

1 LEE SEHAM, Esq. *pro hac vice*
STANLEY J. SILVERSTONE, Esq. *pro hac vice*
2 LUCAS K. MIDDLEBROOK, Esq. *pro hac vice*
NICHOLAS P. GRANATH, Esq., *pro hac vice*
3 SEHAM, SEHAM, MELTZ & PETERSEN, LLP
445 Hamilton Avenue, Suite 1204
4 White Plains, NY 10601
Tel: 914 997-1346; Fax: 914 997-7125

5 NICHOLAS ENOCH, Esq., State Bar 003076
nick@lubinandenoch.com
6 LUBIN & ENOCH, PC
349 North 4th Avenue
7 Phoenix, AZ 85003-1505
8 Tel: 602 234-0008; Fax: 602 626 3586

9 **IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

10 Don ADDINGTON; John BOSTIC; Mark
BURMAN; Afshin IRANPOUR; Roger
11 VELEZ; and Steve WARGOCKI,

12 Plaintiffs,

13 vs.

14 US AIRLINE PILOTS ASSOCIATION,
US AIRWAYS, INC.,
15 Defendants,

Case No. 2:08-cv-1633-PHX-NVW
(Consolidated)

**DECLARATION OF ARNOLD
GENTILE IN OPPOSITION TO
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

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

18 Plaintiffs,

19 vs.

20 Steven H. BRADFORD, Paul J. DIORIO,
Robert., A. FREAR, Mark. W. KING,
21 Douglas L. MOWERY, and John A.
STEPHAN,
22 Defendants.
23

Case No. 2:08-cv-1728-PHX-NVW

1 I, ARNOLD GENTILE, declare that the following is true and correct:

2
3 1. I make this Declaration of my own free will, based on my personal, first-hand
4 knowledge, unless otherwise specifically indicated.

5 2. This Declaration is made in support of USAPA's opposition to the Plaintiffs' motion
6 for class certification.

7 3. I am currently a Captain and have been employed by US Airways as a Pilot since
8 August 19, 1984.

9 4. I am currently the Vice-Chairman of the USAPA Communications Committee. My
10 duties and responsibilities in this capacity include but are not limited to: drafting
11 communications to the press and pilot group and serving as an archivist for
12 communications related to USAPA.

13 5. I am a former member of the Air Line Pilots Association ("ALPA"). When ALPA
14 was the certified bargaining representative of the US Airways Pilots, I acted as the
15 ALPA East MEC's Communications Chairman and performed functions similar to the
16 ones I now perform for USAPA.

17 6. Pursuant to my USAPA duties, and my past ALPA experience, I am familiar with
18 the communications issued by ALPA, USAPA, AWAPPA, Leonidas, LLC and
19 Company representatives concerning the Nicolau Award.

20 7. Since the issuance of the Nicolau decision in May, 2007, ALPA's constant message
21 to the pilot group was that the decision was either subject to modification or, in the
22 alternative, its implementation was subject to indefinite deferral.
23

1 8. With the unprecedented loss of seventeen years of seniority, the Nicolau decision
2 created an uproar within the East pilot group, which included mass picketing by East
3 pilots in front of ALPA's headquarters in Herndon, Virginia on or about May 21, 2007.

4 9. ALPA's reaction to the political crisis was to press the East and West ALPA MEC's
5 to reach a compromise, with repeated warnings to the West MEC that, under ALPA
6 Merger Policy, the Nicolau list could not be implemented without the East MEC's and
7 East pilot group's agreement to a single CBA. Thus, by letter dated June 26, 2007,
8 ALPA National President John Prater advised the respective East and West MEC
9 chairmen that the ALPA Executive Council had voted to "extend consideration" of the
10 Nicolau Award and that in the meantime the Council had ordered the creation of the
11 Rice Committee "to develop approaches to mutual career protection and mutual success,
12 and to achieve a single collective bargaining agreement." (**Exhibit A**). As Prater
13 warned the two ALPA MEC chairmen: "Under both the ALPA Merger Policy and the
14 Transition Agreement, a joint contract needs to be completed before an award can be
15 implemented." (*Id.*).

17 10. In a letter dated July 3, 2007, to all East and West pilots, ALPA President Prater
18 reiterated that: "Both ALPA's Merger Policy and your Transition Agreement provide
19 that a merger seniority list has no effect until a signed joint contract is in effect ... that is
20 acceptable and ratified by a majority of both pilot groups." (**Exhibit B**).

22 11. Due to the continuing inability of the East and West MEC's to reach a compromise
23 on the seniority issue, the ALPA Executive Council passed a resolution at its July 17-

1 19, 2007 meeting, directing the Rice Committee to “continue to assist the MECs and
2 JNC [Joint Negotiating Committee] in achieving the goal of developing consensual
3 approaches that promote mutual career protection and mutual success...” (**Exhibit C**
4 at 7). The whereas clauses of the resolution reaffirmed that, in view of the possibility of
5 an indefinite deferral of the Nicolau decision’s implementation, a “consensual
6 approach” was necessary:

7 WHEREAS no schedule has been specified in Merger Policy or the
8 Transition Agreement for presentation of a merged seniority list to US
9 Airways management, and

10 WHEREAS no merged collective bargaining agreement will take effect
11 without separate membership ratification votes by the AAA and AWA
12 membership, and

13 WHEREAS the Executive Council has resolved that the AAA and AWA
14 MECs explore consensual approaches that promote mutual career
15 protection and mutual success...

16 *Id.* at 4.

17 12. Central to ALPA’s mediatory effort was its continuing pressure on the West MEC to
18 accept something less than the Nicolau Award. As West MEC Chairman John
19 McIlvenna reported to the West pilot group on July 23, 2007:

20 I will tell you that I have never been prouder of the AWA MEC. Extreme
21 pressure was brought to bear on our MEC to mitigate the Nicolau Award
22 by ALPA Staff, EXCL [Executive Council] members and the Rice
23 Committee in an effort to find an easier way out.

24 (**Exhibit D** at 6). The West MEC ultimately lost faith in ALPA as a neutral mediator
25 and sought “Prater-free” negotiations with the East MEC, which took place in Denver
26 on November 15-16, 2007. (**Exhibit E** at 2). The goal, as expressed by West MEC

1 Chairman McIlvenna in a letter dated November 10, 2007, was to overcome the hitherto
2 insuperable barrier of ratification by both East and West pilot groups.

3 As I said before, your leadership recognizes that solely conceding or
4 mitigating parts of the award would not solve the ratification issues, as it
5 would only shift “no” votes from the East to the West. Any solutions we
6 explore would need to generate “yes” votes on both the East and the West.

6 (*Id.*).

7 13. In its continuing effort to obtain a compromise on the seniority integration issue,
8 ALPA directed the East and West ALPA MEC’s to send their respective representatives
9 to negotiations sponsored by ALPA National at Wye River, Maryland. These
10 negotiations continued from January 31, 2008 through February 8, 2008, in what was
11 referred to as a “lock down” environment. These negotiations were terminated when
12 the West MEC’s representatives communicated that they were still subject to a May,
13 2007, West MEC resolution, which mandated that:

14 the AWA MEC will not engage in any negotiations which amend, alter or
15 otherwise change the outcome of the Nicolau award, including any joint
16 negotiations of the America West pilot’s seniority rights already ordered
17 in the award in subsequent contract negotiations.

17 (**Exhibit F**).

18 14. ALPA responded to the West MEC’s intransigence by reassuring East pilots that,
19 under both the Transition Agreement and ALPA Merger Policy, the Nicolau list could
20 not be imposed without the agreement of the East MEC and the East pilots to a single
21 collective bargaining agreement. Moreover, the East MEC and East pilots were assured
22 that ALPA would not interfere with their democratic rights to exercise an effective veto
23

1 over implementation of the Nicolau list. For example, in a letter dated March 14, 2008,
2 to US Airways pilots, ALPA President John Prater stated:

3 The Transition Agreement *requires* that the parties maintain *separate*
4 *operations* until the implementation of a new collective bargaining
5 agreement covering the entire airline. Both the Transition Agreement and
6 ALPA Merger Policy *prohibit* US Airways from utilizing the single
7 seniority list until we reach a single agreement.

8 ***

9 [ALPA] Merger Policy does not contain a timetable for completing the
10 single agreement. ...

11 ***

12 Some members have asked what will happen if pilots from one group or
13 the other sue the Association either to block implementation or to force
14 implementation of the Nicolau award. I repeat – there is no required
15 timetable for implementation of the award. That only happens with a
16 single collective bargaining agreement.

17 ***

18 *When a tentative agreement is reached under the ALPA structure, each*
19 *MEC, followed by each pilot group, will have the right to a separate*
20 *ratification vote on that agreement.* I want to assure you that trusteeship
21 will not be used to deprive you of your right to separate membership
22 ratification. That protection – for each MEC and each pilot group to
23 analyze, debate, and ratify a contract that meets its needs – exists in ALPA
Merger Policy and does *not* under USAPA representation.

14 **(Exhibit G).**

15 15. These views expressed by ALPA President Prater became a salient ALPA campaign
16 theme in the run-up to the ALPA-USAPA election, which culminated in USAPA's
17 certification as the collective bargaining representative of the entire US Airways pilot
18 group on April 18, 2008. East ALPA leadership members, who were committed to
19 ALPA remaining as the US Airways pilot bargaining agent, were convinced that ALPA

1 offered the best chance of either mitigating the Nicolau list or deferring its
2 implementation indefinitely. In an ALPA-produced campaign video featuring East
3 MEC representative Garland Jones, pilots were advised that the veto power accorded to
4 the ALPA East MEC and the East pilot group under ALPA Merger Policy provided the
5 “maximum leverage” to either “effect change” to the Nicolau award or, alternatively, to
6 place that award “on the shelf.” Pilots were warned in this ALPA video that the ability
7 to prevent the implementation of the Nicolau award would “disappear” under USAPA.
8 A true and accurate transcript of the ALPA-Jones video is attached as **Exhibit H**.

9
10 16. In another ALPA-produced campaign video entitled “Firewalls,” ALPA East MEC
11 Chairman Jack Stephan assures pilots that ALPA offers “the best possible protection”
12 against implementation of the Nicolau award through the “firewalls” of East MEC
13 approval and East pilot group ratification. The Stephan video warns that the East pilots
14 would stand to “lose” this veto power under USAPA. A true and accurate transcript of
15 the ALPA-Stephan video is attached as **Exhibit I**.

16 17. The Company shared ALPA’s perception that the Nicolau decision would either
17 have to be modified or its implementation indefinitely deferred. In a letter dated August
18 16, 2007, from US Airways CEO Doug Parker to the Company’s pilots, he advised:

19
20 I should clarify that a joint contract does not necessarily mean immediate
21 seniority integration. I have spoken with enough of our East pilots to
22 know that such a proposal would be extremely difficult, if not impossible,
23 to get ratified. I happen to believe that if we could get everyone together
at the negotiating table, we could work something out that meets
everyone’s needs – though both sides would need to move some from
their increasingly hardening positions.

1 (**Exhibit J**). Parker's August 16, 2007, letter also specifically tied pay increases to the
2 negotiation of a single collective bargaining agreement.

3 18. US Airways President Scott Kirby expressed a similar view in a September 12,
4 2007, videotaped interview, by stating:

5 [T]here are a lot of West pilots going to be in here soon, and a lot of them
6 don't like hearing this, but I think, um, from talking to enough individual
7 East pilots, not just the union leadership, but enough individuals, the
8 current, um Nicolau award is not going to get implemented as is, um,
because it would never get voted in on the East if if we did, um and, what
that means is that there's going to have to be some compromise.

9
10 * * *

11 Because what matters is, no matter what ALPA does, or USAPA does, it
12 has to pass a vote from each of the pilot groups, and that's the key point, it
13 has to pass through a vote, and even if national ALPA sent us the list
tomorrow sent us the list tomorrow, that's a list that would never get
14 passed through, um the East process, and therefore wouldn't get
implemented. ... a deal that can get voted in will require compromise
from both sides ...

15 (**Exhibit K** at ADD2189-90).

16 19. The message from both ALPA and US Airways that the West MEC would have to
17 compromise with respect to the Nicolau Award was not lost on the West pilots. In a
18 document recently produced by Plaintiff Addington, which accompanies the text of the
19 Kirby speech referenced in the above paragraph, Addington states:

20 The only way to salvage our seniority is a DFR suit. I'm told that the
21 pilot must bring it, not the elected reps. It is obvious to me anyway, that
22 ALPA has not lived up to their agreement to present, protect, and defend
the list. ALPA has not presented the list, because they are trying to force
23 us to bargain it away, and it's working. However, I would consider that
compromising away the award is also a DFR issue even after the fact.

1
2 If they are no longer the bargaining agent because the East decertifies, the
3 list still have survivability under the law, and the new agent would have to
4 accept it, even if it was after the fact. The financial damages would come
out of ALPA for the failure to represent the West pilots after we win the
suit.

5 (*Id.* at ADD2192). Based on my monitoring of communications and discussions with
6 West MEC leadership during this period, it is my view that there is no question that
7 West pilots generally understood that the Rice Committee, Wye River negotiations,
8 Executive Council resolutions, and communications from ALPA President John Prater
9 were all designed by ALPA to put pressure on the ALPA West MEC to accept
10 modification of the Nicolau award.

11 20. The Leonidas LLC update of December 28, 2008, recognizes that USAPA is
12 involved in challenging negotiations designed to improve the substandard wages and
13 working conditions of all US Airways pilots. (**Exhibit L** at 4). Leonidas also
14 recognizes that USAPA is “aggressively pursuing” grievances “on our behalf – if they
15 prevail, then everybody wins (both East and West) at US Airways.” (*Id.*)¹ At the
16 same time, the Leonidas update recognizes that USAPA’s efforts are being undermined
17 by “our current discord.”
18

19 21. In light of the shared view of ALPA and US Airways that the Nicolau award was
20 either subject to modification or, in the alternative, its implementation was subject to
21

22 ¹ Indeed, USAPA is clearly doing a superior job of representing junior West pilots with
23 respect to Count One of the current complaint in that neither plaintiffs nor their counsel
participated in the January 8, 2009, grievance hearing held to address the underlying
contract liability issue despite repeated invitations from USAPA to do so.

1 indefinite deferral, there is no basis for presuming that the interests of any individual
2 West pilot – even if he/she would arguably be better off under the Nicolau award –
3 would be promoted by the current litigation. This is particularly true in terms of the
4 litigation’s disruptive impact on USAPA’s ability to process grievances, negotiate
5 toward a single collective bargaining agreement, and engage in other representational
6 duties. In sum, there is no basis for asserting that any West pilot shares an interest with
7 the named plaintiffs in this action.
8

9 Further your Declarant sayeth not.

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

12 Executed on: February 16, 2009

13
14 /s/ Arnold Gentile
15 Arnold Gentile
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