

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

CIVIL ACTION NO.: 3:14-CV-577-RJC-DCK

US AIRLINE PILOTS ASSOCIATION,

Plaintiff,

vs.

ROGER VELEZ, on behalf of himself
and all similarly situated former America
West Pilots, and LEONIDAS, LLC,

Defendants.

DEFENDANTS' RESPONSE TO

MOTION TO AMEND

Pursuant to Local Rule 7.1(E), Defendants Roger Velez and Leonidas, LLC, file this Response to Plaintiff's Motion to Amend.¹

INTRODUCTION

Plaintiff USAPA filed its Complaint for Declaratory Judgment, naming as a defendant Roger Velez, on behalf of himself and all similarly situated former America West Pilots. Doc. 1-

1. USAPA commenced this action the same date that it was de-certified as a labor organization. USAPA filed this action to seek immunity for its officers and directors' decision to refuse to

¹ From a purely procedural standpoint, USAPA's motion is, at the very least, impractical. USAPA has filed a Motion to Amend while multiple dispositive and/or determinative requests are pending. As USAPA noted, Defendants removed to this Court, but USAPA has sought a remand to state court. Doc. 19. Defendants have also filed motions to dismiss, raising personal jurisdiction defenses, among others. Docs. 7, 8. While these motions are pending, it seems in appropriate, or at least impractical, for USAPA to amend its complaint. Unless and until this Court determines where, and against who, the action will proceed, it appears pointless to allow USAPA's proposed amendments.

dissolve the now-defunct labor organization and disburse approximately \$11 million in excess dues² back to members, pursuant to USAPA's Constitution and Bylaws, as well as duties and obligations under federal law. Defendants removed the action on both diversity grounds and federal question jurisdiction. Doc. 1. With respect to federal question jurisdiction, Defendants asserted that the actions of USAPA's officers and directors for which it seeks insulation give rise to federal questions under the Railway Labor Act and the Labor Management Reporting and Disclosure Act, 29 U.S.C. § 501(b). *Id.*

Plaintiff is correct that subsequent to its filing its complaint, counsel for Mr. Velez have sent additional letters to remind USAPA's officers and directors of their duties under federal law, and to assert that USAPA's officers and directors have violated and were continuing to violate their duties by using USAPA's assets for purely partisan political activities that benefited only one faction of the former union. The letters noted that the actions taken by USAPA's officers and directors were not "collective legal action on behalf of the pilot group," because they were actions that explicitly benefited only a faction of the pilot group, the East Pilots, to the detriment of another faction of the group, the West Pilots.

In filing its Motion to Amend, however, USAPA studiously avoided revealing to this Court an important development that further establishes federal question jurisdiction, and demonstrates that USAPA's proposed amendments are in bad faith. Specially, an arbitration panel determined on January 9, 2015, that the West Pilots were entitled to be represented by their own merger committee and that USAPA does not represent the West Pilots' interests in the Seniority List

² 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.

Integration (“SLI”) process. (The Preliminary Arbitration Board “PAB” Decision, is attached as Exhibit 1.) In its 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 [not USAPA] is the representative of all Company pilots (both US Airways and American Airlines).**” Id. at 31 (emphasis added).
- “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 (emphasis added).
- “**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 (emphasis added).

The PAB further directed APA to designate the West Pilots Merger Committee as a full participant in the Substantive SLI Process. Id. at 35. On January 12, 2015, APA appointed a separate Merger Committee to represent the interests of the West Pilots in the Substantive SLI Process.

As a result, USAPA is not involved in any “collective legal action on behalf of the pilot group.” It continues to exist and operate for the sole purpose of advancing the interests of the East Pilots. Regardless of this schism, it refuses to dissolve and disburse excess dues. Indeed, it has instead asked this Court for its blessing to allow the officers and directors to continue to violate their duties under federal law by using approximately \$11 million in dues money, 35-40% of which belongs to the West Pilots, for the personal gain of the offices and directors in their pursuit of partisan political activities.

ARGUMENT

It is true that leave to amend is typically freely granted. Fed.R.Civ.P. 15(a)(2). When an amendment would be prejudicial, is proposed in bad faith or would result in a futility, however, a court may deny the amendment. *See, e.g., Edwards v. City of Goldsboro*, 178 F.3d 231, 242 (4th Cir. 1999). In this case, USAPA's proposed amendment, like its complaint, is an improper attempt to insulate officers and directors under state law who have violated their fiduciary duties from liability under federal law. Indeed, USAPA requests as part of its relief an injunction against Defendants from filing an action here or in any other jurisdiction to remedy such breaches. Doc. 33-1 at para. 105.

Contrary to USAPA's requested relief in its complaint and proposed amendment, which seeks immunity for its officers' and directors' self-dealing, under section 501(a) of the LMRDA, USAPA's officers and directors are obligated "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. § 5. 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* Doc. 33-1 1, at para 52, Art. I, § 3(A). 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).

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. 01(a).

By expending USAPA funds *after* the decertification of USAPA as the exclusive bargaining representative of US Airways pilots on September 16, 2014, *and after* the PAB determined that USAPA cannot and does not represent the West Pilots in the substantive SLI Process on January 9, 2015, USAPA is acting in a manner that does not advance “collective legal action on behalf of the pilot group.” In so doing, USAPA’s officers and directors have 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.

USAPA, in its complaint and proposed amendments, seeks insulation for its officers’ and directors’ breaches of their fiduciary duties in violation of federal law, and seeks to enjoin Defendants and/or any West Pilots from bringing an action under the LMRDA to remedy those violations. USAPA’s motives are clear – it seeks *carte blanche* from either this Court or a state court to retain in excess of \$11 million, 35-40% of which belongs to the West Pilots, to pursue the

partisan political interests of the East Pilots to the detriment of the West Pilots. This raises a federal question under the LMRDA, as established in *Int'l Ass'n of Machinists & Aerospace Workers v. Schimmel*, 128 F.3d 689 (8th Cir. 1997).

USAPA's proposed amendments are therefore in bad faith, would result in a futility, and would prejudice Defendants. This is so because the proposed amendments (1) ignore that an arbitration panel has already determined that USAPA cannot and will not represent the West Pilots in the SLI process, (2) seek a court's blessing for its officers' and directors' violations of their duties under federal law, and (3) seek to enjoin West Pilots from pursuing a remedy to which they are entitled under federal law.

As for USAPA's alternative request to "Supplement" the complaint with additional facts, USAPA's proposed "supplement" is materially misleading and incomplete. As noted above, USAPA seeks to add allegations regarding the additional letters from Mr. Velez's counsel, but USAPA conveniently ignores the fact that on January 9, 2015 the PAB determined that USAPA cannot and does not represent the West Pilots. This determination is material to USAPA's complaint because USAPA speciously argues that it needs the freedom to continue to exist and retain over \$11 million to represent all former US Airways pilots in "collective legal action on behalf of the pilot group." USAPA's omission of the PAB's determination therefore renders USAPA's proposed "supplement" materially misleading, incomplete and prejudicial to Defendants. Accordingly, it should be denied.

CONCLUSION

For the reasons set forth above, the Court should deny USAPA's Motion to Amend or Supplement the Complaint.

Respectfully submitted this 2nd day of March, 2015.

/s/ Kelly J. Flood

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Response to Motion to Amend with the Clerk of the court using the CM/ECF system. In the event that notification pursuant to the CM/ECF system cannot be sent to counsel for the Plaintiff, John Gresham, I hereby certify that the foregoing document was duly served upon counsel for the Plaintiff 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:

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This the 2nd, day of March, 2015.

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Exhibit 1