

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

CIVIL ACTION NO.: _____

EDDIE BOLLMEIER, BILL TRACEY and)
SIMON PARROTT,)

Plaintiffs,)

v.)

GARY HUMMEL, STEPHEN BRADFORD,)
ROB STREBLE, STEVE SMYSER,)
ROBERT FREAR, COURTNEY BORMAN,)
and Jane Doe Borman, RONALD NELSON,)
PAUL DIORIO, PAUL MUSIC, JOHN)
TAYLOR, JOE STEIN, PETE DUGSTAD,)
JAY MILKEY and STEPHEN NATHAN,)

Defendants, sued in their)
individual capacity.)

**VERIFIED COMPLAINT UNDER
TITLE V OF THE LABOR
MANAGEMENT REPORTING
AND DISCLOSURE ACT**

INTRODUCTION

1. This is an action brought by union members under Title V of the Labor Management Reporting and Disclosure Act (“LMRDA”), 29 U.S.C. § 501(b), seeking (1) an accounting of certain expenditures made as a direct consequence of the actions of Defendants, all of whom are officers of US Airways Pilots Association (“USAPA”), (2) restitution to USAPA, for the benefit of its members, of any monies spent in violation of Defendants’ fiduciary duties to expend funds only in accordance with USAPA’s Constitution, Bylaws and applicable governance documents, (3) an injunction against further such expenditures, and (4) disbursement of USAPA funds to its members in accordance with its Constitution. As set forth more fully in Paragraphs 32–34 of this

Complaint, the expenditures occasioned as a consequence of Defendants' actions are for activities that advance Defendants' own personal interests and that are directly adverse to Plaintiffs' interests and the interests of approximately 1500 similarly situated pilots.

PARTIES & PERSONS IN INTEREST

2. Plaintiffs are commercial airline pilots currently employed by American Airlines. Before its merger with American Airlines, Plaintiffs were employed by U.S. Airways. Before US Airways merged with America West Airlines, Plaintiffs were pilots employed by America West Airlines. As of September 16, 2014, Plaintiffs were and continue to be members in good standing of USAPA, which served as Plaintiffs' exclusive bargaining representative from its certification by the NMB on April 18, 2008 until its decertification on September 16, 2014.

3. At all times herein material, Defendants served as either the National Officers or members of the Board of Pilot Representatives ("BPR") of USAPA. Defendant Gary Hummel is USAPA President; Defendant Stephen Bradford is USAPA Vice President; Defendant Rob Streble is USAPA Secretary-Treasurer; and Defendant Steve Smyser is USAPA Executive Vice President. Defendants Robert Frear, Courtney Borman, Ronald Nelson, Paul DiOrio, Paul Music, John Taylor, Jay Milkey, and Stephen Nathan, are each current members of the BPR. Defendants Joe Stein and Pete Dugstad were members of the BPR until September, 30, 2014. Prior to the merger of America West Airlines and US Airways (and since then), Defendants were all employed by US Airways as pilots. Each Defendant is sued here in his personal capacity.

4. At all times herein material, beginning April 18, 2008, USAPA operated as a national unincorporated labor organization within the meaning of 29 U.S.C. § 402(i) and, until its decertification on September 16, 2014, served as the exclusive bargaining representative for all US Airways pilots. Since its 2014 decertification as the pilots' bargaining representative, *see infra* ¶ 17, USAPA has continued to exist and operate as a private unincorporated nonprofit association under the laws of North Carolina. USAPA's principal office is located at 200 East Woodlawn Road in Charlotte, North Carolina. At all times herein material, USAPA was to be governed in accordance with its Constitution and Bylaws, and applicable governance documents. ("USAPA Constitution," attached as Exhibit 1).

5. All of the funds expended by, or with the approval of, Defendants are funds accumulated by USAPA prior to its decertification as the exclusive bargaining agent of the US Airways pilots as a consequence of the operation of a union security clause in collective bargaining agreements applicable to US Airways pilots that required US Airways pilots to pay dues or dues equivalent fees to USAPA as a condition of employment. Upon information and belief, these funds total in excess of \$11 million at present.

JURISDICTION AND VENUE

6. As required by 29 U.S.C. § 501(b), prior to filing suit, Plaintiffs demanded, *inter alia*, that USAPA (1) account for its treasury at the time it was decertified on September 16, 2014, as the exclusive bargaining representative of U.S. Airways pilots and, as well for expenditures made after that date; (2) immediately cease all expenditures that are not

authorized by USAPA's Constitution following its decertification because they are actions that are not in the collective interests of all members, namely those expenditures in the furtherance of USAPA's involvement in the ongoing seniority list integration ("SLI") process occasioned by the merger of US Airways and American Airlines; (3) seek restitution from Defendants of any monies spent in violation of Defendants' fiduciary duties to expend funds only in accordance with USAPA's governing documents, and (4) disburse any remaining funds to its membership in accordance with procedures outlined in the USAPA Constitution.

7. USAPA has refused to provide the requested accounting, to cease expenditures on matters that are not permitted by its Constitution, to obtain reimbursement of improperly expended funds from Defendants, or to disburse funds to members in accordance with its Constitution.

8. Plaintiffs therefore turn to this Court for relief under section 501(b) of the LMRDA, 29 U.S.C. § 501(b), seeking an order requiring Defendants to (1) provide the requested accounting, (2) reimburse USAPA the amounts of the expenditures not authorized by USAPA's governing documents, (3) cease and desist expending additional funds to advance their interests in the SLI process, and (4) disburse funds in USAPA's treasury at the time of decertification in accordance with USAPA's Constitution.

9. This Court has subject matter jurisdiction over this lawsuit pursuant to 29 U.S.C. § 501(b) and 28 U.S.C. § 1331 because Plaintiffs allege that Defendants have violated federal laws.

10. The Court has jurisdiction over Defendants, and venue lies in the Court because a substantial portion of the events and omissions alleged in the Complaint occurred within the Western District of North Carolina.

FACTS

The Merger of America West Airlines and US Airways and the Integration of their Pilot Seniority Lists

11. In 2005, America West Airlines merged its operations with US Airways. At the time of the merger, both the approximately 5100 US Airways pilots (hereinafter “East Pilots”) and the approximately 1900 America West pilots (hereinafter “West Pilots”) were represented by the Airline Pilots Association (“ALPA”).

12. Under ALPA’s governing documents, when airlines whose pilots are represented by ALPA merge, the respective pilot seniority lists are integrated pursuant to a process that is commonly known as the ALPA Merger Policy. Under ALPA Merger Policy, if the two pilot groups are unable to reach agreement regarding the integration of two seniority lists, the matter is resolved through binding arbitration. In 2007, after the East and West Pilots were unable to reach an agreement regarding the integration of the two seniority lists, arbitrator George Nicolau conducted an arbitration and issued an award (referred to as the “Nicolau Award”) integrating the East and West Pilots’ seniority lists. The Nicolau Award did not adopt either the West or East Pilot’s proposal, but rather integrated the two seniority lists in a manner Arbitrator Nicolau determined was “fair and equitable” based on the facts presented to him in the arbitration.

13. On December 22, 2007, US Airways accepted the integrated seniority list established by the Nicolau Award but, as a consequence of an agreement with ALPA, could not immediately implement the integrated seniority list.

The Formation of USAPA and its Certification as the Exclusive Representative of the US Airways Pilots

14. The East Pilots were unhappy with the Nicolau Award and in 2007 formed USAPA as a rival union to ALPA, with the express purpose of abrogating the Award. As an alternative to the Award, USAPA advanced a principle expressly rejected by the Nicolau Award as the basis for integrating the pilots' seniority lists. This principle, if adopted, would have favored the interests of the East Pilots, a group that includes the Defendants, and was adverse to the interests of the West Pilots, as compared to the seniority list created by the Nicolau Award.

15. Because the East Pilots far outnumbered the West Pilots, USAPA defeated ALPA in a subsequent representation election and was certified by the National Mediation Board ("NMB") as the exclusive bargaining representative for US Airways pilots (both East and West), effective April 18, 2008. Although US Airways had accepted the Nicolau Award, the Award was never implemented. Instead, as promised, USAPA sought implementation of its preferred principle for integrating the pilots' seniority lists, which led to protracted litigation between the East and West Pilots.

The Merger of US Airways and American Airlines, USAPA's Loss of Certification as a Representative of US Airways Pilots and the Effect of the Loss on the American Airlines and the East and West Pilots Seniority List Integration Process

16. In early 2013, while the integration of the East and West Pilots' seniority lists was still being litigated in federal court, US Airways and American Airlines entered into a preliminary merger agreement, which was finalized on December 9, 2013. At the time of this announcement, the Allied Pilots Association ("APA") represented the approximately 10,000 pilots employed by American Airlines, while USAPA continued to represent the approximately 5000 pilots (East and West) employed by US Airways.

17. On August 8, 2014, the NMB, acting pursuant to 45 U.S.C. § 181, determined that American Airlines and US Airways constituted a "single transportation system," and as a result, on September 16, 2014, it extinguished USAPA's status as the exclusive bargaining agent for US Airways pilots and extended APA's certification as the exclusive bargaining agent for both the American Airlines and US Airways pilots.

18. As set forth more fully in Paragraphs 25–37, USAPA's loss of certification triggered events that form the basis for this lawsuit.

19. Prior to USAPA's loss of certification, American, USAPA and APA had entered into an agreement ("the MOU," attached to the Complaint as Exhibit 2) that, *inter alia*, provided a mechanism to integrate the American Airlines and the East and West Pilots seniority lists.

20. Because USAPA continued to insist on advancing a seniority integration principle that favored the East Pilots, rather than the Nicolau Award, the West Pilots asserted that

they should be represented by a separate merger committee to participate in the American Airlines SLI negotiations.

21. USAPA opposed allowing West Pilot separate representation, despite APA asserting that, as the soon-to-be exclusive bargaining representative for all pilots, it had the discretion to appoint any merger committees it chose.

22. Under a second agreement reached between USAPA, APA, and American regarding the merger and SLI process (the “Protocol Agreement,” attached to the Complaint as Exhibit 3), USAPA, APA, and American agreed to resolve through a final and binding “Preliminary Arbitration” the question of whether there should be a West Pilots Merger Committee. They also agreed in the Protocol Agreement and the MOU that subsequent to the Preliminary Arbitration, any remaining disputes concerning the SLI process that could not be resolved by negotiations would be resolved in a second arbitration (the “Substantive SLI Process”) between the Company, the American Pilots Merger Committee, and the East Pilots Merger Committee, and that the West Pilots Merger Committee would become a party to that Substantive SLI Process if the Preliminary Arbitration Board (“PAB”) determined that a West Pilots Merger Committee should be appointed.

23. On January 9, 2015, the PAB issued a decision (the “PAB Decision,” attached to the Complaint as Exhibit 4) holding that APA had the right to appoint a West Pilots Merger Committee to represent the West Pilots’ interests in the Substantive SLI Process. In so ruling, the PAB said:

- “The Board dismisses USAPA’s argument that it—as the pre-merger representative of all US Airways pilots—has the full authority to represent all former US Airways pilots and has the sole discretion to allow or not a West Pilots Merger Committee to participate in the SLI process. This argument is unconvincing and runs contrary to the NMB’s determination that APA is the representative of all Company pilots (both US Airways and American Airlines).” *Id.* at 31.
- “USAPA, the Board finds, has neither obligations nor responsibilities to any bargaining unit members, including even the East Pilot seniority list grouping. What is clear, though, is that USAPA does not represent the West Pilot seniority list grouping and does not have a duty of fair representation to that group of employees.” *Id.* at 32.
- “Given the history of intransigence and hostility between USAPA and the West Pilots, it is far from clear that USAPA could or would adequately represent the interests of the West pilots. The fact that USAPA’s very constitution contains a provision stating that only date of hire principles is acceptable in any SLI process is simply one of several considerations supporting this conclusion.” *Id.* at 33.

The PAB further directed APA to designate the West Pilots Merger Committee as a full participant in the Substantive SLI Process. *Id.* at 35.

24. On January 12, 2015, APA appointed a separate Merger Committee to represent the interests of the West Pilots in the Substantive SLI Process.

The Provisions of USAPA’s Constitution Applicable to its Loss of Certification

25. Article I, Section 3 of USAPA’s Constitution provides that loss of NMB certification triggers immediate dissolution of USAPA in accordance with the dissolution procedures outlined in the Constitution. *See* Exh. 1, Art. I, § 3(A).

26. Under the USAPA Constitution, upon dissolution, “*the officers of USAPA shall act as agents of the membership* and dispose of all of the physical assets of the Association by suitable means. All assets shall be liquidated and, less any indebtedness,

shall then be prorated to the active members in good standing of USAPA as of the time of such dissolution in proportion to the monies paid by each such member in the twelve (12) months immediately preceding dissolution.” *Id.* (emphasis added).

27. On information and belief, USAPA held between \$11 and \$13 million in its treasury as of September 16, 2014. Essentially all of these monies were derived from members’ dues or regular or special assessments paid by former US Airways pilots to USAPA. The West Pilots paid approximately 35%–40% of these total monies. Pursuant to the USAPA Constitution, these funds are to be disbursed to the members on a pro-rata basis upon dissolution of the union. *See id.*

28. The Constitution, however, also states that “[w]ithin three (3) business days of . . . the NMB decision . . . triggering dissolution . . . the National Officers shall make a determination as to whether existing circumstances present, or may present in the future, the need for *collective legal action on behalf of the pilot group*, including, but not limited to, representation of the seniority integration process.” *Id.* Art. I, § 3(C) (emphasis added). Upon making such determination, “the dissolution commencement date will be deferred until, in the judgment of the majority of the National Officers, the need for collective legal representation no longer exists.” *Id.* Until such time, the National Officers may retain any USAPA funds necessary, in their determination, to advance the purported collective legal actions providing the basis for deferral of dissolution. The Constitution compels the National Officers to disburse immediately “available funds [that] exceed the expected costs of the collective legal representation.” *Id.*

29. On September 4, 2014, a majority of the USAPA Board of Pilot Representatives passed a resolution urging the National Officers to defer the commencement date of dissolution and the attendant distribution of USAPA assets. Among the reasons stated for deferring dissolution was the unknown costs of “collective legal action,” including seniority integration proceedings.

30. On September 12, 2014, Roger Velez, a West Pilot writing on behalf of the West Pilots, sent Defendants correspondence, attached to the Complaint as Exhibit 5, urging them to follow the USAPA Constitution’s dissolution procedures in light of its then-imminent decertification by the NMB. In this letter, Mr. Velez demanded an accounting of USAPA’s treasury (including the value of its present assets, outstanding liabilities, and the total dues/fees/assessments paid by each US Airways pilot to USAPA in the preceding 12 months). Mr. Velez’s letter further advised Defendants that a decision to defer dissolution of USAPA in order “solely to further the interests of one faction of that group (East pilots) to the detriment of another faction (West pilots), especially in light of the open hostility of the East pilots toward the West pilots since USAPA’s inception” would constitute a breach of Defendants’ legal and fiduciary duties to USAPA’s members. *See id.* at p. 2. As Mr. Velez’s September 12 letter stated, such action directly adverse to the interests of one substantial faction of members would not be “*collective* legal action on behalf of *the* pilot group,” which is the only permissible reason outlined in the Constitution for delaying dissolution.

31. On September 16, 2014, the National Officers, purporting to act pursuant Article I, Section 3(C) of the USAPA Constitution, determined to defer the commencement date of

dissolution and further determined that there would be no interim distribution of any monies to the members of USAPA.

32. Despite Mr. Velez's September 12 letter, USAPA's National Officers, namely Defendants Hummel, Bradford, Streble, and Smyser, decided to defer dissolution of USAPA, purporting to act pursuant Article I, Section 3(C) of the USAPA Constitution. At that time, Defendants made no disbursement to its membership of any of the \$11–\$13 million of funds in its treasury, stating that "it is currently not possible to determine with certainty whether available funds exceed the expected costs of collective legal action." (Dec. 4, 2014, letter from M. Harper to B. O'Dwyer, attached as Exhibit 6.)

33. Subsequently, Defendants authorized the use of, used, and continue to use USAPA funds for purposes that do not constitute "collective legal action on behalf of the pilot group." Specifically, between September 16, 2014, and January 9, 2015, Defendants expended USAPA funds to advance USAPA's position before the PAB that the West Pilots should be denied separate representation in the seniority integration process occasioned by the merger with American Airlines. USAPA's position before the PAB advanced only the interests of the East Pilots (which includes Defendants here) at the expense of the interests of the West Pilots. Accordingly, expenditures in furtherance of this position were not *collective* in nature nor on behalf of *the pilot group* as a whole.

34. Since September 16, 2014, and continuing to the present, Defendants have authorized the use of, used, and continue to use USAPA funds for the purpose of advancing the seniority interests of only the East Pilots (including Defendants) at the expense of the interests of the West Pilots (including Plaintiffs) in the Substantive SLI

Process. More specifically, on information and belief, Defendants have authorized the use of, used, and continue to use USAPA funds to, *inter alia*, pay the fees of lawyers and experts and to pay flight pay loss and expenses of East Pilots who are members of the East Pilots Merger Committee, all of whom who will advance the East Pilots' interest in the Substantive SLI Process.

35. In correspondence dated December 4, December 23, December 31, January 9, and January 20, attached to the Complaint as Exhibits 6–10, counsel for the West Pilots, Marty Harper, further advised USAPA General Counsel Brian O'Dwyer of the National Officers' fiduciary duties to account for the funds in USAPA's treasury, to disburse those funds to USAPA's membership, and to cease using USAPA funds in furtherance of matters adverse to the West Pilots' interests. Mr. Harper re-asserted Plaintiff's demands for, *inter alia*, a full accounting of USAPA's treasury, a detailed list of what "collective legal actions" Defendants relied upon in determining to defer dissolution, an immediate distribution of USAPA funds that are in excess of those contemplated legal actions, a specific accounting of what funds are needed to wind down USAPA's affairs, and an immediate stop to the use of USAPA funds to support litigation and other legal action adverse to the West Pilots' interests. *See id.*

36. On February 13, 2015, Plaintiffs wrote Defendants reiterating the demands previously made by Mr. Velez and Mr. Harper. (attached to Complaint as Exhibit 11.)

37. Despite being fully advised of Defendants' fiduciary duties, Defendants failed to accede to any of Plaintiffs' and the West Pilot's legitimate and reasonable demands.

Consequently, Defendants have violated, and continue to violate, their fiduciary duties to USAPA's members, including Plaintiffs.

FIRST CLAIM FOR RELIEF

(Breach of Fiduciary Duty Claim against USAPA National Officers Gary Hummel, Stephen Bradford, Rob Streble, and Steve Smyser, and BPR Members Robert Frear, Courtney Borman, Ronald Nelson, Paul DiOrio, Paul Music, John Taylor, Joe Stein, Pete Dugstad, Jay Milkey, and Stephen Nathan.)

38. Plaintiffs reallege and incorporate herein by reference the foregoing paragraphs 1 through 37.

39. As the National Officers of USAPA, Defendants Hummel, Bradford, Streble, and Smyser as well as Defendant BPR members Frear, Borman, Nelson, DiOrio, Music, Taylor, Stein, Dugstad, Milkey, and Nathan, are USAPA fiduciaries, obliged by section 501(a) of the LMRDA, "to hold [USAPA's] money and property solely for the benefit of [USAPA] and its members" and "expend the same in accordance with [USAPA's] constitution and bylaws" 29 U.S.C. § 501(a).

40. By expending USAPA funds after the decertification of USAPA as the exclusive bargaining representative of US Airways pilots and after the appointment of a West Pilots Merger Committee to represent the interest of the West Pilots in the Substantive SLI Process in a manner that does not advance "*collective* legal action on behalf of *the* pilot group," Defendants violated their section 501(a) duties to hold USAPA's money solely for the benefit of its members and to expend such monies only in accordance with USAPA's constitution and bylaws.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

(1) Order an accounting of USAPA's treasury from September 16, 2014, to the present, including a full itemization of the value of the treasury as of September 16, 2014 (including any special assessment funds); monies paid in furtherance of any USAPA legal action since September 16, 2014; USAPA's indebtedness as of September 16, 2014 (and any subsequently accrued debts); and an itemization of any funds reasonably necessary to wind down the affairs of USAPA as a labor organization.

(2) Order the Defendants to pay restitution of the funds wrongfully expended.

(3) Preliminarily and permanently enjoin Defendants from further expending any USAPA monies in furtherance of the Substantive SLI Process.

(4) Order Defendants to disburse immediately to USAPA members in accordance with Article I, section III of its Constitution all funds remaining in its treasury as of its decertification as an exclusive bargaining representative on September 16, 2014, except such funds reasonably necessary for the collective action on behalf of the pilot group and ordinary expenses of winding down.

(5) Award Plaintiffs their attorneys' fees and costs for bringing this lawsuit pursuant to 29 U.S.C. § 501(b).

(6) Award Plaintiffs such other relief as the Court deems just.

/s/ C. Grainger Pierce, Jr.
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Dated: March ____, 2015

Plaintiff Bill Tracey's Verification

I, Bill Tracey, hereby verify under penalty of perjury that the facts as stated in the foregoing Application and Complaint are true and correct to the best of my knowledge and belief.

Executed this 19th day of February, 2015.

A handwritten signature in black ink, appearing to read "Bill Tracey", is centered on a light yellow rectangular background.

Maricopa County, Arizona

Plaintiff Eddie Bollmeier's Verification

I, Eddie Bollmeier, hereby verify under penalty of perjury that the facts as stated in the foregoing Application and Complaint are true and correct to the best of my knowledge and belief.

Executed this 19th day of February, 2015.

A handwritten signature in black ink, appearing to read "Eddie Bollmeier". The signature is written in a cursive style with a large initial "E".

Maricopa County, Arizona

Plaintiff Simon Parrot's Verification

I, Simon Parrot, hereby verify under penalty of perjury that the facts as stated in the foregoing Application and Complaint are true and correct to the best of my knowledge and belief.

Executed this 19th day of February, 2015.

A handwritten signature in black ink, appearing to read 'S. Parrot', followed by a horizontal line.

Maricopa County, Arizona