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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 Plaintiffs' Combined Motions In Limine (doc. ## 309-314,
##317-319). The Motions are decided as follows:

1. Evidence & Argument to Relitigate the Process, Procedure, or Decision in the Nicolau
Arbitration

1 This motion is too abstract to be ruled on in advance of trial. No evidence will be
2 admitted to challenge the process, procedure, or decision of the Nicolau Award. However,
3 USAPA may still introduce evidence concerning the content of the Nicolau Award as that
4 award relates to USAPA's representation decisions.

5
6 2. Evidence of Other Seniority Integrations

7 This motion is granted in part. USAPA may offer evidence of other seniority
8 integrations where the union has disparaged an arbitrated award in favor of another seniority
9 policy. Generally, however, it would be burdensome, confusing, and a waste of time to
10 introduce evidence of other seniority integrations resulting in a date-of-hire system, and such
11 evidence will be excluded under Fed. R. Evid. 403. If appropriate, the jury may be instructed
12 that a date-of-hire seniority policy does not, on its own, violate the duty of fair
13 representation.

14
15 3. Evidence and Argument Offered Only to Find Fault with ALPA Merger Policy

16 This motion can be neither granted nor denied as written. The parties may offer
17 evidence regarding the background, issues, and interests involved in the case including
18 evidence of ALPA Merger Policy. Such evidence may be limited, however, because the
19 Court (including the jury) is not charged with deciding the independent merits of ALPA
20 Merger Policy.

21
22 4. Evidence & Argument Showing That USAPA Acted Rationally After It Determined
23 It Would Disregard the Nicolau Award

24 This motion is too abstract to be ruled on in advance. The Court understands
25 Plaintiffs' claim to be more focused and refined than general allegations of irrational
26 behavior, but evidence of USAPA's ongoing conduct is still relevant to the timeframe of any
27 culpable acts.

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1 5. Evidence & Argument That Would be used to Excuse USAPA for Complying with
2 Its Constitution

3 This motion is denied. Evidence of USAPA’s Constitution is not inadmissible, but
4 USAPA’s Constitution cannot excuse any failure on the part of USAPA to honor its duty of
5 fair representation.

6
7 6. Evidence & Argument that West Pilot “Bad Acts” Excuse USAPA’s Unfair
8 Representation

9 This motion is granted. USAPA concedes that this evidence is not relevant to its duty
10 of fair representation, but still argues that it is relevant to USAPA’s ability to discharge that
11 duty. This argument is rejected. Evidence that a small group of West Pilots engaged in “bad
12 acts” is inflammatory, confusing, and of little if any probative value. It is therefore excluded
13 under Rule 403. Consistent with this ruling, if Plaintiffs offer admissible evidence that West
14 Pilots were excluded from union decisionmaking, USAPA may offer evidence to show that
15 West Pilots rejected USAPA’s invitations to participate.

16
17 7. Motion to Strike Late Disclosed Experts

18 This Motion will be discussed at the final pretrial conference.

19
20 8. Evidence or Argument re Grievances or Jurisdiction

21 This motion is granted. The parties agree to exclude evidence whose only relevance
22 is to the ongoing administrative proceedings before the System Board. Evidence relating to
23 grievances processed or prosecuted by USAPA will likewise be excluded as irrelevant.

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1 9. Status of Current Negotiations

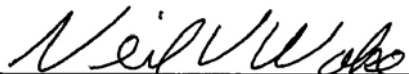
2 This motion is granted in part. The parties may offer evidence of ongoing
3 negotiations between USAPA and US Airways only to the extent that those negotiations
4 relate directly to pilot seniority rights.

5 IT IS SO ORDERED.

6 Dates: April 20, 2009.

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Neil V. Wake
United States District Judge

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