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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Don Addington; John Bostic; Mark  
Burman; Afshin Iranpour; Roger Velez;  
Steve Wargoeki,

Plaintiffs,

vs.

US Airline Pilots Association; US  
Airways, Inc.,

Defendants.

No. CV 08-1633-PHX-NVW  
(consolidated)

**ORDER**

Don Addington; John Bostic; Mark  
Burman; Afshin Iranpour; Roger Velez;  
Steve Wargoeki, et al.,

Plaintiffs,

vs.

Steven Bradford; Paul Diorio; Robert  
Frear; Mark King; Douglas Mowery; John  
Stephan, et al.,

Defendants.

CV08-1728-PHX-NVW

Before the Court are Defendants' Combined Motions In Limine (doc. # 316). The  
Motions are decided as follows:

1. Evidence Offered to Show Any Challenge to the Election of USAPA or Its  
Certification by the N.B.

1           There is no challenge to the election or certification. However, USAPA's constitution  
2 cannot authorize what would otherwise be a violation of the duty of fair representation. This  
3 motion is denied.

4

5       2.     Evidence Offered to Show Implementation of the Nicolau List Was Possible Prior to  
6           Negotiation of a Single CBA

7           Plaintiffs do not intend to offer this, except if appropriate on cross-examination. This  
8 Motion is denied as moot.

9

10     3-5.    Evidence Offered to Prove Counts I & II and May 2009 Arbitration Claims

11           Plaintiffs do not intend to offer this, except if appropriate on cross-examination.  
12 These Motions are denied as moot. While these issues should not be proven or argued to the  
13 jury as such, they do not preclude Plaintiffs from offering admissible evidence relevant to  
14 Count III which happens to be relevant to Counts I and II and the May 2009 Arbitration  
15 Claims.

16

17     6.     Evidence Offered to Show Six East Pilots Serving in the West Were Displaced Back  
18           to the East

19           Plaintiffs do not intend to offer this, except if appropriate on cross-examination. This  
20 Motion is denied as moot.

21

22     7.     Several Exhibits Regarding Enforcement of the Union Security Clause Requiring  
23           Payment of Dues and Fees

24           Plaintiffs do not intend to offer this, except if appropriate on cross-examination. This  
25 Motion is denied as moot.

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1 8. Transcript of Road Shows or Other

2 Plaintiffs do not intend to offer this, except if appropriate on cross-examination. This  
3 Motion is denied as moot.

4

5 9. Exhibits Regarding Unrelated, Various Individual Grievances

6 Plaintiffs do not intend to offer this, except if appropriate on cross-examination. This  
7 Motion is denied as moot.

8

9 10. Exhibits Regarding Letters of Agreement Altering the East CBA

10 Plaintiffs do not intend to offer this, except if appropriate on cross-examination. This  
11 Motion is denied as moot.

12

13 11. Transcripts of Court Hearings

14 Plaintiffs do not intend to offer this. This Motion is denied as moot.

15

16 12. Exhibit 312 Regarding the Empire Shuttle Issue

17 Plaintiffs do not intend to offer this, except if appropriate on cross-examination. This  
18 Motion is denied as moot.

19

20 13-14 Evidence Offered to Prove Pre-Certification DFR Liability by USAPA

21 Pre-certification conduct cannot be the basis for liability. However, such conduct may  
22 be relevant to the context for liability that accrues after certification. Therefore, evidence of  
23 pre-certification conduct that may otherwise be relevant will be admitted subject to an  
24 appropriate limiting instruction, as USAPA suggests in Motion # 14.

25

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1 15. Evidence of Post-Certification Conduct  
2 USAPA's post-certification conduct is relevant to the fair representation claim. This  
3 Motion is denied.

4  
5 16. Evidence of Drafts of USAPA's Seniority Integration Proposal  
6 This Motion is denied.

7  
8 17. Evidence that USAPA Deliberately Delayed Negotiations of a Single CBA  
9 This is a challenge to sufficiency evidence not yet offered. This Motion is denied.

10

11 18. Evidence Offered to Prove Disgorgement of Dues or Fees  
12 This claim has been resolved by the Court. This Motion is denied as moot.

13

14 19-20 Evidence Offered to Show that West Pilots Were Denied Opportunity to Present Their  
15 Interests for Consideration by USAPA

16 The Court cannot determine in advance what such evidence would be offered to  
17 prove. This Motion is denied as premature.

18

19 21. Bradford Letter Wrongfully Posted on Web Board (Attorney-Client Privilege)  
20 This Motion will be discussed at the final pretrial conference.

21

22 22. Declaration by Kevin Horner  
23 This Motion is granted.

24

25 23. Evidence of 36,000 E-mails  
26 This Motion is granted.

27

28

1 24. Evidence Obtained by Subpoena for Production of Documents or Things on Non-  
2 Parties Not First Served on Defendant

3 This Motion is denied as moot.  
4

5 25. Lee Seham's Testimony or References to the Absence Thereof

6 Reference to, or introduction of, evidence of legal opinions received by USAPA from  
7 Mr. Seham or any other attorney, whether made by Plaintiffs or Defendants, is excluded from  
8 the trial, without advance notice to the Court and counsel. Beyond that it cannot be  
9 determined whether such evidence is admissible without a specific trial context.  
10

11 26. Limited Invocation of the Rule to Sequester Witnesses

12 All witnesses will be excluded except parties, experts, and a single designated  
13 representative of USAPA.  
14

15 27. Evidence of Damages

16 Evidence relevant to liability is not inadmissible merely because it is also relevant to  
17 damages. This Motion is denied.  
18

19 28. Reference to Witnesses not Called

20 This Motion is denied.  
21

22 29. Exhibits not Exchanged with Defendant by April 1

23 This Motion will be discussed at the final pretrial conference.  
24

25 30. Improper Argument in Opening Statement Regarding Nicolau Award

26 This Motion is denied as premature. Counsel may not make opening statements  
27 beyond what the evidence will show.  
28

1 31. Lay Testimony on Expected Length of Contract Negotiations

2 This Motion is denied as premature without foundation for witnesses' testimony.

3

4 32. Testimony Regarding Parties to Nicolau Arbitration

5 What legal effect the Nicolau award has is for the Court to determine, or to instruct  
6 the jury upon. Experts may not testify to points of law. Other than that, this Motion is too  
7 obscure to address.

8

9 33. Improper Reference in Opening Statement to Evidence Ordered Excluded.

10 In opening statements, counsel may refer only to matters expected to be supported by  
11 evidence at trial. However, this is not a motion in limine and is denied.

12 IT IS SO ORDERED.

13 Dates: April 20, 2009.

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Neil V. Wake  
United States District Judge