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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'S  
STATEMENT  
OF MATERIAL FACTS  
PURSUANT TO LRCiv 56.1**

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 Pursuant to LRCiv 56.1, Defendant, US Airline Pilots Association (“USAPA”),  
2 submits the following statement of material facts on which USAPA relies in support of  
3 its motion for summary judgment. These facts are not in dispute because they are  
4 stipulated to, were admitted or waived, because they are established by evidence that  
5 was admitted at trial or otherwise in the record that Plaintiffs offered, or were  
6 established by Defendant’s evidence that was not contradicted, nor could be, beyond  
7 any genuine dispute.

8 1. Plaintiffs are pilots who, prior to the merger between US Airways and  
9 America West Airlines, were employed by America West Airlines, and who are now  
10 employed by US Airways. *Source:*

- 11 • Final Jury PreTrial Order, Doc. # 417, at § C “Stipulations and Uncontested  
12 Facts and Law” ¶¶ 1-6.<sup>1</sup>
- 13 • Stipulated Statement of Facts, Doc. #. 77, at ¶¶ 3-8.

14 2. Defendant, US Airline Pilots Association (“USAPA”) is an  
15 unincorporated association with a principal place of business in Charlotte, North  
16 Carolina. *Source:*

- 17 • Final Jury PreTrial Order, Doc. # 417, at § C “Stipulations and Uncontested  
18 Facts and Law” ¶ 22.
- 19 • Stipulated Statement of Facts, Doc. #. 77, at ¶ 11.

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21 \_\_\_\_\_  
22 <sup>1</sup> The stipulated facts were read into the trial record at well (Tr. 1131).

1           3.     The National Mediation Board (“NMB”) certified USAPA as the  
2 exclusive collective bargaining representative of the pilots employed by US Airways  
3 on April 18, 2008. *Source:*

- 4           • Final Jury PreTrial Order, Doc. # 417, at § C “Stipulations and Uncontested  
5 Facts and Law” ¶ 23.
- 6           • Stipulated Statement of Facts, Doc. #. 77, at ¶ 12.

7           4.     US Airways is a Delaware corporation with its principal place of business  
8 in Tempe, Arizona. At all times relevant to this action, US Airways has engaged in  
9 interstate commerce in the industry of air transportation, and has been an employer in  
10 an industry affecting interstate commerce. *Source:*

- 11           • Final Jury PreTrial Order, Doc. # 417, at § C “Stipulations and Uncontested  
12 Facts and Law” ¶ 7.
- 13           • Stipulated Statement of Facts, Doc. #. 77, at ¶¶ 9-10.

14           5.     In May 2005, two air carriers, America West Airlines, Inc. and US  
15 Airways, Inc. agreed to merge by combining all or substantially all of their assets.  
16 The surviving entity is known as US Airways. *Source:*

- 17           • Final Jury PreTrial Order, Doc. # 417, at § C “Stipulations and Uncontested  
18 Facts and Law” ¶¶ 9, 10.
- 19           • Stipulated Statement of Facts, Doc. #. 77, at ¶ 2.

20           6.     On September 23, 2005, US Airways, America West, and ALPA entered  
21 into a “Transition Agreement” for the purpose of governing the process of the two  
22 airlines’ operational merger as it related to the airlines’ pilots. *Source:*

- 1 • Final Jury PreTrial Order, Doc. # 417, at § C “Stipulations and Uncontested  
2 Facts and Law” ¶ 11.
- 3 • Plaintiffs’ Trial Ex. No. 21 (Admitted, *See* Doc. # 472), the Transition  
4 Agreement.
- 5 • Stipulated Statement of Facts, Doc. #. 77, at ¶ 16.

6 7. The Transition Agreement states that the parties **shall maintain**  
7 **“Separate Operations” until the implementation of a single collective bargaining**  
8 **agreement** covering both pilot groups, and all parties interpreted and applied the  
9 Transition agreement to mean the same. *Source:*

- 10 • Plaintiffs’ Trial Ex. No. 21 (Admitted, *See* Doc. # 472), the Transition  
11 Agreement at § II A and § VI A.
- 12 • Final Jury PreTrial Order, Doc. # 417, at § C “Stipulations and Uncontested  
13 Facts and Law” ¶ 19: “The Transition Agreement states that the parties shall  
14 maintain ‘Separate Operations’ until the implementation of a single  
15 collective bargaining agreement covering both pilot groups. During  
16 Separate Operations, East and West aircraft may only be flown by East and  
17 West pilots respectively, unless otherwise permitted or agreed under the  
18 Transition Agreement.”
- 19 • Stipulated Statement of Facts, Doc. #. 77, at ¶ 1 K and ¶ 44.

20 8. Both the Transition Agreement and ALPA Merger Policy state that the  
21 **Airline may not use the single seniority list until an agreement is reached on a**  
22 **single collective bargaining agreement** covering both pilot groups, unless otherwise  
agreed to by all of the parties, and all parties interpreted and applied the Transition  
agreement to mean the same. *Source:*

- Final Jury PreTrial Order, Doc. # 417, at § C “Stipulations and Uncontested

1 Facts and Law” ¶ 20: “Both the Transition Agreement and ALPA Merger  
2 Policy states that the Airline may not use the single seniority list until an  
3 agreement is reached on a single collective bargaining agreement covering  
4 both pilot groups, unless otherwise agreed to by all of the parties.”

- 4 • Amended Complaint (Doc. # 86) at ¶ 44(j).
- 5 • Plaintiffs’ Trial Ex. No. 21 (Admitted, *See* Doc. # 472), the Transition  
6 Agreement at § IV C.
- 7 • Plaintiffs’ Trial Ex. No. 3 (Admitted, *See* Doc. # 472), ALPA Merger  
8 Policy at Part 1 § D 4 and N 2.
- 9 • Plaintiffs’ Trial Ex. No. 9 (Admitted, *See* Doc. # 472), letter from US  
10 Airways’ CEO Doug Parker: “Of course, the list cannot be implemented  
11 without a single labor agreement covering all of our pilots.”
- 12 • Plaintiffs’ trial testimony by deposition of Hemenway at 866:6-7.
- 13 • *See also*, Defendant’s admitted (as recorded in Doc. # 472) trial exhibits  
14 Nos. 1034, 1052, 1057, 1060, 1122, and 1270.

15 **9. Neither the Transition Agreement nor ALPA Merger Policy contains a**  
16 **timetable, or deadline, to complete a new, single collective bargaining agreement.**

17 *Source:*

- 18 • Plaintiffs’ trial testimony of Addington at 274:16-22: “no timetable to reach  
19 a joint collective bargaining agreement.”
- 20 • Plaintiffs’ trial testimony of Dotter at 345:4-8: “There is not a provision that  
21 states how long it should take for the completion of merging the working  
22 agreements.”
- Plaintiffs’ trial testimony by deposition Hemenway at 869:3-6 (no specific  
timetable to reach single CBA).
- Plaintiffs’ trial Ex. 5, Letter from US Airways CEO Doug Parker, dated Aug.

1 16, 2007 (“I should clarify that a joint contract does not necessarily mean  
2 immediate seniority integration.”)

- 3 • *See also*, testimony of Stephan at 983:21-984:2 (no timetable to reach single  
4 CBA).
- 5 • *See also*, Def. Trial Ex. 1122, ALPA President Prater’s letter of 03/14/08, at  
6 page 1, fourth paragraph, “Merger Policy does not contain a timetable for  
7 completing the single agreement” and fifth paragraph, “I repeat – there is no  
8 required timetable for implementation of the award.”

9 **10.** The Transition Agreement **contains no provisions limiting the**  
10 **Company from engaging in pilot furloughs** except for the minimum aircraft and  
11 utilization requirements set forth in Section II of the Transition Agreement. *Source:*

- 12 • Plaintiffs’ Trial Ex. No. 21 (Admitted, *See* Doc. # 472), the Transition  
13 Agreement at § II.
- 14 • *See also*, Hemenway Declaration, Doc. # 53-2 at ¶ 25: “Although ALPA  
15 proposed a no furlough provision during negotiations for the Transition  
16 Agreement that would have been applicable during the period of Separate  
17 Operations, US Airways did not agree to such a provision. *As a result, the*  
18 *Transition Agreement contains no provisions limiting the Company from*  
19 *engaging in pilot furloughs* except for the minimum aircraft and utilization  
20 requirements set forth in Section II of the Transition Agreement. Under  
21 those terms, furloughs are permitted during the period of Separate  
22 Operations so long as US Airways maintains a sufficient number of pilots in  
each of its East and West operations to fly at least the minimum number of  
aircraft at their minimum utilization rate for that fleet.” [emphasis added]
- *See also*, Hemenway Deposition at Tr. 112:5-13, same as Hemenway  
Declaration ¶ 25 (*See, attached Declaration of Nicolas P. Granath, herein*  
*after “Decl.” at Exhibit, hereinafter “Ex.” C).*

**11.** Since the date of its certification, USAPA’s collective bargaining  
objective has been to obtain agreement with the Company on a single collective

1 bargaining agreement that would enhance wages, benefits, and working conditions  
2 and implement a date-of-hire seniority list with conditions and restrictions designed to  
3 protect each pilot's unmerged career expectations. *Source:*

- 4 • Plaintiffs' trial testimony By Deposition of Hemenway, Tr. 891:23-25: "I  
5 don't see any evidence that USAPA is not working hard to make an  
6 agreement."
- 7 • *See also*, Hemenway Deposition 33:25, 173:19 (Decl. Ex. C).

7 **12. USAPA has not engaged in any delay** in negotiating a single collective  
8 bargaining agreement, but rather is pursuing the bargaining objective of obtaining a  
9 single collective bargaining agreement with an integrated seniority list. *Source:*

- 10 • Amended Complaint, Doc. # 86, at ¶74 ("Since June 2008, Defendant US  
11 Airways and USAPA have been negotiating one or more collective  
12 bargaining agreements...");
- 13 • Amended Complaint, Doc. # 86, at ¶ 75 ("In negotiating one or more  
14 collective bargaining agreements to replace the West CBA and the East  
15 CBA...");
- 16 • Plaintiffs' Response to Defendant USAPA's Motion for Reconsideration of  
17 Order Setting Trial Date, Doc. # 239 at 7:24-26 (USAPA "is working hard  
18 to finalize negotiation and approval of a date-of-hire single collective  
19 bargaining agreement with the Company.");
- 20 • Plaintiffs' brief opposing Defendant's motion in limine No. 17, Doc. # 325  
21 at 16:22 ("Plaintiffs have not yet contended that USAPA deliberately  
22 delayed negotiations of a single CBA.");
- Plaintiffs' Joint "Proposed Final Pretrial Order For Jury Trial," Doc. # 356  
at p. 17 ("USAPA has been bargaining with the Airline toward the adoption  
of a new collective bargaining agreement.");
- Statement of Plaintiffs' Counsel in Pre-Trial Conference, Apr. 21, 2009, Tr.  
42:8 ("We're not saying that they delayed any section.");

- 1 • Plaintiffs’ trial testimony of Wargocki at Tr. 1327:14 to 1328:2 (“They are
- 2 negotiating towards a single CBA”);
- 3 • Addington Dep. Tr. 97:21 – 98:15 (no basis to believe that USAPA is trying
- 4 to delay negotiations toward a single CBA) (Decl. Ex. D);
- 5 • Bostic Dep. Tr. 107:4-10 (“I don’t know of any deliberately delayed
- 6 attempts on USAPA’s part”) (Decl. Ex. E);
- 7 • Burman Dep. Tr. 47:14-20 (does not have evidence that USAPA is trying to
- 8 perpetuate separate operations) (Decl. Ex. F);
- 9 • Iranpour Dep. Tr. 67:7-12 (understands USAPA’s current objective to be
- 10 negotiating a single CBA with a date of hire seniority list) (Decl. Ex. G);
- 11 • Wargocki Dep. Tr. 159:3-10 (does not believe that USAPA is continuing
- 12 the East MEC’s objective of permanent separate operations) (Decl. Ex. H);
- 13 • Velez Dep. Tr. 47:20 – 48:7 (does not believe USAPA’s bargaining
- 14 objective is to perpetuate separate operations) (Decl. Ex. I);
- 15 • Plaintiffs’ trial testimony by Dotter (Tr. 365:5-8);
- 16 • Plaintiffs’ trial testimony by Payne (Tr. 820:7-10 USAPA is bargaining for a
- 17 “single Collective Bargaining Agreement”);
- 18 • Plaintiffs’ trial testimony by deposition of Hemenway (Tr. 891:23-25 “I
- 19 don’t see any evidence that USAPA is not working hard to make an
- 20 agreement.”)
- 21 • *See also*, Hemenway Deposition at Tr. 173:15-21 (Decl. Ex. C).

18 **13.** The USAPA Merger Committee presented its seniority integration  
19 proposal to US Airways on September 30, 2008. *Source:*

- 20 • Final Jury PreTrial Order, Doc. # 417, stipulation of fact at ¶ 24.

21 **14.** The Company has not yet responded to the USAPA seniority integration



1 proposal. *Source:*

- 2 • Final Jury PreTrial Order, Doc. # 417, stipulation of fact at ¶ 24.

3 **15.** Plaintiffs have either waived any right to assert claims for damages in  
4 uncontradicted pretrial deposition testimony by disclaiming any damages or by  
5 admitting that all they could do was speculate. *Source:*

- 6 • Addington Dep. Tr. 67:13 (admits he calculated no damages) (Decl. Ex. D);  
7 • Bostic Dep. Tr. 28:7; 33:23; 35:25 (admits he calculated no damages and  
8 applied for no jobs) (Decl. Ex. E).  
9 • Burman Dep. Tr. 36:5; 72:9; 72:17 (admits he calculated no damages, and is  
10 not seeking any damages, and testified “that’s not what the intent of the suit  
11 is”) (Decl. Ex. F);  
12 • Iranpour Dep. Tr. 43:25 (admits he calculated no damages) (Decl. Ex. G);  
13 • Velez Dep. Tr. 32:25 (can only estimate a nominal amount) (Decl. Ex. I);  
14 • Wargocki Dep. Tr. 57:21 (admits he is not seeking any money damages)  
(Decl. Ex. H).

15 **16.** After this Court dismissed Counts I and II for lack of jurisdiction (Doc. #  
16 84), the Plaintiffs pursued those claims before the parties’ (company and union)  
17 System Board Of Adjustment. *Source:*

- 18 • Letter, 2 Dec. 08, Flood to Parties presenting Counts I and II as grievance  
(Decl. Ex. A).

19 **17.** The parties provided Plaintiffs with unhindered access to the Board, and  
20 with Plaintiffs’ participation and consent scheduled a hearing on their Count I and II  
21 grievances for May 28-29, which remains pending. *Source:*

- 1 • Email correspondence with Plaintiffs’ attorney, the parties, and Arbitrator  
2 Bloch scheduling May 2009 arbitration. (Decl. Ex. B);  
3 • *See also*, Hemenway Deposition 30:21 (Counts I and II now pending before  
4 Board) (Decl. Ex. C).

5 **18.** The Board retains full authority to provide make-whole remedies for  
6 breaches of contract. *Source*:

- 7 • Plaintiffs’ trial Ex. No. 21 (Admitted, *See* Doc. # 472), the Transition  
8 Agreement at § X entitled “Disputes as to Interpretation or Application of  
9 this Letter of Agreement”.
- 10 • Hemenway Decl. (Doc. # 31) at ¶ 5.

11 **19.** Since USAPA started negotiating a single CBA, USAPA has exercised its  
12 right to reopen several sections that had previously been tentatively agreed to between  
13 the company and ALPA. *Source*:

- 14 • Plaintiffs’ trial Testimony by deposition of Hemenway (Tr. 887:21 –  
15 888:1 “When a new representative is put in place, they quite  
16 understandably have different interests than the old representative. And  
17 we certainly found that to be the case with USAPA. So what happened  
18 immediately is that [of] the previously agreed to 12 tentative sections, 9 of  
19 those were unagreed to.”);
- 20 • Plaintiffs’ trial Testimony by deposition of Hemenway (Tr. 870:9-20 The  
21 right to reopen is “a right that both parties have in negotiations. A  
22 tentative agreement is just that. It’s a tentative agreement. And  
occasionally, if something else changes in another part has some sort of  
spill back effect then either party may want to take a look at that previous  
tentative agreement.” Hemenway agreed that the right to reopen is “being  
observed as well in the negotiations with USAPA currently.”).

**20.** US Airways and USAPA remain a substantial distance apart in  
negotiating a single CBA, not including negotiations on integrated seniority. *Source*:

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- Plaintiffs’ trial Testimony by deposition of Hemenway (Tr. 887:6-10 Agreeing that “[t]he parties still remain a substantial difference apart ... on those 28 or 29 sections not including the integrated seniority.”)

21. The company’s “Kirby proposal” was described by the West MEC as “woefully inadequate” but it is the proposal that remains ‘on the table.’

- Plaintiffs’ trial testimony of Payne (Tr. 644:15-19)
- Defendant’s trial testimony of Stephan (Tr. 185:21 984:12; 189:13; 986:5; 1300:18; 1308:17; 1309:18; 1310:3; 1320:12)

1 Respectfully Submitted,

2 Dated: May 22, 2009

By: /s/ Nicholas P. Granath, Esq.

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**CERTIFICATE OF SERVICE**

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

- Defendant’s Statement Of Material Facts Pursuant To LRCiv 56.1
- Declaration of Nicholas Granath and its attachments
- Certificate of Service

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

Marty Harper	Don Stevens	Andrew S. Jacob
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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.

On May 22 2009, by:

*/s/ Nicholas Paul Granath, Esq.*