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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-THRU PILOTS COALITION, *et al.*,

Plaintiffs,

v.

ALLIED PILOTS ASSOCIATION, *et al.*,

Defendants.

Case No. 3:15-cv-03125-RS

[REVISED PROPOSED] ORDER GRANTING DEFENDANT ALLIED PILOTS ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT

Fed. R. Civ. P. 56

Date: April 21, 2016
Time: 1:30 p.m.
Courtroom: 3 - 17th Floor
Judge: Hon. Richard Seeborg

The Motion for Summary Judgment or, in the Alternative, for Partial Summary Judgment filed on March 17, 2016, by Defendant Allied Pilots Association ("APA") came on regularly for hearing on April 21, 2016. Having considered the argument and evidence presented by the parties, the Court holds that the motion should be granted for the following reasons.

The standard for evaluating summary judgment motions is well established. Summary judgment is appropriate if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Here, because Plaintiffs will bear the burden of production and proof at trial, APA need only point to an "absence of evidence" supporting plaintiffs' position. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 325 (1986). If APA meets this initial burden, the burden then shifts to Plaintiffs to demonstrate "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); *Celotex*, 477 U.S. at 324.

Plaintiffs' Second Amended Complaint states two counts against APA, each for breach of the duty of fair representation ("DFR") that APA owes to the pilots employed by Defendant American Airlines ("American") under the Railway Labor Act, 45 U.S.C. § 151 *et seq*. ("RLA"). Count I is based on APA's conduct in collective bargaining with American and in representing the American pilots in grievances arising under various collective bargaining agreements. Count II is based on APA's conduct in the seniority list integration ("SLI") arbitration that is currently ongoing among American, American's pilots, and two pilot groups employed by U.S. Airways, which is being merged into American. As explained below, the Court finds neither of these claims to be viable.

1. Count I. Most of Count I is time-barred because the allegations supporting that claim involve incidents that occurred prior to January 6, 2015, six months before Plaintiffs filed their initial complaint in this action. The statute of limitations for DFR claims arising under the RLA is six months. *See, e g., Lea v. Republic Airlines, Inc.*, 903 F.2d 624, 633–34 (9th Cir. 1990). Here, all but one of the allegations on which Count I is based involve the terms of collective bargaining agreements and arbitration proceedings dating from 1997 through 2010. Indeed, all of those allegations concern APA's conduct *prior* to the time it began to serve as the collective bargaining representative of

Plaintiffs and the members of the requested class, during which time they were employed by a separate airline, American Eagle ("Eagle"), and were represented by a different labor organization, the Air Line Pilots Association ("ALPA"). As such, not only is Count I time-barred insofar as it arises from those allegations, but it would be meritless even if not time-barred because APA owed Plaintiffs and the members of the requested class no DFR during that time period; rather, ALPA represented them and owed them a DFR. *McNamara-Blad v. Ass'n of Prof'l Flight Attendants*, 275 F.3d 1165, 1169-72 (9th Cir. 2002).[1]

The sole allegation underlying Count I that is arguably not time-barred concerns APA's conduct in negotiating a provision of a January 2015 collective bargaining agreement with American, "Letter G," at which time APA represented, and owed a DFR to, Plaintiffs and the members of the requested class. Letter G restored up to two years length of service credit (which determines the wages earned by American's pilots) for pilots who had been furloughed, i.e., laid off, from their positions at American. While Plaintiffs are not excluded from obtaining additional length of service credit under Letter G, as a practical matter it does not benefit them because they were never furloughed from American. Rather, during the period of furloughs at American, they were held back at Eagle, waiting for jobs to open up for them at American under the so-called "Flow-Through Agreement," which provided certain job opportunities at American to Eagle pilots. Plaintiffs' claim is that, instead of negotiating the terms embodied in Letter G, APA should have negotiated different terms with American that would have provided them with additional length of service credit for the time they

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[1] Plaintiffs' argument that APA owed them and the members of the requested class a DFR during that time period because they had an expectation of joining the bargaining unit is based on decisions that do not support that proposition but only the narrower and unremarkable proposition that employees previously employed in a bargaining unit represented by a union continue to be represented by that union even if they are furloughed or laid off, as long as they have an expectation of *returning to* the bargaining unit, i.e., reinstatement. *See Marlin-Rockwell Corp. v. NLRB*, 116 F.2d 586 (2d Cir. 1941); *Nashville C. St. L. R. v. Ry. Employees Dep't*, 93 F.2d 340 (6th Cir. 1937). Those decisions do not help Plaintiffs because they had not been employed in the American pilots' bargaining unit during the time period at issue in these allegations. They do, however, support APA's argument that it represented and owed a DFR to certain former TWA pilots who were furloughed from TWA-LLC, a company determined by the National Mediation Board, the federal agency with responsibility for resolving representation issues in the airline industry, to have comprised a "single transportation system" with American.

were employed by Eagle and waiting to "flow-up" to American. Summary judgment on Count I insofar as it arises from that claim is appropriate because Plaintiffs have presented no evidence upon which a reasonable factfinder could conclude that APA breached its DFR by negotiating Letter G or that APA's negotiating conduct caused Plaintiffs' claimed injury of lower wages.

In assessing claims for breach of the DFR, courts take a "highly deferential" approach, "recognizing the wide latitude that [unions] need for the effective performance of their … responsibilities." *Air Line Pilots Ass'n, Int'l v. O'Neill*, 499 U.S. 65, 78 (1991). To prevail on the "breach" element of the claim, a plaintiff must show that the union acted arbitrarily, discriminatorily, or in bad faith. *Id.* at 67. A union's conduct is arbitrary "only if … the union's behavior is so far outside a wide range of reasonableness as to be irrational." *Id.* A union's conduct is discriminatory only if "substantial evidence" demonstrates that the conduct is "intentional, severe, and unrelated to legitimate union objectives," *Beck v. United Food & Commercial Workers Union, Local 99*, 506 F.3d 874, 880 (9th Cir. 2007), and that it arises from "prejudice or animus," *Simo v. Union of Needletrades, Indus. & Textile Employees, Sw. Dist. Council*, 322 F.3d 602, 618 (9th Cir. 2003). To show bad faith, a plaintiff must provide "substantial evidence of fraud, deceitful action, or dishonest conduct." *Beck*, 506 F.3d at 880.

Additionally, a plaintiff must also be able to satisfy the "causation" element of the DFR claim by proving a causal connection between the alleged breach and their claimed injury. *See, e.g.*, *Ackley v. Western Conf. of Teamsters*, 958 F.2d 1463, 1472 (9th Cir. 1992); *Bishop v. Air Line Pilots Ass'n, Int'l*, 159 L.R.R.M 2005, 1998 WL 474076 *16 (N.D. Cal. Aug. 4, 1998), *aff'd mem.*, 211 F.3d. 1272 (9th Cir. 2000). Where, as here, the alleged breach concerns the union's conduct in collective bargaining negotiations, the causation element requires a plaintiff to prove that if the union had advanced the negotiating proposal favored by the plaintiff, "the company would have acceded to the union's demands." *Ackley*, 958 F.2d at 1472; *Bishop*, 1998 WL 474076 at *18.

Plaintiffs cannot satisfy either the "breach" or the "causation" elements of their DFR claim, and thus that claim must fail. First, Plaintiffs have not shown that APA acted arbitrarily, discriminatorily, or in bad faith in negotiating Letter G. APA did not act arbitrarily because the terms of Letter G are not irrational. Letter G was intended to compensate pilots for a particular harm – furlough – that

Plaintiffs did not incur. Nor is the harm that Plaintiffs claim to have incurred – being held back at Eagle while waiting for jobs to open up for them at American, and possibly being displaced from their choice of assignments at Eagle (but not being furloughed from Eagle) – comparable to the harm incurred by pilots who were actually furloughed by American. Moreover, Plaintiffs failed to rebut APA's showing that such agreements to restore length of service credit to furloughed pilots are negotiated at other airlines and that APA has previously negotiated such agreements before Letter G. For the same reasons, Plaintiffs have not shown that the negotiation of Letter G was "unrelated to legitimate union objectives," *Beck*, 506 F.3d at 880, which therefore precludes them from proving that it was discriminatory. Nor have Plaintiffs presented any evidence of "prejudice or animus" in the negotiation of Letter G. *Simo*, 322 F.3d at 618.[2] Additionally, Plaintiffs have presented no evidence that APA acted in bad faith by negotiating Letter G, i.e., that it engaged in fraud, deceit, or dishonest conduct. Finally, Plaintiffs have presented no evidence of causation, i.e., that if, instead of proposing Letter G, APA had proposed the terms that Plaintiffs prefer, "the company would have acceded to [that] demand[]." *Ackley*, 958 F.2d at 1472.[3]

Since virtually all of the allegations underlying Count I are time-barred, and Plaintiffs have no evidence capable of satisfying the "breach" and "causation" elements of the breach of DFR claim

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[2] Plaintiffs attempt to fill this gap by relying on APA's conduct in the negotiations and arbitrations that occurred before it became their collective bargaining representative, which they assert was detrimental to their interests. The most that evidence shows, however, is that APA vigorously represented the interests of the American pilots to whom it owed a DFR during that period. Indeed, if APA had privileged the interests of Eagle pilots not yet working at American, whom it did not represent during that period, it would thereby have risked violating the DFR it owed to the pilots whom it did represent. *See McNamara-Blad*, 275 F.3d at 1173.

[3] Rather, the evidence on this issue shows two things. First, it shows that American expressly declined in the Flow-Through Agreement to grant length of service credit to the former Eagle pilots for their service at Eagle. Second, it shows that American has refused to extend length of service credit under Letter G to another group of APA-represented pilots who were hired by and then furloughed from MidAtlantic Airways, a division of American's latest merger partner, US Airways, because it does not consider them to have been furloughed from the "mainline" carrier, US Airways, just as Plaintiffs were never furloughed from American. Both pieces of evidence indicate that American would not have acceded to a demand from APA to extend length of service credit to former Eagle pilots for their service at Eagle, and Plaintiffs have presented no contrary evidence to carry their burden.

insofar as it arises from the sole remaining allegation of Count I that is at least arguably not time-barred, summary judgment must be granted for APA and against Plaintiffs on Count I.

2. Count II. As noted above, Count II seeks to hold APA liable for breaching its DFR by its conduct in the SLI arbitration, a procedure by which the seniority lists of American, U.S. Airways, and America West Airlines are being merged into a single seniority list, following the merger of America West into U.S. Airways, and the subsequent merger of U.S. Airways into American. Count II is based on three events in the SLI arbitration: (1) a stipulation (the "Stipulation") among the parties to the SLI arbitration providing that pilots' prior service at regional affiliated airlines of American and U.S. Airways, including Eagle, will not be considered in integrating the seniority lists; (2) the terms of the original proposal ("the Proposal") for seniority integration submitted to the arbitration panel by a committee of American pilots charged with representing the interests of the American pilot group in the arbitration, the American Airlines Pilots Seniority Integration Committee ("AAPSIC"), which contained certain terms that Plaintiffs believe would, if adopted by the arbitrators, disadvantage them and the members of the requested class in the seniority integration; and (3) AAPSIC's current arbitration strategy of presenting only the position that no pilot's prior service with any airline should be taken into account in determining the seniority integration (a position with which Plaintiffs do not disagree), rather than also presenting a "fallback" position (and introducing evidence in support thereof) as to how Plaintiffs' prior service with Eagle should be taken into account *if* the arbitration panel rejects AAPSIC's position and decides to take the pilots' prior service into account in determining the seniority integration. The Court assumes for purposes of summary judgment that AAPSIC's conduct is attributable to APA because APA has not moved for summary judgment on the ground that it is not liable for AAPSIC's conduct.

Count II is moot insofar as it arises from Plaintiffs' first two allegations concerning the Stipulation and the Proposal, both of which were withdrawn before proceedings on the merits began in the SLI arbitration and neither of which had any subsequent force or effect. Rather, no equivalent stipulation has been agreed upon and, on September 19, 2015, AAPSIC submitted an entirely different proposal containing none of the features of its original Proposal which Plaintiffs challenged.

Article III of the Constitution limits the jurisdiction of all federal courts to resolving actual "Cases" and "Controversies." U.S. Const. art. III, § 2; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-60 (1992). "To qualify as a case fit for federal-court adjudication, 'an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.'" *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997) (citing *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975)). If a claim is moot, it must be dismissed; "Mootness is a jurisdictional question because the [federal courts are] not empowered to decide moot questions or abstract propositions . . . ." *North Carolina v. Rice*, 404 U.S. 244, 246 (1971) (internal quotations omitted). An "actual controversy" ceases to exist, and the underlying claim predicated upon it is moot, if it becomes "impossible for th[e] court, if it should decide the [claim] in favor of the plaintiff, to grant him any effectual relief whatever." *Mills v. Green*, 159 U.S. 651, 653 (1895). More recently, the Ninth Circuit has held that a "case becomes moot when interim relief or events have deprived the court of the ability to redress [a] party's injuries." *Am. Cas. Co. v. Baker*, 22 F.3d 880, 896 (9th Cir. 1994) (internal quotation marks omitted); *accord San Lazaro Ass'n v. Connell*, 286 F.3d 1088, 1095 (9th Cir. 2002).

Because the factual circumstances on which the first portion of Count II is predicated – the existence of a particular Stipulation and Proposal – no longer exist, no judicial decision on those issues could have any effect on the parties' dispute. Any decision by this Court would constitute an "advisory opinion[] . . . . decid[ing] moot questions or abstract propositions" in contravention of Article III and of longstanding judicial practices. *Rice*, 404 U.S. at 245-46. "[F]ederal courts are without power to decide questions that cannot affect the rights of litigants in the case before them." *Id.* at 246. This Court can do nothing to redress any injury from the withdrawn Stipulation or Proposal, which did not cause any injury in the first place because they were withdrawn before the proceedings on the merits commenced in the arbitration. As such, Count II is moot insofar as it arises from the Stipulation and/or Proposal.

That leaves the allegations regarding AAPSIC's current arbitration litigation strategy – its decision to advance only a primary argument that no pilot's prior service with any airline should be taken into account in determining the seniority integration (a position with which Plaintiffs do not disagree), rather than also presenting the "fallback" position (and introducing evidence in support

thereof) that Plaintiffs advocate, as well as AAPSIC's decision not to provide Plaintiffs with certain information they requested about its position before that position was litigated in arbitration. No claim for breach of the DFR based on these allegations is ripe for adjudication. Under governing Ninth Circuit law, no such claim concerning the position taken by the union in the SLI process following an airline merger ripens until that process produces a final seniority list that injures the plaintiffs. *Addington v. US Airline Pilots Ass'n*, 606 F.3d 1174, 1177 (9th Cir. 2010). Here, that process has not yet concluded, as there is no arbitration decision at this point, and thus Plaintiffs can demonstrate no injury from AAPSIC's current arbitration strategy. AAPSIC's current arbitration proposal is subject to contingencies that render any challenge thereto premature – specifically, that a panel of neutral arbitrators will select among proposals from three different committees, or adopt parts of multiple proposals, or create a seniority list not based on any of the proposals – and, for the same reasons, forbearing from adjudication of that claim at this point would not work an immediate hardship on Plaintiffs. *See id*. at 1179-80. Thus, any claim based on AAPSIC's current arbitration proposal is not yet ripe.

Finally, even if that claim were ripe, it would fail as a matter of law because a union's reasoned explanation for arbitration strategy decisions, e.g., what arguments to advance, what evidence to introduce, and what strategy to disclose before it is implemented, cannot provide the predicate for a claim for breach of the DFR. First, Plaintiffs have no evidence that AAPSIC's arbitration strategy decisions constitute discrimination against them or were adopted in bad faith. To the contrary, AAPSIC's current arbitration proposal argues for past service *not* to be a factor in the SLI decision, as Plaintiffs admit. *See* Second Amended Complaint ¶ 69. AAPSIC's position thus actually *favors* Plaintiffs and the members of the requested class. Nor can Plaintiffs show that AAPSIC's challenged arbitration strategy decisions not to present a "fallback" position (or evidence in support thereof) in the arbitration, or to disclose that strategy prior to its presentation in arbitration, were arbitrary. As a matter of law, a claim for breach of the DFR by "arbitrary" conduct cannot be predicated on reasoned arbitration strategy decisions. *Patterson v. Int'l Bhd. of Teamsters, Local 959*, 121 F.3d 1345, 1349-50 (9th Cir. 1997). AAPSIC has presented a reasoned explanation for its decision not to present a "fallback" position (or evidence in support thereof), specifically that the use of time flying for regional

airlines for purposes of longevity is not consistent with precedent from prior pilot seniority integration proceedings, and that presenting such a "fallback" position would detract significantly from AAPSIC's primary argument against use of longevity entirely, while misdirecting both time and resources. AAPSIC has also provided a reasoned explanation for its decision not to provide Plaintiffs' advance notice of its positions: that divulging such information before presenting the positions in arbitration (at which point they would be made available on the APA website) would potentially place AAPSIC at a strategic disadvantage in the arbitration by making it more likely that the other pilots groups would have advance access to AAPSIC's position, with extra time to prepare their rebuttals. There the inquiry must end because such decisions are quintessentially judgment calls that are not subject to judicial review.

3. Conclusion. For the foregoing reasons, summary judgment is hereby granted to APA and against Plaintiffs, and the Second Amended Complaint and this entire action is hereby ordered dismissed with prejudice.

IT IS SO ORDERED.

Dated:

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RICHARD SEEBORG
United States District Judge