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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

US Airways, Inc., a Delaware Corporation,
Plaintiff,
v.
Don Addington, an individual; John Bostic, an individual; Mark Burman, an individual; Afshin Iranpour, an individual; Roger Velez, an individual; and Steve Wargocki, an individual, on behalf of themselves and all other similarly-situated individuals,
and
US Airline Pilots Association, an unincorporated association,
Defendants.

Case No.: 2:10-cv-01570-ROS

DECLARATION OF PATRICK J. SZYMANSKI IN SUPPORT OF US AIRLINE PILOTS ASSOCIATION'S MOTION TO CONDUCT DISCOVERY PURSUANT TO RULE 56(d) OF THE FEDERAL RULES OF CIVIL PROCEDURE

1 PATRICK J. SZYMANSKI declares as follows under penalty of perjury pursuant
2 to 28 U.S.C. § 1746:

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4 1. I am an attorney for US Airline Pilots Association (“USAPA”), and am
5 duly authorized to make this declaration. I know the following to be true through my
6 work in this case, and if requested could and would competently testify as such.

7 2. USAPA has asserted that there are no genuine issues of material fact that
8 the Court should grant summary judgment dismissing Counts I and III, and enter
9 judgment on Count II declaring that USAPA does not violate its duty to bargain under
10 Section 2, First of the RLA, by proposing and pursuing a seniority system that differs
11 from the Nicolau Award. USAPA has also argued that, to the extent the other parties are
12 urging the Court to decide whether USAPA has breached its duty of fair representation
13 by bargaining for anything other than the Nicolau award, the claims are not ripe and even
14 if they were, US Airways’ action would be untimely.

15 3. However, Defendant West Pilot Class seeks summary judgment on Count I
16 asserting in relevant part that USAPA would breach its duty of fair representation by
17 entering into a collective bargaining agreement that contains a seniority system that
18 differs from the Nicolau Award. Both Plaintiff US Airways and Defendant West Pilot
19 Class have also offered several statements of fact as to which USAPA needs discovery in
20 order to respond. These include US Airways Statement of Facts ¶¶ 36, 43 and 45 and
21 West Pilot Class Statement of Facts ¶ 2.

22 4. The Ninth Circuit held in *Addington v. U.S. Airline Pilots Ass'n*, 606 F.3d
23 1174 (9th Cir. 2010), that the plaintiffs’ claims regarding breach of duty of fair
24 representation could not be ripe until final negotiations and ratification are complete and
25 remanded the matter with directions to dismiss the action. Because any decision on
26 whether USAPA may in the future violate its duty of fair representation must be based on
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1 the facts and circumstances existing at the time a collective bargaining agreement,
2 including ratification, is complete, in order to defend against a claim for breach of duty of
3 fair representation claim, USAPA would need to conduct discovery concerning relevant
4 facts and events occurring over the last five years since the Nicolau Award was issued
5 and since the *Addington* trial was held. In order to defend against any claim that its
6 actions today and in the future fail to comport with its duty of fair representation USAPA
7 needs the opportunity to conduct discovery on operational and financial matters,
8 including furloughs and recalls, aircraft population, hours of flying and the volume of
9 traditional East routes being flown by West pilots (and vice versa). For example,
10 USAPA believes that discovery will show, among other things, that over the last several
11 years US Airways flight operations in the West have been significantly reduced while
12 flight operations in the East have remained steady, undercutting one of the principal
13 assumptions on which the Nicolau Award was based and showing that continuing to
14 promote the Nicolau Award would be unreasonable in light of present day circumstances.

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16 5. In addition, part of any defense USAPA would present would be based on
17 demonstrating the efforts by certain West Pilots and the “Army of Leonidas” to obstruct
18 and frustrate USAPA in its efforts to work with all members of the bargaining unit in
19 fulfillment of its role as the certified bargaining representative. If the Court determines
20 that judgment for USAPA under Count II should not be entered as a matter of law and
21 that litigation of the merits of a duty of fair representation claim can be conducted at this
22 time, USAPA would need to conduct discovery regarding communications and other
23 actions by the “Army of Leonidas” which were designed to frustrate repeated and
24 continuing attempts by USAPA to engage West Pilots in discussions and solicit input
25 from them regarding USAPA’s seniority proposal. The “Army of Leonidas” is the
26 organization formed by several West Pilots, including some of the West Pilot Class
27 named representatives, to fund and control litigation including the *Addington* case and the
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1 position of the West Pilots in the instant action. It is my opinion that this discovery can be
2 accomplished through written discovery and depositions.

3 6. In addition, there are several statements of fact asserted by US Airways
4 and West Pilots to which USAPA cannot adequately respond absent discovery. These
5 include statements regarding what would have happened if the Nicolau Award had been
6 implemented (USASOF ¶ 36), statements regarding West Pilots' alleged threats if US
7 Airways accepts USAPA's seniority proposal, statements regarding why US Airways
8 brought this action (USASOF ¶¶ 43, 45), and statements regarding the pre-merger
9 economic conditions of the airlines (WPC SOF ¶ 2). Although USAPA is aware of
10 several facts relevant to these issues, much of the evidence USAPA is aware of is based
11 on statements by US Airways personnel that are general and incomplete. Thus, without
12 the ability to conduct discovery, the evidence USAPA has may not be completely
13 accurate or completely competent to controvert these statements. It is my opinion that
14 USAPA can obtain the necessary facts through written discovery from the parties and
15 depositions of Plaintiff and/or West Pilot Class representatives.

16 7. To the extent that the Court elects not to grant USAPA's motion for
17 summary judgment or deny the West Pilots Class's motions for summary judgment as a
18 matter of law, I believe that the information outlined above will raise genuine issues of
19 material fact as to the claim of the breach of duty of fair representation and specific
20 statements of fact asserted by Plaintiff and the West Pilot Class in their statements of fact
21 in support of their respective motions for summary judgment. Therefore, if the Court
22 determines the issue of breach of duty of fair representation is properly before the Court
23 or if Plaintiff's Statement of Fact ¶¶ 36, 43 or 45 or West Pilots Class's Statement of Fact
24 ¶ 2 are deemed material, I believe that the West Pilot Class's present motion for summary
25 judgment should be denied or continued as premature under Federal Rule of Civil
26 Procedure 56(d) until USAPA has had an opportunity to conduct discovery.
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I declare under penalty of perjury that the foregoing is true and correct. Executed
on February 21, 2012.

Dated: February 21, 2012
Washington, D.C.

s/Patrick J. Szymanski
Patrick J. Szymanski

CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2012, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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s/J. Kroll