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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)

**FINAL PRETRIAL ORDER FOR BENCH
TRIAL**

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

A. TRIAL COUNSEL FOR THE PARTIES

This Order incorporates the lists of trial counsel from the Final Pretrial Order For Jury
Trial.

B. STATEMENT OF JURISDICTION.

1 This Order incorporates the Statements of Jurisdiction from the Final Pretrial Order
2 For Jury Trial.

3 **C. STIPULATIONS AND UNCONTESTED FACTS AND LAW**

4 **1.** The following material facts are admitted by the parties and require no proof:

5 (1) This Order incorporates all admitted materials facts as set out in § C 1
6 of the Final Pretrial Order For Jury Trial.

7 (2) This Order also incorporates whatever findings of fact are made by the
8 jury in the liability trial (without waiver of, or prejudice to, post-trial motions or appeal).

9

10 **2.** The following material facts, although not admitted, will not be contested at
11 trial by evidence to the contrary:

12 For Plaintiff: None

13 For Defendant: None

14 **3.** The following issues of law are uncontested and stipulated to by the parties:
15 This Order incorporates the parties' respective statements in § C 3 of the Final Pretrial Order
16 For Jury Trial.

17 **D. CONTESTED ISSUES OF FACT AND LAW**

18 The following are the material issues of FACT to be tried and decided:

19 1. Would USAPA members refuse to ratify any collective bargaining
20 agreement that uses the Nicolau Award?

21

22 2. Have a substantial number of East Pilots demonstrated that, if given the
23 option, they would refuse to cooperate with the implementation of a collective
24 bargaining agreement using the Nicolau Award?

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26 The following are the issues of LAW to be determined:

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1. Did USAPA so violate its duty of fair representation that the Court should order it to comply with the duties that ALPA would have had if it remained the bargaining representative, that is, to immediately engage in good faith negotiation of a single joint collective bargaining agreement that incorporates the Nicolau Award seniority list?

2. Did USAPA so violate its duty of fair representation that the Court should order the airline and USAPA to submit to NMB mediation/arbitration to create and implement a single joint collective bargaining agreement that incorporates the Nicolau Award seniority list?

3. Did USAPA so violate its duty of fair representation that the Court should enjoin it from submitting a negotiated collective bargaining agreement to membership ratification without approval by the Court?

4. Did USAPA so violate its duty of fair representation in disputing the validity of the Nicolau Arbitration Award that the Court should award Plaintiffs their reasonable attorneys' fees and non-taxable costs?

5. Does the Court have the legal authority to order USAPA not to amend the West CBA without either the approval of the Court or ratification by a majority of West Pilots?

6. Does the Court have the legal authority to command that USAPA negotiate and implement a single collective bargaining agreement that fully implements the Nicolau list?

7. Did any violation of the duty of fair representation by USAPA cause threatened or actual harm to Plaintiffs sufficient to justify the issuance of injunctive relief by the Court?

1 **E. LIST OF WITNESSES**

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3 **1. Plaintiffs' Witnesses**

4 **a. Witnesses who shall be called at trial:**

5 Don Addington

6 John Bostic

7 Mark Burman

8 Afshin Iranpour

9 Roger Velez

10 Steve Wargocki

11 Doug Dotter

12 Russ Payne

13 Ken Stravers

14 Brian Stockdell

15 **b. Witnesses who may be called at trial:**

16 Eric Ferguson

17 Jeff Koontz

18 Eric Ferguson

19 Jeff Koontz

20 **c. Witnesses who are unlikely to be called at trial:**

21

22 **2. Defendant's Witnesses**

23 **a. Witnesses who shall be called at trial:**

24 None anticipated based on Defendant's statement of the issues.

25 **b. Witnesses who may be called at trial:**

26 This Order incorporates and references § E(a) of the Final Pretrial Order for

27 Jury Trial.

28

1 c. Witnesses who are unlikely to be called at trial:

2 This Order incorporates and references § E(a) of the Final Pretrial Order for
3 Jury Trial.

4 **3.** Each party understands that it is responsible for ensuring that the witnesses it
5 wishes to call to testify are subpoenaed. Each party further understands that any witness a
6 party wishes to call shall be listed on that party's list of witnesses; the party cannot rely on
7 the witness having been listed or subpoenaed by another party.

8

9 **F. LIST OF EXHIBITS**

10 **1.** The following exhibits are admissible in evidence and may be marked in
11 evidence by the Clerk:

12 This Order incorporates by this reference the Exhibits exchanged by the parties
13 before the jury trial on liability and/or admitted at the liability trial in this matter.

14 **2. As to the following exhibits, the parties have reached the following**
15 **stipulations:**

16 This Order incorporates by this reference any stipulations contained in the
17 Final Pretrial Order for Jury Trial regarding Exhibits exchanged and admitted at the liability
18 trial in this matter as though incorporated herein.

19 **3.** As to the following exhibits, the party against whom the exhibit is to be offered
20 objects to the admission of the exhibit and offers the objection stated below:

21 **a. Plaintiff's Exhibits**

22 This Order incorporates all objections made by Defendant to Plaintiffs' exhibits
23 as fully described in the Final Pretrial Order for Jury Trial.

24 **b. Defendant's Exhibits**

25 This Order incorporates all objections made by Plaintiffs to Defendant's
26 exhibits as fully described in the Final Pretrial Order for Jury Trial.

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1 4. Each party has acknowledged by signing this Final Pretrial Order that any
2 objections not specifically raised herein are waived.

3 **G. DEPOSITIONS TO BE OFFERED**

4 1. The parties shall list the depositions that may be used at trial. The portions to
5 be read or submitted at trial shall be identified by page and line number. Additionally, the
6 party offering the deposition shall provide the Court with a copy of the offered deposition
7 testimony. The offering party shall highlight, in color, the portions of the deposition to be
8 offered. If multiple parties are offering the same deposition, only one copy of such
9 deposition shall be provided. Such copy shall contain each party's highlighting (each party
10 should use a different color). Any party objecting to the admission in evidence of any
11 portion of a deposition shall identify by page and line number the portion to which objection
12 is made and shall state the grounds of objection specifically.

13 a. Plaintiff's Depositions

14 Deposition and trial testimony of Al Hemenway

15 Deposition and trial testimony of Steven Bradford

16 b. Defendant's Depositions

17 This Order incorporates Defendant's list of depositions in § G of the Final
18 Pretrial Order for Jury Trial.

19 2. Each party has acknowledged by signing this Final Pretrial Order that any
20 deposition not listed as provided herein will not be allowed, absent good cause.

21 **H. MOTIONS IN LIMINE**

22 Motions in limine shall be filed as separate pleadings *and responded to in accordance*
23 *with the instructions contained in the Order Setting Final Pretrial Conference.*

24 **I. LIST OF PENDING MOTIONS**

25 None.

26 **J. PROCEDURES FOR EXPEDITING TRIAL**

27 The parties shall discuss and report on all available procedures that might be used to
28 expedite trial, including but not limited to (a) presenting stipulated summaries of deposition

1 testimony rather than reading deposition excerpts; (b) editing videotaped depositions to limit
2 the amount of time required for presentation; (c) using summary exhibits in place of
3 voluminous documentary evidence; (d) stipulations on authenticity and foundation; (e)
4 presenting direct expert testimony through summary or written reports; (f) using the
5 courtroom technology to expedite the presentation of evidence. The parties are invited to
6 contact Sandra Fredlund, Judge Wake's Courtroom Deputy Clerk, to arrange a time to visit
7 the courtroom and examine its technology. Information about courtroom technology can also
8 be found at www.azd.uscourts.gov under Judicial Officer Information.

9 **K. ESTIMATED LENGTH OF TRIAL**

10 1.0 hours for opening statements and closing arguments

11 2.5 hours for Plaintiff(s) case, including cross-examination of other parties'
12 witnesses

13 3.0 hours for Defendant(s) case, including cross-examination of other parties'
14 witnesses

15 0.5 hours for Plaintiff(s) rebuttal

16 7.0 hours TOTAL ESTIMATED TIME

17 **L. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR**
18 **BENCH TRIALS**

19 The separately lodged Proposed Findings of Fact and Conclusions of Law are
20 incorporated by reference into this joint Proposed Final Pretrial Order.”

21 **M. CERTIFICATIONS**

22 The undersigned counsel for each of the parties in this action do hereby certify and
23 acknowledge the following:

- 24 **1.** All permitted discovery has been completed.
25 **2.** The identity of each witness has been disclosed to opposing counsel.
26 **3.** Each exhibit listed herein: (1) is in existence; and (2) has been disclosed and
27 shown to opposing counsel.
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1 4. The parties have complied in all respects with the mandates of the Court's
2 Rule 16 Scheduling Order and Order Setting Final Pretrial Conference.

3 5. The parties have made all of the disclosures required by the Federal Rules of
4 Civil Procedure (unless otherwise previously ordered to the contrary).

5 6. The parties acknowledge that once this Proposed Final Pretrial Order has been
6 signed and lodged by the parties, no amendments to this Order can be made
7 without leave of Court.

8 Defendant's Separate Statement: Defendant incorporates all statements by Defendant
9 form § S of the Proposed Pretrial Order For Jury Trial.

10 **T. INFORMATION FOR COURT REPORTER**

11 In order to facilitate the creation of an accurate record, please file a "Notice to Court
12 Reporter" one week before trial containing the following information that may be used at
13 trial:

- 14 1. Proper names, including those of witnesses.
- 15 2. Acronyms.
- 16 3. Geographic locations.
- 17 4. Technical (including medical) terms, names or jargon.
- 18 5. Case names and citations.

19 Please also send (or transmit electronically) to the court reporter a copy of the
20 concordance from key depositions.

21 DATED this 16 day of April, 2009.

23 */s/ Andrew S. Jacob*

/s/ Andrew S. Jacob (with permission)

24 _____
25 Andrew S. Jacob
26 POLSINELLI SHUGHART, P.C.
27 3636 N. Central Ave., Suite 1200
28 Phoenix, AZ 85012

Nicholas P. Granath
SEEHAM, SEHAM, MELTZ & PETERSEN, LLP
445 Hamilton Ave., Suite 1204
White Plains, NY 10601

1 *Attorney for Plaintiffs*

Attorney for Defendant

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3 Based on the foregoing,

4 **IT IS ORDERED** that this Proposed Final Pretrial Order jointly submitted by the
5 parties is hereby **APPROVED** and **ADOPTED** as the official Pretrial Order of this Court.

6 DATED this 1st day of May, 2009.

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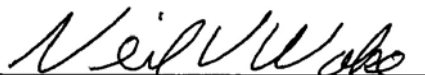
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Neil V. Wake
United States District Judge

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