

No. 17-____

IN THE
Supreme Court of the United States

FLIGHT OPTIONS, LLC, FLEXJET, LLC, ONE SKY FLIGHT,
LLC AND FLIGHT OPTIONS HOLDINGS, I, INC.

Petitioners,

v.

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

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Consolidated Rail Corp. v. Railway Labor Executives Ass'n*, 491 U.S. 299 (1989) (“*Conrail*”), this Court held that disputes over the interpretation of collective bargaining agreements governed by the Railway Labor Act must be arbitrated so long as the interpretation of the contract by the party seeking arbitration is “arguably justified” and not “frivolous” or “obviously insubstantial.” *Id.* at 306-07. This Court further held that this is a “relatively light” burden that may be based on both implied and express terms of the contract. *Id.* at 311-12.

The question presented here is: Whether the Sixth Circuit’s decision below conflicts with this Court’s *Conrail* decision and the broader body of Railway Labor Act precedent given that the Sixth Circuit classified a labor dispute arising from differing interpretations of ambiguous contract terms as a “major dispute” and enjoined the Petitioners to either accept the Union’s interpretation or arbitrate the dispute.

RULE 29.6 STATEMENT

The parent company of Flight Options, LLC is One Sky Flight, LLC, which is privately held. No public company holds 10 percent or more of the stock of the Flight Options, LLC.

The parent company of Flexjet, LLC is One Sky Flight, LLC. No public company holds 10 percent or more of the stock of the Flexjet, LLC.

The parent company of One Sky Flight, LLC is Flight Options Holdings I, Inc. (now known as Epic Aero, Inc.). No public company holds 10 percent or more of the stock of the One Sky Flight, LLC.

There is no parent company of Flight Options Holdings I, Inc. (now known as Epic Aero, Inc.) and no public company holds 10 percent or more of the stock of Flight Options Holdings, I, Inc.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit (Pet. App. 1a) is published at 863 F.3d 529. The district court's decision dated May 25, 2016 (Pet. App. 32a) is unpublished.

JURISDICTION

The Court of Appeals entered its judgment on July 17, 2017. (Pet. App. 1a). The Court denied Petitioners' request for a rehearing *en banc* on August 18, 2017. (Pet. App. 57a). The Court denied the Union's request for panel rehearing on August 23, 2017. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

Pertinent provisions of the Railway Labor Act 45 U.S.C. § 151, *et. seq.*, are reprinted in Appendix D to this petition.

STATEMENT OF THE CASE

Congress devised the Railway Labor Act ("RLA") to promote labor stability by forcing parties to arbitrate over contractual disputes rather than litigate them in federal court. Disputes over contractual terms (express or implied) are termed "minor disputes" under the RLA. Disputes over the formation of new contracts are termed "major disputes." This Court has set forth clear guidelines

requiring courts to view the party seeking arbitration's interpretation of a contract deferentially and to resolve any doubt in favor of finding a dispute to be minor. As in other labor contexts, there is a strong presumption in favor of arbitrability. This case presents the question of whether a court may find a dispute over existing, ambiguous contract language in a CBA to be a major dispute and compel the party seeking to avoid an injunction to either accept the other side's position or arbitrate the issue in the shadow of an injunction.

The Sixth Circuit held found, without any analysis or explanation, that Petitioners' interpretation of the CBA was not "arguably justified," and therefore a major dispute. The Sixth Circuit then enjoined Petitioners to either acquiesce to the Union's demands or arbitrate the issue under the shadow of an injunction that already opined on the underlying disputes in *dicta*, leaving the parties in a position of uncertainty. This decision severely deviated from this Court's previous RLA precedent in several ways. First, the Sixth Circuit misapplied *Conrail* and failed to give the proper deference to Petitioners' interpretation of the CBA. Second, the Sixth Circuit found an issue to be a major dispute based on only a single contract provision when there were multiple contested provisions related to the dispute. Finally, the Sixth Circuit erred by ordering a remedy – arbitration – that is directly contrary to the required remedy for major disputes under the RLA, while simultaneously opining on but not resolving the underlying contractual disputes. While arbitration is ultimately the correct outcome in this case, that outcome is distorted when it is done under the threat of an injunction and where the District

Court and Sixth Circuit have already opined on the merits of the contractual dispute – a topic that should be solely reserved for arbitration. This Court should correct this gross misapplication of the law and reverse the Sixth Circuit’s erroneous decision.

I. Statutory Background

A. *The Railway Labor Act*

The Railway Labor Act (“RLA”) governs labor relations in the railroad and airline industries. *Int’l Ass’n of Machinists v. Central Airlines, Inc.*, 372 U.S. 682, 685-86 (1963). Congress passed the RLA to promote “stability in labor-management relations by providing a comprehensive framework for resolving labor disputes.” *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 252 (1994). The RLA’s “underlying idea” provides that “[carriers] and their employees best settle their own troubles and that government ought to intervene only when they fail.” Edwin E. Witte, *The Government in Labor Disputes* 244 (1932).

The appropriate method of dispute resolution under the RLA depends on the type of dispute at issue. There are four recognized types of disputes under the RLA: statutory disputes; representation disputes; major disputes; and minor disputes. This case concerns so-called major and minor disputes under the RLA.

Minor disputes are conflicts over the “interpretation or application of particular provisions of existing collective bargaining agreements.” *United Transp. Union v. Cuyahoga Valley Ry. Co.*, 979 F.2d 431, 434 (6th Cir. 1992). Such disputes extend to disagreements regarding implied terms of contracts. *Conrail*, 491 U.S. at 311-12. Minor disputes are

resolved through conferences between the parties, followed by grievances, and then arbitration. Under the RLA, the parties' internal System Board of Adjustment ("System Board") has exclusive jurisdiction over minor disputes between air carriers and unions. *International Ass'n of Machinists v. Central Airlines*, 372 U.S. 682, 685-86 (1963).

In the context of a minor dispute, courts only have limited jurisdiction to compel a party to participate in a minor dispute procedure, to enjoin action that may frustrate the jurisdiction of an adjustment board, or to enjoin a union from striking over a minor dispute pending completion of the minor-dispute procedures. *Burlington N. R. Co. v. Bhd. of Maint. of Way Employes*, 481 U.S. 429, 446 (1987) (explaining that courts have jurisdiction to compel a party to fulfill its obligations under the RLA); *Bhd. of R.R. Trainmen v. Chicago River & Ind. R.R.*, 353 U.S. 30, 42 (1957) (explaining that courts have jurisdiction to enjoin a union from striking over a minor dispute while the minor dispute procedures are being exhausted). The authority to compel a party in these circumstances requires not just the existence of a minor dispute, but facts demonstrating the necessity of an injunction. *Burlington N. R. Co. v. Bhd. of Maint. of Way Employes*, 481 U.S. 429, 446 (1987) (noting that even when a violation of an RLA mandate is shown, courts should only grant an injunction if that remedy alone can effectively guard the plaintiff's rights). Courts also have very limited jurisdiction to review the findings of a System Board. *See* RLA § 9, Third; 45 U.S.C. §159 (outlining three limited bases for impeaching a System Board's arbitration award).

While courts are not entirely devoid of jurisdiction to uphold the mandates of the RLA when minor disputes are involved, courts completely lack subject-matter jurisdiction to rule on the merits of a minor dispute. *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 253 (1994) (“[A] minor dispute . . . must be resolved only through the RLA mechanisms, including the carrier’s internal dispute-resolution processes and an adjustment board established by the employer and the unions.”); *Conrail*, 491 U.S. 299, 304 (1989) (where a dispute is minor, the System Board “has exclusive jurisdiction over minor disputes.”); *Union Pac. R.R. Co. v. Sheehan*, 439 U.S. 89, 94 (1978) (“Congress considered it essential to keep these so-called ‘minor’ disputes within the Adjustment Board and out of the courts.”).

Labor and management often disagree on the proper characterization of a dispute. One side may classify it as a minor dispute over the interpretation of an existing agreement to ensure it is resolved through arbitration while the other side classifies the same issue as a major dispute in order to use or threaten self-help or seek judicial intervention. Whether a dispute is major or minor is a legal question for the courts to decide. *Conrail*, 491 U.S. at 306. In *Conrail*, this Court set out clear standards for lower courts to use when determining the proper classification of a dispute.

First, where a party opposing judicial intervention claims its position is allowed under, or not prohibited by, the existing contract, the dispute is minor so long as that party’s interpretation is “arguably justified” by the implicit or explicit terms of the agreement. *Conrail*, 491 U.S. at 307, 310. A

court should only find a dispute regarding the express or implied terms of the contract to be major where the party opposing judicial intervention's interpretation is so "frivolous or obviously insubstantial" that the party is essentially seeking to create a new agreement rather than applying the existing one. *Id.* at 307. Because federal labor policy strongly favors arbitration of disputes, the burden to show a dispute is minor is "relatively light" and the analysis favors a finding of arbitrability. *Id.* at 307.

In contrast, major disputes are disputes over the formation of collective agreements or efforts to secure them. They arise where there is no such agreement or where it is sought to change the terms of one. *Elgin, J. & E. Ry. Co. v. Burley*, 325 U.S. 711, 723 (1945). Parties initiate major dispute procedures by serving written proposals for changes to collective bargaining agreements. The RLA requires parties to resolve major disputes through bargaining and negotiation. *See* RLA § 2, First; 45 U.S.C. § 152. If the parties fail to come to an agreement during bargaining, they can enlist the assistance of the National Mediation Board's ("NMB") mediation service, but the NMB has no authority to compel agreement. RLA § 5, First; 45 U.S.C. § 155.

If the NMB determines that its mediation efforts have been unsuccessful, it offers arbitration to the parties to resolve their dispute. RLA § 5, First; 45 U.S.C. § 155. If either party rejects the NMB's offer of interest arbitration, the NMB then releases the parties from mediation, which commences a 30-day "cooling off" period. *Shore Line R.R. Co v. Transportation Union*, 396 U.S. 142, 152 (1969). Once the 30-day cooling off period expires, the NMB may

recommend the appointment of a Presidential Emergency Board (“PEB”) to make recommendations to resolve the dispute. RLA § 10; 45 U.S.C. § 160. If no PEB is appointed, and the parties have made every effort to make and maintain agreements, the NMB may release the parties to engage in self-help. *Bhd of R.R. Trainmen v. Terminal Co*, 394 U.S. 369, 378 (1969).

In major disputes, courts have jurisdiction to enforce the mandatory bargaining and mediation procedures and enjoin parties from altering the status quo pending completion of the statutory dispute resolution procedures. *See Chicago & N.W. Ry. v. United Transp. Union*, 402 U.S. 570, 581 (1971); *Order of R.R. Telegraphers v. Chicago & N.W. Transp. Co.*, 362 U.S. 330 (1960); *Texas & New Orleans R.R. v. Bhd. of Ry. Clerks*, 281 U.S. 548 (1930). Although neither party is required to request mediation or accept an offer of arbitration from the NMB, the RLA’s mandate to exert every reasonable effort to settle disputes includes good faith utilization of the NMB’s procedures. *See Bhd of R.R Trainmen v. Toledo, Peoria & W. R.R.*, 321 U.S. 50, 60 & n.16 (1944), quoting 75 CONG. REC. 5504 (1932) (statement of Rep. LaGuardia); *see also Air Lines Pilots Ass’n v. United Air Lines*, 802 F.2d 886, 901 (7th Cir. 1986).

B. The McCaskill-Bond Statute

The McCaskill-Bond statute, 49 U.S.C. § 42112, generally requires carriers and unions to abide by Sections 3 and 13 of the Allegheny-Mohawk Labor Protective Provisions when integrating seniority lists as the result of a merger. At bottom, the Allegheny-Mohawk Labor Protective Provisions mandate that

the seniority list integration process be fair and equitable. The McCaskill-Bond statute is an issue of federal law, but it often, as in this case, overlaps with topics covered in a CBA.

II. Facts and Procedural History

This case concerns the merger of two jet fractional ownership airlines, Flight Options and Flexjet. In December 2013, One Sky Flight, Inc., Flight Options' parent company, acquired Flexjet. Flight Options' pilots were represented by the International Brotherhood of Teamsters (hereinafter, "the Union") at the time of this acquisition; the Flexjet pilots were unrepresented. The Union and Flight Options were parties to a Collective Bargaining Agreement ("CBA") that was ratified in 2010 before the acquisition. (Pet. App. 74a). Section 1.5(c) of that CBA contained a section on procedural requirements and employee protections in the event of a merger between Flight Options and another carrier. (Pet. App. 89a). This section of the CBA is at the heart of the parties' disputes.

The CBA contemplates a three-step process for integrating the pilot employees into one group: (1) the negotiation of a fence agreement, which separates the two pilot groups from each other; (2) the integration of the pilot seniority lists; and (3) the modification of the 2010 CBA, as necessary to permit the integration of the pilot groups, through negotiation and arbitration. (Pet. App. 89a). This Petition arises from a dispute over the second step in this process, integration of the pilot seniority lists. (Pet. App. 90a).

The seniority integration process is critically important to pilots. "Seniority integration affects pilots' pay, the planes they fly, time off, in what order

they are subject to furlough or lay-off in bad economic times, bidding order, base location, routes flown, and whether they are ‘captain[s], first officer[s], or second officer[s]—factors that have an enormous effect on the pilot’s income and income-related benefits such as pensions.” Jerman & Joshi, *Seniority Integration in Airline Mergers: The Intended & Unintended Consequences of the McCaskill-Bond Statute*, 25 Air & Space Law. 1, 17 (No. 2 2012) (internal citations omitted). This importance is underscored by the protection of the integration process under federal law via the McCaskill-Bond Statute, and the 2010 Flight Options CBA.

Section 1.5(c)(1) of the CBA, which governs the second step of integration, provides that “seniority lists of the respective Pilot groups shall be integrated pursuant to Teamsters Merger Policy if both groups are represented by the IBT, or if the Pilots of the acquired airline are not represented by the IBT, then pursuant to Sections 3 and 13 of the Allegheny-Mohawk Labor Protective Provisions.” (Pet. App. 90a). The CBA also states that the ultimate list may not result in a “system flush” or “removal of Pilots from their positions.” (Pet. App. 90a).

On August 17, 2015, Union director Rick Dubinsky sent a letter to Flexjet indicating that the Union had selected a committee to represent the Flexjet pilots in the seniority integration process. The Union did not represent Flexjet pilots at the time it appointed this committee.¹ Flexjet responded to Mr.

¹ The Union eventually narrowly won an election over the combined Flexjet and Flight Options pilot group in December

Dubinsky's letter on August 20, 2015, stating that it was inappropriate for the Union to select a seniority integration committee before there had been a single carrier finding by the NMB or even an election over whether the Union would represent Flexjet pilots. Flexjet also objected to the Union's formation of this committee because (1) the Union did not represent Flexjet pilots at that point, and (2) the committee consisted entirely of Union-friendly pilots. When the final election of the combined pilot group took place in December, 330 voted in favor of the Union and 314 voted in opposition.

Prior to the election, the Union disregarded Flexjet's objections and proceeded to devise an integrated seniority list in closed sessions and without any neutral Flexjet representatives present. Flexjet and Flight Options ("the Companies") repeatedly requested that the Union allow a Company representative to attend and observe the sessions to ensure that the process was fair and equitable as required by McCaskill-Bond and the CBA. The Union rejected these requests.

The Union notified the Companies that an Integrated Seniority List ("the List") had been agreed to by the Flexjet and Flight Options Merger Committees on February 24, 2016. The List used longevity-date order to determine seniority, which had mixed effects on both Flight Options and Flexjet pilots. The List notably contained provisions that

2015, four months after the Union unilaterally appointed a merger committee on behalf of Flexjet pilots that it did not represent.

specifically targeted Flight Options pilots who had taken leaves of absence to fly at Flexjet after the acquisition. (Hereinafter, “the LOA Pilots”). While every other pilot had their years of service at their respective companies recognized, the LOA Pilots’ time spent at Flexjet was not credited and unfairly penalized those pilots. Because the LOA Pilots had a reputation for being “company friendly,”² the Companies believed that the Union-controlled committees specifically targeted the LOA pilots, in violation of both the CBA’s and McCaskill-Bond’s requirements that the process to create an integrated seniority list be fair and equitable. The Companies also felt that the List could potentially cause a system flush or removal of pilots from their position in violation of Section 1.5(c)(1) of the CBA. As a result, the Companies refused to accept the proposed List.

The Union filed a grievance with the System Board of Adjustment seeking to force the Companies to accept the Integrated Seniority List. On March 23, 2016, the Companies filed for a declaratory judgment in the District Court for the Northern District of Ohio to determine whether the Integrated Seniority List process complied with McCaskill-Bond and to stay the Union’s grievance until the Court could determine this issue. (Pet. App. 39a). In response, the Union filed Counterclaims seeking an injunction to

² The Companies encouraged Flight Options pilots to go to Flexjet because there was more growth and hiring needs there compared to Flight Options. The Union publicly discouraged pilots from taking leaves to fly at the sister company Flexjet (non-unionized at that time).

compel the Companies to accept the Integrated Seniority List based on the Companies' alleged refusal to bargain, among other things. (Pet. App. 41a). The Union's counter-claims were substantially broader than the Companies' narrow declaratory judgment that solely sought a determination based on an interpretation of a federal statute, McCaskill-Bond. In response to this attempt to expand the scope of the case, the Companies argued, among other things, that the underlying issues were minor disputes that the District Court did not have jurisdiction to resolve because the claims could only be resolved by ruling on the Companies' defenses: (1) that the process used to create the List violated the fair and equitable requirements of the CBA; (2) that the List would cause a system flush; (3) that the List would cause the removal of Pilots from their position; (4) that the Teamsters Merger Policy did not apply under the CBA; and (5) that the Union did not represent the pilots of Flexjet as required by the CBA, all of which required interpretation of express terms of Section 1.5(c)(1) of the Flight Options CBA . (Pet. App. 2a).

While broad on paper, the Union's counter-claims ultimately represented a single contractual dispute: whether the Companies were required to accept the Integrated Seniority List. The Companies pointed out that the District Court did not have jurisdiction to resolve this issue because it was a minor dispute that required broader interpretation of the 2010 Flight

Options CBA³, and that the only appropriate scope of inquiry for the Court was whether the List complied with the McCaskill-Bond statute – an issue of federal law that did not involve the CBA. Whether the List complied with Section 1.5(c)(1) of the CBA and whether the CBA required the Companies to accept the List in spite of its flaws are minor disputes that must be arbitrated because they require interpretation of explicit and implicit terms of the CBA. After reviewing the parties’ competing arguments, the District Court concluded that whether the CBA required the Companies’ to accept the List was a major dispute. The Court reasoned that the dispute was major because it dealt with the acquisition of future rights instead of a dispute over existing rights. (Pet. App. 43a). The District Court then put itself in the place of the arbitrator and ordered the Companies to accept the List. (Pet. App. 51a).

The Companies appealed from the Court’s preliminary injunction order pursuant to 28 U.S.C. § 1292(a)(1). On appeal, the Companies argued that the dispute was minor and thus the District Court lacked jurisdiction to rule on the merits or require the Companies to accept the Integrated Seniority List.

The Sixth Circuit misinterpreted the central issue on appeal as to whether the Companies had a

³ Specifically, whether the List complied with Section 1.5(c)(1)’s requirements to be created in a fair and equitable process, to avoid a system flush, and to avoid the removal of a pilot from his or her position.

right to participate in the Integrated Seniority List process. By focusing on this sole issue, the Sixth Circuit failed to properly apply *Conrail* because it never analyzed whether the Companies' interpretations of Section 1.5(c)(1) in the broader context of the CBA were arguably justified. The Court found, without analysis, that the issue was a major dispute because one of the Companies' arguments (whether the Carriers had an implied right to participate in the creation of the List) of the CBA was not arguably justified. (Pet. App. 26a). The Sixth Circuit's holding repeated the District Court's mistake by failing to address the other explicit clauses of the CBA in dispute regarding whether the List complied with the Allegheny-Mohawk Labor Protective Provisions, whether the List caused a system flush or removed pilots from their positions, whether the Teamsters Merger policy applied, and whether the Union represented Flexjet pilots, all minor disputes that deprive the courts of jurisdiction to address the merit of these disputes.

The Companies filed a petition for rehearing *en banc* pointing out that the Sixth Circuit's decision was contrary to *Conrail* because it failed to give proper deference to the Companies' interpretation of the CBA and properly apply the "arguably justified" standard. The Companies further argued that the decision disregarded the Sixth Circuit's own post-*Conrail* precedent involving disputes over the meaning of terms in existing agreements. The Court denied the Companies' petition for rehearing. (Pet. App. 58a).

REASONS FOR GRANTING THE WRIT

This Court should grant a writ for three reasons. First, the Sixth Circuit's decision conflicts with this Court's RLA precedent in *Conrail* by misapplying the major-minor dispute analysis by not applying the proper deference to the Companies' interpretation when applying the arguably justified standard. *Conrail* instructed that a carrier had only a "relatively light" burden to show that its interpretation of a collective bargaining agreement was "arguably justified" rather than "frivolous" or "obviously insubstantial." The Companies met that burden by demonstrating multiple plausible contractual interpretations that supported their refusal to accept the List. The Sixth Circuit disregarded the *Conrail* standard by not giving proper deference to the Companies' interpretation.

Second, the Sixth Circuit violated the principles of *Conrail* by holding that an issue clearly covered by the terms of a CBA was a major dispute because one of the Companies' multiple contractually-based defenses to this action was not arguably justified. (Pet. App. 26a).

Finally, the Sixth Circuit erred by issuing an injunction without a finding that there was an imminent threat that the RLA would be violated absent an injunction. Courts can only issue an injunction under the Railway Labor Act to prevent a violation of the Act and, even then, only after the party seeking an injunction has worked in good faith to resolve the dispute outside of court. The Sixth Circuit disregarded this principle and issued an injunction in this case when there was no finding

that the parties would not have arbitrated the issue absent the injunction. (Pet. App. 27a).

The RLA and this Court's precedent interpreting and applying it have helped maintain labor stability in the railroad and airline industries for more than 90 years by requiring Parties to resolve disagreements growing out of existing agreements peacefully through grievance handling and arbitration. The Sixth Circuit's approach in this case threatens to unsettle this stability by blurring the lines between major and minor disputes and inviting parties to bring contract-based labor disputes to the courts rather than the statutorily-mandated System Boards of Adjustment. This outcome ignores this Court's precedent and is in total conflict with the language and purpose of the RLA. This Court should grant this Petition to correct these legal and procedural errors.

I. The Sixth Circuit's Decision Conflicts With *Conrail* And Misconstrues The Issues.

The Sixth Circuit's decision in this case is profoundly incorrect. First, the Court of Appeals failed to follow the "relatively light burden" standard from *Conrail*. While the Court of Appeals nominally mentioned these principles, it did not actually apply them. The Sixth Circuit in reality disregarded the deferential approach demanded by *Conrail* in favor of an over-simplified, surface-level analysis that failed to take into account the implied terms and interconnected express terms of the CBA. As a result, the Sixth Circuit impermissibly decided the merits of the underlying contract interpretation dispute and improperly interfered in the parties' labor relations.

There is a long and consistent line of precedent underlying the federal courts' limited role under the Railway Labor Act. The standards developed over the years by this Court have repeatedly emphasized the RLA's goal of preventing labor disputes from interrupting carrier operations from labor disputes. To accomplish this, the test for determining whether a dispute is major or minor strongly favors finding a dispute to be minor. As set forth in *Conrail*, the appropriate inquiry is whether the carrier's interpretation is "arguably justified" by the terms of the agreement, 491 U.S. at 310, and whether the dispute can "be conclusively resolved by interpreting the existing agreement," 491 U.S. at 305. The carrier does not have to prove that its contract interpretation is correct or likely to succeed, only that it is not "frivolous" or "obviously insubstantial." *Id.* at 306. The carrier's burden to satisfy these standards is "relatively light" because of the strong presumption in favor of arbitration. *Id.* at 307. If there is any doubt as to arbitrability, the Court should defer to the arbitral jurisdiction of the System Board. *Id.* at 310.

The courts' role in determining whether a dispute is major or minor is narrow. The court can neither interpret the contract nor decide which party's interpretation is correct. *Id.* at 318. The RLA places exclusive jurisdiction to resolve these contract interpretation disputes in System Boards that have special expertise in interpreting labor agreements and an intimate familiarity of the parties' bargaining history. *Id.* at 310-11. This Court has found that system boards are better equipped than courts to resolve disputes over the interpretation of collective bargaining agreements, because they are expert in

the industry and familiar with its jargon and the “law of the shop.” See, *Gunther v. San Diego & E. Ry. Co.*, 382 U.S. 257, 261 (1965).

The relevant issues regarding the Integrated Seniority List in this case were classic minor disputes. The Union sought to compel the Companies to accept the Integrated Seniority List, arguing that this was required by Section 1.5(c)(1) of the Flight Options CBA. That section of the CBA states, in part, that “The Company or other Successor, as appropriate, shall accept the integrated seniority list.” (Pet. App. 90a). The Companies argued that this overly narrow focus was improper because (1) the List did not comply with McCaskill-Bond, (2) the List did not comply with the CBA because the Companies were excluded from the creation process, (3) the List and the process used to create it were not fair and equitable as required by Section 1.5(c)(1) of the CBA, (4) the List may cause a System Flush which would violate Section 1.5(c)(1) of the CBA, (5) the List may cause pilots to lose their positions in violation of Section 1.5(c)(1) of the CBA; (6) the List was improperly created under the Teamsters Merger Policy when that Policy did not apply under the terms of the CBA; and (7) the process used to create the List was improper because the Union did not represent Flexjet pilots.

The McCaskill-Bond issue was proper for a federal court to decide because it was an issue of pure federal law that did not require an interpretation of the CBA. The remaining issues, however, required the court to interpret implicit or explicit CBA terms and should have been left to the parties to resolve through the System Board of Adjustment process.

The Companies' right to participate in (or at least observe) the Integrated Seniority List process is an implied term of the contract based on the language requiring the List to comply with Sections 3 and 13 of the Allegheny-Mohawk Labor Protective Provisions, which require the process used to create the list to be fair and equitable. This requirement is an affirmative duty on both the Companies and the Union, and in order for the Companies to fulfill their duty they needed to be involved at some level in the creation of the List. The remaining issues regarding whether the List complies with the Allegheny-Mohawk Labor Protective Provisions, whether the List caused a system flush, whether the List caused the removal of pilots from their positions, whether the List was improper because it used the Teamsters Merger Policy, and whether the process used to create the List was improper because the Union did not represent Flexjet pilots are conflicts over explicit and implicit terms in Section 1.5(c)(1) of the CBA. All of these issues are minor disputes because they can only be resolved by interpreting terms in the CBA.

The Court of Appeals disregarded the Companies' arguments and focused solely on the issue of whether the CBA provided the Companies a right to participate in the creation of the List. (Pet. App. 24a). The Court of Appeals incorrectly held that the Companies' interpretation of this issue was not "arguably justified," and therefore a major dispute. The Court of Appeals further erred by issuing an injunction on this sole basis when there were multiple other minor disputes that related to the ultimate issue of whether the Companies were required to accept the List. The Court's

determination and subsequent injunction were erroneous for several reasons.

First, the Court of Appeals misunderstood the ultimate issue: whether the Union's claim that the CBA's requirement for the Companies to "accept the List" was a major dispute. The District Court held that it was, finding the language of the CBA dealt with "acquisition of rights for the future" rather than "rights claimed to have vested in the past."⁴ (Pet. App. 43a). When analyzing this issue on appeal, the Court of Appeals ignored the Union's claim, and chose instead to focus on only one of the Companies' multiple CBA-based arguments for not accepting the List. In doing so, the Court implicitly ruled that, where a party proffers multiple interpretations, the existence of one arguably unjustified interpretation renders an issue a major dispute regardless of how many other arguably justified interpretations / minor disputes are present. This reasoning is contrary to *Conrail* and is not supported by any rational interpretation of the Railway Labor Act.

Even if the argument regarding the Carrier's ability to participate in the creation of the List was unjustified, the Court of Appeals still erred by deciding that this was a major dispute. The Court of Appeals held that "the district court did not err in finding that the 2010 CBA does not arguably justify the Carriers' assertion that they have a right to

⁴ The District Court also improperly decided the minor dispute regarding whether the List complied with the CBA's requirement that the List satisfy the Allegheny-Mohawk Sections 3 and 13 Labor Protective Provisions. (Pet. App. 44a).

participate in the ISL process.” (Pet. App. 26a). However, the District Court never made this finding. (Pet. App. 43a et seq). The District Court did not apply the *Conrail* standard at all. Instead, it improperly applied the standard from another problematic Sixth Circuit RLA case, *Wheeling & Lake Erie Ry. Co. v. Bhd. of Locomotive Engineers & Trainmen*, 789 F.3d 681, 690 (6th Cir. 2015). The issue of whether the Companies have a right to participate in the creation of the Integrated Seniority List turns on whether the Companies’ position that it was an implied term of the CBA was “arguably justified” under *Conrail*. However, the District Court ignored this approach and instead looked to whether the issue was related to “future rights.” This “future rights” language was an improper interpretation of dicta in previous RLA jurisprudence and ignored the critical “arguably justified” test set forth in *Conrail*. Further, there were no “future rights” being negotiated. This issue concerned existing implicit and explicit terms in the 2010 Flight Options CBA, into which the Flexjet pilots were ultimately being merged. Rather than correct this error, the Court of Appeals simply pretended that the District Court applied the correct standard, then upheld that ruling without any independent analysis of its own. (Pet. App. 26a).

Even ignoring this procedural error, the Sixth Circuit also erred in concluding that the Companies’ interpretation of the CBA regarding their duties relative to the Integrated Seniority List was not arguably justified. The CBA is a joint agreement between Flight Options and the Union. Unless specifically stated otherwise, any rule or obligation in the CBA applies with equal force to both parties, and

any allegation that either side is failing to abide by their obligations can be arbitrated by the System Board. In this case, the CBA contained a clause requiring that, if pilots of an acquired carrier are hired by the Company, the seniority lists of the respective pilot groups “shall be integrated.” (Pet. App. 90a). The CBA does not specify which party is responsible for creating the List. The Companies interpreted the CBA to implicitly require their involvement in the process. Even if the ultimate decision on creating the List was left to the Union, the Companies still had an obligation under the CBA to ensure the process that created the List was fair and equitable under Sections 3 and 13 of the Allegheny-Mohawk Labor Protective Provisions. Since the Companies could not comply with this requirement without either observing or participating in this process, the CBA must have an implied term allowing or requiring some level of Company involvement in the creation of the List. Finally, regardless of whether there was an implied right for the Companies to participate in the creation of the List, there were explicit terms in the CBA requiring the Companies to ensure the process used to create the List complied with Allegheny-Mohawk, and did not cause a system flush or remove pilots from their positions.

The Sixth Circuit also erred by limiting its analysis to the explicit terms of the collective bargaining agreement. A collective bargaining agreement includes express and implied terms and both must be considered in determining whether a dispute is an RLA minor dispute. *Conrail*, 491 U.S. at 308 (“Collective bargaining agreements often incorporate express or implied terms that are

designed to give management . . . a degree of freedom of action within a specified area of activity.”). This Court has repeatedly held that a collective bargaining agreement “is not an ordinary contract for the purchase of goods and services, nor is it governed by the same old common-law concepts which control such private contracts” *Id.* at 311. As this Court recognized, “the general framework of a collective bargaining agreement leaves some play in the joints, permitting management some range of flexibility in responding to changed conditions.” *Id.* at 309 n. 7. A court must therefore consider unwritten past practices as well as express agreement terms when analyzing whether an interpretation is arguably covered by the terms of a CBA. *Id.*

Here, the Court of Appeals should have allowed for the possibility that the express language on the scope of the rule allowed some “play in the joints” and could be interpreted to require the Companies to be involved in the Seniority List Integration process. But neither the district court nor the court of appeals addressed this issue. Instead, these courts solely relied on a surface-level, myopic, and inaccurate reading of an unrelated term in the CBA that does not control the issue. This violates the deferential standard in *Conrail*.

The Sixth Circuit’s error is made plain by the second part of its analysis on the Integrated Seniority List issue. After ruling that the issue of whether the Companies were required to accept the List was a major dispute, the Court of Appeals then continued to find that the CBA’s arbitration provision was *also* part of the status quo, and that therefore the Companies should be enjoined to either accept the

List *or* submit a grievance over the List. This result is nonsensical. By recognizing that the dispute at issue is both subject to the arbitration provisions of the CBA *and* that the dispute should be arbitrated, the Court of Appeals implicitly recognized that the issue was a minor dispute. Indeed, the practical effect of the Court of Appeals' decision is similar to if it had correctly found the issue was a minor dispute, but with the added burden of a meritless and inappropriate injunction that opines on the merits of the issue in *dicta* and which the Union will likely use in subsequent proceedings against the Companies.

**II. The Question Presented Is Important And
Recurring Thus The Sixth Circuit's
Decision Disrupts The Carefully Crafted
Structure Of Disputes Under The Railway
Labor Act.**

The issues in this case have recurring significance for the stability of labor relations in the railroad and airline industries. In enacting the Railway Labor Act, Congress recognized the vital importance that these industries play. Railroads and Airlines work in a complex inter-connected web. The entire system can be thrown into disarray if even small nodes in this web shut down due to labor strife. And since the transportation system is so interconnected to the broader economy at large, a shutdown can have ripple effects far beyond the scope of labor disputes in other industries.⁵ That is why

⁵ This is exacerbated by the fact that the RLA does not regulate secondary picketing or prevent a striking RLA union from targeting neutral employers. *See Burlington Northern R.R.*

Congress designed the RLA to mandate that disputes growing out of the interpretation of collective bargaining agreements be resolved in arbitration and limited labor injunctions to a narrow set of circumstances when all efforts have been expended to reach an amicable agreement.⁶

This case requires Supreme Court review because the Sixth Circuit did not simply misapply the *Conrail* standards. Instead, the Court of Appeals followed a completely different approach by failing to examine or give any deference to the Companies' interpretation of the disputed CBA terms. This is contrary to this Court's RLA precedents that it is a light burden for the non-moving party to show an issue is a minor dispute and that, if there is any doubt, the court should find in favor of arbitration.

This presumption of arbitrability is a cornerstone of this Court's labor relations jurisprudence. *See, e.g., Union Pacific R.R. Co. v. Bhd. of Locomotive Engineers and Trainmen*, 558 U.S. at 74 ("In creating the scheme of mandatory arbitration superintended by the NRAB, the 1934 amendments largely 'foreclose[d] litigation' over minor disputes," quoting *Union Pacific R.R. Co. v. Price*, 360 U.S. 601, 616 (1959)). *See also Andrews v. Louisville & N.R.R. Co.*, 406 U.S. 320, 322-23 (1972) (minor disputes must be resolved by RLA arbitration boards, not courts); *Bhd.*

Co. v. Bhd. of Maintenance of Way Employes, 481 U.S. 419 (1987).

⁶ This duty is reinforced by the Norris-LaGuardia Act, 29 U.S.C. § 101, *et seq.*, which was also improperly disregarded by the Court of Appeals in this case.

of *Locomotive Engineers v. Louisville & N.R.R. Co.*, 373 U.S. 33, (1963) (dispute over meaning of arbitration award could not be resolved through strike); *Bhd. of R.R. Trainmen v. Chicago River & Ind. R.R. Co.*, 353 U.S. 30 (1957) (union cannot strike over minor dispute). This presumption in the Railway Labor Act was born out of this Court's precedent under the LMRA, which similarly has a presumption in favor of arbitration. See, e.g., *United Steelworkers v. Am. Mfg. Co.*, 363 U.S. 564 (1960); *AT&T Technologies, Inc. v. Communications Workers*, 475 U.S. 643, 648 (1986). These cases have recognized that confining labor disputes over the interpretations over CBA's has led to a relatively peaceful and stable labor-relations environment that minimizes strikes and lockouts. See *AT&T*, 475 U.S. at 648 ("These precepts have served the industrial relations community well, and have led to continued reliance on arbitration, rather than strikes or lockouts, as the preferred method of resolving disputes arising during the term of a collective-bargaining agreement.").

This Court's decision in *Conrail* has led to similar stability in the railroad and airline industries. Until recently, the Circuit Courts of Appeals have uniformly applied the *Conrail* test as it was set forth by this Court.⁷ The Sixth Circuit bucked

⁷ See, e.g., *Bhd. of Maint. of Way Emps. Div./IBT v. Norfolk S. Ry. Co.*, 745 F.3d 808, 815 (7th Cir. 2014); *Bhd. of Maintenance of Way Employes Div. v. Burlington Northern Santa Fe Ry. Co.*, 596 F.3d 1217, 1223 (10th Cir. 2010); *Air Line Pilots Ass'n, Int'l v. Guilford Transp. Indus.*, 399 F.3d 89, 99 (1st Cir. 2005); *CSX Transp., Inc. v. Bhd. of Maintenance of Way Employes*, 327 F.3d 1309, 1322 (11th Cir. 2003); *Ass'n of Flight*

this trend when it failed to properly consider implied terms and apply the deferential *Conrail* standard in *Wheeling & Lake Erie Ry. Co. v. Bhd. of Locomotive Engineers & Trainmen*, 789 F.3d 681 (6th Cir. 2015). The Court of Appeals used that precedent as a launching pad to take Sixth Circuit jurisprudence even further from the rule in *Conrail*. This upsets the careful balance that Congress and this Court have established. Now that there is a Circuit that is more likely to wade into the merits of a labor dispute, there is a danger that parties will purposely seek out that forum, which would lead to increased protracted litigation and potential disruption to the airline and railroad industries. Indeed, the instant case is a prime example of that. Not long after the District Court mistakenly granted the Union an injunction in this case, the Union quickly returned seeking yet another injunction over a different minor dispute. *See Flight Options, LLC v. Int'l Bhd. of Teamsters, Local 1108*, No. 1:16-CV-00732, 2017 WL 1173143 (N.D. Ohio Mar. 30, 2017). This Court should step in to reaffirm the standards in *Conrail* and correct this emerging split in the circuits before it leads to

Attendants v. Horizon Air Indus., Inc., 280 F.3d 901, 904 (9th Cir. 2002); *United Transp. Union v. Kansas City Sou. Ry. Co.*, 172 F.3d 582, 588 (8th Cir. 1999); *United Transp. Union v. South Carolina Public Ry. Comm'n*, 130 F.3d 627, 635 (4th Cir. 1997); *Bhd. of Locomotive Eng'rs Div. 269 v. Long Island R.R.*, 85 F.3d 35, 38 (2d Cir. 1996); *Southeastern Penn. Transp. Auth. v. Bhd. of R.R. Signalmen*, 882 F.2d 778, 786 (3d Cir. 1989) *Air Line Pilots Ass'n v. E. Air Lines*, 869 F.2d 1519, 1521 (D.C. Cir. 1989); *Int'l Bhd. of Teamsters v. Southwest Airlines Co.*, 875 F.2d 1129, 1135 (5th Cir. 1989) (*en banc*).

further improper and destabilizing court intervention in labor relations.

This case is particularly troubling in that it not only misapplied the *Conrail* standard, but it did so in a way that completely distorted the basic distinction between major and minor disputes. The ultimate result of the Sixth Circuit's decision was to enjoin the Companies to either accept the List or arbitrate the issue in front of the System Board. At first blush, this result seems to have a similar practical effect as if the Court of Appeals had properly found the issue to be a minor dispute and dismissed the case to be arbitrated. After all, an arbitrator will ultimately resolve the issues in this case even though the Court of Appeals erred in finding it a major dispute. But this seemingly benign result is a serious deviation from the procedure established by the RLA and improperly blurs the lines between major and minor disputes.

Injunctions are an extraordinary remedy, even more so in the labor context. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Congress has recognized this in both the Railway Labor Act and the Norris-LaGuardia Act, which require a party seeking an injunction to exert every reasonable effort to resolve the issue amicably before seeking an injunction. There is nothing in the record that would justify an injunction in this case. There were no findings that the status quo would be violated absent an injunction or any other basis that could justify an injunction. There was no need or justification for an injunction here because the parties had already shown a willingness to arbitrate all disputes but the narrow McCaskill-Bond issue. In effect, the Court of

Appeals issued an injunction requiring the parties to act exactly as they had already planned.

Furthermore, an injunction is generally only appropriate under the Railway Labor Act in the event of a major dispute that threatens to disrupt the status quo or to prevent another violation of the RLA. While the Court of Appeals nominally found this to be a major dispute, it also contradictorily (implicitly) held that the disputes over the Integrated Seniority List were non-frivolous disputes subject to be arbitrated pursuant to the CBA's arbitration clause.

This nonsensical ruling crosses the streams between major and minor disputes and effectively authorizes injunctions for any minor dispute. Such a finding is contrary to the RLA and undermines the entire statutory scheme that requires parties to resolve minor disputes through arbitration. By giving the court a toehold into minor disputes like this, it encourages parties to go to court first rather than to proceed through the RLA's mandated arbitration process.

Even if the end result is that the court will simply issue an injunction to compel a party to arbitrate, that still disrupts the purpose of the RLA by unnecessarily complicating and prolonging the resolution of everyday disputes over the terms of a CBA. This is exactly what Congress tried to avoid when drafting the RLA. This Court should step in to correct this problem and avoid any further unnecessary entanglement between labor-relations and the judiciary.

SUMMARY REVERSAL

As an alternative to granting oral argument for this petition, the Court could summarily reverse the Sixth Circuit's decision and remand with instructions that, under a proper application of *Conrail*, the dispute over the Integrated Seniority List is a minor dispute within the meaning of the RLA.

This Court has granted summary reversal of lower court decisions when they are clearly erroneous and contrary to controlling Supreme Court precedent. Stern & Gressman, *Supreme Court Practice* 345 (10th ed. 2013) (citing *Am. Tradition P'ship v. Bullock*, 132 S. Ct. 2490 (2012)). While relatively rare, this Court has summarily reversed decisions that failed to follow well-established precedent its precedents such as the instant case. *See, e.g., Jenkins v. Hutton*, 137 S. Ct. 1769, 1772 (2017) (reversing the Sixth Circuit Court of Appeals for failing to follow the narrow review of habeas claims under AEDPA); *Caetano v. Massachusetts*, 136 S. Ct. 1027 (2016) (reversing the Massachusetts Supreme Court for failing to follow the Second Amendment guidelines in *District of Columbia v. Heller*, 554 U.S. 570 (2008)); *Tolan v. Cotton*, 134 S. Ct. 1861, 1866 (2014) (reversing the Fifth Circuit Court of Appeals for failing to follow the well-established summary judgment standard from *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986)).

As explained in this petition, the Sixth Circuit failed to give effect to this Court's decision in *Conrail* regarding the proper classification of RLA labor disputes as major or minor. Furthermore, the Sixth Circuit's ruling is contrary to the plain text of the RLA that limits the use of injunctions to cases where

there is a threat of a status quo violation or other violation of the Act. These errors were not nuanced readings of the established law or distinguishable on their facts – the Sixth Circuit completely disregarded nearly thirty years of precedent under the RLA based on this Court’s decision in *Conrail*. This serious error undermines the entire statutory scheme of the RLA by broadening the permissible role of the courts in labor disputes in a way contrary to the letter and intent of the statute. The Sixth Circuit’s errors in this case are as serious and plain as the failure of other courts to follow well-established principles of law such as *Liberty Lobby* and *Heller*. Such obvious errors should be summarily reversed.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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