UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

FLIGHT OPTIONS, LLC and
FLEXJET, LLC,
Plaintiffs,
v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 1108; INTERNATIONAL BROTHERHOOD OF TEAMSTERS; and BROTHERHOOD OF TEAMSTERS, AIRLINE DIVISION,
Defendants.

and
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AIRLINE DIVISION, and TEAMSTERS LOCAL UNION 1108,

Counter-Plaintiffs,
v.
FLIGHT OPTIONS, LLC; FLEXJET, LLC; ONESKY FLIGHT, LLC; and FLIGHT OPTIONS HOLDINGS I, INC.,
Counter-Defendants.

No. 1:16-cv-00732

Opinion and Order

[Resolving Doc. 10]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On April 22, 2016, Counter-Plaintiffs International Brotherhood of Teamsters et al. ("Pilots Union") filed a motion for preliminary injunction and temporary restraining order against Counter-Defendants Flight Options, et al. ("The Carriers").[1] On May 11, 2016, the Court held a hearing that consolidated the temporary restraining order hearing with the preliminary injunction hearing.[2]

[1] Doc. 10. Counter-Defendants Opposed Doc. 13. Counter-Plaintiffs Replied Doc. 18.
[2] *See* Docket Order dated May 2, 2016.

This case concerns disputes between Pilots Union and the Carriers arising out of the merger of two luxury jet airline carriers: Flexjet and Flight Options. The Court decides whether the Carriers and the Pilots Union entered a contract that gave the Pilots Union the responsibility to establish a seniority ranking after the Carriers acquired control of a related flight company. The Court also decides whether the Carriers were required to bargain with the Pilots Union before the Carriers offered separation packages.

For the reasons below, this Court **GRANTS** the motion for preliminary injunction and **ORDERS** the Counter-Defendants Carriers to accept the integrated seniority list, rescind the voluntary separation package and bargain in good faith with Counter-Plaintiffs Pilots Union.

**Factual Background**

Counterclaim-Defendants Flexjet and Flight Options provide fractional jet ownership and luxury jet travel. Flexjet employs approximately 320 pilots while Flight Options employs approximately 370 pilots.[3] Counterclaim-Defendant OneSky owns both Flexjet and Flight Options.

The Pilots Union acts as the certified collective bargaining representative for Defendant Flight Options pilots.

The Pilots Union and Flight Options negotiated a collective bargaining agreement that became effective on March 31, 2010.[4] As part of the negotiations, Flight Options' parent holding companies executed a 2010 letter of agreement with the Pilots Union. That holding company letter of agreement required the holding companies to follow certain Flight Options collective bargaining agreement provisions. In the letter agreement, the OneSky holding company agreed to the method it would use to merge seniority listings in any later similar acquisition.

[3] Doc. 10-1 at 2.
[4] Doc. 8-2.

That letter agreement provides that "The Holding companies and Flight Options and their affiliates . . . shall be subject to all terms and conditions of Section 1 of the Flight Options/[Pilots Union] CBA (as it presently exists or as subsequently amended) as if all references to Flight Options and/or the Company expressly referred to the Holding Companies, any of them, or their affiliates."[5] The Letter of Agreement then goes on to explain that the agreement "shall be binding on any Successor to Flight Options, the holding companies, any of them, or any Successor thereto."[6]

The Letter of Agreement also requires affiliated companies comply with CBA pilot seniority consolidation provisions. The letter agreement states, "Upon acquisition by holdings I of a controlling interest in an air carrier . . . the acquired air carrier shall be consolidated utilizing the procedure for Successor Transactions set forth in Section 1.5 of the Flight Options/[Pilots Union] CBA."[7]

In December 2013, OneSky acquired a controlling interest in Flexjet, and announced an operational merger between Flexjet and Flight Options.

After a contested representation election, on December 16, 2015, the National Mediation Board certified Counter-Plaintiffs Pilots Union as the bargaining representative of the combined unit of Counter-Defendants Flexjet and Flight Options pilots.[8]

Section 1.5(c) of the Flight Options – Pilots Union collective bargaining agreement addresses pilot protections when Flight Options, or its parent company, acquires an air carrier.[9]

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[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] Doc. 9 at ¶4.
[9] **1.5(c)(1)** If Pilots of the acquired carrier are hired by the Company, the seniority lists of the respective Pilot groups shall be integrated pursuant to Teamsters Merger Policy if both groups are represented by the [Pilots Union], or if the Pilots of the acquired airline are not represented by the [Pilots Union], then pursuant to Sections 3 and 13 of the Allegheny-Mohawk Labor Protective Provisions. Seniority integration procedures shall be promptly initiated following announcement of an operational merger affecting the seniority of the pilot groups. The Company or other Successor, as appropriate, shall accept the integrated seniority list. There shall be no system flush or

When one union represents both merging bargaining units, the CBA agrees that the Pilots Union will use internal union procedure to prepare a combined seniority list.

After the merger announcement, the Pilots Union began seniority integration procedures with a committee comprised of three Flexjet pilots and three Flight Options pilots.[10] The Pilots Union says it chose these representatives to fairly represent pilots in their respective units.

When assembling a combined seniority list, many policy decisions became involved. And these policy decisions mostly existed independent of the merged seniority lists. At both Flight Options and Flexjet, pilots had taken leave of absences, including leaves for military service. Flight Option pilots had been furloughed. Some pilots had flown for predecessor

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removal of Pilots from their positions as a result of seniority list integration.

**1.5(c)(2)** Prior to integration of Seniority Lists in accordance with paragraph 1.5(c)(1), above, the parties shall negotiate a mutually agreeable fence agreement. The fences shall remain in effect for the period of time the acquired carrier continues as a separate transportation system. Until the fences are removed, all aircraft (including orders and options to purchase aircraft) and the operations of each pre-transaction carrier shall remain separated. If the fence agreement cannot be reached within 60 days of a request by either party to begin negotiations, all unresolved issues shall be submitted to interest arbitration. The arbitrator's resolution of the disputed issues shall be on an issue-by-issue basis, rather than a "total package" basis, and shall be binding on the parties with respect to the particular dispute, but shall have no precedential or binding effect on other or future disputes arising under this subparagraph.

**1.5(c)(3)** Unless and until an operational merger is finally effectuated, the Union shall continue to be recognized as the representative of the premerger Pilot craft or class to the extent provided by law. In the event of an operational merger, the representative of the post-merger craft or class shall be established pursuant to Section 2, Ninth of the Railway Labor Act, as amended.

**1.5(c)(4)** If Pilots of the acquired carrier are hired by the Company, the Agreement shall be modified in those respects necessary to permit the integration through negotiations between the surviving air carrier and the representative of the consolidated, post-merger Pilot craft or class. If a modified agreement is not executed within nine months from the date a final and binding integrated Pilot Seniority List is issued, the parties shall submit outstanding issues to binding interest arbitration. The arbitrator's resolution of the disputed issues shall be on an issue-by-issue basis, rather than a "total package" basis, and shall be binding on the parties with respect to the particular dispute, but shall have no precedential or binding effect on other or future disputes arising under this subparagraph. Until such time as a fully merged agreement is reached, either through bargaining or arbitration, the surviving air carrier may continue to operate the two carriers separately.

**1.5(c)(5)** The Company may operate the acquired carrier under the parties' fence agreement for a reasonable period following acquisition.

[10] Doc. 31 at 128.

companies. How to treat these periods impacted individual pilot seniority but did not systemically advantage either Flight Option pilots or Flexjet pilots.

On February 24, 2016, the Pilots Union presented the integrated list to the Carriers Chief Executive Officer. On the same day, the Pilots Union also sent another letter to the Carriers Chief Executive "to serve as notice in accordance with Section 6, Title I of the Railway Labor Act (RLA) . . . of the Union's intent to open and commence negotiations between the parties for the purposes of amending the CBA to apply to the entire combined craft or class of Flight Options and Flexjet Pilots . . ."[11]

On February 26, 2016, the Carriers rejected the integrated list on the basis that it "does not comply with McCaskill-Bond." The letter also stated that "the company does not agree that these Section 1.5(c)(4) negotiations trigger the Section 6 status quo obligation."[12]

On March 3, 2016, the Pilots Union responded and again demanded to bargain under Section 6 of the RLA as well as over whatever issues existed over the integrated list. The Carriers have refused to bargain with the Pilots Union as requested in the Pilots Union's March 3, 2016, letter.

On March 23, 2016, the Carriers filed a complaint in this Court seeking declaratory judgment "that the [Pilots Union's] actions violate McCaskill-Bond, that the [Pilots Union] and the representatives of the Flexjet pilots must collectively bargain with the Carriers for a fair and equitable seniority integration under McCaskill-Bond, that the Flexjet pilots are entitled to their

[11] Doc. 9 at ¶ 20. Section 6 of the RLA, 45 U.S.C. § 156, provides that: "[Carriers] and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended changes has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules or working conditions shall not be altered by the carrier until the controversy has been fully acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

[12] Doc. 10-1 at 9.

own representative, and that the purported ISL presented to Flight Options by the [Pilots Union] on February 24, 2016 did not comply with McCaskill-Bond."[13]

The Pilots Union claims the Carriers have not negotiated in good faith. After the Carriers buy a related flight business, the collective bargaining agreement requires fence bargaining to negotiate job responsibilities for current pilots and the pilots of the newly purchased flight company. On March 31, 2016, the Pilots Union met with the Carriers to negotiate over a Fence Agreement under Section 1.5(c) of the collective bargaining agreement.

The parties did not reach a fence agreement, and the Pilots Union characterized the Carriers' negotiations as "surface-level" and "regressive."[14] At the preliminary injunction hearing, Flight Options pilot and Pilots Union local 1108 business agent Laddie Hostalek testified that fence negotiations began in December 2013 and Pilots Union had been meeting with the Carriers every month or every other month to negotiate the fence agreement.[15] Hostalek testified that the Carriers offered minimal, and widely spaced, available bargaining dates.[16] The parties are now scheduled to meet again regarding the Fence Agreement in June 2016.

The Pilots Union also complains that the Carriers failed to bargain over a pilot separation program. On March 31, 2016, the Carriers presented the Pilots Union with a voluntary separation package ("VSP") for pilots at Flight Options and Flexjet. Counter-Plaintiffs Pilots Union say that the Carriers are required to bargain with the Pilots Union over the separation package and say the Carriers refused to meet face to face to bargain over the proposed VSP. Instead, on April 22, 2016, the Carriers offered the VSP to Flight Options pilots without giving the Pilots Union any chance to bargain .[17]

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[13] Doc. 1.
[14] Doc. 10-1 at 28-29.
[15] Doc. 31 at 69.
[16] *Id*. at 93.
[17] *Id*. at 15-17.

On April 22, 2016, Counter-Plaintiffs Pilots Union filed a motion for preliminary injunction asking this Court to order the Carriers to bargain over rates of pay, rules and working condition and to rescind the VSP until bargaining has occurred. The Pilots Union also asks this Court to find that the integrated seniority list is "fair and equitable" or alternatively to order the Carriers to arbitrate the "fair and equitable" nature of the integrated seniority list.[18]

**Law and Discussion**

A district court's decision to grant a preliminary injunction under the Railway Labor Act rests within that court's discretion.[19] In considering whether to use a preliminary injunction, courts weigh: "(1) whether the movant has demonstrated a substantial likelihood of success on the merits; (2) whether the movant will suffer irreparable injury without the injunction; (3) would the preliminary injunction cause substantial harm to others; and (4) will the public interest be served if the injunction issues."[20]

However, in a RLA labor dispute, a district court may "enjoin a violation of the status quo pending completion of the required procedures, without the customary showing of irreparable injury."[21]

The Railway Labor Act provides,

> It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.[22]

[18] Doc. 10.
[19] *Adams v. Fed. Express Corp.*, 547 F.2d 319, 322 (6th Cir. 1976) (citing other cases).
[20] *Overstreet v. Lexington-Fayette Urban Cty. Gov't*, 305 F.3d 566, 573 (6th Cir. 2002).
[21] *Consol. Rail Corp. v. Ry. Labor Executives' Ass'n*, 491 U.S. 299, 303 (1989).
[22] 45 U.S.C. § 152.

The RLA distinguishes between two categories of labor disputes: "disputes concerning the making of collective agreements," known as major disputes, and "disputes over grievances," known as minor disputes.[23] Major disputes give federal courts jurisdiction; minor disputes must be submitted to binding arbitration.

The Sixth Circuit recently described the difference between major and minor disputes. The Sixth Circuit said that a major dispute is one that arises "where a CBA does not exist or where one of the parties seeks to change the terms of an existing CBA. The issue in a major dispute 'is not whether an existing agreement controls the controversy'; instead, the focus is on the 'acquisition of rights for the future, not [the] assertion of rights claimed to have vested in the past.'"[24] The Sixth Circuit also found that major disputes arise when a party makes a claim that is "frivolous or obviously insubstantial in light of the express language" of the underlying agreement.[25]

The Pilots Union's preliminary injunction motion specifically involves two disputes: the integrated seniority list and the voluntary separation program. This Court examines each dispute in turn.

***Integrated Seniority List***

As an initial matter, the integrated seniority list dispute is a "major dispute" because its focus is on the "acquisition of rights for the future" rather than "rights claimed to have vested in the past."[26] This Court enjoys jurisdiction over the integrated seniority list dispute.

As will be described, the Carriers and the Pilots Union agreed to a collective bargaining agreement that gave the Pilots Union responsibility to assemble the seniority list. Under its

[23] *Elgin, J. & E. Ry. Co. v. Burley*, 325 U.S. 711, 722 (1945).
[24] *Wheeling & Lake Erie Ry. Co. v. Bhd. of Locomotive Engineers & Trainmen*, 789 F.3d 681, 690 (6th Cir. 2015) (quoting *Burley*, 325 U.S. at 725).
[25] *Id*. at 692.
[26] *Id*.

contract with the Pilots Union, the Counter-Defendants Carriers were required to accept the integrated seniority list when it was presented.

Even if the collective bargaining agreement had not given the union responsibility for merging the seniority lists, the Pilots Union used a "fair and equitable" process as required by Allegheny-Mohawk Sections 3 and 13.[27] Nothing shows that the Pilots Union's process was not fair and equitable.

Section 1.5(c)(1) of the Carriers – Pilots Union collective bargaining agreement gives the union, not the Carriers, the responsibility to create the seniority list. That section states

> **1.5(c) Pilot Protections in the Event of an Acquisition of an Air Carrier**
> **1.5(c)(1)** If Pilots of the acquired carrier are hired by the Company, the seniority lists of the respective Pilot groups shall be integrated pursuant to Teamsters Merger Policy if both groups are represented by the [Pilots Union], or if the Pilots of the acquired airline are not represented by the [Pilots Union], then pursuant to Sections 3 and 13 of the Allegheny-Mohawk Labor Protective Provisions. Seniority integration procedures shall be promptly initiated following announcement of an operational merger affecting the seniority of the pilot groups. The Company or other Successor, as appropriate, shall accept the integrated seniority list. There shall be no system flush or removal of Pilots from their positions as a result of seniority list integration. (Emphasis added.)

Because both groups were represented by the Pilots Union, the Teamsters Merger Policy controlled the integration process.

The Pilots Union did not have a written Teamsters Merger Policy, but they followed standard protocols when they assembled the Flight Options-Flexjets seniority list. Captain Dubinsky, a retired pilot with considerable pilot integration experience, oversaw the integrated seniority list process. With extensive experience, including having led a number of United

[27] Section 3 and 13 of the Allegheny-Mohawk Labor Protective Provisions were incorporated into the McCaskill-Bond Amendment to the Federal Aviation Act, 40 U.S.C. §42112, Note § 117(a).

Airlines seniority list integrations, Dubinsky testified the seniority integration process followed standard Airline Pilots Association (ALPA) Merger Policy.[28] Dubinsky further testified that the integration process emulated the ALPA process to make sure the integration process was "fair and equitable."

The Flight Options – Flexjet pilot circumstances give support that the seniority merger process was fair and reasonable. Recall, both pilot groups were represented by the Pilots Union. And both pilot groups were roughly the same size. While any pilot seniority integration formula would advantage some pilots while disadvantaging others, the formula did not systemically benefit any subgroup of pilots. Somewhat counterintuitively, the incoming Flexjet pilots generally received higher seniority rankings than the Flight Option pilots.

The Carriers say that Allegheny-Mohawk Sections 3 and 13 control because the pilots of the acquired airline were not represented by the Pilots Union at the time of the acquisition. Even if this Court were to give credence to Counter-Defendants' argument, the integrated seniority list process was fair and equitable and thus met the Allegheny-Mohawk Sections 3 standard.[29] Section 3 of the Allegheny-Mohawk standard states,

> **Section 3**
> Insofar as the merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with section 13.
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> **Section 13**
> (a) In the event that any dispute or controversy (except as to matters arising under section 9) arises with respect to the protections provided herein which cannot be settle by the

[28] Doc. 31 at 103.

> parties within 20 days after the controversy arises, it may be referred by any party to an arbitrator selected from a panel of seven names furnished by the National Mediation Board for consideration and determination. The parties shall select the arbitrator from such panel by alternatively striking names until only one remains, and he shall serve as arbitrator. Expedited hearings and decisions will be expected, and a decision shall be rendered within 90 days after the controversy arises, unless an extension of time is mutually agreeable to all parties. The salary and expenses of the arbitrator shall be borne equally by the carrier and (i) the organization or organizations representing employee or employees or (ii) if unrepresented, the employee or employees or group or groups of employees. The decision of the arbitrator shall be final and binding on the parties.
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> (b.) The above condition shall not apply if the parties by mutual agreement determine that an alternative method for dispute settlement or an alternative procedure for selection of an arbitrator is appropriate in their particular dispute. No party shall be excused from complying with the above condition by reason of having suggested an alternative method or procedure unless and until that alternative method or procedure shall have been agreed to by all parties.

Although the Pilots Union is the certified pilot representative, the Carriers say that they have an obligation to ensure that the integrated seniority list process is fair and equitable. Against the backdrop of adversarial national labor policy, the Carriers do not show case or statutory authority that the Carriers owed a representational duty to the pilots. The Pilots Union owed fair representation to the pilots it represents. The Carriers do not.

Pilots can enforce the fair representation duty and can sue the union for breach of this duty of fair representation. But it is nowhere clear that the Carriers have any duty or standing to challenge the Pilots Union's pilot representation.

The Pilots Union gave the integrated seniority list ("ISL") to the Carriers. At the time the list was given to the Carriers, the Pilots Union represented both Flexjet and Flight Options pilots.

The Pilots Union ISL methodology was based on pilots' "modified longevity date." Two equal-size merger committees—Flexjets Pilots Merger Committee and Flight Options Pilots Merger Committee—worked together to devise the methodology.

Pilots had longevity dates going as far back as 1995, with over 370 of the 670 pilots having a longevity date dating to the year 2000 or before. Under the consolidated seniority list, all Flexjet pilots kept their relative seniority to other Flexjet pilots. All Flight Options pilots kept their relative seniority to other Flight Option pilots.[30]

The integration committees decided that because "Flexjet is the older company when compared to all combined companies . . . a Flexjet pilot would be integrated above an adjacent Flight Options pilot having a later Longevity Date, notwithstanding the Longevity Date of subsequent Flight Options pilots may be earlier." Captain Adam Fine, a Flexjet pilot who served on the merger committee testified that the longevity method was selected over the date-of-hire method because the "date-of-hire method would put half the entire Flexjet pilot group at the extreme bottom of the seniority list."[31] This methodology resulted in the first thirty-three pilots on the seniority list all being Flexjet pilots.[32] Captain Fine also testified that the 80 transfer pilots were allowed to choose whether they wanted to be integrated based on their position at Flexjet or their position at Flight Options.[33]

On February 24, 2016, the two committees sent a detailed letter to all pilots that explained the committees' seniority integration decision. In the letter, the committees explained the various factors the committees considered in deciding on the modified longevity methodology. Among other factors, the Committee said its integration formula considered: different aged companies, previous merged seniority list at Flight Options resulting in scrambled

[30] Doc. 31 at 133.
[31] Doc. 31 at 131.
[32] *See* Doc. 19-1.
[33] Doc. 31 at 136.

Date of Hire, different sized companies, furloughs, personal leaves of absence, large disparities in hiring bubbles at both companies during different years, different Captain/First Officer ratios at each company, inaccurate or incomplete employment data, and pilots hired on the same date at each company. The Committees addressed each of these factors and then explained the various methods it considered and why it ultimately chose the one it did.[34]

This Court finds it difficult to argue that the Carriers have any standing to challenge the integration committee's decision. Moreover, the union representation background does not suggest why the Pilots Union would, or has, favored any subgroup of union members. The process was sanctioned by representative employees of both Flexjet and Flight Options. And even accepting the Carriers' curious resistance to the integrated seniority list, the CBA provides a clear mandate that the "Company or other Successor, as appropriate, shall accept the integrated seniority list."[35]

Counter-Defendants Carriers seem to misunderstand their primary duty in relation to the ISL—it is not a duty to ensure the process is fair and reasonable, but rather a duty to accept the ISL list presented. Counter-Plaintiffs Pilots Union, as the representatives of both Flexjet and Flight Options pilots, hold the duty to ensure a fair and equitable ISL process for the pilots they represent.

The Carriers' own Chairman made a statement on October 15, 2014, that acknowledged that it was the union's job to integrate the seniority lists. The Chairman said, "once the union were to request a single system and thereby start to a merging of seniority lists . . . then the union's first job will be to integrate the seniority lists. That's—that's what they do."[36]

[34] Doc. 19-2.
[35] Doc. 8-2.
[36] Doc. 31 at 40.

This Court finds that the integrated seniority list was fair and equitable and **ORDERS** the Counter-Defendants Carriers to accept the ISL.

***Voluntary Separation Program***

Applying the Sixth Circuit's *Wheeling* guidance, the voluntary separation package ("VSP") is a major dispute because it relates to "acquisition of rights for the future." The dispute is also a major one because the Carriers' claim that it had the right to present the VSP to pilots without bargaining is a "claim that is "frivolous or obviously insubstantial in light of the express language" of the collective bargaining agreement, as demonstrated below.

When parties are engaged in a major dispute under the Railway Labor Act, they must maintain the status quo until they exhaust the major dispute process.[37] Influenced by a goal to avoid disruption of the transportation system, the Railway Labor Act sets forth a detailed sequence of steps that carriers and their employees' representatives must follow in negotiating CBAs. The Seventh Circuit has summarized that sequence of steps as follows:

> First, the party seeking a change in rates of pay, rules or working conditions must give notice and confer with the other party. If the parties remain unable to resolve their dispute after this conference, either or both of them may seek mediation by the National Mediation Board. If the mediation fails to produce agreement, the National Mediation Board must attempt to persuade the parties to submit to binding arbitration. If either or both of the parties rejects the offer of arbitration and the dispute threatens 'substantially to interrupt interstate commerce to a degree such as to deprive any section of the country or substantial transportation service,' the NMB must contact the President who may then create an emergency board to 'investigate and report respecting such dispute.' If the NMB releases the parties from mediation before an agreement has been reached, the RLA imposes a 30-day "cooling-off" period upon the parties. Throughout this entire lengthy negotiation process, carriers and unions are required to maintain

[37] *See Consol. Rail Corp.*, 491 U.S. at 302–03 ; *United Transp. Union v. Cuyahoga Valley Ry. Co.*, 979 F.2d 431, 435 (6th Cir.1992). *In Detroit & Toledo Shore Line Railroad Co. v. United Transportation Union*, 396 U.S. 142, 143 (1969).

> the status quo with respect to rates of pay, rules, and working conditions.[38]

If either side unilaterally alters the status quo:

> A court may issue an injunction to put a stop to that party's illegal self-help and to restore the status-quo, and it may do so even without the traditional showing of irreparable injury to either party.[39]

Offering voluntary separation packages to Flight Options pilots without any meaningful bargaining with Pilots Union violates the status quo.

The Carriers have a collective bargaining agreement with the Pilots Union. After the representation election and the resulting certification, the Pilots Union represents both Flight Options pilots and Flexjet pilots.

The Flight Options – Pilots Union collective bargaining agreement requires negotiations to resolve issues coming from the merger or acquisition. The same provision requires interest arbitration if the parties are unable to resolve issues coming from the Flexjet acquisition:

> The Flight Option Collective Bargaining Agreement says:
>
> **1.5(c)(4)** If Pilots of the acquired carrier are hired by the Company, the Agreement shall be modified in those respects necessary to permit the integration through negotiations between the surviving air carrier and the representative of the consolidated, post-merger Pilot craft or class. If a modified agreement is not executed within nine months from the date a final and binding integrated Pilot Seniority List is issued, the parties shall submit outstanding issues to binding interest arbitration. [40]

Further, the collective bargaining agreement requires that seniority govern any "reduction in force"

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[38] *United Air Lines, Inc. v. Int'l Ass'n of Machinist & Aerospace Workers, AFL-CIO*, 243 F.3d 349, 361 (7th Cir. 2001).

[39] *Id.*; *see also*, *Wheeling & Lake Erie Ry. Co. v. Bhd. of Locomotive Engineers & Trainmen*, 789 F.3d 681, 691 (6th Cir. 2015).

[40] Doc. 8-2, Page ID 90.

> **5.1 Application of Seniority**
> Except as may be provided otherwise in this Agreement, seniority shall govern all pilots in cases of promotion and demotion, retention in case of reduction in force, recall after furlough, choice of vacancies, choice of vacation and schedule bidding, and such other purposes as may be provided in this Agreement.

Thus, the voluntary separation package seems to run counter to the collective bargaining agreement. The Carriers state in their briefing, "because Flight Options pilots faced possible furlough due to overstaffing Flight Options decided to offer a very generous voluntary separation program ("VSP") to see if enough pilots will take the offer to avoid a potential furlough."[41] The voluntary separation program seems aimed at reducing the workforce.

Independent of how any separation program plays out, the Carriers were required to meet, confer and negotiate with the pilot certified representative before offering the separation proposal.

As the Supreme Court has explained, the RLA,

> does not undertake to compel agreement between the employer and employees, but it does command those preliminary steps without which no agreement can be reached. It at least requires the employer to meet and confer with the authorized representative of its employees, to listen to their complaints, to make reasonable effort to compose differences—in short, to enter into a negotiation for the settlement of labor disputes . . .[42]

The Supreme Court has further explained that the RLA's duty to bargain in good faith is similar to the National Labor Relations Act duty to bargain in good faith and that "the duty of management to bargain in good faith is essentially a corollary of its duty to recognize the union."[43],[44]

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[41] Doc. 13-1 at 18.
[42] *Virginian Ry. Co. v. Sys. Fed'n No. 40*, 300 U.S. 515, 548 (1937).
[43] *Chicago & N. W. Ry. Co. v. United Transp. Union*, 402 U.S. 570, 575 (1971).
[44] The Carriers argue that the Eighth Circuit's reasoning in *Int'l Ass'n of Machinists & Aerospace Workers, Dist. Lodge No. 19 v. Soo Line R. Co.*, 850 F.2d 368 (8th Cir. 1988) should apply here. There, the Eighth Circuit, in a

Counter-Defendants Carriers must rescind the VSP offers made and bargain in good faith with Pilots Union.

**Conclusion**

For the reasons above, this Court **GRANTS** the motion for preliminary injunction and **ORDERS** the Counter-Defendants Carriers to accept the integrated seniority list, rescind the voluntary separation package and bargain in good faith with Counter-Plaintiffs Pilots Union.

IT IS SO ORDERED.

Dated: May 25, 2016

*s/ James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

divided opinion, decided that the implementation of a voluntary separation package despite a collective bargaining agreement was a "minor dispute." However, this Court is not bound by that decision and finds that the case at hand is more similar to *Bhd. of Ry., Airline & S.S. Clerks, Freight Handlers, Exp. & Station Employees v. Chesapeake & Ohio Ry. Co.*, No. C 83-451, 1983 WL 1754, at *7 (N.D. Ohio Oct. 19, 1983), which found that the implementation of a voluntary separation package did constitute a major dispute.