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

US AIRLINE PILOTS ASSOCIATION, **Plaintiff,** **v.** **ROGER VELEZ, on behalf of himself and all similarly situated former America West Pilots, and LEONIDAS, LLC,** **Defendants.**	**File No. 3:14-CV-577-RJC-DCK**
EDDIE BOLLMEIER, BILL TRACY, and SIMON PARROTT, **Plaintiffs,** **v.** **GARY HUMMEL et al.,** **Defendants.**	**File No. 3:15-CV-00111-RJC-DCK**
EDDIE BOLLMEIER, BILL TRACY, and SIMON PARROTT, **Plaintiffs,** **v.** **ROBERT FREAR, COURTNEY BROWN, RONALD NELSON, PAUL DIORIO, and PAUL MUSIC,** **Defendants.**	**File No. 3:15-cv-480-RJC-DSC**

DEFENDANTS DIORIO, FREAR, MUSIC, AND NELSON'S REPLY IN SUPPORT OF THEIR MOTIONS TO DISMISS AND FOR RECONSIDERATION

Defendants Paul DiOrio, Robert Frear, Paul Music, and Ronald Nelson (collectively, the ñMoving Defendantsò), respectfully submit this reply in support of their motions to dismiss the plaintiffsô claims against them pursuant to Federal Rule of Civil Procedure 12(b)(6), (Docs. No. 87, 96), and their motion for the Court to reconsider its orders granting a preliminary injunction and denying the other defendantsô motion to dismiss, (Doc. No. 88).

Plaintiffsô opposition to the Moving Defendantsô motions relies on a plainly untenable interpretation of the US Airline Pilots Association (ñUSAPAò) Constitution. Plaintiffsô argument fails because (1) their interpretation is contrary to the USAPA Constitutionôs primary objective: to pursue date-of-hire seniority; (2) their interpretation leads to the absurd result that USAPA could never participate in post-merger seniority proceedings; and (3) courts must grant substantial deference to USAPAôs interpretation of its own Constitution. Plaintiffsô claims against the individual defendants are also misguided because defendants have not received any direct personal benefits from their alleged actions and other remedies are available against USAPA itself. Therefore, plaintiffsô claims against the Moving Defendants must be dismissed for failure to state a valid claim. Because plaintiffsô claims against all defendants are identical, the Court should also reconsider and reverse its prior orders.

ARGUMENT

I. Article I, Section 3(C) of the USAPA Constitution Does Not Supersede USAPA's Primary Constitutional Objective to Pursue Date-of-Hire Seniority.

Plaintiffsô primary argument is that the phrase ñcollective legal actionò in Article I, Section 3(C) of the USAPA Constitution precluded USAPA from advocating for date-of-hire seniority after its decertification. (Pls.ô Opp. to Mtns., Doc. No. 98, pp. 5-7.) This argument

fails because USAPA is explicitly committed to date-of-hire seniority in its Constitution, the pursuit of which was the very reason for USAPAôs creation.

USAPA was formed after the US Airways-America West merger because the East Pilots opposed the Nicolau Award, which disadvantaged East Pilots compared to date-of-hire-based seniority. (Bollmeier II Complaint, ¶¶ 14-15). When USAPA was formed, the date-of-hire seniority principle favored by the East Pilots and opposed by the West Pilots was enshrined in the Constitution. Article I, Section 8(D) of the USAPA Constitution expressly states that one of its objectives is to ñmaintain uniform principles of seniority based on date of hire and the perpetuation thereof[.]ò (USAPA Constitution, Bollmeier II Complaint, Ex. 1, p. 8.) As the Ninth Circuit put it, ñ[f]rom the outset, USAPA was irreconcilably opposed to the negotiating position of the West Pilots[,]ò and was instead ñconstitutionally committed to a date-of-hire list that favored the East Pilots[.]ò *Addington v. USAPA*, 791 F.3d 967, 986 (9th Cir. 2015) (ñ*Addington II*ò) (emphasis added). As the collective bargaining representative of both the East Pilots and West Pilots, USAPA consistently worked toward achieving date-of-hire seniority rather than the Nicolau Award. *See Addington v. USAPA*, 606 F.3d 1174, 1177-78 (9th Cir. 2010) (addressing USAPAôs proposal of a date-of-hire seniority list to US Airways); *Addington II*, 791 F.3d at 976 (addressing USAPAôs efforts to seek date-of-hire-based seniority in the American Airlines merger process).

Under Article I, Section 3(C) of the USAPA Constitution, upon decertification, dissolution of USAPA can be deferred if the National Officers determine that circumstances present ñthe need for collective legal action on behalf of the pilot group, including but not limited to, representation in seniority integration proceedings.ò (USAPA Constitution, Bollmeier II Complaint, Ex. 1, p. 6.) The evident purpose of this provision is to permit USAPA to advocate

in post-merger seniority integration proceedings, as was necessary after the US Airways-America West merger.

Given that USAPA was founded to pursue date-of-hire seniority and specified that goal as a Constitutional objective, ñcollective legal action . . . in seniority integration proceedingsò must mean action to pursue date-of-hire seniority. Under the Constitution, pursuing date-of-hire seniority was the collective goal of USAPA when it was a collective bargaining representative. Under the Constitution, pursuing date-of-hire seniority thus remained the ñcollectiveò goal in USAPAôs post-merger advocacy. It makes no sense for the Constitution to call for date-of-hire seniority throughout USAPAôs tenure as a collective bargaining representative, but then require some other seniority position in post-merger proceedings.

Plaintiffs assert that decertification was a ñgame changerò that altered the meaning of ñcollectiveò action. (Pls.ô Opp. to Mtns., pp. 5-6.) But they provide no reason why this should be so. USAPAôs Constitution, like USAPA itself, was created to pursue date-of-hire seniority in a post-merger integration. That goal was explicitly included as a Constitutional objective in Article I, Section 8(D). When that same Constitution discusses ñcollective legal action . . . in seniority integration proceedings,ò it must mean pursuit of date-of-hire seniority. Any other interpretation defies logic.

Therefore, because the individual defendants complied with the USAPA Constitution in pursuing date-of-hire seniority in the post-decertification proceedings, they could not have breached their fiduciary duty to USAPA under 29 U.S.C. § 501. *See Nellis v. Air Line Pilots Association*, 815 F. Supp. 1522, 1541-42 (E.D. Va. 1993) (ñAs long as a union leadership remains in compliance with the unionôs internal policies, then the union itself suffers no harm[.]ò), *aff'd by*, 15 F.3d 50, 51-52 (4th Cir. 1994).

II. Plaintiffs' Interpretation of Article I, Section 3(C) Leads to Absurd Results.

Plaintiffsô interpretation of Article I, Section 3(C) is not only contrary to the text, purpose, and history of the USAPA Constitution, but also leads to absurd results. Plaintiffs contend that ñcollective legal actionò excludes any action that benefits some members and disadvantages other members. (Pls.ô Opp. to Mtns., p. 7.) This position, however, would preclude USAPA from advancing any position in post-merger seniority proceedings, which cannot have been the intent of the USAPA Constitution.

As plaintiffs concede, ñseniority is a zero sum game.ò (Pls.ô Opp. to Mtns., p. 12.) Courts recognize this as well: ñ[T]he issue of seniority is a sensitive one for the union to traverse because a seniority dispute is the equivalent of a family feud over an inheritance: it is a zero-sum game, where moving one pilot up the list necessarily requires moving another pilot down.ò *Addington II*, 791 F.3d at 980 (emphasis added). Therefore, advancing any position in seniority integration proceedings necessarily benefits some members and disadvantages other members.

If ñcollective legal actionò in Article I, Section 3(C) precludes advocacy for a position that disadvantages some members, then USAPA would never be able to advance any position in post-merger seniority integration proceedings. This is clearly an absurd result because Article I, Section 3(C) expressly contemplates post-decertification legal action in ñseniority integration proceedings.ò Contract interpretations that lead to absurd results must be rejected. *See Mgmt. Sys. Associates, Inc. v. McDonnell Douglas Corp.*, 762 F.2d 1161, 1172 (4th Cir. 1985) (ñóAll instruments should receive a sensible and reasonable construction and not such a one as will lead to absurd consequences or unjust results.ôò (quoting *DeBruhl v. State Highway & Public Works Com.*, 245 N.C. 139, 95 S.E.2d 553, 557 (1956))).

ñCollective legal actionò in Article I, Section 3(C) must be interpreted to permit USAPA to advocate a position in post-decertification seniority proceedings. It therefore must permit post-decertification advocacy for date-of-hire seniority, the USAPA Constitutionôs founding principle.

III. At the Very Least, USAPA's Interpretation of Its Own Constitution is Reasonable, and Cannot Be Rejected by the Court.

Even if the Court finds some merit to plaintiffsô interpretation of Article I, Section 3(C), USAPAôs contrary interpretation of its own Constitution must be deemed at least reasonable. It is well-established that courts must defer to a unionôs interpretation of its own constitution as long as that interpretation is plausible or reasonable. Applying that principle here, the Court must defer to USAPAôs interpretation of Article I, Section 3(C) so as to permit USAPAôs advocacy for date-of-hire seniority in post-merger proceedings.

ñIt is well established that a unionôs interpretation of its own constitution is entitled to judicial deference unless its interpretation is patently unreasonable.ò *Tile Workers Finishers Local 77 v. Tile Marble, Terrazzo, Finishers, Shopworkers & Granite Cutters International Union*, No. 87-2062, 1988 WL 54023, at *1 (4th Cir. 1988) (unpublished; attached); *see also Local No. 48, United Bhd. of Carpenters v. United Bhd. of Carpenters*, 920 F.2d 1047, 1052 (1st Cir. 1990) (ñjudges should refrain from second-guessing labor organizations in respect to plausible interpretations of union constitutionsò); *Newell v. International Bhd. of Electrical Workers,* 789 F.2d 1186, 1189 (5th Cir.1986) (holding unionôs interpretation of its own constitution will not be invalidated unless ñpatently unreasonableò); *Local 334 v. United Ass'n of Journeymen*, 669 F.2d 129, 131 (3d Cir.1982) (holding same). Moreover, in *Nellis*, the Fourth Circuit held that when ñreviewing a unionôs decision under a policy that expressly vests such

discretion in the union leadership, this court must plainly accord the highest degree of deference to the unionôs decision.ò *Nellis v. Air Line Pilots Ass'n*, 815 F. Supp. 1522, 1538 (E.D. Va. 1993) (emphasis added), *aff'd*, 15 F.3d 50 (4th Cir. 1994).

Here, USAPAôs officers determined that Article I, Section 3(C) permitted USAPA to advocate for date-of-hire seniority in post-merger proceedings, and decided that USAPAôs dissolution should be deferred so USAPA could take such legal action. The officersô interpretation of Article I, Section 3(C) is, at the very least, not patently unreasonable because (1) USAPA was founded to pursue date-of-hire seniority; (2) date-of-hire seniority is enshrined as a Constitutional objective; (3) USAPA had always pursued date-of-hire seniority as a collective bargaining representative;[1] (4) the phrase ñcollective legal actionò is not explicitly defined and is consistent with their interpretation; and (5) a contrary interpretation leads to absurd results. *See* Sections I, II, *supra*. Their interpretation cannot now be second-guessed by the Court. Moreover, the officersôdiscretionary decisions under Article I, Section 3(C) are entitled to ñthe highest degree of deference,ò and thus cannot be found to violate their fiduciary duty to USAPA. *See Nellis*, 815 F. Supp. at 1538.

IV. Defendants Did Not Receive Any Direct Personal Benefit From the Actions Challenged by the Plaintiffs.

Without any precedent on point, plaintiffs argue that defendants received a direct personal benefit from the seniority-related actions challenged in their Section 501 claims. (Pls.ô Opp. to Mtns., pp. 12-14.) However, courts have only found personal benefits to union officers in situations akin to embezzlement, *i.e.* where the officers directly received union funds

[1] As of September 16, 2014 ï the date of the officersôdetermination ï USAPAôs pursuit of date-of-hire seniority had been found **not** to violate its duty of fair representation. *See Addington v. USAPA*, No. CV-13-471-PHX-ROS, 2014 WL 321349, at *7 (D. Ariz. Jan. 10, 2014) (rejecting DFR claim by West Pilots), *rev'd in part*, *Addington II*, 791 F.3d 967.

themselves, purchased items with union funds, used union property, or received non-union-related reimbursements. *See Ray v. Young*, 753 F.2d 386, 390 (5th Cir. 1985) (comprehensively describing personal benefits); *Brink v. DaLesio*, 667 F.2d 420, 426 (4th Cir. 1981) (addressing officer who gained personal use of a seashore condominium by using union funds to pay above-market rent); *Morrissey v. Curran*, 650 F.2d 1267, 1271 (2d Cir. 1981) (addressing excessive compensation and benefits paid directly to union officers). On the other hand, there is no direct personal benefit if officers advance a general policy that applies to all members, and which benefits them and others more than certain members. *See Hoffman v. Kramer*, 362 F.3d 308, 323 (5th Cir. 2004) (rejecting Section 501 claim for alleged improper negotiations in part because ñthe defendants are not alleged to have benefitted personally any more than similarly-situated pilots who fared better under the contractò).

In this case, the actions challenged by plaintiffs did not confer any direct personal benefit on defendants. There is no allegation that the individual defendants received any USAPA funds themselves, purchased items with USAPA funds, used USAPA property, or received non-union-related reimbursements. Because defendants did not receive any direct personal benefit, and acted pursuant to the correct ï or at least a not patently unreasonable ï interpretation of USAPAôs Constitution, they did not breach their fiduciary duty to USAPA. *See Nellis*, 815 F. Supp. at 1538, 1541-42.

V. The West Pilots Still Have a Potential Remedy Even Though Section 501 Suits Are Barred Against the Individual Defendants.

Without citing precedent, plaintiffs assert that they have no alternate remedy if their Section 501 claims against the individual defendants are dismissed. (Pls.ô Opp. to Mtns., pp. 9-10.) However, there are two potential remedies.

First, plaintiffs may have a claim against USAPA for breach of the duty of fair representation. Even though USAPA was not the certified bargaining representative of plaintiffs after September 16, 2014, USAPA continued to represent plaintiffs and all USAPA members in the US Airways-American Airlines merger proceedings. Specifically, under the ñSeniority Integration Protocol Agreement,ò USAPA represented US Airways pilots in the seniority list integration process after September 16, 2014. (Protocol Agreement, Bollmeier II Complaint, Ex. C.) Because USAPA continued to act as the representative of its members in these labor negotiations, USAPA continued to owe them a duty of fair representation. *See BIW Deceived v. Local S6, IAMAW Dist. Lodge 4*, 132 F.3d 824, 833 (1st Cir. 1997) (ña union owes a duty of fair representation to nonmembers whom it has undertaken constructively to representò); *Koshatka v. Philadelphia Newspapers, Inc.*, 762 F.2d 329, 335 (3d Cir. 1985) (ñA unionôs assumption of the tasks of representation is one of the bases upon which the duty of fair representation can arise.ò).

Second, under *Wooddell v. International Brotherhood of Electrical Workers, Local 71*, 502 U.S. 93, 112 S.Ct. 494, 116 L.Ed.2d 419 (1991), and 29 U.S.C. § 185, plaintiffs may have a direct claim against USAPA for breach of contract based on the alleged breach of the USAPA Constitution. *See Moore v. Local Union 569 of Int'l Bhd. of Elec. Workers*, 989 F.2d 1534, 1540-41 (9th Cir. 1993) (ña *Wooddell* claim requires a union to obey its own constitution regardless of the contextò).

Plaintiffsô potential remedy ï both in terms of legal theories and the existence of actual money to be recovered ï rests in an action against USAPA itself. But under the controlling authority of *Nellis*, the actions challenged here cannot be a breach of the individual defendantsô fiduciary duty under Section 501. *See Nellis v. Air Line Pilots Association*, 815 F. Supp. 1522, 1541-42 (E.D. Va. 1993) *aff'd by*, 15 F.3d 50, 51-52 (4th Cir. 1994). The individual defendants

simply decided to advocate for date-of-hire seniority. Their advocacy was expressly authorized by the USAPA Constitution and was consistent with USAPAôs primary Constitutional objective. There is no basis to hold them personally liable for such conduct.

CONCLUSION

For the reasons stated above, the Moving Defendants respectfully request that the Court (1) enter an order granting their motions to dismiss and dismissing plaintiffsô claims against them, with prejudice; and (2) reconsider and reverse its prior decisions granting plaintiffsô motion for a preliminary injunction and denying the Bollmeier I Defendantsô motion to dismiss.

This the 4th day of January, 2016.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Reply in Support of DefendantsôMotions to Dismiss was filed electronically with the Clerk of Court using the CM/ECF system which will send notification of such filing to C. Grainger Pierce, Jr., Jeffrey R. Freund, Kelly Joyce Flood, Marty Harper, Zachary Ista, John Gresham, Stanley J. Silverstone, Lee Seham, and Roger Adams Blake, Jr., Attorneys for the other parties.

Dated: January 4, 2016.

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