IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re:	)	**Chapter 11**
	)	
ATA Holdings Corp., et al.,[1]	)	**Case No. 04-19866-BHL-11**
	)	**(Jointly Administered)**
Debtors.	)	
	)	

REPLY OF THE AIRCRAFT MECHANICS FRATERNAL ASSOCIATION TO ATA'S OPPOSITION TO AMFA MOTION TO COMPEL ASSUMPTION OF TENTATIVE AGREEMENT

The Aircraft Mechanics Fraternal Association ("AMFA") hereby submits this Reply (the "Reply") to the Opposition (the "Opposition") of Debtor ATA Airlines, Inc. ("ATA") to the Motion to Compel Debtor to Assume the Tentative Agreement with the Aircraft Mechanics Fraternal Association ("Motion") of AMFA. In support of this Reply, AMFA states as follows.

PRELIMINARY STATEMENT

The Opposition is without foundation. Initially, it is worth noting that the Opposition disingenuously attempts to "fragment" and mischaracterize the Tentative Agreement ("TA") agreed to by the Debtor as "a single issue among the hundreds of issues discussed by ATA and AMFA during their ongoing collective bargaining." (Opposition at 1-2). The Debtor's representative, Richard W. Meyer, erroneously and misleadingly insinuates, in his Declaration of March 28, 2005, that ATA and AMFA have tentatively agreed to terms on only four (4) provisions or Articles, as listed in Exhibit I to his Declaration. (Meyer Decl., ¶8). Exhibit I of his declaration only contains copies of Articles numbered 1, 6, 9 and 29. In point of fact, ATA and

[1] The Debtors are the following entities: ATA Holdings Corp., ATA Airlines, Inc., Ambassadair Travel Club, Inc., ATA Leisure Corp., Amber Travel, Inc., American Trans Air Execujet, Inc., ATA Cargo, Inc., and Chicago Express Airlines, Inc.

AMFA have tentatively agreed to terms on nineteen (19) provisions of the TA. (Motion at 1). Attached hereto as Exhibit "A" are no less than ten (10) additional Articles to the TA numbered 10, 11, 14, 16, 19, 20, 21, 26, 27 and 28, each bearing the signature of the Debtor's Declarant and accordingly, each undermining his credibility.[2] It is worth noting that, unlike ATA's unilateral change of Article 29, in the case of Article 26, ATA elected to proceed within the dictates of the Railway Labor Act ("RLA") and came to a mutual agreement with AMFA instead of acting unilaterally. The Opposition by ATA on this point is nothing more than a feeble attempt to avoid Point II of the Motion, namely, that the Debtor must assume the TA in its entirety with all of its burdens, or none of it. (Motion at 11-13).

AMFA expressly states in its motion that the TA in its Motion "*inter alia,* contains moving expense reimbursement provisions in Article 29 agreed to on May 28, 2004." (Motion at 1). In addition, a copy of the entire TA, which is comprised of nineteen (19) Articles, including Article 29, is attached to the Motion as Exhibit A[3].

Article 29 is emphasized over the other Articles in the Motion because on February 22, 2005, ATA advised certain employees for the first time in writing that due to staff reductions, they would be displaced from their position due to job classification seniority and if they could

[2] For Article 26, two versions are provided because the original was mutually agreed to on November 26, 2002 and a revised Article 26 was mutually agreed to by the parties on October 31, 2003. ATA and AMFA have tentatively agreed to an additional five (5) Articles, however, the custodian of these records for AMFA could not obtain access to the remaining five by the time of this Reply.

[3] Exhibit A of the Motion consists of a copy of the Article 29 Expenses sign off on May 28, 2004; as well as copies of the following nineteen (19) Articles: Article 1:Purpose of Agreement; Article 6: Overtime; Article 9: Sick Time; Article 10: Leaves of Absence; Article 11: Seniority; Article 12: Vacancies; Article 13: Field Service, Special Projects and Training; Article 14: Furlough; Article 16: Grievance Procedure and System Board; Article 17: Safety, Health & Standards; Article 18: Operations Check Flight; Article 19: Transportation; Article 20: Uniforms; Article 21: Union Leave; Article 22: Wage Rules; Article 26: General & Miscellaneous; Article 27: Saving Clause; Article 28: Union Security; and Article 29: Expenses.

not exercise their seniority over less senior employees, they would be furloughed. ATA further advises in this letter that it will not be abiding by the moving expense reimbursement provisions of Article 29 of the TA to which it had previously agreed to on May 28, 2004, by specifically stating, on the second page of the letter, that '[a]ny relocation expenses will be at your expense." (Walden Aff., ¶ 9) (Motion at ¶ 10 and Exhibit B thereto).

Accordingly, AMFA does not refer to Article 29 as the entire TA in its Motion in isolation from the other eighteen (18) Articles of the TA as ATA erroneously asserts, except to discuss ATA's unilateral action not to abide by the moving expense reimbursement provisions of Article 29 previously agreed to.

ATA also admits that it has made a change in the current Employee Handbook to implement a new policy on seniority which partly mirrors the language in the TA Article on Seniority (Meyers Decl., ¶ 9).

Finally, because ATA currently pays and/or will be paying the moving expenses of its Fleet Service Employees, as indicated on the attached document entitled Flight Deck Reading File 05-16, there is evidence that the unilateral change of Article 29 of the TA by ATA is not motivated by business reasons. (See last page of attached Flight Deck Reading File 05-16, Q3 as to crewmembers eligibility for moving expenses, attached hereto as Exhibit "B.").

LEGAL ARGUMENT

POINT I

ATA MUST MAINTAIN THE STATUS QUO AND MAY NOT ENGAGE IN SELF-HELP OR MAKE UNILATERALLY CHANGES TO ARTICLE 29 OF THE TA, WHICH INCLUDES 19 ARTICLES AGREED TO WITH AMFA, BUT NOT ARTICLES ON ALL OUTSTANDING ISSUES

The Opposition's argument that there is no agreement at all is based simply on the fact that AMFA and ATA have not yet reached agreement on all issues and that AMFA's membership at ATA have not ratified the TA. (Opposition at 2).

The Debtor's representative, Richard W. Meyer, concedes that the parties remain in bargaining and that they have not been released from mediation by the National Mediation Board ("NMB"). (Meyers Decl., ¶4). However, Mr. Meyers is wrong as to the October 27, 2004 date he claims AMFA asked the NMB to be released from mediation. The correct date is September 29, 2004, which precedes the Debtor's bankruptcy filing, as stated by AMFA in its Motion and supporting Affidavit of Mark Walden. (Motion at ¶7; Walden Aff., ¶6). In corroboration of AMFA's assertion, a copy of the NMB's letter to Mr. Meyer, which clearly states that AMFA's request for a proffer was dated, September 29, 2004, as well as that the case remains in mediation, is attached hereto as Exhibit "C."

The issue therefore before this Court is whether ATA having bound itself provisionally to an agreement with AMFA based on agreed to language of the nineteen (19) Articles, which currently comprise the TA, including Article 29 on moving expenses, is thereby precluded from acting unilaterally to change the existing status quo embodied in the nineteen Articles comprising the TA, including Article 29.

It is undisputed that the NMB has not released the parties from mediation and therefore neither party may engage in self help. (Motion at 6) (Meyer Decl., ¶4).

Ironically, the Opposition expressly quotes language that supports AMFA's position that ATA may not unilaterally make changes to subjects tentatively agreed to, including Article 29 on moving expenses, just because all issues have not been agreed to. Specifically, the Opposition confirms that "'[I]f the parties are at impasse only over certain issues, an employer may not

make unilateral changes as to subjects that were tentatively agreed to during negotiations.' *Id.* at 287." (Opposition at 6). AMFA agrees. This is precisely the extant *status quo* between ATA and AMFA, in which despite the lack of agreement over certain issues, ATA may not make unilateral changes to the nineteen (19) Articles already tentatively agreed to during negotiations with AMFA, including Article 29 on moving expenses.

Visiting Nurse Services of Western Massachusetts v. NLRB, 177 F.3d 52 (1st Cir. 1999), which is cited to by the Opposition, is distinguishable on its facts in that there was no tentative agreement between VNS and the Union. In the instant case, ATA and AMFA have a tentative agreement, which consists of nineteen (19) Articles, including Article 29 on moving expenses. (See Exhibit A to Motion).

The Opposition is not only clearly in error as to the facts in Visiting Nurse Services, but effectively misleads this Court by interweaving its own language or spin inconsistent with the facts. Specifically, the Opposition states:

> As the First Circuit explained: "Collective bargaining involves give and take on a number of issues." **If a party could implement where they reached tentative agreement or impasse on only one of those issue,** "the effect . . . would be to permit [a party] to remove, one by one, issues from the table and impair the ability to reach an overall agreement through compromise on particular items"

Opposition at 6-7. (emphasis supplied).

This Court should not countenance the Opposition's attempt to mislead this Court by ascribing a diametrically opposite meaning to that intended by the First Circuit in its decision in

Visiting Nurse Services. The Opposition conveniently fails to mention that in this NLRA case, the First Circuit rejected the position of the employer, VNS, namely, that the parties were at an impasse because the Union rejected or did not accept the employer's position on a particular issue. Id. at 58. The full and exact quotation in Visiting Nurse Services is as follows:

> Collective bargaining involves give and take on a number of issues. The effect of VNS's position would be to permit the employer to remove, one by one, issues from the table and impair the ability to reach an overall agreement through compromise on particular items. In addition, it would undercut the role of the Union as the collective bargaining representative, effectively communicating that the Union lacked the power to keep issues at the table.

Id. at 59.

Accordingly, the meaning of this quotation from the First Circuit's Opinion is not as represented by the Opposition that tentative agreements can be ignored with impunity by an employer.

The principle of good faith bargaining under the National Labor Relations Act is equally applicable under the Railway Labor Act, which governs the conduct of the parties in this case. International Association of Machinists and Aerospace Workers v. Transportes Aereos Mercantiles, 924 F.2d 1005, 1009-1010 (11th Cir. 1991) (The Railway Labor Act's duty to bargain in good faith is supported by an analogy to cases interpreting the National Labor Relations Act because the RLA and NLRA duty to bargain in good faith are based on the same underlying policy: existing rates of pay, rules and working conditions must be maintained during negotiations because "the bargaining status of a union can be destroyed by going through the motions of negotiating almost as easily as by bluntly withholding recognition" of the union as the bargaining representative).

When an NMB certified union has entered into collective bargaining negotiations pursuant to the Railway Labor Act's bargaining provisions, and reached tentative agreement on several, but not all, provisions, the employer may not make unilaterally changes, but must maintain the status quo as embodied in the TA'ed provisions. United Transportation Union v. Wisconsin Central Ltd., 1999 U.S. Dist. LEXIS 6086 (N.D. Ill. Apr. 12, 1999).

In United Transportation Union, the District Court denied the employer's motion to dismiss the union's causes of action for violations of Section 6 and Section 2 Seventh, and Section 2 First of the Railway Labor Act, because the union stated claims having commenced bargaining negotiations, when the employer made the unilateral changes by eliminating profit sharing, and triggering the good faith requirement of section 2, First, which precludes unilateral changes after negotiations have begun. Id. See also, International Association of Machinists and Aerospace Workers v. Transportes Aereos Mercantiles, 924 F.2d 1005, 1008 (11th Cir. 1991) (§ 2 First's duty to bargain in good faith, standing alone, precludes unilateral changes after negotiations have commenced).

The Opposition not only does not attempt to distinguish the United Transportation Union case, which is the only District Court decision found within the jurisdiction of the Seventh Circuit on this issue, it elects not to even mention the case at all, thereby conceding on this issue.

The Opposition does attempt, but fails to, distinguish Transportes Aereos Mercantiles (or the acronym "Tampa" as referred to in the Opposition), in a footnote, by saying that there was clear evidence of bad-faith by the employer, that the tentative agreement was never ratified and executed but was implemented by the employer, and that the employer advised the union that the tentative agreement constituted the status quo but then changed its position on what constituted

the status quo. (Opposition at 9, fn. 6). ATA's acknowledgment that the TAMPA case involved a non-ratified TA confirms that this Court should be guided by the Eleventh Circuit decision.

United Transportation Union and especially the Eleventh Circuit's decision in Transportes Aereos Mercantiles control the current case for the reasons that follow.

First,

> "the U.S. Supreme Court severely circumscribed the Williams holding in Detroit & Toledo Shore Line Ry. Co. v. United Transportation Union [citations omitted]" by holding "that the status quo provisions obligate both union and management to maintain not only the working conditions contained in an existing collective bargaining agreement, **but also "those actual, objective working conditions, broadly conceived, which were in effect prior to the time the pending dispute arose and which are involved in or related to that dispute."** [citation omitted] The Court added: "Clearly these conditions need not be covered in an existing agreement." The rationale for this holding is that if management is permitted to resort to self-help before exhaustion of the Act's negotiation and mediation procedures, "the union cannot be expected to hold back its own economic weapons, including the strike." [citation omitted] In addition, "unilateral changes made while the employees' representative is seeking to bargain . . . interfere with the normal course of negotiations by weakening the union's bargaining position." [citation omitted]

International Association of Machinists and Aerospace Workers v. Transportes Aereos Mercantiles, 924 F.2d 1005, 1007-1008 (11th Cir. 1991) (emphasis supplied).

Similarly, in the instant case, ATA's unilateral change of Article 29 is a resort to self-help before exhaustion of the Act's negotiation and mediation procedures and interferes with the normal course of negotiations by weakening AMFA's bargaining position. Further, it is implausible for ATA to maintain that Article 29 of the TA, which was agreed to on May 28, 2004, should now be regarded as a mere fiction to be entirely disregarded simply because the actual, objective working conditions in 2002 before negotiations with AMFA had commenced and before Article 29 of the TA were more narrowly conceived than they would be without the existence of Article 29 of the TA. ATA's attempt to set the clock to 2002, before negotiations with AMFA had commenced and before Article 29 of the TA was agreed to in 2004, further ignores that the time when the Article 29 dispute arose is 2005 and the substance of the dispute is Article 29, which was agreed to in 2004 and not unilaterally changed until 2005. It is simply implausible that the Article 29 provision of the TA agreed to by ATA on May 28, 2004 does not supersede ATA's policy in August 2002, which did not provide for moving expenses and which was at a time when negotiations between the parties had not yet been commenced.

ATA's limitations argument is similarly unavailing for the same reasons. (Opposition at 12-13). In order to accept ATA's limitations argument, this Court must turn a blind eye to both the existence and substance of Article 29, which ATA agreed to on May 28, 2004, as well as the fact that on September 1, 2002 or on September 15, 2002, the parties had not yet commenced negotiations. Accordingly, the cases ATA cites to in its Opposition are factually distinguishable from the instant case on these bases.

Second, Transportes Aereos Mercantiles decides a question left open in the U.S. Supreme Court's Detroit & Toledo case by further holding that § 2 First's duty to bargain in good faith, standing alone, precludes unilateral changes after negotiations have commenced by reasoning

that Detroit & Toledo has limited Williams' allowance of unilateral changes to the narrow situation where there is "absolutely no prior history of any collective bargaining or agreement between the parties on any matter." Id. at 1008.

In the instant case, negotiations between the parties commenced on October 11, 2002 resulting in nineteen (19) Articles of a TA and the parties remain in mediation under the auspices of the NMB before either the February 22, 2005 written notice by ATA or the alleged January 7, 2005 verbal notification to AMFA's Airline Representative of a unilateral change by ATA to Article 29. Accordingly, as in Transportes Aereos Mercantiles, there was a prior history of collective bargaining here that cannot be ignored, which removes the instant case from falling anywhere near the Williams' small window of remaining vitality. Id. at 1009.

Third, Transportes Aereos Mercantiles also reasons that unilateral changes are precluded under § 2 First of the RLA notwithstanding the absence of a collective bargaining agreement in cases where identical policies to those in the Detroit & Toledo holding are implicated, namely, that if management is permitted to make unilateral changes in working conditions during collective bargaining, the union's position will be undermined, interruptions to interstate commerce are likely to occur, and the purposes of the Act will be frustrated. Id. at 1009. Similarly here, ATA's position that AMFA's membership must ratify a TA on all outstanding issues before ATA has any obligation to AMFA and its members under the Railway Labor Act before taking unilateral action on any Article of the TA tentatively agreed to is untenable because it undermines the union's bargaining leverage during the entire dispute resolution process mandated by the RLA, interruptions to interstate commerce are likely to occur, and the purposes of the RLA will be frustrated. Moreover, the Eleventh Circuit expressly rejected the view that a TA requires ratification before it will be considered the source of the status quo.

Fourth, the progeny of the Williams' case, referenced in the Opposition as the Second, Ninth and D.C. Circuit cases (Opposition at 9) are distinguishable from the instant case in that these cases either fall within the Williams' small window of remaining vitality, or their reasoning is inferior to that in Transportes Aereos Mercantiles . Id. In addition, the United Transportation Union case decided by the District Court of the Northern District of Illinois adopted the preferred and better reasoning of the Eleventh Circuit in Transportes Aereos Mercantiles. The instant case is similar to Transportes Aereos Mercantiles and United Transportation Union because the parties have already reached a tentative agreement on more than several issues through bargaining. Accordingly, ATA is precluded from making unilateral changes to the TA, including Article 29 on moving expenses because in so doing ATA engages in self-help and thereby disturbs the status quo as set forth in the nineteen (19) Article TA agreed to with AMFA.

CONCLUSION

In light of the foregoing, AMFA respectfully requests that the Court approve the Motion, overrule the Opposition, and grant such other and further relief as is just and proper.

Date: April 1, 2005

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