

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

CIVIL ACTION NO.: 3:15-cv-00111-MOC-DCK

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.)

**DECLARATION OF
ERIC FERGUSON**

1. I gave an initial Declaration on March 27, 2015. The information in that Declaration continues to be true and accurate and I incorporate it by reference rather than repeat all of it herein.

2. I have been personally involved in all aspects of the East-West seniority dispute since 2007. I have also been involved in USAPA governance as a member of USAPA's BPR (Phoenix representative) from the fall of 2009 until my resignation on February 24, 2015. (See Declaration of E. Ferguson, Doc. 16-1, ¶ 7).

3. I have closely reviewed all of the pleadings filed by Plaintiffs in the LMRDA suit, including all of Plaintiffs' briefs associated with this TRO proceeding. Based on my personal involvement in these matters for almost eight years, I can confirm that the factual information included in those pleadings is true and accurate.

4. I understand that the primary purpose of this TRO proceeding is to obtain an order from this Court that directs the Defendants, officers and directors of USAPA, to stop USAPA from spending excess dues monies in its treasury for purposes that are not for the benefit of the entire group of former US Airways pilots. In other words, the Plaintiffs seek an order requiring Defendants to authorize USAPA to spend the excess dues in its treasury only for “collective legal action on behalf of the pilot group.”

5. The Plaintiffs do not seek an order that precludes Defendants from authorizing USAPA from spending reasonable amounts to wind up USAPA’s affairs in an orderly fashion.

6. By way of background information, USAPA collected dues and agency fees from former US Airways Pilots from April 18, 2008 to September 16, 2014. Both dues and agency fees were mandatory.

7. As best as the Plaintiffs and West Pilots can calculate, USAPA collected about \$70 million in dues and fees from April 18, 2008 to September 16, 2014. The Plaintiffs and other West Pilots have repeatedly asked Defendants and USAPA for an accounting of the total dues and fees collected from April, 2008 to September 16, 2014, but Defendants and USAPA have failed to respond to these requests and therefore have not provided the requested information.

8. USAPA was decertified by the National Mediation Board as the exclusive bargaining representative of the former US Airways pilots on September 16, 2014.

9. The best information the Plaintiffs and West Pilots have is that USAPA had between \$10 to \$12 million in funds on hand when it was decertified. Again, the Plaintiffs and West Pilots have asked Defendants and USAPA on several occasions since September, 2014 for this information so that the requested data could be shared with the Court for this TRO proceeding.

Like the other financial information requested from Defendants and USAPA, they have refused to produce the requested data.

10. USAPA's decertification on September 16, 2014 triggered USAPA's dissolution. See Art. 1, Sec. 3.B of USAPA's Constitution where it provides that "in the event of dissolution of the Association, the officers of USAPA shall act as agents for the membership and dispose of all of the physical assets of the Association by suitable means." (See USAPA Constitution and Bylaws, Doc. 1-2 at 7).

11. USAPA's Constitution also requires that upon dissolution "[a]ll 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 member in the twelve (12) months immediately preceding dissolution." (*Id.*, Art. 1, Sec. 3.A).

12. Immediately upon decertification, all USAPA members in good standing on September 16 were entitled to their pro rata share of USAPA's cash assets of between \$10 to \$12 million, minus, of course, whatever funds were reasonably needed to wrap up USAPA's business affairs. I am a First Officer, so my pay scale is less than a Captain's. As best as I can calculate, I believe that I am owed between \$1,200 and \$2,000, while others may be owed as little as \$600 or as much as \$5,000. I am concerned that when I am actually paid sometime in the future, the amount I will get will be far less than what I was entitled to on September 16, 2014, because in the interim the defendants have allowed USAPA to spend substantial monies on things that were not "collective legal action on behalf of the pilot group."

13. But instead of dissolving USAPA immediately, USAPA's four National Officers, who are defendants here, elected to defer dissolution pursuant to Art. 1, Sec. 3 of USAPA's Constitution, which provides in pertinent part:

“Within three (3) business days of ... the NMB decision ... the National Officers shall make a determination as to whether existing circumstances present, or may in the future, the need for collective legal action on behalf of the pilot group including but not limited to, representation in seniority integration proceedings.” (Emphasis added.)

14. So, on the same day USAPA was decertified, the National Officers in fact decided to defer USAPA’s dissolution because of the National Officers’ perceived need for “collective legal action on behalf of the pilot group...” (See National Officers Statement, Doc. 22-4 at 1). The first item listed as justification for deferring dissolution was “Seniority list integration proceedings as between USAPA and APA.” (See *Id.*).

15. Since decertification, the USAPA Constitution has restricted the spending of the excess USAPA treasury funds to those items necessary to wrap up the affairs of USAPA (which the Plaintiffs and West Pilots do not oppose so long as they are reasonable) and any items where the “need for collective legal action on behalf of the pilot group” is required. (Emphasis added.)

16. To me the word “collective” as used in USAPA’s Constitution is easy to define. It means: “shared or done by a group of people: involving all members of a group.” Merriam-Webster Online Dictionary, 2004, <http://www.merriam-webster.com> (15 Jan. 2015). “All members of a group” in this instance means all “members of USAPA,” since USAPA represented only one craft or class of US Airways employees – its Pilots. Currently, there are about 5,000 USAPA members, as best the Plaintiffs and West Pilots know. About 30% are “West Pilots,” while 70% are former “East Pilots.”

17. Since decertification, the largest single event that USAPA has been spending its money on is “seniority list integration.” Based on my personal information, these activities include (but may not be limited to):

- Opposing at every opportunity the West Pilots' application, as provided for in Paragraph 8(b) of the Protocol Agreement (See Doc. 1-4 at 10), to have their own West Merger Committee during the SLI seniority arbitration. Notwithstanding USAPA's total opposition to the West Pilots' application and a five (5) day arbitration in December, 2014, the Preliminary Arbitration Board ("PAB") directed APA to appoint a West Merger Committee, which it did on January 12, 2015. (See Doc. 1-5 at 35-36).
- The West Pilots have repeatedly asked Defendants and USAPA to disclose how much it spent on its effort to keep the West Pilots from getting their own Merger Committee, but Defendants and USAPA have refused to disclose the amount. Based on my personal litigation experience with USAPA over the past seven years, I know for certain that it cost USAPA a lot of money to fund the overall effort (unsuccessfully) to deny the West Pilots their own Merger Committee.
- Between September 16, 2014 to the date of this Declaration, the USAPA (East) Merger Committee has consisted of between four and six pilots, all on full flight pay loss. This Committee of pilots has been working full time to get ready for the SLI Arbitration which begins on June 29, 2015. In addition, the USAPA (East) Merger Committee has the services of two lawyers, several retained experts, and an unknown number of consultants and technicians. From my previous work on the America West Merger Committee in 2007/08 and my current position on the West Pilots Merger

Committee, I know for a fact that it costs hundreds of thousands of dollars to cover all of the expenses of the USAPA (East) Merger Committee since September 16, 2014.

- The Plaintiffs and West Pilots have asked Defendants and USAPA to produce financial information about how much USAPA has spent since September 16, 2014 to support the USAPA (East) Merger Committee, so that this critical financial data could be presented to the Court at the TRO hearing. Defendants and USAPA have refused to provide the data requested.

18. At least since March, 2013 when the West Pilots filed what is now known as the “Addington II” suit in Federal District Court in Phoenix, Arizona (see *Addington v. U.S. Airline Pilots Association, et al.*, 2:13-cv-00471-ROS (D. Ariz. 2013), *appeal to Ninth Circuit pending*), the West Pilots have sought to have their own Merger Committee. Defendants and USAPA have been fully aware of this. So spending substantial USAPA funds since September 16, 2014 to deny the Plaintiffs and West Pilots their own Merger Committee was not an effort for “collective legal action on behalf of the pilot group.” In fact, it was a costly legal action for only a part of the “collective” pilot group.

19. Likewise, the Plaintiffs and West Pilots did not want the USAPA (East) Merger Committee to represent them in the SLI arbitration. This is exactly why the West Pilots filed their application under the Protocol Agreement to have their own West Merger Committee. To reinforce what USAPA has known for more than two years, over 1,200 former America West Pilots who are opposed to USAPA representing them in the SLI process recently sent emails to this effect to USAPA President Bradford telling him exactly this. An example of what all of these

pilots sent to Steve Bradford and Jess Pauley, the Chair of the USAPA (East) Merger Committee, is attached hereto as Attachment 9-A.

20. USAPA and at least one individual defendant recently acknowledged what has been obvious ever since USAPA was decertified on September 16, 2014. Steve Bradford, USAPA's current President, and a defendant in this action, formally announced in a USAPA publication that "USAPA is no longer the Collective Bargaining Agent for former US Airways Pilots but will represent 'East' Pilots in that process." In fact, Defendants have authorized USAPA to spend and USAPA has already spent hundreds of thousands of dollars supporting only the East Pilots in the SLI process since September 16, 2014.

21. Since decertification, USAPA has not been able to collect dues or fees since it is no longer a collective bargaining representative. Therefore it has no way to replenish the USAPA treasury for the hundreds of thousands of dollars Defendants have authorized it to spend only on behalf of the East Pilots. Thus, there are substantially far less monies in the USAPA treasury to return to "all members in good standing" today than on September 16, 2014.

22. The Plaintiffs and West Pilots seek a limited TRO: they seek one that enjoins Defendants from authorizing USAPA to spend any more money from its treasury on the entire seniority integration process since such spending is not in support of "collective legal action on behalf of the pilot group." The Court needs to enjoin Defendants from taking actions which benefit only a percentage of the pilot group.

23. I intend to appear and be available to testify at the TRO hearing regarding the declarations made herein.

I declare under penalty of perjury that the foregoing is true and correct. Executed this
16th day of June, 2015.

A handwritten signature in black ink, appearing to read "Eric Ferguson", written in a cursive style.

Eric Ferguson

From: George Maliga gmaliga@msn.com
Subject: Disclaimer Of USAPA Representation
Date: May 24, 2015 at 2:24 PM
To: sbradford@usairlinepilots.org, jpauley@usairlinepilots.org
Cc: phxresolve@gmail.com

Steve Bradford and Jess Pauley,

This message is to advise you and USAPA that the only reason I remain as a member of USAPA is to be certain that when USAPA dissolves as required by its Constitution and distributes its remaining assets to its members, I will be treated as a member and will receive my share of those assets. I do not remain a member of USAPA for the purpose of having USAPA represent my interests in the upcoming seniority integration proceedings with the American Airline pilots. So there is no misunderstanding, I want to state clearly and unequivocally that USAPA does not represent my interests in that proceeding. Only the West Pilots Merger Committee, appointed by APA at the direction of the Preliminary Arbitration Board, represents my interests in that proceeding.

Sincerely,

George G. Maliga