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

EDDIE BOLLMEIER, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	Case No. 3:15-cv-00111-RJC-DCK
	)	
GARY HUMMEL, et al.,	)	
	)	
Defendants.	)	
_____	)	

MOTION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION (WITH NOTICE)

Plaintiffs Eddie Bollmeier, Bill Tracey, and Simon Parrott, by and through counsel, hereby move pursuant to Fed. R. Civ. P. 65(a) and (b) for a temporary restraining order or preliminary injunction against Defendants Gary Hummel, Stephen Bradford, Rob Streble, Steve Smyser, Robert Frear, Courtney Borman, Ronald Nelson, Paul Diorio, Paul Music, John Taylor, Jay Milkey, and Stephen Nathan in their individual capacities.

The grounds for the request for the temporary restraining order or preliminary injunction are set forth in the accompanying Memorandum of law in Support of Motion for Temporary Restraining Order or Preliminary Injunction and attachments thereto, and the Verified Complaint and exhibits attached thereto. Plaintiffs are submitting a proposed form of restraining order and a proposed form of injunction contemporaneously herewith.

Respectfully submitted this 27th day of March, 2015,

/s/ Kelly J. Flood

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Marty Harper *(admitted pro hac vice)*
Kelly J. Flood *(admitted pro hac vice)*
ASU Alumni Law Group
Two North Central, Suite 600
Phoenix, AZ 85004
(602) 251-3621
(602) 251-3622
marty.harper@asualumnilawgroup.org
kelly.flood@asualumnilawgroup.org

Jeffrey Freund *(admitted pro hac vice)*
Zachary Ista *(admitted pro hac vice)*
Bredhoff & Kaiser, P.L.L.C
805 15th Street N.W.
Washington, D.C. 20005
(202) 842-2600 (p)
(202) 842-1888 (f)
jfreund@bredhoff.com
zista@bredhoff.com

C. Grainger Pierce, Jr.
Nexsen Pruet, PLLC
Carillon Building
227 West Trade Street, Suite 150
Charlotte, NC 28202
(704) 338-5321 (p)
(704) 805-4712 (f)
gpierce@nexsenpruet.com

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MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION

INTRODUCTION

This case is, at bottom, the culmination of a seven-year dispute between the pilots of the former America West Airlines ("West Pilots") and the former US Airways ("East Pilots") stemming from the 2005 merger of America West and US Airways and the integration of their separate seniority lists. Simply put, Defendants—all of whom are East Pilots—have spent and are spending union dues and assessment money collected from both East and West pilots under the authority of the Railway Labor Act ("RLA") to advance their personal interests and the interests of East Pilots only at the direct expense of Plaintiffs and the West Pilots. That has been their and their predecessors' *modus operandi* since US Airline Pilots Association's ("USAPA") certification as bargaining agent for both East and West Pilots in April, 2008. Until September 16, 2014, Defendants hid behind principles of federal labor law that gave great deference to unions (and their officers and directors, collectively hereinafter "Union Officers") in deciding how best to represent union members. But on September 16, USAPA lost its right to speak for both the East and West Pilots,

and the Defendants no longer have the protection afforded to a certified labor union and its officers. Stripped of those protections, other principles of law apply, and it is on those principles that this lawsuit is based.

It is a fundamental principle of the Labor Management Reporting and Disclosure Act ("LMRDA") that Union Officers owe a fiduciary duty to the union's members to, *inter alia*, expend union funds, which are derived primarily from membership dues and assessments, only in accordance with a union's governing documents. *See* 29 U.S.C. § 501(a). It is even more fundamental that, no matter what a union's governing documents may provide, Union Officers may not spend union funds to feather their own nests. Defendants here, however, have breached their fiduciary duties as Union Officers to the members of USAPA, including Plaintiffs. As outlined below, since USAPA's decertification as the exclusive bargaining representative of US Airways pilots, Defendants have expended, and continue to expend, union funds in violation of the USAPA Constitution and for their own personal benefit as East Pilots. Accordingly, Plaintiffs have filed this action pursuant to Title V of the LMRDA to compel Defendants to account for the funds they have improperly expended, to cease such expenditures prospectively and to reimburse USAPA all funds they have already expended in violation of its Constitution. By this Motion, Plaintiffs seek a preliminary injunction against these improper expenditures while this case proceeds to conclusion.[1]

[1] The complaint seeks other final relief, including an accounting, an order that Defendants repay personally to the union the funds they have improperly expended on this effort since September 16 and a distribution of USAPA's assets to its members as required by its governing documents. Plaintiffs do not seek any preliminary relief on these matters. Nor do they seek preliminary relief against the Stein and Dugstad Defendants who were previously Union Officers who engaged in these violations but who, at present, are no longer Union Officers.

BACKGROUND FACTS

A. The Merger History Among America West Airlines, US Airways, and American Airlines, the Resulting Changes in Pilot Representation and the Seniority List Integration Process

1. The America West – US Airways Merger and Pilot Seniority Integration

Plaintiffs are each commercial airline pilots currently employed by American Airlines. (Verified Compl. ¶ 2.) They were previously employed by US Airways prior to its 2013 merger with American, and, before that, by America West Airlines before it merged with US Airways in 2005. (*Id.*) When employed by America West, Plaintiffs, along with the approximately 1,900 other West Pilots, were members of the Airline Pilots Association ("ALPA"). ALPA also represented the approximately 5,100 pilots employed by US Airways—the East Pilots—at the time of its merger with America West. (Verified Compl. ¶ 11.)

The US Airways-America West merger required the integration of the respective airlines' pilot seniority lists pursuant to a process outlined in ALPA's governing documents known as ALPA Merger Policy. (Verified Compl. ¶ 12). Under ALPA Merger Policy, if two pilot groups fail to reach agreement on seniority list integration ("SLI"), the matter is resolved through binding arbitration. (*Id.*) In 2007, after the East and West Pilots failed to reach an SLI agreement, the issue was submitted to arbitrator George Nicolau, who conducted an arbitration and issued an award ("the Nicolau Award") integrating the two seniority lists. (*Id.*) The Nicolau Award did not adopt either the East or West Pilots' proposal, but instead integrated the lists in a manner deemed "fair and equitable" by Arbitrator Nicolau. (*Id.*) In December, 2007, US Airways accepted the integrated list established by the Nicolau Award, but pursuant to its agreement with ALPA could not immediately implement the list. (Verified Compl. ¶ 13.)

2. The East Pilots' Response to the Nicolau Award

Displeased with the Nicolau Award, various East Pilots formed USAPA as a rival union to ALPA. (Verified Compl. ¶ 14.) Since its inception, USAPA has had as an express goal the abrogation of the Nicolau Award and the implementation of the East Pilots' preferred integration proposal of Date of Hire ("DOH") (which Arbitrator Nicolau had expressly rejected). (*Id.*) If adopted, the East Pilots' 2007 SLI DOH proposal would have favored the East Pilots' interests and adversely impacted the West Pilots' interests, as compared to the list created by the Nicolau Award. (*Id.*)

In 2008, because East Pilots far outnumbered West Pilots, USAPA defeated ALPA in a representation election among US Airways pilots, and the National Mediation Board ("NMB"), pursuant to the Railway Labor Act ("RLA") certified USAPA as the exclusive bargaining representative for all US Airways pilots, including both the East and West pilot groups. (Verified Compl. ¶ 15.) Despite US Airways already having accepted the Nicolau Award, USAPA blocked its implementation in favor of advancing the East Pilots' preferred DOH integration principles. (*Id.*) Indeed, USAPA adopted a Constitution that specifically requires pilot seniority to be based on DOH principles. (Exhibit 1 to Verified Compl. At Art. I, § 8(D).) This led to lengthy (and still ongoing) litigation between the East and West Pilots over the SLI process. (Verified Compl. ¶ 15.)

3. The American Airlines – US Airways Merger and Pilot Seniority Integration

While the last SLI litigation was still pending, US Airways and American Airlines finalized a merger agreement in December, 2013. (Verified Compl. ¶ 16.) At the time of the merger, USAPA remained the bargaining agent of the approximately 5,000 US Airways pilots (East and West), while the Allied Pilots Association ("APA") represented the approximately 10,000 American

Airlines pilots. (*Id.*) Subsequent to the merger, the NMB determined that American Airlines and US Airways constituted a "single transportation system" under the RLA. On September 16, 2014, the NMB certified APA as the exclusive bargaining representative of the combined class of US Airways and American Airlines pilots employed by the New American, and it concurrently extinguished USAPA's certification as the bargaining representative for US Airways pilots. (Verified Compl. ¶ 17.) USAPA's loss of certification triggered certain provisions in USAPA's Constitution, described in Part B below, that in part created the need for this action.

Prior to its decertification, USAPA had entered into a Memorandum of Understanding ("MOU") with American Airlines and the APA that, *inter alia*, provides a mechanism for integrating the American Airlines pilots' seniority lists with those of the East and West Pilots. (Verified Compl. ¶ 19; Ex. 2 attached to Verified Compl.) Because USAPA, since its inception, had advanced its constitutionally-mandated DOH method of integrating the East and West lists rather than the Nicolau Award, the West Pilots asserted the need for representation by a separate merger committee during SLI negotiations with the American pilots. (Verified Compl. ¶ 20.) APA took the position that as the new collective bargaining representative, it had discretion, and perhaps the duty, to appoint a separate West Pilots Merger Committee, but USAPA vigorously opposed separate representation for the West Pilots. (Verified Compl. ¶ 21.) To resolve that issue, USAPA, APA, and American reached a second agreement, the Protocol Agreement, regarding the merger and SLI process, through which the parties agreed to settle through a final and binding "preliminary arbitration" the question of whether there should be a separate West Pilots Merger Committee. (Verified Compl. ¶ 22; Ex. 3 attached to Verified Compl.) Through the MOU and Protocol Agreement, USAPA, APA, and American further agreed that any remaining disputes concerning the SLI process that could not be resolved through negotiation would be resolved in a second

arbitration (the "Substantive SLI Process") between American, the American Pilots Merger Committee and the USAPA Merger Committee. The Protocol Agreement provided that the West Pilots Merger Committee would become a party to the Substantive SLI Process if the Preliminary Arbitration Board ("PAB") determined that a West Pilot Merger Committee should be appointed. (*Id.*)

The preliminary arbitration took place on December 15–17, 2014. Throughout that proceeding, counsel for USAPA vigorously argued that the West Pilots should not be separately represented in the Substantive SLI Process, but rather their interests should be represented by the USAPA Merger Committee. On January 9, 2015, the PAB issued a decision holding that APA had a right to appoint a West Pilots Merger Committee and that APA should, in fact, designate such a committee as a full participant in the Substantive SLI Process. (Verified Compl. ¶ 23; Ex. 4 attached to Verified Compl.) In so holding, the PAB observed that "USAPA does not represent the West Pilot seniority grouping list" and that "[g]iven 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" in the Substantive SLI Process. (*Id.*) In response to the PAB decision, APA appointed a West Pilot Merger Committee on January 12, 2015. (Verified Compl. ¶ 24.)

B. Provisions of USAPA's Constitution Relevant to its Loss of Certification and Subsequent Dissolution

Pursuant to Article I, Section 3 of USAPA's Constitution, loss of NMB certification triggers immediate dissolution of USAPA in accordance with the procedures outlined in that Constitution. (Verified Compl. ¶ 25; Ex. 1 attached to Verified Compl.) Upon its dissolution, USAPA's National Officers, namely Defendants Hummel, Bradford, Streble, and Smyser, "shall act as agents of the membership and dispose of all 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," a group which includes Plaintiffs here. (Verified Compl. ¶ 26.)

USAPA's Constitution, however, also provides that its National Officers may defer the organization's dissolution date indefinitely upon the National officers' "determination . . . [that] 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 in the seniority integration process." (Verified Compl. ¶ 28, Ex. 1 at Art. I, § 3(C).) If the National Officers make such a determination, they may retain any USAPA funds necessary to advance the purported collective legal actions providing the basis for the deferral of dissolution, but the National Officers must disburse immediately "available funds [that] exceed the expected costs of the collective legal action." (*Id.*)

C. Defendants' Actions Subsequent to USAPA's Decertification

On September 4, 2014, just days before the NMB's decertification of USAPA, a majority of USAPA's Board of Pilot Representatives—including Defendants Frear, Borman, Nelson, Diorio, Music, Taylor, Stein, Dugstad, Milkey, and Nathan—passed a resolution urging the Defendant National Officers to defer USAPA's dissolution and the resulting disbursement of USAPA funds, arguing that there existed a need "for collective legal action, including . . . seniority integration proceedings." (Verified Compl. ¶ 29.) The three West Pilots on the BPR opposed this resolution. The Defendant National Officers followed the recommendation and decided to defer dissolution on September 16, 2014, and made no disbursement to USAPA members of any of the approximately $12 million of funds then in its treasury, which funds were generated exclusively by members' dues and assessments. (Verified Compl. ¶ 31.)

Subsequent to the decision to defer dissolution, and in direct contravention of USAPA's constitution, 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." (Verified Compl. ¶ 33.) Such expenses include Defendants' expenditure of USAPA treasury funds between September 16, 2014, and January 9, 2015, to argue their position before the PAB that the West Pilots be denied a separate merger committee in the Substantive SLI Process. (*Id.*). In addition, from September 16, 2014, to the present, Defendants have authorized the use of, used, and continue to use USAPA treasury funds to advance the East Pilots' SLI seniority interests at the expense of the West Pilots' seniority interest in the Substantive SLI Process. (Verified Compl. ¶ 34; and see Ex. 1, Ferguson Decl. at ¶ 10, attached hereto.) Such expenditures include the paying of attorney's, experts' and consultants' fees, and paying flight pay loss and other expenses of the five East Pilots who are members of the East Pilot Merger Committee.[2] (*Id.*) Thus, the Defendants' use of USAPA treasury funds to oppose a separate West Pilot Merger Committee, and their continuing use of it to advance their vision of seniority, cannot reasonably be described as "collective legal action on behalf of the pilot group." They are thus not only actions contrary to the terms of USAPA's Constitution, but they are also actions designed to advance the personal seniority interests of the Defendants. Unable to stop the Defendants from their unending practice of favoring the East pilots' seniority goals over the West Pilots, the three West members of the BPR resigned. (See Ex. 1, Ferguson Decl. at ¶ 6.)

[2] Although Defendants have authorized these expenditures for the East Pilots and the East Pilot Merger Committee, they have not authorized any such expenses to advance the very separate interests of the West Pilots or the West Pilot Merger Committee. (Ex. 1, Ferguson Decl. at ¶ 11-12.) Thus, not only are West Pilots' dues paid to USAPA being used against them by Defendants, West Pilots are receiving no money from USAPA to pay for their SLI expenses. USAPA has not disclosed any of the costs and expenses it has incurred supporting the East Merger Committee notwithstanding several demands by the West Pilots for an accounting of these items.

D. The Benefit to the Defendants and the Harm to Plaintiffs and the West Pilots from Defendants' Actions

The expenditure of funds to advance Defendants' (and the rest of the East Pilots') interests before the PAB and in the Substantive SLI Process is not—and cannot be, given the current circumstances—in the collective interest of the pilot group. For self-serving reasons, the Defendants refuse to acknowledge this even after the PAB decision.[3] (*Id.*) It bears repeating that the Defendant BPR members and National Officers are all East Pilots who stood to personally benefit through greatly improved seniority positions, increased pay and an improved lifestyle had the West Pilots been denied separate representation by the PAB and were therefore precluded from separate representation in the Substantive SLI Process. Further, the Defendants will all personally benefit, even now that the West Pilots have been granted separate representation, if the SLI Arbitration Board decides to use a USAPA DOH-like list to integrate the former US Airways pilots with the American pilots. Since seniority is a zero sum game, Defendants' gain will be at the direct expense of Plaintiffs and the West Pilots.

The four attached charts make the point. (See Ex. 2, Stockdell Decl., Attachments A, B, C and D). Chart A shows where the Defendants were slotted on the initial Nicolau list and demonstrates how their individual seniority would substantially improve if USAPA's 2008 DOH list is used. Chart B reflects the same information when both the Nicolau list and USAPA's DOH list are brought current after accounting for attrition from 2007 to the present. Chart C demonstrates the seniority impact the three Plaintiffs and the last three West Pilots on the USAPA BPR suffer when

[3] Since the PAB decision on January 9, 2015, USAPA's Officers have refused to accept the PAB's conclusions and continue to contend (wrongfully) that the USAPA Merger Committee represents all former US Airways pilots, including the West Pilots, in the Substantive SLI Process. Obviously, the West Pilots disagree.

moved from the initial Nicolau list to USAPA's 2008 DOH list. Chart D reflects the same impact on each of the West Pilots using the 2015 lists after again accounting for attrition.

The attached charts graphically demonstrate the serious conflict between the seniority positions between the East and West Pilots. They also show the significant benefit each of the Defendants stands to gain if their seniority is determined by USAPA's DOH list or something like it. Improved seniority translates into more money, better bidding opportunities and eventually a better quality of life (work schedule, including number of days off, access to relief from work on holidays, desirable trips, etc.) and overall a much improved career.[4] So it is understandable why the Defendants have been spending USAPA funds ever since decertification on September 16, 2014, to block the West Pilots' participation in the Substantive SLI Process. The Defendants desperately want their DOH list to prevail over the Nicolau list.

The charts also demonstrate why Plaintiffs (and the West Pilots) want the Nicolau list. More importantly, all four charts clearly demonstrate why the "existing circumstances" do not and cannot "present, or may present in the future, the need for *collective* legal action on behalf of the pilot group." The West and East Pilots are at polar opposites on the seniority issue. They have been since 2007 and will be until their fight over seniority finally ends. The charts conclusively demonstrate that the Defendants' continued refusal to dissolve and continued expenditure of

[4] Changes in seniority positions are not just numbers on a list. There is a lot of money at stake depending on the results of the Substantive SLI Process. In 2013 a class of West Pilots filed an action against USAPA, alleging that USAPA breached its duty of fair representation, and submitted evidence of the harm that USAPA's actions were causing. *See* Addington v. U.S. Airline Pilots Association, et al., 2:13-cv-00471-ROS (D.Ariz) (Silver, J.) A two-day bench trial occurred on October 22 and 23, 2013. Exhibit 148 was admitted into evidence without objection. (See, Ex. 2, Stockdell Decl. Attachment E). Trial Ex. 148 shows that if the Substantive SLI Board uses something like USAPA's DOH list instead of the Nicolau list to integrate the US Airways pilots with the American pilots, more than $280 million will be gained by the East Pilots and lost by the West Pilots over the term of the current CBA, before it was amended effective January 30, 2015.

USAPA monies to support their DOH list exclusively is a breach of their fiduciary duties to the pilot group "*collectively*," since continuing to spend USAPA money to support the East Pilots only is extremely harmful to the West Pilots.

The final integrated pilot seniority list for all American pilots will most likely be decided by the end of 2015. The three merger committees are working hard to prepare for the actual arbitration which is scheduled to commence on June 29, 2015 and conclude on or about October 16, 2015. Obviously, it takes lots of money to retain the lawyers, experts and consultants to prepare for and present an effective case in the Substantive SLI Process.

The USAPA Merger Committee has been working full time on this for more than two years, while being fully subsidized by USAPA. Since September 16, 2014, Defendants have authorized USAPA's continuing use of treasury funds to support only the East Pilots and, notwithstanding numerous requests, have consistently refused to allow any USAPA money to be used to support Plaintiffs' (and the West Pilots') position that the Substantive SLI Board should use the Nicolau list for pilot integration purposes. (See Ex. 1, Ferguson Decl. ¶¶ 9-12).

E. Plaintiffs' Demand to USAPA

On February 13, 2015, Plaintiffs sent a written demand to USAPA Officers requesting (1) an accounting of USAPA's treasury funds both before and since September 16, 2014; (2) that they cease spending USAPA funds on the Substantive SLI Process; and (3) that they recoup moneys from the Defendants that they improperly expended on the preliminary arbitration and on the SLI Process since September 16. (Verified Compl. ¶ 36.) The Officers, however, have failed to accede to any of Plaintiffs' legitimate and reasonable demands. (Verified Compl. ¶ 37.) After first obtaining leave of this Court (as required by 20 U.S.C. § 501(b)), Plaintiffs filed this Complaint.

ARGUMENT

Plaintiffs Are Entitled to a TRO or Preliminary Injunction Enjoining Defendants from Continuing to Use USAPA Funds to Support the East Pilots in the SLI Process

To prevail on a motion for a TRO or preliminary injunction, "Plaintiffs must demonstrate that (1) they are likely to succeed on the merits; (2) they will likely suffer irreparable harm absent an injunction; (3) the balance of the hardships weighs in their favor; and (4) the injunction is in the public interest." *League of Women Voters of North Carolina v. North Carolina*, 796 F.3d 224, 236 (4th Cir. 2014) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

A. Plaintiffs Are Likely to Succeed on the Merits of Their LMRDA Title V Claim

Title V of the LMRDA provides that "[t]he officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group." 29 U.S.C. § 501(a). Accordingly, such persons owe a fiduciary duty to the organization and its members to, *inter alia*, "hold [the labor organization's] money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with [the labor organization's] constitution and bylaws . . . ." *Id.* When union officials breach this duty and the union refuses to take action against the offending officials, Title V further provides that members of the affected labor organization may sue such officers or representatives in federal court "to recover damages, or secure an accounting or other appropriate relief for the benefit of the labor organization." 29 U.S.C. § 501(b).

1. Plaintiffs Have Satisfied the LMRDA Title V's Procedural Requirements

As an initial matter, Plaintiffs here have met their statutory prerequisites before filing such a lawsuit against Defendants. Pursuant to section 501(b), "the Plaintiff must meet two statutory condition precedents before he may maintain his action against the Defendants: (1) the Plaintiff must have unsuccessfully demanded that the union or its governing board or officers bring the

action; and (2) the Plaintiff must secure court permission to bring the action by filing a verified application with the court showing good cause." *Reed v. United Transp. Union*, 633 F. Supp. 1516, 1527 (W.D.N.C. 1986), *rev'd on other grounds*, 828 F.2d 1066 (4th Cir. 1987). *See also Dinko v. Wall*, 531 F.2d 68, 70-71 (2d Cir. 1976) (identifying the statutory prerequisites a plaintiff must meet before bringing suit against union officials under Title V). As to the demand requirement, Defendants were first formally made aware of the basis of Plaintiffs' claims on September 12, 2014, in a letter from USAPA member Roger Velez outlining substantially the same violations of Defendants' duties alleged in Plaintiffs' Verified Complaint here and requesting that USAPA cure those violations. (Ex. 5 attached to Verified Compl.) West Pilots' attorney Marty Harper reiterated those demands in a series of correspondence with USAPA's general counsel in late 2014 and early 2015. (Exhs. 6–10 attached to Verified Compl.) On February 13, 2015, Plaintiffs themselves sent a final correspondence to USAPA's National Officers, again demanding that USAPA's National Officers and Board of Pilot Representatives immediately cease expending union funds in violation of the USAPA Constitution. (Ex. 11 attached to Verified Compl.) Despite this series of requests, Defendants have failed to accede to any of Plaintiffs' lawful demands. (Verified Compl. ¶ 37.) Therefore, Plaintiffs sought leave of this Court to bring suit against Defendants pursuant to 29 U.S.C. § 501(b), which Judge Cogburn granted on March 6, 2015, prior to transferring the case to this Court. (See Case 3:15-mc-00035-MOC-DCK Document 2.) Accordingly, Plaintiffs have satisfied the conditions precedent required to maintain this suit against Defendants.[5] For the reasons below, Defendants are highly likely to prevail on the merits of this lawsuit.

[5] There likewise is no doubt that Plaintiffs are "members" of USAPA for Title V purposes. The LMRDA defines "member" as "any person who has fulfilled the requirements for membership in

2. Defendants Have Violated LMRDA Title V's Substantive Obligations

As applied to USAPA, LMRDA Title V imposes a fiduciary duty upon its National Officers and Board of Pilot Representatives, Defendants here, to hold USAPA's money solely for the benefit of USAPA and its members and to expend that money only in accordance with USAPA's Constitution and not to use it for their personal agendas. In pertinent part, USAPA's Constitution provides that NMB decertification triggers immediate dissolution of the organization in accordance with the dissolution procedures outlined in the Constitution, including disbursement of any remaining USAPA funds to its members. (*See* Ex. 1 attached to Verified Compl., at Art. I, § 3.) The only exception to this dissolution requirement in the Constitution is that USAPA's National Officers may defer the dissolution indefinitely, and therefore also defer distribution of USAPA assets to its members, if they determine that "existing circumstances present, or may present in the future, the need for *collective legal action on behalf of the pilot group*." (*Id.*, Art. I, § 3(C).)[6] Thus, the challenged expenditures could only be made (and could only form a basis for deferring dissolution and could only reduce the pot of dollars available for distribution to USAPA's members) if they were properly authorized by USAPA's governing body and were consistent with its governing documents.

[a labor organization], and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership." 29 U.S.C. § 402(o). Thus, even members of a decertified union have Title V standing if they did not voluntarily withdraw from the union and were never suspended or expelled from membership. *See Erkins v. Bryan*, 663 F.2d 1048, 1048–52 (11th Cir. 1981). Plaintiffs here were members in good standing of USAPA for more than twelve months prior to its decertification in September, 2014. Thus, they remain "members" who have standing to sue under Title V of the LMRDA.

[6] Indeed, any available USAPA funds in excess of the expected costs of such actions are to be disbursed to USAPA's members even if dissolution is legitimately deferred. *See* Ex. 1 attached to Verified Compl., at Art. I, § 3(C). The National Officers have refused to do this.

Whether Defendants have violated USAPA's Constitution and, as well, Title V of the LMRDA, thus turns on whether, since USAPA's decertification, they have authorized or made expenditures for purposes other than "collective legal action on behalf of the pilot group." As a general principle, expenditure of union funds is permissible so long as the expenditure is properly authorized by the union's governing body and so long as the authorization is consistent with the union's governing documents. And while courts defer to union officers' reasonable interpretation of the union constitution, *see Local 334, United Ass'n of Journeymen & Apprentices of Plumbing & Pipe Fitting Indus. of the United States & Canada v. United Ass'n of Journeymen & Apprentices of Plumbing & Pipe Fitting Indus. of the United States & Canada*, 669 F.2d 129, 131 (3d Cir. 1982), this principle "cannot be used to give carte blanche to union activity which is alleged to constitute a violation of the broad fiduciary duties of union officials under the LMRDA." *Sabolsky v. Budzanoski*, 457 F.2d 1245, 1252 (3d Cir. 1972). Accordingly, where the officials' interpretation "is not fair or reasonable" or "conflict[s] with the stark and unambiguous language of the constitution," such interpretation is given no deference and courts apply the plain meaning of the applicable provision of the constitution. *Loretangeli v. Critelli*, 853 F.2d 186, 194 (3d Cir. 1988). That is even more so the case when the action complained of advances the interests of the very union officers who made the challenged decision. *See, e.g. Morrissey v. Curran*, 650 F.2d 1267, 1274 (2d Cir. 1981) ("We thus adopt the view, consistent with the thrust of § 501, that where a union officer personally benefits from union funds, a court in a § 501(b) suit may determine whether the payment, notwithstanding its authorization, is so manifestly unreasonable as to evidence a breach of the fiduciary obligation imposed by § 501(a)."); *see also Brink v. DaLesio*, 667 F.2d 420, 424 (4th Cir. 1981) ("[W]here a union official profits personally through the use . . . of union funds . . . the official bears the burden of proving that the transaction was validly

authorized in accordance with the union's constitution and bylaws after adequate disclosure, and that it does not exceed a fair range of reasonableness.").

Here, USAPA's Constitution provides "stark and unambiguous language" detailing the only authorized use of post-decertification funds: "collective action on behalf of the pilot group." By definition, *the* pilot group necessarily includes both East *and* West Pilots. Thus, the post-decertification "*collective* legal action" contemplated by the Constitution must be on behalf of both East and West Pilots as a whole group. And even if it could be construed to authorize legal action on behalf of a portion of the pilot group only, it surely cannot be construed to authorize actions by USAPA's National Officers and BPR members that are *manifestly in opposition to* the interests of a significant portion of the pilot group. Any other interpretation is patently unreasonable, and this Court owes no deference to Defendant's interpretation of the Constitution that gives them carte blanche to spend USAPA funds for whatever purposes they deem necessary. *See Loretangeli*, 853 F.2d at 194; *Sablosky*, 457 F.2d at 1252.

That is doubly so here. The very Defendant BPR members who urged the National Officers to defer dissolution and who have consistently authorized the expenditures aimed at advantaging the East Pilots at the expense of the West Pilots in the PAB, and the Defendant National Officers who actually deferred dissolution, are all East Pilots who stood to benefit personally by exclusion of the West Pilots from the Substantive SLI Process and who stand to benefit personally from taking the position that the Nicolau list should not be used as the basis for integrating the former US Airways pilots with the American pilots. This is why the Defendants are willing to spend as

much of the millions remaining in USAPA's treasury as necessary to get the seniority list they want.[7]

B. The Three Other TRO and Preliminary Injunction Factors Also Call for an Immediate Injunction

In addition to the Plaintiffs' likely success on the merits of this claim, they are further entitled to a preliminary injunction because, absent one, USAPA's members, including Plaintiffs, are likely to suffer irreparable harm, Defendants will not suffer a corresponding harm that outweighs that suffered by Plaintiffs without an injunction, and the public interest weighs squarely in favor of Plaintiffs.

1. Irreparable Harm

In the absence of immediate injunctive relief, USAPA's members, including Plaintiffs, are likely to suffer substantial and irreparable harm. As noted above, Defendants' continuing expenditure of USAPA funds in furtherance of only their and the East Pilots' interests in the ongoing Substantive SLI Process is draining USAPA's treasury of funds that instead should be returned to its membership. Since USAPA no longer serves as the exclusive bargaining representative for any group of pilots, it is unable to replenish its coffers through new dues collections. Thus, absent a preliminary injunction, USAPA funds will continue to dwindle, thereby reducing the disbursement amount Plaintiffs and other USAPA members are entitled to under

[7] To the extent that Defendants intend to authorize or use USAPA treasury funds to pay for counsel they may retain to defend them in this action, such conduct would plainly violate USAPA's Constitution and Title V of the LMRDA. *See Mulligan v. Parker*, 805 F.Supp 593, 595 (N.D. Ill. 1992) ("A union is customarily prohibited from paying the legal expenses of officers charged in Title V suits."); *see also Milone v. English*, 306 F.2d 814, 817 (D.C. Cir. 1962) ("As a general proposition, we think funds of a union are not available to defend officers charged with wrongdoing which, if the charges were true, would be seriously detrimental to the union and its membership.").

USAPA's Constitution. It is highly unlikely that the Defendants, either jointly or severally, have sufficient assets to replenish the tens of thousands of dollars that they have authorized to be spent so far to support only the East Pilots' position on seniority, let alone the millions of dollars the Defendants are willing to spend between now and whenever this East/West dispute is done.

On this point, *International Association of Machinists & Aerospace Workers, AFL-CIO v. Schimmel*, 128 F.3d 689 (8th Cir. 1997), a case involving similar circumstances in connection with another airline's change in the representational status of the employees, is instructive. There, eight Trans World Airlines ("TWA") flight attendants and the Internal Association of Machinists and Aerospace Workers ("IAM") brought an LMRDA Title V action against officers of the Independent Federation of Flight Attendants ("IFFA"). *Id.* at 690. Until early 1997, IFFA was the exclusive bargaining representative for TWA flight attendants, who, in turn, was the only group represented by IFFA and whose dues payments were the exclusive sources of income for IFFA. *Id.* In February of 1997, the TWA flight attendants elected IAM to replace IFFA as their exclusive bargaining representative. *Id.* at 691. Prior to this election and in contemplation of IAM's likely victory, the eight *Schimmel* plaintiffs sent IFFA a letter demanding that it account for its current assets and refrain from further expenditures pending the outcome of the representation election. *Id.* at 690. Despite this demand letter, IFFA's president transferred $700,000 in IFFA funds to new accounts, which compelled IAM and the eight individual flight attendants to file a Title V action, seeking a preliminary injunction against further IFFA expenditures. *Id.* at 691. The plaintiffs argued that since IFFA no longer had a collective bargaining agreement, members, or duties of representation, any expenditure of funds violated its officers' fiduciary duties to the membership. *Id.* On these facts, the Eighth Circuit held that "the TWA flight attendants will be

irreparably harmed without an injunction because union funds reflecting their union dues would finance continued IFFA activities that do not advance the flight attendants' interests." *Id.* at 693.

So, too, here. Like IFFA in *Schimmel*, USAPA no longer has any representative authority over any pilots. Yet Defendants continue to expend USAPA funds reflecting USAPA union dues—to which USAPA members, including Plaintiffs, are rightly entitled under USAPA's Constitution—on continued activities that do not advance the whole pilot group's interests. *See id.* Therefore, like in *Schimmel*, Plaintiffs have demonstrated a serious and substantial threat of irreparable harm if Defendants are not preliminarily enjoined from further expending USAPA funds for impermissible actions.[8]

2. Weighing of Equities

In balancing the equities, a court must consider whether a preliminary injunction would irreparably harm the party against whom it is sought, and if so, whether that harm outweighs the irreparable harm to the movant in the absence of such relief. *See Steakhouse, Inc. v. City of Raleigh*, 166 F.3d 634, 637 (4th Cir. 1999). Here, this balancing weighs heavily in favor of Plaintiffs, as Defendants will not suffer any harm at all by being prevented from spending funds which were received in significant part from the Plaintiffs in the first place.

[8] There is an additional manner in which Plaintiffs (and the West Pilots) may be irreparably damaged absent an injunction. If Defendants successfully advance their personal position of favoring the East Pilots (including, of course, themselves) over the West Pilots in the Substantive SLI Process—while using USAPA funds to do so—as they have so far, Plaintiffs and other West Pilots will face grave long-term consequences, because the outcome of the Substantive SLI Process will determine the West Pilots' relative seniority in perpetuity; a determination that will control every aspect of their working lives, including their compensation, work schedules, equipment flown and retirement benefits. Given this derivative consequence of Defendants' unlawful expenditure of funds, it would be impossible to ascertain with certainty an amount of money damages that would make Plaintiffs whole after the fact. *See Loretangeli*, 853 F.2d at 196 n. 17 ("[I]rreparable injury is suffered where monetary damages are difficult to ascertain or inadequate.").

If this Court were to preliminarily enjoin Defendants from further spending USAPA funds in violation of the union's Constitution, Defendants would still be able to advance their interests, *i.e.* the East Pilots' interest, in the ongoing Substantive SLI Process. As part of its agreements between USAPA, APA and American Airlines, American has contributed $4 million to support the respective merger committees' participation in the Substantive SLI Process. (*See* Ex. 2 attached to Verified Compl, at pp. 2–3, ¶ 7.) APA has, in turn, advanced this money in equal proportions to the three merger committees, USAPA/East Pilots, West Pilots, and the legacy American Pilots. (See Ex. 1, Ferguson Decl. ¶ 14).

Therefore, each of the three committees has available approximately $1.3 million to fund its involvement in the SLI negotiations. Moreover, Defendants and the East Pilots may, as the West Pilots have had to do for years, privately raise funds from affected pilots and other supporters to further finance their continued involvement in the SLI negotiations. Consequently, an injunction against Defendants' further use of USAPA funds does not harm them in any way, let alone "irreparably"; rather, it only serves to put the East Pilots' interests on equal footing with the West Pilots' interests, who, unlike Defendants, have not had unfettered access to USAPA funds, and preserves USAPA's funds for those who are entitled to it – its members.

3. Public Interest

The public interest factor in this matter weighs squarely in favor of Plaintiffs. As the Third Circuit has held, "true public interest lies in vindicating principles of union democracy by requiring [] defendants to obey their own constitution. Section 501 embodies this public interest by imposing fiduciary responsibilities on union officials." *Loretangeli*, 853 F.2d at 196. Conversely, the public interest is not furthered by allowing Defendants to continue to ignore USAPA's Constitution and to expend USAPA funds exclusively for the benefit of the East Pilots, including

themselves. Here, then, where the gravamen of Plaintiffs' complaint is Defendants' failure to obey USAPA's Constitution, the public policy considerations embodied in Title V of the LMRDA weigh strongly in favor of granting the present motion for temporary restraining order or preliminary injunction.

CONCLUSION

For the reasons stated above, Plaintiffs' motion for a temporary restraining order or preliminary injunction should be granted. Proposed orders (a proposed TRO and a proposed injunction) identifying the precise relief sought has been filed herewith.

Respectfully submitted this 27th day of March, 2015.

/s/ Kelly J. Flood

Marty Harper
Kelly J. Flood
ASU Alumni Law Group
Two North Central, Suite 600
Phoenix, AZ 85004
(602) 251-3621
(602) 251-3622
marty.harper@asualumnilawgroup.org
kelly.flood@asualumnilawgroup.org

Jeffrey Freund
Zachary Ista
Bredhoff & Kaiser, P.L.L.C
805 15th Street N.W.
Washington, D.C. 20005
(202) 842-2600 (p)
(202) 842-1888 (f)
jfreund@bredhoff.com
zista@bredhoff.com

C. Grainger Pierce, Jr.
Nexsen Pruet, PLLC
Carillon Building
227 West Trade Street, Suite 150
Charlotte, NC 28202
(704) 338-5321 (p)
(704) 805-4712 (f)
gpierce@nexsenpruet.com

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the Motion for Temporary Restraining Order or Preliminary Injunction with the Clerk of the court using the CM/ECF system. John Gresham, of Tin, Fulton Walker & Owen, has notified Plaintiffs' counsel that he is counsel for Defendants Bradford, Streble, Hummel, Stein, Nathan, Taylor, and Dugstad, In the event that notification pursuant to the CM/ECF system cannot be sent to John Gresham, I hereby certify that the foregoing document was duly served upon counsel for the Defendants Bradford, Streble, Hummel, Stein, Nathan, Taylor, and Dugstad in accordance with the provisions of Rule 5 of the Federal Rules of Civil Procedure by depositing it in the United States Mail, first-class postage prepaid, addressed as follows:

John Gresham
Tin Fulton Walker & Owen
301 East Park Avenue
Charlotte, NC 28203

I hereby certify that I additionally emailed this motion to Mr. Gresham this same date at jgresham@tinfulton.com.

I hereby certify that, with respect to the Defendants who have not to our knowledge been served, I have placed a copy of this motion in the United States Mail, certified first-class postage prepaid, return receipt requested, addressed as follows:

JAY MILKEY
61 Silver Street
South Hadley, MA 01075

COURTNEY BORMAN
2402 E 5th Street, #1641
Tempe, AZ 85281

PAUL DIORIO
325 Summer Street
North Andover, MA 01845

STEVE SMYSER
14345 Hastings Ct.
Stongesville, OH 44136

RONALD NELSON
5554 Champion Creek Blvd.
Medina, OH 44256

PAUL MUSIC
213 NE Treebine Terrace
Jensen Beach, FL 34957-6716

ROBERT FREAR
420 Bath Club Blvd. S.
North Redington Beach, FL 33708

Dated this 27th day of March, 2015.

/s/ Kelly J. Flood

Kelly J. Flood