

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
CASE NO.: 0:17-cv-60917**

SPIRIT AIRLINES, INC.

Plaintiff,

v.

AIR LINE PILOTS ASSOCIATION,
INTERNATIONAL; SPIRIT AIRLINES
MASTER EXECUTIVE COUNCIL;
STUART MORRISON; BRIAN COLEY;
MICHAEL LORUSSO; TODD HIRSHON;
MICHAEL LUCKSTONE; RYAN
PACHKOFSKY; JAMES ACKERMAN,
TIM CONNORS; ANTONIO
NASSAR, PAUL SLOTTEN and
MICHAEL MATYAS,

Defendants.

**ORDER GRANTING TEMPORARY RESTRAINING ORDER; SETTING BRIEFING
SCHEDULE AND HEARING ON MOTION FOR PRELIMINARY INJUNCTION**

THIS CAUSE came before the Court on the Emergency Motion for a Temporary Restraining Order (“TRO”) and Preliminary Injunctive (“PI”) Relief (the “Motion”) [DE 4] filed by Plaintiff Spirit Airlines, Inc. (“Spirit”). The Court has carefully reviewed the Motion, the record in this case, and is otherwise fully advised in the premises.

FINDINGS

1. Defendants are the Air Line Pilots Association, International (“ALPA”), which represents pilots at Spirit, the ALPA Master Executive Council (“MEC”), a representative body that, under ALPA’s Constitution and Bylaws, makes all decisions on matters affecting Spirit pilots; MEC Chairman Captain Stuart Morrison, MEC Vice Chairman Captain Brian Coley, and MEC Secretary-Treasurer Captain Michael LoRusso; as well as MEC members Captain Todd

Hirshon, First Officer Michael Luckstone, Captain Ryan Pachkofsky, Captain James Ackerman, Captain Tim Connors and First Officer Antonio Nassar; and MEC Negotiating Committee Members Captain Paul Slotten and Captain Michael Matyas (collectively, “Defendants”).

2. Spirit seeks to enjoin Defendants, and all persons acting in concert therewith, including all of ALPA’s individual members, from calling, permitting, instigating, authorizing, encouraging, participating in, approving, or continuing any form of interference with Plaintiff’s airline operations, including, but not limited to, any strike, work stoppage, sick-out, slowdown, work to rule campaign, concerted refusal to accept voluntary or overtime (“open time” or “junior assignment”) flight assignments, or other **concerted** refusal to perform normal pilot operations, including but not limited to, slow taxiing, writing up maintenance items, calling in fatigued, delaying flights, refusing to answer a call from the scheduling, refusing to fly an aircraft that meets legal requirements for flight, or refusing to accept voluntary or overtime flying, in violation of the Railway Labor Act, 45 U.S.C. § 151 *et seq.* (the “RLA”).

3. Plaintiff is a “common carrier by air” as defined in the Federal Aviation Act of 1958 and a “carrier” as defined by the RLA. Defendant ALPA is a labor organization that is the certified bargaining representative of Plaintiff’s pilots. Defendant MEC is a representative body that, under the ALPA Constitution and Bylaws, makes all decisions on matters affecting Spirit pilots.

4. Based upon the Complaint for Injunctive Relief [DE 1], Motion and Memorandum in Support of Plaintiff’s Motion for a Temporary Restraining Order and Preliminary Injunctive Relief [DE 4], and Affidavits, it appears to the Court that a TRO should issue because Spirit is likely to succeed on the merits of its claims that Defendants are violating the RLA, and because immediate, substantial and irreparable damage, injury or loss will result to

Spirit before a hearing on its request for a PI can be had.¹ Unless this Court issues a TRO restraining Defendants from the actions described below, Plaintiff will suffer immediate and irreparable damage in the form of damage to its business reputation and customer goodwill, increased costs for measures designed to avoid flight delays and cancellations, and loss of revenue and associated costs caused by flight delays and cancellations, none of which may be recoverable from Defendants, and much of which can never be recovered. Spirit has shown, through affidavits, that it will suffer substantial and irreparable injury without the TRO. *See* [DEs 4-1; 4-2]. It further appears that unless such activity is restrained, the travel plans of large numbers of Plaintiff's customers will be disrupted, and the public will be deprived of transportation services, causing serious and substantial damage to the public interest.²

5. It further appears to the Court that if the TRO is issued and final judgment in granted in favor of Defendants, the injury to Defendants, if any, will be minor when compared with the loss and hardship that Plaintiff and the public will suffer if the TRO is not issued, and, furthermore, that any such injury suffered by Defendants will be adequately indemnified by bond.

TEMPORARY RESTRAINING ORDER

6. Upon the pleadings before the Court, and for the reasons stated on the record,

¹ “For an injunction, live testimony with opportunity for cross examination is normally required after proper notice; for a TRO, though, sworn affidavits may suffice if the complainant would suffer ‘substantial and irreparable injury’ without the TRO.” *Delta Air Lines, Inc. v. Air Line Pilots Ass'n, Int'l*, 238 F.3d 1300, 1305–06 (11th Cir. 2001) (internal citations omitted).

² The Court finds the following line from the Eleventh Circuit instructive in this case: “[w]hen the public interest, commerce, and a clear statutory provision are implicated, we will not shy away from holding the parties to their duties under the RLA so as to avoid ‘any interruption to commerce.’” *Delta Air Lines, Inc.*, 238 F.3d at 1308 (*citing* 45 U.S.C. § 152).

IT IS ORDERED that the Defendants, and each of them, their members, agents, and employees, and all persons and organizations acting by, in concert with, through, or under them, or by and through its or their orders, are hereby temporarily restrained, pending a hearing on the PI in this matter, from calling, permitting, instigating, authorizing, encouraging, participating in, approving, or continuing any form of interference with Plaintiff's airline operations, including, but not limited to, any strike, work stoppage, sick-out, slowdown, work to rule campaign, concerted refusal to accept voluntary or overtime flight assignments, or other **concerted** refusal to perform normal pilot operations consistent with the status quo, including but not limited to, slow taxiing, writing up maintenance items, calling in fatigued, delaying flights, refusing to answer a call from the scheduling, refusing to fly an aircraft that meets legal requirements for flight, or refusing to accept voluntary or overtime flying, in violation of the RLA, 45 U.S.C. § 151 *et seq.*

IT IS FURTHER ORDERED that Defendants shall take all reasonable steps within their power to prevent the aforesaid actions and to immediately cease the aforesaid actions from continuing if commenced, including, but not limited to, the following:

(a) Instructing all pilots represented by Defendant ALPA, and employed by Plaintiff, to resume their normal working schedule and practices and providing Plaintiff a copy of all such instructions;

(b) Notifying all pilots represented by Defendant ALPA, and employed by Plaintiff, by the most expeditious means possible, of the issuance, contents, and meaning of this TRO and providing Plaintiff a copy of all such notices;

(c) Including in such notice a directive from ALPA to Spirit's pilots not to engage in a **concerted** refusal to perform normal pilot operations consistent with the status quo, including

but not limited to: slow taxiing, writing up maintenance items, calling in fatigued, delaying flights, refusing to answer a call from the scheduling, refusing to fly an aircraft that meets legal requirements for flight, refusing to accept voluntary or overtime flying (“open time” or “junior assignment”), or otherwise engaging in a **concerted** refusal to conduct pilot operations in the normal manner, and to cease and desist all such activity; and to cease and desist all exhortations or communications encouraging same; and failure to follow this directive may result in fine, suspension, or other sanction by ALPA;

(d) Posting the notice described above on Defendants’ internet websites and social media accounts and providing Plaintiff a copy of the notices;

(e) Including the contents of such notice on all recorded telephone hotlines under control of Defendants, until such time as the Court has ruled upon Plaintiff’s Motion for a PI, and providing Plaintiff a copy of all such messages; and

(f) Distributing the contents of such notice through all non-public communication systems maintained by Defendants, including any telephone trees, pilot-to-pilot communication systems, or similar systems, and providing Plaintiff a copy of the notices.

IT IS FURTHER ORDERED that by **5 p.m. on May 10, 2017**, Defendants must file sworn affidavits describing the methods used to effect the notice described above to all pilots represented by Defendant ALPA; Defendants must also file copies of all notices required to be furnished to Plaintiff by Defendants under this TRO.

BOND TO BE POSTED

This TRO is issued on the condition that a bond be filed by Plaintiff herein on or before **May 10, 2017 at noon**, in the sum of **\$50,000**, and that Defendants shall recover from Plaintiff

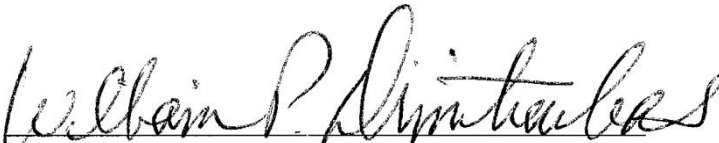
under said bond all costs and damages, if any, suffered by them in the event that Plaintiff does not succeed in this action.

PRELIMINARY INJUNCTION

A **HEARING** is set before this Court in the United States Courthouse located at 299 East Broward Boulevard, Fort Lauderdale, Florida 33301, Courtroom 205F, on **May 15, 2017** at **1:30 PM**, at which time Defendants and/or any other affected persons may challenge the appropriateness of this Order and move to dissolve the same and at which time the Court will hear argument on Plaintiff's requested PI;

(1) Any response or opposition to Plaintiff's Motion for Preliminary Injunction must be filed and served on Plaintiff's counsel by **May 11, 2017** by **5:00 PM**. Plaintiff shall file any Reply Memorandum on or before **May 12, 2017** by **1:00 PM**. The above dates may be revised upon stipulation by all parties and approval of this Court.

DONE AND ORDERED at 10:25 AM in chambers in Fort Lauderdale, Broward County, Florida, this 9th day of May, 2017.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies to:

All counsel of record