IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO PLAINTIFF, v. AMERICAN AIRLINES GROUP, DEFENDANT.	Civil No. 1:18-cv-07617 Honorable Sharon Johnson Coleman

AMERICAN AIRLINES GROUP'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS UNDER RULE 12(b)(6) AND 12(b)(1)

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PRELIMINARY STATEMENT

In its complaint, the Transport Workers Union ("TWU" or the "Union"), a union that formerly represented the fleet service employees of American Airlines, Inc. ("American") prior to the merger of American with US Airways, alleges that the longstanding practice of drug testing those employees in order to satisfy American's contractual commitments with the United States Postal Service ("USPS") violates the status quo provisions of the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151 et seq. In fact, however, both express and implied terms in the applicable collective bargaining agreement ("CBA") permit drug testing of fleet service employees who handle mail as necessary for those employees to be able to handle mail in accordance with USPS requirements, and American can easily satisfy its "relatively light burden" of showing an "arguable" contractual justification for the drug tests. Moreover, TWU is no longer the bargaining representative for the fleet service employees and, accordingly, lacks standing to pursue any claim on their behalf.

Under the RLA, disputes between carriers and unions representing their employees concerning the interpretation or application of CBAs are subject to the exclusive jurisdiction of an arbitration panel, the System Board of Adjustment. So long as a carrier's contractual justification for its actions is not "frivolous or obviously insubstantial," only the System Board has jurisdiction over the dispute.

Here, American's contractual basis for drug testing fleet service employees is in no way frivolous or insubstantial. American's contract with the USPS has for many years required that all fleet service employees who handle mail complete a certification protocol including a drug test. To fulfill this obligation, fleet service employees have always had to meet USPS requirements, and American has a well-established past practice of drug testing those fleet service employees who have not been certified to handle mail. For more than a dozen years,

TWU acquiesced in this practice, raising no objection as American repeatedly drug-tested fleet service employees in order for them to be qualified to handle USPS mail. Accordingly, USPS drug testing has become an implied term of the CBA that, at the very least, provides an "arguable justification" for American's requiring such tests.

Moreover, the CBA includes a very broad management rights provision that authorizes American to conduct drug testing in accordance with USPS requirements. The CBA provides that American is vested with "sole jurisdiction of the management and operation of its business [and] the direction of its working force." In order to manage its business and meet its obligations to the USPS, American has the authority to require its fleet service employees to meet the minimum standards required for them to be able to perform mail handling responsibilities. In its exercise of that authority, American has adopted a drug and alcohol policy—again without objection from TWU—expressly providing for drug testing in conformance with USPS requirements. American was fully entitled under that management rights provision to require drug testing in order to ensure that fleet service employees are qualified to perform the mail handling function of their jobs.

Additionally, contrary to the assertion in its complaint that it is the authorized bargaining representative of the fleet service employees, TWU no longer has any representation rights at all. Rather, TWU's certification as the bargaining representative of the pre-merger American Airlines fleet service employees was extinguished more than three years ago, and the representative of the post-merger employees is the "Airline Fleet Service Employee Association TWU/IAM" ("Airline Fleet Association"). Only the Airline Fleet Association, not the TWU, can assert a claim on behalf of American's fleet service employees, and TWU lacks standing to pursue this action.

Accordingly, TWU's single claim in this case should be dismissed with prejudice under Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1).[1]

STATEMENT OF FACTS

A. Background.

American is a commercial airline headquartered in Fort Worth, Texas, and a "carrier" as that term is defined by the RLA. (See Declaration of Jim Weel ("Weel Decl.") filed concurrently herewith, ¶ 3.) In December 2013, American merged with US Airways, a Phoenix-based airline. (*Id*.) While the two carriers continued to operate separately for approximately two years after the merger, US Airways ceased operations in October 2015, and all flights since that time have been flown by American. (*Id*.)[2]

American employs a classification of employees known as fleet service. (*Id*. ¶ 4.) Prior to the merger, legacy American Airlines ("LAA") fleet service employees were represented for purposes of collective bargaining by TWU, and legacy US Airways ("LUS") fleet service employees were represented by the International Association of Machinists and Aerospace Workers ("IAM"). (*Id*.) Subsequent to the merger, the National Mediation Board, the federal agency responsible for resolving representation disputes in the airline industry, certified an entirely separate labor organization, the Airline Fleet Association, to represent fleet service employees at the post-merger airline. (*Id*.); *see also American Airlines, Inc./US Airways, Inc.*, 42 NMB 127 (2015). In so doing, the NMB extinguished the pre-merger certifications of both TWU and IAM to represent the LAA and LUS fleet service employees respectively. (Weel Decl. ¶ 4.) The Airline Fleet Association assumed responsibility by operation of law to

[1] Plaintiff improperly named American Airlines Group ("AAG"), as the defendant in its complaint. AAG is a holding company that owns American, the Company that actually employs fleet service employees and conducted the challenged drug testing.

[2] The district court may properly consider extrinsic evidence in ruling on a motion to dismiss under Rule 12(b)(1). *See Ezekiel v. Michel*, 66 F.3d 894, 897 (7th Cir. 1995).

administer the pre-merger TWU and IAM CBAs as applicable to the two pre-merger groups, subject to an ongoing process to negotiate a single CBA applicable to the combined group post-merger. *See Ass'n of Flight Attendants v. US Airways, Inc.*, 24 F.3d 1432 (D.C. Cir. 1994).

B. Mail Handling Services Provided To The United States Postal Service.

Historically, LAA and LUS both maintained contracts with the USPS to transport mail, and post-merger American has continued to handle USPS mail. (Weel Decl. ¶ 6.) As part of their job duties, fleet service employees are responsible for loading and unloading cargo, transporting cargo between the terminal and aircraft, stacking cargo at airport warehouses, and verifying paperwork related to the cargo function. (*Id.*) These responsibilities include loading mail onto the aircraft before departure and unloading the mail when the aircraft arrives at its destination. (*Id.*)

In order to handle mail, the USPS requires fleet service employees to have completed a certification process. (See Declaration of Tiffany Schildge (Schildge Decl.") filed concurrently herewith, ¶ 3.) That process includes, among other things, a criminal background check, fingerprinting, and a drug screen. (*Id.*) American arranges for its fleet service employees to complete these requirements and sends a packet of information to the USPS containing the results. (*Id.* ¶ 4.) If the fleet service employee passes the drug test, and meets the other requirements, the USPS provides American with a certificate approving that employee to handle the mail. (*Id.*)

Each year for more than a decade, USPS has conducted audits at American to verify that each of the fleet service employees who handle mail has completed the certification process. (*Id.* ¶ 5.) The USPS conducted 16 such audits in 2017, and eight more in 2018. (*Id.*) As a routine part of these audits, USPS agents present themselves at various stations throughout the American system and ask to see the certifications for the fleet service employees working at that station.

(*Id*.) If the certification is not available for any reason, that employee is no longer allowed to perform mail handling duties, and American requires that employee to complete the USPS certification process -- including the mandated drug screen before he or she can resume such duties. (*Id*. ¶ 6.) American has followed this practice since at least 2006 without objection by TWU. (*Id*.)

Similarly, since at least 2006, whenever American discovers on its own that certifications of fleet service employees are missing, those employees have had to complete the certification process including the drug screen. (*Id*. ¶ 7.) For example, when employees transfer to another station or move from a part-time to a full-time position or vice versa, their files are reviewed, and, if the USPS certification cannot be located, the employees have been required to complete the drug test and other USPS certification requirements. (*Id*.) At no time until now has TWU objected to that requirement. (*Id*.)

C. American's Internal Audit.

In February 2017, after USPS audits had revealed a number of missing certifications, American commenced its own audit to verify that all fleet service employees were certified to handle mail. (*Id*. ¶ 8.) As part of its internal audit, the American compliance department asked each domestic station to produce the USPS certification for each of its fleet service employees. (*Id*.) As it received information from each station, the compliance department compiled a list of employees for whom certifications were missing. (*Id*.)

In March 2017, American began to work with the local management at its various stations to obtain certifications for each of the uncertified fleet service employees, as well as additional employees identified as uncertified by the USPS. (*Id*. ¶ 9.) To that end, on March 22, 2017, American sent an email to a representative of the Airline Fleet Association, Michael Maiorino, to inform him that four Seattle-based fleet service employees had been identified

through a USPS audit as uncertified, and that American had identified an additional 30 uncertified fleet service employees through its own internal audit. (See Declaration of Robert L. Jones ("Jones Decl.") filed concurrently herewith, ¶ 3, Exh. 1.) American explained that it intended to require these 34 employees to obtain proper certifications, expressly mentioning that the certification process would include a drug test. (*Id*.) Maiorino did not object and American proceeded with the certification process. (Jones Decl. ¶ 3.)

Similarly, on March 24, 2017, American sent an email to Andre Sutton, a representative of the Airline Fleet Association in Las Vegas, and Maiorino, advising them that both the USPS and American had audited the Las Vegas station and had identified seven fleet service employees who were uncertified. (*Id*. ¶ 4, Exh. 2.) American informed both union representatives that the seven would have to be certified and expressly stated that a drug screen would be required as part of the process. (*Id*.) Again, neither Sutton nor Maiorino objected, and American proceeded with the certification process, including the drug tests. (Jones Decl. ¶ 4.)

Shortly thereafter, on April 11, 2017, American sent an email to Mike Mayes, the Declarant in support of TWU's Motion for Preliminary Injunction in this matter, and another Airline Fleet Association official, Michael Klemm, advising them that American was conducting an internal audit related to its USPS contract, and that the American "HR Compliance team would soon be contacting stations throughout the system to ensure all team members who are handling USPS mail are compliant." (*Id*. ¶ 5, Exh. 3.) Significantly, American twice mentioned in its email that the USPS certification process included a "drug screen." (*Id*.) Mayes and Klemm were also informed that American would notify local union leadership as it prepared to certify fleet service employees at each of its stations. (*Id*.) The two union leaders were specifically asked to "let me know if you want me to copy you on those emails." (*Id*.) Klemm

responded that he had no objection to the process and Mayes did not object or respond to the email at all. (*Id*., Exh. 4.)

Throughout 2017 and 2018, American has conducted drug tests on over 500 fleet service employees at approximately 34 domestic airports. (Schildge Decl. ¶ 9.) Prior to initiating the certification process at each of these locations, American notified the appropriate local Airline Fleet Association official that any employees whose files did not contain a USPS certification would be required to complete the certification process. (Jones Decl. ¶ 6.)

D. The Current Dispute.

In a letter dated November 2, 2018, approximately 20-months after he had first been informed that employees with missing USPS certifications would be required to complete the certification process including drug testing, Mayes contended that any such drug testing was "without any basis in the Collective Bargaining Agreement between TWU and American." (*Id*. ¶ 7, Exh. 5.) While he acknowledged that drug testing of fleet service employees had occurred previously, Mayes asserted that the "scale" of the testing had escalated in a "systematic" way. (*Id*.) Though he concedes that American is authorized under the CBA to require fleet service employees to complete the USPS certification process, Mayes apparently believes the labor contract somehow limited just how many employees could be tested. (*Id*.)

American responded in a letter dated November 16, 2018, reminding Mayes that it notified the Association of the internal audit and certification process over a year-and-a-half earlier, on April 11, 2017. (*Id*. ¶ 8, Exh. 6.) Since that time, the letter continued, 250 fleet service employees in 34 cities had completed the certification process, including drug testing, with no objection from the Union. (*Id*.) American referred to the provisions in the TWU/American CBA acknowledging that fleet service employees were required to perform mail

handling services, and noted that fleet service employees could not perform their negotiated and agreed upon job functions unless proper USPS certifications were on file. (*Id.*)

E. TWU/American CBA.

As the certified representative of the post-merger fleet service employees, the Airline Fleet Association is responsible for administering the existing TWU/American CBA which continues to govern the employment of LAA fleet service employees. (Weel Decl. ¶ 5.)

Article 28 of that CBA reserves to American broad management rights. (*Id.* ¶ 5, Exh. 1.) Pursuant to that Article, "[t]he Union recognizes that the Company will have sole jurisdiction of the management and operation of its business, the direction of its workforce, [and] the right to maintain discipline and efficiency in its hangars, stations, shops or other places of employment." (*Id.*) While certain drug testing procedures are included in Article 29 of the CBA in situations where there is reasonable cause to believe employees may have been under the influence of drugs, and where employees have been involved in accidents, nothing in the agreement suggests that those are the only circumstances in which drug testing is permitted, nor does the CBA restrict American's right to conduct drug tests. (*Id.*) To the contrary, Article 11 provides that one of the job functions of fleet service employees is handling mail, and, of course, drug testing has been required of fleet service employees in order for them to be able to handle mail. (*Id.*)

F. Drug Testing Policy.

American has maintained a drug and alcohol policy since the early 1990s. (Weel Decl. ¶ 7.) That policy applies to all employees and covers topics such as the types of drug testing American conducts, the reasons that might warrant drug testing, drug testing procedures, the consequences of violating the policy and the availability of assistance under the EAP. (*Id.*)

The current version of the policy, adopted nearly a year ago, states: "Any employee needing United States Postal Service (USPS) clearance will be subject to testing according to the

terms of the Company's contract with the USPS." (*Id.* ¶ 8, Exh. 2.) Written notice of the revised policy was provided to the Airline Fleet Association on January 11, 2018, and no objection has ever been raised. (*Id.* ¶ 9, Exh. 3.) In fact, in its complaint and again in its motion for preliminary injunction, TWU concedes that the policy applies to fleet service employees.

ARGUMENT

I. TWU HAS NO RIGHT TO ASSERT A CLAIM UNDER SECTION 2 SEVENTH OF THE RLA ON BEHALF OF FLEET SERVICE EMPLOYEES.

In its complaint, TWU inaccurately asserts that it is "the exclusive collective bargaining representative for various crafts or classes of employees of American, including Fleet Service employees." (ECF No.1, ¶ 1.) As described above, however, TWU's certification to represent fleet service employees at American was extinguished on May 19, 2015, and the Airline Fleet Association became the certified representative of fleet service employees on that date. *American Airlines*, 42 NMB at 130-31.

Only an NMB-certified representative may assert claims under Section 152, Seventh of the RLA. *See Marcoux v. American Airlines, Inc.*, 645 F. Supp. 2d 68, 88 (E.D.N.Y. 2008) ("Section 152 Seventh is directed at the employer's relationship with the employees' certified representative" and accordingly, "only APFA, as the flight attendants' certified representative, could claim a private right of action under this Section.") Because the NMB has extinguished TWU's certification, and certified a different union to represent fleet service employees post-merger, TWU has no right of action against American under Section 152 Seventh and its claim should therefore be dismissed under Federal Rule of Civil Procedure 12(b)(6). *See Bensel v. Allied Pilots Ass'n*, 387 F.3d 298, 317 (3rd Cir. 2004) (affirming dismissal of RLA claims not brought by certified representative); *Cooper v. TWA Airlines, LLC*, 349 F. Supp. 2d 495, 503 (E.D.N.Y. 2004) (same).

II. THIS COURT DOES NOT HAVE JURISDICTION OVER TWU'S CLAIM BECAUSE IT RAISES A MINOR DISPUTE UNDER THE RLA.

This action is governed by the RLA, 45 U.S.C. §§ 151 *et seq*., the principal purpose of which is to avoid interruptions to commerce. *Detroit & T. S. L. Ry. v. United Transp. Union* ("*Shore Line*"), 396 U.S. 142 (1969). To achieve this statutory purpose, the RLA provides that air carriers and their employees are obligated "to exert every reasonable effort to make and maintain agreements . . . and to settle all disputes … in order to avoid any interruption to commerce or to the operation of any carrier." 45 U.S.C. § 152, First.

The role of the federal courts in enforcing this obligation depends on whether the dispute in question is characterized as "major" or "minor." Major disputes are those over the "formation of collective agreements or efforts to secure them. They arise where there is no such agreement or where it is sought to change the terms of one, and therefore the issue is not whether an existing agreement controls the controversy. They look to the acquisition of rights for the future, not to the assertion of rights claimed to have vested in the past." *Elgin, J. & E. Ry. Co. v. Burley*, 325 U.S. 711, 723 (1945). For major disputes, the RLA sets forth a detailed negotiation and mediation process. 45 U.S.C. §§ 155, 156. While the parties ultimately are free to exercise self-help, they must maintain the "status quo" until the negotiation and mediation procedures are exhausted. *Shore Line*, 396 U.S. at 150. Moreover, in a major dispute, the parties' obligations to maintain the status quo are enforceable, by injunction, in the federal courts. *Bhd. of Ry. Clerks v. Florida East Coast R.R.*, 384 U.S. 238, 246 (1966).

Minor disputes, on the other hand, are those which concern grievances or matters which require the interpretation or application of existing collective bargaining agreements. *Elgin*, 325 U.S. at 722-23. For minor disputes, the RLA requires the parties to submit the contract interpretation issues to the appropriate board of adjustment for final and binding arbitration. 45

U.S.C. § 184. The Supreme Court has repeatedly held that the jurisdiction of the appropriate adjustment board is "mandatory, exclusive and comprehensive." *Brotherhood of Locomotive Engineers v. Louisville & N. R. Co.* 373 U.S. 33, 38 (1963). In a minor dispute, there is no obligation on the part of the carrier to maintain the status quo pending a decision from the adjustment board. *Consolidated Rail Corp. v. Railway Labor Execs. Ass'n,* 491 U.S. 299, 304 (1989).

The Supreme Court has ruled that carriers bear a "relatively light burden" in establishing that a dispute is minor and therefore subject to mandatory arbitration. *Id*. at 307. "Where an employer asserts a contractual right to take the contested action, the ensuing dispute is minor if the action is arguably justified by the terms of the parties' collective-bargaining agreement. Where, in contrast, the employer's claims are frivolous or obviously insubstantial, the dispute is major." *Id*. at 307, 310. The Seventh Circuit has held that the burden of establishing a minor dispute is so light under *Conrail* that "if there is any doubt as to whether a dispute is major or minor a court will construe the dispute to be minor." *Railway Labor Execs. v. Norfolk & W. Ry. Co.*, 833 F.2d 700, 705 (7th Cir. 1987). It recently reaffirmed this principle, ruling that "[t]he burden on a railroad to convince the court that its changes are only an interpretation or application of an existing CBA is quite low." *Bhd. of Locomotive Eng'rs & Trainmen v. Union Pac. R.R.*, 879 F.3d 754, 758 (7th Cir. 2017).[3]

Because TWU's claim raises a minor dispute, and for the reasons discussed below, this Court is without jurisdiction and this action should be dismissed under Rule 12(b)(1).

[3] Assessing the quantum of evidence needed to establish that a dispute is minor, the Seventh Circuit ruled that "[t]he Railroad's declaration is enough to show that its position is not frivolous, though it may or may not prevail. Wading through the competing declarations to determine the actual authority the Railroad had to modify the disciplinary policies, based on past practices, is a job for the arbitrator." *Id*. at 759. Only if the union "were to produce evidence that foreclosed the carrier's interpretation" might it succeed in showing a major dispute within the jurisdiction of a federal court. *Id*. at 758.

A. Drug Testing Fleet Service Employees Is At The Very Least "Arguably Justified" By American's Past-Practice And TWU's Acquiescence.

In *Conrail*, the Supreme Court was required to decide whether a dispute over a drug testing practice unilaterally implemented by a carrier was a minor dispute subject to mandatory arbitration under the "arguably justified" standard. There, the employer had required its employees to undergo physical examinations periodically and when they were returning from leaves of absence. Although drug testing had been conducted as a part of the exams rarely, and only in limited circumstances, the employer decided that all such physical exams would include a test for drugs. The collective bargaining agreement between the parties did not address the issue of physical exams or drug testing during such exams. *Conrail*, 491 U.S. at 311. The employer based its right to impose drug testing "solely upon implied contractual terms, as interpreted in light of past practice." *Id*. at 312. The unions representing the affected employees agreed that due to the long-term past practice of the parties, the employer's right to conduct physical exams had become an implied term of the collective bargaining agreement, but claimed that the drug testing was an unlawful change in the status quo, *i.e.*, a major dispute under the RLA.

The Supreme Court rejected the union's claim, holding that the dispute was minor because the newly imposed drug testing was "arguably justified" by the implied terms of the contract. The Court based its ruling on the employer's past practice of conducting physical exams and imposing periodic changes to those exams, without objection from its unions. *Id*. at 313, 317-20.

The Seventh Circuit similarly held that a disagreement over drug testing raised a RLA minor dispute subject to the exclusive jurisdiction of a system board of adjustment. *Railway Labor Executives,* 833 F.2d 700. There, the collective bargaining agreement was silent about

whether a railroad could conduct either medical examinations or drug tests. Because the railroad had been conducting medical exams for over twenty years without union objection, the Seventh Circuit ruled that the employer had an implied contractual right to do so. *Id*. at 705-06. Furthermore, because the railroad had a past-practice of changing the components of those medical exams with union acquiescence, the Court held that the railroad was at least arguably justified in unilaterally introducing a drug screen to the examination process. *Id*. at 707. *See also Allied Pilots Ass'n v. American Airlines, Inc.*, 898 F.2d 462, 464-65 (5th Cir. 1990) (unilateral implementation of drug test arguably justified by past practice).

American's contractual basis for drug testing fleet service employees who are not certified to handle mail is more than arguably justified under the holdings in *Conrail* and *Railway Labor Executives*. American has had a well-established practice dating back at least as far as 2006—acquiesced in by TWU and the Airline Fleet Association—of requiring drug tests of fleet service employees anytime it discovered they did not have proper certifications to handle US mail. (Schildge Decl. ¶ 7.) This practice is confirmed by the many emails sent to Airline Fleet Association representatives including Mayes, notifying them that fleet service employees were to be required to undergo the USPS certification process including drug testing. (Jones Decl., Exhs. 1 -3.) The Airline Fleet Association failed to object in March 2017 when American emailed about drug testing that the Company conducted at its Las Vegas station, and in April 2017 when American informed Mayes and others that it would conduct drug testing on a larger group of uncertified fleet service employees identified through American's internal audit. (*Id*.) The Airline Fleet Association thereafter remained silent throughout 2017 and 2018 as American drug tested hundreds of fleet services employees. (Schildge Decl. ¶ 7.) Under these circumstances, it is far from frivolous for American to assert that it has an implied right under the

TWU/American CBA to drug test uncertified fleet service employees. Indeed, American's right to require its employees to be able to perform the fundamental responsibilities of their jobs by handling USPS mail has been unquestioned for decades, and it is TWU's attempt to curtail that right based on the "scale" of the drug testing that is patently frivolous.

B. Drug Testing Fleet Service Employees Is At The Very Least "Arguably Justified" By The Management Rights Clause Of The TWU/American CBA.

While American's established past practice is more than sufficient to meet the "arguably justified" standard established under *Conrail* and *Railway Labor Executives*, the express provisions of the TWU/American CBA provide further confirmation that American has the authority to require its fleet service employees to complete all USPS certification requirements (including a drug test). In *International Bhd. Of Teamsters, Chauffeurs, Warehousemen & Helpers v. Southwest Airlines*, 875 F.2d 1129 (5th Cir. 1989), the Court held that a management rights clause providing employees "shall be governed by all Company rules, regulations and orders previously or hereafter issued by proper authorities of the Company," together with the airline's past practice of unilaterally issuing work rules, arguably justified the unilateral promulgation of a new drug testing rule. *Id.* at 1134-35. In holding that the disagreement over drug testing was a minor dispute subject to mandatory arbitration, the Fifth Circuit held: "Thus, Southwest seems to have complied fully with all conditions of the management rights clause to which the union had agreed. As a result, it is *arguable* that the program is a proper exercise of management's rights." *Id*. at 1135 (emphasis in original).

Here, the management rights clause in Article 28 of the TWU/American CBA is even broader, reserving to American "sole jurisdiction of the management and operation of its business [and] the direction of its work[] force." (Weel Decl., Exh. 1.) Such a broad management rights clause more than arguably justifies American's decision to take the necessary

steps to ensure that its fleet service employees are qualified to perform the mail handling functions that TWU and American have agreed, in Article 11 of the CBA, are a core function of their jobs. (*Id*.) This is particularly true in the present case where nothing in the CBA prohibits American from testing for drugs, and in light of American's demonstrated practice of requiring drug tests anytime the Company discovers that fleet service employees are not properly USPS-certified. *See Airline Prof'ls Ass'n Int'l Bhd. Teamsters v. ABX Air, Inc.*, 274 F.3d 1023 (6th Cir. 2001) (management rights clause arguably justified comprehensive employee search policy).

American's interpretation of the CBA is consistent with the well-recognized principles of labor contract interpretation that counsel against inferring a commercially unreasonable result. *See In re Universal Serv. Fund Tel. Billing Practice Litig.*, 619 F.3d 1188, 1207 (10th Cir. 2010) ("a contract should not be interpreted to produce a result that is absurd [or] commercially unreasonable"); *Int'l Ass'n Machinists & Aerospace Workers Lodge No. 1194 v. Sargent Indus.*, 522 F. 2d 280, 282 (6th Cir. 1975) (same). Here, TWU's interpretation of the CBA would preclude the very employees it purports to (and at one time actually did) represent from being able to perform essential functions of their jobs. Without proper USPS certifications, these fleet service employees would not be able to perform the mail handling responsibilities specified in the CBA, a commercially unreasonable result both for the employees and for American.

C. Drug Testing Fleet Service Employees Is At The Very Least "Arguably Justified" By American's Substance Abuse Policy.

American has implemented and maintained a drug and alcohol or substance abuse policy for over two decades with no objection by TWU about the substance of the policy or the many revisions American has made to the policy throughout the years. (Weel Decl. ¶¶ 7-9, Exh. 3.) TWU acknowledges that the substance abuse policy applies to fleet service employees at issue in this case by citing to the policy repeatedly in its complaint (*see* Complaint ¶¶ 8, 11-14 and 20)

and in the declaration submitted in support of its motion for preliminary injunction. Because TWU concedes that the drug testing policy applies to fleet service employees, and because the drug testing policy indisputably permits drug testing of "employees needing United States Postal Service (USPS) clearance," that policy likewise more than "arguably justifies" the USPS drug testing that TWU challenges in this case. (Weel Decl., Exh. 3.)

CONCLUSION

For these reasons, this Court should grant the instant motion to dismiss with prejudice.

DATED: December 12, 2018.

Respectfully submitted,

By: /s/ Robert A. Siegel

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CERTIFICATE OF SERVICE

The undersigned certifies that, on December 12, 2018, pursuant to Fed. R. Civ. P. 5 and L.R. 5.5, a true and correct copy of the foregoing American Airlines Group's Memoranda of Law In Support of Notice of Motion to Dismiss Under Rule 12(b)(6) and 12(b)(1) was filed with the Clerk of Court using the CM/ECF System, which will send notification of such filing to the attorneys of record at the email addresses on file with the court.

/s/ Robert A. Siegel

Robert A. Siegel