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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII**

In re: ALOHA AIRGROUP, INC. <i>et al.</i> , Debtors.	Case No. 08-00337 (Chapter 11 Cases) (Jointly Administered) (Honorable Lloyd King)
This document relates to: ALL CASES	
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, Plaintiff, v. ALOHA AIRLINES, INC., Defendant.	VERIFIED COMPLAINT FOR MAJOR DISPUTE INJUNCTION AND OTHER RELIEF Adv. Pro. No. _____

PRELIMINARY STATEMENT

The Air Line Pilots Association, International (“ALPA”) and the pilots of Aloha Airlines, Inc. (“Aloha” or “the Company”) maintain the legal right to strike Aloha immediately because Aloha has repudiated its collective bargaining agreement with ALPA. The Norris-La Guardia Act, 29 U.S.C. §101, et seq. removes jurisdiction from this and any other court to interfere with that right. The actions of Aloha over the past weeks have unquestionably triggered a “major dispute” under the Railway Labor Act (“RLA”), 45 U.S.C. §§ 151 et seq.

Notwithstanding the above, ALPA and the Aloha pilots it represents have for some time offered concessions and tried to reach some mutually acceptable resolution of the major dispute. Unfortunately, as set forth below, ALPA and the Aloha pilots have been rebuffed and ignored by Aloha management. ALPA and the Aloha pilots will continue efforts to resolve the major dispute through an agreement with Aloha, but their patience --as Aloha manipulates this situation -- has limits. If no agreement is reached by 12:01 a.m., on Saturday, April 26, 2008, ALPA and the Aloha pilots may strike any or all of Aloha’s operations.

This is an action for immediate injunctive relief to restore respect for the ALPA-Aloha collective bargaining agreement which Aloha has unilaterally repudiated as set out below.

Jurisdiction and Venue

1. This is an adversary proceeding brought pursuant to Fed. R. Bankr. P. 7001(7), 7001(9) and 7065, seeking injunctive relief against Defendant’s unlawful abrogation of the collective bargaining agreement between ALPA and Aloha, pursuant to Section 105 of the Bankruptcy Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”), and the RLA.

2. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157, 1331, 1334(b) and 1367.

3. An actual case or controversy has arisen and now exists between ALPA and the Defendant. The dispute between ALPA and Aloha constitutes a labor dispute within the meaning of Section 13(a) of the Norris-LaGuardia Act, 29 U.S.C. §113(a).

4. This proceeding is a “core proceeding” under 28 U.S.C. § 157(b)(2).

5. Venue of the Adversary Proceeding in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Parties

6. ALPA is an unincorporated labor organization with its principal offices located at 1625 Massachusetts Avenue, Northwest, Washington, DC 20036 and 535 Herndon Parkway, Herndon, VA 20172. ALPA is a “representative” as defined in Section 1, Sixth of the RLA, 45 U.S.C. §1, Sixth, and is the exclusive collective bargaining representative of Aloha’s pilots.

7. Aloha Airlines is a corporation duly organized and existing under the laws of the State of Hawaii and having offices and their principal places of business in Hawaii. Aloha is a “common carrier” by air and engaged in interstate or foreign commerce under Section 201 of the RLA, 45 U.S.C. § 181 and is subject to the provisions of the RLA.

The ALPA-Aloha Collective Bargaining Agreement and Its Repudiation by Aloha

8. Aloha and ALPA have been parties to successive collective bargaining agreements for many years. The current collective bargaining agreement was negotiated during Aloha's first Chapter 11 reorganization which was filed in December 2003. The CBA became effective on November 29, 2005 and will not become amendable pursuant to the RLA collective bargaining process until April 30, 2009 (the "CBA"). This Court approved Aloha's entry into the CBA on or about February 3, 2006. The CBA is a comprehensive agreement that governs rates of pay, rules and working conditions of Aloha's pilots.

9. On March 20, 2008, Aloha filed for Chapter 11 bankruptcy protection for the second time. Because the CBA is not amendable at this time, Aloha may not serve notice of intent to bargain contract modifications and require ALPA to renegotiate the CBA under the collective bargaining process of the RLA. Even if Aloha could trigger the statutory collective bargaining process, Aloha would be required to maintain the contractual status quo until that negotiating process was exhausted. Although the Bankruptcy Code provides for the rejection of collective bargaining agreements after strict requirements are proved in bankruptcy court, *see* 11 U.S.C. §1113, Aloha has never applied for such relief. Under Section 1113(f) of the Code, Aloha is required to adhere to all terms of the CBA unless and until it lawfully rejects the agreement under the procedures of Section 1113. In any event, under the express terms of the CBA, Aloha waived its right to file any application under 11 U.S.C. §1113. And even if it had not, §1113 relief cannot be granted on a retroactive basis.

10. Despite the above, Aloha through its actions and express statements of its president and chief executive officer David A. Banmiller on the record in open court repudiated the pilots' CBA. Specifically, Mr. Banmiller boldly and repeatedly stated in this Bankruptcy

Court on April 1, 2008 words to the effect that “The CBA provides for one thing, but the reality is something else”. Both before and after those statements, Aloha has taken a series of actions to repudiate the CBA completely, as set out below.

11. Some of the more egregious actions that Aloha has taken in its repudiation of the CBA are as follows:

A. **“Termination” of Pilots:** On or about April 7, 2008, in connection with its precipitous decision to curtail all passenger service, Aloha purported to “terminate” all but approximately forty (40) of the approximately three hundred twelve (312) pilots on the Aloha Airlines Pilot Seniority List. The purported “termination” of these pilots while others remain in service in Aloha’s cargo operation is a nullity.

The CBA requires a written “statement of charges” and a noticed hearing prior to imposition of any discipline. Further, the CBA requires progressive discipline and “just cause” for termination of employment.

These “termination” letters were actually issued for the sole purpose of circumventing the furlough provisions set forth in the CBA, which require, inter alia, that furloughs be conducted in reverse seniority order and that pilots receive “furlough pay” and related benefits pursuant to a longevity-based formula.

B. **Furlough Out of Seniority Order:** The actions by the management of Aloha in “terminating” all Pilots who were not assigned to the cargo operation as of March 31, 2008, had the practical effect of completely ignoring and circumventing the seniority-based process set forth in Section 16 (“Furlough and Recall”) of the CBA. Pilots hired within the past six months remained on the Company payroll, earning wages and receiving benefits, while the pilot with the second highest seniority in the entire pilot group who has been employed at Aloha for 29 years

was effectively furloughed by virtue of the “termination” letter. There is only one seniority list for the entire Aloha Pilot group -- no differentiation or segmentation is made for passenger vs. cargo pilots. Pilots have “system-wide” seniority.

C. **Recall Out of Seniority Order:** In recent days, at the insistence of the Aloha Master Executive Council of ALPA, the management of Aloha Airlines, Inc. has scheduled two (2) ground school classes to conduct federally-mandated training of “senior” Aloha pilots willing to fly in the Aloha cargo operation. These “senior” pilots were assigned to the passenger operation previously. However, these “senior” pilots are being recalled to this short (three to six day) transition training program out of seniority order and without regard to their relative seniority on the Aloha Pilots Seniority List. Once recalled out of seniority order, they begin receiving pay and benefits, again circumventing the seniority provisions of the CBA.

D. **Failure to Respect Successorship and Job Security Provisions:** Aloha has refused to confirm to ALPA that it will honor the Job Security and Successorship provisions of the CBA, and indeed has failed to do so in agreements with the “stalking horse” purchaser. In these circumstances, those contractual provisions mandate that the purchaser of Aloha’s Air Cargo Division and/or other flight operations offer employment to pilots from the Aloha Airlines, Inc. System Seniority List in seniority order and otherwise abide by the CBA.

E. **Failure to Make Retirement Plan Contributions and Maintain Benefits:** Upon information and belief, the Company has failed to make Retirement Plan contributions and has failed to maintain benefits as follows, including for employees for the periods they have worked or will continue to work post-petition.

(1) Company retirement plan contributions to Equity Annuity Plan (EAP), per CBA Document R12:

- Aloha failed to make contributions to EAP C-Plan accounts on April 7, 2008, equal to 11% of earnings of all pilots for March 2008 flying. Based on this failure, ALPA reasonably believes that Aloha will fail to make the following contributions:

- Contributions to EAP B-Plan accounts on April 20, 2008, equal to 7% of earnings of all pilots for April 2008 flying, and each month thereafter.

- Contributions to EAP C-Plan accounts on or about May 7, 2008 and on or about the 7th day of each month thereafter, equal to 11% of pilot true-up earnings for April 2008 flying, and each month thereafter.

- Contributions to EAP B-Plan accounts on or about May 20, 2008, and on or about the 20th day of each month thereafter, equal to 7% of pilot true-up earnings for March 2008 flying.

- Contributions to EAP C-Plan accounts on or about May 7, 2008, equal to 11% of earnings of pilots for April 2008 flying in cargo operation.

- Contributions to EAP B-Plan accounts on or about May 20, 2008, equal to 7% of earnings of pilots for April 2008 flying in cargo operation.

(2) Termination of coverage on March 31, 2008 under some or all of the following employee benefit plans under the CBA, with respect to pilots still flying for the Company after March 31, 2008 in the cargo operation:

- Life Insurance - both Company-paid and optional pilot-paid, per CBA Section 29.A. and 29.B.

- AD&D Insurance - both Company-paid and optional pilot-paid, per CBA Section 29.A.

- Loss of License Disability Insurance Plan, per CBA Section 29.N.

- Aloha Airlines, Inc. Disability Plan, per CBA Document R12.
- Flexible Spending Account (FSA) Plan, per CBA Section 29.P.
- Long Term Care Plan, per CBA Section 29.D.5 and 29.D.6.

(3) Termination of coverage on March 31, 2008 under the following employee benefit plans under the CBA, with respect to pilots who should have been furloughed, not terminated, on March 31, 2008:

- Per Section 29.I., medical/vision/pharmacy coverage is required to continue for 60 days to furloughed pilots. Furloughed pilots then have option to continue for 1 year thereafter by paying same rate Company pays for active employees.

- Per Section 29.I., dental coverage is required to continue for 60 days to furloughed pilots. Furloughed pilots then have option to continue for 1 year thereafter by paying same rate Company pays for active employees.

- Per Section 29.I., life insurance coverage is required to continue for 60 days to furloughed pilots. Furloughed pilots then have option to continue for 1 year thereafter by paying same rate Company pays for active employees.

- AD&D Insurance - both Company-paid and optional pilot-paid, per CBA Section 29.A.

- Loss of License Disability Insurance Plan, per CBA Section 29.N.
- Aloha Airlines, Inc. Pilots Disability Plan, per CBA Document R12.
- Aloha Flexible Spending Account (FSA) Plan – Pilots, per CBA Section 29.P.
- Long Term Care Plan, per CBA Section 29.D.5 and 29.D.6.

(4) Terminating, rather than furloughing pilots, deprived such pilots who are eligible for early retirement from giving the required 60-day advance notice of early retirement, pursuant to CBA Document R.9. Depriving such pilots of the ability to retire early deprived them of the opportunity to pay for retiree health care by using unused sick leave hours accrued as of the date of retirement, per CBA Section 29.E.

(5) Termination of Loss of License Disability Insurance Plan benefit payments to disabled pilots, per CBA Section 29.N.

(6) Anticipated failure to make required monthly contribution to Voluntary Employees Beneficiary Association (VEBA) Trust established under the Aloha Airlines, Inc. Pilots Disability Plan, per CBA Section 29.N.

(7) Termination of various benefits for pilots' survivors, per CBA Section 29 and CBA R-Documents.

(8) Termination of various benefits to retired pilots, per CBA Section 29 and CBA R-Documents.

F. Failure to Provide Continuing Pay and Benefits Including Medical Coverage, Upon Furlough: Following the de facto furlough triggered by the shutdown of the passenger operation and the issuance of the "termination" letters on or about April 7, 2008, Aloha has failed and refused to provide these furloughed pilots with the contractually-mandated pay and benefits (air carrier pass privileges, medical coverage, etc.) for periods of time as of March 31, 2008, without any warning or notice. Whatever Aloha's position on its ability to make payments, no such issues are even implicated by Aloha's repudiation of its obligation to provide

the contractually-mandated airline pass privileges. This repudiation makes it impossible, as a practical matter, for many newly-unemployed pilots to seek alternate employment with Mainland-based (or even Hawaii-based) air carriers, as they are now forced to purchase airline tickets for interviews and job fairs at a time when their finances have been unexpectedly put in turmoil. Further, by terminating senior pilots, it has deprived such pilots of the ability to use a pass to travel to training. Furlough pass privileges were negotiated in good faith for precisely this reason.

G. **Vacation Payout:** The CBA provides that any terminated or furloughed pilot shall be paid his/her accrued and “banked” vacation. Aloha has refused to pay affected pilots their accrued and banked vacation.

COUNT 1

(VIOLATION OF THE RLA'S COLLECTIVE BARGAINING PROVISIONS)

12. The allegations contained in paragraphs 1 through 11 above are incorporated by reference as if fully set forth in this paragraph.

13. By its conduct described in paragraphs 1 through 12 above, Aloha has violated and continues to violate its obligations to make every reasonable effort to make and maintain status quo working conditions of the Aloha pilots pursuant to RLA Section 2, First and Seventh, and Sections 5 and 6 of the RLA. 45 U.S.C. §§152, First, Seventh, Fifth, Sixth.

14. Unless enjoined, Aloha will continue the above-described unlawful unilateral course of conduct. ALPA and the Aloha pilots will continue to suffer irreparable injury from Aloha's unlawfully conduct.

COUNT II

(VIOLATION OF RLA ORGANIZATIONAL PROTECTIONS)

15. The allegations contained in paragraphs 1 through 14 above are incorporated by reference as if fully set forth herein.

16. Aloha is obligated under Section 2 First, Third, Fourth and Eighth of the RLA, 45 U.S.C. § 152, First, 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 Aloha pilots.

17. Aloha, by refusing to bargain with ALPA and by unilaterally and materially modifying pilot compensation, work rules and benefits, has intentionally interfered with, undermined and subverted ALPA's status and effectiveness as collective bargaining

representative and denied Aloha pilots their legal rights, in violation of Section 2 First, Third, Fourth and Eighth of the RLA, 45 U.S.C. § 152, First, Third, Fourth and Eighth.

18. Aloha'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 Aloha's pilots and of the rights of the Aloha pilots to organize and bargain collectively through their designated representative, without interference, influence or coercion by Aloha, in violation of Section 2 First, Third, Fourth and Eighth of the RLA, 45 U.S.C. § 152, First, Third, Fourth and Eighth.

19. Aloha, 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 Aloha pilots, in violation of Section 2 First, Third, Fourth and Eighth of the RLA, 45 U.S.C. § 152, First, Third, Fourth and Eighth.

20. Unless enjoined, Aloha will continue the above-described unlawful unilateral course of conduct. ALPA and the Aloha pilots it represents will continue to suffer irreparable injury from Aloha's unlawful conduct.

PRAYER FOR RELIEF

Wherefore, plaintiff ALPA respectfully requests that this Court issue:

1. Injunctive relief:
 - a. Restraining and enjoining defendant Aloha, its directors, officers, agents and employees, from engaging in any further self-help;
 - b. Directing and enjoining defendant, its directors, officers, agents and employees, to exert every reasonable effort to make and maintain agreements with ALPA concerning the rates of pay, rules and working conditions of defendant's pilots;
 - c. Enjoining, ordering, directing and requiring Aloha, its directors, officers, agents and employees, to cease and desist, on a going-forward basis, from unilaterally implementing, without reaching prior agreement with ALPA, programs unless the RLA's mandatory bargaining and mediation procedures are exhausted with respect thereto; and
 - d. Enjoining, ordering, directing and requiring Aloha, its 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 Aloha pilots.
2. A judgment declaring the rights of the parties and awarding additional relief, as determined by the Court, including monetary relief, as may be appropriate to fully remedy Aloha's violations of the RLA and its infringement of the rights of the Aloha pilots as represented by ALPA.

3. Such other and further relief as may seem just and proper to this Court, including damages in such amounts as are established, together with the costs and expenses of this proceeding.

Dated: April 18, 2008
Honolulu, Hawaii

Respectfully Submitted,

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