EXHIBIT D

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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Don Addington, *et. al.*,

Plaintiffs,

v.

US Airline Pilots Association, *et. al.*,

Defendants.

Case No.: CV-13-00471-PHX-ROS

US Airline Pilots Association's Reply Memorandum in Support of Motion for Summary Judgment

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seniority regime" that triggers USAPA's duty of fair representation, not USAPA and US Airways' decision to amend the TA.[5] *Id.* As this Court has already ruled, any dispute concerning the TA, including what it requires, is a "minor dispute" within the exclusive jurisdiction of the System Board of Adjustment.[6] *See* Doc. 122, at 6-7.

As to Plaintiffs' continued claim that the MOU is the "single agreement" referenced in the TA (Doc. 267, at 7), Plaintiffs submit no evidence to rebut USAPA and US Airways' agreement that it is not. The MOU is a four-party agreement between US Airways, American, USAPA, and the APA which is applicable to the merged operations of US Airways and American, not the merged operations of America West and US Airways. USAPA 56.1 Stmt., ¶44. Further, in MOU ¶4, the parties explicitly agreed to modify and displace all provisions of the TA and agreed that the procedures in ¶10 provide the exclusive means for integrating seniority, including the provision that the *status quo* of separate seniority lists shall continue. USAPA 56.1 Stmt., ¶49. Consistent with that provision, by letter dated February 28, 2013, US Airways denied the David

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[5] This Court noted in its October 11, 2012 Order in the Declaratory Judgment Action that "there is no claim that the Transition Agreement itself is limiting USAPA's authority during the negotiation of a new collective bargaining agreement." 2:10-cv-01570-ROS, Doc. 193, at 6, n. 2.

[6] It is well established that under the Railway Labor Act, disputes growing out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions are subject to mandatory arbitration before the System Board of Adjustment. 45 U.S.C. §184; *Consol. Rail. Corp. v. Ry. Labor Executes' Ass'n*, 491 U.S. 299, 303, 109 S.Ct. 2477, 2480 (1989); *International Ass'n of Machinists and Aerospace Workers, AFL-CIO v. Aloha Airlines*, 776 F.2d 812, 815 (9th Cir. 1985). In fact, Section X of the TA establishes such a system board to hear disputes concerning the interpretation or application of the TA. Doc. 213-4 Tab 6, p. 12. Plaintiffs' claim that USAPA is bound by the TA, that the TA is the contract "status quo", that the TA requires implementation of the Nicolau Award, and that the MOU is the "single agreement" referenced in the TA, concern the interpretation or application of the TA, and therefore is within the exclusive jurisdiction of the System Board of Adjustment. Just as this Court ruled that Plaintiffs' claim against US Airways "is a basic claim about the interpretation or application of a collective bargaining agreement" that "must be submitted to arbitration", so too must this new iteration of Plaintiffs' DFR claim against USAPA be submitted to arbitration. Doc. 122, at 6-7.

Braid grievance in part because "[a]t this point in time, we have neither a combined contract nor a combined seniority list." Doc. 213-10 Tab 43, p. 8.

As discussed in USAPA's initial memorandum in support of its motion (Doc. 211, pp. 7-10), USAPA acted properly, reasonably and well within its DFR to all the pilots it represents when it agreed to the MOU which, at the request of the airline parties, contained ¶4 which provided that the MOU (and the MTA) replaced not only the TA but also any preexisting *status quo* within.

II. Plaintiffs mischaracterize ¶10.h of the MOU and ignore that both East and West Pilots were fully and accurately informed that the MOU was neutral on the subject of seniority.

Plaintiffs claim "USAPA put ¶ 10.h into the MOU with the intention of abandoning the existing obligation to use the Nicolau Award." Doc. 267, at 11. They are wrong.

As an initial matter, both the Ninth Circuit and this Court recognize that consistent with its DFR, USAPA is not under any obligation to use the Nicolau Award. *Addington v. US Airline Pilots Ass'n*, 606 F.3d 1174, 1181 n. 3 (9th Cir. 2010) ("We note . . . that USAPA is at least as free to abandon the Nicolau Award as was its predecessor, ALPA."); 2:10-cv-01570-ROS, Doc. 193, at 7 ("[I]f USAPA wishes to abandon the Nicolau Award and accept the consequences of this course of action, it is free to do so.").

Second, USAPA has never been secretive about its dissatisfaction with the Nicolau Award, and its opposition to the unmodified Nicolau Award.

Third, all ¶10.h says is that the MOU is seniority neutral. That the MOU is seniority neutral was repeatedly communicated to the membership prior to the MOU ratification vote and was understood by Plaintiffs as demonstrated in their emails and the Leonidas updates. USAPA 56.1 Stmt., ¶¶82, 89, 90; Doc. 213-9 Tabs 18, 19, 22; West Pilots Email Chain, annexed as Ex. A to the Declaration of Joy K. Mele. In this respect, the idea that there was some secret or nefarious purpose behind ¶10.h is a notion