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8 **IN THE UNITED STATES DISTRICT COURT**
9 **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)

**DEFENDANT USAPA'S PROPOSED
FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

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,
Douglas L. MOWERY, and John A.
STEPHAN,
21

22 Defendants.

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

1
2 **INTRODUCTION.**

3 This matter was heard by the Court in a bifurcated trial. The jury phase of the
4 trial to determine disputed liability fact issues was held from April 28 to May __, 2009.
5 A verdict in favor of the plaintiffs was reached on May __, 2009. A bench trial on the
6 nature and appropriateness of the injunctive relief sought was held from May _ to __,
7 2009.

8 The Court has fully considered the evidence presented at trial, the exhibits
9 admitted into evidence, and the argument of counsel, and being fully advised, now
10 makes the following Findings of Fact and Conclusions of Law, and renders a decision.

11 **FINDINGS OF FACT.**

12 **Parties**

13 1. Plaintiffs are pilots who, prior to the merger between US Airways and
14 America West Airlines, were employed by America West Airlines, and who are now
15 employed by US Airways.

16 2. Defendant, US Airline Pilots Association (“USAPA”) is an
17 unincorporated association with a principal place of business in Charlotte, North
18 Carolina. USAPA is the exclusive collective bargaining representative of the pilots
19 employed by US Airways.

20 3. US Airways is a Delaware corporation with its principal place of business
21 in Tempe, Arizona. At all times relevant to this action, US Airways has engaged in
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1 interstate commerce in the industry of air transportation, and has been an employer in an
2 industry affecting interstate commerce.

3 The Merger and Seniority Integration in General

4 4. In May 2005, US Airways and America West agreed to merge by
5 combining all or substantially all of their assets. The surviving entity is known as US
6 Airways.

7 5. With respect to union-represented employee groups, the general policy of
8 US Airways and America West was to permit the unions to resolve the seniority
9 integration issue internally, subject to the airlines' right to avoid undue costs arising
10 from the seniority integration process.

11 6. Pursuant to internal union policy, the unions for the Flight Attendants,
12 Mechanics, Stock Clerks, Baggage Handlers, and Maintenance Specialists integrated the
13 employees in these classifications on a date-of-hire basis. The airlines agreed that
14 integration on this basis for these employee groups was "fair and equitable."

15 7. Pursuant to an arbitration conducted under Allegheny-Mohawk
16 procedures, the East and West Dispatchers were integrated on a date-of-hire basis.

17 Seniority Integration Under ALPA

18 8. At the time of the merger, and at all times until April 18, 2008, the Air
19 Line Pilots Association ("ALPA") represented both the US Airways ("East") and the
20 America West ("West") pilots as the exclusive collective bargaining representative of
21 the pilots of post-merger US Airways.

1 9. On September 23, 2005, US Airways, America West, and ALPA entered
2 into a “Transition Agreement” for the purpose of governing the process of the two
3 airlines’ operational merger as it related to the airlines’ pilots.

4 10. Under the Transition Agreement, the airlines allowed ALPA to resolve the
5 pilot seniority integration issue subject to ALPA’s internal ALPA Merger Policy,
6 subject to the airlines’ right to avoid undue costs arising from the seniority integration
7 process. The terms of ALPA Merger Policy are set out in a document, entitled “Section
8 45 – Merger and Fragmentation Policy” and dated August 10, 2005.

9 11. Merger Representatives consider the following criteria currently stipulated
10 by ALPA Merger Policy: a) Preserve Jobs, b) Avoid windfalls to either group at the
11 expense of the other, c) Maintain or improve pre-merger pay and standard of living, d)
12 Maintain or improve pre-merger pilot status, and e) Minimize detrimental changes to
13 career expectations. These criteria were established in 1991 pursuant to an amendment
14 of ALPA Merger Policy by the ALPA Board of Directors.

15 12. ALPA is a unitary labor organization with a single Constitution and By-
16 Laws governing all subordinate bodies and members.

17 13. At all relevant times, ALPA was an international labor organization that
18 represented approximately 61,000 airline pilots at over 40 U.S. and Canadian airlines.

19 14. All ALPA members may be “disciplined fined, or expelled” for violating
20 ALPA’s rules and policies, including violations of the ALPA Constitution and By-Laws
21 or failing to comply with the decisions of ALPA’s governing bodies, such as the ALPA
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1 Board of Directors, the ALPA Executive Board or the ALPA Executive Council.

2 15. At airlines where ALPA is the collective bargaining representative, the
3 CBA is administered by a Master Executive Council (“MEC”) composed of pilot
4 representatives who are elected by pilots who are members in good standing. In order
5 to be a member in good standing of ALPA, an individual pilot must be current in his
6 dues obligations to ALPA as required under the ALPA Constitution and By-Laws.

7 16. MEC’s are subordinate bodies of ALPA. MEC’s do not have the authority
8 to act as collective bargaining representatives. ALPA itself is the sole bargaining
9 representative of the pilots employed by ALPA-organized airlines. MEC’s and their
10 representatives are forbidden to initiate any action that is inconsistent with Constitution
11 and By-Laws or with the best interests of the Association or the general membership.

12 17. ALPA Merger Policy is promulgated by the ALPA Board of Directors.

13 18. The ALPA Board of Directors is also empowered to amend ALPA Merger
14 Policy. Neither the promulgation nor the amendment of ALPA Merger Policy is subject
15 to a ratification vote by ALPA rank-and-file members.

16 19. Pursuant to ALPA Merger Policy, MEC’s are required to appoint Merger
17 Representatives, who are also subject to removal by the MEC’s. Merger
18 Representatives are not elected by ALPA rank-and-file members. Merger
19 Representatives must be ALPA members in good standing.

20 20. Prior to this amendment, ALPA Merger Policy provided as a preface to
21 these criteria: “Merger representatives should, whenever possible, use Conditions and
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1 Restrictions so as to accomplish seniority list integration based on date of hire, keeping
2 in mind the following primary goals:”. The amendment of ALPA Merger Policy in
3 1991 was advocated by representatives of the relatively junior pilot group at United in
4 order to obtain an advantage over the more senior US Airways pilot group.

5 The Nicolau Arbitration

6 21. Pursuant to ALPA Merger Policy, in October 2006, the East and West
7 ALPA MEC merger representatives referred their dispute to mediation and arbitration.

8 22. Mediation of the dispute was not successful.

9 23. The East and West ALPA MEC merger representatives submitted their
10 dispute to a Board of Arbitration chaired by George Nicolau (the “Nicolau
11 Arbitration”). The parties to the Nicolau Arbitration were stated to be “the US Airways
12 Pilot Merger Representatives and the America West Pilot Merger Representatives.”

13 24. Under then-existing ALPA Merger Policy, the Arbitration Board was
14 composed of two non-voting ALPA members chosen from the Master List of Pilot
15 Neutrals. The third member and Chairman of the Board was required to be chosen from
16 a list of Arbitrators approved by ALPA.

17 25. The Arbitration Board must render a seniority integration decision
18 consistent with the criteria set forth in ALPA Merger Policy.

19 26. The decision of Arbitrator George Nicolau was issued in May, 2007.

20 27. The Nicolau Award granted no seniority credit to East Furlougees with
21 up to 16 years of seniority relative to West pilots with as little as two months of
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1 seniority. [Brucia dissent]. Moving up the list from that point, West and East pilots
2 were ratioed together in a manner that effectively eliminated up to 16 years of date-of-
3 hire seniority for every East pilot.

4 28. The Nicolau Award generated considerable negative reaction within the
5 East pilot group, which included mass picketing by East pilots in front of ALPA's
6 headquarters in Herndon, Virginia on or about May 21, 2007.

7 29. A majority of East Pilots strenuously objected to the Nicolau Award and
8 were opposed to its implementation. On or about July 25, 2007, the East MEC
9 determined that the East pilots would never ratify a single collective bargaining
10 agreement that incorporated the Nicolau List.

11 30. On or about August 15, 2007, the US Airways MEC resolved to withdraw
12 its representatives from negotiations for a single collective bargaining agreement due to
13 the West MEC's refusal to agree to a joint proposal for immediate pay parity. [State
14 Complaint ¶ 93].

15 31. Since the issuance of the Nicolau Award in May, 2007, ALPA's constant
16 message to the pilot group was that the decision was either subject to modification or, in
17 the alternative, its implementation was subject to indefinite deferral.

18 32. ALPA National engaged in continuing efforts from May, 2007 through
19 April 18, 2008, to resolve the impasse that had developed between the US Airways
20 MEC and the West MEC by a consensual approach. These efforts were conducted
21 pursuant to a May 24, 2007 Executive Council resolution, which urged the two MEC's
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1 to “explore consensual approaches that promote career protection and mutual success,
2 and achieve an acceptable single collective bargaining agreement that improves pay,
3 benefits, work rules and job security for both pilot groups.” During this period, ALPA
4 National put “extreme pressure” on the West MEC to agree to a modification of the
5 Nicolau Award. The West MEC refused, at all times, to consider any modification of
6 the Nicolau Award, including the introduction of any conditions or restrictions that
7 would delay or limit the impact of the seniority integration list contained in the Nicolau
8 Award. These efforts were typified by the Rice Committee and Wye River conferences.
9 The efforts were met by the West MEC’s intransigent rejection of any compromise.

10 33. The company, too, through CEO Parker urged compromise, but to no
11 avail.

12 34. ALPA used all reasonable means at its disposal to implement the Nicolau
13 Award.

14 35. Under ALPA Merger Policy, there is no required timetable for
15 implementation of a seniority integration arbitration award.

16 36. From August 15, 2007 through the date of loss of ALPA’s representation
17 status on April 18, 2008, there were no further negotiations toward a single collective
18 bargaining agreement.

19 37. The Transition Agreement states that the parties shall maintain “Separate
20 Operations” until the implementation of a single collective bargaining agreement
21 covering both pilot groups. During Separate Operations, East and West aircraft may
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1 only be flown by East and West pilots respectively, unless otherwise permitted or
2 agreed under the Transition Agreement.

3 38. Both the Transition Agreement and ALPA Merger Policy state that the
4 Airline may not use the single seniority list until an agreement is reached on a single
5 collective bargaining agreement covering both pilot groups, unless otherwise agreed to
6 by all of the parties.

7 39. Under ALPA policy, a single CBA could not be adopted until it was
8 agreed to by both the East and West MEC's and ratified separately by a majority of East
9 and West pilots.

10 40. The parties stipulated that the Nicolau Award generated considerable
11 negative reaction among many East pilots, and that on or about July 25, 2007, the East
12 MEC determined that the East pilots would never ratify a single collective bargaining
13 agreement that incorporated the Nicolau List.

14 41. The West MEC refused to consider any modification to the Nicolau
15 Award.

16 42. The respective positions of the East pilots and West MEC resulted in an
17 impasse preventing further negotiations toward a single CBA.

18 43. At this time, the Airline is still conducting separate pilot operations where
19 each pilot group works under a different pilot collective bargaining agreement that
20 utilizes its own seniority list.

1 Formation of USAPA

2 44. In the years preceding the Nicolau Award, there had been broad-based
3 support among both East and West pilots for an independent union. Many East and
4 West pilots shared the concern that ALPA, as a multi-carrier union, might act contrary
5 to the interests of their airline-specific pilot groups.

6 45. In the years preceding the Nicolau Award, West MEC Chairman John
7 McIlvenna formed an independent union as an alternative to ALPA due to ALPA's lack
8 of democratic institutions, lack of political accountability, and concern that ALPA's
9 multi-carrier structure compromised its representation of the West pilots' interest.
10 McIlvenna's independent union effort came close to obtaining endorsement from a
11 majority of West pilots.

12 46. In the early 1990's, the East pilots came close to succeeding in the
13 formation of an independent union in reaction to ALPA's failure to properly represent
14 the East group and its sabotage of a British Airways investment plan, which would have
15 enhanced the East pilots' employment opportunities.

16 47. During US Airways bankruptcy proceedings pre-dating the formation of
17 USAPA, ALPA agreed to terminate the East pilots' pension plan without allowing a
18 prior vote by the pilot rank-and-file.

19 48. During US Airways bankruptcy proceedings pre-dating the formation of
20 USAPA, and for the purpose of providing financial assistance to the carrier, ALPA
21 agreed to changes in the East CBA's scope provisions that significantly increased
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1 outsourcing of pilot jobs to US Airways' wholly-owned subsidiaries.

2 49. USAPA announced its creation on or about August 6, 2007, with a broad
3 platform of political objectives, including: a) a constitutional pilot bill of rights, b)
4 membership ratification of all contracts and side letters, c) increasing the level of
5 democratic control by the members, including direct election of national officers, d) the
6 creation of a carrier-specific union that could better pursue the objectives of the pilot
7 group, e) reducing wasteful spending of the members' dues money, and f) obtaining
8 better collective bargaining agreements.

9 50. USAPA's Constitution, which was posted on its website during its
10 campaign, provided that it was an "objective" of USAPA: "To maintain uniform
11 principles of seniority based on date of hire and perpetuation thereof, with reasonable
12 conditions and restrictions to preserve each pilot's un-merged career expectations."

13 51. During the inter-union election campaign that preceded certification by
14 the National Mediation Board, USAPA campaigned for the votes of East and West
15 pilots through mailings, its website, and road shows in Philadelphia, Charlotte and
16 Phoenix. During these campaign activities, USAPA communicated to East and West
17 pilots its policy objectives, including its constitutional objective related to seniority
18 integration.

19 52. During the inter-union election campaign, USAPA communicated to West
20 pilots that USAPA would protect their interests by, among other things: a) obtaining a
21 better contract, b) providing more democratic and efficient union representation, and c)
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1 protecting West pilots in their existing positions.

2 53. During the inter-union election campaign, USAPA communicated to West
3 pilots that USAPA wanted them to become dues-paying members and be actively
4 involved within the USAPA political structure.

5 54. On April 18, 2008, the National Mediation Board (“NMB”) certified
6 USAPA as the collective bargaining representative of the pilots employed in the service
7 of the Airline.

8 55. Subsequent to USAPA’s certification, the America West Airline Pilots
9 Protective Alliance (AWAPPA) – a corporation formed to promote West pilots’
10 interests – commenced a campaign to “destroy” USAPA. The AWAPPA campaign
11 included concerted efforts to jam USAPA’s information and safety hotlines in order to
12 disrupt USAPA’s operations and to inflict financial harm on USAPA. The AWAPPA
13 campaign also involved a highly successful campaign to persuade the approximately
14 1800 West pilots not to become members of USAPA or pay either dues or agency fees.
15 To date, only about 6 percent of the West pilots have been USAPA members in good
16 standing.

17 56. AWAPPA also engaged in a program of intimidating West pilots –
18 through threats of physical harm, threats to property, economic coercion, and telephonic
19 harassment – who expressed an interest in participating in USAPA’s political structure.

20 57. The AWAPPA-coordinated dues boycott and intimidation frustrated
21 USAPA’s efforts to obtain the participation of West pilots on the USAPA Board of Pilot
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1 Representatives, Negotiating Advisory Committee, and Merger Committee.

2 USAPA's Seniority Proposal

3 58. Since the date of its certification, USAPA's collective bargaining
4 objective has been to obtain agreement with the Company on a single collective
5 bargaining agreement that would enhance wages, benefits, and working conditions and
6 implement a date-of-hire seniority list with conditions and restrictions designed to
7 protect each pilot's unmerged career expectations. Pursuant to USAPA's
8 Constitution, USAPA's Merger Committee developed a seniority integration proposal
9 that combined a date-of-hire seniority list with conditions and restriction, substantially
10 limiting the exercise of date-of-hire seniority by East pilots, which conditions and
11 restrictions were designed to protect each pilot's unmerged career expectations.

12 59. The conditions and restrictions contained within the USAPA Merger
13 Committee's seniority integration proposal: a) created protected positions for West
14 pilots within West operations that severely limited the ability of East pilots to use their
15 date-of-hire seniority over a ten-year period; b) created recapture rights that protected a
16 West pilot's ability to return to his/her original home domicile in the event of a
17 displacement resulting from an economic downturn; c) provided that the conditions and
18 restrictions would protect West pilots from encroachment on their positions by pilots
19 from other airlines in the event of a future merger; d) created the ability to reallocate
20 protected positions to EMB 190 aircraft in the event of a carrier decision to operate that
21 aircraft in the West domiciles of Phoenix or Las Vegas; e) allowed senior West pilots to
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1 use their seniority, without restriction, to bid into wide body flying opportunities
2 available within East operations; f) created a reduction ratio system to ensure that West
3 captains would not suffer demotions disproportionate to their number within the
4 combined system.

5 60. The USAPA Merger Committee presented its seniority integration
6 proposal to US Airways on September 30, 2008. The Company has not yet responded
7 to the USAPA seniority integration proposal. In order for the seniority integration
8 proposal to be implemented, the following would have to happen: 1) USAPA's
9 Negotiating Advisory Committee and US Airways would have to reach a tentative
10 agreement on a single collective bargaining agreement, 2) the USAPA Board of Pilot
11 Representatives would have to approve the tentative agreement on a single collective
12 bargaining agreement by a majority vote, and 3) USAPA members in good standing
13 would have to approve the single collective bargaining agreement by a majority of votes
14 cast.

15 61. USAPA remains presently engaged in collective bargaining with US
16 Airways.

17 62. The issue of seniority integration remains an open issue, neither agreed to
18 nor finalized in an executed contract. Other major contractual provisions remain open,
19 including contractual sections addressing wages, benefits, and scope protections
20 designed to protect pilot work opportunities.

21 63. The injunctive relief as pled and/or sought by plaintiffs, even if modified,
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1 would directly, or in effect, unavoidably dictate the terms of the contract as pertains to
2 seniority. In addition, to the extent that all non-seniority issues or terms, for example
3 rates of pay, are open and unresolved, the requested injunctive relief would unavoidably
4 hinder the bargaining discretion of the union because the parties remain free to accept or
5 reject terms and various articles in relation to other terms or articles, i.e. in common
6 parlance 'horse trading.'

7 64. USAPA's members did not have an opportunity to vote on ALPA's
8 merger policy or the decision by the MEC representatives to submit the issue of
9 seniority integration to the Nicolau arbitration.

10 65. A majority of pilots in the bargaining unit have expressed a democratic
11 preference against ALPA and for USAPA in a representation election conducted by the
12 National Mediation Board.

13 66. USAPA's constitution guarantees its members an opportunity to accept or
14 reject any tentatively agreed to collective bargaining agreement in a ratification vote.
15 The proposed constitution was available for pilots to read before the representation
16 election was held, and the election ended with USAPA being certified as the bargaining
17 agent for the pilots employed by US Airways.

18 67. The injunctive relief as pled and/or sought by plaintiffs, even if modified,
19 would directly, or in effect, unavoidably deny all pilots in the bargaining unit the
20 opportunity to vote in a ratification election. The pilots' right to a ratification vote
21 existed under both ALPA's structure and USAPA.

1 68. The injunctive relief as pled and/or sought by plaintiffs, even if modified,
2 would directly, or in effect, unavoidably would place USAPA in a position of violating
3 its own constitution, and expose it to the risk of lawsuits based on violation of its
4 constitution.

5 69. The injunctive relief, as pled and/or sought by plaintiffs, would do nothing
6 more than reinstate the impasse of indefinite duration, which is harmful to the pilot
7 group, including the plaintiff class.

8 **CONCLUSIONS OF LAW.**

9 1. Each Plaintiff is an “employee” of US Airways, within the meaning of
10 Section 1, Fifth of the Railway Labor Act, 45 U.S.C. § 151, Fifth.

11 2. Defendant, US Airline Pilots Association (“USAPA”), is a
12 “representative” within the meaning of Section 1, Sixth of the Railway Labor Act, 45
13 U.S.C. § 151, Sixth.

14 3. US Airways is a “carrier” within the meaning of Section 1, First of the
15 Railway Labor Act, 45 U.S.C. § 151, First.

16 4. The general duty of fair representation arises from the Railway Labor Act
17 itself. 45 U.S.C. § 151–152; *Laturner v. Burlington N., Inc.*, 501 F.2d 593, 599 n.12
18 (9th Cir. 1974). A union breaches this duty when its conduct toward a member is
19 “arbitrary, discriminatory, or in bad faith.” *Jones v. Union Pac. R.R.*, 968 F.2d 937,
20 941 (9th Cir. 1992) (*quoting Vaca v. Sipes*, 386 U.S. 171, 190 (1967)). This duty is
21 narrowly construed so that unions have the latitude to act in what they perceive to be
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1 the best interests of their members. *Id.*

2 5. “The exclusive agent's statutory authority to represent all members of a
3 designated unit includes a statutory obligation to serve the interests of all members
4 without hostility or discrimination toward any, to exercise its discretion with complete
5 good faith and honesty, and to avoid arbitrary conduct.” *Vaca v. Sipes*, 386 U.S. 171,
6 177, (1967).

7 6. The Court cannot dictate the terms of a labor contract, which should be
8 decided upon by the give and take of collective bargaining. *H.K. Porter Co., Inc. v.*
9 *NLRB*, 397 U.S. 99, 103-04, 108 (1970). *See also, Tex Tan Welhausen Co. v. NLRB*,
10 434 F.2d 405, 407 (5th Cir. 1970) (following *Porter's* ruling that the Board is without
11 power to compel a company or a union to agree to any substantive contractual
12 provision of a collective bargaining agreement); *NLRB v. Atlantic Int'l Corp.*, 664 F.2d
13 1231, 1233 (4th Cir. 1981) (“The notion that the Board may require a party to comply
14 with what it speculates the outcome of negotiations would have been had good-faith
15 bargaining taken place clearly contravenes the holding of *H. K. Porter Co., Inc. v.*
16 *NLRB*, 397 U.S. 99, 90 S. Ct. 821, 25 L. Ed. 2d 146 (1970). Porter forbids the Board
17 from requiring a company and a union to bargain to a foreordained result.”)); *East Bay*
18 *Chevrolet v. NLRB*, 659 F.2d 1006, 1009 (9th Cir. 1981) (“the Board may not prescribe
19 the substantive terms of a collective bargaining agreement, either directly or
20 indirectly”); *Clearwater Finishing Co. v. NLRB*, 670 F.2d 464, 468 (4th Cir. 1982)
21 (“H. K. Porter Co. stands for the proposition that the Board has no authority to order
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1 agreement on mandatory subjects of bargaining”); *Hyatt Management Corp. v. NLRB*,
2 817 F.2d 140, 143 (D.C. Cir. 1987) (“Cases subsequent to *H.K. Porter* have recognized
3 that neither the courts nor the Board can change or nullify substantive contractual
4 provisions”) (citations omitted); *Clothing & Textile Workers Local 1566 (Belding*
5 *Hemingway Co.)*, 246 N.L.R.B. 747 (1979), *enforced*, 662 F.2d 1044 (4th Cir. 1981)
6 (Board refusing to require union to execute a settlement agreement proposed by the
7 employer that the union had wrongfully refused to accept).

8 7. Art. XI, Section E of the USAPA Constitution provides that “all
9 Collective Bargaining Agreements, side letters, and all agreements to affiliate or to
10 merge with another labor organization shall be ratified by a majority of the votes cast
11 provided that a majority of the total eligible membership casts ballots in the
12 referendum on such agreement(s).” Under ALPA policy, pilots were also guaranteed
13 the right to a ratification vote.

14 8. Great deference is due a union’s interpretation of its own constitution, and
15 such an interpretation should not be disturbed unless it is ‘patently unreasonable.’
16 *United Bhd. of Carpenters & Joiners, Lathers Local 42-L v. United Bhd. Carpenters &*
17 *Joiners*, 73 F.3d 958, 963 (9th Cir. 1996). “There is a well-established federal policy of
18 avoiding unnecessary interference in the internal affairs of unions. . . . Absent bad faith
19 or special circumstances, an interpretation of a union constitution by union officials, as
20 well as interpretations of the union's rules and regulations, should not be disturbed by
21 the court.” *Motion Picture & Videotape Editors Guild, Local 776 v. International*
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1 *Sound Technicians, Local 695*, 800 F.2d 973, 975 (citations omitted), *amended*, 806
2 F.2d 1410 (9th Cir. 1986), *cert. denied*, 483 U.S. 1022 (1987); *Local 1052, United Bhd.*
3 *of Carpenters & Joiners v. Los Angeles County Dist. Council of Carpenters*, 944 F.2d
4 610, 613 (9th Cir. 1991); *Local No. 48, United Bhd. of Carpenters and Joiners of*
5 *America v. United Bhd. of Carpenters & Joiners of America*, 920 F.2d 1047 (1st Cir.
6 1990); *Papianni v. Int'l Ass'n Bridge, Structural & Ornamental Iron Workers, Local*
7 *11*, 622 F. Supp. 1559, 1565, 1567 (D.N.J. 1985) (citations omitted).

8 9. The Labor Management Reporting and Disclosure Act (“LMRDA”), 29
9 U.S.C. § 402 *et seq.* applies to unions subject to the RLA (29 U.S.C. § 402(J)(1)).
10 Under, LMRDA courts are bound to adhere to a longstanding policy against
11 intervention in the internal affairs of the union. *Local No. 48, United Bhd. of*
12 *Carpenters & Joiners of America v. United Bhd. of Carpenters & Joiners of America*,
13 920 F.2d 1047 (1st Cir. 1990) (internal operations of unions are left to union officials
14 chosen by members to manage those operations, except in very limited instances
15 expressly provided for in the LMRDA); *Newman v. Local 1101, Communication*
16 *Workers of America, ALF-CIO*, 570 F.2d 439 (2d Cir. 1978) (only where there is clear
17 and convincing proof that union action against a member was part of a purposeful and
18 deliberate attempt by union officials to suppress dissent within the union should federal
19 courts act under LMRDA, otherwise the court is bound to adhere to the longstanding
20 policy against intervention in the internal affairs of the union); *Schuchardt v.*
21 *Millwrights and Machinery Erectors Union No. 2834*, 380 F.2d 795 (10th Cir. 1967)

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1 (LMRDA does not project absolute judicial control into internal management of
2 unionism).

3 10. Federal law requires a ratification vote where a union's constitution or
4 bylaws require it. 29 U.S.C. § 411(a)(1); *Deboles v. Trans World Airlines, Inc.*, 552
5 F.2d 1005, 1018 (3d Cir. 1977), *cert. denied*, 434 U.S. 837 (1977). *See also Dodd v.*
6 *Fleming*, 223 F. Supp. 2d 15, 21 (D.D.C. 2002) (29 U.S.C. § 411(a)(1) "provide[s] that
7 once the right to vote is given pursuant to a union's constitution or bylaws, that right is
8 protected by section 101(a)(1) of the LMRDA") (citing *American Postal Workers*
9 *Union Local 6855 v. Am. Postal Workers Union*, 665 F.2d 1096 (D.C. Cir. 1981)). The
10 Labor-Management Reporting Disclosure Act, 29 U. S. C. A. § 411(a)(1), requires a
11 union to submit a collective bargaining agreement to the rank and file for ratification if
12 the union's constitution or bylaws provide for member ratification; *Meyerson v.*
13 *Contracting Plumbers Ass'n.*, 606 F. Supp. 282 (S.D.N.Y. 1982); *Christopher v.*
14 *Safeway Stores, Inc.*, 644 F. 2d 467 (5th Cir. 1981), *disapproved on other grounds*,
15 *Fulk v. United Transp. Union*, 81 F. 3d 733 (7th Cir. 1996); *Deboles v. Trans World*
16 *Airlines, Inc.*, 552 F. 2d 1005 (3d Cir. 1977), *Hicks v Cylinder Gas, Chem., Petroleum,*
17 *Distillery, Auto Serv. & Accessory Drivers, Local 283 150 LRRM (BNA) 2082 (E.D.*
18 *Mich. 1994)*; *Local 1052, United Bhd. of Carpenters & Joiners v. Los Angeles County*
19 *District Council of Carpenters*, 944 F. 2d 610, 613-15 (9th Cir 1991) (stating that
20 where the union constitution affords no right to vote on a merger, there is no violation
21 of Section 411(a)(1) for denying such a vote by the union membership; the court noted
22

1 that a union's interpretation of its own constitution is afforded deferential treatment,
2 and should not be disturbed by the court absent bad faith or special circumstances);
3 *Branch v Vickers, Inc.* 209 F. Supp. 518 (E.D. Mich. 1962) (plaintiff demand to set
4 aside ratification vote rejected); *Leary v Western Union Tel. Co.* 570 F. Supp. 1384
5 (S.D.N.Y. 1983) (where union constitution did not provide for a ratification vote,
6 failure to vote not a violation); *Farkas v Rumore* 1993 U.S. Dist. LEXIS 5582
7 (S.D.N.Y. Apr. 28, 1993) (right to vote in elections or referendums encompasses
8 member's right to vote on collective bargaining agreement when union constitution
9 recognizes and grants that right); *Carothers v McCarthy* 705 F. Supp. 687 (D.D.C.
10 1989) (union's refusal to provide members with changes negotiated to master
11 agreement when changes were given to local union representatives was violation of
12 members' right to equal vote since they were denied adequate information about
13 matters to be voted on).

14 11. Notwithstanding the jury's verdict on the disputed liability facts, the
15 injunctive relief pled and sought by the plaintiffs, in this case even if modified, exceeds
16 the Court's jurisdiction or would otherwise contravene established law, and is therefore
17 denied.

18 12. The Court should not prescribe a specific negotiating result, but at most,
19 reinstate the dual ratification requirement so that USAPA would be required to
20 negotiate a single CBA that would satisfy the majority of East and West USAPA
21 members voting separately. This would effectively restore the political status quo that
22

1 existed under ALPA. To compel the adoption of the Nicolau Award would not only
2 indefinitely extend the impasse, but would create a right (Nicolau implementation as
3 part of a single CBA) that did not even exist under ALPA policy. This approach would
4 be consistent with the Court's prior holding that the plaintiffs' claim has never been
5 substantive but rather merely procedural. (*See* Doc. # 84 at 9:21).

6 **DECISION OF THE COURT.**

7 The Court finds in favor the Defendants in this matter. The Clerk shall enter
8 judgment accordingly.

9 DATED this _____ day of May 2009.

10 _____
11 NEIL V. WAKE
12 United States District Judge
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1 Respectfully Submitted,

2 Dated: April 24, 2009

By: /s/ Lucas K. Middlebrook

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1 **CERTIFICATE OF SERVICE**

2 This is to certify that on the date indicated herein below true and accurate copies
3 of the foregoing documents and their attachments, *to wit*,

- 4
- Defendant USAPA’s Proposed Findings of Fact And Conclusion of Law
 - Certificate of Service

5 were electronically filed with the Clerk of Court using the CM/ECF system, which
6 will send notification of such filing to all admitted counsel who have registered with
the ECF system, including but not limited, to:

7 Marty Harper Don Stevens Andrew S. Jacob
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9

10 Further, I certify that paper hard copies shall be provided to The Honorable Neil
V. Wake, District Court Judge, 401 W. Washington Street, SPC 52, Phoenix, AZ 85003.

11 On April 24 2009, by:

12 */s/ Lucas K. Middlebrook*
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