

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>DENISE A. GEORGE and TIMOTHY P. KINCAID</b>	:	<b>No. 02-CV-6405</b>
	:	
	:	
v.	:	
	:	
<b>NORTHWEST AIRLINES, INC. and INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, LOCAL 1776</b>	:	

**MEMORANDUM OPINION AND ORDER**

**J. Rufe**

**February 27, 2004**

Before the Court is Defendant Northwest Airlines, Inc.'s Motion to Dismiss Plaintiffs' Amended Complaint. For the reasons below, the Motion is granted in part and denied in part.

**FACTUAL BACKGROUND**

Plaintiffs Denise A. George and Timothy P. Kincaid bring this hybrid action against Defendants Northwest Airlines, Inc. ("Northwest") and International Association of Machinists and Aerospace Workers, Air Transport District 143, Local 1776 ("the Union") pursuant to the Labor Management Relations Act, ("LMRA"), 29 U.S.C. § 185, and Railway Labor Act, ("RLA"), 45 U.S.C. § 151 et seq.<sup>1</sup> At all relevant times Plaintiffs were Northwest customer service agents at the Lehigh Valley International Airport and members of the Union.

On May 22, 2001, Northwest terminated Plaintiffs' employment because Plaintiffs had discounted airfares and provided transportation credit vouchers to friends, family members,

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<sup>1</sup> A hybrid action is one where the alleged misconduct of the employer and union are intertwined. See Arriaga-Zayas v. International Ladies' Garment Workers Union, 835 F.2d 11, 12 (8th Cir. 1987).

and acquaintances and had misled Northwest during its subsequent investigation. That same day, Plaintiffs grieved their terminations under the terms of a Collective Bargaining Agreement called the Gray Book (“CBA”). The most recent version of the CBA was executed by the Union on February 25, 1999. The CBA contains a three-step grievance procedure concluding with review by the System Board of Adjustment chaired by a neutral arbitrator. The CBA further provides that any employee whom the System Board of Adjustment finds was discharged without just cause will be reinstated. Plaintiffs allege they were discharged without just cause because their activities had been approved by their manager.

On May 23, 2001, Northwest provided Plaintiffs with a Step One hearing, which resulted in denials of Plaintiffs’ grievances. On May 30, 2001, the Union appealed the grievances, asking for a Step Two hearing, which was never held. On July 30, 2001, the Union sent Plaintiffs a Last Chance Agreement, which would have permitted reinstatement provided that Plaintiffs agreed to a disciplinary suspension without pay, admitted their wrongdoing, and agreed to waive the right to seek redress for any grievance, past or future, stemming from the agreement. Plaintiffs also would have been placed on probationary status for 24 months. Plaintiffs thereafter rejected this settlement proposal.<sup>2</sup>

On August 16, 2001, the Union notified Northwest that it had appealed the grievances to the System Board of Adjustment for a hearing and decision. On January 16, 2002, Plaintiffs were again offered a settlement similar to the Last Chance Agreement. The Union warned Plaintiffs that the failure to execute the settlement agreements would result in the

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<sup>2</sup> The Amended Complaint alleges that the letters were dated July 23, 2001, mailed on July 30, 2001, and received by Plaintiffs on August 6, 2001, which was the deadline for their response. Pls.’ Am. Compl. ¶ 30.

withdrawal of their grievances. On January 28, 2002, Plaintiffs again rejected the settlement offer. On February 7, 2002, the Union notified Plaintiffs that, upon reviewing the facts underlying the grievances and the terms of the CBA, and considering other factors, it had decided to withdraw Plaintiffs' grievances from arbitration. The instant litigation ensued.

Plaintiffs' Amended Complaint advances claims against both the Union and Northwest. Plaintiffs allege that the Union violated its duty of fair representation when it denied them a Step Two hearing in violation of Article 16, Paragraph D of the CBA. Plaintiffs further allege that Northwest "was engaged in a concerted scheme to destroy the Union by setting up employees for discipline and then pressuring the [U]nion to refuse to process the employees' grievances." Pls.' Am. Compl. ¶ 45.

In its Motion to Dismiss the Amended Complaint, Northwest asserts that Plaintiffs cannot advance their claims under the LMRA. Northwest further contends that jurisdiction under the RLA is lacking because Plaintiffs allege only a minor dispute that is subject to the mandatory and exclusive jurisdiction of the System Board of Adjustment. Finally, Northwest argues that this case does not fall within the limited exception to the exclusive jurisdiction of the System Board set forth in International Association of Machinists & Aerospace Workers v. Northwest Airlines, Inc., 673 F.2d 700 (3d Cir. 1982).

By Order dated September 30, 2003, the Court directed the parties to conduct jurisdictional discovery and scheduled an evidentiary hearing for December 22, 2003. The parties thereafter jointly requested that the Motion to Dismiss be decided on the present record. See Joint Mot. to Modify Scheduling Order [Doc. No. 27].

## STANDARD OF REVIEW

A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) may advance either a facial or factual challenge to subject matter jurisdiction. Fin. Software Sys. v. First Union Nat'l Bank, 84 F. Supp. 2d 594, 596 (E.D. Pa. 1999) (citing Mortensen v. First Fed. Sav. & Loan Ass'n, 549 F.2d 884, 891 (3d Cir. 1977)). Where, as here, a motion to dismiss creates a factual issue regarding subject matter jurisdiction, there is no presumption of truthfulness to the jurisdictional allegations in the complaint. Mortensen, 549 F.2d at 891. In assessing a Rule 12(b)(1) motion, the parties may submit, and the court may consider, affidavits and other relevant evidence outside the pleadings. Berardi v. Swanson Mem'l Lodge No. 48 of Fraternal Order of Police, 920 F.2d 198, 200 (3d Cir. 1990). When a defendant advances its attack on jurisdiction with supporting evidence, the plaintiff has the burden of responding to the facts so stated. Mortensen, 549 F.2d at 891; Northwest Airlines, 673 F.2d at 711. In this case, Plaintiff George has submitted an affidavit in which she avers that Northwest and the Union conspired to put together a Last Chance Agreement that would subject senior employees to termination without any recourse and that the purpose and effect of their collusive effort was to undermine the Union.

## DISCUSSION

### **A. Plaintiffs cannot advance LMRA claims against Northwest.**

In their Amended Complaint, Plaintiffs invoke jurisdiction under both the LMRA and the RLA. The express language of the LMRA, however, makes it inapplicable to Northwest because Northwest is covered by the RLA. 29 U.S.C. § 152(2) (providing that the Act shall not apply to “any person subject to the Railway Labor Act”); 45 U.S.C. § 151 (providing airlines and their employees are covered under the RLA).

The Supreme Court has ruled that the LMRA, as part of the National Labor Relations Act (“NLRA”), does not apply to RLA employers:

The NLRA came into being against the background of pre-existing comprehensive federal legislation regulating railway labor disputes. Section 2(2) and (3) of the NLRA, 29 U.S.C. §§ 152(2), (3) expressly exempt from the Act’s coverage employees and employers subject to the Railway Labor Act. And when the traditional railway labor organizations act on behalf of employees subject to the Railway Labor Act in a dispute with carriers subject to the Railway Labor Act, the organizations must be deemed, *pro tanto*, exempt from the National Labor Relations Act.

Bd. of R.R. Trainmen v. Jacksonville Terminal Co., 394 U.S. 369, 376-77 (1969).

Accordingly, to the extent that claims against Northwest are pleaded under the LMRA, they must be dismissed.

**B. Whether Plaintiffs’ claims are subject to RLA preemption.**

The Court must next determine whether Plaintiffs’ claims are subject to RLA preemption. In order to decide this issue, the Court must first address whether Plaintiffs’ claims are “major” or “minor” disputes. The distinction between major and minor disputes is significant. While federal courts have broad powers to intervene in some major disputes, minor disputes must be resolved through arbitration in a grievance proceeding or before a System Board of Adjustment. See 45 U.S.C. § 184; Caparo v. United Parcel Service Co., 993 F.2d 328, 331 (3d Cir. 1993); Assoc. of Flight Attendants, AFL-CIO v. USAir, Inc., 960 F.2d 345, 347 (3d Cir. 1992) (“Congress placed great emphasis on negotiation and voluntary settlement rather than judicial resolution of labor disputes under the RLA.”).

Major disputes relate to the formation or alteration of collective bargaining

agreements; minor disputes concern the application of a valid agreement to a specific grievance. See Union Pacific Railroad Co. v. Sheehan, 439 U.S. 89, 94 (1978). Minor disputes “relate either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case.” International Association of Machinists and Aerospace Workers v. US Airways, Inc., \_\_\_ F.3d \_\_\_, 2004 U.S. App. LEXIS 1618, No. 03-4169 (3d Cir. Feb. 3, 2004) at \*14. The rationale for this dichotomy derives, in part, from Congress’s perception that the System Board possesses the expertise and the administrative mechanisms to handle “minor” disputes efficiently and fairly. Sheehan, 439 U.S. at 94.

Plaintiffs argue that the case is not preempted by the statutory administrative appeal requirements of the RLA since there was “unlawful collusion” between the Union and Northwest to deprive Plaintiffs of their right to a full and fair hearing under the CBA. Pls.’ Suppl. Mem. of Law at 2 (noting that there are exceptions to the RLA preemption doctrine, “even where the claims involved would ordinarily be of the type suited for resolution by the statutorily mandated procedures.”). This unlawful collusion, Plaintiffs assert, excepts this matter from compulsory arbitration. Plaintiffs note that although Northwest’s actions in targeting Plaintiffs for the “rate desk pricing” may have been subtle, Northwest demonstrated an attempt to subvert and undermine the Union. Plaintiffs assert that having two senior employees removed without a fight demonstrated to other Union members that the Union was weakened and that it was incapable of standing up for its members.

In Northwest Airlines, the Third Circuit ruled that, notwithstanding that a matter may involve a “minor” dispute, a district court may have jurisdiction if the employer had attempted to “destroy or undermine the [union’s] representation of [the] employees.” 673 F.2d at

710. In an attempt to fit within the confines of the Northwest Airlines exception, Plaintiffs specifically aver in their pleadings that Northwest “was engaged in a concerted scheme to destroy the Union by setting up employees for discipline and then pressuring the [U]nion to refuse to process the employees’ grievances.” Pls.’ Am. Compl, ¶ 45. Plaintiffs further allege that Northwest was intent on “send[ing] a message that the [U]nion was worthless, and that employees would be better without it.” Id. Moreover, Plaintiffs allege, by carefully structuring false allegations against these two employees, Northwest would “scare off or intimidate” the Union from defending those employees and if the Union ultimately backed off from its defense of members, then it “would serve as a ‘test case.’” Id. ¶ 47.

In opposition to the Motion to Dismiss, Plaintiff George submitted an affidavit in which she avers that (1) management had been aware of the “rate desk pricing” practice; (2) Northwest attempted to structure the allegations against long-term employees to intimidate the Union from defending said employees; (3) the Union ultimately backed off in defending Plaintiffs; and (4) the purpose of Northwest’s actions was to show that senior employees could be readily dispatched without a fight and that the Union will just accept employees’ dues. See Aff. of Denise George, 12/16/02 at 1-2.

Viewing the facts in the light favorable to Plaintiffs and accepting as true the claims in Plaintiff George’s affidavit, the Court cannot definitively rule that this dispute is one that cannot be heard in a judicial forum. See Goclowski v. Central Transp. Co., 571 F.2d 747, 759 (3d Cir. 1978) (employer can be joined where employer acted in collusion with union). Northwest’s alleged collusion with the Union, if proved, may amount to undermining the CBA. Moreover, this appears to be one of those cases where the jurisdictional issue and the merits of

the case are intertwined. The Third Circuit has cautioned that where these issues are entwined, district courts should “demand less in the way of jurisdictional proof than would be appropriate at a full trial of the issue.” Northwest Airlines, 673 F.2d at 711. Where there are genuine issues of material fact, the district court “must permit the case to proceed to a plenary trial on the contested issues so that it may resolve the question of its jurisdiction even while hearing proofs that are equally pertinent to the merits.” Id. at 712; Mortensen, 549 F.2d at 892. Based upon this directive, and with no testimonial evidence presented to the Court with respect to the jurisdictional issue due to the cancellation of the evidentiary hearing, the Court is constrained to deny the Motion without prejudice.<sup>3</sup>

### CONCLUSION

For the foregoing reasons, the Court denies without prejudice Northwest’s Motion to Dismiss, except to the extent the Amended Complaint purports to advance an LMRA claim against Northwest.

An appropriate Order follows.

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<sup>3</sup> The Court emphasizes that it has made no final determination as to whether it has subject matter jurisdiction over Plaintiffs’ claims against Northwest. The parties should continue to develop a record with respect to the jurisdictional issue as they conduct discovery in this case. The Court anticipates that the jurisdictional issue will be revisited when summary judgment motions are filed.

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<b>P. KINCAID</b>	<b>:</b>	
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<b>v.</b>	<b>:</b>	
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<b>NORTHWEST AIRLINES, INC. and</b>	<b>:</b>	
<b>INTERNATIONAL ASSOCIATION</b>	<b>:</b>	
<b>OF MACHINISTS AND AEROSPACE</b>	<b>:</b>	
<b>WORKERS, LOCAL 1776</b>	<b>:</b>	

**ORDER**

AND NOW, this \_\_\_\_ day of February, 2004, upon consideration of Defendant Northwest Airline, Inc.'s Motion to Dismiss Plaintiffs' Amended Complaint [Doc. No. 20], and Plaintiffs' response thereto, and the documentary evidence, as well as the parties' supplemental memoranda of law, it is hereby ORDERED and DECREED that the Motion is GRANTED IN PART and DENIED IN PART. It is ORDERED as follows:

1. To the extent the Amended Complaint asserts a cause of action based upon the Labor Management Relations Act, 29 U.S.C. § 185, against Defendant Northwest Airlines, Inc., such cause of action is DISMISSED WITH PREJUDICE.
2. Defendant Northwest Airlines, Inc.'s Motion is DENIED WITHOUT PREJUDICE in all other respects.
3. Defendant Northwest Airlines, Inc. is directed to file an Answer within twenty (20) days of the date of this Order.

**BY THE COURT:**

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**CYNTHIA M. RUFÉ, J.**