

1 RANDAL E. MOWREY declares as follows under penalty of perjury pursuant to
2 28 U.S.C. § 1746:

3 1. I previously submitted a declaration in support of USAPA’s Motion for
4 Summary Judgment in this case (Doc. 153-3).

5 2. I make this declaration to supplement my previous declaration and, in
6 particular, the respond to certain so-called “statement of fact” submitted by US Airways
7 and the West Pilot Class.

8 3. USAPA Exhibit 23 is a true and accurate copy of the decision issued by
9 Arbitrator Richard Bloch on April 26, 2007, with respect to a dispute between two Locals
10 of the Transport Workers Union over the how the seniority lists of flight dispatchers
11 employed by America West and US Airways should be combined to create a “fair and
12 equitable” merged list. I included a quotation from the decision in my first declaration
13 (¶22).

14 4. USAPA Exhibit 24 is a true and accurate copy of a letter from ALPA
15 President Capt. John H. Prater to US Airways CEO Doug Parker dated December 14,
16 2007, stating that the “the award of the ALPA arbitration board” would be delivered to
17 the US Airways office in “Tempe, Ariz., on Wednesday, December 19, 2007.”

18 5. USAPA Exhibit 25 is a true and accurate copy of the seniority proposal
19 USAPA made to US Airways on September 30, 2008, which was referred to in my first
20 declaration (¶26).

21 6. USAPA Exhibit 26 is a true and accurate copy of a the Findings Upon
22 Investigation issued by the National Mediation Board on January 23, 2008, in which the
23 NMB concludes that US Airways and America West “constitute a single transportation
24 system” for the purposes of the Railway Labor Act.

25 7. Although ALPA does not participate as a party in seniority integration
26 arbitration proceedings under the ALPA Merger Policy and did not do so in the
27 proceeding resulting from the merger between America West and US Airways, ALPA is
28 significantly involved in the overall process. ALPA determines the Merger Policy itself
and as explained below (¶¶ 12-14) changes that policy from time to time. The changes
are accomplished by the action of the ALPA Executive Board and are not ratified by the

1 pilots. ALPA also negotiated a Transition Agreement with America West and US
2 Airways that provided the airline parties would continue to recognize ALPA subordinate
3 bodies the America West MEC and the US Airways MEC, would provide agreed upon
4 financial support for the two Merger Committees, would provide information in response
5 to requests by the two Committee and would abide by the result provided it met certain
6 defined conditions. In addition, in selecting a neutral arbitrator to hear the dispute, the
7 two Merger Committees are limited to picking from a list that is determined by ALPA.

8 8. As USAPA Ex. 24 shows, ALPA gave the Nicolau list to US Airways on
9 December 19, 2007. US Airways accepted the list on December 20, 2007. This was
10 done at a time when the US Airways MEC had demanded that ALPA reject list, while the
11 lawsuit filed by the US Airways MEC to vacate the Nicolau Award was being litigated
12 and while the application filed by USAPA to replace ALPA as the bargaining
13 representative was being processed. I and numerous other pilots believed that at least
14 part of the purpose for having US Airways accept the list was to attempt to persuade
15 pilots, particularly pilots employed by US Airways before the merger, that it would be
16 futile for them to choose USAPA instead of ALPA.

17 9. At the time the merger was announced in May 2005, America West was about
18 to file its own petition for reorganization under the Bankruptcy Code and was able to
19 avoid that filing because of the merger. America West CEO Doug Parker made this
20 statement in a Crew News meeting in Phoenix on February 6, 2007. As set forth in the
21 presentation made by the US Airways MEC to ALPA in support of its demand to set
22 aside the Nicolau Award, Mr. Parker said (USAPA Ex. 6, at P. 17):

23 First off, as to the . . . the stagnation of growth, for America West
24 pilots since the merger – what I will tell you is, and this is a hard thing to
25 communicate to people but I believe it with all my heart: If we didn't do the
26 merger with US Airways, you'd be in a lot worse position. Frankly, I think
27 as a 3 [year] F/O, you wouldn't have a job.

28 We would have gone through a bankruptcy filing. We would have
downsized. We had an airline at America West that had 20% lower unit
revenues than US Airways and now has the same unit costs. That airline
could not survive. We would have tried to make it better. We'd go file
bankruptcy and get ourselves a little stronger and now the economy's back
and we'd be trying to come out like Delta is.

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2 But I swear to you that [the] airline was going to file bankruptcy.
3 When it filed bankruptcy, we would have downsized at least 15%, and, you
4 know, while you feel bad about stagnation, you should feel better about that
5 versus where you were headed. And that's where we were headed.

6 10. The Plan of Reorganization approved by the Bankruptcy Court was the result
7 of an agreement by America West and US Airways to merge.

8 11. Article XVIII of the ALPA Constitution in effect at the time of the merger
9 between America West and US Airways provides:

10 **SECTION 1 - COLLECTIVE BARGAINING**

11 Conference or negotiations shall not be initiated, carried on, or concluded
12 in the name of ALPA by any member, group, or groups of members thereof
13 to make or establish employment agreements relating to rates of pay, rules,
14 or other conditions of employment, or any other agreements, contracts, or
15 documents of a similar or related character, or any other form of
16 agreements, contracts, or documents without the prior approval of the
17 President. Any and all agreements, contracts, or documents of any and
18 every character whatsoever shall not become effective, binding or operative
19 unless and until they bear the signature of the President.

20 12. At the time of the merger between America West and US Airways, many of
21 the 1,894 pilots on the America West Seniority list were not actively flying because of
22 disability, military service, assignment as check airmen and other reasons.

23 13. ALPA's merger policy can be changed or amended by majority vote of the
24 ALPA Executive Board. Membership ratification is not required and I am not aware of
25 any change that was ratified by the pilots affected.

26 14. ALPA's Executive Board has amended the ALPA Merger Policy from time to
27 time.

28 15. The ALPA Merger Policy in effect at a point prior to the version of the Policy
in effect at the time of the merger between America West and US Airways provided in
part:

Merger representatives should, WHEN POSSIBLE, USE CONDITIONS
AND RESTRICTIONS SO AS TO ACCOMPLISH SENIORITY LIST
INTEGRATION BASED ON DATE OF HIRE, KEEPING IN MIND

THE FOLLOWING PRIMARY GOALS:

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- a. PRESERVE JOBS.
- b. AVOID WINDFALLS TO EITHER GROUP AT THE EXPENSE OF THE OTHER.
- c. MAINTAIN OR IMPROVE PRE-MERGER PAY AND STANDARD OF LIVING.
- d. MAINTAIN OR IMPROVE PRE-MERGER PILOT STATUS.
- e. MINIMIZE DETRIMENTAL CHANGES TO CAREER EXPECTATIONS. STATEMENT OF INTENT - Paragraph E.4 (45.01.02) The intent of this section is a preference for the use of conditions and restrictions to balance the equities brought to a merger, with seniority list integration based on date of hire. This preference is not, however, to be construed as a prejudice implying that either merger representatives or an arbitrator should sacrifice equity in order to preserve date of hire seniority list integration. The application of this section should not preclude the consideration or use of any integration method which could balance the equities brought to a merger.

16. After the dispute over the Nicolau Award ALPA again amended the Merger Policy LPA Merger Policy effective April 30, 2009 (USAPA Ex. 11). This new version provided (Section 45.C.4.e):

- e. The merger representatives shall carefully weigh all the equities inherent in their merger situation. In joint session, the merger representatives should attempt to match equities to various methods of integration until a fair and equitable integrated seniority list is reached. Factors to be considered in constructing a fair and equitable integrated seniority list, in no particular order and with no particular weight, shall include but not be limited to the following:
 - Career expectations.
 - Longevity.
 - Status and category.

17. The lawyers involved in representing the America West Merger Committee and the US Airways Merger Committee in the proceedings that led to the Nicolau Award were hired by the America West MEC and the US Airways MEC.

18. The position taken by the US Airways Merger Committee in the ALPA

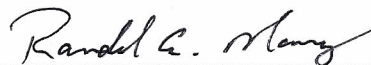
1 Merger Proceeding was that both pre-merger US Airways pilots and pre-merger America
2 West pilots were entitled to be placed on the integrated list based on their length of
3 service, with a series of conditions and restrictions that would protect America West
4 pilots from being displaced from their positions even by US Airways pilots who would be
5 placed higher on the integrated list.

6 19. At the time it was made in September 2008, USAPA's seniority proposal, if
7 immediately implemented, would have made 63 senior West pilots eligible to bid and
8 hold wide body Captain positions.

9 20. The conditions and restrictions that were part of the USAPA seniority
10 proposal that was made in September 2008, protect former America West pilots from
11 being displaced by former US Airways pilots who under the proposal would hold
12 positions higher on the seniority list because of their earlier hire dates. For example,
13 there are a number of pilots who originally worked for Pacific Southwest Airlines who
14 live in the western and southwestern parts of the United States who were on the pre-
15 merger US Airways seniority list as a result of the merger of Pacific Southwest with US
16 Air, Inc., in 1987. The conditions and restrictions which are part of the USAPA proposal
17 prevent these pilots from exercising their higher position on the proposed integrated list
18 to displace pre-merger America West pilots from the Phoenix domicile and their
19 customary routes.

20 I declare under penalty of perjury that the foregoing is true and correct and that
21 this Declaration is executed on February 21, 2012.

22 Dated: February 21, 2012
23 Spring Hill, Florida

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26 RANDAL E. MOWREY
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