

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

US AIRLINE PILOTS ASSOCIATION	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 14-0328 (BAH)
v.	)	
	)	
U.S. AIRWAYS, INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**DECLARATION OF CAPTAIN MARK STEPHENS**

CAPTAIN MARK STEPHENS hereby declares that the following is true and correct, under penalty of perjury:

1. I am a pilot employed by defendant American Airlines, Inc. (“**American**”). I am presently a domestic S-80 Captain assigned to American’s DFW domicile. I am also Chairman of the Seniority Integration Committee (“**SIC**”) designated by defendant Allied Pilots Association (“**APA**”) to represent the pre-merger American Pilots in the integration of the pilot seniority lists of defendants American and US Airways, Inc. (“**US Airways**”) in connection with the merger of American and US Airways (“**Company**”). This Declaration is submitted in support of APA’s motion to compel arbitration of APA’s pending dispute under the January 15, 2013 Memorandum of Understanding (“**MOU**”) among American, US Airways, APA and the U.S. Airline Pilots Association (“**USAPA**”).

2. I was hired at American in July 1989. Prior to being hired at American, I flew as a pilot in the United States Air Force for nine years. I hold a B.S. degree in Electrical

Engineering from the United States Air Force Academy; an M.S. degree in Aeronautical Science from Embry-Riddle University; and a J.D. degree from Texas Wesleyan University School of Law. Throughout my employment with American, I have been a member of APA. I have held numerous APA offices. Among other things, I have served as Chairman of the APA Negotiating Committee from 2001 through February 2003, which included the time period in which American acquired the assets of Trans World Airlines (“TWA”) and the TWA Pilots were integrated with the American Airlines seniority list; and again from 2007 to 2009. I have also been a member of the Equity Distribution Committee in connection with American’s bankruptcy proceeding commencing in November 2011; and Chairman of the pre-acquisition American Pilots Committee in the 2013 arbitration over the protections to be afforded the former TWA pilots at American following the Company’s elimination of the protections in a document known as Supplement CC, which had been eliminated in the bankruptcy proceeding.

**The MOU, McCaskill-Bond, and Allegheny-Mohawk Sections 3 and 13**

3. In February 2013, US Airways and American agreed to merge. In anticipation of that merger, US Airways, American, USAPA and APA entered into the MOU on January 15, 2013. A copy of the MOU is attached as Exhibit 1.

4. American and US Airways merged on December 9, 2013. Pursuant to paragraph 3 of the MOU, that date was the “Effective Date” of the MOU.

5. In the MOU, APA, USAPA, American and US Airways agreed to a detailed set of timelines and procedures to govern the process of integrating the pre-merger pilot seniority lists of American and US Airways. Paragraph 10 of the MOU contains the primary provisions governing the process and timing for seniority integration. Paragraphs 26 and 27 of the MOU also contain provisions relating to the parties’ obligations with respect to certain key benchmarks

in the seniority integration process. In addition, the MOU included comprehensive provisions regarding the terms and conditions of employment to apply to the American and US Airways pilots pending the establishment of a Joint Collective Bargaining Agreement (“**JCBA**”) and integrated seniority list; the process for establishing a JCBA; and the maintenance of “fenced” American and US Airways pilot operations and seniority lists pending the JCBA and seniority integration processes. Since the Effective Date of the MOU, all of those provisions have been in effect.

6. As of the Effective Date of the MOU, US Airways was operating separate “East” and “West” pilot operations and pilot seniority lists, as had been the case since the 2005 merger of US Airways (“**East**”) and America West Airlines (“**West**”).

7. Paragraph 10 of the MOU provides, in its entirety:

10. a. A seniority integration process consistent with McCaskill-Bond shall begin as soon as possible after the Effective Date. If, on the date ninety (90) days following the Effective Date, direct negotiations have failed to result in a merged seniority list acceptable to the pilots at both airlines, a panel of three neutral arbitrators will be designated within fifteen (15) days to resolve the dispute, pursuant to the authority and requirements of McCaskill-Bond. That arbitration proceeding will commence no later than 60 days after the designation of the arbitrators, or as soon thereafter as practicable given the availability of the designated arbitrators, provided that it is understood that, in no event, shall the seniority integration arbitration proceeding commence prior to final approval of the JCBA pursuant to the deadlines and procedures in Paragraph 27 below. The panel of arbitrators will render its award within six (6) months of the commencement of the arbitration, and in any event not later than 24 months after the Effective Date.

b. The panel of arbitrators may not render an award unless it complies with all of the following criteria: (i) the list does not require any active pilot to displace any other active pilot from the latter’s position; (ii) furloughed pilots may not bump/displace active pilots; (iii) except as set forth in Paragraphs 12 and 13 below, the list does not require that pilots be compensated for

flying not performed (e.g., differential pay for a position not actually flown); (iv) the list allows pilots who, at the time of implementation of an integrated seniority list, are in the process of completing or who have completed initial qualification training for a new category (e.g., A320 Captain or 757 First Officer), or who have successfully bid such a position but have not been trained because of conditions beyond their control (such as a company freeze), to be assigned to the positions for which they have been trained or successfully bid, regardless of their relative standing on the integrated seniority list; and (v) it does not contain conditions and restrictions that materially increase costs associated with training or company paid move as specified in the JCBA.

c. The integrated seniority list resulting from the McCaskill-Bond process shall be final and binding on APA and USAPA (and/or the certified bargaining representative of the combined pilot group), the company(ies) and its(their) successors (if any), and all of the pilots of American/New American Airlines and US Airways.

d. During the McCaskill-Bond process, including any arbitration proceeding, US Airways, American or New American Airlines, or their successors (if any), shall remain neutral regarding the order in which pilots are placed on the integrated seniority list, but such neutrality shall not prevent said carriers from insuring that the award complies with the criteria in Paragraph 10(b)(i)-(v).

e. The obligations contained in this Paragraph shall be specifically enforceable on an expedited basis before a System Board of Adjustment in accordance with Paragraph 20, provided that the obligations imposed by McCaskill-Bond may be enforced in a court of competent jurisdiction.

f. A Seniority Integration Protocol Agreement ("Protocol Agreement") consistent with McCaskill-Bond and this Paragraph 10 will be agreed upon within 30 days of the Effective Date. The Protocol Agreement will set forth the process and protocol for conducting negotiations and arbitration, if applicable, and will include a methodology for allocating the reimbursement provided for in Paragraph 7. The company(ies) will be parties to the arbitration, if any, in accordance with McCaskill-Bond. The company(ies) shall provide information requested by the merger representatives for use in the arbitration, if any, in accordance with requirements of McCaskill-Bond, provided that the information is relevant to the issues involved in the arbitration, and the requests are reasonable and do not impose undue burden or expense, and so

long as the merger representatives agree to appropriate confidentiality terms.

g. This Memorandum is not a waiver of any argument that participants may make in the seniority integration process. Nor do the provisions of this Memorandum constitute an admission as to the appropriate allocation of flying following the expiration of the protections in Paragraph 8 of this Memorandum, or the manner in which the respective pre-merger carriers would have operated in the absence of a merger, or the job entitlements or equities that arguably underlie the construction of an integrated seniority list, or for any other purpose. This Memorandum may be offered into evidence or shown to a mediator as background information and to describe the actual operations of the separate carriers prior to expiration of the protections in Paragraph 8 of this Memorandum.

h. US Airways agrees that neither this Memorandum nor the JCBA shall provide a basis for changing the seniority lists currently in effect at US Airways other than through the process set forth in this Paragraph 10.

i. Nothing in this Paragraph 10 shall modify the decision of the arbitration panel in Letter of Agreement 12-05 of the 2012 CBA.

(MOU, at 6-7.)

8. Paragraphs 26 and 27 of the MOU provide, in their entirety:

26. APA shall file a single carrier petition with the NMB as soon as practicable after the Effective Date, when APA determines that the facts support the legal requirements for the filing of a petition but in no event later than four months after the Effective Date. If and when the NMB makes a single-carrier finding, the single carrier acknowledged by the NMB and the certified representative shall be governed by this Memorandum.

27. If and when the NMB makes a single-carrier finding, the organization certified to represent the pilots of the single carrier, the single carrier acknowledged by the NMB and the certified organization shall promptly engage or re-engage in negotiations to achieve a JCBA to be applicable to the carrier that will be the product of the Merger. In the event that such negotiations are not completed within 30 days of the NMB's certification, New American Airlines will offer final and binding interest arbitration under Section 7 of the RLA, and the organization will accept such

proffer, to resolve once and for all the terms of the JCBA. The arbitration decision shall be issued no later than 60 days after the close of the 30-day negotiation period. A panel of three arbitrators led by Richard Bloch shall serve as the arbitrators for this process. If Arbitrator Bloch declines to serve in this capacity or is unable to resolve the parties' dispute, the parties shall select another arbitrator. The arbitrator's jurisdiction and award will be limited to fashioning provisions which are consistent with the terms of the MTA, including provisions which implement the terms of the MTA or facilitate the integration of pilots under the terms of the MTA. The arbitrator's award specifically shall adhere to the economic terms of the MTA and shall not change the MTA's Scope terms (Paragraph 25 of this Memorandum) or the modifications generated through the process set forth in Paragraph 24 of this Memorandum.

(MOU, at 12.)

9. Paragraph 10(a) of the MOU provides, in part, that “[a] seniority integration process consistent with McCaskill-Bond shall begin as soon as possible after the Effective Date.”

The “McCaskill-Bond” statute provides, in pertinent part:

(a) LABOR INTEGRATION.—With respect to any covered transaction involving two or more covered air carriers that results in the combination of crafts or classes that are subject to the Railway Labor Act (45 U.S.C. 151 et seq.), sections 3 and 13 of the labor protective provisions imposed by the Civil Aeronautics Board in the Allegheny-Mohawk merger (as published at 59 C.A.B. 45) shall apply to the integration of covered employees of the covered air carriers; except that—

...

(2) the requirements of any collective bargaining agreement that may be applicable to the terms of integration involving covered employees of a covered air carrier shall not be affected by the requirements of this section as to the employees covered by that agreement, so long as those provisions allow for the protections afforded by sections 3 and 13 of the Allegheny-Mohawk provisions.

49 U.S.C § 42112, note § 117. Sections 3 and 13 of the “Allegheny/Mohawk” Labor Protective Provisions (“LPPs”), in turn, provide as follows:

3. Insofar as the merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with section 13.

13. (a) In the event that any dispute or controversy (except as to matters arising under section 9) arises with respect to the protections provided herein which cannot be settle[d] by the parties within 20 days after the controversy arises, it may be referred by any party to an arbitrator selected from a panel of seven names furnished by the National Mediation Board for consideration and determination. The parties shall select the arbitrator from such panel by alternatively striking names until only one remains, and he shall serve as arbitrator. Expedited hearings and decisions will be expected, and a decision shall be rendered within 90 days after the controversy arises, unless an extension of time is mutually agreeable to all parties. The salary and expenses of the arbitrator shall be borne equally by the carrier and (i) the organization or organizations representing the employee or employees or (ii) if unrepresented, the employee or employees or group or groups of employees. The decision of the arbitrator shall be final and binding on the parties.

(b) The above condition shall not apply if the parties by mutual agreement determine that an alternative method for dispute settlement or an alternative procedure for selection of an arbitrator is appropriate in-their particular dispute. No party shall be excused from complying with the above condition by reason of having suggested an alternative method or procedure unless and until that alternative method or procedure shall have been agreed to by all the parties.

Copies of McCaskill Bond and Sections 3 and 13 of the LPPs are attached as Exhibit 2.

10. Pursuant to these provisions, any unresolved issues regarding the "fair and equitable" integration of the seniority lists are subject to resolution through arbitration under Section 13 of the LPPs, including any "alternative method for dispute settlement or ... alternative procedure for selection of an arbitrator" agreed to by the parties within the meaning of Section

13(b). At all times, APA and the SIC have understood the provisions of the MOU to constitute such an alternative method for dispute settlement under Section 13(b) of the LPPs.

**The Negotiations With Respect to a Seniority Integration Protocol**

11. The first procedural step in the seniority integration process, as set forth in MOU paragraph 10(f), was for the parties to negotiate a Seniority Integration Protocol Agreement: “A Seniority Integration Protocol Agreement (“Protocol Agreement”) consistent with McCaskill-Bond and this Paragraph 10 will be agreed upon within 30 days of the Effective Date.” As Chairman of the SIC, I participated in and oversaw those protocol negotiations on behalf of the SIC and the pre-merger American pilots.

12. The initial deadline for completion of Protocol Agreement negotiations was January 8, 2014 (*i.e.*, 30 days after December 9, 2013), but the deadline was twice extended – once at the request of USAPA – and, ultimately, the deadline was February 18, 2014.

13. On December 19, 2013, I attended a meeting in Washington, D.C. together with Edgar James, APA’s outside general counsel, Captain Jess Pauley, Chairman of the USAPA Merger Committee, and Patrick Szymanski, counsel for the USAPA Merger Committee. At that meeting, Pauley and Szymanski presented a proposed “Protocol Agreement,” a copy of which is Exhibit 3. The second “Whereas” clause of the December 19 draft stated:

WHEREAS, it is in the best interest of the Parties to set out with specificity the process for integrating the existing seniority lists and including those lists and all appropriate ancillary provisions, including implementation procedures, into the Joint Collective Bargaining Agreement (JCBA) defined in the MOU.

The December 19 USAPA draft made no reference to the protocol as an alternative method of dispute resolution under Section 13(b) of the LPPs, or to any need for additional protocol provisions beyond the MOU to establish such an alternative process.

14. USAPA's December 19, 2013 draft did not refer to merger committees representing the pre-merger pilot groups in the seniority integration process. Instead, the draft provided for negotiation and arbitration of the seniority integration between "USAPA" and "APA." The effect of this proposal was to give USAPA continued control of the participation of both the East and West pilots in the seniority integration process, even after it ceased to be a certified bargaining representative; and to prevent APA, after certification as the single bargaining representative of the integrated craft or class, from exercising its representational authority by providing for separate participation for the "West" pilots in the seniority integration process, if APA so chooses.

15. Paragraph 4 of the December 19 USAPA draft proposed a methodology for selecting the panel of arbitrators required under Section 10(a) of the MOU:

4. If APA and USAPA do not reach agreement on an integrated seniority list within 90 days of the Effective Date, they shall within 15 days select three neutral arbitrators to serve as a Board of Arbitration. APA and USAPA shall exchange lists of three arbitrators. If the name of an arbitrator appears on both lists, that person shall be selected for the Board of Arbitration. APA and USAPA will repeat this process of exchanging lists of three arbitrator twice more with any arbitrator whose name appears on both lists selected for the Board of Arbitration. If after exchanging lists three times one or more positions on the Board of Arbitration remain(s) unfilled, the parties will then strike from the list of arbitrators an equal number of times to produce the required number of arbitrators. If an odd number of arbitrators is required for the strike list, then a flip of a coin will determine whether APA or USAPA selects the additional arbitrator for the list. (For example, if one arbitrator is required, APA or USAPA will add one name to the list of six and then each party will have three strikes from the list.) APA and USAPA may also agree on the arbitrators to be appointed to the Board of Arbitration.

16. In response to the December 19, 2013 USAPA draft, on January 17, 2014, Wesley Kennedy, counsel for the SIC, transmitted APA's proposed "Seniority Integration Protocol

Agreement,” a copy of which is Exhibit 4. Among other things, APA accepted without any modification the “Whereas” clause quoted in Paragraph 13.

17. Paragraph 2 of the January 17, 2014 APA proposal provided as follows with respect to the pre-merger groups’ merger committees:

a. Within \_\_\_ days of the execution of this Protocol Agreement, APA and USAPA will designate Merger Committees to represent, for seniority integration purposes, the pilots on the pre-merger seniority lists in the separate crafts and classes. So long as APA and USAPA are separately certified by the National Mediation Board (the “NMB”) to represent the separate pilot crafts and classes at American and USAirways, respectively, APA and USAPA will each be responsible for the manner in which the Merger Committee(s) it so designates is (are) appointed, operated and financed, and the manner in which any negotiated seniority integration agreement is approved and/or ratified, consistent with the MOU, this Protocol Agreement, the respective organization’s duty of fair representation, and other legal obligations.

b. Effective on and after the date that the NMB determines the representation of the combined pilot craft and class at New American , the Organization, if any, designated by the NMB as the duly designated representative of the combined craft and class (the “Organization”) shall designate such Merger Committees as are required to represent, for seniority integration purposes, the pilots on the pre-merger seniority lists in the combined craft and class. Consistent with the MOU, this Protocol Agreement, the duty of fair representation, and the Organization’s other legal obligations, the Organization shall delegate to such Merger Committees authority to act for and on behalf of the pilots on their respective pre-merger seniority lists for purposes of concluding an integrated pilot seniority list. The Organization shall have authority over the manner in which such Merger Committees’ operations are financed. Once designated, each Merger Committee shall fill its own vacancies by selection made by the remaining members of that Merger Committee.

Under this proposal, once APA was certified as the single bargaining representative of the combined pilot group, it would assume responsibility for the structure of the pre-merger groups’ merger committees consistent with its legal obligations including, if APA so chooses, the

discretion to provide for the separate participation of the West Pilots in the seniority integration process. To similar effect, paragraph 20 of the January 17, 2014 SIC proposal provided, with respect to “further elements of the seniority integration protocol”:

Further elements of the seniority integration protocol may be established by written agreement.

18. In paragraph 7 of the January 17, 2014 proposal, APA proposed a methodology for selecting the arbitration panel required under paragraph 10(a) of the MOU:

If the Merger Committees (and New American, as applicable) do not reach agreement on an integrated seniority list by April 9, 2014, they shall within 15 days thereafter select three neutral arbitrators to serve as a Board of Arbitration in accordance with the MOU and this Protocol Agreement. The Arbitration Board shall be selected by each Merger Committee submitting to the other Merger Committee(s) a list of \_\_\_ arbitrators. Any names common to the Merger Committees’ lists will be appointed to the Arbitration Board. To the extent that positions on the Arbitration Board remain unfilled and the Merger Committees are unable to agree on the remaining arbitrators, the remaining arbitrators shall be selected by alternate strike from the arbitrators proposed by the Merger Committees. The Merger Committees shall determine by agreement or by lot the order of striking.

19. In response to the January 17, 2014 APA proposal, on January 29, 2014, Pauley, on behalf of USAPA, transmitted to me a revised proposed “Seniority Integration Protocol Agreement,” a copy of which is attached as Exhibit 5. Among other things, the January 29, 2014 USAPA proposal added a reference to Section 13(b) of the LPPs in the “Whereas” clause quoted in Paragraph 13 (above), which APA had accepted without modification in its January 17, 2014 proposal:

WHEREAS, it is desirable to set out with specificity, pursuant to Section 13(b) of the Allegheny-Mohawk LPPs, the process for integrating the existing seniority lists and including those lists and all appropriate ancillary provisions, including implementation procedures, into the Joint Collective Bargaining Agreement

(JCBA) defined in the MOU, and

Prior to this reference, there had been no indication that USAPA did not view the MOU itself as constituting an alternative seniority integration process within the meaning of Section 13(b) of the LPPs. APA and the SIC did not agree that, as implied in USAPA's revised proposed "Whereas" clause, a further seniority integration protocol agreement was necessary to establish an alternative process under Section 13(b) of the LPPs.

20. Paragraph 2 of the January 29, 2014 USAPA proposal provided as follows with respect to the pre-merger groups' merger committees:

a. So long as APA and USAPA are separately certified by the National Mediation Board (the "NMB") to represent the separate pilot crafts and classes at American and US Airways, respectively, APA and USAPA will each be responsible for the manner in which the Merger Committee it so designates is appointed, operated and financed, and the manner in which any negotiated seniority integration agreement is approved and/or ratified, consistent with the MOU, this Protocol Agreement, the respective organization's duty of fair representation, and other legal obligations.

b. Effective on and after the date that the NMB determines the representation of the combined pilot craft or class at the Airlines, the Organization, if any, designated by the NMB as the duly designated representative of the combined craft and class (the "Organization") shall continue in existence the Merger Committees established for seniority integration purposes by the premerger representatives for their respective premerger pilot craft or class. The Organization shall delegate to such Merger Committees authority to act for and on behalf of their respective premerger craft or class for purposes of concluding an integrated pilot seniority list, which if reached by negotiation shall be subject to the premerger pilot craft or class's right to a membership ratification vote. The Organization shall have authority over the manner in which such Merger Committees' operations are financed from Organization funds. Each Merger Committee shall fill its own vacancies by selection made by the remaining members of that Merger Committee.

The effect of this proposal was to restrict APA from providing, after certification as the single

bargaining representative of the integrated craft or class, for separate participation for the “West” pilots in the seniority integration process if APA so chooses.

21. Paragraph 7 of the January 29, 2014 USAPA proposal included a new proposed methodology for selecting the arbitration panel required by paragraph 10(a) of the MOU:

If the Merger Committees do not reach agreement on an integrated seniority list by March 9, 2014, they shall within 15 days thereafter select three neutral arbitrators to serve as an Arbitration Board in accordance with the MOU and this Protocol Agreement. The Arbitration Board shall be selected by each Merger Committee submitting to the other Merger Committee a list of 5 arbitrators. Any names common to the Merger Committees’ lists will be appointed to the Arbitration Board. To the extent that positions on the Arbitration Board remain unfilled and the Merger Committees are unable to agree on the remaining arbitrators, the remaining arbitrators shall be selected by alternate strike from the arbitrators proposed by the Merger Committees. The Merger Committees shall determine by agreement or by lot the order of striking.

22. The January 29, 2014 USAPA proposal accepted, without modification, APA’s proposed paragraph 20 regarding “further elements of the seniority integration protocol,” as paragraph 19.

23. In response to the January 29, 2014 USAPA proposal, on February 5, 2014, Kennedy, counsel to the APA SIC, transmitted a revised proposed “Seniority Integration Protocol Agreement,” a copy of which is Exhibit 6. Among other things, APA deleted USAPA’s proposed reference to Section 13(b) of the LPPs; and added references to other proposed “Whereas” clauses that the MOU was “consistent with Section 13(b) of the Allegheny/Mohawk LPPs,” to confirm that the MOU constituted an alternative seniority integration process under Section 13(b):

WHEREAS, consistent with Section 13(b) of the Allegheny/Mohawk LPPs, in Section 10.a. of the MOU, APA, USAPA, American and US Airways agreed that “[a] seniority

integration process consistent with McCaskill-Bond shall begin as soon as possible after the Effective Date,”

WHEREAS, consistent with Section 13(b) of the Allegheny/Mohawk LPPs, Section 10.f. of the MOU provides that the agreed seniority integration process would be implemented through “[a] Seniority Integration Protocol Agreement ... consistent with McCaskill Bond and this Paragraph 10” to be agreed upon “within 30 days of the Effective Date,” which has been extended by agreement by 30 days, and

24. Paragraph 2 of the February 5, 2014 APA proposal provided, with respect to the pre-merger groups merger committees:

a. So long as APA and USAPA are separately certified by the National Mediation Board (the “NMB”) to represent the separate pilot crafts and classes at American and US Airways, respectively, APA and USAPA will each be responsible for the manner in which the Merger Committee it so designates is appointed, operated and financed, and the manner in which any negotiated seniority integration agreement is approved and/or ratified, consistent with the MOU, this Protocol Agreement, the respective organization’s duty of fair representation, and other legal obligations.

b. Effective on and after the date that the NMB determines the representation of the combined pilot craft and class at American , the Organization, if any, designated by the NMB as the duly designated representative of the combined craft and class (the “Organization”) shall designate such Merger Committees as are required to represent, for seniority integration purposes, the pilots on the pre-merger seniority lists in the combined craft and class. Consistent with the MOU, this Protocol Agreement, the duty of fair representation, and the Organization’s other legal obligations, the Organization shall delegate to such Merger Committees authority to act for and on behalf of the pilots on their respective pre-merger seniority lists for purposes of concluding an integrated pilot seniority list. The Organization shall have authority over the manner in which such Merger Committees’ operations are financed. Once designated, each Merger Committee shall fill its own vacancies by selection made by the remaining members of that Merger Committee.

Like the January 17, 2014 APA proposal, this proposal would have confirmed that, once APA

was certified as the single bargaining representative of the combined pilot group, it would assume responsibility for the structure of the pre-merger groups' merger committees consistent with its legal obligations, including the discretion to provide for the separate participation of the West Pilots in the seniority integration process if APA so chooses.

25. Paragraph 7 of the February 5, 2014 APA proposal accepted, without modification, USAPA's proposed mechanism for selecting the arbitration panel required by paragraph 10(a) of the MOU, with two exceptions:

If the Merger Committees (and American, as applicable) do not reach agreement on an integrated seniority list by March 9, 2014, they shall within 15 days thereafter select three neutral arbitrators to serve as an Arbitration Board in accordance with the MOU and this Protocol Agreement. The Arbitration Board shall be selected by each Merger Committee submitting to the other Merger Committee a list of 5 arbitrators. Any names common to the Merger Committees' lists will be appointed to the Arbitration Board; if there are more than three common names, each Committee shall rank order the common names, and the three arbitrators shall be designated based on the Committees' relative combined ranking. To the extent that positions on the Arbitration Board remain unfilled and the Merger Committees are unable to agree on the remaining arbitrators, the remaining arbitrators shall be selected by alternate strike from the arbitrators proposed by the Merger Committees. The Merger Committees shall determine by agreement or by lot the order of striking.

26. The February 5, 2014 APA proposal retained, without modification, the proposed paragraph regarding "further elements of the seniority integration protocol."

27. In response to the February 5, 2014 APA proposal, on February 15, 2014, Szymanski, USAPA's merger counsel, transmitted a revised proposed "Seniority Integration Protocol Agreement," a copy of which is Exhibit 7. In the email transmitting the proposal, Szymanski stated, in part:

The USAPA counterproposal is intended to omit any reference to

what happens once the NMB designates/certifies a single representative for the combined pilot craft or class following a single carrier determination. To that end, we have entirely eliminated paragraph 2.

In accord with discussions with Ed James, we have eliminated references to Section 13(b) of the A-M LLPs and have agreed to delete the confidentiality proposal from the Protocol Agreement. On the later point, we want to discuss a reasonable arrangement regarding public disclosure of information during negotiations. In particular, although there was no agreement concerning confidentiality, we think it was inappropriate for US Airways to publicly disclose the most recent draft protocol proposal, certainly without any prior notice or discussion with the other parties. We have, however, include a provision in the current paragraph 5(e) that prohibits the introduction of matters from the negotiations at the arbitration hearing.

Accordingly, the USAPA proposal deleted all references to Section 13(b) of the LPPs in the “Whereas” clauses; and deleted entirely paragraph 2 of the previous proposals regarding the status of the pre-merger groups’ merger committees.

28. Paragraph 6 of the February 15, 2014 USAPA proposal accepted, without modification, the provision of the February 5, 2014 APA proposal for selection of the arbitration panel required by paragraph 10(a) of the MOU.

29. Although Szymanski’s February 15, 2014 email indicated an intention to delete “any reference to what happens once the NMB designates/certifies a single representative for the combined pilot craft or class following a single carrier determination,” paragraph 18 of the February 14, 2014 USAPA proposal modified APA’s proposed provision for further elements of the protocol to require written agreement “of the parties” to the MOU, *i.e.*, including USAPA:

Further elements of the seniority integration protocol may be established by written agreement of the parties.

30. Hollinger, counsel to the Company, provided comments to Wes Kennedy on the

proposed draft Seniority Integration Protocol Agreement on behalf of American and US Airways, by email on February 15, 2014. Among other things, the Company accepted, with only editorial modifications, the proposed methodology for selecting the arbitration panel required by Section 10(a) of the MOU.

31. On February 16, 2014, Kennedy transmitted a further proposed Seniority Integration Protocol Agreement, a copy of which is Exhibit 8. Among other things, the February 16, 2014 APA proposal adopted USAPA's elimination of any reference to Section 13(b) of the LPPs from the "Whereas" clauses; accepted USAPA's proposed deletion of paragraph 2 in its entirety; and retained, with Hollinger's editorial modifications, the methodology to which all parties had at that point agreed for the selection of the arbitration panel required by Section 10(a) of the MOU. However, the February 16, 2014 APA proposal modified the proposed paragraph 18 to make clear that, following the certification of a single bargaining representative, the parties to the MOU would be American, US Airways, and the single certified bargaining representative:

Further elements of the seniority integration protocol may be established by written agreement of the parties (American, US Airways, USAPA and APA until NMB certification of a single bargaining representative; American, US Airways, and the certified bargaining representative following NMB certification of a single bargaining representative).

32. Pursuant to a request from Szymanski for a copy of the comments that Hollinger had provided to Kennedy, Hollinger forwarded his comments on the proposed Seniority Integration Protocol Agreement to Szymanski by email on February 17, 2014, a copy of which is Exhibit 9.

33. Following the February 16, 2014 APA proposal, an email exchange ensued between Szymanski and Kennedy, a copy of which is Exhibit 10. Szymanski raised no further

issue regarding possible references to Section 13(b) of the LPPs; the elimination of the original paragraph 2; or the agreed methodology for selecting the arbitration panel required by Section 10(a) of the MOU. The only principal significant remaining substantive issue was USAPA's insistence on the right to assert continued party status following the certification of APA as the single bargaining representative. According to Szymanski:

¶19. Revert to APA's original proposal with the understanding that the purpose and intent of doing so is to allow the parties to reserve their positions regarding a West merger Committee and any changes to the Protocol Agreement. USAPA will not waive its position on these issues, but we would agree to leave any dispute until when/if APA is certified.

34. APA and the SIC were unwilling to agree to such a reservation of rights, for the precise reason that USAPA had argued to the court in *Addington v. US Airline Pilots Ass'n*, No. 13-cv-00471, Doc. 298 (D. Ariz. Jan. 10, 2014), that only the certified bargaining representative is a proper party to the seniority list arbitration, albeit with separate committees representing the pre-merger seniority list pilots, and that APA would be that representative when the arbitration would occur under the MOU. The court held that it "has no doubt that—as is USAPA's consistent practice—USAPA will change its position when it needs to do so to fit its hard and unyielding view on seniority. . . . The Court's patience with USAPA has run out. . . . And when USAPA is no longer the certified representative, it must immediately stop participating in the seniority integration." A copy of the decision is Exhibit 11, *quoting* language at 20-21.

35. Thus, although there was agreement on virtually all issues – including a procedure for the selection of arbitrators – the parties were unable to finalize a Protocol Agreement by the February 18, 2014 deadline.

**The Final Step in the Seniority Integration Process Under the MOU;  
Submission of the Seniority Integration To Arbitration**

36. The next procedural milestone in the seniority integration process, as set forth in MOU paragraph 10(a), was for USAPA and APA to engage in direct negotiations for an integrated seniority list. There was a 90-day period for such negotiations (*i.e.*, 90 days from the merger close), which expired on March 9, 2014 without an agreement. Pursuant to paragraph 10(a) of the MOU, the seniority integration was at that time submitted to arbitration according to the terms of the MOU.

37. Under MOU Paragraph 10(a), the next step in the seniority integration process is for the parties to select a panel of three arbitrators and to proceed to final and binding arbitration to generate an integrated seniority list: “If, on the date ninety (90) days following the Effective Date, direct negotiations have failed to result in a merged seniority list acceptable to the pilots at both airlines, a panel of three neutral arbitrators will be designated within fifteen (15) days to resolve the dispute, pursuant to the authority and requirements of McCaskill-Bond.”

**USAPA Attempts to Repudiate the Seniority Provisions of  
The MOU and Refuses to Arbitrate the MOU Disputes.**

38. On February 19, 2014, Paul Jones (Senior Vice President, General Counsel, and Chief Compliance Officer for US Airways/American), sent the following e-mail to APA and USAPA:

The time period for reaching a Seniority Integration Protocol Agreement that had been extended by agreement of the parties has now expired. Under Section 10.a. of the MOU, the next deadline we are facing will come on March 9. Unless direct negotiations have resulted in a merged seniority list by that date, we are obligated to select a panel of three neutral arbitrators within fifteen days.

We propose that, in the event that no integrated seniority list has

been agreed to by the March 9 deadline, each of the three parties submit a list of names of three proposed arbitrators to serve on the panel of neutrals. If any arbitrators' names appear on all three lists, that person or those persons shall be on the panel. For those names that appear on one or more, but not all three, lists, the parties shall strike among them to determine which shall serve on the panel. The strike order shall be determined by coin toss.

Please let me know if this is acceptable. Thanks.

39. APA responded to Mr. Jones' proposal on March 5, 2014, indicating that it was willing to accept his proposal or, alternatively, that it was willing to accept the arbitrator-selection proposal proposed by USAPA to which all parties had agreed in the Protocol Agreement negotiations.

40. On March 9, 2014, Mr. Jones responded to APA's proposal, indicating that either option was acceptable to the Company.

41. USAPA has never responded to the Company's or to APA's proposal.

42. USAPA filed a request with the NMB on February 20, 2014, in an attempt to avoid the process and time lines set forth in the MOU by invoking Section 13(a) of the *Allegheny-Mohawk* LPPs, seeking a panel of seven potential arbitrators from which USAPA claimed the parties would select one to resolve their seniority-integration dispute. A copy of this request is attached as Exhibit 12.

43. APA and American/US Airways opposed USAPA's request for an arbitrator panel from the NMB, noting the inconsistency between USAPA's request and its obligations under the MOU. Copies of APA's and American/US Airways' letters to the NMB are attached as Exhibit 13. USAPA's response is attached as Exhibit 14. On April 11, 2014, without taking a position on the dispute, the NMB provided a list of seven potential arbitrators. A copy of the NMB letter is attached as Exhibit 15.

44. Following USAPA's request to the NMB, on February 25, 2014, APA, American and US Airways submitted MTA Dispute # 4 pursuant to Paragraph 20 of the MOU:

Except as expressly provided otherwise in this [MOU], any dispute over the interpretation or application of this [MOU] shall be resolved in accordance with this provision. Any such dispute shall be arbitrated on an expedited basis directly before a specially-created one-person System Board of Adjustment consisting of arbitrator Richard Bloch or Ira Jaffe, whoever shall be available to hear the dispute earliest. If Arbitrator Bloch or Jaffe declines to serve in this capacity or is not available to resolve the dispute, another neutral arbitrator shall be selected. The dispute shall be heard no later than thirty (30) days following the submission to the System Board (subject to the availability of the arbitrator), and shall be decided no later than thirty (30) days following the first day of the hearing, unless otherwise agreed to in writing.

APA submits the following dispute for consideration and decision by the Board:

1. Questions At Issue

Whether USAPA violated MOU Paragraph 10 (and related provisions of the MOU) by unilaterally requesting, on February 20, 2014, that the National Mediation Board ("NMB") provide a list of seven potential arbitrators for a seniority-integration arbitration involving the pilots employed by US Airways and American in order to pick one arbitrator to resolve disputes over the integration of three seniority lists.

Copies of both APA's and American/US Airways' MTA Dispute #4 are attached as Exhibit 16.

(The MOU as applied at both carriers prior to the JCBA is called the Merger Transition Agreement, or "MTA").

45. On February 27, 2014, USAPA filed the Complaint in this case seeking to compel APA and American and US Airways to conduct the pilot seniority integration pursuant to the procedures of Section 13(a) of the *Allegheny-Mohawk* LPPs. The process and time lines set forth in Section 13(a) of the *Allegheny-Mohawk* are substantially different from, and inconsistent with, the MOU.

46. In connection with MTA Dispute #4, the arbitrators were contacted and asked for their schedules; however, on March 5, 2014, Brian O'Dwyer, USAPA's General Counsel, wrote to the two potential arbitrators informing them of this litigation and objecting to the submission of the dispute to arbitration. A copy is attached as Exhibit 17. Counsel for the Company sent a response to the arbitrators objecting to USAPA's "unilateral assertion that arbitration under the MOU 'must not proceed' pending resolution of the lawsuit filed by USAPA." A copy of this March 7, 2014 letter is attached as Exhibit 18.

47. On April 21, 2014, APA, American and US Airways filed a new more expansive MTA Dispute #5 based on its understanding from the Complaint that USAPA intended to repudiate all of the seniority related provisions of the MOU. Copies of APA's and the Company's Grievance #5 are attached as Exhibit 19. The questions set forth in MTA Dispute #5 expanded upon MTA Grievance #4:

1. Questions At Issue

(a) Whether USAPA violated MOU Paragraph 10 (and related provisions of the MOU) by unilaterally requesting, on February 20, 2014, that the National Mediation Board ("**NMB**") provide a list of seven potential arbitrators for a seniority-integration arbitration involving the pilots employed by US Airways and American (collectively "**Carriers**") in order to pick one arbitrator to resolve disputes over the integration of three seniority lists.

(b) Whether USAPA violated MOU Paragraph 10 (and related provisions of the MOU) by repudiating the seniority integration process and timelines, as evidenced by USAPA's February 27, 2014 filing of a complaint in federal district court to compel APA and the Carriers to arbitrate the seniority integration of US Airways and American pilots pursuant to the timelines and procedures set forth in Section 13(a) of the *Allegheny-Mohawk* LPPs, as opposed to the process and timelines set forth in the MOU.

(c) Whether, as a contractual matter, the parties' failure to execute a Seniority Integration Protocol Agreement, referenced in MOU Paragraph 10(f), renders ineffective any of the other provisions of MOU Paragraph 10, specifically including the arbitrator-selection and hearing-schedule provisions in MOU Paragraph 10(a).

(d) Whether, as a contractual matter, the parties' failure to select arbitrators, pursuant to either the arbitrator-selection provision in MOU Paragraph 10(a) or through a Seniority Integration Protocol Agreement under MOU Paragraph 10(f), renders ineffective any of the other provisions of MOU Paragraph 10, specifically including the hearing-schedule provisions in MOU Paragraph 10(a).

If so, with respect to Issues (a)-(b), what shall be the remedy?

As a remedy for the above violations of the MOU, APA requests the Board of Adjustment to enter an order directing USAPA to:

(a) cease and desist from taking any action that is contrary to, or inconsistent with, any of the arbitrator-selection or other seniority-integration provisions in the MOU;

(b) attempt to mutually agree to an arbitrator-selection procedure in accordance with the provisions of MOU Paragraph 10. In this regard, MOU Paragraph 10(e) states: "The obligations contained in this Paragraph [10] shall be specifically enforceable on an expedited basis before a System Board of Adjustment in accordance with Paragraph 20 . . .;" and

(c) refrain from insisting that APA submit the seniority-integration dispute to a single arbitrator (as opposed to a panel of three arbitrators), and from insisting that they select that one arbitrator from the panel provided by the NMB in response to USAPA's unilateral February 20, 2014 request.

APA requests, further, that the Board of Adjustment issue the following rulings as to disputed issues of MOU interpretation and application:

(d) USAPA breached the MOU in the manners set forth above and in the Carriers' Statement of Facts;

(e) The arbitrator-selection provision in MOU Paragraph 10(a) remained operative and in effect, as a contractual matter, even

though there was no agreement to a Paragraph 10(f) Seniority Integration Protocol Agreement by the applicable deadline; and

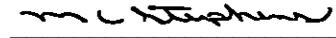
(f) The seniority-integration provisions in MOU Paragraph 10 and related paragraphs, including without limitation the hearing-schedule provisions in Paragraph 10(a), remain operative and in effect, as a contractual matter, even though there was no agreement to a Seniority Integration Protocol Agreement by the applicable deadline and even though no arbitrators have been selected.

43. APA and American/US Airways again referred the matter to the two arbitrators seeking their availability. On April 25, 2014, counsel for USAPA informed the arbitrators that “USAPA is unwilling to submit any of the disputes identified by the Company or APA to the System Board.” Copies of these letters are attached as Exhibit 20.

**DECLARATION PURSUANT TO 28 U.S.C. § 1746**

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 2, 2014



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Mark Stephens