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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA			
BY _____	DEPUTY		

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Don Addington, et. al.,

Plaintiffs,

vs.

US Airline Pilots Association,

Defendant.

No. CV08-1633-PHX-NVW

FINAL JURY INSTRUCTIONS

DATED this 12th day of May, 2009.



Neil V. Wake
United States District Judge

1 Duty of Jury

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3 Now that you have heard all of the evidence, it is my duty to instruct you as to the law of
4 the case.

5

6 Each of you have has received a copy of these instructions that you may take with you to
7 the jury room to consult during your deliberations.

8

9 You must not infer from these instructions or from anything I may so or do as indicating
10 that I have an opinion regarding the evidence or what your verdict should be.

11

12 It is your duty to find the facts from all the evidence in the case. To those facts you will
13 apply the law as I give it to you. You must follow the law as I give it to you whether you
14 agree with it or not. And you must not be influenced by any personal likes or dislikes,
15 opinions, prejudices, or sympathy. That means that you must decide the case solely on
16 the evidence before you. You will recall that you took an oath to do so.

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18 In following my instructions, you must follow all of them and not single out some and
19 ignore others; they are all important.

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1 Duty of Fair Representation

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3 As you have heard, the Defendant in this case, USAPA, is a union. When a union or labor
4 organization is the exclusive representative of employees, the law requires that the union
5 represent the interests of those employees in a proper manner. This duty is known as the
6 "duty of fair representation."

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10 Once it becomes the representative, a union owes a duty of fair representation to every
11 employee within the bargaining unit that it represents. Not every employee within a
12 bargaining unit must be a member of that union. However, the union must represent the
13 interests of every employee within the bargaining unit, whether or not a given employee is
14 a member of the union.

15

16 Some Plaintiffs are not members of USAPA, but all Plaintiffs are members of the
17 bargaining unit represented by the Defendant, USAPA. Therefore, once it was certified
18 on April 18, 2008, USAPA owed all Plaintiffs a duty to fairly represent them.

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22 In this case you must decide whether USAPA has breached the duty of fair representation
23 owed to Plaintiffs. Plaintiffs contend that USAPA breached its duty. USAPA denies this
24 claim.

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26 If you decide that Plaintiffs have proven their case, then you will have found that USAPA
27 is liable to Plaintiffs and your verdict must be for Plaintiff. In that situation, it will be

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1 necessary to determine the amount of any money damages owed to Plaintiffs and whether
2 other relief should be granted, but those determinations will be made in a later phase of
3 the case by another jury or by the Court. In this trial, you are not asked to determine the
4 amount of any money damages owed or what other relief should be granted.

5
6 If, on the other hand, you decide that Plaintiffs have not proven their case, then your
7 verdict must be for the Defendant, USAPA.

8
9 * * *

10
11 Now I will instruct you on the scope and nature of the union's duty of fair representation.

12
13 Unions owe their members a contractual obligation to follow their constitutions. Unions
14 have a right to interpret their own constitutions. A union constitution, however, cannot
15 alter the duty of fair representation. A union's conduct may still violate the duty of fair
16 representation whether or not the conduct is consistent with the union's constitution.

17
18 * * *

19
20 A union owes a duty of fair representation only from the time that it becomes the
21 exclusive bargaining representative. It has no duty to represent employees in a bargaining
22 unit before it is certified as the exclusive bargaining representative for the bargaining
23 unit.

24
25 In this case, Defendant USAPA was not certified to represent Plaintiffs until April 18,
26 2008. This means that you may not base any verdict in favor of Plaintiffs upon a finding
27 that USAPA breached its duty of fair representation before April 18, 2008. You may still
28

1 consider the circumstances before USAPA was certified and USAPA's actions before
2 then in determining whether USAPA violated its duty of fair representation on or after
3 April 18, 2008.

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7 A union breaches or violates its duty of fair representation when, in the course of
8 negotiating a collective bargaining agreement, the union's conduct toward a member of
9 the bargaining unit it represents is discriminatory or in bad faith. In this case, the union
10 violated its duty if it adopted and submitted its seniority proposal for a reason or reasons
11 that are not legitimate union objectives.

12

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15 A union has a duty to represent the employees in the bargaining unit fairly and
16 impartially. This duty includes the requirement that the union's actions must be taken in
17 good faith and with an honest purpose.

18

19 The fact that one group of workers is adversely affected by an action taken by the union is
20 not enough, in and of itself, to establish that the union breached the duty of fair
21 representation. In general, a union complies with its duty of fair representation if its
22 decisions and actions were intended to promote the interests of the bargaining unit as a
23 whole. The law allows a union to reconcile differences between two groups of workers,
24 as long as its actions are done in good faith, and are not taken solely to benefit one group
25 of workers over another but rather with an intent to benefit the bargaining unit as a whole.

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1 In determining whether Defendant USAPA's seniority proposal was intended to benefit
2 the bargaining unit as a whole, you may consider whether USAPA properly considered
3 the interests of all the employees in the bargaining unit before adopting its seniority
4 proposal, as well as any promises USAPA may have made during its election campaign.
5 Even if the union's conduct could be rationally related to a legitimate union objective, the
6 union can still be liable for violating its duty of fair representation if its actions are shown
7 to be solely motivated by objectives that are not legitimate union objectives.

8
9 * * *

10
11 Because the union is the exclusive bargaining representative for the employees in the
12 bargaining unit, it is a legitimate objective of the union to negotiate with the employer
13 over the terms and conditions of employment. During this negotiation, or collective
14 bargaining, the interests of all employees the union represents are to be considered. A
15 wide range of reasonableness must be allowed a union bargaining to serve all the
16 members of the unit it represents, subject to good faith.

17
18 However, a union may not make seniority decisions solely to benefit a stronger, more
19 politically favored group over a minority group. In other words, a union may not pursue
20 seniority-related bargaining objectives solely on the basis of political expediency.
21 Preferential representation to the numerically larger number of voters is not in itself a
22 legitimate union objective.

23
24 It is a legitimate union objective to resolve the conflicting interests of members of the
25 bargaining unit or groups of members within the bargaining unit. The law does not
26 demand that all members be satisfied with the resolution. However, in general it is not a
27 legitimate union objective merely to change the outcome of a conflict that was already
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1 resolved by a procedure agreed upon by the pilot representatives. In this case, a general
2 preference for any particular seniority system other than the Nicolau Award is not,
3 standing alone, a legitimate union objective. The union may, however, change the
4 outcome of a conflict that was already resolved by a procedure agreed upon by the pilot
5 representatives if in doing so, the union is actually motivated to further a union objective
6 that is legitimate.

7
8 In this case, dissatisfaction with the practices or policies of the previous union, ALPA,
9 unrelated to the merged pilot seniority list, is not a legitimate union objective.

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11 * * *

12
13 The Nicolau Award was a final and binding resolution of the conflicting interests of the
14 two pilot groups with respect to seniority rights. As provided in the Transition
15 Agreement, ALPA Merger Policy required ALPA, and consequently USAPA, to adopt
16 the Nicolau Award as its bargaining position and use all reasonable means at its disposal
17 to compel the employer to accept and implement the Nicolau Award. Revisiting the
18 seniority issue, in itself, was not a legitimate union objective for USAPA. However,
19 USAPA was entitled to revisit the issue of seniority rights if it was actually motivated to
20 further legitimate union objectives. Any new collective bargaining agreement is subject
21 to ratification or rejection by a majority vote of USAPA members.

22
23 Dissatisfaction with the procedures, agreed to by the representatives of both pilot groups,
24 by which the Nicolau Award was formulated is not a legitimate union objective.

25
26 Plaintiffs contend that USAPA's articulated reason for its actions is a pretext for
27 breaching the duty of fair representation. A "pretext" is a reason asserted to justify an act,
28

1 which is not the true reason for such act. When you consider Plaintiffs' evidence of
2 pretext, remember that the relevant question is whether USAPA's reason was not the real
3 reason for USAPA's actions. You are not to consider whether USAPA's reason showed
4 poor or erroneous judgment. You are not to consider USAPA's wisdom. However, you
5 may consider whether USAPA's stated reason is the true reason or merely a pretext.
6 Plaintiffs have the burden to persuade you by a preponderance of the evidence that
7 USAPA took action against Plaintiffs for improper reasons.

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11 The parties have strong differences of opinion on which method of seniority integration
12 or proposal is to be preferred. You are not asked to decide whether the Nicolau Award or
13 the Defendant's seniority proposal is to be preferred. You are not asked to decide whether
14 Mr. Nicolau properly conducted the arbitration or reached a preferable result.

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18 If you decide that USAPA was not actually motivated by a legitimate union objective in
19 adopting and promoting its seniority proposal and did so only to enhance the rights of
20 East Pilots at the expense of West Pilots, then you must find for Plaintiffs. If you decide
21 that USAPA was actually motivated by a legitimate union objective in adopting and
22 promoting its seniority proposal, then you must find for USAPA.

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Burden of Proof – Preponderance of the Evidence

In this case, the Plaintiffs have the burden of proving all elements of their claim by a preponderance of the evidence.

When a party has the burden of proof on any claim by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim is more probably true than not true.

You should base your decision on all of the evidence, regardless of which party presented it.

* * * *

What Is Evidence

The evidence you are to consider in deciding what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits which are received into evidence; and
3. any facts to which the lawyers have agreed.

1 What Is Not Evidence

2

3 In reaching your verdict, you may consider only the testimony and exhibits
4 received into evidence. Certain things are not evidence, and you may not consider them in
5 deciding what the facts are. I will list them for you:

6

7 (1) Arguments and statements by lawyers are not evidence. The lawyers are not
8 witnesses. What they have said in their opening statements, will say in their closing
9 arguments, and at other times is intended to help you interpret the evidence, but it is not
10 evidence. If the facts as you remember them differ from the way the lawyers have stated
11 them, your memory of them controls.

12

13 (2) Questions and objections by lawyers are not evidence. Attorneys have a duty to
14 their clients to object when they believe a question is improper under the rules of
15 evidence. You should not be influenced by the objection or by the court's ruling on it.

16

17 (3) Testimony that has been excluded or stricken, or that you have been instructed to
18 disregard, is not evidence and must not be considered. In addition sometimes testimony
19 and exhibits are received only for a limited purpose; when I have given a
20 limiting instruction, you must follow it.

21

22 (4) Anything you may have seen or heard when the court was not in session is
23 not evidence. You are to decide the case solely on the evidence received at the trial.

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1 Evidence for Limited Purpose

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3 Some evidence may be admitted for a limited purpose only.

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5 When I instruct you that an item of evidence has been admitted for a limited
6 purpose, you must consider it only for that limited purpose and for no other.

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9 Direct and Circumstantial Evidence.

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11 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as
12 testimony by a witness about what that witness personally saw or heard or did.

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14 Circumstantial evidence is proof of one or more facts from which you could find
15 another fact. You should consider both kinds of evidence. The law makes no distinction
16 between the weight to be given to either direct or circumstantial evidence. It is for you to
17 decide how much weight to give to any evidence.

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1 Credibility of Witnesses

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3 In deciding the facts in this case, you may have to decide which testimony to
4 believe and which testimony not to believe. You may believe everything a witness says,
5 or part of it, or none of it. Proof of a fact does not necessarily depend on the number of
6 witnesses who testify about it.

7

8 In considering the testimony of any witness, you may take into account:

9

10 (1) the opportunity and ability of the witness to see or hear or know the things
11 testified to;

12 (2) the witness's memory;

13 (3) the witness's manner while testifying;

14 (4) the witness's interest in the outcome of the case and any bias or prejudice;

15 (5) whether other evidence contradicted the witness's testimony;

16 (6) the reasonableness of the witness's testimony in light of all the evidence; and

17 (7) any other factors that bear on believability.

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19 The weight of the evidence as to a fact does not necessarily depend on the
20 number of witnesses who testify about it.

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1 No Transcript Available to Jury

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3 During deliberations, you will have to make your decision based on what you
4 recall of the evidence. You will not have a transcript of the trial.

5 * * *

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7 Taking Notes

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9 Whether or not you have taken notes, you should rely on your own memory of the
10 evidence. Notes are only to assist your memory. You should not be overly influenced by
11 your notes or those of your fellow jurors.

12

13 When you leave, your notes should be left in the jury room. No one will read your notes.

14 They will be destroyed at the conclusion of the case.

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17 Stipulations of Fact

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19 The parties have agreed to certain facts that have been read to you. You should therefore
20 treat these facts as having been proved.

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1 Charts and Summaries Not Received In Evidence.

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3 Certain charts and summaries not received in evidence have been shown to you in order
4 to help explain the contents of books, records, documents, or other evidence in the case.

5 They are not themselves evidence or proof of any facts. If they do not correctly reflect the
6 facts or figures shown by the evidence in the case, you should disregard these charts and
7 summaries and determine the facts from the underlying evidence.

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11 Charts and Summaries In Evidence.

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13 Certain charts and summaries have been received into evidence to illustrate information
14 brought out in the trial. Charts and summaries are only as good as the underlying evidence
15 that supports them. You should, therefore, give them only such weight as you think the
16 underlying evidence deserves.

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1 Duty to Deliberate

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3 When you begin your deliberations, you should elect one member of the jury as your
4 presiding juror. That person will preside over the deliberations and speak for you here in
5 court.

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7 You will then discuss the case with your fellow jurors to reach agreement if you can do
8 so. Your verdict must be unanimous.

9

10 Each of you must decide the case for yourself, but you should do so only after you have
11 considered all of the evidence, discussed it fully with the other jurors, and listened to the
12 views of your fellow jurors.

13

14 Do not hesitate to change your opinion if the discussion persuades you that you should.
15 Do not come to a decision simply because other jurors think it is right.

16

17 It is important that you attempt to reach a unanimous verdict but, of course, only if each
18 of you can do so after having made your own conscientious decision. Do not change an
19 honest belief about the weight and effect of the evidence simply to reach a verdict.

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Communication With Court.

If it becomes necessary during your deliberations to communicate with me, you may send a note through the bailiff, signed by your presiding juror or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

1 Return of Verdict

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4 A verdict form has been prepared for you. After you have reached unanimous agreement
5 on a verdict, your presiding juror will fill in the form that has been given to you, sign and
6 date it, and advise the court that you are ready to return to the courtroom.

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