



**U-S AIRWAYS**

4000 E. Sky Harbor Blvd.  
Phoenix, AZ 85034  
480.693.0800

E. Allen Hemenway  
Vice President, Labor Relations

December 4, 2009

Sent via facsimile and electronic

Lawrence E. Gibbons  
Director, Office of Mediation Services  
National Mediation Board  
1301 K Street, NW, Suite 250 East  
Washington, D.C. 20005-7011

Re: Applications for Mediation Services: US Airways, Inc. (America West Airlines and US Airways) and US Airline Pilots Association – NMB File No. CA-6968

Dear Mr. Gibbons:

This responds to your request that US Airways provide comments concerning the referenced applications for mediation services filed with the National Mediation Board by the US Airline Pilots Association (USAPA) on November 13, 2009. In those applications, USAPA seeks to invoke the Board's services in respect of negotiations over a single agreement covering the pilots employed by pre-merger US Airways (the "East pilots") and pre-merger America West Airlines pilots (the "West pilots").

In view of the Board's decision in US Airways/America West Airlines, 35 NMB 65 (2008), that the merger of those carriers has resulted in a single transportation system concerning its pilots, a single agreement covering all post-merger US Airways pilots is appropriate. The collective bargaining agreement covering the West pilots is currently amendable, and the agreement covering the East pilots will become amendable on January 1, 2010. At that time, the Company will not contest the Board's authority to assert jurisdiction over this matter. However, for a number of reasons, it is the Company's position that mediation efforts by the Board are premature. Thus, we respectfully request that the Board defer active mediation for the time being while the parties continue with the private mediation process that has been underway since June 2009.

First, although negotiations for a single agreement began in 2005, intervening events have resulted in a considerable delay in progress toward a final contract and in fact given all the delays, talks really have not yet gotten started. Pursuant to the terms of the Transition Agreement that was reached by pre-merger US Airways, pre-merger America West Airlines and the Master Executive Councils of the Air Line Pilots Association (ALPA) at each of those airlines, the parties agreed to focus on the negotiation of a single agreement (and not conduct negotiation of separate East and West agreements as those contracts became amendable), negotiations began in 2005, and talks over a single agreement proceeded through September 2007. A copy of the Transition Agreement is included with this letter. In an effort to reach a comprehensive agreement without further delay, the Company (in May of 2007) presented a comprehensive proposal to the two pilot groups. That proposal was intended as the precursor to a final agreement.

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In the same month, shortly before the comprehensive proposal was presented, Arbitrator George Nicolau issued his award concerning the integration of the seniority lists of the West and the East pilots. Arbitrator Nicolau found that certain West pilots with fewer years of service than certain of their East counterparts were entitled to higher slots on the integrated list. The East pilots had argued that the seniority list should be integrated on a strict date-of-hire basis, and were very unhappy with the Nicolau award. Under the Transition Agreement, an integrated pilot seniority list cannot be used by the Company until a single agreement has been reached. Thus, the East pilots understood that the effect of the Nicolau award could be postponed by delaying the negotiation of that single agreement, and the East MEC directed its negotiating committee to cease participation in the single agreement talks.

No negotiations took place after September 2007. Instead, an organizing campaign was initiated among the East pilots by USAPA, a newly created union with a Constitution and Bylaws mandating the use of strict date-of-hire seniority in integrating pilot seniority lists. With their numerical superiority, the East pilots were able to prevail in the representation election conducted by the Board, and, on April 18, 2008, USAPA was certified as the representative of all of the pilots of post-merger US Airways. US Airways, 35 NMB 135 (2008).

When negotiations over a single agreement finally resumed in June 2008, USAPA did not simply take over where ALPA had left off. Instead, bargaining essentially began from scratch as the newly formed Negotiations Advisory Committee went through each proposal word-by-word and rescinded many of the tentative agreements reached by the Company and ALPA. USAPA's process of reviewing the prior agreements of its predecessor has still not been completed. For example at recent negotiating sessions, the Negotiations Advisory Committee continued to withdraw from prior agreements ALPA had reached.

Additionally, during the on-going negotiations and mediation process the proposals advanced by USAPA (in response to their own previous proposals) are very often regressive. Not only has the Union repeatedly reopened provisions that have been agreed to in previous bargaining sessions, but it has changed fundamental concepts the parties each been relying on to try to reach agreement. To cite just one of many examples, at the most recent bargaining session in mid-November, the Negotiations Advisory Committee announced, for the very first time, that the preferential bidding system that both sides had agreed from the outset of negotiations would serve as the basis for creating pilot schedules was unacceptable. Instead, the Committee declared that its scheduling proposal would involve line building as was done in the industry decades ago. When asked the reasons behind this huge change in its approach to scheduling, the Union would say only that its Board of Pilot Representatives (BPR) had directed the adoption of a different plan. According to the Committee, no further explanation of the reasoning behind this change could or would be provided.

Moreover, the chasm between the parties' bargaining positions is so dramatic that intervention by the Board is not likely to be fruitful at this time. In the current economy, with the Company facing enormous losses now and for the foreseeable future, just the USAPA proposals that are now on the table would increase annual pilot costs by nearly \$500 million. And, inasmuch as the

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Negotiating Advisory Committee has informed us that their proposal concerning pilot pay is going to be revised significantly, that figure is actually much lower than where USAPA soon plans to be. Since the Union has yet to present a comprehensive package including all economic items, the financial impact from its overall proposal will be even more exorbitant than what we have already seen.

Despite the massive financial losses it has incurred since its comprehensive proposal was first presented to ALPA in May 2007, the Company has continued to keep nearly all elements of that offer on the table. Even though that proposal would increase the Company's annual pilot costs by more than \$100 million, not a single significant aspect of that proposal has thus far been withdrawn. Through the enormous spike in oil prices during the summer of 2008 and the drastic loss of revenues resulting from the current recession, the Company has not yet chosen to retreat from the offer it was able to extend at a time when the economic outlook in general, and for US Airways in particular, was much, much brighter.

Its conduct away from the bargaining table reveals the actual motives for USAPA's negotiating strategy. A campaign is underway encouraging US Airways pilots to prepare to engage in a work stoppage. "Cash or Chaos" stickers have been found in pilot crew lounges and in other locations frequented by Company pilots. Union updates advise that, "We have the power to show management who this airline belongs to." Rather than seeking mediation in order to achieve a single agreement acceptable to the pilots and to the Company, it appears USAPA intends to try to convince the Board to exercise its powers to release the parties to engage in self-help.

Indeed, until its Constitution and Bylaws are changed, the Union cannot lawfully enter a single agreement no matter what terms are offered by the Company. In Addington v. US Airline Pilots Association, CV-08-1633-PHX-NVW (July 17, 2009), a federal court in Phoenix issued a permanent injunction, a copy of which is attached hereto as Attachment B, requiring USAPA to negotiate a single agreement that implements the terms of the Nicolau award without modification. A group of West pilots had sued USAPA for violating its duty of fair representation by presenting a date-of-hire seniority proposal in negotiations with the Company. After a jury verdict in favor of the plaintiffs, the court enjoined USAPA from negotiating separate pilot agreements for the East and West pilots and ordering USAPA to support and defend the Nicolau award in negotiations with the Company.

In spite of that Injunction, USAPA has not modified the date-of-hire seniority integration requirement contained in its Constitution and Bylaws in any way. Nor has the Union withdrawn or altered the unlawful date-of-hire seniority proposal it presented to the Company last year. In fact, the only time the Negotiations Advisory Committee has even acknowledged the existence of the court order was in a written statement read at the bargaining table indicating that the Union intended "to comply with the injunction pending appeal."

Instead of complying with the court order, however, USAPA recently presented a sick leave proposal that would provide East pilots with completely different benefits than the West pilots receive. That proposal contravenes the provision set forth in the injunction that USAPA "not

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negotiate for separate collective bargaining agreements for the separate pilot groups, but rather negotiate for a single collective bargaining agreement for both pilot groups that incorporates the Nicolau Award.”

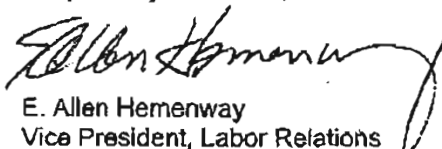
If the Company were to accept these USAPA sick leave or seniority proposals, it, too, would risk violating the injunction. The court order applies not just to USAPA “and its officers, committees, representatives, [and] agents”, but also to “all persons in active concert and participation with them.” To avoid potential contempt sanctions, the Company cannot bargain over certain proposals USAPA has presented.

Nor should the Board involve itself in mediating a dispute that must be resolved by the courts before the parties can determine whether the bargaining positions USAPA continues to take will be permitted in a final agreement. USAPA has appealed from the order issuing the injunction to the United States Court of Appeals for the Ninth Circuit, and oral argument in the case is scheduled to be held in San Francisco on December 8, 2009. Until a final decision has been rendered, even the framework of a final agreement cannot possibly be reached.

Section V.E. of the Transition Agreement governing negotiations over the terms of a single agreement provides for the appointment of a private mediator to facilitate negotiations at the request of either party. The Company invoked the mediation process earlier this year, and the parties jointly selected Carol Wittenberg to serve as their mediator. Since June, Ms. Wittenberg has been actively working as the mediator for the on-going talks between the parties. At this point, it is far too early in the process to determine how successful Ms. Wittenberg’s efforts may be. Shortly after Ms. Wittenberg was appointed to mediate the dispute, the court issued the injunction against USAPA, and, as a result, she has not had a realistic opportunity to assist the parties in resolving their differences.

Until that litigation is finally concluded and Ms. Wittenberg is thereafter afforded the time needed to try to settle the parties’ differences through the private mediation process the parties agreed to use to try to reach a single agreement, the Board should exercise its discretion to decline to assert jurisdiction over this matter. Accordingly, the Company respectfully requests that the Board direct the parties to continue to adhere to the private mediation process until the extreme differences in their positions have been narrowed and the West pilots’ lawsuit has been resolved.

Respectfully submitted,

  
E. Allen Hemenway  
Vice President, Labor Relations

**US AIRWAYS**  
Labor Relations

4000 E. Sky Harbor Boulevard  
Mail Code CH-VLR  
Phoenix, AZ 85034

# FAX

Date:	<b>December 4, 2009</b>
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To:	<b>Lawrence E. Gibbons</b>
	Director
	Office of Mediation Services
	National Mediation Board
Phone:	
Fax phone:	<b>(202) 692-5084</b>

From:	<b>Al Hemenway</b>
	Vice President
	Labor Relations
Phone:	<b>480-693-8634</b>
Fax phone:	

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