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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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|------------------------|---|-------------------------|
| US Airways, Inc., |) | No. CV-10-01570-PHX-ROS |
| Plaintiff, |) | ORDER |
| vs. |) | |
| Don Addington, et al., |) | |
| Defendants. |) | |

This is a hard case. As set forth in the parties’ summary judgment filings, the underlying facts are undisputed but the appropriate conclusions to be drawn from those facts differ greatly. Having reviewed all of the filings and considered the arguments made by counsel at the oral argument, the Court concludes Defendant US Airline Pilots Association (“USAPA”) is free to pursue any seniority position it wishes during the collective bargaining negotiations. But with that freedom comes risk because the West Pilot Defendants¹ may have viable legal claims in the future should the collective bargaining agreement contain a seniority provision harmful to a subsection of the union. As for US Airways, it must negotiate with USAPA and it need not insist on any particular seniority regime. But US

¹ The West Pilot Defendants are Don Addington, John Bostic, Mark Burman, Afshin Iranpour, Roger Velez, and Steve Wargocki, on behalf of themselves and the certified West Pilot Class.

1 Airways must evaluate any proposal by USAPA with some care to ensure that it is reasonable
2 and supported by a legitimate union purpose.

3 **I. Background**

4 In 2005, US Airways merged with America West Airlines, Inc. (“America West”) to
5 form a single airline. (Doc. 151, ¶ 1). At that time, US Airways had recently emerged from
6 bankruptcy. (*Id.*, ¶ 2). Pilots employed by both airlines were represented by the Air Line
7 Pilots Association (“ALPA”) as their bargaining representative and each group had existing
8 collective bargaining agreements. (Doc. 151, ¶ 6; Doc. 153, ¶¶ 5, 6 & 10). The America
9 West pilots at the time of the merger were generally referred to as the West Pilots. The US
10 Airways pilots at the time of the merger were generally referred to as the East Pilots. (Doc.
11 151, ¶¶ 4-5). As a result of the merger, America West, US Airways Group, US Airways,
12 ALPA and others entered into a Transition Agreement that contained employment terms and
13 conditions related to the merger. (Doc. 151, Transition Agreement, App. 087; Doc. 153, ¶
14 14, Ex. 3). All pilots “in the service of America West and US Airways” were parties to the
15 Transition Agreement. (Doc. 156-3 at 25).

16 The Transition Agreement provided “[t]he seniority lists of America West pilots and
17 US Airways pilots will be integrated in accordance with ALPA Merger Policy and submitted
18 to [US Airways] for acceptance.” (Doc. 156-3 at 30). The Transition Agreement also
19 provided a detailed procedure for any disputes involving “the interpretation or application
20 of” the Transition Agreement. (Doc. 156-3 at 36). Finally, the Transition Agreement
21 provided that it could “be modified by written agreement of [ALPA] and [US Airways]
22 collectively.” (Doc. 156-3 at 38).

23 Under ALPA’s policies, the West Pilots and the East Pilots were each represented by
24 a Master Executive Council (“MEC”). (Doc. 151, ¶¶ 6-8). Under the “ALPA Merger
25 Policy” referenced in the Transition Agreement, Merger Committees, appointed by each
26 MEC and representing each pilot group, were responsible for creating a single integrated
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1 seniority list. If the Merger Committees could not agree, the matter would proceed to
2 arbitration. (Doc. 151, ¶ 16; Doc. 153, ¶ 16).

3 Because no agreement could be reached, the seniority issue proceeded to arbitration
4 before the Board of Arbitration consisting of neutral arbitrator George Nicolau and pilot
5 neutrals Stephen Gillen and James Brucia. The arbitration decision, referred to as the
6 Nicolau Award, issued on May 1, 2007. The Nicolau Award created an integrated seniority
7 list that placed approximately 500 of the most senior East Pilots at the top of the list because
8 they flew wide-body aircraft and no West Pilot flew such aircraft. It placed all East Pilots
9 who were on furlough at the time of the merger at the bottom of the list. It then blended the
10 two pilot lists. (Doc. 151, ¶¶ 21-24, 28, 30-33; Doc. 153, ¶¶ 16-19). The East Pilots
11 disagreed with the arbitration award and took immediate steps to frustrate it.

12 The East MEC appealed to ALPA's Executive Committee to overturn the Nicolau
13 Award (Doc. 151, ¶ 35; Doc. 153, ¶ 21), but it was determined there was no ground under
14 the ALPA Merger Policy to set the award aside. (Doc. 151, ¶¶ 36-37). On June 26, 2007, the
15 East MEC filed suit in the District of Columbia against the West MEC to set aside the
16 Nicolau Award. (Doc. 151, ¶ 39; Doc. 153, ¶ 23). The East MEC also notified ALPA it was
17 demanding that ALPA refrain from sending the Nicolau seniority list to US Airways for
18 acceptance. (Doc. 153, ¶ 24). Dissatisfied with ALPA's actions, a group of pilots formed
19 a new labor organization known as USAPA. (Doc. 151, ¶¶ 41-45, 49-53; Doc. 153, ¶¶ 25,
20 27). USAPA's Constitution and Bylaws provide that its objectives include maintaining
21 "uniform principles of seniority based on date of hire and the perpetuation thereof, with
22 reasonable conditions and restrictions to preserve each pilot's un-merged career
23 expectations." (Doc. 153, ¶ 28, Ex. 2 at 8). In other words, one of the main purposes of
24 USAPA is to reject the Nicolau Award. On November 13, 2007, USAPA filed an application
25 with the National Mediation Board ("NMB") seeking to replace ALPA as the representative
26 of the combined bargaining unit consisting of the US Airways pilots and the America West
27 pilots. (Doc. 153, ¶ 30).

1 Despite USAPA's attempts to gain recognition, on December 19, 2007, ALPA
2 presented the Nicolau Award to US Airways for acceptance. (Doc. 162, ¶ 28, Response). On
3 December 20, 2007, US Airways accepted the integrated seniority list as determined in the
4 Nicolau Award. (Doc. 151, ¶ 34; Doc. 153, ¶ 32). A short while later, a representation
5 election was held between ALPA and USAPA which USAPA won. (Doc. 151, ¶¶ 62-63;
6 Doc. 153, ¶ 33). On April 18, 2008, the NMB certified USAPA as the new bargaining
7 representative of the combined pilot group. (Doc. 151, ¶ 64; Doc. 153, ¶ 33). The East
8 MEC's litigation seeking to vacate the Nicolau Award was dismissed. (Doc. 151, ¶ 40).

9 USAPA took over direct negotiations with US Airways for a single integrated
10 collective bargaining agreement. On September 30, 2008, USAPA submitted a new seniority
11 proposal to US Airways. (Doc. 151, ¶ 65; Doc. 153, ¶ 38). This proposal combined the East
12 and West Pilots on the merged seniority list according to their dates of hire without regard
13 to whether a pilot was on furlough at the time of the merger. The East Pilots allege that the
14 proposal contains extensive conditions and restrictions that protect the West Pilots. But the
15 West Pilots contend the proposal puts a majority of them at or near the bottom of the list and
16 would put the West Pilots at risk of furlough before the East Pilots who were on furlough at
17 the time of the merger. (Doc. 151, ¶¶ 66-70; Doc. 153, ¶ 38).

18 In 2008, a group of West Pilots sued USAPA claiming USAPA had breached its duty
19 of fair representation by refusing to adopt the Nicolau Award during negotiations with US
20 Airways. The case was certified as a class action and proceeded to trial where the West
21 Pilots prevailed. On appeal, however, the case was dismissed as not presenting a ripe
22 controversy. Shortly after that dismissal, US Airways filed the present declaratory judgment
23 action against the class of West Pilots and USAPA. US Airways' complaint sought one of
24 the following three determinations:

- 25 (1) USAPA's seniority proposal (i.e., strict "date of hire") *breaches*
26 its duty under the Railway Labor Act and its duty of fair
27 representation and US Airways cannot adopt it (Doc. 1, Count
28 I);

- 1 (2) USAPA's seniority proposal *does not breach* its duty under the
2 Railway Labor Act and its duty of fair representation and US
3 Airways must adopt it (Doc. 1, Count II); or
4 (3) US Airways will not be liable to the West Pilots regardless of
5 which seniority proposal it adopts. (Doc. 1, Count III).

6 US Airways contends it needs this guidance in order to determine the range of
7 permissible proposals in the collective bargaining agreement negotiations. According to US
8 Airways, if it accepts USAPA's seniority proposal, the West Pilots have said they will sue
9 US Airways for facilitating or assisting USAPA's breach of the duty of fair representation.
10 And, if US Airways insists on adopting the new collective bargaining agreement
11 incorporating the Nicolau Award, USAPA has promised a work stoppage.

12 USAPA now seeks summary judgment that its seniority proposal does not breach its
13 duty of fair representation while the West Pilots seek summary judgment that USAPA's
14 proposal does breach its duty of fair representation. US Airways has filed briefs stating it
15 is neutral on these issues but offering some guidance on the applicable legal framework.

16 **II. Summary Judgment Standard**

17 Summary judgment is appropriate where "the movant shows that there is no genuine
18 dispute as to any material fact and the movant is entitled to judgment as a matter of law."
19 Fed.R.Civ.P. 56(a). When determining whether a genuine dispute exists, the evidence of the
20 non-moving party is to be believed, and all reasonable inferences drawn in its favor.
21 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255-56 (1986). "[A] party seeking summary
22 judgment always bears the initial responsibility of informing the district court of the basis for
23 its motion, and identifying those portions of the pleadings, depositions, answers to
24 interrogatories, and admissions on file, together with affidavits, if any, which it believes
25 demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477
26 U.S. 317, 323 (1986) (internal citations omitted). In considering cross-motions for summary
27 judgment, the court considers each party's evidence in evaluating whether summary
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1 judgment is appropriate. *Johnson v. Poway Unified School District*, 658 F.3d 954, 960 (9th
2 Cir. 2011).

3 **III. Discussion**

4 The primary focus of the parties' summary judgment filings is whether the Transition
5 Agreement is "binding" on USAPA. According to USAPA, it is "not 'contractually' bound
6 by any of ALPA's agreements," including the Transition Agreement. (Doc. 160 at 10). But
7 the West Pilots, as well as US Airways, cite a variety of authority supporting the position that
8 the "decertification of ALPA and the certification of USAPA did not change the binding
9 nature of the Transition Agreement." (Doc. 164 at 7). The West Pilots and US Airways are
10 correct.

11 When USAPA became the pilots' new collective bargaining representative, it
12 succeeded "to the status of the former representative without alteration in the contract terms."
13 *Int'l Bhd. of Teamsters v. Texas Int'l Airlines, Inc.*, 717 F.2d 157, 163 (5th Cir. 1983). As
14 there does not appear to be any dispute that the Transition Agreement was part of the contract
15 between the pilots and US Airways, the Transition Agreement applies to USAPA. Even the
16 case which USAPA relies upon states there is a "general principle that collective bargaining
17 agreements survive a change in representative." *Ass'n of Flight Attendants, AFL-CIO v.*
18 *USAir, Inc.*, 24 F.3d 1432, 1439 (D.C. Cir. 1994). Thus, just as ALPA would have been
19 bound by the Transition Agreement had it remained the pilots' representative, USAPA is
20 bound by the Transition Agreement.²

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22 ² USAPA believes the Transition Agreement is not binding and it "cannot in any way
23 limit the authority of USAPA . . . with respect to negotiating a new agreement." (Doc. 152
24 at 16). It is unclear why USAPA is so adamant on this point as there is no claim that the
25 Transition Agreement itself is limiting USAPA's authority during the negotiation of a new
26 collective bargaining agreement. Regardless of the binding nature of the Transition
27 Agreement, USAPA's duty in negotiating a collective bargaining agreement remains the
28 same: to act in conformity with its duty of fair representation. *See 14 Penn Plaza LLC v.*
Pyett, 556 U.S. 247, 270-72 (2009) ("Labor unions certainly balance the economic interests
of some employees against the needs of the larger work force as they negotiate collective-

1 But being “bound” by the Transition Agreement has very little meaning in the context
2 of the present case. It is undisputed that the Transition Agreement can be modified at any
3 time “by written agreement of [USAPA] and the [US Airways].” (Doc. 156-3 at 38).
4 Moreover, USAPA and US Airways are now engaged in negotiations for an entirely new
5 collective bargaining agreement and there is no obvious impediment to USAPA and US
6 Airways negotiating and agreeing upon any seniority regime they wish. As explained by the
7 Ninth Circuit, “seniority rights are creations of the collective bargaining agreement, and so
8 may be revised or abrogated by later negotiated changes in this agreement.” *Hass v.*
9 *Darigold Dairy Products Co.*, 751 F.2d 1096, 1099 (9th Cir. 1985). And a union “may
10 renegotiate seniority provisions of a collective bargaining agreement, even though the
11 resulting changes are essentially retroactive or affect different employees unequally.” *Id.*

12 Of course, in negotiating for a particular seniority regime, USAPA must not breach
13 its duty of fair representation. Accordingly, if USAPA wishes to abandon the Nicolau Award
14 and accept the consequences of this course of action, it is free to do so. By discarding the
15 result of a valid arbitration and negotiating for a different seniority regime, USAPA is
16 running the risk that it will be sued by the disadvantaged pilots when the new collective
17 bargaining agreement is finalized. An impartial arbitrator’s decision regarding an
18 appropriate method of seniority integration is powerful evidence of a fair result. Discarding
19 the Nicolau Award places USAPA on dangerous ground.

20 In the end, the Court cannot provide as much guidance as it had hoped it could.
21 Pursuant to the Ninth Circuit’s decision, any claim for breach of the duty of fair
22 representation will not be ripe until a collective bargaining agreement is finalized. *Addington*
23 *v. U.S. Airline Pilots Ass’n*, 606 F.3d 1174, 1181-82 (9th Cir. 2010). In this case, that means
24 even though an integrated seniority regime is an incredibly important issue, and USAPA

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27 bargaining agreements” and that balance must reflect compliance with the unions’ “duty of
28 fair representation.”).

1 appears totally committed to a particular seniority regime, it is not possible to determine the
2 viability of any claim for breach of the duty of fair representation until a particular seniority
3 regime is ratified. When the collective bargaining agreement is finalized, individuals will
4 be able to determine whether USAPA's abandonment of the Nicolau Award was permissible,
5 *i.e.* supported by a legitimate union purpose. Thus, the best "declaratory judgment" the
6 Court can offer is that USAPA's seniority proposal does not automatically breach its duty
7 of fair representation.³

8 This conclusion places US Airways in a difficult position. At the present time, it is
9 not possible to predict what will result from the collective bargaining negotiations. Thus, the
10 Court cannot grant US Airways prospective immunity from any legal action by the West
11 Pilots. But based on the representation at oral argument that the seniority list is unlike other
12 matters addressed in collective bargaining, it is unlikely the West Pilots could successfully
13 allege claims against US Airways merely for not insisting that USAPA continue to advocate
14 for the Nicolau Award. *See Davenport v. Int'l Broth. of Teamsters, AFL-CIO*, 166 F.3d 356,
15 361-62 (D.C. Cir. 1999) (addressing, without deciding, "the proper standard for determining
16 whether an employer can be implicated in a union's breach of duty").

17 Accordingly,

18 **IT IS ORDERED** USAPA's Motion for Summary Judgment (Doc. 152) **is**
19 **GRANTED IN PART and DENIED IN PART.**

20 **IT IS FURTHER ORDERED** the Motion for Discovery (Doc. 163) **is DENIED.**

21 **IT IS FURTHER ORDERED** the West Pilots' Motion for Summary Judgment (Doc.
22 150) **is DENIED.**


23 **IT IS FURTHER ORDERED** the Motion to Add Language (Doc. 190) **is DENIED.**

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27 ³ Based on this conclusion, there is no need to address USAPA's request to conduct
28 discovery. (Doc. 163).

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IT IS FURTHER ORDERED the Clerk of Court shall enter judgment dismissing Counts I and III of the complaint and in favor of US Airline Pilots Association on Count II of the complaint stating US Airline Pilots Association's seniority proposal does not breach its duty of fair representation provided it is supported by a legitimate union purpose.

DATED this 11th day of October, 2012.



Roslyn O. Silver
Chief United States District Judge