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2 **IN THE UNITED STATES DISTRICT COURT**
3 **FOR THE DISTRICT OF ARIZONA**

4 Don ADDINGTON; John BOSTIC; Mark
5 BURMAN; Afshin IRANPOUR; Roger
6 VELEZ; and Steve WARGOCKI,

7 Plaintiffs,

8 vs.

9 Steven H. BRADFORD, Paul J. DIORIO,
10 Robert A. FREAR, Mark. W. KING, Douglas
11 L. MOWERY, and John A. STEPHAN,

12 Defendants.

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

**DECLARATION OF
NICHOLAS PAUL GRANATH**

13 I, Nicholas Paul Granath, declare as follows:

14 1. I make this Declaration of my own free will, based on my personal, first-
15 hand knowledge, unless otherwise specifically indicated.

16 2. I am attorney of record for defendant USAPA in this matter as well as for
17 all named defendants in the matter of Addington *et al* v. Bradford *et al*, Case No. 2:08-
18 cv-01728-NVW.

19 3. This Declaration is made in support of the motion for reconsideration by
20 the US Airline Pilots Association.

21 4. Attached are true and correct copies of select pages extracted from the
22 court reported transcript of the hearing on October 29, 2008, notice thereof filed in the
23

1 matter of Case No. 2:08-cv-01633-NVW, Docket No. 80, which is hereto marked and
2 labeled as EXHIBIT A.

3 Further your Declarant sayeth not.

4 Pursuant to 29 USC § 1746, I declare under penalty of perjury that the foregoing
5 is true and correct.

6 Executed on: December 1, 2008

7 
8 /s/ NICHOLAS PAUL GRANATH

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Don Addington, et al.,)	
)	No. CV 08-1633-PHX-NVW
Plaintiffs,)	
vs.)	
)	Phoenix, Arizona
US Airline Pilots)	October 29, 2008
Association, et al.,)	10:08 a.m.
)	
Defendants.)	

BEFORE: THE HONORABLE NEIL V. WAKE
UNITED STATES DISTRICT JUDGE
(Preliminary Injunction Hearing)

Official Court Reporter:
Laurie A. Adams, RMR, CRP
Sandra Day O'Connor U.S. Courthouse, Suite 312
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Phoenix, Arizona 85003-2151
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Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

UNITED STATES DISTRICT COURT

1 Nicolau Award, and that your union's refusal to do any of that
2 and throwing it aside and other details, and demanding a
3 straight date of hire seniority agreement with the company,
4 that all of that breaches the duty of fair representation. And
5 all of that can be remedied, fully remedied, either by an
6 arbitrator with the Board or by this, if I have jurisdiction.
7 I understand that to be their argument on Count 3.

8 Mr. Harper, do I correctly understand your Count 3?

9 MR. HARPER: I'm sorry, Your Honor. I was --

10 THE COURT: That's all right.

11 MR. HARPER: I was trying to catch up.

12 THE COURT: That's all right. I will let you go.

13 That is how I understand it.

14 MR. HARPER: Then that's the way it is, Your Honor.

15 THE COURT: And this is extremely liberal reading of
16 the pleadings. But the reason I take that, is I take it from
17 your briefs as well where you argue that.

18 Go ahead.

19 MR. SEHAM: If I understand the question correctly,
20 that to the extent the DFR is based on USAPA's alleged
21 violation of a contractual duty in the Transition Agreement to
22 negotiate in good faith, that the system board would have
23 jurisdiction and that we would proceed to a system board
24 hearing on that.

25 THE COURT: Well, you do it with a board composed

UNITED STATES DISTRICT COURT

1 2, we have already said that we were.

2 THE COURT: But see, Count 2 is inseparable from Count
3 3. Whether the employer has breached a duty to negotiate in
4 good faith is entirely dependent on whether they make their
5 case that the union has breached its duty of fair
6 representation.

7 So I don't see how you can arbitrate one and not the
8 other. You can't decide one and not the other, whether it's an
9 arbitrator or me.

10 MR. SEHAM: Well, Your Honor, that helps clarify your
11 earlier inquiry, at least to my perception, that certainly to
12 the extent that the neutral arbitrator finds that the
13 adjudication of the contractual claims in Count 2 require
14 evaluation of the claims in Count 3, then yes, we are agreeing
15 that that goes to a neutral arbitrator.

16 THE COURT: All right. Okay. Now, with respect to
17 the motions to dismiss, nobody has to argue. Everyone is free
18 to argue. I will let you present what you want. And I am
19 inclined to give 15 minutes to each side. And that means 15
20 minutes for you -- or seven and-a-half minutes for each of the
21 defendants and 15 minutes for the plaintiff.

22 So I am indifferent as to who goes first.

23 MR. SIEGEL: Your Honor, since we made the Rule
24 12(b) (1) motion for lack of jurisdiction, I would probably go
25 first. And in seven and-a-half minutes I will try to do it --

1 That's the allegation that, for purposes of stating a claim, I
2 have to take as true.

3 MR. SEHAM: I don't -- I actually -- in fact, their
4 allegation is more general to say East Pilots in general have
5 been hostile to this approach, and that effective forwarding of
6 the implementation dates back to August 2007. But clearly, if
7 ALPA merger policy, according to their arguments, was
8 incorporated by reference into the Transition Agreement, it
9 also incorporated a political veto, which is both the east MEC
10 and the East Pilots had to agree to a single contract for this
11 to ever, as they say, see the light of day.

12 THE COURT: Well, they had duties as well after the
13 ALPA merger policy was implemented according to its processes.

14 MR. SEHAM: Well, and I understand that if those
15 duties were violated they were violated in August 2007, and
16 within six months of that date is when any claim for duty of
17 fair representation should have been brought.

18 But in any case, the suggestion, the plaintiffs'
19 theory suggests that the company would violate the Transition
20 Agreement if it agreed to revisit the Nicolau list, and that
21 has to fail for any number of reasons. First of all, where we
22 are in negotiations, we have passed our list and which the
23 Court has misunderstood, and I will come to that if it fits
24 within my 10 minutes. But the company has not responded.

25 The terms of the Transition Agreement expressly