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13 **IN THE UNITED STATES DISTRICT COURT**  
14 **FOR THE DISTRICT OF ARIZONA**

15 Don ADDINGTON; John BOSTIC; Mark  
BURMAN; Afshin IRANPOUR; Roger VELEZ;  
16 and Steve WARGOCKI,

17 Plaintiffs,

18 vs.

19 US AIRLINE PILOTS ASSOCIATION, and  
20 US AIRWAYS, INC.,

21 Defendants.

Case No. 2:08-cv-1633-NVW

**MOTION OF US AIRLINE PILOTS  
ASSOCIATION TO BE HEARD ON  
PLAINTIFFS' APPLICATION FOR  
PRELIMINARY INJUNCTION**

1  
2 COMES NOW defendant US Airline Pilots Association (“USAPA”) to move this Court  
3 for an order granting USAPA the opportunity to be timely heard in opposition to Plaintiffs’  
4 Application For Preliminary Injunction (oral argument and evidentiary hearing requested),  
5 made September 18, 2008 (Docket No. 12). USAPA seeks the opportunity to be heard because  
6 the aforesaid Application constitutes serious interference with USAPA’s rights and obligations  
7 as the certified collective bargaining representative of all US Airways pilots.

8 As and for supporting grounds for this Motion, USAPA states as follows:

9 1. Prior to the filing of the instant lawsuit, *USAPA initiated a grievance that*  
10 *essentially seeks the same remedy as the Plaintiffs’ first cause of action*, namely that no pre-  
11 merger America West pilots should be furloughed prior to the furloughing of pilots on the new  
12 hire seniority list. USAPA has requested, and US Airways has agreed, to the expedited  
13 processing of this grievance. The pending Application would interfere with USAPA’s  
14 fulfillment of its rights and obligations as collective bargaining representative and be in  
15 derogation of the exclusive jurisdiction of the System Board of Adjustment over all contract  
16 disputes.

17 2. The Application seeks to compel the Company to assign flights currently being  
18 operated by pre-merger US Airways pilots to pre-merger America West pilots in violation of  
19 contractual language that provides, pending operational integration, each pilot group will fly  
20 the aircraft previously operated by their respective airlines. The seeking of such relief  
21 interferes with USAPA’s ability to enforce the contractual rights of its members and its  
22 exclusive right to negotiate with the Company concerning the terms and conditions of  
23 employment of US Airways pilots.

1           3.       The Application — in contrast with the Complaint’s First Cause of Action —  
2 seeks to shift the burden of furloughs from former America West pilots not just to pilots on the  
3 new hire seniority list, but also to former US Airways pilots who were on furlough at the time  
4 of the airlines’ merger. The application in this respect interferes with USAPA’s ability to  
5 enforce the contractual rights of its members and its exclusive right to negotiate with the  
6 Company concerning the terms and conditions of employment of US Airways pilots.

7           4.       The Application challenges the legitimacy of the federal National Mediation  
8 Board’s certification of USAPA as the exclusive bargaining representative of all US Airways  
9 pilots by basing its request for relief, in part, on allegations that USAPA made unlawful  
10 campaign promises during the inter-union election.

11           5.       The Application seeks to compel USAPA to act in violation of its Constitution  
12 and Bylaws, which has been duly filed with the United States Department of Labor, by  
13 requiring it to abandon seniority integration based on date of hire seniority principles that are  
14 adhered to by most major airline labor unions.

15           6.       The Application effectively requests that this Court order USAPA to implement  
16 a bargaining proposal that was formulated by the internal policies of the predecessor union, the  
17 Air Line Pilots Association (“ALPA”) – namely the “Nicolau Award.” The subject of the  
18 injunctive relief requested by Plaintiffs pertains directly to *on-going collective bargaining*  
19 between US Airways and USAPA.<sup>1</sup> On April 18, 2008, USAPA became the certified  
20 collective bargaining representative of all pilots employed by US Airways. *See US Airways*, 35  
21 NMB 135 (2008).

1           7.       For the above, and other reasons, the Application clearly implicates USAPA’s  
2 rights and obligations as the certified collective bargaining representative of all US Airways  
3 pilots and requires that USAPA be provided with an opportunity to be heard.

4           8.       Moreover, Plaintiffs commenced this case very recently, on September 4, 2008.  
5 The same day Plaintiffs commenced a *separate* civil action in the Superior Court of the State of  
6 Arizona for the County of Maricopa (case number CV2008-021384; assigned to Judge Bethany  
7 Hicks) based on common facts, issues and remedy.<sup>2</sup>

8           9.       Because the state Complaint could have been brought in federal court, USAPA  
9 removed the state case to federal court on September 19, 2008, and seeks to combine it with  
10 this case. And because all claims in the removed case are preempted by the Railway Labor Act  
11 (45 U.S.C. § 151 *et seq.*) and fail to state a claim, USAPA intends to bring dispositive motion  
12 on all claims.

13           10.      Further, because the federal Complaint in the case at bar lacks subject matter  
14 jurisdiction and fails to state a claim, USAPA intends to bring a dispositive motion on Count III  
15 which purports to state a duty of fair representation (“DFR”) claim against USAPA.

16           11.      Before service of process was made on, or waived by, USAPA, on September  
17 18, 2008, Plaintiffs filed an application for Preliminary Injunction. (Docket No. 12).

18           12.      Plaintiff’s federal Complaint, state Complaint, and application for injunctive  
19 relief are calculated to, or have the unavoidable effect of, asking this Court to exceed its  
20 jurisdiction by depriving a Railway Labor Act constituted System Board of Adjustment of its  
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22           <sup>1</sup> And appears to do so without bringing this to the Court’s attention.

23           <sup>2</sup> Plaintiffs’ counsel is the same in both actions filed simultaneously on September 4, 2008,  
and the Complaints are strikingly similar.

1 exclusive jurisdiction to resolve *pending* contract grievances,<sup>3</sup> to deprive the parties of their  
2 right to freely bargain over rates of pay, rules or working conditions such as seniority, and  
3 incredibly, even to over-turn the results of a National Mediation Board supervised  
4 representation election that resulted in the Board certifying USAPA as the collective bargaining  
5 representative for the Pilots of US Airways.

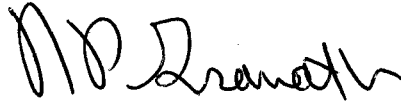
6 13. For these grounds, and more that will be presented to this Court by motion and  
7 brief, and because USAPA has a material stake in the outcome of the application for injunctive  
8 relief, USAPA hereby requests the opportunity to be heard.

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<sup>3</sup> By letter dated September 12, 2008, USAPA counsel provided counsel for Plaintiffs with a  
22 copy of a pending grievance that was filed by USAPA, which seeks the same relief as  
23 Count I of the Plaintiffs' federal complaint, i.e., an order enjoining US Airways from  
furloughing any West Pilots before it has furloughed all pilots on the New Hire Seniority  
List.

1 Respectfully Submitted,



2 Dated: September 21, 2008

3 By:

/s/ Nicholas Paul Granath, Esq.

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