

Docket No. 09-16564

In the
UNITED STATES COURT OF APPEALS
for the
NINTH CIRCUIT

Don ADDINGTON, John BOSTIC, Mark BURMAN, Afshin IRANPOUR,
Roger VELEZ, and Steve WARGOCKI, *individually and representing*
a class of persons similarly situated,

Plaintiffs-Appellees

v.

US AIRLINE PILOTS ASSOCIATION, *an unincorporated association*
representing the pilots in the employment of US Airways Inc.,

Defendant-Appellant

Appeal from Permanent Injunction and related rulings necessary thereto
by the United States District Court for the District of Arizona.
No. 2:08-CV-1633 and 2:08-CV-1728 (consolidated)
Honorable Neil V. Wake, United States District Judge

ANSWERING BRIEF OF PLAINTIFFS-APPELLEES

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Exhibit C

DFR claim. That is just not true. USAPA offers no authority to support this. All the authorities addressed above hold otherwise.

USAPA makes this argument to take advantage of the great deference that courts give to a union when making an objective analysis of a DFR claim. The objective-arbitrary analysis is quite forgiving. “[A] union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a ‘wide range of reasonableness,’ as to be irrational.” *Air Line Pilots Assn. Intl. v. O’Neill*, 499 U.S. 65, 67 (1991) (citation omitted); *see, e.g., Nemsky*, 574 F.3d at 867 (evidence allowed summary judgment on arbitrary standard but precluded summary judgment on bad faith standard). The West Pilots, however, do not make that kind of claim. They make a bad faith claim decided by subjective analysis. Perhaps USAPA evades addressing that claim because the evidence of wrongful motivation here is so strong.

(3) The West Pilots make an improper motive DFR claim.

USAPA challenges the West Pilots’ claim on the basis that it is a “discrimination” claim and invalid because (so they allege) the West