

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,	)	
	)	
Plaintiff,	)	NO. CIV
	)	
v.	)	
	)	COMPLAINT FOR INJUNCTIVE
MESABA AVIATION, INC., (dba MESABA AIRLINES)	)	AND DECLARATORY RELIEF
	)	
Defendant.	)	
	)	

**Summary of Action**

1. Air Line Pilots Association, International ("ALPA") brings this action seeking injunctive, declaratory and other appropriate relief against Mesaba Aviation, Inc. ("Mesaba" or the "Company") for violations of the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151-188. ALPA is the certified, exclusive collective bargaining representative for the pilots at Mesaba. ALPA seeks an Order from this Court compelling Defendant, in accordance with its obligations under the RLA, to: (1) bargain in good faith with ALPA with regard to the rates of pay, rules and working conditions of Mesaba pilots; and (2) cease undermining the organizational rights of Mesaba pilots, and ALPA as their exclusive representative.

### Jurisdiction and Venue

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331.

3. Venue is proper in this jurisdiction pursuant to 28 U.S.C. §1391 (b) and (c) because, as described below, Defendant resides in this district and the transactions and corporate decisions that gave rise to these claims took place exclusively in this district.

### Parties

4. Plaintiff ALPA is an unincorporated labor union with headquarters at 1625 Massachusetts Avenue, N.W., Washington, D.C. 20036. ALPA is the exclusive "representative" of Mesaba pilots, as that term is defined in Section 1, Sixth of the RLA, 45 U.S.C. §151, Sixth. ALPA's functions as the exclusive collective bargaining representative of the Mesaba pilot group are coordinated by a governing body called the Mesaba Master Executive Council. ALPA brings this action on behalf of itself and the Mesaba pilots whom it represents.

5. Defendant Mesaba is incorporated in the State of Minnesota and maintains its principal place of business at 7501 26th Avenue, Minneapolis, Minnesota 55450. Mesaba is in the business of providing scheduled passenger flight service across the United States, as a feeder airline for Northwest Airlines. Along with Big Sky Airlines, Mesaba is a wholly-owned airline subsidiary of Mesaba Holdings Inc. ("Mesaba Holdings"). Mesaba is now, and at all times material to this action has been, an "air carrier" as that term is defined in 49

U.S.C. § 40102(a)(2). Mesaba is also a "carrier by air" engaged in the business of providing air services in interstate commerce within the meaning of Section 201 of the RLA, 45 U.S.C. §181.

### **Factual Background**

6. On June 1, 2001, in accordance with RLA Section 6, 45 U.S.C. § 156 and Section 31, "Duration of Agreement," of the Mesaba Airlines pilot contract (the "contract"), ALPA's President, Captain Duane Woerth, sent a letter to Paul Foley (then Mesaba's President and Chief Executive Officer), to notify Mesaba of ALPA's desire to meet and negotiate amendments to the contract. The contract became effective on June 1, 1996 and was originally amendable on June 1, 2000. However, by an agreement entered into on October 24, 1996, the parties extended the amendable date of the contract until June 1, 2002.

7. When the parties communicated about upcoming negotiations, they decided to conduct Section 6 negotiations using a technique known as interest-based bargaining ("IBB"), which differs from traditional bargaining because the parties focus on interests of the parties rather than particular contract positions, with amended contract language flowing out of those discussions. ALPA and Mesaba negotiators participated in IBB training under the auspices of the National Mediation Board ("NMB"), and began IBB in September 2001. At negotiating sessions over the next two months, Company negotiators insisted on linking issues together – for instance, saying that they could not agree to certain improvements unless other, unrelated changes were also made. These tactics

undermined the IBB process. IBB broke down in December 2001, when Company negotiator Joe Restifo (Mesaba's Director of Flight Operations) stated that the Company wanted to bring a halt to IBB and instead to bargain in the traditional manner of exchanging written proposals on various contract sections. As a result, the parties essentially lost all time and ground covered over the months invested in the IBB process, needlessly protracting bargaining.

8. Prior to the next session in January 2002, the parties agreed to focus discussions on contract Section 11, Training and Testing. From then through March 2002, the parties' bargaining focused almost exclusively on Section 11. ALPA negotiators proposed that the parties adopt much of the language of the current agreement. By contrast, the Company sought to rewrite the Section, and in addition, demanded that ALPA accept numerous concessions. When ALPA requested documentation from the Company as to why concessions in the section were necessary, Company negotiators reneged on the promise to provide it.

9. Despite their misgivings about the Company's failure to produce any supporting data whatsoever, ALPA's negotiators decided that it was important to move the process forward, and at a session on March 19, 2002, presented a counter-proposal on Section 11. The Company negotiators left the table and cancelled sessions scheduled for the next two days. They could not be convinced to return to the table, despite numerous appeals by the ALPA negotiators.

10. Ultimately, the Company negotiators withdrew their demand for concessions on the part of ALPA with respect to Section 11. The parties tentatively agreed to contract language that is largely the same as that contained in the current collective bargaining agreement. That Company negotiators dropped their demand for concessions indicated that they had made concessionary demands simply to frustrate and delay the negotiations process.

11. By April 2002, a Company pattern of surface bargaining became more evident. At a session in early April, the Company simply refused to engage ALPA in any meaningful discussion concerning the annual allowance that Mesaba provides its pilots for uniforms. At another April session, Company negotiators stated that Mesaba sought changes to contractual provisions covering the transportation of pilots to training events – yet failed to explain what changes were necessary.

12. In May 2002, Captain Tom Wychor, Chairman of the Mesaba Master Executive Council, asked Mr. Foley (then Mesaba's President and Chief Executive Officer) to meet with the ALPA negotiating committee informally – a time-honored practice at Mesaba that the pilot leadership believed could be instrumental in getting the negotiations process back on track. While Mr. Foley responded favorably when initially approached about a proposed meeting, he thereafter told Captain Wychor that the Company's lawyer had counseled against his participation in such a meeting.

13. Meanwhile, the Company continued to cancel dates set for negotiations, refused to respond to ALPA's bargaining proposals and largely failed to produce proposals of its own. Accordingly, ALPA's President determined that it was appropriate to apply for mediation services by the NMB. ALPA's application was forwarded to the NMB on June 18, 2002 and on July 10, 2002, the parties were notified that the matter had been assigned to Mediator Richard Frey.

14. ALPA and the Company met for sessions in July 2002 without the participation of Mediator Frey. The parties agreed that they would discuss Section 12, Hours of Service and Section 25, Scheduling. In order to effectively discuss proposed modifications to these sections, the parties agreed that it would be necessary to schedule meetings – outside, and in addition to, negotiation sessions – at which a few select representatives from each side would review and analyze the cost of bargaining proposals in these areas. Such “costing” analysis is a normal and necessary part of the bargaining process for complicated pilot contracts. The parties thereafter scheduled meetings for this purpose on at least five separate occasions. Each time, Company negotiators cancelled the meetings – often after ALPA representatives had rearranged their schedules to be present. Recently, after almost a year of trying to get these meetings scheduled, Company negotiators stated that they had no interest in meeting with ALPA representatives to conduct cost analyses of Sections 12 and 25.

15. Mediated negotiating sessions began in August 2002. Whereas before the Mediator was involved in the process, Company negotiators had been available for negotiations at least two weeks per month, they thereafter claimed they could only meet once per month for negotiation sessions. Meanwhile, in crew rooms and other public venues, Mesaba management officials – including Mr. Foley and John Spanjers (then Mesaba’s Vice President of Flight Operations) – were communicating regularly to the Mesaba pilot group and denigrating ALPA’s bargaining positions, claiming that ALPA was attempting to delay negotiations and was not serious about reaching an agreement with management.

16. In late September 2002, Mesaba’s parent corporation, Mesaba Holdings, announced that it was going to be purchasing Big Sky Airlines – whose pilots are not represented by ALPA – and that it intended to use Big Sky Airlines for the purpose of providing passenger feed for larger airlines, which is the same kind of flying that is performed by the Mesaba pilot group. It was further announced that Mr. Foley would be assuming the position of President and Chief Operating Officer of Mesaba Holdings and Mr. Spanjers would be taking over as President and Chief Operating Officer of Mesaba. Thereafter, during visits to crew rooms, Mr. Spanjers stated that management could foresee the possibility that there would be more growth opportunities at Big Sky than Mesaba, because Mesaba pilots were more costly.

17. In early January 2003, Mediator Frey stated that, to move the process forward, he wanted both the Company and ALPA to prepare comprehensive proposals – addressing all open contract sections – and be ready to exchange them at the first session in February. When the parties convened on February 4, 2003, it was evident that while ALPA had completed the drafting requested by the Mediator, the Company negotiators had not. The Company negotiators, moreover, were unwilling to state when they would complete their proposals – and refused to engage in any substantive discussion of the proposals that ALPA propounded.

18. Later in February, the parties got back to the table – and from then through April 2003, they worked with the Mediator on various contract sections, including Section 25, Scheduling. With respect to Section 25, in particular, both parties had proffered complete substantive proposals during that time – and relatively few open issues remained between them.

19. On May 12, 2003, the parties convened for negotiations in Washington, D.C. at the offices of the NMB. When the parties got to the table, the Company negotiators announced that they were revising many of their past proposals, reneging on key agreements in critical contract sections, and seeking changes to current contractual language that neither party had ever sought to change. They then presented a new proposal for Section 24, Filling of Vacancies. The new proposal – which opened up 13 new issues – represented a drastic backward movement from the Company's earlier proposal for Section 24. Some



of the Company's proposed regressive changes would cause significant, negative economic impact to pilots, such as drastically curtailing career and income progression of the Mesaba pilots. Other changes were to non-economic sections that nevertheless would cause significant negative effect to a pilot's quality of life. The Company offered no justifications for any of these proposed changes, except to say that they were required for "operational flexibility." Likewise with no real justification, the Company presented a new proposal for Section 25, Scheduling – again making significant regressive steps back from previous positions and reneging on key agreements that had already been made in the Section. In addition, the Company's new proposal for Section 25 opened up numerous issues that neither party had ever sought to open during two months of intense bargaining on the Section only a short time before. In addition to Sections 24 and 25, the Company's negotiators indicated that they would be offering additional revisions to other sections as negotiations progressed.

20. While Company negotiators were back-tracking at the bargaining table, management intensified a course of direct dealing and subversion designed to circumvent and undermine ALPA as the Mesaba pilots' exclusive collective bargaining representative. First, while management officials had for some time been making appearances at pilots' mandatory recurrent training to "educate" pilots about the state of the aviation industry and what they should realistically hope to achieve through negotiations, they began to use these appearances to question individual pilots directly about bargaining issues and

the state of negotiations. Second, in mid-May 2003, during mediated bargaining with ALPA, senior management invited a line pilot – who is represented by ALPA but serves in no union leadership capacity – to attend a meeting in the capacity of “pilot representative.” On information and belief, the purpose of the meeting was to allow senior management the opportunity to discuss pilot working conditions with this purported “pilot representative.” When the pilot who was originally asked to attend this management meeting declined the invitation, management then asked an instructor pilot – who likewise is represented by ALPA but holds no union leadership position – to attend in her place. On information and belief, this meeting took place on May 28, 2003. Mesaba management did not want an ALPA leadership representative at this meeting, and at no time did management advise the ALPA leadership at Mesaba of this meeting.

21. Defendant Mesaba has acted in bad faith in the bargaining process as described herein. Defendant has, among other things, engaged in dilatory conduct, failed to timely or substantively respond to many of ALPA’s proposals, taken erratic and inconsistent positions, and without justification proffered sub-standard and regressive bargaining proposals that are so inferior and obviously unpalatable to the pilots as to frustrate, undermine and significantly protract the bargaining process. In addition, Defendant has gone through the motions of bargaining without any sincere desire to reach an agreement with the exclusive representative of the Mesaba pilots through negotiations.

**COUNT I**  
**(VIOLATION OF RLA BARGAINING OBLIGATIONS)**

22. The allegations contained in paragraphs 1 through 21 above are incorporated by reference as if fully set forth herein.

23. Defendant is obligated under Section 2, First, Second, Third, Fourth and Eighth of the RLA, 45 U.S.C. §152, First, Second, Third, Fourth and Eighth, to treat, confer and bargain exclusively with ALPA with regard to terms and conditions of employment for all pilots in the class or craft of pilots represented by ALPA and with regard to all disputes between Mesaba and its pilots, as represented by ALPA. Defendant is further obligated under the aforesaid statutory provisions to make every reasonable effort to make agreements with ALPA concerning rates of pay, rules and working conditions, to maintain such agreements, to consider expeditiously and settle all disputes between Mesaba and its pilots, as represented by ALPA, and to refrain from treating, conferring or bargaining with individual pilots with regard to terms and conditions of employment or with regard to disputes related thereto.

24. Defendant, by its course of conduct described above, has failed and refused to treat, confer and bargain exclusively with ALPA, to make every reasonable effort to make and maintain agreements with ALPA or otherwise to negotiate in good faith with ALPA, and to make every reasonable effort to consider and settle all disputes, with regard to terms and conditions of employment of Mesaba pilots, for whom ALPA is the exclusive bargaining representative under the RLA. Said conduct is in violation of the obligations

imposed on Defendant by Section 2, First, Second, Third, Fourth and Eighth of the RLA, 45 U.S.C. §152, First, Second, Third, Fourth and Eighth.

25. Defendant's bad faith, dilatory, regressive and surface bargaining conduct, as described above, evidences lack of a sincere intent to reach an agreement with ALPA and constitutes a failure and refusal to bargain in good faith with ALPA concerning rates of pay, rules and working conditions, in violation of Defendant's statutory obligations under Section 2, First and Section 6 of the RLA, 45 U.S.C. §152, First and 156.

26. Defendant's course of conduct, as described above, has caused, and unless enjoined will continue to cause, substantial and irreparable harm to ALPA, and to the Mesaba pilots represented by ALPA, and to the public interest in maintaining and encouraging the collective bargaining process mandated by the RLA, for which there is no adequate remedy at law.

27. Unless enjoined, Defendant will continue the above-described unlawful course of conduct.

**COUNT II**  
**(VIOLATION OF RLA ORGANIZATIONAL PROTECTIONS)**

28. The allegations contained in paragraphs 1 through 27 above are incorporated by reference as if fully set forth herein.

29. Defendant is obligated under Section 2, First, Second, Third, Fourth and Eighth of the RLA, 45 U.S.C. §152, First, Second, Third, Fourth and Eighth, to refrain from interfering with, undermining, subverting or destroying ALPA's

status and effectiveness as the collective bargaining representative of the Mesaba pilots.

30. Defendant, by refusing to bargain and/or engaging in surface bargaining with ALPA, by directly dealing and attempting to negotiate with individual pilots and bypassing their union, and by threatening that all new growth opportunities will go to an affiliated airline whose pilots are not represented by ALPA unless Mesaba pilots modify their bargaining goals, has intentionally interfered with, undermined and subverted ALPA's status and effectiveness as the exclusive collective bargaining representative of the Mesaba pilots and has denied the Mesaba pilots their rights, in violation of Section 2, First, Second, Third, Fourth and Eighth of the RLA, 45 U.S.C. §152, First, Second, Third, Fourth and Eighth.

31. Defendant's course of conduct, as described above, is destructive of the representative standing and legitimate effectiveness of ALPA as the exclusive collective bargaining representative of Mesaba pilots and of the rights of the Mesaba pilots to organize and bargain collectively through their designated representative, without interference, influence or coercion by Mesaba, in violation of Section 2, First, Second, Third, Fourth and Eighth of the RLA, 45 U.S.C. §152, First, Second, Third, Fourth and Eighth.

32. Defendant, by its course of conduct, as described above, has undertaken to interfere with, undermine, subvert and destroy ALPA's status and effectiveness as the collective bargaining representative of the Mesaba pilots, in

violation of Section 2, First, Second, Third, Fourth and Eighth of the RLA, 45 U.S.C. §152, First, Second, Third, Fourth and Eighth.

33. Defendant's course of conduct, as described above, has caused, and unless enjoined, will continue to cause substantial and irreparable harm to ALPA and to the Mesaba pilots represented by ALPA, for which there is no adequate remedy at law.

34. Unless enjoined, Defendant will continue the above-described unlawful course of conduct.

**PRAYER FOR RELIEF**

WHEREFORE, ALPA respectfully requests that this Court issue:

1. An Order:
  - (a) Enjoining, ordering, directing and requiring Defendant, its subsidiaries, directors, officers, agents and employees, to treat exclusively with ALPA as the collective bargaining representative for Mesaba pilots and to make every reasonable good faith effort to make and maintain agreements and settle all disputes with ALPA, with respect to the terms and conditions of employment of all Mesaba pilots.
  - (b) Enjoining, ordering, directing and requiring Defendant, its subsidiaries, directors, officers, agents and employees, to refrain from interfering with, undermining, subverting or

destroying ALPA's status and effectiveness as the collective bargaining representative of the Mesaba.

- (c) Enjoining, ordering, directing and requiring Defendant, its subsidiaries, directors, officers, agents and employees, to cease and desist from such conduct detailed above, including, but not limited to, refusing to bargain, engaging in surface and regressive bargaining, directly dealing and attempting to negotiate with individual pilots and bypassing ALPA.

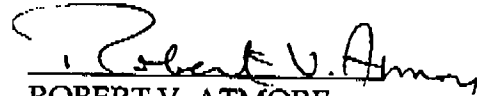
2. A judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring the rights of the parties.

3. A judgment awarding additional relief, as determined by the Court, including monetary relief, as may be appropriate to fully remedy Defendant's violations of the RLA and its infringement of the rights of the Mesaba pilots, as represented by ALPA.

4. Such other and further relief as may seem just and proper to this Court including reasonable attorneys' fees and costs and disbursements of this proceeding.

Dated: June 2, 2003

Respectfully submitted,



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