

BEFORE THE PRELIMINARY ARBITRATION BOARD

In the Matter of the West Pilots'
Request for a Merger Committee

Between

Allied Pilots Association (APA)

and

American Airlines Pilots Seniority
Integration Committee f/k/a Allied
Pilots Association Merger Committee

and

US Airline Pilots Association (USAPA)

and

US Airline Pilots Association
Merger Committee

and

West Pilots Merger Committee

and

US Airways, Inc.

and

American Airlines, Inc.

SLI: West Pilots' Request
for Merger Committee

Before: Joshua M. Javits, Chair
Stephen Crable, Member
Shyam Das, Member

Date of Pre-Hearing Briefs: December 3, 2014
Dates of Hearing: December 15, 16 and 17, 2014
Date of Award: January 9, 2015

ISSUE:

The parties were unable to stipulate the exact issue to be considered by the Preliminary Arbitration Board and, instead, each party presented different versions of what it believed the issue should be.

APA proposes the issue as:

“Should the West Pilots’ request that APA designate a separate merger committee to represent the interests of pilots on the US Airways (West) Seniority List be granted as a valid exercise of APA’s discretion as the exclusive certified bargaining representative for all Company pilots?”

USAPA presents the following statement as the issue for consideration:

“Whether or not the Preliminary Arbitration Board should grant the Applicant’s request for a separate seniority committee in the Sections 3 and 13 process?”

The Company proposes that the issue before the Preliminary Arbitration Board is:

“Whether APA has the authority to designate a West Pilots Merger Committee and whether it should do so?”

The West Pilots present the following issue for consideration:

“Does the Allied Pilots Association (APA), as the certified exclusive

bargaining agent for all American Airlines pilots, have discretion to appoint a merger committee to represent the interests of the West Pilots in the seniority list integration process?”

BACKGROUND TO THE DISPUTE:

The background to the underlying dispute essentially stems from the merger between US Airways and America West in May 2005. At the time of the merger, US Airways had approximately 5,100 pilots (East Pilots) whereas America West had only around 1,900 pilots (West Pilots). Both pilot groups were at the time represented by ALPA.

In September 2005, US Airways, America West and ALPA entered in to a Transition Agreement that was designed to integrate operations and combine the pilots groups of the two airlines. This integration, however, was contingent on three events: (1) the post-merger airline obtaining a single FAA certificate; (2) the creation of a single seniority list; and (3) the negotiation of a single CBA which would cover both East and West Pilots.

When the US Airways and America West Merger Committees were unable to agree to an integrated seniority list, the issue was referred to “final and binding arbitration” for resolution as provided for in their Transition Agreement.

In May 2007, Arbitrator Nicolau issued an award (the “Nicolau Award”) that placed the 500 most senior East Pilots at the top of the integrated seniority list. The Nicolau Award placed the approximately 1,700 furloughed East Pilots at the bottom of the seniority list. The remaining pilots – both East and West Pilots

– were then blended on the integrated seniority list according to their relative seniority prior to the merger.

It is worth noting that the East Pilot group was unhappy with the result of the Nicolau Award, believing that the integrated seniority list was less favorable to them than it was to the West Pilot group. The East Pilots preferred the use of the “date of hire” method of integrating seniority lists and had unsuccessfully sought to have this method adopted at arbitration. After the Nicolau Award was issued, a group of East Pilots established a new union, USAPA, which was set up to block the introduction of the Nicolau Award and to promote the use of “date of hire” for integrated seniority list purposes.

Following an election between USAPA and ALPA, USAPA prevailed and was later certified by the National Mediation Board (NMB) to be the bargaining unit representative for both the East Pilot and the West Pilot groups. After replacing ALPA, USAPA rejected and blocked the implementation of the Nicolau Award and began promoting the use of the “date of hire” principle for integrating seniority lists. This resulted in a dispute between the East Pilots and the West Pilots, as the West Pilot group believed that the “date of hire” principle for integrating seniority lists was much less favorable to them than the Nicolau Award. If the “date of hire” principle were adopted as the basis for integrating seniority lists, it would have resulted in West Pilots generally being placed at a much lower position on the seniority list than was otherwise the case under the Nicolau Award. Given the nature of the dispute between the East and West Pilot groups, US Airways was unable to implement a single, integrated seniority list, or

a single collective bargaining agreement for East and West pilots. Instead, both sets of pilots – the East Pilots and the West Pilots – continued to operate under their respective pre-merger seniority lists and collective bargaining agreements.

This dispute, moreover, resulted in long-running litigation between USAPA, the West Pilots and US Airways. In September 2008, a group of West Pilots sued USAPA in the Federal District Court in Arizona alleging that USAPA had breached its duty of fair representation to them by blocking the Nicolau Award during its negotiations with US Airways for a single CBA. The court (in a jury trial) ruled in favor of the West Pilots, finding that USAPA had indeed breached its duty of fair representation to the West Pilots through its insistence on using “date of hire” for seniority list integration (Addington I, District Court decision).

This finding was ultimately appealed to the Federal Court of Appeals for the 9th Circuit, which in a 2-1 decision ruled that the West Pilots complaint was not yet ripe for consideration, as negotiations between USAPA and US Airways for a joint CBA was not yet complete (Addington I, 9th Circuit decision).

Shortly after the Addington I decision, US Airways filed a suit in the Federal District Court in Arizona against USAPA and the West Pilots’, requesting a declaratory judgment regarding its obligations with respect to the Nicolau Award (Addington II). The Company filed this petition in light of the fact that USAPA insisted that it would never accept the Nicolau Award while the West Pilots maintained that they would not accept anything other than the implementation of the Nicolau Award.

In October 2012, the District Court in Addington II ruled that the issue was still not ripe for consideration as the parties had not reached an agreement for a single CBA. The court noted that USAPA was free to abandon the Nicolau Award if it so chose, but it went on to hold that USAPA was on “dangerous ground” by seeking to discard the Nicolau Award. In particular, the court found:

“By discarding the result of a valid arbitration and negotiation for a different seniority regime, USAPA is running the risk that it will be sued by disadvantaged pilots when the new collective bargaining agreement is finalized. An impartial arbitrator’s decision regarding an appropriate method of seniority integration is powerful evidence of a fair result. Discarding the Nicolau Award places USAPA on dangerous ground.”

Against this backdrop, American Airlines, which was in bankruptcy at the time, agreed to merge with US Airways. On February 13, 2013, US Airways and American Airlines entered in to an Agreement and Plan of Merger. The merger was finalized on December 9, 2013. At the time of the merger, the approximately 10,000 pilots flying for American Airlines were represented by APA. The approximately 5,000 pilots – both East Pilots and West Pilots – flying for US Airways continued to be represented by USAPA.

In anticipation of the US Airways and American Airlines merger, the two carriers, USAPA and APA entered in to a Memorandum of Understanding Regarding Contingent Collective Bargaining (MOU). The MOU provided that the recently negotiated CBA between American Airlines and APA would become the

CBA for the pilots of both carriers (American and US Airways) in the event of the merger. This initial CBA was termed the “Master Transition Agreement” (MTA) by the parties. All signatories recognized, however, that the parties would need to negotiate a joint collective bargaining agreement (JCBA).

The MOU provides that all parties agree that APA would petition the NMB for a finding that US Airways and American constituted a “single carrier” as soon as possible after the merger. Once the NMB made a finding that the newly merged group was a “single carrier,” the “organization certified to represent the pilots of the single carrier...shall promptly engage or re-engage in negotiations to achieve a JCBA.” If the parties fail to conclude the JCBA negotiations within 30 days of the NMB certifying the new union, the parties agree to submit the open issues to arbitration.

The MOU also established the framework whereby the parties would integrate pilot seniority lists for the two carriers utilizing a process consistent with McCaskill-Bond. In the event the parties were unable to negotiate an integrated seniority list, the dispute would then be submitted to a panel of arbitrators for consideration.

In March 2013, after the US Airways-American merger had taken effect, the West Pilots filed another lawsuit in Federal District Court against USAPA (Addington III). According to the West Pilots, USAPA breached its duty of representation by entering into the MOU because it did not require the use of the Nicolau Award to determine the relative order of East and West Pilots in the McCaskill-Bond seniority integration process set out in the MOU. The West

Pilots sought an injunction requiring USAPA to use the Nicolau Award as the basis for ranking East and West Pilots in the seniority integration process.

US Airways subsequently filed a petition to intervene in Addington III, asking the court to confirm its position that “its obligation under McCaskill-Bond to provide for a ‘fair and equitable’ seniority integration entailed affording an opportunity to the West Pilots to have a ‘separate seat at the table’ under the circumstances of this case.” US Airways wished to have the West Pilots participate in the seniority integration list process in order to avoid any potential future litigation. The Company argued that participation in seniority integration negotiations was not limited to only the certified bargaining representative under McCaskill-Bond. USAPA countered that only the certified bargaining unit representative (in this case, USAPA) is permitted to take part in the McCaskill-bond process. USAPA’s position was that it and only it could represent the former pilots of US Airways, including the West Pilot grouping.

In January 2014, the District Court issued its decision in Addington III, finding in favor of USAPA. Addressing the West Pilots right to participate separately and independently in the seniority integration process, the court found that the West Pilots could not do so where their certified collective bargaining representative (USAPA) objected to their participation. The court found in relevant part:

“[W]hen a certified bargaining representative exists, introducing an independent group, such as the West Pilots, would “interfere with the established representation format” and also ‘tamper with and inevitably

complicate the procedures used to negotiate seniority list integration.’...In addition, allowing the involvement of any employee or group of employees with sufficiently distinct interests would be an invitation to chaos; the seniority integration process cannot accommodate the participation of whoever might be affected by the final result. Therefore, the process contemplated by McCaskill-Bond allows only the certified bargaining representatives to participate in the seniority integration proceedings.”

The Addington III court noted, however, the following:

“USAPA has succeeded here but it is a Pyrrhic victory. As contemplated by the MOU, in the very near future an election will take place and a new representative will be chosen by all of the post-merger pilots. It is almost certain USAPA will lose that election. Once that happens, USAPA will no longer be entitled to participate in the seniority integration proceedings. The court has no doubt that – as is USAPA’s consistent practice – USAPA will change its position when it needs to do so to fit its hard and unyielding view on seniority. That is, having prevailed in convincing the court that only certified representatives should participate in seniority discussions, once USAPA is no longer the certified representative, it will change its position and argue entities other than certified representatives should be allowed to participate. The Court’s patience with USAPA has run out. USAPA avoided liability on the DFR claim by the slimmest of margins and the court has serious doubts that USAPA will fairly and adequately

represent all of its members while it remains certified representative. But all the court can do at this stage is implore USAPA to, in the words of the CAB, 'make every effort to see that [the West Pilots] are given extensive consideration, and that their interests are fairly and fully represented' during seniority integration."

It should be noted that the parties' MOU provided that within 30 days of the merger a Seniority Integration Protocol Agreement would be agreed. This Protocol Agreement was to establish the process for conducting seniority list integration negotiations and, if necessary arbitration. Although the deadline to agree to a Protocol Agreement was mutually extended, the parties were nonetheless unable to reach an agreement.

The central issue of contention was a disagreement between USAPA and APA over the role of USAPA in the seniority integration process following its decertification by the NMB. Although APA agreed that USAPA could continue to participate in the SLI (Seniority List Integration) process even though it no longer presented any Company pilots, it and USAPA disagreed over whether or not APA could appoint other merger committees to participate in SLI negotiations.

During these negotiations, APA insisted that as the certified bargaining representative it had the authority to appoint other merger committees to take part in the SLI process. APA believed it had the discretion to appoint not only an East Pilots Merger Committee (USAPA) and an American Pilots Merger Committee, but also a separate West Pilots Merger Committee. USAPA

disputed this, insisting that the APA did not have the authority to designate a separate West Pilots Merger Committee to take part in SLI negotiations.

Because of this ongoing dispute over whether a West Pilots Merger Committee could be appointed by APA or not, the parties were unable to reach a Protocol Agreement by the February 2014 deadline.

In February 2014, USAPA filed a lawsuit in Federal District Court in the District of Columbia against US Airways, American, and APA. USAPA sought a declaratory judgment that the Company and APA were required to conduct the seniority integration process, including any arbitration hearing, pursuant to the procedures prescribed in Section 13(a) of Allegheny-Mohawk instead of those provided in the agreed MOU.

Both the Company and APA denied that Section 13(a) applied and filed counterclaims against USAPA. In its counterclaim, APA sought a declaration that it, as the certified bargaining unit representative of all Company Pilots, had the discretion to establish new merger committees to take part in the SLI process if it so chose.

While the lawsuit in the District of Columbia was pending, the parties participated in mediation in an effort to reach a Protocol Agreement. During mediation, USAPA claimed that the question to be presented to any arbitration board should be whether or not the West Pilots had an independent legal right under McCaskill-Bond to take part in the SLI process. This proposal was, however, rejected by APA and the Company, which claimed that the issue was whether or not APA, as the certified bargaining unit representative had the

discretion to appoint a separate West Pilots Merger Committee to take part in SLI negotiations.

Ultimately, the parties executed a Protocol Agreement on September 4, 2014, in which they agreed to dismiss all claims and counterclaims in the District of Columbia lawsuit. The parties agreed in Paragraph 8 of the Protocol Agreement that the issue in contention should be presented to a Preliminary Arbitration Board for consideration, as follows:

8a. Effective if and when the NMB certifies APA as the representative of the combined craft and class, the Merger Committees established by APA and USAPA shall continue in existence, solely for the purpose of concluding an integrated pilot seniority list pursuant to the MOU; provided, that all parties reserve their rights and/or positions with respect to the establishment of a separate Merger Committee to represent the interests of the pilots on the US Airways (West) seniority list referenced in paragraph 2(b) including, without limitation, APA's position that, following certification by the NMB as the single bargaining unit representative, it will have the discretion to designate such a committee, and USAPA's position that APA will have no such legal authority...

8b. APA has received requests from pilots on the US Airways (West) seniority list referred to in paragraph 2(b) and/or their representatives that, following certification of the APA by the NMB, a Merger Committee be

designated to represent the interests of such pilots for purposes of this seniority Integration Protocol. Upon such certification by the NMB, those requests will be referred to a "Preliminary Arbitration Board." The parties to such Preliminary Arbitration will be American, APA, USAPA, the existing Merger Committees, and any committee of pilots on the US Airways (West) seniority list making such requests to APA or the Preliminary Arbitration Board not later than 14 days after certification of APA by the NMB... The Preliminary Arbitration Board shall issue an order granting or denying any such requests that APA designate the requested Committee...The order shall be final and binding on APA and USAPA, American and US Airways or their successors, and all of the pilots of American and US Airways."

On September 20, 2014, the West Pilots sent a request to APA asking APA to appoint a West Pilots Merger Committee to participate in the SLI process.

The matter now comes before the undersigned Preliminary Arbitration Board to consider whether or not a West Pilots Merger Committee should be permitted to take part in the SLI process. As noted earlier in this decision , though, the parties were unable to agree to the exact "issue" in the instant case.

POSITIONS OF THE PARTIES:

The Company's Position:

The **Company** asserts that APA has the authority to appoint a West Pilots Merger Committee in the instant case. As APA is certified by the National Mediation Board (NMB) as the exclusive collective bargaining representative of all Company pilots, it has the inherent authority to appoint merger committees that represent the interests of all pilots in the seniority integration process.

The Company notes that APA has already exercised that authority by allowing the USAPA Merger Committee to participate in the seniority integration process - even though USAPA's representation certificate was revoked by the NMB. According to the Company, APA has the same authority to appoint a separate West Pilots Merger Committee to participate in the seniority integration process.

The Company notes that APA has a duty of fair representation to all of its pilot members. The principles of "fairness and equity" that are embodied in Section 3 of the Allegheny Mohawk Labor Protective Provisions and incorporated into the McCaskill-Bond Amendment to the Federal Aviation Act suggest that APA should be permitted to appoint a West Pilots Merger Committee, the Company contends. Allowing a West Pilots Merger Committee to participate in the seniority integration process will ensure that the distinct minority interests of the West Pilots will be properly represented, the Company maintains.

Recent industry practice involving the integration of multiple different seniority lists has been to designate separate merger committees for each of the

seniority lists to be integrated, the Company notes. According to the Company, this trend suggests that APA should designate separate merger committees for each of the seniority lists to be integrated.

The Company insists that the appointment of a West Pilots Merger Committee would allow competing opinions to be heard during the seniority integration arbitration. APA, as the sole bargaining representative for all Company pilots, can and should designate a separate merger committee to represent the distinct minority interests of West Pilots, the Company asserts. Doing so would ensure the pilots on each of the three (3) separate seniority lists are fully and fairly represented throughout the integration process, the Company maintains. Adopting this approach would also expedite achieving an integrated seniority list and avoid further litigation between the respective parties.

APA's Position:

APA notes that as the exclusive bargaining representative it has the discretion to act on behalf of all Company pilots in the upcoming seniority integration list negotiations. This discretion is limited only by APA's duty of fair representation under McCaskill-Bond. According to APA, it has the discretion to designate a separate West Pilot Merger Committees to participate in SLI negotiations so long as this designation is consistent with the duty of fair representation.

APA insists that its decision to designate a West Committee was fully consistent with its duty of fair representation and, therefore, within APA's

discretion as the certified bargaining unit representative. To ensure a SLI process that does not favor one group of pilots over another, APA wishes that all distinct pilot seniority list groups (American Pilots, East Pilots and West Pilots) be heard at the seniority integration negotiations. This means that a separate West Pilot Merger Committee should be designated to represent the interests of West Pilots, APA argues. Not only is APA's designation of a West Pilot Merger Committee reasonable and non-discriminatory, but it also meets APA's requirement to ensure a fair process for all pilot groups. According to APA, designating a West Pilot Merger Committee is fully within its discretion as the pilots' exclusive bargaining representative.

APA denies that the designation of a West Pilot Merger Committee is unreasonable or somehow arbitrary. It notes that all Company Pilots – East Pilots, West Pilots, and legacy American Pilots – are on separate seniority lists and, thus, have disparate interests regarding the integration of those lists. Appointing a West Pilot Merger Committee will ensure that the interests of all pilots will be properly represented during the SLI negotiations, APA contends.

APA further notes the years of litigation between East and West Pilots and the disruptive effect that ongoing dispute had on Company operations. According to APA, it is entirely reasonable to include West Pilots in any seniority integration process to avoid any additional litigation caused by their exclusion from the SLI process. If APA permitted the USAPA Merger Committee to be the sole representative of the US Airways pilots (i.e. both East and West Pilot groups), West Pilots would inevitably claim that APA breached its duty of fair

representation to those in the West Pilot group. According to APA, West Pilots would highlight the fact that USAPA no longer owes West Pilots a duty of fair representation during any SLI negotiations and arbitration. Given that USAPA's constitution requires it to advocate seniority based on "date of hire" – a position that West Pilots vigorously oppose - APA would be accused of abdicating its fiduciary duty to West Pilots. To avoid potential future litigation, APA wishes to designate a West Merger Committee to participate alongside the USAPA Merger Committee in the SLI process.

APA notes that its duty of fair representation makes it responsible for fully representing the interests of both East Pilots and West Pilots and forbids it from arbitrary or discriminatory treatment of either group. If West Pilots were not involved in the SLI process, APA would be vulnerable to a DFR suit alleging that it favored the larger, more powerful East Pilot group over the minority West Pilot group. According to APA, it must have the discretion to designate separate Merger Committees for both East and West Pilot groups. Doing so would not only ensure a fair process for determining seniority, but it would also inoculate the APA against any claims of discriminating against one group in favor of the other.

APA denies that designating a West Merger Committee in any way prejudices or discriminates against East Pilots. Having a West Merger Committee participate in SLI negotiations would merely afford West Pilots the same status granted to the East Pilots and the legacy American Pilots, APA asserts. According to APA, designating a West Merger Committee cannot be

deemed to violate its DFR obligation by discriminating against any pilot group. To the contrary, designating a West Merger Committee is a good faith effort by APA to ensure the aggregate welfare of all bargaining unit members.

APA insists that it has the discretion to designate separate Merger Committees to represent disparate seniority interests in the upcoming SLI process. According to APA, its exercise of this discretion is consistent with APA's duty of fair representation; it is also consistent with the McCaskill-Bond requirement that the SLI process be "fair and equitable." Designating a West Merger Committee is fair and equitable given the contentious and litigious history between East and West Pilots, APA contends. Since USAPA no longer owes a duty to West Pilots, it is necessary for West Pilots to have their own representatives participate in the SLI process, APA argues. For that reason, APA concludes that its designation of a separate West Pilots Merger Committee is essential to ensure a fair and equitable SLI process.

The West Pilots' Position:

The **West Pilots** insist that APA, as the statutorily certified representative of all American Airlines pilots, has the discretion to appoint a West Merger Committee to participate in the seniority integration process. According to the West Pilots, APA owes a duty of fair representation to all Company pilot employees even where those employees may have competing interests. Nonetheless, APA has broad authority to determine how best to meet the diverse interests of these competing groups.

The West Pilots contend that APA has the discretion to decide the best way to represent its members during the seniority list integration process. So long as APA's discretion is not arbitrary, discriminatory or exercised in bad faith, APA must be permitted to act in what it perceives to be its members' best interests. According to the West Pilots, the Preliminary Board of Arbitration should be highly deferential when considering whether APA's discretion has been properly exercised.

The West Pilots argue that APA and the Company are charged with creating a "fair and equitable process" for determining seniority integration following an airline merger. As the sole representative of all Company pilot employees, APA must ensure that the seniority integration process it employs is not biased in favor of one group of employees over another.

According to the West Pilots, APA's discretion to appoint Merger Committees to represent the seniority interests of Company pilots is constrained only by its duty of fair representation to all those employees. It is clearly within APA's discretion to appoint Merger Committees to advance the respective interests of disparate pilots groups within the Company.

The West Pilots insist there is no breach of APA's duty of fair representation in its appointing a West Pilots Merger Committee in this case. By ensuring that a minority pilot group (West Pilots) is a full participant in the seniority integration process, APA is fully meeting its duty of fair representation to all employees, the West Pilots maintain. For these reasons, the West Pilots insist that APA has the sole discretion to appoint a West Pilots Merger

Committee to participate in the seniority integration process.

The West Pilots note that USAPA no longer possesses any statutory authority to represent Company pilots in any forum. Following the NMB's certification of APA as the exclusive bargaining representative for all American Airline pilots, USAPA no longer owes the West Pilots a duty of fair representation under the law. As a participant in seniority integration negotiations, USAPA cannot be expected to properly represent the interests of West Pilots.

According to the West Pilots, it is more likely that USAPA, free from its statutory duty of fair representation to West Pilots, will advance its own agenda and pursue a seniority list based on "date of hire." This "date of hire" principle is precisely the opposite of what the West Pilot group believes should be used as the basis for pilot seniority. Given the litigious past between the West Pilot group and the East Pilot group, APA has properly concluded that both groups should participate in the seniority list integration negotiations.

According to the West Pilots, APA has acted in the interests of all its members and created a "fair and equitable" seniority integration process by having both East and West Merger Committees participate in the SLI process. APA's decision in this regard is clearly within its discretion as the exclusive bargaining representative of all Company employees, the West Pilots insist. There is no legal bar that would prevent APA from appointing a West Pilots Merger Committee from participating in the seniority integration process.

The West Pilots deny that the issue before the Board is whether or not West Pilots have an independent legal right to participate in the SLI proceedings.

Any attempt to reframe the issue in this manner should be dismissed by the Board, the West Pilots insist. Whether the West Pilots have a separate and independent legal right to engage in SLI negotiations and arbitration is irrelevant, as APA has already decided as a matter of its discretion to appoint a West Merger Committee.

According to the West Pilots, USAPA is merely attempting to confuse the issue before the Board by recrafting the issue to be decided. The only issue to be resolved, the West Pilots maintain, is whether APA has properly exercised its discretion to appoint a West Merger Committee to ensure that the interests of West Pilots are fully represented in the SLI process. As a minority group, the West Pilots should be afforded full party status in the SLI proceedings to avoid being dominated by USAPA. For that reason, the West Pilots conclude that APA has the discretion to appoint a West Committee to participate in the seniority integration process.

USAPA's Position:

USAPA insists that the issue before the Board is whether or not the West Pilots' have an independent legal right to have a separate Merger Committee for SLI negotiations. It denies that the issue is whether APA has the authority under McCaskill-Bond to designate a separate Merger committee for West Pilots. This issue, as proposed by the West Pilots, is incorrect, USAPA asserts. Section 8(b) of the Protocol Agreement clearly states that the Board is to decide whether to grant or deny the West Pilots' request for a separate Merger Committee. For that

reason, USAPA maintains that the issue to be determined by the Board centers on the legal right of West Pilots to participate in SLI proceedings.

USAPA argues that the Board is bound by and must give preclusive effect to the prior court judgment in *Addington III*. In its decision in that case, the Federal District Court for Arizona dismissed the West Pilots request for separate party status in seniority integration negotiations. According to USAPA, the doctrines of *res judicata* and collateral estoppel prevent the West Pilots from re-litigating a claim that has already been decided.

USAPA asserts that those Unions which were the certified bargaining agents prior to a merger are the only entities that have the right to participate in the SLI process. It insists that USAPA - as the pre-merger representative that represented all US Airways pilots - is by McCaskill-Bond's terms automatically part of the SLI process.

According to USAPA, it has the full authority to represent all former US Airways pilots in SLI proceedings. Only it has the discretion to allow a West Pilots' Merger Committee to participate in the SLI process, USAPA contends. USAPA argues that its pre-merger representation status gives it exclusive authority to represent all US Airways pilots (including West pilots) in the SLI process. Since USAPA held that position for all of the US Airways pilots (including the West Pilots) before the merger, it therefore has the statutory right to participate in this SLI process entirely independent of the wishes of APA.

USAPA contends that APA is precluded from asserting control over the McCaskill-Bond process. In its counterclaim against USAPA in the action before

the District Court for the District of Columbia, APA asserted that upon its certification as the designated post-merger representative for bargaining unit members that it would assume control over the McCaskill-Bond process and USAPA could only participate with the permission of APA. However, both APA and USAPA filed a stipulation agreeing to the dismissal of all claims with prejudice and the District Court entered an order to that effect. According to USAPA, the District Court's dismissal with prejudice of APA's claim under McCaskill-Bond precludes it from litigating that same claim in any other forum.

USAPA contends that the West Pilots' request for a separate Merger Committee also should be denied because their participation in the SLI process is not necessary for the "fair and equitable" integration of seniority lists (Section 3 of Allegheny-Mohawk). According to USAPA, West Pilots have no unique interests that require their independent participation in SLI proceedings. Rather, their participation would merely perpetuate an internal seniority dispute between the East Pilots and West Pilots. West Pilots should not have a right to participate as a separate party in the SLI process just because they have differing seniority proposals to those of the USAPA Merger Committee. Allowing West Pilots to have a separate Merger Committee would divide the pre-merger US Airways pilot group and would pit the interests of the East and West Pilots against one another.

According to USAPA, it is inevitable that various pilot segments will have differing interests relative to others within their group (e.g. junior employees v. senior employees). However, without identifying a unique, equitable interest that

justifies their participation, West Pilots' request for a separate Merger Committee should be dismissed. The only reason West Pilots want separate party status is so that they can continue their effort to impose the Nicolau Award in the SLI process, USAPA asserts. According to USAPA, the West Pilots have obstinately refused to consider any alternative to the Nicolau Award. Allowing West Pilots separate status to participate in SLI negotiations would allow them to advance the Nicolau Award and allow them to elevate their seniority position relative to East Pilots

USAPA rejects the contention that it is somehow hostile to the interests of the West Pilot group. There is no evidence that the USAPA Merger Committee is incapable of representing the seniority interests of all US Airways Pilots – both East Pilots and West Pilots - in the SLI process. To the contrary, West Pilots' unyielding intent to impose the Nicolau Award is an attempt by it to obtain more seniority for West Pilots at the expense of other pilots.

DECISION AND ORDER:

Determination of the Issue

The Company, APA and the West Pilots all argue that the issue of whether or not APA, as the certified bargaining unit representative for all Company Pilots, has the authority to appoint a West Pilots Merger Committee to participate in the seniority list integration (SLI) process is properly before the Preliminary Arbitration Board. USAPA, in contrast, believes that the issue is whether or not the West Pilots have a separate and independent legal right to

participate in the SLI process, such that the Board should grant their request to do so.

The Company, APA and the West Pilots base their argument -- as does USAPA -- on the language found in the parties' Protocol Agreement. This Protocol Agreement was based on an earlier MOU, which set forth the process for the merger of the American Airlines and US Airways pilot groups. Section 10(f) of the MOU states that the parties will negotiate a "Protocol Agreement" that will set forth the process for seniority list integration (SLI) in accordance with McCaskill-Bond.

The relevant provisions of the Protocol Agreement, which was reached in mediation, are Paragraph 8(a) and 8(b), which provide the following:

8a. Effective if and when the NMB certifies APA as the representative of the combined craft and class, the Merger Committees established by APA and USAPA shall continue in existence, solely for the purpose of concluding an integrated pilot seniority list pursuant to the MOU; provided, that all parties reserve their rights and/or positions with respect to the establishment of a separate Merger Committee to represent the interests of the pilots on the US Airways (West) seniority list referenced in paragraph 2(b) including, without limitation, APA's position that, following certification by the NMB as the single bargaining unit representative, it will

have the discretion to designate such a committee, and USAPA's position that APA will have no such legal authority...

8b. APA has received requests from pilots on the US Airways (West) seniority list referred to in paragraph 2(b) and/or their representatives that, following certification of the APA by the NMB, a Merger Committee be designated to represent the interests of such pilots for purposes of this seniority Integration Protocol. Upon such certification by the NMB, those requests will be referred to a "Preliminary Arbitration Board." The parties to such Preliminary Arbitration will be American, APA, USAPA, the existing Merger Committees, and any committee of pilots on the US Airways (West) seniority list making such requests to APA or the Preliminary Arbitration Board not later than 14 days after certification of APA by the NMB... The Preliminary Arbitration Board shall issue an order granting or denying any such requests that APA designate the requested Committee...The order shall be final and binding on APA and USAPA, American and US Airways or their successors, and all of the pilots of American and US Airways."

(Emphasis added).

Paragraph 8(a) essentially sets forth the differences between the parties and specifically provides that the parties agree to "reserve" their respective positions. APA's position is that, following its certification by the NMB as the exclusive bargaining unit representative, it has the inherent discretion to

designate merger committees, including a West Pilot Merger Committee, if it so wishes. USAPA reserves its position that APA has no such legal authority to appoint separate merger committees to represent the interests of the former US Airways pilots.

Paragraph 8(b) of the Protocol Agreement then goes on to establish a Preliminary Arbitration Board to determine whether a request by the West Pilots group to be designated to represent West Pilots in the SLI process should be granted. Paragraph 8(b) sets up the process for the selection of the Preliminary Arbitration Board and details the time frame for a decision by the Board.

USAPA maintains that the language in Paragraph 8(b) of the Protocol Agreement that....”the Preliminary Arbitration Board shall issue an order granting or denying any such requests that APA designate the West Committee” requires that the Board must decide the question of the West Pilots participation in the SLI process without any regard to APA’s discretion to appoint a separate merger committee.

The Board believes that the use of the term “designate” in Paragraph 8(b) of the Protocol Agreement is key to determining the appropriate issue in this case. By using an active verb like “designate,” the parties clearly anticipated that someone or something would be responsible for doing the “designating.”

Paragraph 8(b) makes clear that while the Board has the authority to grant or deny the West Pilots Merger Committee’s request, the designation is to be made by APA. As set forth in Paragraph 8(a) the parties could not agree on whether

APA has discretion to make such a designation. That is an issue left to this Board to resolve.

The bargaining history of the Protocol Agreement also strongly supports the conclusion that the issue of whether or not APA has the discretion to "designate" a West Pilots Merger Committee to participate in the SLI negotiations is properly before this Board.

The negotiations for the Protocol Agreement involved the Company (American Airlines), APA and USAPA. Under Section 8(a) of the Protocol Agreement, USAPA was granted the right to participate in the SLI process even though it was no longer the certified bargaining unit representative for former US Airways pilots. At the time, APA was going to be certified by the NMB as the sole and exclusive bargaining unit representative and, given this certification, it alone had the right to appoint any merger committees it wanted given that it controlled the SLI process.

This right, of course, was subject to APA's McCaskill-Bond and duty of fair representation obligations to Company employees. Nonetheless, APA was essentially agreeing in Section 8(a) of the Protocol Agreement that USAPA as an entity would stay in existence to participate in the SLI process – even if USAPA had no independent legal right to continue to be a participant in the SLI process. APA also agreed that it would stay out of the SLI process, and instead choose an American Airlines Pilots Seniority Integration Committee (PSIC) to represent all American Airlines pilots in the SLI process.

The dispute identified by the parties in Paragraph 8(a) of the Protocol Agreement was whether APA had the right to appoint a West Pilots Merger Committee, since at the time a West Pilots group had made a request to APA to participate in the SLI negotiations. Rather than simply appointing a West Pilots Merger Committee, APA – as is its right as the certified representative of all American Airline pilots – agreed to delegate its authority to the Preliminary Arbitration Board to decide if it could and should appoint a West Pilots Merger Committee.

The Board notes that USAPA suggested in its August 6, 2014, proposal that the issue to be put before the Board should be what is the legal status of West Pilots to participate in the seniority list integration process? This proposal, however, was rejected by both the Company and by APA on August 7, 2014. In the subsequent Protocol Agreement, the language proposed by USAPA was not included. Rather, as noted above, the issue as outlined in Paragraph 8(a) of the Protocol Agreement focuses on APA's authority to designate a West Pilots Merger Committee in the SLI process.

In Paragraph 8(b) of the Protocol Agreement, the parties further agreed that this Board would issue an order granting or denying the West Pilots Merger Committee's request that APA designate it to represent the interests of the West Pilots seniority list group in the SLI process. The Preliminary Arbitration Board was given the authority to essentially stand in APA's place and determine whether or not the West Pilot group should be represented at the SLI bargaining table by its own Merger Committee.

After carefully considering the arguments of the parties, the Board finds that the proper issue before it, therefore, is as follows: “Whether the APA has the discretion to designate a West Pilots Merger Committee to participate in the seniority Integration List (SLI) process and, if so, whether it should do so?”

Determination of the Merits

Based on the entire record and arguments of the parties, the Board finds that APA has the discretion to designate a West Pilots Merger Committee to participate in the seniority Integration List (SLI) process, and that it should do so.

Of course, USAPA wishes the issue to center on the West Pilots “right” to be part of the SLI process because it believes that the West Pilots do not have such an independent right. This is exactly what the court said in *Addington III*; that only the certified and exclusive bargaining representative has the right to appoint Merger Committees to participate in the SLI process.

Based on the court’s decision in *Addington III*, one could argue that the West Pilots do not have an independent right to take part in the SLI process. The Preliminary Arbitration Board takes no position with respect to this particular matter, as it is currently being appealed to the 9th Circuit Court of Appeals.

What is clear from *Addington III*, however, is that the certified representative of all bargaining unit employees is vested with the authority to control the SLI process and to designate the participants in the SLI process.

At the time of the *Addington III* decision, USAPA was the designated

representative of all Company (US Airways) bargaining unit members, it should be noted. In this role, USAPA did not wish to appoint a West Pilots Merger Committee to participate in the SLI process, insisting that control over who is involved in SLI negotiations is reserved exclusively for the certified bargaining unit representative.

Since APA became certified by the NMB as bargaining unit representative for the single carrier, it now has the inherent discretion to determine whom it wishes to participate in the SLI process. Following USAPA's decertification, it is no longer the bargaining unit representative of any Company employees.

While the Board makes no finding as to the legal status of USAPA and its right to independently participate in the SLI process as the pre-merger representative of US Airways Pilots, the Board notes that USAPA owes no duty of fair representation to any employee group.

The Board dismisses USAPA's argument that it - as the pre-merger representative of all US Airways pilots – has the full authority to represent all former US Airways pilots and has the sole discretion to allow or not a West Pilots Merger Committee to participate in the SLI process. This argument is unconvincing and runs contrary to the NMB's determination that APA is the representative of all Company pilots (both US Airways and American Airlines).

As the sole and exclusive bargaining representative of all Company pilots, only APA has the authority to choose which merger committees may participate in the SLI process. This comports with the exclusive representation concept; that is, multiple unions cannot represent the same bargaining unit members. It is

simply not possible for USAPA to represent all US Airways Pilots when those same employees are currently represented by APA.

USAPA, the Board finds, has neither obligations nor responsibilities to any bargaining unit members, including even the East Pilot seniority list grouping. What is clear, though, is that USAPA does not represent the West Pilot seniority list grouping and does not have a duty of fair representation to that group of employees.

Moreover, USAPA does not have the authority to prevent the West Pilots from participating in the SLI process at the invitation of APA, the sole and exclusive bargaining unit representative.

The Board is satisfied that APA is permitted to designate a West Pilots Merger Committee to take part in the SLI process. As the sole representative of all Company pilots, APA has the authority to appoint merger committees to represent the interests of pilots in the SLI process. Not only does APA have the authority to appoint a West Pilots Merger Committee, the Board believes that doing so is appropriate and warranted in the instant case.

The Board finds that APA's designation of a separate West Pilots Merger Committee is consistent with its duty of fair representation to all pilot employees and is "fair and equitable" as required under McCaskill Bond. APA's duty of fair representation obligation makes it accountable to its entire membership, including minority interests such as the West Pilots.

In this case, APA has determined that the interests of all pilot seniority list groups should be represented in the SLI negotiations. The Board notes that

there are three such groups of pilots within the newly merged Company - East Pilots, West Pilots, and legacy American Pilots. Each pilot group is on a separate seniority list and, therefore, has a distinct interest regarding the integration of those seniority lists.

By including an American Airlines PSIC Merger Committee, a USAPA Merger Committee and a West Pilots Merger Committee, APA is trying to establish a full and fair process whereby all three pilot groups have their say in the SLI process.

The Board believes that APA's comprehensive efforts to include all pilot groups in the SLI process meet its duty of fair representation obligations. Appointing a West Pilots Merger Committee will ensure that the interests of all pilots will be properly represented during the SLI negotiations. There is no evidence that such a process is biased in favor of one single pilot group over any other.

Given the history of intransigence and hostility between USAPA and the West Pilots, it is far from clear that USAPA could or would adequately represent the interests of the West pilots. The fact that USAPA's very constitution contains a provision stating that only date of hire principles is acceptable in any SLI process is simply one of several considerations supporting this conclusion.

Designating separate merger committees for USAPA (East Pilots) and the West Pilots is not only reasonable, but is also desirable to ensure that both pilot groups have their interests properly represented in the SLI negotiations. The Board sees no convincing basis on which to conclude that the designation of a

West Pilots Merger Committee would prejudice or discriminate against the East Pilots, as USAPA claims.

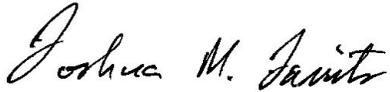
To the contrary, designating a West Pilots Merger Committee merely means that West Pilots would have the same opportunity to promote their case as the East Pilots. Allowing a West Pilots Merger Committee to participate in the seniority integration process would ensure that the distinct minority interests of the West Pilots will be properly represented.

For all the foregoing reasons, the Board concludes that APA's designation of a West Pilots Merger Committee is consistent with the Protocol and MOU; is consistent with the MacKaskill-Bond requirement that the SLI process be "fair and equitable;" is a proper and reasonable exercise of its discretion; and is fully consistent with APA's duty of fair representation to all Company pilots. Indeed, in this particular case, the Board concludes that "fairness and equity" demand the appointment of a West Pilot Merger Committee to participate in the SLI process.

The Board notes that pursuant to Paragraph 8(b) of the Protocol Agreement, "[T]he Preliminary Arbitration Board shall issue an order granting or denying any such requests that APA designate the requested Committee...The order shall be final and binding on APA and USAPA, American and US Airways...and all of the pilots of American and US Airways."

ORDER

The Board orders APA to designate the West Pilots Merger Committee as a full participant in the seniority integration process.



Joshua M. Javits, Chair

1/9/15 _____
Date



Stephen Crable, Member

1/9/15 _____
Date



Shyam Das, Member

1/9/15 _____
Date

