

APPENDIX

APPENDIX A

No. 16-3606

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

July 17, 2017

DEBORAH S. HUNT, Clerk

FLIGHT OPTIONS,	)	
LLC; FLEXJET, LLC;	)	
ONESKY	)	
FLIGHT, LLC; FLIGHT	)	
OPTIONS HOLDING I,	)	
INC.,	)	
	)	ON APPEAL FROM
Plaintiffs/Counter-	)	THE UNITED
Defendants-	)	STATES DISTRICT
Appellants,	)	COURT FOR THE
	)	NORTHERN
v.	)	DISTRICT OF OHIO
	)	
INTERNATIONAL	)	
BROTHERHOOD OF	)	
TEAMSTERS, LOCAL	)	
1108; INTERNATIONAL	)	
BROTHERHOOD OF	)	
TEAMSTERS,	)	
AIRLINE DIVISION,	)	
	)	
Defendants/Counter-		
Claimants-Appellees		

OPINION

Before: COLE, Chief Judge; COOK and WHITE, Circuit Judges.

This action under the Railway Labor Act (RLA) concerns the merger of two airlines – an acquiring airline with unionized pilots and an acquired airline with newly unionized pilots – and their efforts to bring both groups under a new, joint collective-bargaining agreement. The airlines and their pilots’ union dispute whether the creation of an integrated seniority list (ISL) of pilots is exclusively committed to the union, or whether it is subject to collective bargaining with the airlines. The union asks us to find this disagreement to be a “major” dispute under the RLA and to affirm the district court’s preliminary injunction ordering the airlines to accept the ISL proffered to them by the union. The airlines ask us to find this dispute to be “minor” and subject to exclusive arbitral jurisdiction, and to vacate the preliminary injunction. The airlines assert the right not to accept a union-proffered seniority list and instead to participate in the seniority-integration process through collective bargaining. Because this assertion is not arguably justified by the parties’ existing collective-bargaining agreement, the dispute is major, leading us to **AFFIRM** in part and **VACATE** in part.¹

¹ The parties’ dispute over voluntary-separation programs (VSPs) was initially an issue on appeal. After oral argument, the parties settled the issue and stipulated to an order dismissing with prejudice the claims related to it. Because this

I

The International Brotherhood of Teamsters, Airline Division (Teamsters) and its Local 1108 (together, the Union) represent the pilots of Flight Options, LLC (Flight Options) and Flexjet, LLC (Flexjet, and together with Flight Options, the Carriers), two merged airlines that offer fractional ownership of jet aircraft. Flight Options and its pilots have had a collective-bargaining agreement since 2010 (the 2010 CBA), while Flexjet's pilots are newly unionized and are not yet party to a CBA.

Flight Options is based in Cleveland, Ohio, and is a "carrier" for purposes of the RLA. *See* 45 U.S.C. § 181. Michael Silvestro (Silvestro) is CEO of Flight Options and Kenneth Ricci (Ricci) is chairman of Flight Options and its parents. Flight Options has approximately 360 pilots who are represented by the Union and operate under the 2010 CBA.

Flexjet, another "carrier" under the RLA, has approximately 340 pilots and was acquired in December 2013 by a Flight Options parent. Prior to the acquisition, Flexjet's pilots were at-will employees. On September 30, 2015, the National Mediation Board (NMB) found that Flight Options and Flexjet were a single transportation system for

issue is now moot, we will not discuss it further. *See Int'l Union, United Auto., Aerospace, Agr. & Implement Workers of America v. Dana Corp.*, 697 F.2d 718, 721 (6th Cir. 1983) ("We cannot reach the merits of this appeal unless we find that the parties' Settlement Agreement did not render the case moot. Generally, the settlement of a dispute between the parties does render the case moot.").

purposes of labor representation under the RLA. 42 N.M.B. 174, 181 (2015). On December 15, 2015, the Union was certified after an election as the representative of the combined Flight Options and Flexjet pilot groups.² Silvestro and Ricci serve as CEO and chairman at Flexjet, too.

Although the Union was elected to represent the Flexjet pilots, these pilots are not yet parties to the 2010 CBA (or a successor joint CBA). Section 1.5 of the 2010 CBA governs the integration of pilots from an acquired airline; parent entities of Flight Options agreed to be bound by Section 1 of the 2010 CBA on behalf of themselves and their successors.

On appeal, the parties dispute whether the integration of the pilot groups' seniority lists³ is solely a Union matter (in which case, the Carriers must accept the list the Union proffers) or whether the Carriers should have been allowed to participate in negotiating the list.

Section 1.5(c)(1) of the 2010 CBA governs the

² Flight Options pilots elect a master executive council within Local 1108. Flexjet pilots are not yet eligible to elect their own master executive council because a majority of them are not yet members in good standing of the Union. Until the Flexjet pilots achieve this threshold, they are represented by the Flexjet Pilots Leadership Council, which is appointed by the Local 1108 executive board as an analog of a master executive council.

³ A pilot's seniority determines his or her "promotion and demotion, retention in case of reduction in force, recall after furlough, choice of vacancies, choice of vacation and schedule bidding...." 2010 CBA § 5.1, R. 8-2, PID 108.

creation of the ISL when Flight Options acquires another carrier:

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 [Teamsters], or if the Pilots of the acquired airline are not represented by the [Teamsters], 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.

2010 CBA, R. 8–2, PID 89.⁴

⁴ The McCaskill–Bond Amendment (McCaskill–Bond) to the Federal Aviation Act of 1958 regarding craft or class integration between two air carriers, 49 U.S.C. § 42112 n.(a), incorporates by reference the Allegheny–Mohawk Labor Protective Provisions (Allegheny–Mohawk), 59 C.A.B. 20 (1972):

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

Under this provision, there are two mutually exclusive processes for creating an ISL depending on whether the Union represents both the Flight Options pilots *and* the acquired pilot group, or only the former. If both pilot groups are represented by the Union, the ISL is created “pursuant to Teamsters Merger Policy,” and the Carriers “shall accept the [ISL].” *Id.* Otherwise, the ISL is created “pursuant to Section 3 and 13 of the Allegheny–Mohawk Labor Protective Provisions,” and again, the Carriers “shall accept the [ISL]” that results from that process. *Id.*

Ricci summed up the process in a presentation he made to the pilots:

failure to agree, the dispute may be submitted by either party for adjustment in accordance with section 13. *Id.* at 45.

.... 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 settled by the 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 decision of the arbitrator shall be final and binding on the parties.

(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 the parties. *Id.* at 49.

If [the Flexjet pilots vote to be represented by the Union], then the Union's first job will be to integrate the seniority lists. That's – that's what they do.

If there is no Union, then it will fall upon management to integrate the seniority lists. So I understand why many people want to know when it is going to happen, but I'm the last guy that gets to do it.

D. Ct. Tr., R. 43, PID 1063.

Soon after it was elected to represent the acquired pilot group, the Union appointed the Flight Options Merger Committee (FOMC) and the Flexjet Merger Committee (FXMC) – two autonomous committees each comprised of three pilots from their respective groups – and charged them with the task of creating an ISL. Laddie Hostalek, business agent for Local 1108 and a Flight Options pilot, testified that the members of the FOMC were appointed by the Flight Options Master Executive Council and the members of the FXMC were appointed by the Flexjet Pilots Leadership Council.

Adam Fine, a Flexjet pilot and chairman of the FXMC, testified regarding the work of the two merger committees. According to Fine, in order to create a fair and equitable ISL, the committees reviewed precedent airline mergers and considered draft lists based on different seniority-calculation methodologies; they also conducted statistical analyses of the impact of different methodologies on pilot subgroups. After evaluating the results, the committees determined that given the different founding dates of Flight Options and Flexjet, a date-

of-hire methodology would place half the Flexjet pilots at the “extreme bottom” of the ISL. D. Ct. Tr., R. 43, PID 1159–60. They instead unanimously adopted an ISL based on longevity, which they believed would be fair and equitable to both groups.⁵

The Union proffered the ISL to Silvestro on February 24, 2016, stating that it was unanimously adopted by the merger committees and requesting confirmation of its acceptance pursuant to Section 1.5(c)(1) of the 2010 CBA. Two days later, Silvestro rejected the ISL by letter, asserting that for the ISL process to comply with McCaskill–Bond, the Flexjet pilots must select their own negotiators and the Carriers “must be included to insure the process is fair and equitable.”⁶ Verified Counterclaim, R. 6, PID

⁵ They defined longevity as the time spent working for the individual airline, excluding time on furlough or personal leave-of-absence status. The ISL maintained absolute seniority within the two pilot groups, i.e., if the ISL were again split between Flight Options and Flexjet pilots, the pilots would all fall in the same order of seniority as before the integration. Thus, the practical effect of the longevity approach was that pilots who worked for both airlines and had accrued seniority with both were not permitted to add their service together to move ahead of other pilots within their group. All of the top thirty positions on the ISL were held by Flexjet pilots.

⁶ Silvestro’s February 26 letter was not the first time the Union heard that the Carriers desired to be involved in the ISL process. Prior to the election, the Carriers wrote to the Union stating that after its certification as representative of both pilot groups, the ISL process would need to include negotiations with the Carriers in order for the outcome to comply with Section 1.5(c)(1) of the 2010 CBA and McCaskill–

446-47. Silvestro's letter further justified the rejection by arguing that the ISL appeared to be "quickly put together," that the Union lacked a Teamsters merger policy to govern the process, and that pilots who had taken leaves of absence from Flight Options to fly for Flexjet appeared to be adversely targeted by the longevity-based calculation method.⁷ *Id.* at PID 447.

The Union sent Silvestro a separate notice, also dated February 24, 2016, invoking Section 6 of the RLA to begin negotiations for a new, joint CBA.⁸

Bond. After the certification and the formation of the FOMC and FXMC, the Carriers twice complained, to no avail, about being excluded from the Union's ISL process, warning that they would not "sit by and accept whatever list is given to them by the [Union]..." Undated Lett., R. 13-7, PID 705.

⁷ These pilots were allowed to choose between being treated as a Flight Options or a Flexjet pilot for purposes of seniority calculation, but they did not receive credit for both.

⁸ Section 6 of the RLA establishes a procedure to cause carriers and their unions to make and maintain agreements and to avoid disruptions to interstate commerce. It provides:

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 change 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*,

Silvestro's February 26 response rejecting the ISL proffered by the Union also stated that, in accordance with Section 1.5(c)(4) of the 2010 CBA, joint CBA negotiations would not begin until an ISL is finalized.

The Union responded by filing a class-action grievance against the Carriers under Section 1.9 of the 2010 CBA,⁹ and by invoking arbitration under McCaskill–Bond¹⁰ to resolve the ISL dispute. A week and a half after the Union filed its grievance, the Carriers filed the instant action seeking a declaratory judgment that the Union's ISL process violated McCaskill–Bond because the Union must collectively bargain with the Carriers for a fair and equitable ISL, and because Flexjet pilots are “entitled to their own representative.” Verified Complaint, R. 1, PID 13.

The Carriers also sought a preliminary injunction to restrain the Union from attempting to

rules, or working conditions shall not be altered by the carrier until the controversy has been finally 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. 45 U.S.C § 156 (emphases added).

⁹ Section 1.9 provides in relevant part:

The parties agree to arbitrate any grievance filed by the Union ... alleging a violation of Section 1 on an expedited basis. Any such grievance shall proceed directly to the System Board of Adjustment sitting with a neutral arbitrator acceptable to both parties.... 2010 CBA § 1.9(a), R. 8–2, PID 93.

¹⁰ See note 4 and accompanying text.

enforce the ISL it created, and from further pursuing arbitration regarding the ISL, until it negotiates the list with the Carriers. The Carriers argued that under McCaskill-Bond, they are entitled and obligated to negotiate with the Union over the ISL to ensure the list is “fair and equitable.” The Carriers specifically argued that the ISL proffered by the Union, with its longevity-based seniority calculation, is not “fair and equitable” to Flight Options pilots who took leaves of absence to fly for Flexjet, and further that the Flexjet pilots were inadequately represented because the FXMC was comprised of Flexjet pilots who were not chosen by the Flexjet pilots, but rather by the Flexjet Pilots Leadership Council, which was appointed by the Local 1108 executive board instead of being popularly chosen.

After first moving to dismiss based on Federal Rules of Civil Procedure 12(b)(1) and (6), the Union filed an answer disputing the district court’s subject-matter jurisdiction on the basis that under the RLA, the Carriers’ claims are “minor” disputes and thus subject to mandatory arbitration. It also asserted five counterclaims, including moving to compel arbitration under Ohio state law and the Federal Arbitration Act.

In April 2016, the Union filed a motion for preliminary injunction and temporary restraining order. After first characterizing the dispute over the ISL as minor, the Union changed its position by seeking relief ordering the Carriers to restore the status quo (i.e., to accept the ISL), a remedy available

only in major disputes.¹¹ It also sought an order to arbitrate, a right provided by the 2010 CBA.¹² At the motion hearing, the district court pressed the Carriers on why they believe they must participate in the seniority-integration process; they responded that they could be sued if the ISL is not “fair and equitable” as required by McCaskill–Bond. They asserted that the Union’s process was ad hoc and its longevity method was unfair to the pilots who split their time between the two carriers, taking leaves from Flight Options to fly for Flexjet. After the Carriers asserted that they have an obligation under McCaskill–Bond to ensure a “fair and equitable” integration, the district court asked counsel why that would be when it is the Union – whose autonomous merger committees negotiated the ISL – that owes a duty of fair representation to its members,¹³ while the Carriers do not. In response, the Carriers again argued that they have an obligation under McCaskill–Bond to ensure a “fair and equitable” integration, and that they could be sued by pilots for

¹¹ At varying points in this matter, both parties have taken inconsistent positions on the major/minor question.

¹² See note 9 and accompanying text.

¹³ See *Steele v. Louisville & N.R. Co.*, 323 U.S. 192, 199, 65 S.Ct. 226, 89 L.Ed. 173 (1944) (establishing duty of fair representation under the RLA). This duty applies in all contexts of union activity, including contract negotiations. *Williams v. Molpus*, 171 F.3d 360, 364–65 (6th Cir. 1999) (citation omitted), *overruled on other grounds by Chapman v. United Auto. Workers Local 1005*, 670 F.3d 677 (6th Cir. 2012) (en banc).

failing to uphold this statutory obligation. They did not allege, however, that any pilot complained that the Union-created ISL was unfair or inequitable, or that any pilot threatened suit. The Carriers also argued that the Union lacked a “Teamsters Merger Policy,” and that accordingly, under Section 1.5(c) of the 2010 CBA, the pilot seniority integration would be conducted pursuant to Allegheny–Mohawk. The Union responded that it followed its unwritten internal merger policy in creating the ISL, including appointing the two merger committees pursuant to the Teamsters and Local 1108 bylaws.

The district court first considered whether the ISL issue is a “major” or “minor” dispute under the RLA, concluding that it is a “major” dispute and that Section 1.5(c)(1) of the 2010 CBA obligates the Carriers to accept the Union’s ISL. The court further concluded that the FOMC/FXMC process satisfied McCaskill–Bond, noting that the committees had to balance multiple issues, including different-aged companies, previous seniority integrations, furloughs, personal leaves of absence, disparities in hiring bubbles, captain/first-officer ratios, inaccurate or incomplete data, and pilots hired on the same date. Although any given seniority-calculation methodology might advantage or disadvantage individual pilots, the district court explained, neither group was systemically favored, although Flexjet pilots – who the Carriers claim received inadequate representation – generally received the higher seniority rankings.

The district court noted that the Carriers presented no authority suggesting that they owe a

representational duty to their pilots, who are all represented by the Union. Considering its assessment that the Union's ISL process and resulting list were objectively fair and equitable, the district court remarked that the Carriers' resistance to accepting the ISL was "curious" in light of the 2010 CBA's "clear mandate" that the "Company or other Successor, as appropriate, shall accept the integrated seniority list." D. Ct. Tr., R. 43, PID 944 (citing 2010 CBA § 1.5(c)(1)) (internal quotation marks omitted). The district court granted the Union's motion for preliminary injunction and ordered the Carriers to accept the proffered ISL.

II

We review the issue of subject-matter jurisdiction de novo. *Watson v. Cartee*, 817 F.3d 299, 302 (6th Cir. 2016) (citation omitted). RLA disputes fall into two jurisdictional categories, major and minor. *Elgin, J. & E.R. Co. v. Burley*, 325 U.S. 711, 723, 65 S.Ct. 1282, 89 L.Ed. 1886 (1945). Major disputes, predicated on Section 2, Seventh and Section 6 of the RLA, involve attempts to acquire future labor-agreement rights and carry the greatest risk for a strike. Minor disputes, predicated on Section 2, Sixth and Section 3, First (i) of the RLA, involve grievances less likely to result in a strike. *See id.* at 723–24, 65 S.Ct. 1282. The core distinction between these two types of disputes is that "major disputes seek to create contractual rights, minor disputes to enforce them." *Consol. Rail Corp. v. Ry. Labor Execs.' Ass'n*, 491 U.S. 299, 302, 109 S.Ct. 2477, 105 L.Ed.2d 250 (1989) (citing *Burley*, 325 U.S. at 723, 65 S.Ct. 1282).

“Major” disputes focus on “acquisition of rights for the future, not [the] assertion of rights claimed to have vested in the past,” *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 723, 65 S.Ct. 1282) (alteration in original), and are subject to federal-court jurisdiction. *See Consol. Rail Corp.*, 491 U.S. at 307, 109 S.Ct. 2477 (1989). They require management and labor to “undergo a lengthy process of bargaining and mediation” under Sections 5 and 6 of the RLA before resorting to economic self-help, such as striking. *Id.* at 302–03, 109 S.Ct. 2477. The statutory requirements provide an “integrated, harmonious scheme for preserving the status quo from the beginning of the major dispute through the final 30-day ‘cooling-off’ period.”¹⁴ *Detroit & Toledo Shore Line R. Co. v. United Transp. Union*, 396 U.S. 142, 152, 90 S.Ct. 294, 24 L.Ed.2d 325 (1969). The “immediate effect” of this status quo requirement is “to prevent the union from striking and management from doing anything that would justify a strike.” *Id.* at 150, 90 S.Ct. 294. This means that labor and management must maintain not only the status quo under existing CBAs, but also “those actual, objective working conditions and practices, broadly conceived, which were in effect prior to the time the pending dispute arose and which are involved in or related to

¹⁴ The process begins once a party serves the other with a written “Section 6” notice setting a time and place for negotiations, the first step in obtaining a new CBA or changing an existing one.

that dispute.” *Id.* at 153, 90 S.Ct. 294. Federal courts’ major-dispute jurisdiction proceeds from their equitable power to enforce the status quo. When courts exercise jurisdiction over major disputes, they enjoin the parties to “make and maintain agreements” and in so doing help thwart disruptions to interstate commerce. *See* 45 U.S.C. § 152, First.

“Minor” disputes, in contrast, involve “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), and are committed to grievance arbitration. *See Consol. Rail Corp.*, 491 U.S. at 307, 109 S.Ct. 2477. Such disputes “contemplate[] the existence of a collective agreement already concluded, or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one.” *Burley*, 325 U.S. at 723, 65 S.Ct. 1282.

A party to a dispute under the RLA bears a “relatively light burden” to demonstrate that a dispute is covered by an existing agreement, making it minor. *Consol. Rail Corp.*, 491 U.S. at 307, 109 S.Ct. 2477 (citation and internal quotation marks omitted). “[I]f there is any doubt as to whether a dispute is major or minor a court will construe the dispute to be minor.” *Airline Prof’ls Ass’n, Teamster Local Union 1224 v. ABX Air, Inc.*, 400 F.3d 411, 414–15 (6th Cir. 2005) (*ABX Air III*) (quoting *Ry. Labor Execs. Ass’n v. Norfolk & W. Ry. Co.*, 833 F.2d 700, 705 (7th Cir. 1987)). In assessing whether a dispute is major or minor, we “look[] to whether a claim has been made that the terms of an existing

agreement either establish or refute the presence of a right to take the disputed action.” *Consol. Rail Corp.*, 491 U.S. at 305, 109 S.Ct. 2477. “Where an employer asserts a contractual right to take the contested action, the ensuing dispute is minor if the action is arguably justified by the terms of the parties’ collective-bargaining agreement.” *Id.* at 307, 109 S.Ct. 2477. This presumption does not apply, however, if the contractual claim is “obviously insubstantial or frivolous, []or made in bad faith.” *Id.* at 310, 109 S.Ct. 2477. This follows because “[i]f a party asserts a contractual basis for a claim without sincerity or on insubstantial grounds, ‘honoring that party’s characterization would ... undercut the [RLA’s prohibition] against unilateral imposition of new contractual terms.’ ” *Wheeling*, 789 F.3d at 692 (first alteration in original, second alteration added) (quoting *Consol. Rail Corp.*, 491 U.S. at 306, 109 S.Ct. 2477).

Whether to grant a preliminary injunction under the RLA is left to a district court’s discretion. *Adams v. Fed. Express Corp.*, 547 F.2d 319, 322 (6th Cir. 1976) (citing *Virginia Ry. Co. v. Sys. Fed’n No. 40*, 300 U.S. 515, 551, 57 S.Ct. 592, 81 L.Ed. 789 (1937)). The maintenance of the status quo may be “enforceable by whatever appropriate means might be developed on a case-by-case basis.” *Chicago & Nw. Ry. Co. v. United Transp. Union*, 402 U.S. 570, 577, 91 S.Ct. 1731, 29 L.Ed.2d 187 (1971). We review a district court’s decision whether to grant a preliminary injunction under the RLA for an abuse of discretion, such as the improper application of governing law, the use of erroneous legal standards, or the reliance on clearly erroneous findings of fact.

See City of Pontiac Retired Emps. Ass'n v. Schimmel, 751 F.3d 427, 430 (6th Cir. 2014) (en banc) (citation omitted). In general, courts must examine four factors in deciding whether to grant a preliminary injunction: (1) whether the movant has demonstrated a substantial likelihood of success on the merits, (2) whether the movant will suffer irreparable injury absent injunction, (3) whether a preliminary injunction would cause substantial harm to others, and (4) whether the public interest will be served by an injunction. *Overstreet v. Lexington–Fayette Urban Cty. Gov't*, 305 F.3d 566, 573 (6th Cir. 2002). “These factors are not prerequisites, but are factors that are to be balanced against each other.” *Id.* The second factor is inapplicable in the context of an RLA dispute, because courts may “enjoin a violation of the status quo pending completion of the required [Section 6] procedures, without the customary showing of irreparable injury.” *Consol. Rail Corp.*, 491 U.S. at 303, 109 S.Ct. 2477.

Finally, as with any contract, we interpret a collective-bargaining agreement de novo. *Salary Policy Emp. Panel v. Tennessee Valley Auth.*, 149 F.3d 485, 489 (6th Cir. 1998).

III

A. The Carriers’ Complaint

The Carriers invoked the district court’s jurisdiction by asserting that they have a statutory obligation under McCaskill–Bond and the Allegheny–Mohawk provisions it codifies that is distinct from the 2010 CBA. They argue that they have an independent obligation under McCaskill–Bond to

ensure that the pilot seniority integration is “fair and equitable.” The Carriers correctly note that McCaskill–Bond applies when there is a “transaction for the combination of multiple air carriers into a single air carrier,” 49 U.S.C. § 42112 n.(b)(4)(A), and that generally this means that Allegheny–Mohawk applies to the pilot seniority integration. *Id.* at § 4112 n.(a). They overlook, however, that the statute also provides that when, as here, the “same collective bargaining agent represents the combining crafts or classes at each of the covered air carriers, that collective bargaining agent’s internal policies regarding integration, if any, will not be affected by and will supersede the requirements” of McCaskill–Bond. *Id.* at § 42112 n.(a)(1). Further, when, as here, a CBA applies to “the terms of integration involving covered employees of a covered air carrier,” those terms “shall not be affected by the requirements of [McCaskill–Bond] as to the employees covered by that [CBA], so long as those provisions allow for the protections afforded by sections 3 and 13 of the Allegheny–Mohawk provisions.” *Id.* at § 42112 n.(a)(2).

Thus, as the collective-bargaining agent for the pilots of both carriers, the Union’s internal policies regarding integration supersede the requirements of McCaskill–Bond. Further, because the 2010 CBA applies to the terms of the integration, it controls. Nothing in the CBA denies the protections afforded by sections 3 and 13 of Allegheny–Mohawk. Those protections are that the seniority integration must be “fair and equitable” and either section 13 or an alternative agreed-upon dispute-resolution process must be provided. In this context, the protections are

afforded for the benefit of the covered employees. The requirement that the integration be “fair and equitable” is an obligation imposed by the 2010 CBA on the Union, the party to whom the 2010 CBA commits the task of creating an ISL. Further, a dispute-resolution process is provided by the expedited-grievance provision of Section 1.9 of the 2010 CBA. Thus, because the 2010 CBA commits the integration process to the Union and continues to allow employees the protections of sections 3 and 13 of Allegheny–Mohawk, the district court properly concluded that the Carriers do not have a distinct McCaskill–Bond obligation.

B. The Union’s Counterclaim

In its counterclaim, the Union asserts that “[b]y failing to accept the [ISL], the Carrier[s] unilaterally changed the unambiguous Section 1.5(c)(1) obligation to accept the list....” Verified Counterclaim, R. 9, PID 463. The Carriers answer that this is a minor dispute over which the courts lack jurisdiction, that their actions are consistent with the 2010 CBA, and that they do not seek to unilaterally change its terms. As with the McCaskill–Bond issue, these disputes concern whether the creation of the ISL is committed solely to the Union, or whether the Carriers must be included in that process. The pilot-integration provision of the 2010 CBA squarely addresses this question, an important point considering that a dispute’s amenability to resolution through contractual interpretation typically renders it a minor dispute, *see Consol. Rail Corp.*, 491 U.S. at 305, 109 S.Ct. 2477, over which district courts have no jurisdiction. *See Stephens v. Ret. Income Plan for*

Pilots of U.S. Air, Inc., 464 F.3d 606, 610 (6th Cir. 2006).

When a party claims that its actions are arguably justified by an existing labor agreement, we presume the dispute is minor “unless the [party’s] claims of contractual justification are so frivolous or obviously insubstantial as to indicate that it is attempting to circumvent the § 6 RLA major disputes resolution procedure.” See *Chicago & N.W. Transp. Co. v. Ry. Labor Execs. Ass’n*, 855 F.2d 1277, 1285 (7th Cir. 1988). Here, the express terms of the 2010 CBA and the record facts call into question our usual presumption that a dispute governed by the CBA is minor.

Our decision in *Wheeling* is instructive. In that case a railroad sought changes to its collective-bargaining agreement with the union representing its conductors and brakemen. The agreement provided that a train crew “shall consist of not less than one (1) conductor and one (1) brakeman....” *Wheeling*, 789 F.3d at 684 (quoting the agreement). On several occasions, despite the union’s objections, the railroad ran trains without the required minimum complement of crew, and later substituted management employees for union employees. *Id.* at 685–87. The railroad claimed that this action was arguably justified by the CBA because the contract did not restrict it from “run[ning] trains without union employees.” *Id.* at 688. The union countered that the CBA’s crew provision had a single exception (which was inapplicable to the dispute) and that the carrier attempted to add a new one – the use of management employees to run trains – that the parties had not bargained for or agreed to. *Id.* at 689.

We concluded that the dispute was major because the railroad's claim that "the [CBA] allows it to man trains without union conductors is frivolous or obviously insubstantial in light of the *express language* of the [CBA]." *Id.* at 693 (emphasis added) (citing *Consol. Rail Corp.*, 491 U.S. at 307, 109 S.Ct. 2477). Although the parties' "practice, usage and custom is of significance in interpreting their agreement," *Consol. Rail. Corp.*, 491 U.S. at 311, 109 S.Ct. 2477 (citation and internal quotation marks omitted), in *Wheeling* we found no support in the record that there was an historical practice of management exercising the kind of discretion over crew assignments it claimed the CBA justified. *See Wheeling*, 789 F.3d at 694.

Collective-bargaining agreements may "include implied, as well as express, terms." *Consol. Rail Corp.*, 491 U.S. at 311, 109 S.Ct. 2477. Because the language of the *Wheeling* CBA was express, we concluded that "we need not consider any implied terms." 789 F.3d at 694. In *ABX Air III*, however, we found that an airline's CBA arguably permitted the carrier to require a medical examination before allowing a pilot to return to work after a period of disability. 400 F.3d at 415. There, although the CBA did not expressly permit the carrier to require the examination, we found it meaningful that under the CBA the carrier retained "discretion with respect to the hiring, firing, promoting, supervising, planning, and other management functions, except as limited by the [CBA] and public law." *Id.* at 415–16 (citation and internal quotation marks omitted). We also viewed the history of the parties' prior collective bargaining, including that they considered (but did

not adopt) express terms related to medical examinations, as supporting the carrier's argument that at the least its medical-examination requirement was an open question. *Id.* at 416. Because the carrier's action was not inconsistent with the CBA's express terms and given the carrier's retention of management discretion, we concluded that its claim that its action was arguably justified under the CBA was not insubstantial, obviously frivolous, or made in bad faith, and that, as a result, the dispute was minor. *Id.* at 417 (citing *Consol. Rail Corp.*, 491 U.S. at 310, 109 S.Ct. 2477).

A claim is "arguably justified" if any reasonable labor arbitrator, applying appropriate principles of contract interpretation and after reviewing relevant extrinsic evidence (such as evidence of past practice), could find that the contract *does justify* a party's claimed right to take, or to refrain from taking, an action. *Cf. Wheeling*, 789 F.3d at 692. When no reasonable contractual interpretation, express or implied, would justify a party's claim, the dispute is major and is subject to federal courts' jurisdiction to enjoin violations of the status quo.

Neither party relies on practice, usage, or custom to impart meaning to Section 1.5(c)(1) of the 2010 CBA. *See Consol. Rail. Corp.*, 491 U.S. at 311, 109 S.Ct. 2477. Here, the Union invokes the pilot-integration provision as follows: the Union represents both pilot groups; the Teamsters merger policy is applicable; the Teamsters merger policy was followed; the Carriers violated the CBA by refusing to accept the Union-proffered ISL; the Union pursued expedited grievance arbitration against the Carriers,

the contractual remedy for the Carriers' refusal to accept the proffered ISL; in bringing the instant action and attempting to enjoin the expedited grievance arbitration, the Carriers assert unilaterally a new right to participate in the creation of the ISL. The Carriers invoke the provision as follows: the Union represents both groups; the Teamsters merger policy should control the integration process; there is no Teamsters merger policy; because there is no Teamsters merger policy, the Allegheny–Mohawk process applies.

Before we characterize the ISL dispute as minor because controlled by the CBA, we must satisfy ourselves that the Carriers' assertion that the 2010 CBA requires that they be allowed to bargain collectively with the Union over the ISL is "arguably justified." If the Carriers in actuality seek to change an existing term in the 2010 CBA, the dispute is major without regard to their own characterization of it. *See Consol. Rail Corp.*, 491 U.S. at 310, 109 S.Ct. 2477.

Section 1.5(c)(1) contemplates two mutually exclusive processes for pilot integration. If both pilot groups are represented by the Teamsters, the Teamsters merger policy applies; if not, then the parties follow the Allegheny–Mohawk provisions, which require a fair and equitable integration process that *may* (but need not necessarily) include collective bargaining. *See* 59 C.A.B. 20, 45 (1972). Regardless of which of these two processes applies, the 2010 CBA expressly provides that the Carriers "shall accept" the resulting ISL. 2010 CBA § 1.5(c)(1), R. 8–2, PID 89.

In his pilot presentation, shortly after the purchase, Ricci, the Carriers' chairman, accurately described the seniority-integration process: if the Flexjet pilots elected the Union to represent them, then it would be the Union, and not management, that would put together the ISL. Neither party disputes that the Teamsters represent both pilot groups. Any reasonable labor arbitrator would find that, based on the express language of the pilot-integration provision, the creation of the ISL is committed to the Union and the Carriers' sole function with regard to it is to accept what is proffered. Because the issue is controlled by express terms that leave no ambiguity or openness to interpretation, we need not consider implied terms. *Cf. Wheeling*, 789 F.3d at 694.

The Carriers argue, however, that this process does not apply because there is no "Teamsters Merger Policy," and the contract requires the integration to be conducted pursuant to such a policy.¹⁵ It is true that the Teamsters do not have a standalone, written document directing how pilot-seniority integrations are to be done; the Carriers rely on this fact in asserting that no merger policy exists. However, the record rebuts this assertion. The Union explained that it followed an unwritten internal merger policy, which included appointing the FOMC and FXMC pursuant to its national and local

¹⁵ Although Section 1.5(c)(1) of the 2010 CBA capitalizes "Teamsters Merger Policy," suggesting it is a defined term, it does not appear elsewhere in the contract.

bylaws. Although the Carriers may find this policy unsatisfactory, it is not for them to say what the “Teamsters Merger Policy” should look like or provide; it is the *Teamsters’* merger policy. In any case, appointing autonomous merger committees pursuant to Union rules, and entrusting the creation of the ISL to those committees, effected a merger policy.

Although the pilot-integration provision by its nature does not affect ordinary operations, it nonetheless represents the status quo because it is what Flight Options and the Union bargained for and agreed would govern in the extraordinary case of Flight Options acquiring another airline. The Union followed the 2010 CBA’s express terms and proffered an ISL to the Carriers for acceptance; the Carriers refused to accept the list, instead asserting a new, unbargained-for right to be involved in the ISL process. The Carriers may seek such a right, but they must undergo the Section 6 bargaining process to do so, and, in the interim, must maintain the contract’s status quo.

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 participate in the ISL process. The dispute is thus major. The district court properly enjoined the Carriers to honor the express terms of Section 1 of the 2010 CBA. However, these express terms provide that if the Carriers refuse to accept the Union’s proffered ISL, the Union may invoke an expedited grievance-arbitration

process, which uniquely applies to disputes under Section 1 of the 2010 CBA.¹⁶ *Compare* 2010 CBA § 1.9(a) (Expedited Arbitration) *with* § 20 (Grievance Procedures). This process is equally part of the contractual status quo, and it is the process that the Union sought to pursue when the Carriers started this action. The district court’s contractual interpretation stopped short, finding that the contract required the Carriers to accept the proffered ISL. Although that is true, the 2010 CBA’s established remedy for non-compliance is that the Carriers submit to expedited arbitration brought by the Union. Accordingly, the district court shall modify the injunction to require the Carriers to either accept the Union’s proffered ISL or to submit to expedited grievance arbitration under Section 1.9 of the 2010 CBA.

IV

The Carriers raise three additional issues on appeal.

The first issue is whether the Norris–LaGuardia Act of 1932 (NLA), 29 U.S.C. § 101, bars the issuance of a preliminary injunction because it is not the “only practical, effective means” for enforcing the Union’s rights under the RLA. District courts may issue labor injunctions “when such a remedy is the only practical, effective means of enforcing the duty to exert every reasonable effort to make and maintain agreements.” *See Chicago & Nw. Ry. Co.*, 402 U.S. at

¹⁶ *See* note 9 and accompanying text.

583, 91 S.Ct. 1731 (discussing strike injunctions). The Carriers do not identify any other “practical, effective means” of dispute resolution, however. Indeed, it is they who first availed themselves of the federal courts in lieu of grievance arbitration, invoked by the Union, which would have directly addressed each parties’ rights and obligations. Given this, the district court’s grant of preliminary injunction is not inconsistent with the NLA.

The Carriers next argue that the district court misapplied the RLA by imposing its injunction on Flight Options Holdings I, Inc. and OneSky Flight, LLC, parent entities of Flight Options, as “carriers.” Both of these companies are counter-defendants and indirect holding companies of Flight Options. Flight Options Holdings I, Inc. signed a side letter binding it, its affiliates (including subsidiaries and parents), and its successors to Section 1.5 of the 2010 CBA. OneSky Flight LLC’s parent, Directional Aviation Capital, LLC, signed a similar letter. The district court did not erroneously classify these companies as “carriers” for RLA purposes; rather it referred to them by a collective party name based on their agreed status.

The final issue is whether the district court failed to address all four preliminary-injunction factors and failed to require the Union to post an injunction bond, and, if so, whether these failures were abuses of discretion. The Carriers argue that the district court’s order should be reversed because it discusses only the movant’s likelihood of success on the merits, and does not address the other preliminary-injunction factors: irreparable harm to the movant

absent injunction, substantial harm to others, and the public interest. See *Overstreet*, 305 F.3d at 573 (6th Cir. 2002).

It is “generally useful for [district courts] to analyze all four of the preliminary injunction factors.” *Leary v. Daeschner*, 228 F.3d 729, 739 n.3 (6th Cir. 2000). This is especially true because this court may analyze a factor differently than did the district court. *Id.* Weighing the preliminary-injunction factors is a matter of discretion, however, and here the district court did not abuse its discretion by not conducting an explicit four-factor analysis. See *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985) (“[T]he four considerations applicable to preliminary injunction decisions are factors to be balanced, not prerequisites that must be met.”). The preliminary-injunction order’s analysis opened with a listing of the *Overstreet* factors. To the extent it did not explicitly address a factor, the court’s order indirectly addresses it, or the record otherwise supports its presence. First, courts may “enjoin a violation of the status quo pending completion of the required [Section 6] procedures, without the customary showing of irreparable injury.” *Consol. Rail Corp.*, 491 U.S. at 303, 109 S.Ct. 2477. Second, the Carriers are unlikely to suffer substantial harm from being required to preserve the status quo: not only are they obliged by statute to do so, but their opposition to accepting the proffered ISL is, as the district court noted, “curious” given the express language of the 2010 CBA and their lack of a discernible interest in what the final ISL looks like. See Op. & Order, R.33, PID 940. Further, the pilots are unlikely to be harmed by an injunction that

vindicates their own union's ISL process, whose result the district court reasonably concluded was fair and equitable. Third, the public's interest in uninterrupted service from the Carriers – at least that segment of the public that relies on or benefits from their services – is protected by the maintenance of the status quo. *See Int'l Ass'n of Machinists & Aerospace Workers v. Transportes Aereos Mercantiles Pan Americanos, S.A.*, 924 F.2d 1005, 1007 (11th Cir. 1991) (explaining that the RLA is designed to prevent disruptions to interstate commerce).

The Carriers also argue that the preliminary injunction is jurisdictionally defective because the district court did not require the Union to post an injunction bond. *See* Fed. R. Civ. P. 65(c) (permitting preliminary injunction “only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained”); *see also Mich. Am. Fed'n of State Cty. & Mun. Emps. Council, Local 1640 v. Matrix Human Servs.*, 589 F.3d 851, 860 (6th Cir. 2009) (holding that “a bond is an absolute precondition of a federal court's jurisdiction over labor injunctions.”). This point is moot. During the pendency of this appeal the district court ordered, and the Union posted, a \$125,000 bond.

V

For the reasons set forth above, we **AFFIRM** the district court's determination that the CBA pilot-integration provision is not in conflict with McCaskill–Bond; **AFFIRM** its determination that it had jurisdiction to order the Carriers to act in

conformity with the CBA, which requires that they either accept the ISL or submit to expedited grievance arbitration; **VACATE** the preliminary injunction to the extent it permits the Carriers to do the former and removes the option to do the latter; and **REMAND** this matter to the district court for further proceedings consistent with this opinion.

APPENDIX B

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

FLIGHT OPTIONS,	)	
LLC; FLEXJET, LLC;	)	
ONESKY	)	
FLIGHT, LLC; FLIGHT	)	
OPTIONS HOLDING I,	)	
INC.,	)	No. 1:16-CV-
	)	00732
Plaintiffs/Counter-	)	
Defendants,	)	
	)	
v.	)	
	)	
INTERNATIONAL	)	
BROTHERHOOD OF	)	
TEAMSTERS, LOCAL	)	
1108; INTERNATIONAL	)	
BROTHERHOOD OF	)	
TEAMSTERS,	)	
AIRLINE DIVISION,	)	
	)	
Defendants/Counter-	)	
Claimants	)	

ORDER & ORDER

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

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.

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

¹ Doc. 10. Counter-Defendants Opposed Doc. 13. Counter-Plaintiffs Replied Doc. 18.

² See Docket Order dated May 2, 2016.

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.

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,

³ Doc. 10-1 at 2.

⁴ Doc. 8-2.

⁵ *Id.*

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 When one union

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 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

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 companies. How to treat these periods impacted individual pilot seniority but did not

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.

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

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.”

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 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

¹² Doc. 10-1 at 9.

¹³ Doc. 1.

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

¹⁴ Doc. 10-1 at 28-29.

¹⁵ Doc. 31 at 69.

¹⁶ Id. at 93.

Union any chance to bargain .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

¹⁷ Id. at 15-17.

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).

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

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

²¹ *Consol. Rail Corp. v. Ry. Labor Executives’ Ass’n*, 491 U.S. 299, 303 (1989).

²² 45 U.S.C. § 152.

²³ *Elgin, J. & E. Ry. Co. v. Burley*, 325 U.S. 711, 722 (1945).

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 contract with the Pilots

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.*

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

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).

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 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

²⁸ Doc. 31 at 103.

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.

Section 13

(a) In the event that any dispute or controversy (except as to matters arising

²⁹ [omitted in original]

under section 9) arises with respect to the protections provided herein which cannot be settled by the 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.

(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,

³⁰ Doc. 31 at 133.

³¹ Doc. 31 at 131.

³² *See* Doc. 19-1.

³³ Doc. 31 at 136.

the Committee said its integration formula considered: different aged companies, previous merged seniority list at Flight Options resulting in scrambled 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

³⁴ Doc. 19-2.

³⁵ Doc. 8-2.

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

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

³⁶ Doc. 31 at 40.

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

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 (sic) *Detroit & Toledo Shore Line Railroad Co. v. United Transportation Union*, 396 U.S. 142, 143 (1969).

imposes a 30-day “cooling-off” period upon the parties. Throughout this entire lengthy negotiation process, carriers and unions are required to maintain 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

³⁸ *United Air Lines, Inc. v. Int’l Ass’n of Machinist & Aerospace Workers*, 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).

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”

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

⁴⁰ Doc. 802, Page ID 90.

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

⁴¹ Doc. 13-1 at 18.

⁴² *Virginian Ry. Co. v. Sys. Fed’n No. 40*, 300 U.S. 515, 548 (1937).

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}

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

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 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.

APPENDIX C

No. 16-3606

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

August 18, 2017

DEBORAH S. HUNT, Clerk

FLIGHT OPTIONS,	)	
LLC; FLEXJET, LLC;	)	
ONESKY	)	
FLIGHT, LLC; FLIGHT	)	
OPTIONS HOLDING I,	)	
INC.,	)	
	)	ON APPEAL FROM
Plaintiffs/Counter-	)	THE UNITED
Defendants-	)	STATES DISTRICT
Appellants,	)	COURT FOR THE
	)	NORTHERN
v.	)	DISTRICT OF OHIO
	)	
INTERNATIONAL	)	
BROTHERHOOD OF	)	
TEAMSTERS, LOCAL	)	
1108; INTERNATIONAL	)	
BROTHERHOOD OF	)	
TEAMSTERS,	)	
AIRLINE DIVISION,	)	
	)	
Defendants/Counter-		
Claimants-Appellees		

ORDER

Before: COLE, Chief Judge; COOK and WHITE,
Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing *en banc*.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

s/Deborah S. Hunt
Deborah S. Hunt, Clerk

APPENDIX D

45 U.S.C. § 151a. General purposes

The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

45 U.S.C. § 152. General duties

First. Duty of carriers and employees to settle disputes

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 55a

operation of any carrier growing out of any dispute between the carrier and the employees thereof.

* * *

Sixth. Conference of representatives; time; place; private agreements

In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And provided further, That nothing in this chapter shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. Change in pay, rules, or working conditions contrary to agreement or to section 156 forbidden

No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements

except in the manner prescribed in such agreements or in section 156 of this title.

* * *

45 U.S.C. § 153. National Railroad Adjustment Board

First. Establishment; composition; powers and duties; divisions; hearings and awards; judicial review

There is established a Board, to be known as the “National Railroad Adjustment Board”, the members of which shall be selected within thirty days after June 21, 1934, and it is provided—

(a) That the said Adjustment Board shall consist of thirty-four members, seventeen of whom shall be selected by the carriers and seventeen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of sections 151a and 152 of this title.

(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one voting representative on any division of the Board.

(c) Except as provided in the second paragraph of subsection (h) of this section, the national labor

organizations, as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one voting representative on any division of the Board.

(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after June 21, 1934, in case of any original appointment to office of a member of the Adjustment Board, or in case of a vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if

such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, Constituting a board of three, shall within thirty days after the appointment of the neutral member, investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with sections 151a and 152 of this title and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of paragraph (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

* * *

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: Provided, however, That except as provided in paragraph (h) of this section, final awards as to any such dispute must be made by the entire division as hereinafter provided.

(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall

forthwith agree upon and select a neutral person, to be known as “referee”, to sit with the division as a member thereof, and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this chapter for the appointment of arbitrators and shall fix and pay the compensation of such referees.

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute. In case a dispute arises involving an interpretation of the award, the division of the Board upon request of either party shall interpret the award in the light of the dispute.

(n) A majority vote of all members of the division of the Adjustment Board eligible to vote shall be competent to make an award with respect to any dispute submitted to it.

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award

includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named. In the event any division determines that an award favorable to the petitioner should not be made in any dispute referred to it, the division shall make an order to the petitioner stating such determination.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be conclusive on the parties, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the

division of the Adjustment Board: Provided, however, That such order may not be set aside except for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.

(q) If any employee or group of employees, or any carrier, is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award or by the failure of the division to include certain terms in such award, then such employee or group of employees or carrier may file in any United States district court in which a petition under paragraph (p) could be filed, a petition for review of the division's order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Adjustment Board. The Adjustment Board shall file in the court the record of the proceedings on which it based its action. The court shall have jurisdiction to affirm the order of the division, or to set it aside, in whole or in part, or it may remand the proceedings to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order. The judgment of the

court shall be subject to review as provided in sections 1291 and 1254 of Title 28.

(r) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

* * *

Second. System, group, or regional boards: establishment by voluntary agreement; special adjustment boards: establishment, composition, designation of representatives by Mediation board, neutral member, compensation, quorum, finality and enforcement of awards.

Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this chapter, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

If written request is made upon any individual carrier by the representative of any craft or class of employees of such carrier for the establishment of a special board of adjustment to resolve disputes otherwise referable to the Adjustment Board, or any dispute which has been pending before the

Adjustment Board for twelve months from the date the dispute (claim) is received by the Board, or if any carrier makes such a request upon any such representative, the carrier or the representative upon whom such request is made shall join in an agreement establishing such a board within thirty days from the date such request is made. The cases which may be considered by such board shall be defined in the agreement establishing it. Such board shall consist of one person designated by the carrier and one person designated by the representative of the employees. If such carrier or such representative fails to agree upon the establishment of such a board as provided herein, or to exercise its rights to designate a member of the board, the carrier or representative making the request for the establishment of the special board may request the Mediation Board to designate a member of the special board on behalf of the carrier or representative upon whom such request was made. Upon receipt of a request for such designation the Mediation Board shall promptly make such designation and shall select an individual associated in interest with the carrier or representative he is to represent, who, with the member appointed by the carrier or representative requesting the establishment of the special board, shall constitute the board. Each member of the board shall be compensated by the party he is to represent. The members of the board so designated shall determine all matters not previously agreed upon by the carrier and the representative of the employees with respect to the establishment and jurisdiction of the board. If they are unable to agree such matters shall be determined by a neutral

member of the board selected or appointed and compensated in the same manner as is hereinafter provided with respect to situations where the members of the board are unable to agree upon an award. Such neutral member shall cease to be a member of the board when he has determined such matters. If with respect to any dispute or group of disputes the members of the board designated by the carrier and the representative are unable to agree upon an award disposing of the dispute or group of disputes they shall by mutual agreement select a neutral person to be a member of the board for the consideration and disposition of such dispute or group of disputes. In the event the members of the board designated by the parties are unable, within ten days after their failure to agree upon an award, to agree upon the selection of such neutral person, either member of the board may request the Mediation Board to appoint such neutral person and upon receipt of such request the Mediation Board shall promptly make such appointment. The neutral Person so selected or appointed shall be compensated and reimbursed for expenses by the Mediation Board. Any two members of the board shall be competent to render an award. Such awards shall be final and binding upon both parties to the dispute and if in favor of the petitioner, shall direct the other party to comply therewith on or before the day named. Compliance with such awards shall be enforceable by proceedings in the United States district courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the Adjustment Board.

45 U.S.C. § 156. Procedure in changing rates of pay, rules, and working conditions.

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 change 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 finally 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.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FLIGHT OPTIONS,	)	
LLC; FLEXJET, LLC;	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
INTERNATIONAL	)	Case No. 1:16-cv-
BROTHERHOOD OF	)	00732
TEAMSTERS, LOCAL	)	
1108; INTERNATIONAL	)	
BROTHERHOOD OF	)	
TEAMSTERS,	)	
AIRLINE DIVISION,	)	
	)	
Defendants	)	

DECLARATION OF ROBERT SULLIVAN

I, Robert Sullivan, hereby state and affirm as follows:

1. I am over 21 years of age, have personal knowledge of the matters described in this declaration, and am competent to testify to the

matters herein.

2. I am the Chief Administrative Officer of OneSky Flight, LLC.

3. After OneSky acquired Flexjet, the IBT began organizational efforts in late 2014 to represent the Flexjet pilots.

4. The Flexjet Pilots Organizing Committee ("FJPOC") formally announced themselves to Flexjet on January 30, 2015.

5. On July 4, 2015, the IBT applied to represent the Flexjet and Flight Options pilots as a single transportation system.

6. The NMB's single carrier finding only addresses union representation without bearing on an airline's function as one company from an operational/ organizational standpoint.

7. Flight Options and Flexjet are still operating as two airlines, and they each have their own Federal Aviation Administration operating certificate, different operating procedures and specifications, different clients (known as "owners"), different aircraft with different livery, different pilot groups, and different management teams running each separate airline.

8. For example, Flight Options and Flexjet pilots do not comingle to fly aircraft with each other.

9. To fly an aircraft at Flight Options, a pilot must be trained and qualified on that aircraft and that specific carrier's operating procedures—and the same is true for Flexjet aircraft.

10. A number of Flight Options pilots took

personal leaves of absence and took a position at Flexjet. These pilots had to train and qualify on Flexjet aircraft and are now Flexjet employees, with inactive leave-of-absence status at Flight Options.

11. The 2010 CBA and its pay, work rules, furlough provisions, and seniority system cover Flight Options pilots.

12. In contrast, individual employment agreements and Flexjet work rules cover Flexjet pilots.

13. The 2010 CBA does not apply to the Flexjet pilots, and the Union have never argued that it applies until now.

14. Nor do any of the work rules or employment agreements at Flexjet apply to Flight Options pilots.

15. In essence, each pilot group works under the rules of its employer.

16. The IBT began fence agreement negotiations with Flight Options in November 2014 and negotiated until late February 2015.

17. At that time, the IBT stopped negotiating for a fence because (the Carriers believe) that it was concerned that it did not have enough votes to win a combined election of Flexjet and Flight Options pilots.

18. The IBT did not communicate about or attempt to negotiate a fence agreement for almost nine months while it contemplated its next move.

19. Indeed, the IBT did not reach out to Flight Options' counsel to request to re-open fence negotiations until October 29, 2015.

20. At that point, Flight Options' counsel, Tom Jerman of Jones Day, retired from the practice of law and indicated that the Company would be hiring new labor counsel.

21. W. Chris Harrison with Ogletree Deakins began representing Flight Options in January 2016, and the Union and Flight Options exchanged another round of proposals in February 2016 before meeting again in March and April 2016 to exchange additional proposals.

22. The parties are currently selecting dates for May 2016 to meet and negotiate the fence agreement.

23. Job and pay protection for Flight Options pilots have been sticking points in these negotiations, as well as the Carriers' ability to transition pilots across the fence to correct an imbalance in the amount of flying for each Carrier, which could avoid potential furloughs.

24. An interest arbitration for the fence agreement is scheduled in June 2016, and the fence agreement will either be resolved at the parties' pre-arbitration negotiations or by Arbitrator Herb Fishgold in interest arbitration.

25. Neither Flight Options nor OneSky have hired the Flexjet pilots: they still operate separately as Flexjet employees.

26. No operational merger affecting the pilot group seniority has been announced. Flight Options and Flexjet pilots do not bid against each other for positions, schedules, vacation, or any other condition of employment, and the flight operations are completely separate.

27. The IBT did not represent Flexjet pilots when OneSky acquired Flexjet. Instead, the pilots were unrepresented.

28. Furthermore, the IBT does not have a "Teamsters Merger Policy"—which matters because such a policy would provide transparency to pilots about the seniority integration process. A pilot's standing on the seniority list impacts his or her career progression, bidding, schedules, movement from first officer to captain, and vacation.

29. The IBT has no merger policy and did not tell the pilots what it intended to do.

30. Instead, the IBT produced a "final" list to the Company after a brief period of closed-door meetings.

31. But the Carriers heard nothing further from the IBT about seniority integration until after the election.

32. By early January 2016, this newly devised Flexjet Merger Committee began meeting with the Flight Options Merger Committee—but not with the Company—to negotiate seniority integration.

33. On January 10, 2016 and again on January 15, 2016, the Carrier objected to the IBT's closed integration process and requested that the IBT permit a Company representative to attend the seniority integration negotiations so that the Company could comply with its obligations under McCaskill-Bond.

34. The IBT twice refused, rebuffing the Carriers' attempts to participate and claiming that seniority list integration was "an internal matter for the IBT only."

35. On February 24, 2016—only a few weeks later—the IBT notified Flight Options and Flexjet that the Merger Committees had purportedly agreed on an ISL which essentially used longevity date order.

36. This purported ISL also contains provisions requiring pilots working for Flexjet on a leave of absence from Flight Options to make an election at some future unspecified time with unspecified consequences.

37. Because the ISL appears to adversely target the pilots working for Flexjet on a leave of absence from Flight Options, the ISL may violate the 2010 CBA (to which Flight Options and the IBT—but not Flexjet—are parties).

38. The Union appears intent on pursuing implementation of this ISL as soon as possible, as it filed a grievance seeking enforcement of the ISL pursuant to the Flight Options pilots' 2006 CBA—which does not cover Flexjet pilots.

39. The Company also anticipates that any Section 13 arbitration pursued by the Union will seek enforcement of the current ISL.

40. A "final and binding integrated Pilot Seniority List is *issued*" by Flight Options, not by the IBT.

41. Second, the Carriers provided representation-election training to all chief pilots in mid-2014, early 2015, and mid-2015, and human resources managers also attended the mid-2015 training.

42. This training explained the concept and importance of laboratory conditions and maintaining the pilots' ability to vote free from interference,

influence, or coercion. Weiss Decl. § XX (Ex. XX). The Carriers instructed managers not to make promises or threats; poll, spy or monitor; favor or penalize based on union preference; and many other important rules.

43. In October 2015, after the Carriers issued videos from Kenn Ricci, the Carriers again provided training to remind managers of these rules.

44. Since the election, Mr. Jerman's retirement, and Mr. Harrison's retention, fence agreement negotiations resumed.

45. The parties met in February, March, and April 2016 and are scheduling dates in May 2016.

46. Both sides have narrowed the issues down to job and pay protection for Flight Options pilots during the fence period and the Carriers' ability to move pilots across the fence in times of over- or understaffing to avoid furloughs.

47. Arbitration on the fence issue will occur in June 2016 if the parties cannot reach an amicable agreement first.

48. The Carriers have taken other actions to move the bargaining process along. For example, Flight Options has negotiated pending grievances with the IBT, the parties have scheduled arbitrations over other disputes, and both sides have worked to maintain labor relations.

49. The Company has not crossed its arms and refused to meet with the Union: the parties meet and converse regularly as part of their ongoing relationship.

50. Because Flight Options faces possible pilot furloughs due to overstaffing, Flight Options has decided to offer a very generous voluntary separation program ("VSP") to see if enough pilots will take the offer to avoid a potential furlough.

51. The voluntary departure of pilots high on the pay scale would mitigate the financial impact of the separation payments.

52. Although Flight Options did not feel it had a legal obligation to do so, it gave the IBT an opportunity to review and agree to the program.

53. Although Flight Options presented a very generous package, the IBT countered and demanding significantly more money.

54. Despite the IBT's rejection of this offer, Flight Options renewed the offer after telling the IBT that the program was as good as it could be—but the IBT would not accept it.

55. Because there is no status quo or CBA at Flexjet, the Company issued the same VSP to the Flexjet pilots, and it has been well-received.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: April 29, 2016.

/s/Robert Sullivan
Robert Sullivan

APPENDIX F

FLIGHT OPTIONS PILOTS COLLECTIVE
BARGAINING AGREEMENT

SECTION 1 - RECOGNITION and SCOPE

1.1 Introduction

1.1(a) Pursuant to the certification by the National Mediation Board in Case No. R-7072 dated March 3, 2006, this Agreement is entered into by and between Flight Options, LLC (hereinafter “Flight Options” or “Company”) and the International Brotherhood of Teamsters, Airline Division (hereinafter “Union”) as representative of Captains and First Officers of the Company, (hereinafter “Pilot(s)”) pursuant to the terms of the Railway Labor Act, as amended (hereinafter the “Act”) in the mutual interests of the Pilots and the Company to promote the safety and continuity of air transportation, to further the efficiency and economy of operations, and to provide for orderly collective bargaining pertaining to rates of pay, rules or working conditions, between the Company and its Pilots.

1.1(b) This Agreement shall supersede all previous Agreements by and between the Company and the Union or any other labor organization or individual with respect to the Pilots described above and shall constitute the

sole Agreement between the Company and the Union. Any and all agreements made by the parties shall be reduced to writing and signed by the authorized representatives. An “authorized representative” of the Union shall be any authorized agent of the Teamsters Airline Division, including the President of the Executive Board of Local 1108, or his designee.

1.2 Scope of the Agreement

1.2(a) Except as otherwise provided in this Section, all present and future revenue flying performed in and for the service of the Company, its Affiliates, or the Company’s Parent, including present and future flying performed on behalf of the Company, its Affiliates, or Parent pursuant to any agreement or arrangement to which the Company, any of its Affiliates, or Parent holds a majority interest, shall be performed by Pilots named on the Flight Options Pilots Seniority List in accordance with the terms and conditions of this Agreement and any other applicable agreement between the Company and the International Brotherhood of Teamsters, Airline Division.

1.2(b) The Company will actively employ a minimum number of Line Pilots on the Flight Options Seniority List that is commensurate with the Company’s fractional hours under Management and JetPASS card holder hours. The number of Line Pilots required will be measured quarterly by dividing the fractional Hours under Management and JetPASS card holder hours at the end of each quarter by 800

hours, then multiplying by 4.0.

1.3 Exceptions to the Scope of this Agreement

1.3(a) Flying by Flight Options Owners

1.3(a)(1) Flying by any Flight Options owner, as defined in the FARs, who is a natural person, a certificated airman and qualified to operate Flight Options aircraft as a PIC or SIC, is not covered by this Agreement.

1.3(a)(2) No Flight Options Pilot shall be required to accompany owners who are operating aircraft pursuant to this exception.

1.3(b) Subcontract Charter of Flight Options Fractional or JetPASS Card Program Flights

Flying within the scope of this Agreement shall not be subcontracted to any person or entity not subject to this Agreement; provided, however, that covered flying may continue to be Subcontract Chartered to ATCO operators under the following conditions:

1.3(b)(1) Subcontract Charter shall not be used to reduce existing positions or to slow expansion.

1.3(b)(2) ATCO operators shall conduct all Subcontract Chartered flights under FAR Part 135.

1.3(b)(3) Flight Options Pilots shall wear uniforms different from those worn by ATCO flight crews.

1.3(b)(4) Flight Options Pilots shall not be required to fly with ATCO Pilots.

1.3(c) Operating Partner Companies

1.3(c)(1) The Company may lease aircraft in the Flight Options livery to an Operating Partner Company for use in the Operating Partner Company's private or charter operations, or for Subcontract Charter in support of Flight Options fractional or JetPASS card holder trips. This flying activity is not subject to the provisions of this Agreement.

1.3(c)(2) The Operating Partner Company may sell or lease an aircraft in the Flight Options livery to a local user and retain the management of that aircraft. The aircraft can be used in the Operating Partner's private or charter operations, or for Subcontract Charter in support of Flight Options fractional or JetPASS card holder trips. This flying activity is not subject to the provisions of this Agreement.

1.3(c)(3) The Operating Partner Company may manage an aircraft owned in the Flight Options fractional aircraft ownership fleet. The aircraft can be used in the Operating Partner's private or charter operations, or for Subcontract Charter in support of Flight Options fractional or JetPASS card holder trips. This flying activity is not

subject to the provisions of this Agreement.

1.3(c)(4) Pilots with Operating Partner Companies will wear uniforms different from those worn by Flight Options pilots.

1.3(d) Flying Conducted by Affiliates of Flight Options

Flying conducted by any air carrier that is an Affiliate of Flight Options which (1) utilizes aircraft with a maximum take off weight of 110,000 pounds or greater or (2) for purposes of freight or ACMI operations, or (3) engages in scheduled passenger operations, shall not be subject to the provisions of this Agreement.

1.3(e) Charter Broker Services

1.3(e)(1) The Company or Affiliate may act as a charter broker without limitation if the brokered flying is not performed by the Company or Affiliate.

1.3(e)(2) If a brokered charter will be flown by the Company or Affiliate, then the brokered charter shall be assigned at the Company's direction according to the following priority if pilots and suitable aircraft are available to fulfill the terms of the requested brokered flight, by:

1.3(e)(2)(i) Flight Options Pilots operating aircraft owned or leased by the Company;

1.3(e)(2)(ii) Pilots employed by an Operating Partner Company;

1.3(e)(2)(iii) An ATCO.**1.4 Parallel Operations**

1.4(a) The Company shall not establish a new air carrier to do fractional, JetPASS card holder or other flying of the type covered by this Agreement, unless such flying operations are flown by Pilots on the Flight Options Pilot Seniority List in accordance with this Agreement.

1.4(b) If the Company acquires a controlling interest in an air carrier that does fractional, JetPASS card holder or other flying of the type covered by this Agreement, the acquired air carrier shall be consolidated utilizing the procedures for Successor Transactions. A “controlling interest” for purposes of this Section means the ownership of an equity interest representing more than 50 percent of the outstanding capital stock of an Entity, or voting securities representing more than 50 percent of the total voting power of outstanding securities then entitled to vote generally in the election of such Entity’s board of directors or other governing body.

1.5 Successor Transactions**1.5(a) Successor Obligations**

1.5(a)(1) This Agreement shall be binding upon the parties hereto, their successors, administrators, executors, transferees and assigns. Any transaction that involves a transfer (in a single transaction or in a series of

related multi-step transactions) to a Successor of ownership or control of the Company and/or substantially all of its assets shall be a "Successor Transaction" and subject to this Agreement.

1.5(a)(2) No contract or other legally binding commitment involving the transfer of ownership or control pursuant to a Successor Transaction shall be signed or otherwise entered into unless it is agreed, as a material and irrevocable condition of entering into, concluding and implementing such transaction that the Successor shall assume the employment of Pilots on the Flight Options Pilots Seniority List in accordance with the status quo consisting of the applicable rates of pay, rules and working conditions set forth in this Agreement (including its merger protections).

1.5(a)(3) The Company shall give written notice of the existence of this Agreement, and provide a copy of this Agreement to any proposed Successor before the Company and the proposed Successor enter into a Successor Transaction. A copy of the notice submitted to the proposed Successor shall be provided to the Union under standard confidentiality agreements at the Company's request when

permitted by applicable law, regulations and any confidentiality agreements, the latter of which shall not extend beyond the negotiation and execution of the written definitive agreement including the occurrence of any material contingencies.

1.5(b) Pilot Protections in the Event the Company is Acquired by another Air Carrier

Unless otherwise agreed, the following provisions shall apply in the event of a Successor Transaction that affects the Seniority rights of Pilots on the Flight Options Pilot Seniority List where the Company is acquired by another air carrier or its affiliate, and shall bind the Successor or surviving air carrier.

1.5(b)(1) The integration of the Seniority Lists of the respective Pilot groups shall be governed by Sections 3 and 13 of the Allegheny-Mohawk Labor Protective Provisions ("LPPs"). The parties shall promptly initiate the Seniority integration procedures of Sections 3 and 13 following announcement of an operational merger affecting the Seniority rights 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.

1.5(b)(2) Prior to integration of Seniority Lists in accordance with paragraph 1.5(b)(1), above, the parties shall negotiate a mutually agreeable fence agreement. The fences shall remain in effect until Seniority Lists and CBAs are merged. 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(b)(3) Unless and until an operational merger is finally effectuated, the Union shall continue to be recognized as the representative of the pre-merger 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(b)(4) Prior to an operational merger, the surviving air carrier and the representative of the consolidated, post-merger Pilot craft or class shall negotiate modifications to the collective bargaining agreement necessary to permit the integration. 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) 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 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. 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.

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 pre-merger 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.

1.6 New Equipment

1.6(a) The Company may introduce new equipment affecting Pilots covered by this Agreement.

1.6(b) In those instances where the Company introduces new equipment for which rates of pay exist under this Agreement, the rates of pay, rules and working conditions applicable

to such aircraft shall be based on the Agreement.

1.6(c) Any disputes about the operation of this provision shall be submitted to arbitration.

1.6(d) In those instances where the Company intends to introduce into service an aircraft type or model for which there are no existing pay rates specified in subsection 27.1, or for which no pay rates can be determined by application of the formula set forth in subsection 27.1(g), the Company shall provide prompt written notice to the Executive Board President. The parties may meet at any time prior to, but no less than 120 days before the introduction of the new equipment to negotiate the applicable rates of pay and rules that are necessary to operate the new equipment.

1.6(e) In those instances where the Company contemplates introducing an aircraft type-certificated to exceed Mach 1.0 flight (hereinafter "Supersonic Aircraft") or a type or model in aircraft class Very Light Jet ("VLJ") the Company shall provide prompt written notice to the Executive Board President. The parties may meet at any time prior to, but no less than 180 days before the introduction of the supersonic aircraft to negotiate the applicable rates of pay, rules and working conditions.

1.6(f) If the parties are unable to reach agreement on the issues bargained pursuant

to the provisions of paragraph 1.6(d) or 1.6(e) above, by the 60th day prior to the date of the introduction of the new equipment, they shall submit their respective last offers on disputed matters 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 provisions related to new equipment.

1.6(g) The Company may operate the new equipment prior to reaching an agreement with the Union on all disputed issues, or the issuance of an arbitrator's final decision, whichever is applicable. The agreement or the arbitrator's decision shall be retroactive to the commencement of operations of the new equipment. Rates of pay, rules and/or working conditions shall be retroactive to the first day of the operation of the new equipment unless the agreement or arbitrator's decision otherwise provides.

1.7 Foreign Operations

1.7(a) The Company shall continue to be subject to the Railway Labor Act, as amended, with its headquarters, senior management and Flight Operations Department situated within the United States.

1.7(b) The Company shall not open a foreign

operating base to perform flying covered by this Agreement.

1.7(c) Nothing herein shall preclude an affiliate of the Company from establishing foreign air operations that operate exclusively outside the United States except for flights that originate or end in the United States but do not both originate and end in the United States.

1.8 Information Sharing

The Company will provide the Union, upon a specific written request, with documents and information reasonably necessary to determine compliance with Section 1. Proprietary, sensitive or confidential information shall be subject to standard confidentiality agreements acceptable to the Company, when requested.

1.9 Expedited Arbitration

1.9(a) The parties agree to arbitrate any grievance filed by the Union in accordance with the requirements of Section 21, alleging a violation of Section 1 on an expedited basis. Any such grievance shall proceed directly to the System Board of Adjustment sitting with a neutral arbitrator acceptable to both parties. That neutral shall be selected from the Scope Provision Arbitration Panel within 10 days of the filing of the grievance. The hearing shall take place no later than 30 days after the selection of the neutral arbitrator. The decision of the System Board of Adjustment shall be rendered no later than 30 days after the record is closed.

Timelines, as referenced in this paragraph, may be extended only by mutual agreement of the parties in writing.

1.9(b) The Scope Provision Arbitration Panel shall consist of seven arbitrators selected by the parties. Said panel shall be established by agreement of the parties before ratification of this Agreement. Arbitrators for disputes arising under this Section shall be selected by alternately striking names from the list. The party striking first shall be selected by a coin toss for each successive grievance filed under this section.

1.10 Definitions

The following definitions shall be applicable throughout Section 1 of this Agreement, whether or not the defined term is capitalized in the text.

1.10(a) “Affiliate” means (1) any Entity that the Company controls; or (2) any other corporate Subsidiary, Parent, or division of the Company; or (3) any Entity controlled by an Affiliate as defined in (1) or (2) of this definition. “Affiliate” does not include Flight Options Holdings I, Inc.

1.10(b) “ATCO” or “ATCO Operators” means an air taxi operator or air management company that conducts charter flights under FAR Part 135. ATCO shall be applied to any air operator which flies Flight Options subcontract charter flying that would otherwise be conducted by Flight Option Pilots on the Flight Options Pilot Seniority List.

1.10(c) “Brokered Charter” means charter flights that are brokered by the Company or an Affiliate.

1.10(d) “Control, controlled or controlling interest” means an equity interest representing more than 50 percent of the outstanding capital stock of an Entity; or voting securities representing more than 50 percent of the total voting power of outstanding securities then entitled to vote generally in the election of such Entity’s board of directors or other governing body.

1.10(e) “Entity” means a natural person, corporation, association, partnership, trust or any other form for conducting business.

1.10(f) “Hours under Management” means the number of flying hours that are contractually committed to fractional owners or JetPASS card holder customers, excluding Hours under Management that are in redemption or retention.

1.10(g) “Line Pilots” means all pilots on the Flight Options Seniority List excluding Management Pilots.

1.10(h) “Operating Partner Company” means a company that is in the Flight Options Direct partner program. Pilots of an Operating Partner Company are not on the Flight Options Seniority List, and are not subject to this Agreement. They operate aircraft in Flight Options livery that are either leased from or to the Company, or managed for the Company, and share

discounts in the Flight Options fuel, training, and other programs. The aircraft may be placed on the Flight Options certificate, or may be placed on the certificate of the Operating Partner Company. An Operating Partner Company is not an Affiliate of Flight Options.

1.10(i) “Parent” means an Entity that controls another Entity. The Flight Options LLC parent company is Flight Options Holdings II, Inc, and “Parent” does not include any entity that controls Flight Options Holdings II, Inc.

1.10(j) “Subcontract Charter” is a charter flight that is flown by an ATCO or Operating Partner Company for a fractional owner or JetPASS card holder.

1.10(k) “Subsidiary” means any Entity that is controlled by another Entity.

END OF SECTION 1