

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Don Addington; John Bostic; Mark  
Burman; Afshin Iranpour; Robert Velez;  
Steve Wargocki; individual residents of  
the State of Arizona, formerly employed  
by America West Airlines, Inc. and  
presently employed by its successor after  
merger, US Airways, Inc.,

Plaintiffs,

vs.

US Airline Pilots Association, an  
unincorporated association representing  
the pilots in the employment of US  
Airways Inc.; US Airways, Inc., a  
Delaware corporation,

Defendants.

No. CV 08-1633-PHX-NVW

**ORDER**

The Court has considered the Motion for Reconsideration filed by US Airline Pilots Association (“USAPA”) (doc. # 93). “The Court will ordinarily deny a motion for reconsideration of an order absent a showing of manifest error or a showing of new facts or legal authority that could not have been brought to its attention earlier with reasonable diligence.” LRCiv 7.2(g)(1).

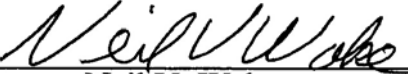
The arguments presented in this motion for the most part were not raised in USAPA’s prior motion to dismiss under Fed. R. Civ. P. 12(b)(1) & 12(b)(6) (docs. # 35, 36), and USAPA has failed to show that these arguments “could not have been brought to [the

1 Court's] attention earlier with reasonable diligence.” LR Civ. 7.2(g)(1). It is especially  
2 inappropriate to use a motion for reconsideration to make successive Rule 12(b) motions,  
3 which Rule 12(b) itself does not authorize.

4 Considered on their merits, USAPA's arguments do not undermine the Court's prior  
5 holding. USAPA claims that the only good faith obligation that plaintiffs have alleged is the  
6 obligation to negotiate toward integrated operations under the Transition Agreement. This  
7 argument fails to account for Plaintiffs' express allegations that USAPA has breached its  
8 duty of fair representation, a duty born out of federal labor statutes. As previously explained,  
9 that duty is not stripped of its statutory character and remedy merely because a contract is in  
10 the background of the breach. Moreover, USAPA has identified no contract imposing a duty  
11 to arbitrate such a dispute before a system board of adjustment or any other tribunal.  
12 Contrary to USAPA's new argument, it did not consent at the October 29, 2008 hearing to  
13 neutral decision of the West Pilots' fair representation claim. If it had so consented, it still  
14 could not deprive the employees of their statutory remedy by offering a decision-maker  
15 which the employees are not bound to accept.

16 IT IS THEREFORE ORDERED that the Motion for Reconsideration filed by US  
17 Airline Pilots Association (“USAPA”) (doc. # 93) is denied.

18 DATED this 8<sup>th</sup> day of December, 2008.

19  
20  
21   
22 \_\_\_\_\_  
23 Neil V. Wake  
24 United States District Judge  
25  
26  
27  
28