

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

**AIR LINE PILOTS ASSOCIATION,
INTERNATIONAL**

Plaintiff,

v.

SPIRIT AIRLINES, INC.,

Defendant.

CIVIL NO. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

SUMMARY OF ACTION

1. The Air Line Pilots Association, International (“ALPA”) brings this action seeking injunctive, declaratory and other appropriate relief against Spirit Airlines, Inc. (“Spirit” or the “Company”) for violations of the Railway Labor Act (“RLA”), 45 U.S.C. § 152, First, Second, Third, Fourth and Eighth. ALPA is the certified, exclusive collective bargaining representative for the pilots at Spirit. ALPA seeks an order from this Court compelling Spirit, in accordance with its obligations under the RLA, (1) to bargain in good faith with ALPA, (2) to cease interfering with and coercing Spirit pilots with respect to the exercise of their organizational rights, and (3) to cease in its efforts to undermine and destroy ALPA’s standing, effectiveness and functioning as the pilots’ lawfully elected, exclusive representative, through a continuing pattern and practice of illegal conduct.

2. Under the RLA, the Company is obligated to exert every reasonable effort to make and maintain agreements with ALPA. This duty to bargain in good faith is the cornerstone

of the RLA's statutory scheme. Over the past three months, however, while engaged in federally mediated negotiations with ALPA, the Company has repeatedly violated its current collective bargaining agreement with ALPA and has attempted to coerce and intimidate Spirit pilots into acquiescing to these violations, in an ongoing course of bad faith conduct and disingenuous bargaining with the pilots' statutory representative, totally at odds with the Company's core duties under the RLA. The Company repeatedly, and unilaterally, has disregarded or changed terms of its contract and past practice affecting pilot pay and other essential working conditions. The Company's bad faith noncompliance with the contract and past practice includes: (1) redefining "block out time," the time on each flight segment when pilots begin to receive flight pay; (2) discontinuing the long-settled past practice of reimbursing pilots for training-related expenses; (3) terminating contractual protection requiring at least four consecutive days off between trips; (4) denying contractually protected sick leave; and (5) requiring furloughed pilots to fly past their furlough effective date and making such assignments out of seniority order. These violations of the collective bargaining agreement by the Company, which ALPA has appropriately submitted to arbitration, are not isolated bad acts, but rather comprise a course of continuing bad faith conduct, evidencing the Company's total lack of willingness to bargain in good faith with ALPA and the Company's unlawful purpose to undermine and destroy ALPA's effective representation of the Spirit pilots, along with the collective bargaining process itself.

3. Under the RLA, the Company is also obligated not to interfere with pilots' exercise of their organizational rights and to refrain from any conduct that undermines or is destructive of the collective bargaining process or ALPA's effectiveness and standing as the pilots' chosen bargaining representative. The Company is engaged in a continuing pattern and

practice of interfering with pilots' organizational rights, repeatedly bypassing ALPA and the collective bargaining process and attempting, unilaterally, to impose unauthorized changes in the terms of the collective bargaining agreement through a combination of intimidation and coercion. The Company's practice of bypassing ALPA and the collective bargaining process further evidences Spirit's intention and purpose to destroy ALPA's effectiveness and status by attempting to marginalize the pilots' chosen representative. By repeatedly and unilaterally violating the collective bargaining agreement without any regard for its statutory obligation to bargain in good faith with ALPA, the pilots' exclusive bargaining representative, the Company is attempting to destroy not just ALPA, but the collective bargaining process itself, by undermining pilots' confidence in the utility of the process to fairly protect their rights.

4. The Company's continuing practice of violating the collective bargaining agreement with apparent impunity and of attempting to treat ALPA as irrelevant has seriously jeopardized labor peace on the Company's property, by alienating the overwhelming majority of Spirit pilots from the RLA's collective bargaining process. Spirit pilots increasingly lack confidence in the utility of the collective bargaining process to fairly protect their contractual and statutory rights. The longer Spirit is allowed to continue to circumvent the collective bargaining process, and to unilaterally modify terms of the collective bargaining agreement governing essential working conditions without any regard for the pilots' chosen representative, the more difficult it will be for ALPA to maintain labor peace on the Company's property going forward.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the present action under 28 U.S.C. §§ 1331 and 1337 because the case arises under the RLA, 45 U.S.C. §§ 151 et seq., a federal statute that affects interstate commerce.

6. Venue properly lies in this judicial district under 28 U.S.C. §§ 1391(b) and (c) because (1) Defendant Spirit maintains daily, significant flight operations, offices and personnel, and otherwise continuously does significant daily business in this judicial district at its Operations Facility located at Detroit Metropolitan Wayne County Airport (“DTW”), also currently Spirit’s second largest pilot domicile or base, and (2) a significant part of the events and omissions giving rise to the claims set forth herein occurred in and/or impact this judicial district, including injuries to pilots, employed by Spirit and represented by ALPA, residing in this judicial district.

THE PARTIES

7. Plaintiff ALPA is an unincorporated labor organization. ALPA is a “representative” as defined in Section 1, Sixth of the RLA, 45 U.S.C. § 151, Sixth. ALPA is the duly authorized, recognized and certified collective bargaining representative under the RLA and under the Spirit-ALPA collective bargaining agreement for all pilots employed by Spirit.

8. Defendant Spirit is now, and at all times material to this action has been, an air carrier engaged in the business of providing both cargo and passenger air transportation service in interstate and foreign commerce pursuant to certificates of public convenience and necessity.

Spirit is a “common carrier by air engaged in interstate or foreign commerce” as defined in Section 201 of the RLA, 45 U.S.C. § 181.

9. ALPA and Spirit are parties to a collective bargaining agreement (“CBA”) covering the pilots employed in the service of Spirit. The CBA became effective on January 31, 2003, and currently remains in full force and effect.

10. ALPA and Spirit are currently engaged in negotiations over a new collective bargaining agreement, pursuant to Section 6 of the RLA, 45 U.S.C. § 156. These negotiations currently are under the jurisdiction of the National Mediation Board, docketed as NMB Case No. A-13454 on September 1, 2007.

FACTUAL BACKGROUND

11. Currently, Spirit is engaged in a systematic assault on its pilots, their union, and the RLA-mandated collective bargaining process, through a pattern and practice of bad faith bargaining, interference with pilots’ exercise of their organizational rights, and coercion and intimidation of pilots and their ALPA representatives, all designed to frustrate ongoing federally mediated bargaining and to destroy ALPA’s effectiveness and standing as the pilots’ chosen representative. The Company has repeatedly violated terms of the CBA affecting pilots’ pay and other essential working conditions, including (1) unilaterally redefining “block out time,” (2) unilaterally discontinuing reimbursement of training-related expenses, (3) unilaterally terminating contractual protection for at least four consecutive days off between trips, (4) unilaterally denying contractually protected sick leave, and (5) unilaterally requiring furloughed

pilots to continue flying past their furlough effective date, denying required compensation for same, and making such unauthorized assignments out of seniority order.

12. As shown in greater detail below, it is clear from the Company's pattern and practice of conduct that it has no intention of complying with its obligations under the RLA to exert every reasonable effort to bargain in good faith towards agreement with ALPA and to respect ALPA's status as the pilots' collective bargaining representative. Despite being engaged in federally mediated bargaining with ALPA, Spirit is set on a course of bad faith bargaining and subverting the collective bargaining process, with the intention of interfering with pilots' organizational rights and of destroying ALPA's effectiveness and standing among the Spirit pilot group.

I. Spirit Unilaterally Reduces Pilot Pay by Redefining "Block Out Time," in Violation of Long-Settled Past Practice on the Company's Property.

13. On May 27, 2008, the Company announced that, effective June 1, 2008, it was unilaterally imposing a new definition of "block out time," without any basis in the CBA or precedent in past practice. "Block out time" is the point in time when pilots begin to receive their flight pay. Over the course of more than a decade, the parties have agreed, and the unbroken practice has been, to define "block out time" – and the beginning of the pilots' hourly pay clock – as when the aircraft's cabin door is closed and the parking brake is released.

14. In its May 27 notice to pilots, the Company advised that, effective June 1, "block out time" would be redefined as when the aircraft reached a speed of 0.5 knots during roll out.

15. In some more congested airports, such as LaGuardia, it is not uncommon for 20 minutes or more to elapse between when the cabin door is closed and the parking brake is

released, and when the aircraft first reaches a roll speed of 0.5 knots. By defining “block out time” as when the aircraft rolls at 0.5 knots, the Company is effectively docking pilots up to a third of an hour’s pay, or more, for each flight segment.

16. The Company provided ALPA notice of this change in the terms of the CBA affecting pilots’ pay only days before it was unilaterally imposed.

17. The Company did not make any attempt to bargain with ALPA over the change, even though there was both a long-settled practice and explicit agreement on the property that “block out time” is defined as when the cabin door is closed and the parking brake is released.

18. The Company unilaterally imposed this new definition of the “block out time” by fiat, without any regard for the federally mediated collective bargaining process in which it is engaged with ALPA and without any regard for ALPA’s status as the pilots’ exclusive bargaining representative.

19. The Company’s conduct, unilaterally imposing a modification to the CBA materially affecting pilots’ rates of pay without meaningful prior notice and without even a pretense of bargaining, is part of a pattern and practice of not bargaining in good faith with ALPA, in the context of federally mediated negotiations pursuant to Section 6 of the RLA.

20. ALPA’s effectiveness and status among Spirit pilots, as their collective bargaining representative, depends in large measure on the Company honoring its contractual commitments and complying with its duty under the RLA to bargain in good faith with ALPA.

21. In unilaterally redefining “block out time” and disregarding the collective bargaining process and ALPA’s status as the pilots’ statutory representative, the message the Company is sending the pilots is unmistakable: Spirit does not intend to be bound by its

contractual obligations or statutory duty to bargain with ALPA and, therefore, ALPA is irrelevant and powerless to prevent the Company from modifying the terms of the CBA at will. The Company's conduct is part of a pattern and practice of interfering with the pilots' organizational rights and of conduct aimed at destroying ALPA's effectiveness and status among the pilots as their exclusive representative.

22. In dictating and imposing a new definition of "block out time," the Company is also attempting to gain an unfair advantage in future bargaining. As a result of the Company unilaterally changing the facts on the ground, the Company hopes that ALPA will now be forced to bargain with the Company to re-establish closing the cabin door and releasing the parking brake as the definition of "block out time," even though that definition of "block out time" is already established by long-settled past practice over the years with Company officials including commitments made in collective bargaining. The Company's course of conduct, aimed at prejudicing ALPA at the bargaining table, further evidences the Company's lack of sincere intent to reach agreement with ALPA, the Company's continuing pattern of bad faith bargaining, and the Company's twin objectives of undermining the collective bargaining process and of destroying ALPA's effectiveness, during federally mediated negotiations.

II. The Company Attempts to Undermine and Destroy ALPA's Effectiveness and Standing, by Discontinuing an Unbroken Past Practice of Reimbursing Training-Related Expenses.

23. On May 30, 2008, the Company informed ALPA that it was considering no longer paying pilots per diem, lodging and transportation expenses incurred in connection with

training events at Spirit's headquarters in Miramar, Florida and at the Airbus training facility in Miami, Florida.

24. Under the CBA, the Company is required to reimburse pilots for per diem, lodging and transportation expenses incurred on Company business away from the pilot's domicile. Domicile is defined in Section 2.O of the CBA: "'Domicile' means the geographic location where pilots are based for flight duty purposes."

25. In addition to the express terms of the CBA, bargaining history and unbroken past practice on the Company's property establish that neither Miramar nor Miami are close enough geographically to the Spirit pilot domicile, or flying base, at Fort Lauderdale-Hollywood International Airport in Broward County, Florida ("FLL"), to be considered part of that domicile for purposes of reimbursing training-related expenses. Further, there was explicit agreement among the parties during contract negotiations that neither Miramar nor Miami were part of the FLL domicile. Accordingly, the Company, until now, has consistently and without objection reimbursed expenses incurred in connection with training events at these two locations.

26. In a June 10 letter to the Company, Captain Sean Creed, Chair of ALPA's Spirit Master Executive Council, informed the Company that it was required, under the CBA and according to past practice, to reimburse training-related expenses. Captain Creed explained that the location of the training facility in Miramar was more than 20 miles from the nearest Spirit domicile at FLL, and, therefore, could not be considered part of the FLL domicile under the CBA's definition. Captain Creed further explained that, in addition to the clear language of the CBA, bargaining history and past practice established the Company's obligation to reimburse training-related expenses.

27. Despite the clear contractual prohibitions and over ALPA's strenuous objections, the Company informed Captain Creed on June 25, that, effective July 1, the Company would no longer pay pilots' training-related per diem, lodging and transportation expenses. By simply ignoring ALPA's well founded objections to discontinuing the long-settled practice of reimbursing pilots for training-related expenses, the Company demonstrates its disdain for ALPA and for the collective bargain process, which is part of a pattern and practice of conduct intended to subvert ALPA's ability to effectively defend pilots' interests, including the previously undisputed right to be compensated for training-related expenses.

III. Spirit's Unilateral Termination of, and Course of Dealing Concerning, the Contractual Protection for at Least Four Consecutive Days Off Has Also Undermined the Bargaining Process and Demonstrates a Bad Faith Intent to Marginalize and Destroy ALPA.

28. The ALPA-Spirit CBA contains rates of pay, rules and working conditions governing Spirit pilots' employment. Section 25 of the CBA sets forth the Company's obligations pertaining to scheduling, including protection for at least four consecutive days off between trips. Prior to each month of flying, Spirit pilots bid on their schedule for the next month. The Company publishes a "bid package" of lists ("bid lists") of flying schedules ("lines of time" or "bid lines") for the coming month, on which the pilots bid. Pilots are paired with lines of time on the basis of bidding preference and seniority.

29. There are three types of bid lines: Regular, Reserve and Relief. Specifically, for each of the three types of lines, the CBA provides that every bid line of time constructed by the Company for pilots contain:

To the maximum extent possible, blocks of five (5) consecutive days off in domicile. In lieu of the above, to the maximum extent possible, no less than four (4) consecutive days off in domicile, except regular lines may contain blocks of less than four (4) consecutive days off in domicile on the first three and last three days of the month. Exceptions to multiple day-off blocks may occur with prior consultation of the Scheduling Committee Chairman.

CBA, Sec. 25, ¶¶ B.3.g.(5), B.3.h.(2), B.3.i.(2). Thus, the CBA protects the pilots from the Company imposing schedules on them with blocks of less than four consecutive days off between trips.

30. For many Spirit pilots, contractual protection for blocks of at least four consecutive days off is the difference between working conditions that enable them to preserve, if barely, a semblance of normal family life and working conditions that would be devastating to family life. In many cases, four consecutive days off is also the minimal amount of time pilots need to rest and recover mentally and physically from the strain and stress of their job. The safety implications of depriving pilots of minimal necessary rest are obvious.

31. The adverse impact of the Company's unilateral termination of the "four-day-off" rule, as it is known in common pilot parlance, is perhaps greatest on the approximately 100 Spirit pilots whose homes, families and lives are in and around Detroit, but whose domicile, or flying base, is FLL. As commuters who always burn two of their days off in transit to and from home, blocks of four consecutive days off were already effectively shortened to blocks of two days off, or, essentially, a weekend's length of time, under the terms of the current CBA. These pilots and their families, in particular, have relied on the "four-day-off" rule in organizing many essential facets of their lives. Among these families, everything from childcare arrangements to the terms of a spouse's employment are predicated on the pilot spouse being home and available for at

least two consecutive days at a time, the only contractual protection for which is the “four-day-off” rule. Relocating from the Detroit area to Fort Lauderdale is not a realistic option for most of these pilots, many of whom would face (if they were to move their families closer to FLL) the interruption or loss of a working spouse’s income and the sale of a home whose value has already plummeted with the collapse of Michigan’s housing market.

32. The express terms of the CBA, negotiating history and unbroken past practice establish that the Company must adhere to the “four-day-off” rule, except in the event of an unforeseen operational contingency and, then, only in consultation with the Chair of the ALPA Spirit Scheduling Committee. Negotiations over the “four-day-off” rule, including the meaning of “to the maximum extent possible,” were always limited to the operational context. It was never contemplated during contract negotiations that economic contingencies could justify a unilateral decision by the Company to schedule pilots’ flying time such that they were deprived of blocks of four consecutive days off between trips and, in fact, the understanding between ALPA and Spirit was completely contrary to any such claim. As the Company itself has repeatedly recognized, ALPA’s consent is required to obtain relief from the rule for any non-operational reason. On multiple occasions since the CBA went into effect, most recently in September of 2006, the Company has sought relief from the “four-day-off” rule purportedly to save costs. On each of those occasions, the Company has attempted to obtain ALPA’s consent to the relief through bargaining. When ALPA declined to consent to any change in the rule, as it did on each of these occasions, the Company did not challenge ALPA’s position and continued to adhere to the rule.

33. On July 9, 2008, in a conversation between Jeffrey Carlson, Spirit's Vice President for Flight Operations, and Arthur Luby, ALPA Assistant Director of Representation, the Company informed ALPA that, starting with the bid package for August 2008, it no longer would adhere to the "four-day-off" rule in constructing the bid lines for FLL-domiciled pilots. Mr. Carlson told Mr. Luby that the reason for terminating the "four-day-off" rule was the Company's need to reduce costs. In response, Mr. Luby stated that the pilots were prepared to negotiate with the Company over the "four-day-off" rule, as they had in the past, and invited the Company to make a proposal. Mr. Luby further stated that taking such an action unilaterally would be a violation of the CBA and would be totally unacceptable to the pilots.

34. On July 10, 2008, during a federally mediated negotiating session, ALPA requested that the Company provide the contractual basis for unilaterally imposing this rule change and abrupt break with past practice. The Company was unable to provide any contractual basis for its announced action. The Company also was unable to provide an operational rationale for terminating the rule. Rather, the Company has informed ALPA that relief from the rule is purportedly necessary to save money. The Company stated, and continues to state, that it is not required to negotiate with ALPA over termination of the "four-day-off" rule. According to the Company – the express language of the CBA notwithstanding – its authority to unilaterally terminate the "four-day-off" rule for non-operational reasons, without even consulting ALPA, is itself non-negotiable.

35. The Company's stated reason for needing to terminate the "four-day-off" rule, cost savings, is so obviously without any factual support as to be a knowingly false reason for claiming the need for contractual relief. ALPA has performed an analysis of the financial impact

on the Company of terminating the “four-day-off” rule, which shows that any cost savings would be negligible. The Company also stated that it intended to establish additional Relief and Reserve Lines beginning in August, in preparation for what it anticipated would be an increase (once the “four-day-off” rule was terminated) in the number of pilots unable to fly their scheduled Regular lines because they are not sufficiently rested. The added cost of flying these additional Relief and Reserve lines negates any residual cost savings that might be achieved by terminating the “four-day-off” rule.

36. By flouting its contractual and statutory obligations, the Company has squandered virtually all of the goodwill remaining among its pilots for the current management team, making labor peace on the Company’s property increasingly precarious.

37. By unilaterally terminating the “four-day-off” rule, the Company circumvented the collective bargaining process, making it impossible for ALPA to effectively confront and challenge the Company’s violation of the CBA in the collective bargaining process. Because of the Company’s demonstrated contempt for the CBA and the bargaining process, Spirit pilots have begun to question the utility of the collective bargaining process to fairly protect their contractual and statutory rights. The Company’s unilateral termination of the “four-day-off” rule is part of a pattern and practice of conduct aimed at undermining and destroying ALPA’s status and effectiveness as the collective bargaining representative of the pilots, by undermining pilots’ confidence in the collective bargaining process and in their collective bargaining representative to timely defend their contractual rights.

38. The Company’s unilateral termination of the “four-day-off” rule demonstrates that Spirit has no intention of dealing in good faith with ALPA as the chosen collective

bargaining representative of Spirit pilots, as required by the RLA. The most striking, but certainly not the only, evidence of the Company's bad faith lies (1) in its unilateral imposition of a change in the terms of the CBA that the Company itself has heretofore, without exception, always recognized would require ALPA's consent and (2) in its stated reason for needing relief from the "four-day-off" rule, cost savings, being completely spurious. As is shown above and below, the bad faith demonstrated by the Company in unilaterally terminating the "four-day-off" rule is not isolated conduct, but is part of a pattern and practice of bad faith treatment of pilots and ALPA and of noncompliance with the CBA, during federally mediated bargaining.

39. By unilaterally terminating the "four-day-off" rule, the Company is again attempting to gain an unfair advantage in future bargaining by changing the facts on the ground during bargaining. The Company is attempting to gain additional leverage at the bargaining table, by unilaterally imposing changes in contractually protected working conditions in the hopes that ALPA will have to negotiate a return to the previous contractually required conditions. The Company's unmistakable purpose in unilaterally terminating the "four-day-off" rule, undermining negotiations and ALPA at the bargaining table, is part of a pattern and practice of bad faith conduct during federally mediated negotiations intended to destroy ALPA's effectiveness and standing.

IV. The Company Attempts to Intimidate Spirit Pilots and Mask Its Own Incompetence by Threatening to Discipline Pilots Who Have Called in Sick.

40. On May 30, the Company announced that 115 Spirit pilots, or 30% of the active pilot group, would be furloughed by September 1, 2008. Forty-five pilots were furloughed effective August 1, 2008. An additional 70 pilots were furloughed effective September 1, 2008.

41. Since implementing the August furloughs, the Company has not implemented, or even announced, a commensurate reduction in its flight schedule or capacity.

42. The Company intends to operate essentially the same number of flights as it was operating in May of 2008 with 30% fewer pilots than it had on the line in May of 2008.

43. By way of comparison, on information and belief, both Continental Airlines and Northwest Airlines have downsized their pilot groups in the last year and implemented a corresponding reduction in capacity. Continental announced on June 5, 2008, that it was furloughing 7.6% of its pilot group. Continental has also announced that by the end of 2008 it will have reduced its capacity by 6.7%. Similarly, Northwest Airlines announced on July 9, 2008, that it was downsizing its pilot group by 8.4%. Year-to-date in 2008, Northwest has already reduced its capacity by 3.0% and plans an additional 6.8% reduction in capacity in the fourth quarter of this year.

44. As shown above, the Company has reduced its roster of line pilots by 30% without a commensurate reduction in capacity. Also, as shown above, the Company has unilaterally and unlawfully terminated contractual protection for at least four consecutive days off between trips. The Company's mismanagement and contractual violations have resulted in a critical shortage of pilots. Further, under increasing physical and mental strain as they fly the maximum number of hours allowed with fewer days to recover, the remaining active Spirit pilots increasingly are fatigued and, in some cases, are getting sick. That the Company has had to cancel a small number of flights, because there are no healthy, sufficiently rested flight crews available in the Company's system, is an entirely predictable consequence of the Company's deliberate decision to under-staff and overwork its pilot group.

45. Rather than taking responsibility for the current staffing crisis, which is a direct and foreseeable result of its own mismanagement and failure to adhere to the CBA, the Company has chosen to foist the blame for the consequences of its own incompetence on its pilots.

46. The Company has begun a campaign of misinformation in the news media, accusing the pilots of misuse of sick leave and of engaging in a “sick in”. The Company has provided no evidence to support these allegations.

47. Under the Federal Aviation Regulations (“FARs”), a pilot is prohibited from operating an aircraft and therefore is required to call in sick whenever he or she “[k]nows or has reason to know of any medical condition that would make [him or her] unable to meet the requirements of the medical certificate necessary for the pilot operation.” 14 C.F.R.

§ 61.53(a)(1). Under the FARs, pilots are also prohibited from operating an aircraft while taking many of the most common over-the-counter medications. Thus, a pilot who is treating symptoms with any of these common medications is likewise prohibited from operating an aircraft and therefore required to use sick leave.

48. Section 14 of the CBA governs pilots’ use of sick leave. Pursuant to Section 14.A, pilots currently accrue “4.0 hours of sick leave credit for each full month of active service.” The CBA prohibits the Company from requiring a doctor’s note from a pilot using accrued sick leave, unless “there is a reasonable basis to question the pilot’s use of sick leave.” CBA Section 14.F.4. If such a reasonable basis exists, the CBA specifies that “a member of Flight Operations management may require a pilot to furnish the Company with a physician’s certificate describing the sickness or injury.” Id. The CBA also expressly provides that “[a]

pilot may not be counseled or disciplined for the legitimate use of sick leave.” CBA Section 14.F.5.

49. Currently, the Company is requiring a doctor’s note from all pilots who call in sick. This blanket practice is a clear violation of the CBA’s requirement that there first be “a reasonable basis to question the pilot’s use of sick leave” before the Company is permitted to “require a pilot to furnish the Company with a physician’s certificate.”

50. The Company also has informed ALPA that it intends to initiate counseling and disciplinary proceedings against any pilot who calls in sick. On August 9, 2008, the Company’s Chief Pilot, Paul Olechowski, informed Frank Hann an ALPA officer and member of the Spirit Master Executive Council, that the Company would be issuing a Notice of Investigation (“NOI”) to any pilot who called in sick. Under Section 19 of the CBA, an NOI is the first step in the Company’s disciplinary process, a process that can lead to termination. Mr. Olechowski made clear that the Company intended to issue NOIs to pilots using sick leave regardless of whether the pilot provided a doctor’s note confirming the illness. The Company’s practice of investigating pilots whose use of sick leave is supported by a physician’s note is a clear violation of the CBA’s prohibition against “counsel[ing]” or “discipline[ing]” a pilot “for the legitimate use of sick leave.”

51. To date, the Company has also singled out eight individual pilots for discipline in connection with their use of accrued sick leave, in direct contravention of the CBA. On August 12, 2008, the Company issued NOIs to seven Spirit pilots, including an ALPA officer. On August 13, the Company issued an NOI to an eighth pilot. These NOIs advised each of the eight

pilots, all of whom had called in sick between August 10 and August 13, that the Company was investigating his attendance record and use of sick leave.

52. Here, the Company's own records demonstrate that there was no basis for investigating the use of sick leave by any of the eight pilots issued NOIs. For all of 2008, these pilots have each taken eight or fewer sick days; one of the pilots issued an NOI had taken no sick days for all of 2008 prior to August 10.

53. While there was no basis for investigating any of these pilots, the Company's abuse of its disciplinary authority was especially egregious in several cases, in particular:

- Captain Peter Waxton became ill while flying a multiple-leg trip. Upon his arrival in FLL, Captain Waxton was ordered by the Company to wait in the baggage claim area for an ambulance that the Company had ordered. After being examined by the emergency medical technicians, he was sent by the Company to a clinic used by the Company, where he was seen by a physician, who prescribed medication and told him not to fly until he was re-examined. The Company was advised by the clinic and by Captain Waxton, that the Company's own doctor had told him not to fly. Notwithstanding Captain Waxton's physician-certified illness, he was issued an NOI.
- Captain Stephen Zalewski became ill on August 10, during a flight from Boston to FLL. Captain Zalewski, who commutes between FLL and his home in Tennessee, was scheduled to begin a four day trip on August 11. On the morning of August 11, Captain Zalewski called the Company's scheduling department to inform them that he was ill and unable to fly. At the airport on his way home,

Captain Zalewski, whose symptoms were unmistakable, happened to speak with Company personnel. At that time, Captain Zalewski reiterated to the Company personnel that he had called in sick and was going home to get better. On August 12, Captain Zalewski went to the doctor, who prescribed medication and provided a note certifying that he was sick. On August 12, when the Company called Captain Zalewski and told him to provide a doctor's note for his sick call, he faxed the note immediately to the Company. Notwithstanding Captain Zalewski's physician-certified illness, he was issued an NOI.

- Captain Anthony Michaels, an ALPA officer and member of Spirit's Master Executive Council, notified the Company in advance that he would be out sick on August 11 for a scheduled root canal procedure. At no time did the Company question Captain Michael's use of sick leave for this purpose. Notwithstanding the fact that Captain Michael's absence was pre-approved and that he provided a doctor's note, he was issued an NOI.

In each of these cases, the use of sick leave was legitimate: either the pilot was clearly ill and had provided the Company with a doctor's note, or the Company had previously approved the pilot's absence. In all of these cases, the Company violated the CBA by counseling or disciplining a pilot for the legitimate use of sick leave.

54. To date, seven of the eight pilots who received NOIs have been fully exonerated, while the Company has yet to reschedule a meeting with the eighth pilot under investigation. Between August 19 and August 22, the Company canceled its investigations of five of the eight

pilots before even meeting with any of them. Two more, including Captain Waxton, were cleared at the meetings with the Company on August 21.

55. By withdrawing seven of the NOIs and taking no action on the eighth, the Company has implicitly admitted that there was never any legitimate basis for investigating any of these pilots' attendance records or use of sick leave. These baseless investigations are part of a pattern and practice of bad faith noncompliance with the CBA, during federally mediated bargaining, intended to harass and intimidate pilots, in violation of the Company's duty under the RLA to bargain in good faith with ALPA and to exert every reasonable effort to make and maintain agreements with ALPA.

56. The apparent impunity with which the Company has flouted the provisions of the CBA governing sick leave and discipline demonstrates that Spirit has no intention of complying with the CBA when the contract does not suit the Company's purposes. The Company's complete disregard for the protections and rights afforded pilots by the CBA and its blatant abuses of disciplinary authority are part of a pattern and practice of conduct intended to interfere with the pilots' organizational rights, to undermine the collective bargaining process, and to destroy ALPA's effectiveness and standing, by attempting to show it to be powerless to defend the pilots' interests.

V. The Company Attempts to Coerce Furloughed Pilots to Continue Flying Past Their Furlough Effective Date, Demonstrating the Company's Continuing Bad Faith Intention to Interfere with Pilots' Organizational Rights and to Undermine and Destroy ALPA's Effectiveness.

57. On August 12, 2008 the Company published its bid package for the month of September. The package included pairings through September 4 for pilots who had been informed in May that they had been furloughed effective September 1.

58. The CBA requires that all furloughs be effective on the first of the month. Specifically, Section 24.F.3 of the CBA provides: “A Position Reduction Bulletin may reference more than one position but shall have the same effective date for all listed positions, which shall be the first of the month.” (Emphasis added.)

59. The CBA also guarantees minimum monthly compensation for any pilot flying any portion of a month. Specifically, Section 4.A provides: “Pilots will be paid and credited flight pay at the applicable hourly rate with a minimum guarantee of seventy-two (72) hours a month.”

60. Spirit has stated that it does not intend to pay those furloughed pilots, who have been directed by the Company to continue flying past their September 1 furlough date, their guaranteed monthly minimum of 72 hours pay for the month of September.

61. Directing pilots who were furloughed effective September 1 to continue flying up to four days into September, as the Company is doing here, without paying them the guaranteed monthly minimum of 72 hours pay, is a clear violation of the CBA.

62. The Company’s direction to furloughed pilots to continue flying past their furlough effective date shows a complete disregard for the terms of the CBA and for its own previous statements, on which Spirit pilots have relied in good faith. This pattern of unilateral, disingenuous conduct, especially in the context of federally mediated bargaining, again

demonstrates the Company's contempt for the bargaining process and its bad faith in dealing with ALPA and the Spirit pilots.

63. The Company's coercive direction to furloughed pilots to continue flying past their furlough effective date is a direct attack on ALPA's status as the pilots' statutory representative, intended to try to demonstrate to pilots that ALPA is powerless to effectively enforce the CBA to protect their rights and interests. The Company's attempt to coerce pilots into flying, when the CBA expressly protects them from such an order, is part of a pattern and practice of conduct designed to interfere with pilots' organizational rights and to destroy ALPA's effectiveness and standing among the Spirit pilots.

COUNT I

(VIOLATION OF RLA GOOD FAITH BARGAINING OBLIGATIONS)

64. The allegations contained in paragraphs 1 through 63 above are incorporated by reference as if fully set forth herein.

65. Spirit 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 rates of pay, rules and working conditions for all pilots in the class or craft of pilots represented by ALPA and with regard to all disputes between Spirit and its pilots, as represented by ALPA. Spirit is further obligated under the aforesaid statutory provisions to make every reasonable effort to make and maintain agreements with ALPA concerning rates of pay, rules and working conditions, to maintain such agreements, and to

expeditiously consider and settle all disputes between Spirit and its pilots, as represented by ALPA.

66. Pursuant to Section 2, Eighth of the RLA, 45 U.S.C. §152, Eighth, the provisions of Section 2, Third, Fourth and Fifth of the RLA, 45 U.S.C. §152, Third, Fourth and Fifth, are made a part of the CBA between Spirit and its pilots, and are binding on the Company.

67. The Company, 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 Spirit pilots, for whom ALPA is the exclusive bargaining representative, and who are covered by the RLA. Instead, during federally mediated bargaining with ALPA, pursuant to Section 6 of the RLA, Spirit is engaging in a course of bad faith noncompliance with the terms of the CBA intended to undermine the collective bargaining process, including (1) unilaterally terminating or disregarding contractual provisions and practices governing essential working conditions that previously had been adhered to, without exception, by the Company, (2) repeatedly abusing its contractual authority, to wit, initiating groundless disciplinary investigations of pilots' and coercing pilots to fly past their furlough effective dates, and (3) continually interfering with pilots' organizational rights and attempting to undermine and destroy ALPA's effectiveness as the pilots lawfully elected representative, by engaging in a pattern and practice of dealing with Spirit pilots and ALPA that is both disingenuous and intended to intimidate. Said course of conduct is as willful as it is inimical to the collective bargaining process, evidencing a total unwillingness and a total absence of

intention to negotiate sincerely and in good faith with ALPA, and is, therefore, in violation of the obligations imposed on Spirit by Section 2, First, Second, Third, Fourth and Eighth of the RLA, 45 U.S.C. §152, First, Second, Third, Fourth and Eighth.

68. Spirit's conduct, as described above, constitutes, independently, a failure and refusal to bargain in good faith with ALPA concerning rates of pay, rules and working conditions, in violation of Spirit's statutory obligations under Section 2, First of the RLA, 45 U.S.C. §152, First.

69. Spirit's course of conduct, as described above, has undermined, and unless enjoined, will continue to undermine the federally mediated collective bargaining in which Spirit and ALPA are currently engaged. Spirit's course of conduct, as described above, has undermined, and unless enjoined, will continue to undermine labor peace on the Company's property.

70. Unless ordered to immediately cease and permanently desist from engaging in any and all bad faith conduct toward Spirit pilots and ALPA, and unless ordered to affirmatively bargain in good faith with ALPA over all matters and actions affecting pilots' rates of pay, work rules and working conditions on the Company's property, Spirit will continue the above-described unlawful course of conduct.

COUNT II

(VIOLATION OF RLA ORGANIZATIONAL OBLIGATIONS)

71. The allegations contained in paragraphs 1 through 70 above are incorporated by reference as if fully set forth herein.

72. Spirit 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 Spirit pilots' exercise of their organizational rights and from undermining, subverting or destroying ALPA's status and effectiveness as the exclusive collective bargaining representative of the Spirit pilots.

73. During pending federally mediated bargaining, pursuant to Section 6 of the RLA, Spirit is engaging in a continuing pattern and practice both of intentional interference with pilots' organizational rights and of conduct intended to undermine, subvert and destroy ALPA's standing and effectiveness as the pilots' exclusive bargaining representative. The Company has repeatedly, and unilaterally, terminated or modified essential contractual protections for Spirit pilots, disregarding ALPA, the pilots' statutory representative, and bypassing the collective bargaining process. The Company has attempted, and continues to attempt, to harass, coerce and intimidate Spirit pilots into acquiescing to violations of the CBA, including flying sick and flying past their furlough effective date. And, the Company repeatedly has changed the facts on the ground, unilaterally imposing modifications to the terms of the CBA, in an attempt to gain an unfair advantage and leverage in future bargaining. Said actions form a continuing pattern and practice of intentional conduct, undertaken to intimidate and coerce Spirit pilots, to interfere with Spirit pilots' organizational rights, and to subvert and destroy the RLA's collective bargaining process and ALPA's effectiveness and standing, by repeatedly bypassing ALPA and circumventing the collective bargaining process, with the unlawful purpose of attempting to marginalize ALPA and call into question its ability to timely defend and protect the pilots' rights

and, thereby, alienate Spirit pilots from the collective bargaining process and, ALPA, their chosen bargaining representative.

74. Spirit's course of conduct, as described above, is destructive of the representative standing and effectiveness of ALPA, as the exclusive collective bargaining representative of Spirit pilots, and of the rights of the Spirit pilots to organize and bargain collectively through their designated representative, without interference, influence or coercion by Spirit, 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.

75. Spirit, 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 Spirit 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.

76. Spirit's course of conduct, as described above, has subverted, and unless enjoined, will continue to subvert ALPA's status and effectiveness as the Spirit pilots' exclusive bargaining representative. Spirit's course of conduct, as described above, has interfered, and unless enjoined, will continue to interfere with Spirit pilots' organizational rights. Spirit's course of conduct, as described above, has alienated, and unless enjoined, will continue to alienate pilots from the collective bargaining process. Spirit's course of conduct, as described above, has undermined, and unless enjoined, will continue to undermine labor peace on the Company's property.

77. Unless ordered to immediately cease and permanently desist from interfering with the Spirit pilots' organizational rights and from taking any action, intentional or otherwise, that

undermines or subverts ALPA's effectiveness and standing as the Spirit pilots' exclusive bargaining representative, Spirit 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 Spirit to immediately cease and permanently desist from any and all bad faith conduct toward Spirit pilots or ALPA, and enjoining, ordering, directing and requiring Spirit to negotiate and bargain in good faith with ALPA, and to exert every reasonable effort to make and maintain agreements with ALPA.
 - (b) Enjoining, ordering, directing and requiring Spirit to immediately cease and permanently desist, and otherwise refrain, from interfering with Spirit pilots' exercise of their organizational rights, and from any and all conduct that undermines, subverts or is destructive of ALPA's effectiveness and standing, or that undermines or is destructive of the RLA's collective bargaining process.
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, as may be appropriate to fully remedy Spirit's violations of the RLA and infringement of the rights of Spirit 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: September 3, 2008

Respectfully submitted,

/s/ John G. Adam

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