

CV 13-00417-PHX-ROS, May 14, 2013

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

09:50:47

5	)		09:50:47
6)		
6	)	CV 13-00417-PHX-ROS	
7	)	Don Addington, on behalf of	
7	)	himself and all similarly situated	
8	)	former America West Pilots, et al.,	
8	)	Plaintiffs,	Phoenix, Arizona
9	)		May 14, 2013
9	)		10:04 a.m.
10	)	and	
10	)		09:50:47
11	)	US Airline Pilots Association, an	
11	)	unincorporated association, et al.,	
12	)	Defendants.	
13)		

BEFORE: THE HONORABLE ROSLYN O. SILVER, CHIEF JUDGE

09:50:47

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PRELIMINARY INJUNCTION HEARING

Official Court Reporter:
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09:50:47

Proceedings Reported by Stenographic Court Reporter
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09:50:47

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P R O C E E D I N G S

09:50:47

(Court was called to order by the courtroom deputy.)

(Proceedings begin at 10:07.)

THE COURT: Please be seated.

COURTROOM DEPUTY: This is case number CV-13-471,

10:08:47

Addington, et al. v. US Airline Pilots Association, et al., on
for preliminary injunction hearing.

Counsel, please announce for the record.

MR. HARPER: Good morning, Your Honor. Marty Harper,
Andy Jacob, and Jennifer Axel for the West Pilots from
Polsinelli.

10:09:03

THE COURT: All right. Thank you.

And over here?

MR. SZYMANSKI: Good morning. Patrick Syzmanski,
Susan Martin, Joy Mele, and Gary Silverman for defendant US
Airline Pilots Association.

10:09:16

THE COURT: Thank you.

MR. SIEGEL: Good morning, Your Honor. Robert Siegel
and Chris Hollinger for US Airways.

THE COURT: All right. Thank you.

10:09:35

Counsel, I gave you some questions, so let's start at
the top.

You know, obviously, you have, in good faith,
submitted to me some -- a proposal and we are not going to do
that. The first question is really the motion to dismiss and I

10:09:49

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1 presume, Mr. Szymanski, are you arguing for the USAPA? 10:10:00

2 MR. SZYMANSKI: Yes, Your Honor.

3 THE COURT: All right. Come forward. Maybe you can
4 answer this question for me.

5 MR. SZYMANSKI: Okay. So, Your Honor, I do have 10:10:08
6 argument with respect to whether or not this is ripe or not
7 but --

8 THE COURT: Yes. The motion to dismiss issue, as I
9 see it, I've read your motion to dismiss and there's a variety
10 of different issues in there but the most important one to me 10:10:30
11 is the question of *Iqbal* and whether or not I should allow
12 for -- even if I dismissed it on that basis, I should allow an
13 amendment. You know, there's some question about whether or
14 not and it is certainly theoretical whether or not when one
15 files an application for preliminary injunction pursuant to 10:10:52
16 Rule 65, whether or not a complaint ever has to be filed.

17 So there's case law going both ways and also case law
18 quite clear that indicates that the application itself may be
19 enough, particularly because there are issues of arguments at
20 least of irreparable harm. 10:11:18

21 So what I did was take what has been alleged at least
22 in the application itself.

23 And if I am to consider the motion to dismiss on the
24 complaint independent of the application for a preliminary
25 injunction, I did see that there are some arguments there, some 10:11:36

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1 may well supplanting or supplement what they have and overcome
2 *Iqbal*. Do you agree or disagree?

3 MR. SZYMANSKI: I disagree, Your Honor. First of
4 all, the two claims are different. The claim that's made in
5 the complaint and the claim that's made in the preliminary
6 injunction are different claims. The complaint that's made in
7 complaint goes about the forward-seeking ultimate results of
8 seniority integration which, because it goes forward and talks
9 about what's going to happen in the future, we don't think is
10 ripe.

11 The claim in the complaint is that --

12 THE COURT: Well, we're not talking about ripe.
13 We're talking about amendment; and as I look at the complaint
14 here, I think what you're referring to --

15 MR. SZYMANSKI: Paragraph 99.

16 THE COURT: 98, 99 which you have in front of me.

17 MR. SZYMANSKI: Right.

18 THE COURT: And it's broadly breach the duty of fair
19 representation by entering into the MOU. So the MOU is
20 prospective. It isn't retrospective. So in that way -- and
21 there are a number of things that they allege that follows my
22 order and they allege those facts whether they are true or not
23 in their application for preliminary injunction.

24 So I don't know if they intend to do that but
25 certainly taking reasonable inferences in their favor at this

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1 point and my obligation to allow an amendment if I dismiss it 10:13:15
2 on an *Iqbal* basis, then there is enough there.

3 MR. SZYMANSKI: I would like to be heard on the
4 ripeness at some point, Your Honor.

5 THE COURT: That's next. We're talking about the 10:13:36
6 motion to dismiss here and what my brief analysis of your
7 motion is. There are other issues you raise in the motion to
8 dismiss and that is the next point here and that's something
9 that I can talk to the West Pilots about and so we can save
10 some time. 10:13:56

11 So let me ask the West Pilots about this issue.

12 Just so everybody knows, there are a number of
13 allegations about what happened post my order and I think
14 everybody understood what my order stated, which is that I
15 would look at anything subsequent to my order to determine 10:14:21
16 whether or not there was a violation of the duty of fair
17 representation.

18 And, you know, I have, in a very synoptic fashion,
19 set forth some of the things that have troubled me and some of
20 them, Mr. Syzmanski, are what appear to be allegations to what 10:14:42
21 you said which would perhaps -- perhaps can be explained but
22 they seem contrary, as I have indicated, to what you set forth
23 in Court which indicated quite clear told me and you were very
24 candid and I thought we're fine. We're going to go forward,
25 have another seniority agreement and the Nicolau Award would be 10:15:04

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1 at least considered.

10:15:12

2 And then we have these allegations about what has
3 been said since that time and also noted what is in a press
4 release which is by USAPA which says USAPA will propose
5 date-of-hire integration in accordance with USAPA's
6 constitution at the outset of the McCaskill-Bond process. The
7 parties exchange accurate information, et cetera. Based upon
8 this information, the pilot groups attempt to negotiate a
9 mutually agreeable merger, merged seniority list and that the
10 Merger Committee will proposed DOH method of integrating
11 seniority.

10:15:31

10:15:55

12 So it seems to me that something must have changed
13 and that USAPA now claims that the findings that were made in
14 the Nicolau Award are really no longer applicable, that that is
15 not something that you're going to the table with.

10:16:23

16 And that I haven't seen in any of the papers that
17 I've received from USAPA that would explain what happened in
18 the interim after you appeared in Court and indicated to me
19 unequivocally that certainly it can be a part of our
20 consideration, certainly we have a basis upon which to go
21 forward and certainly you understand the ruling of the Court
22 which is I am going to look prospectively, not retrospectively,
23 because that was what I had to do. That's what I was told to
24 do by the Ninth Circuit.

10:16:43

25 So, okay. Now, tell me.

10:17:02

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1 MR. SZYMANSKI: So, Your Honor, first of all, I 10:17:06
2 think -- I thought that it was clear when we argued about the
3 declaratory judgment action that USAPA's position was that the
4 Nicolau Award was not its obligation and it did not plan to go
5 ahead and propose the Nicolau Award or follow the Nicolau 10:17:23
6 Award.

7 THE COURT: You said that, I believe --

8 MR. SZYMANSKI: Transcript from the argument?

9 THE COURT: Yes. You're prepared to talk. We want
10 to talk and we will want genuine engagement with the West 10:17:45
11 Pilots about the seniority proposal and we are proposed to make
12 changes. No changes.

13 MR. SZYMANSKI: Changes in the date-of-hire proposal,
14 not changes in the Nicolau proposal.

15 THE COURT: Well, you never said that. If you had 10:18:01
16 said that in open Court, then we would have had a hearing at
17 that time because the issue was what I made quite clear is that
18 you had to go forward. USAPA had to go forward and with an
19 open mind and that the Nicolau Award was not irrelevant. It
20 was to be considered. 10:18:22

21 You know, I, frankly, don't have enough experience
22 with seniority agreements. I do, to some extent, way back when
23 I did some of this work, as to whether or not there might be a
24 fair way, taking into account not only the Nicolau Award, and I
25 am quite aware that it wasn't a unanimous decision and a 10:18:43

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1 date-of-hire proposal for seniority. 10:18:47

2 But somehow, USAPA, it seems to me -- tell me if I'm
3 wrong -- has rejected all of that and basically said is this
4 correct that you made this statement that you were -- that
5 USAPA will do whatever it takes to see that there is no 10:19:08
6 Nicolau?

7 MR. SZYMANSKI: Your Honor, I don't recall that
8 statement. I don't think I made that statement but I will tell
9 you --

10 THE COURT: Okay. Let's stop there. That is fine 10:19:20
11 and I expected that that is probably what you would say and in
12 fairness, I haven't judged that. But that is a factual issue.
13 That is a factual issue that relates to whether or not -- of
14 whether or not there's a violation of the duty of fair
15 representation and I -- you know, in all fairness to you, I can 10:19:35
16 imagine that I have an open mind about it. Maybe you didn't
17 say that.

18 But what are we dealing with here? Why did you
19 get -- why did USAPA get to the point where it decided that as
20 you have -- as has been stated in the press release, that date 10:19:56
21 of hire is it, nothing else?

22 MR. SZYMANSKI: Well, Your Honor, a couple of things.
23 First of all, after your decision and the correspondence is in
24 the record, correspondence between myself and Mr. Harper and
25 correspondence between USAPA's president and the chief 10:20:18

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1 representative from Phoenix domicile asking myself, asking
2 Mr. Harper, President Hummel, asking Captain Scherff to join
3 and sit down and talk about the Nicolau Award and the seniority
4 integration proposal between the two parties. At that point,
5 it was not an issue with respect to merger. It was an issue
6 between the East Pilots and the West Pilots over seniority
7 integration between the two of them.

10:20:22

10:20:45

8 And the response that we got back was that -- what
9 part of the Nicolau Award don't you understand? We want the
10 Nicolau Award, only the Nicolau Award, and we're not willing to
11 compromise at all. So we had no discussions at that point
12 because we offered. We were prepared to discuss it. We were
13 prepared to make changes with respect to the date-of-hire
14 proposal. We were prepared to --

10:21:04

15 THE COURT: Did you offer something?

10:21:21

16 MR. SZYMANSKI: We didn't offer anything specific.

17 THE COURT: But what would you have offered as you
18 have said in open Court? I'm sorry to interrupt and make this
19 complicated for you, but how about we get to my question where
20 I am -- as I mentioned, I am somewhat uneducated about this.
21 There are other methods and means to establish a seniority
22 system that would be fair; correct?

10:21:42

23 MR. SZYMANSKI: Absolutely, Your Honor.

24 THE COURT: So what did you offer?

25 MR. SZYMANSKI: And, Your Honor, I'm not saying that

10:22:00

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1 the Nicolau Award is not fair although there were significant
2 problems with it, and I'm not saying that a date-of-hire
3 proposal is not fair. We've given the Court cases and
4 citations to a number of Court decisions that say that a
5 date-of-hire proposal is within the union's duty of fair
6 representation and is fair.

7 But there are a number of other possible proposals
8 and we were prepared to discuss those with representatives of
9 the West Pilots and they said no. They did not want to talk
10 about that.

11 THE COURT: And taking that as true, they stood
12 stiff-legged in front of you and said no way? It's Nicolau or
13 nothing.

14 MR. SZYMANSKI: Yes, Your Honor.

15 THE COURT: So what you're saying is that that just
16 broke down the negotiations? You couldn't offer anything?
17 What would you have offered?

18 MR. SZYMANSKI: We were under consideration at the
19 time immediately after that with the Merger Committee about a
20 number of changes to the proposal. Frankly, not with respect
21 to the order on which people appeared on the list but with
22 respect to a very important part of the list, which is the
23 conditions and restrictions which the plaintiffs continually
24 want to ignore, conditions and restrictions that would
25 guarantee them not only their own work in the Phoenix base and

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1 what they have with respect to the West flying, but also would
2 allow them to bid positions that are on the -- that are
3 traditional East lists and, in fact, as we've said over and
4 over again, there were a number of provisions that would have
5 allowed them at the time that the date-of-hire proposal was
6 made in 2008, 60 plus West pilots would have been eligible to
7 bid wide bodies. There are no wide bodies in the West.

8 And at this particular point, the declaration from
9 pilot Robert Davison says that that number, at this particular
10 point, would be above 80, which are wide bodies which they
11 otherwise didn't have.

12 THE COURT: Okay. So 80 versus how many?

13 MR. SZYMANSKI: Well, at the time the proposal was
14 made in 2008, zero. There are no wide-body pilots.

15 THE COURT: No. I understand that. But what you are
16 offering now was 80 and so how many would not have been
17 included in a wide-body?

18 MR. SZYMANSKI: Well, the other pilots wouldn't have
19 had the seniority to be able to bid it as there were additional
20 attritions.

21 THE COURT: So at bottom it was still seniority?

22 MR. SZYMANSKI: Well, the conditions and restrictions
23 are an important part of that because, first of all --

24 THE COURT: But, still, as bottom it was still
25 seniority? Is what you were proposing?

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1 MR. SZYMANSKI: We were still proposing -- 10:24:57

2 THE COURT: I'm just trying to figure this out so
3 that I know today what you were proposing and I'm not telling
4 you that that is unfair. But I want to understand. At the
5 bottom it was seniority. 10:25:10

6 MR. SZYMANSKI: The basic list that was being
7 proposed was date of hire but there were conditions and
8 restrictions that protected the flying that was being done and
9 has been done and those conditions and restrictions also
10 allowed those pilots from the West to bid their seniority 10:25:26
11 because there are senior pilots in the West, based on a
12 date-of-hire list, they would be high enough up on a combined
13 date-of-hire list to bid wide-body flying.

14 THE COURT: So when I'm reading this press release
15 here, it says the parties exchanged accurate information about 10:25:55
16 their current seniority lists and with respect to each of the
17 currently employed pilots, DOH, DOB, current bid and so forth.
18 Based on this information, the pilot groups attempted to
19 negotiate a mutually agreeable merged seniority list.

20 So where is there anything here about what you are 10:26:20
21 speaking of?

22 MR. SZYMANSKI: Your Honor, that has to do with the
23 merger situation and what I was describing was what happened
24 immediately after this Court's decision in October of 2012 and
25 at that point, there was not a merger. What I was talking 10:26:40

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1 about was strictly negotiations between US Airways and USAPA 10:26:44
2 and strictly a discussion between -- potential discussion
3 between East Pilots and West Pilots, between USAPA and the West
4 Pilots over what the proposal would be to US Airways in those
5 separate negotiations. 10:27:00

6 THE COURT: Okay. So the question, though, was --
7 and this is -- I think this was April 26, 2013. What list will
8 USAPA present in the McCaskill-Bond process? That was the
9 question.

10 MR. SZYMANSKI: And my -- and what I've said over and 10:27:19
11 over again at meetings and so forth is that when you start the
12 McCaskill-Bond process, the initial thing you do is exchange
13 with the other side what your current seniority situation is
14 and our current seniority situation is two lists. There's a
15 list for the West Pilots and a list for the East Pilots and 10:27:41
16 then we will get a seniority list from the Allied Pilots
17 Association and that's what you exchange as ground zero, the
18 starting point.

19 Then there is a proposal that is made, a proposal
20 initially gets made to the other pilot group and the 10:27:57
21 proposal -- if there is no agreement between the other pilot
22 group and USAPA, there's a proposal or position that is taken
23 before the Board of Arbitration.

24 THE COURT: Well, it seems here at the very end,
25 Mr. Syzmanski, it says there is an arbitration proceeding. It 10:28:12

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1 will be a panel of three neutral arbitrators in accordance with 10:28:20
2 USAPA's constitution. Our Merger Committee will propose DOH
3 method for integrating seniority. It's not as if you are
4 saying, gee, this is what we -- this is currently what we have.
5 You're saying what you're going to do. 10:28:40

6 MR. SZYMANSKI: Your Honor, that is currently what we
7 have --

8 THE COURT: No. You say it is here in accordance
9 with the constitution, we will propose DOH.

10 MR. SZYMANSKI: I suppose it should have said we 10:28:57
11 expect to propose because that clearly was at the time, Your
12 Honor.

13 THE COURT: Who is responsible for this press
14 release?

15 MR. SZYMANSKI: The Merger Committee, Your Honor. 10:29:04

16 THE COURT: Thank you.

17 MR. SZYMANSKI: But the Merger Committee at this
18 point --

19 THE COURT: Okay. Thank you. I'm going to ask you
20 another question. You have asked about the ripeness issue so I 10:29:16
21 have -- that is a very important question and always has been
22 and that's the next issue here on ripeness and, as you can see,
23 I am looking for what happened after the order, after the
24 hearing to determine whether or not there is any basis
25 whatsoever to establish -- for the plaintiffs to establish the 10:29:41

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1 significant burden of a violation of the duty of fair 10:29:46
2 representation.

3 And we have some facts that are floating around here
4 and you have now disputed some of those facts. Looking at
5 that, why doesn't that make this case ripe, particularly if, as 10:30:04
6 I understand from the corporations now -- and I don't know what
7 American Airlines is -- I'm not quite sure. But they are
8 really standing back. And I think they did that, frankly,
9 before the Ninth Circuit although maybe they weren't parties
10 and maybe the Ninth Circuit didn't understand it so that they 10:30:28
11 stand back. Then during the contract negotiations, they don't
12 care or they are saying maybe they do care but they have
13 decided we just want to know what to do. We're going to leave
14 this to the union.

15 So there's a difference here now in my view when you 10:30:44
16 have an MOU where the corporation has basically said we'll
17 leave it to the union and the Court's order was that is fine
18 with me as long as you're negotiating in good faith.

19 So why isn't there enough on the record now for me to
20 hold a preliminary injunction hearing to determine whether or 10:31:09
21 not there has been bad faith?

22 MR. SZYMANSKI: Well, Your Honor, if the claim that
23 the hearing is being held on is the claim that's in the
24 preliminary injunction motion which, as I said, is different
25 than the claim that is in the complaint, the claim in the 10:31:26

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1 preliminary injunction motion is that USAPA breached the duties 10:31:29
2 of fair representation by entering into a memorandum of
3 understanding that was neutral with respect to seniority. In
4 other words, they are saying that they think we breached the
5 duty of fair representation by not doing a memorandum of 10:31:47
6 understanding, frankly, that adopted the Nicolau Award. That's
7 what they are saying. It's their claim.

8 THE COURT: Yeah. And I see that and I understand
9 your point there and in looking at the agreement I think
10 itself, I think USAPA may have tried to make clear that don't 10:32:06
11 vote in favor of it or don't vote against it because we are not
12 rejecting the Nicolau Award or we're not accepting it, which is
13 precisely what I asked you to do.

14 And then you, based upon that, there was a vote and
15 98 percent of the West Pilots went along with it. But then 10:32:28
16 subsequently, what do we have here after that? What do we have
17 USAPA doing? Isn't that what I need to look at?

18 MR. SZYMANSKI: USAPA actually hasn't done much of
19 anything since then. We only have a chairman on the Merger
20 Committee. We're in the process of trying to staff that 10:32:48
21 committee and we're going to have West Pilot representatives on
22 that committee. That committee is then going to decide what
23 the proposals are that will be made. Those proposals will be
24 taken before the Board of Pilot Representatives and the Board
25 of Pilot Representatives will decide. So we're in the process. 10:33:02

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1 THE COURT: Yes. Circling back to what you have said 10:33:11
2 at the beginning, is your position would be there has been no
3 violation because we clearly set forth in the memorandum
4 agreement that we're going to be open-minded about it. And
5 then when you sat down with Mr. Harper to try to work it out, 10:33:29
6 then they said Nicolau or no Nicolau --

7 MR. SZYMANSKI: That actually happened before but
8 yes.

9 THE COURT: Okay. So that that occurred and so that
10 just broke down the negotiations and there was no violation or 10:33:39
11 duty of fair representation despite the --

12 MR. SZYMANSKI: Whatever the statement is, Your
13 Honor. I understand the statement.

14 THE COURT: Well, two statements. One of them is
15 allegedly yours, which you don't believe you said that, and the 10:33:53
16 other one is what is in this -- is in the press release which
17 apparently should have been written more carefully apparently.

18 So what you're saying is you're ready, willing to go
19 and consider the Nicolau agreement along with a number of other
20 options and one that you proposed here today that apparently 10:34:23
21 you didn't have the opportunity.

22 MR. SZYMANSKI: We haven't had any discussions
23 because they don't want to discuss anything other than the
24 Nicolau Award and I don't want the Court to misunderstand the
25 fact that doing the Nicolau Award itself as it is, as it 10:34:38

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1 stands, is a realistic possibility. It isn't. It just -- it
2 isn't.

10:34:43

3 But we are willing to say --

4 THE COURT: Why isn't it?

5 MR. SZYMANSKI: Because we think it was unfair.

10:34:53

6 THE COURT: Well, why isn't it -- but it was unfair.

7 Why is it not fair now in the future, as you're working this

8 out? As I said quite clearly in my order, you're not bound by

9 it but it may well be that it is the fair way to go. I mean --

10 I made that clear that it's quite dangerous for you to reject

10:35:16

11 it.

12 Now -- and that's why I'm here today wondering what
13 you would have offered.

14 Now, I've heard something that I didn't see in the
15 papers and, you know, I didn't give you the opportunity to

10:35:30

16 prepare for this but I take it that Mr. Harper didn't hear

17 about this either, about other proposals. It's your position

18 they stood stiff-legged in front of you, Nicolau, no Nicolau

19 and then that just broke things down and everybody got all

20 worked up --

10:35:51

21 MR. SZYMANSKI: Well, I don't think it's fair to say
22 that people got any more worked up than they have been for the

23 past five years; but, nevertheless, Your Honor, what happened

24 then is that they said no, we won't talk about anything other

25 than the Nicolau Award. Just the Nicolau Award, no changes

10:36:05

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1 from the Nicolau Award and that's the only thing that we're
2 willing to discuss.

10:36:09

3 So there was no opportunity for compromise.

4 And then -- I'm sorry, Your Honor. And then the
5 merger happened. Then shortly after your decision in October
6 and this change of correspondence in October, the beginning of
7 December there were serious discussions, as we've outlined in
8 the papers that we've submitted, with respect to the
9 preliminary injunction about a merger between US Airways and
10 American and there were those negotiations for the Memorandum
11 of Understanding that happened in Dallas-Ft. Worth over the
12 Christmas and New Year's holidays culminating in the Memorandum
13 of Understanding that was considered by the Board of Pilot
14 Representatives in early January.

10:36:20

10:36:41

15 THE COURT: Okay.

10:36:59

16 MR. SZYMANSKI: And that was neutral with respect --

17 THE COURT: I agree. It's neutral on its face. In
18 fact, I guess everybody thought it was going to be neutral.

19 MR. SZYMANSKI: And we went to the Board of Pilot
20 Representatives and they unanimously approved it to go out to
21 the membership. The membership, as you saw from the results,
22 overwhelmingly ratified it and at that point we are now waiting
23 for the process to work its way through because that Memorandum
24 of Understanding is contingent. There's a condition and that
25 condition is there actually has to be a merger. We're all

10:37:10

10:37:33

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1 expecting and hoping that that merger is going to happen but it 10:37:37
2 is still subject to a number of approvals by government
3 agencies and by the bankruptcy court that various classes of
4 debtors and so on and so forth.

5 THE COURT: Are you arguing now that this issue is 10:37:52
6 not ripe or are you arguing something else?

7 MR. SZYMANSKI: No. I'm just trying to lay out for
8 Your Honor what the process is. And they have asked for a
9 hearing before the bankruptcy court in mid-April -- mid-August,
10 the 15th, and for approval on the 15th and an effective date of 10:38:05
11 I think September 15. And the Memorandum of Understanding says
12 that if that is what happens, then we will start negotiations
13 with the Allied Pilots Association in September with respect to
14 this issue.

15 THE COURT: Okay. Then I missed the timing here to 10:38:26
16 some extent. I thought that after the Memorandum of
17 Understanding was reached and there was a vote in favor of it.
18 It seems quite clear to me that Memorandum of Understanding was
19 meant to be neutral on seniority, that there were some
20 negotiations after that. There was some exchange between you 10:38:53
21 and Mr. Harper?

22 MR. SZYMANSKI: No. There wasn't.

23 THE COURT: No? So there hasn't been --

24 MR. SZYMANSKI: Other than letters with respect to
25 this lawsuit. 10:39:07

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1 THE COURT: Okay. So there hasn't been anything 10:39:07
2 where USAPA took the position that it would reject -- during
3 the negotiations with APA on seniority, that it would reject
4 the Nicolau agreement. There's nothing that happened after
5 that. 10:39:24

6 MR. SZYMANSKI: Your Honor, I don't want to mislead
7 the Court. USAPA is not going to propose the Nicolau Award
8 unless this Court orders us to do that. That is not going to
9 happen. We are looking for a compromise --

10 THE COURT: But did you offer a compromise or was 10:39:38
11 there something where you offered it?

12 MR. SZYMANSKI: Your Honor, there were no
13 discussions. They didn't want to discuss anything other than
14 the Nicolau Award.

15 THE COURT: Okay. Let me stop you. I'm trying to 10:39:51
16 get the timing here. So in January, the neutral Memorandum of
17 Understanding was entered into and then after that, really
18 nothing concrete occurred to try to -- it was ratified.

19 MR. SZYMANSKI: It was ratified on the eighth of
20 February. 10:40:11

21 THE COURT: So after February nothing happened
22 between USAPA and US Air pilots, the plaintiffs in this case,
23 that would indicate that USAPA was not going to sit down in
24 good faith and negotiate something?

25 MR. SZYMANSKI: That's correct. Our offer was 10:40:29

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1 outstanding. 10:40:31

2 It has been rejected and I know if we go back for
3 sure --

4 THE COURT: Let me go back. Why isn't it a potential
5 violation of the obligation of fair representation for USAPA to 10:40:41
6 say under no circumstances will they ever accept the USAPA
7 agreement after my order?

8 MR. SZYMANSKI: First of all, Your Honor, we thought,
9 frankly, that Your Honor decided that last time.

10 THE COURT: Well, let's read the order then. 10:41:03

11 MR. SZYMANSKI: Okay. The order says --

12 THE COURT: Let's read all of the order which I
13 thought I was very clear to make the -- all counsel and the
14 parties in front of me; but I basically said that you could, in
15 fact, go forward and make a decision without the Nicolau Award 10:41:27
16 but I didn't say that you unequivocally could reject it. I
17 said that it was dangerous for you to do that because it was
18 considered fair.

19 So you had to consider it. Now that's what I said
20 and there's no way you could read that order any other way. 10:41:54

21 MR. SZYMANSKI: All right. Your Honor, you know your
22 order and I'm not going to argue with your order.

23 THE COURT: I will tell you that despite all of that,
24 this is a factually dense issue and there's been some
25 allegations about statements that you made and I'm not 10:42:16

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1 surprised for you to stand here and say you didn't make those
2 statements because they are serious. In fact, they were made
3 because they are contrary to my order and then, in fact, you're
4 telling me that you and your clients were willing to go forward
5 and enter into a fair agreement and it would be give and take
6 and that nobody would be taking a hardened position on that and
7 that is for another day. That is based upon facts -- that's
8 why I raised the issue of genuine issue of material fact. The
9 burden to establish essentially bad faith is pretty
10 substantial.

11 So -- and as I said, you know, I'm not presaging
12 anything. I just noticed these, as I mentioned, I wanted you
13 to know and your client to know that there has been some pretty
14 substantial allegations of statements made and then, of course,
15 I've read the press release. So you haven't been given an
16 opportunity to really respond on a factual basis because your
17 focus has been ripeness and I have to look at all allegations
18 in favor of plaintiff on this to determine whether or not it's
19 ripe and if I --

20 MR. SZYMANSKI: On the motion to dismiss.

21 THE COURT: On both.

22 MR. SZYMANSKI: On both.

23 THE COURT: And the -- particularly where there are
24 allegations of irreparable harm?

25 And, of course, the Rules of Evidence don't really

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1 apply other than the facts that are presented have to be 10:43:59
2 reliable. So that makes it a lot easier for this Court to give
3 all reasonable inferences in favor of the plaintiff.

4 But as I said, that's for another day. And as I also
5 mentioned, and I want to hear from Mr. Siegel on this, is 10:44:13
6 whether or not things have changed in terms of ripeness because
7 that made a big difference to me. I have been trying at
8 length, as I think everybody knows, to try to figure out why
9 the Ninth Circuit did what it did on ripeness but understanding
10 full well this process of negotiations for Collective 10:44:33
11 Bargaining Agreement. So I accepted that -- wait a minute.

12 I accepted that and then I read the MOU. It's quite
13 clear to me that the corporation is standing back and they are
14 saying just tell us what to do. Just solve this seniority
15 issue. And I had mentioned I think before that this whole 10:45:03
16 process of seniority could be resolved because the companies
17 may say, look, we're going to give everybody a huge raise so
18 let's just go with date of hire and everybody accepts that.
19 Well, that's not what they are saying.

20 They are saying -- they are saying you resolve it so 10:45:19
21 here we are. As far as I'm concerned, at some point, the new
22 allegation that occurred subsequent has created ripeness. So
23 we're -- and you have not persuaded me otherwise.

24 MR. SZYMANSKI: Well, I haven't actually argued about
25 ripeness yet. 10:45:44

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1 THE COURT: Well, I've read what you argued and I 10:45:45
2 hope you're not going to argue what I've already read because
3 that's -- I've considered all of that.

4 If you have something else, then tell me.

5 MR. SZYMANSKI: Well, it is, Your Honor, that I think 10:45:55
6 the focus here from all of the prior cases on a collective
7 bargaining agreement or ratification is wrong. The touchstone
8 for ripeness, and it's clear from the Supreme Court's decision,
9 in *Airline Pilots Association v. O'Neill* and the Ninth

10 Circuit's decision in *Addington I* and I submit, Your Honor, 10:46:16
11 frankly, this Court's decision last October is that what you
12 have to have to have a ripe dispute with respect to seniority
13 integration is that you have to have -- you have to have a new
14 seniority integrated seniority regime that is going to go into
15 effect and we don't have that here. We don't have a seniority 10:46:40
16 integration that is going to go into effect.

17 THE COURT: Can that mean that the union is only
18 going to represent some and not everybody? If they make that
19 quite clear in answer to actual final agreement that the Ninth
20 Circuit Supreme Court would say that they would never have a 10:47:14
21 cause of action because that's what I think we're coming to.
22 And that's not what the Ninth Circuit said. The Ninth Circuit
23 was, I think in my view, in all fairness to the Ninth
24 Circuit -- and they are always right -- is that they were not
25 ready to make the decision because I don't think they really 10:47:38

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1 understood what the position of the corporation was and they 10:47:42
2 also understood quite well what the case law that you've cited
3 was because they cited it, too, is the collective bargaining
4 process is so factually dense and negotiations can change
5 things dramatically. So I think the situation has changed 10:48:02
6 unless you're going to say there was never any cause of action,
7 and that was the question I proposed to you and it's also in my
8 questions here.

9 MR. SZYMANSKI: Your Honor, our position, and I think
10 it's supported by all of the cases, is that the issue is not 10:48:21
11 ripe until there is an integrated seniority list that is
12 different than the seniority lists that we have right now.

13 THE COURT: Okay. Give me the exception that makes
14 the rule that would allow for a cause of action by these
15 plaintiffs for any others where the union took the position 10:48:38
16 that they were going to favor some and not the others in the
17 collective bargaining process.

18 MR. SZYMANSKI: There were allegations like that
19 frankly in the *O'Neill* case in the Supreme Court and there were
20 allegations like that in *Addington I*. 10:48:52

21 THE COURT: There were allegations.

22 MR. SZYMANSKI: Yes. There were allegations?

23 THE COURT: So they can never raise that from the
24 dead? I mean, it's essentially they can never raise it
25 during -- until -- I mean a collective bargaining -- it's a 10:49:08

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1 Collective Bargaining Agreement can cure any previous --

10:49:12

2 MR. SZYMANSKI: Yes, absolutely. If you will, and I
3 don't for a moment acknowledge that that is the situation right
4 now, but I will tell you that the cases are very clear that if
5 the union at some point was doing something wrong, it can still
6 reform. And the point at which you make the judgment is when
7 the agreement goes into effect because up until that point, it
8 can change.

10:49:32

9 THE COURT: So their remedy then would be to do what
10 they are doing now, is to come to the Court and say, Your
11 Honor, they are not acting in good faith now. Save us some
12 time. Tell us again. Tell them again to act in good faith and
13 to engage in negotiations that represent everybody equally. Is
14 that what they would do? Is they would get an order from the
15 Court, look, you have to do what you're required to do.

10:49:48

10:50:14

16 Otherwise, there's a waste of time because if the Collective
17 Bargaining Agreement then only reflects one side, that is part
18 of the union, a limited part of the union, then you're saying
19 at that time they have a cause of action.

20 MR. SZYMANSKI: It's only at the point where there's
21 a point --

10:50:42

22 THE COURT: So there is no cause of action prior to
23 that?

24 MR. SZYMANSKI: No. There are no cases, Your Honor,
25 that say that is so. And the facts here, quite frankly, are

10:50:50

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1 quite different than that. The union is trying to represent 10:50:53
2 everybody. It is, as we've said -- with respect to collective
3 bargaining negotiations, we have West Pilots on a Negotiating
4 Committee. We have West Pilots on the Board of Pilot
5 Representatives. We have West Pilots on all of our committees 10:51:05
6 and we're in the process of putting together a Merger Committee
7 that will have West Pilots on it.

8 THE COURT: All right. So give me the best case that
9 you have that answers my question that the cause of action is
10 never ripe until after the Collective Bargaining Agreement is 10:51:21
11 entered into.

12 MR. SZYMANSKI: It's not --

13 THE COURT: And, for example, distinguish for me the
14 language in the Ninth Circuit that says otherwise.

15 MR. SZYMANSKI: First of all, Your Honor, the Ninth 10:51:37
16 Circuit says: We conclude that this case, pages 1179, 1180,
17 606 F.3d, we conclude that this case presents contingencies
18 that could prevent effectuation of the USAPA'S proposal and the
19 accompanying injury.

20 At this point, neither the West Pilots nor USAPA can 10:51:58
21 be certain what seniority proposal ultimately will be
22 acceptable to both parties and they are talking about the
23 seniority proposal. They are not talking about just the
24 Collective Bargaining Agreement.

25 THE COURT: I got it. 10:52:14

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1 MR. SZYMANSKI: Likewise, it is not certain whether 10:52:15
2 that proposal will be ratified as part of the new single
3 Collective Bargaining Agreement. And not until the airline
4 responds, and they have negotiations and the membership
5 ratifies and so forth, will the West Pilots actually be 10:52:26
6 affected by USAPA's seniority proposal, whatever that final
7 proposal ultimately is.

8 Because of these contingencies -- because these
9 contingencies make the claim speculative, the issues are not
10 yet fit for judicial determination. We also conclude, the 10:52:45
11 Court said, that withholding judicial consideration does not
12 work a direct and immediate hardship on the West Pilots.
13 Quote, to meet the hardship requirement, a litigant must show
14 that withholding review would result in direct and immediate
15 hardship and would entail more than possible financial loss. 10:53:03

16 THE COURT: And why haven't they alleged that here?

17 MR. SZYMANSKI: Because, Your Honor, it's all what
18 the final proposal is, what the final integrated seniority list
19 must be is not known. If we have a process for it that we've
20 set up, which is negotiations with the Allied Pilots 10:53:23
21 Association, with the ratification of vote by our pilots if
22 there is an agreement and if not, a decision by a three-member
23 board of neutral arbitrators on a fair and equitable basis as
24 required by federal law.

25 THE COURT: So what you're saying is interpreting 10:53:41

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1 that last paragraph or the last sentence or two of that 10:53:44
2 paragraph, which says they have to establish irreparable harm,
3 that you're saying they haven't established it?

4 MR. SZYMANSKI: And they don't establish that until
5 there is a seniority. 10:53:59

6 THE COURT: That's not what I read. Would you read
7 that last portion for me? That's what I remember, too. And
8 that's why I interpreted that to mean that they certainly
9 could, under some circumstances, raise it.

10 Otherwise, it would be quite clear that a preliminary 10:54:13
11 injunction would never apply during a collective bargaining
12 process even if the union had engaged in violation of the duty
13 of fair representation.

14 MR. SZYMANSKI: Your Honor, those two paragraphs, on
15 page 1179 and 1180, read them together. I don't believe that 10:54:35
16 you can read them to say anything other than other than the
17 fact that there is not irreparable harm until there is an
18 integrated seniority list that -- and that the Court then knows
19 what that list is so that you can decide what the violations
20 are. 10:54:55

21 THE COURT: Okay. Let me see if there's anything
22 else that I need for you to address here.

23 Were about -- you mentioned other possibly seniority
24 proposals that would be fair and not in violation of the duty
25 of fair representation. You mentioned one. Are there others 10:55:17

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1 that you would have proposed except that you were told by 10:55:20
2 counsel that this is not something they are willing to enter
3 into?

4 MR. SZYMANSKI: Your Honor, there's a whole range of
5 different possible seniority integrations. Frankly, to accept 10:55:32
6 the argument that the plaintiffs are making in this case, you
7 would have to decide -- I would think that a Court would have
8 to decide that there is only one way --

9 THE COURT: No. I've never said that.

10 MR. SZYMANSKI: Okay. But to accept their argument, 10:55:51
11 which is we can only do the Nicolau Award, is essentially that,
12 is to say there is only one way that is fair to integrate the
13 seniority list and that's the Nicolau Award and that's just not
14 true.

15 THE COURT: And that's your interpretation of what 10:56:10
16 they did and that's why negotiations were terminated, because
17 they just basically said to you Nicolau or no Nicolau. Is that
18 right?

19 MR. SZYMANSKI: That's true, Your Honor, but more to
20 the point, to your question about alternate ways of integrating 10:56:25
21 seniority, there are any number of different ways of doing it.
22 There are ways of doing it with neighborhoods and ratios
23 somewhat like what the Nicolau Award was but based on different
24 time frames or different numbers. There is date of hire.
25 There are dynamic lists. There is a number -- there are a 10:56:47

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1 number of other things that have been done in the course of 10:56:51
2 seniority integration proceedings. There's a whole range and
3 they are saying the only thing they are willing to accept is
4 the Nicolau Award. They are not willing to talk about anything
5 else. 10:57:05

6 THE COURT: And that's what they have told you
7 subsequent to the MOU?

8 MR. SZYMANSKI: Yes. And when I left this Court, I
9 said we were going to try to engage them in a discussion to try
10 to resolve it and we did. But they said we don't want to talk 10:57:14
11 about anything other than the Nicolau Award.

12 THE COURT: Okay.

13 So, in other words, they, then, didn't comply, as far
14 as you're concerned, with my order either, which was that USAPA
15 did not have to adopt only the Nicolau Award but had to be 10:57:34
16 fair.

17 So they stymied you. They were the wall as far as
18 you're concerned and your client is concerned?

19 MR. SZYMANSKI: And they are still there, Your Honor.
20 They have not changed their position. 10:57:51

21 THE COURT: But that was communicated --

22 MR. SZYMANSKI: But yes.

23 THE COURT: That was communicated to you?

24 MR. SZYMANSKI: Yes.

25 THE COURT: And that would be -- those are the facts 10:57:57

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1 that you would proffer to establish that they have not met 10:57:58
2 their burden?

3 MR. SZYMANSKI: Those are the only some of them. If
4 we are going to go to the merits of this case, there are a
5 number of other things which we've stated. 10:58:09

6 THE COURT: Okay. Kind of give me an idea right now
7 because we haven't had an opportunity -- you didn't have an
8 opportunity to brief that and we might as well talk about that
9 now.

10 MR. SZYMANSKI: Your Honor, if we go to the merits of 10:58:20
11 this case and we have a trial on the merits at some point,
12 there are a number of different factual issues and we raise
13 this in the declaratory judgment action. You'll recall there
14 was a motion there --

15 THE COURT: No. Let's talk about what happened 10:58:38
16 afterwards. What would you raise that would be in defense of
17 your position that your client acted in good faith?

18 MR. SZYMANSKI: Well, there are any number of
19 different factors about what the seniority integration might be
20 or could be. 10:58:52

21 THE COURT: No. No. I mean, what did they do?

22 MR. SZYMANSKI: What did my client do?

23 THE COURT: Yes. In other words, your client had an
24 obligation of fair representations and the agreement appears to
25 be fair. It appears to be neutral and, you know, I guess 10:59:07

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1 everybody concluded that because the vote was quite clear they
2 are in favor of it, of going forward.

10:59:12

3 So what happened -- so I take it your position is
4 that the documentation will establish that you tried to do it
5 as you said you would do in open court here. You tried to
6 engage them. But that they were just an absolute wall and said
7 no.

10:59:28

8 MR. SZYMANSKI: Yes, Your Honor.

9 THE COURT: Okay. All right. And you mentioned some
10 things but I'm not going to have you go into that right now.
11 That answers the question I had has USAPA's date of hire ever
12 changed and in your view it has.

10:59:48

13 MR. SZYMANSKI: Well, we've offered to discuss and to
14 change it. Frankly, that proposal was a proposal that was made
15 in collective bargaining negotiations with US Airways.

11:00:09

16 THE COURT: But was it after the MOU?

17 MR. SZYMANSKI: No. It was before.

18 THE COURT: But you would have offered it but they
19 didn't allow you to offer it is what you're saying?

20 MR. SZYMANSKI: There was a mutual agreement, Your
21 Honor, to make the MOU neutral with respect to seniority.

11:00:23

22 THE COURT: Right. But then after that, which it is
23 neutral and I have agreed with you.

24 MR. SZYMANSKI: There has been no offer since -- no
25 discussion between us and the company or American over

11:00:36

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1 seniority. 11:00:40

2 THE COURT: And the reason why there hasn't been is

3 because of the breakdown in communications that was caused by

4 US Air. Is that your position?

5 MR. SZYMANSKI: I wouldn't say it that way, Your 11:00:52

6 Honor. I would say it is because the Memorandum of

7 Understanding provides for a process for resolving this through

8 the McCaskill-Bond process and we haven't started that process

9 yet and that process is a process that is primarily the

10 bargaining representatives between USAPA and the Allied Pilots 11:01:13

11 Association and it hasn't started yet.

12 THE COURT: And why hasn't that began?

13 MR. SZYMANSKI: Because under the Memorandum of

14 Understanding, it doesn't begin until there's actually an

15 approved merger by the bankruptcy Court. The timeline says 11:01:25

16 that it happens once the plan of reorganization is approved.

17 THE COURT: And so since that neutral Memorandum of

18 Understanding, your client has not taken any position that

19 would indicate that you were not -- your client was not going

20 to at least consider the Nicolau agreement? 11:01:47

21 MR. SZYMANSKI: Your Honor --

22 THE COURT: That calls for a yes-or-no answer.

23 MR. SZYMANSKI: Has not taken any action since that

24 time.

25 THE COURT: Or any position. You don't even have to 11:02:02

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1 say action. Has not expressed an opinion that you would not or 11:02:04
2 your client would not at least consider the Nicolau Award?

3 MR. SZYMANSKI: I will tell you, Your Honor, that
4 USAPA is not prepared to do the Nicolau Award.

5 THE COURT: Okay. All right. That is what -- 11:02:23

6 MR. SZYMANSKI: We're willing to discuss something
7 other than that which we think would absolutely fulfill our
8 duty of fair representation to all of the pilots.

9 THE COURT: Okay. And you didn't propose anything
10 because your position is, as they said, it had to be Nicolau. 11:02:38
11 Is that the way --

12 MR. SZYMANSKI: That's correct.

13 THE COURT: Okay. Thank you.

14 All right. Let me hear from plaintiffs' counsel.
15 Mr. Harper? 11:02:48

16 Mr. Harper, let me hear from Mr. Siegel for a second.
17 Just a moment.

18 You know the question I proposed to you, which is
19 whether or not, in fact, you've stood back or you're taking the
20 position that this is -- this seniority issue is for the union 11:03:24
21 and it's not part of the negotiations. Am I right on that?

22 MR. SIEGEL: Yes, Your Honor. You are correct. The
23 MOU requires the carrier to remain neutral on the order of the
24 pilots on the list. We will not be negotiating regarding the
25 order of the pilots on the list. We won't be arbitrating 11:03:47

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1 regarding the order. 11:03:52

2 THE COURT: Okay. And what about the American

3 Airlines? It's their position also?

4 MR. SIEGEL: The paragraph in the MOU says that both

5 carriers will remain neutral in that process. 11:04:02

6 THE COURT: Okay. Thank you. That's all I needed.

7 Thank you.

8 MR. HARPER: Your Honor, there's a lot on the table.

9 I did come prepared with a slide presentation but we're not

10 going to do the order that we presented but we do have a few 11:04:28

11 slides that maybe I can pick up some of the issues that you and

12 Mr. Syzmanski were talking about and develop it a little bit

13 farther. So I have here slide 28. I don't know if it shows up

14 on your screen or not.

15 THE COURT: I have it. 11:04:50

16 MR. HARPER: And we have some hard copies of the

17 slides. We can pass those out if you want.

18 But I think you were just talking to Mr. Syzmanski

19 about this process, Your Honor, his concept of ripeness and

20 we're here today on May 14 and, in general, the timelines that 11:05:08

21 we have here are the ones that are going to play out under the

22 MOU. The dates are a little uncertain because we don't know

23 exactly when the POR is going to go final. I'm reading where

24 the public documents are and it's on or around August 15, 2013.

25 And then once that date hits, wherever it is, certain 11:05:36

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1 things are going to fall into line after that.

11:05:39

2 What Mr. Syzmanski is talking to you about is the
3 West Pilots never having a ripe claim in this process that
4 we're going to follow now until sometime after the deadline for
5 the award which could be as late as August of 2015.

11:05:59

6 And what he's really talking to you about here in
7 that argument is they want to get to that point in time because
8 the six words that they are going to like most: Final and
9 binding, fair and equitable. That's what's going to come out
10 of the McCaskill-Bond arbitration. They like that because
11 nobody can overturn them then. We will not have a cause of
12 action that will allow us to really overturn a federal final
13 and binding, fair and equitable. Exactly what they got in the
14 Nicolau. That process they agreed to go through and come up
15 with final and binding, fair and equitable.

11:06:23

11:06:47

16 It's going to be good for them down there but not
17 good for us up here and that's what they have taken away.

18 The other argument he's making to you is that if we
19 can get it that far, Your Honor, this cause of action is going
20 to be moot. And that's exactly the question you asked. Is the
21 Supreme Court or the Ninth Circuit or even this Court going to
22 allow a process to go forward that allows these West Pilots to
23 get to a point in time when their cause of action is moot?
24 That is their intent. That's what they are trying to argue
25 here.

11:07:06

11:07:27

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1 Now, luckily there are more people in this courtroom 11:07:27
2 today arguing that this case is ripe than we had before.

3 Before you just had us. Now we have Airways. Now we have
4 American and one of your questions goes to APA and maybe Bob or
5 somebody else can speak to it, but I have talked to Mr. Ed 11:07:46
6 James. He's the general counsel for APA. And his position is
7 that he thinks it's ripe now, too. So we have four parties in
8 this family of litigants that are before you that think this
9 cause of action is ripe and we only have one.

10 It is fundamentally unfair to think that we have no 11:08:07
11 cause of action until our cause of action is moot. That's what
12 they are talking about.

13 Now, until he stood here today, I never heard him
14 say, and it's never been written, that there's going to be a
15 West list and there's going to be an East list. It's not 11:08:24
16 written down anywhere. I think he made a mistake in making
17 that statement today because what they intend to do, and you
18 have picked it up in the facts and in the documents, is to take
19 that date of hire from September of 2008 and drop it into this
20 process here. 11:08:49

21 If you go back to the outline here, it goes into --
22 starts to go into the process, Your Honor, the first day after
23 the POR goes final because that's when the parties and he says
24 he's the only party who is going to represent the West Pilots
25 back here. I think Mr. Siegel perhaps has a different point of 11:09:09

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1 view, but nobody has ever said in writing that the West Pilots
2 get to participate in this protocol. He's going there by
3 himself. He's going there with that list and from that point
4 forward in that process by themselves, that's the list that
5 they will want to shuffle with the person list.

6 THE COURT: He has said -- first of all, let's talk
7 about the MOU. It appears on its face to be consistent with
8 this Court's order that it says or in advance of the MOU -- I
9 don't have it in front of me -- that the West Pilots are not to
10 consider this MOU as discarding the Nicolau Award and the East
11 Pilots are not to consider as if it's going to be enforced.

12 So on the face, it looks as if it's fair at least
13 from the start. But he has said that after that that the West
14 Pilots took the position under no circumstances are we going to
15 negotiate anything but the Nicolau Award. We're not going to
16 be able to come to the table unless you accept that.

17 MR. HARPER: Well, I thought what he said, and I know
18 what Mr. Siegel has said, is that the MOU on its face is
19 neutral. I don't think anybody has written someplace that the
20 MOU is fair. I think that is an open question that we have
21 that we've been talking about today.

22 THE COURT: Okay. Neutral.

23 MR. HARPER: But indeed our position is neutral is
24 not good enough under these set of circumstances for where we
25 were.

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1 On September 7, 2013, the West Pilots had a
2 Transition Agreement that required the Nicolau to be dropped in
3 to any negotiated -- and that changed on the eighth.

4 THE COURT: So you are -- you wish to re-merge and
5 say that now the Nicolau Award, is it for your clients and
6 nothing else? That despite what I said, which is that USAPA
7 does not have to accept the Nicolau Award as the only basis
8 upon which to negotiate a fair seniority agreement -- now,
9 that's what I said; correct?

10 MR. HARPER: I think what you said is that if they
11 abandon the Nicolau without a legitimate union purpose, then
12 they are substantially at risk.

13 THE COURT: That's right. But that doesn't mean they
14 have to adopt it, embrace it. So what happened after that
15 order that would indicate that, in fact, they were not going to
16 at least consider it?

17 MR. HARPER: The Nicolau?

18 THE COURT: Right.

19 MR. HARPER: He just told you. They have -- from --
20 Mr. Bradford wrote his first letter back in May of 2007. But
21 from there clear on through today --

22 THE COURT: Okay. I heard him today. Give me some
23 facts now after the MOU was, in fact, made final. What
24 happened?

25 MR. HARPER: They tried to drag us to New York and

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1 get us involved in the bankruptcy litigation back there because 11:12:55
2 we threatened to bring a DFR case out here. That's what
3 happened.

4 THE COURT: You threatened on what basis, though,
5 what facts? 11:13:05

6 MR. HARPER: On the ripe question. The question that
7 we think is ripe.

8 Can we put that back up there? I'll get to that.

9 Here's what we think the ripe question is: Based
10 upon your order from October of 2012, USAPA's abandonment of 11:13:20
11 the Nicolau award was permissible if it was supported by a
12 legitimate union purpose.

13 THE COURT: Okay. So, all right. So now just on
14 that basis alone and their representation subsequent to the MOU
15 and actually a representation here today that it's your 11:13:42
16 position that they are in violation of their duty?

17 MR. HARPER: Yes, but can I just make a point? We
18 think that you need to be looking at whether they violated that
19 ripe question as of February 7, 2013.

20 THE COURT: That's what I thought you were saying. 11:14:03

21 MR. HARPER: Yes.

22 THE COURT: And I'm not sure I'm willing to accept
23 that.

24 MR. HARPER: Because -- it seems to me those have to
25 be -- whatever the facts are, Your Honor, to support a 11:14:10

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1 legitimate union purpose have to be on the table. The cards
2 have to be on the table when the MOU is ratified and, according
3 to them, goes neutral.

4 THE COURT: All right. Mr. Harper, I know what
5 you're saying but that's not what I found. What I found in
6 accordance with the decision from the Ninth Circuit was that I
7 was going to look prospectively and if they violated my order,
8 I would look to see -- and in this case your allegation is that
9 they have unequivocally stated no Nicolau, whether or not that
10 constituted a legitimate union purpose.

11 So that's what it is. There is no sort of revival as
12 I think that I will find.

13 That may have been and should have been what occurred
14 a long time ago. If I am to project into the Ninth Circuit
15 decision what I think happened is that they thought that this
16 could be resolved as a consequence of the collective bargaining
17 process where the company was involved. The company wasn't a
18 party. I'm not sure anybody asserted the company's position in
19 their case. But if -- it seems to me at least that the
20 dissenting in that case may have been persuaded, at least one
21 of the majority, that it's ripe. But they didn't.

22 So here we are and we're now looking at it
23 subsequently. I'm not looking at it back.

24 Now, that evidence that you -- what you're talking
25 about in 2007 may well be irrelevant to what they have done

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1 here today in terms of an allegation of bad faith is that they
2 have -- despite what they have said about being open-minded
3 about this and considering that Nicolau Award and the Court's
4 order, that they have been intransigent and always taken the
5 position no Nicolau as a consequence.

11:16:03

11:16:22

6 So, okay.

7 I'm hearing from Mr. Syzmanski that's not the case
8 but those are factual issues. But you do understand what I'm
9 saying? You're not going to get the opportunity here that I
10 can see on anything that you've alleged that the case that you
11 had before Judge Wake is now the case before this Court?

11:16:37

12 MR. HARPER: No. And I understand that and I am not
13 arguing that.

14 THE COURT: Okay.

15 MR. HARPER: Here's my point: If you go to Addington
16 I and footnote one, they say in the footnote that the case will
17 be ripe -- the majority says the case will be ripe when the
18 CBA is ratified. MOU is the CBA. Everybody here seems to
19 agree with that and the MOU was ratified on February 8, 2012.

11:16:54

20 So at that moment in time, at least right before
21 that, what was the legitimate union purpose for ratifying an
22 MOU that did not include the Nicolau Award? At that moment in
23 time, what is it that's on the table that would justify them
24 doing that?

11:17:19

25 I think that is the ripe question because that is

11:17:39

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1 what the Ninth Circuit set up in footnote number one and I 11:17:41
2 think your order was consistent with that.

3 What are the facts there? And they haven't come up
4 with anything that would suggest that they had a legitimate
5 union purpose. 11:17:53

6 Now, looking forward -- if you want me to look
7 forward.

8 THE COURT: No. Let me stop you for a second. So I
9 understand that. Mr. Syzmanski would say, as he has said, that
10 there's a lot more to happen. MOU is not the end of it. The 11:18:05
11 MOU is not the Collective Bargaining Agreement despite the fact
12 that -- and, you know, the union or -- excuse me, the company
13 has taken the position we're going to leave it up to the union
14 to decide this but we haven't even sat down and negotiated it
15 yet. But the MOU is the MOU but it is not the final Collective 11:18:32
16 Bargaining Agreement. There's a lot to go along the way here.
17 So that's the first thing is that I have a problem with your
18 saying the MOU is, in fact, a Collective Bargaining Agreement.
19 That's not what the Ninth Circuit said.

20 MR. HARPER: The MOU, if you listen to us, if you 11:18:51
21 look at Airways and if you listen to American, the MOU is the
22 new Collective Bargaining Agreement. Substantially all of the
23 terms --

24 THE COURT: But the MOU says you negotiate. It
25 doesn't say this is the agreement. That's what the Ninth 11:19:12

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1 Circuit said. The Ninth Circuit said whatever you end up with 11:19:16
2 is what is the final agreement and perhaps at that point there
3 may well be a cause of action. I don't know primarily what the
4 Ninth Circuit said except they are always right.

5 So I disagree with you on that point. Let's go on. 11:19:42
6 You wanted to talk about prospective --

7 MR. HARPER: But I do think we are ships passing in
8 the night here because the MOU sets all of the terms and
9 conditions of employment for the pilots of the new American for
10 the next five years to 2019. No other terms and conditions of 11:20:00
11 their employment, outside of whatever has been negotiated and
12 maybe jiggered a little bit before they get to the joint
13 Collective Bargaining Agreement, are going to change. So the
14 MOU is the Collective Bargaining Agreement.

15 Now, circumstances have perhaps changed since the 11:20:20
16 Ninth Circuit looked at this and where we are today because in
17 the MOU there is a new process that deals with pilot seniority
18 integration and that is the McCaskill-Bond.

19 Airways is not going to be negotiating with USAPA or
20 APA over that process at all. So the negotiations between the 11:20:42
21 carriers and the unions terminated on February 8, 2013, for the
22 most part. I don't want to overstate that because there is
23 some jiggering that is going to go on. But that is the new
24 Collective Bargaining Agreement.

25 THE COURT: Well, okay. But when you say Collective 11:21:04

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1 Bargaining Agreement and we talk in the context of the Ninth 11:21:07
2 Circuit, the question is we're talking about a potential cause
3 of action and the McCaskill requirements are that you come to
4 the table -- as I understood what happened before, that the
5 union comes to the table, both of the unions come to the table 11:21:30
6 and they work out a seniority system. If they can't, then it
7 goes to arbitration which is exactly what happened previously
8 and then it went to arbitration. You had the Nicolau Award.
9 So isn't that exactly what we have now in the MOU?

10 MR. HARPER: Can you go to the slide that -- 11:21:52

11 MS. AXEL: That one?

12 MR. HARPER: No.

13 And I was here with you last October. I was a
14 little -- we were talking on the same issue again.

15 Go to slide five. 11:22:04

16 This is under -- and please let me just go back a
17 little bit and talk to you about the TA without offending you.
18 But under the previous Transition Agreement, what was supposed
19 to happen, Your Honor, was that the USAPA and Airways was
20 supposed to sit down and negotiate a single agreement, a 11:22:28
21 Collective Bargaining Agreement. They were supposed to
22 negotiate all of the various parts of the Collective Bargaining
23 Agreement and then the seniority list, the Nicolau list, which
24 had been arbitrated, was simply to be stuck into that
25 agreement. There was to be no negotiation over that agreement. 11:22:50

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1 It was just to be trapped into Section 22. That was what was 11:22:56
2 supposed to have happened before.

3 It's like what is going to happen here again except
4 that it's changed.

5 This was to drop in under the new process here, 11:23:12
6 everything has been negotiated but seniority is out and it's
7 left to the McCaskill-Bond process. There is going to be no
8 further negotiations over that list. All of the terms and
9 conditions of the employment, wages, working conditions,
10 bidding, all of that stuff is final. 11:23:34

11 So the only thing that is to be decided is seniority
12 under McCaskill-Bond.

13 THE COURT: Well, I understand all of that. I don't
14 understand where we have a disagreement then.

15 MR. HARPER: Because I thought you were saying that 11:23:48
16 there was more negotiations to go between the airlines and
17 USAPA before you get a final CBA.

18 THE COURT: No. No. No. No. What I'm saying is
19 that the negotiations in the MOU are required as part of
20 McCaskill. The MOU requires negotiations on seniority. 11:24:08

21 MR. HARPER: Between the two unions.

22 THE COURT: Yes, that's all I'm saying.

23 MR. HARPER: Then we're on the same page. Yes.
24 Phase one is --

25 THE COURT: All we're talking about is seniority. I 11:24:22

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1 think the Ninth Circuit thought that somehow that that could be 11:24:24
2 negotiated with the company and that's why they did what they
3 did.

4 But now where we are is we have the McCaskill
5 requirements. We have the MOU on seniority only and it 11:24:37
6 requires that there be the two unions come together, negotiate.
7 If they can't, then it goes to arbitration.

8 MR. HARPER: Right.

9 THE COURT: So, then, there's no disagreement here.

10 MR. HARPER: Okay. I felt that we were not talking 11:24:57
11 on the same plane but I think we are.

12 THE COURT: I think we are now.

13 MR. HARPER: I just want to make sure we all are on
14 the same field here. So I think we are.

15 THE COURT: So that -- the seniority will never -- 11:25:12
16 once it's negotiated or once it's arbitrated, it will never
17 change from that point forward. It's out as Mr. Siegel has
18 said. The company is not going to touch that for the final
19 Collective Bargaining Agreement so that is what I understand.
20 I kind of understood that to be the last time, too, although I 11:25:37
21 don't know if anybody threw around McCaskill.

22 MR. HARPER: Well, I tried to but they weren't far
23 enough along in the process to jump up and jump into it. We
24 tried to talk about it but it was premature, Your Honor, last
25 October because it was just beginning at that point in time. 11:25:54

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1 It evolved into the process that in February it was in place. 11:25:57

2 THE COURT: Okay. So now we can talk prospectively.

3 What has the union done that is in violation of their duty?

4 After the MOU?

5 MR. HARPER: Their duty -- the breach of the duty was 11:26:15

6 not to include the Nicolau in the MOU.

7 THE COURT: And is that as simple as it is?

8 MR. HARPER: Yes. I think that that is the breach of
9 the duty of fair representation. They had the duty to insist
10 on the Nicolau and they didn't. 11:26:27

11 THE COURT: Wait a minute. Wait a minute. They
12 don't have a duty to insist on it?

13 MR. HARPER: As part of the negotiations, yes.

14 THE COURT: Well, you're saying they had to come to
15 the table. So what we're talking about is what I thought I 11:26:38
16 resolved which is it can be considered. It should be
17 considered. There has been a determination that it's fair but
18 that doesn't have to be the final decision on seniority.

19 Now, that's my ruling.

20 MR. HARPER: The final decision on seniority here 11:27:05
21 will be when the three arbitrators shuffle two lists and come
22 up with one list. It's going to be the American list --

23 THE COURT: But we're talking about the union here
24 acting -- or complying with their duty. So they come to the
25 table with APA and they say this is what we publish to propose; 11:27:26

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1 right? 11:27:35

2 MR. HARPER: Which is that list there.

3 THE COURT: And you're saying they are only going to

4 propose DOH?

5 MR. HARPER: Absolutely. 11:27:44

6 THE COURT: Okay. I got it. I don't think I need to

7 hear any more from you.

8 MR. HARPER: If you want me to -- I mean --

9 THE COURT: Well, if you want to, I'll let you.

10 MR. HARPER: I have a fairly good memory and this 11:27:54

11 call that we were supposed to have had.

12 THE COURT: Yes. The call.

13 MR. HARPER: The call.

14 THE COURT: I hope that we're not going -- I'm not

15 going to have to decide credibility of lawyers here. 11:28:05

16 MR. HARPER: No. No. If you go to our statement of

17 facts, page 22, items 100, 101, 102. You don't need to look at

18 them now. There was a statement made at the Charlotte

19 presentation that you have been talking to Mr. Syzmanski about;

20 okay? It was after Charlotte and before Phoenix. And I've 11:28:24

21 only had one telephone conversation with him since we were last

22 in front of you that I can recall and he was in town and he

23 called me to talk about the West position on the MOU because he

24 had just said that this is all going to be in Charlotte. He

25 said date of hire -- Nicolau goes away and all of the things 11:28:47

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1 that you were asking about goes away. 11:28:54

2 I said, "Pat, if you continue to talk that way here,
3 you are really going to cause a lot of unrest with the pilots
4 and it may influence the way they vote on the MOU." That was
5 the beginning and end of the conversation that we had after we 11:29:05
6 were both -- both before you last time and before the MOU.

7 Since the MOU, we've had no conversations about any
8 compromise, any other thing other than date of hire and not
9 Nicolau going into this process.

10 And they are adamant that it's not going to be the 11:29:26
11 Nicolau. And unless we get the remedy we ask for, they are
12 going to sit at these tables in this process and advance only
13 the date of hire.

14 THE COURT: Okay. And do you agree with
15 Mr. Syzmanski that there is at least the potential of a fair 11:29:42
16 negotiation and seniority agreement that is divined that is not
17 Nicolau and is not date of hire but is a confluence of both?

18 MR. HARPER: You mean between the West and the East
19 Pilots?

20 THE COURT: Well, yes. The proposal they come to the 11:30:11
21 table with. They come to the table under the MOU and start
22 negotiating with the APA. Does it have to be Nicolau because
23 then we're -- the two of you are standing stiff-legged.

24 MR. HARPER: We are.

25 THE COURT: And contrary to what I have ordered, 11:30:30

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1 which is that you must both give in and reach an agreement that 11:30:37
2 can be a confluence of both, the fairness of the Nicolau
3 agreement and perhaps the fairness of DOH. Now, if you're
4 taking that position, then there's a problem.

5 MR. HARPER: We're taking the position that they have 11:30:58
6 a duty to follow through with what they agreed -- ALPA agreed
7 to and Airways accepted back in 2007 which is the Nicolau.
8 That is our position, Your Honor. And we think that the union
9 has the duty to represent us, the minority, and not trump us
10 because they are the majority and put something else on the 11:31:19
11 table.

12 THE COURT: So, then, are you not, then, in violation
13 of the agreement or the Court's order? I made quite clear --
14 do I have to read the Court order to you, too, Mr. Harper?

15 MR. HARPER: I don't think -- I'm sure we're not in 11:31:34
16 violation because --

17 THE COURT: Well, I said they do not have to adopt
18 Nicolau. Okay?

19 Now, they have said, and Mr. Syzmanski very candidly
20 said today they are not Nicolau. Are you saying on the other 11:31:53
21 side it has to be Nicolau?

22 MR. HARPER: We are saying the duty is to present the
23 Nicolau in the course of the pilot integration process --

24 THE COURT: Okay. Just present it but not propose it
25 as the only method and means of adopting a seniority agreement. 11:32:06

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1 MR. HARPER: Your Honor, when you go -- 11:32:14

2 THE COURT: You're trying to get some help from your
3 father over here.

4 MR. HARPER: When we get to this process here --
5 that's the process. When we get to the process -- 11:32:28

6 Jen, can we put this back up, the timeline?

7 Your Honor, we go in to the post-August 15, 2013, and
8 moving in to the end of the year. We're saying when they go to
9 start that process, that they need to present the Nicolau Award
10 unless they have a legitimate union purpose for not doing so. 11:33:16

11 The touchstone is the legitimate union purpose.

12 THE COURT: Okay. Okay. I agree with you. But the
13 legitimated union purpose can be in representing everyone which
14 would also be the East Pilots and coming up with a combination;
15 right? You agree that there are a variety of different 11:33:41

16 seniority agreements --

17 MR. HARPER: There are a variety of seniority --

18 THE COURT: -- that can be fair to everyone. Now,
19 there is a major disagreement from East and West. I love that.
20 It makes it easier. So the East and West Pilots on what's 11:33:54

21 fair, date of hire or the proposal and what in combination,
22 considering a variety of different agreements, the Nicolau
23 agreement, but that's not the only way; right?

24 Now, Mr. Syzmanski has said there's a variety of
25 different ways to do it. Are you in agreement with that? 11:34:15

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1 MR. HARPER: For a union that is writing on a clean 11:34:19
2 slate.

3 THE COURT: No. No. No. The clean slate, as I
4 basically said, is prospective. Now, that's it. It's what
5 they are doing -- 11:34:30

6 MR. HARPER: There has to be a legitimate union
7 purpose going forward to put anything else on the table.

8 THE COURT: There are no other potential agreements?

9 MR. HARPER: I'm not aware of any potential outer
10 agreement that they have in mind. 11:34:41

11 THE COURT: So the negotiations, did they break down
12 between the two of you so that neither of you could propose
13 something other than the position you had taken in 2007? Is
14 that the problem?

15 MR. HARPER: The issue is, Your Honor -- 11:35:01

16 THE COURT: Wait. Let me start for a minute. I
17 think I heard you say that there are other seniority agreements
18 that could be potentially at least considered other than the
19 Nicolau agreement and date of hire.

20 MR. HARPER: There are all sorts -- 11:35:23

21 THE COURT: And that might be fair but it requires
22 negotiations. Am I right?

23 MR. HARPER: Well, let me back up just a second.

24 THE COURT: No. No. Now I'm going to play the same
25 game with you. Yes or no. Could there be? 11:35:34

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1 MR. HARPER: There could be. 11:35:37

2 THE COURT: Okay. Then thank you.

3 So there could be but the problem then is that the
4 two of you couldn't agree, or everybody decided it's one or the
5 other in contrast to what I ordered? 11:35:49

6 MR. HARPER: No. What you ordered was that they
7 could do -- propose something else, bring something else up if
8 they had a legitimate union purpose for doing it. And that
9 purpose has nothing --

10 THE COURT: Okay. I gotcha. We can stop. 11:36:05

11 So your position is as soon as they said no Nicolau
12 agreement, that was the end of it because there wasn't -- they
13 hadn't considered at least something else? And that was not a
14 legitimate purpose; okay? Is that right?

15 MR. HARPER: Yes. And we've always said if they have 11:36:20
16 a legitimate union purpose for abandoning the Nicolau, then
17 they haven't violated the DFR. They have not articulated a
18 legitimate union purpose to deviate from the Nicolau Award,
19 whether it be because the change benefits the union as a whole
20 or whatever the case may be. It's never been articulated and 11:36:41
21 it's up to them.

22 THE COURT: So if I find that they haven't -- because
23 they violated that by not even considering it and saying it's
24 off the table, what's the remedy?

25 MR. HARPER: The remedy is the relief that we have 11:36:56

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1 asked for. 11:36:58

2 THE COURT: Which is?

3 MR. HARPER: Can you put that up?

4 I have the remedy. It's slides 53-1.

5 THE COURT: I have 53 up here. Page 53. 11:37:46

6 MR. HARPER: 53-1. Do you have the handout?

7 THE COURT: Yes. I have it.

8 MR. HARPER: It's 26, Jen, I'm sorry. Page 26. No.

9 Slide 26.

10 THE COURT: All right. I have it. Relief requested. 11:38:05

11 MR. HARPER: This is the remedy that we have asked

12 for and just as a little bit of rounding it out, American --

13 and I don't know. Do they have a representative in the

14 courtroom today?

15 THE COURT: You say must use an unmodified Nicolau 11:38:18

16 Award to define?

17 MR. HARPER: Yes. Which is the one on the left over

18 there.

19 THE COURT: Why?

20 MR. HARPER: Because that is the list that was 11:38:27

21 approved and that is the list that will -- let me -- why is

22 there some rush here and everybody agrees I think, except

23 Mr. Syzmanski, that we're on perhaps a short fuse because in

24 order to get this process started correctly after the POR goes

25 final and afford any interruptions down the road by way of 11:38:56

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1 other litigations or delays and stuff like that, we have to 11:39:00
2 have an agreement. It's best to have an agreement on the USAPA
3 side what list is to be used during this process that starts
4 the day after the POR goes final.

5 THE COURT: Let me stop you. If I order both sides, 11:39:18
6 that is East and West Pilots, to sit down and try to work
7 something out tomorrow and I do know, through experience and
8 otherwise, that unions can work 24 hours a day to try to reach
9 an agreement because it's so important to all of the employees,
10 to work something out, to consider the Nicolau agreement, to 11:39:44
11 consider it to be having been found fair before but to work
12 something out that may not be the Nicolau agreement, why
13 couldn't you meet that burden? Why couldn't you get that done?

14 MR. HARPER: I'm sure that our pilot representatives
15 could sit down and negotiate. I just don't know if they are 11:40:03
16 going to be able -- if they aren't willing to consider the
17 Nicolau. He's adamant to come to something that is good.

18 THE COURT: What if I order it as I did before?

19 MR. HARPER: You know, they have been ordered to do
20 stuff in the past, Your Honor. 11:40:19

21 THE COURT: Well --

22 MR. HARPER: And that's the best I can tell you.

23 THE COURT: Do you want me to call in the United
24 States Marshals?

25 MR. HARPER: But if something doesn't happen that has 11:40:29

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1 yet to happen, then this remedy that we have asked for is one 11:40:32
2 that American and I think maybe Airways, to some degree, says
3 is okay with them because it perhaps provides the best
4 opportunity to go through this McCaskill-Bond process in an
5 orderly fashion and hit the dates that are set forth in the 11:40:53
6 MOU, because everybody who signed the MOU at that point in time
7 would be bound to make sure that this happened.

8 THE COURT: I understand what you're asking for.

9 Let me ask Mr. Siegel, in terms of the timing here --
10 no, no, no, not timing today. I mean for the merger. Come up 11:41:14
11 and tell me if they were to enter into -- how much time do we
12 need to get this particular component resolved so that
13 everything can go forward, we're going to have a merger. All
14 of the pilots are in the air again and we've got this resolved.
15 Is this really so urgent that we need to get this done 11:41:39
16 tomorrow?

17 MR. SIEGEL: Your Honor, we have to get this done on
18 an expedited basis. The projection right now is for -- to get
19 regulatory approval and bankruptcy Court approval by the end of
20 the third quarter of this year. And right when we get that 11:41:53
21 approval under the MOU, we start immediately the McCaskill-Bond
22 process so what we're looking at is trying to get an expedited
23 resolution of this disputed by the time we close the merger.
24 So we have that amount of time.

25 THE COURT: Do we have any idea at this point what 11:42:14

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1 APA going to come to the table with? 11:42:17

2 MR. SIEGEL: The answer is no but also I thought
3 maybe I should take a moment to correct a couple of pieces
4 about the description of the McCaskill-Bond process, one of
5 which goes to the parties itself. 11:42:32

6 When we start the McCaskill-Bond process, there has
7 been a couple of comments about the parties will be USAPA and
8 APA. That's not actually how it works or how it's going to
9 work. APA -- the entity that will bargain for the American
10 Pilots will be what they call the American Merger Committee. 11:42:51
11 APA will not play a role because it intends to become the
12 representatives of all of the pilots once it becomes a single
13 carrier, so it's not accurate to say there will be a process or
14 an arbitration between APA and USAPA.

15 THE COURT: Okay. 11:43:10

16 MR. SIEGEL: That's just a nuance but I think it
17 would be important for the Court to know that.

18 The second part of that, Your Honor, is that there
19 has been some comment about it will be USAPA and then as the
20 representative of the US Airways pilots. That's not what the 11:43:26
21 MOU says. It says the pilot representatives.

22 There is an issue and there is precedent about who is
23 a party in the McCaskill-Bond process and it goes back to the
24 old Allegheny-Mohawk labor protective provisions that used to
25 be administered by the CAB and Congress essentially 11:43:44

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1 incorporated that. 11:43:48

2 THE COURT: That's interesting. How do we determine,
3 then, who, then, is going to come to the table on behalf of the
4 East and West Pilots?

5 MR. SIEGEL: As we've said in our papers, at least 11:43:57
6 from US Airways standpoint, we read the precedent to say that a
7 segment of the US Airways pilots with a different interest and
8 a different seniority list such as the West Pilots have
9 standing as a separate party in the McCaskill-Bond.

10 THE COURT: So they can actually come in 11:44:16
11 independently so we have three?

12 MR. SIEGEL: Three. Now, that's our legal view.
13 I've read the papers filed by USAPA with this Court and they
14 have filed a number of papers that indicate they may not agree
15 with that perception. But I think it's the correct perception. 11:44:30

16 THE COURT: Okay. So that is based upon the law and
17 I can decide that?

18 MR. SIEGEL: Yeah. It's not an issue before you,
19 Your Honor, but it's an important issue for the Court to
20 understand and it's -- 11:44:43

21 THE COURT: It is. It's critical.

22 So is that something that has been fully briefed or
23 not?

24 MR. SIEGEL: We haven't briefed the issue to this
25 Court. When I say precedent, I am referring to CAB decisions 11:44:52

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1 that were issued to interpret the -- what was called the 11:44:56
2 Allegheny-Mohawk labor protective provisions and those are
3 the -- that is the predecessor of the McCaskill-Bond. That was
4 in place until 1978 until Congress deregulated the industry and
5 now they have reregulated the -- 11:45:14

6 THE COURT: Let me stop you for a second.

7 How do we decide, if it's determined that USAPA,
8 because of this controversy over a substantial period of time,
9 how is it decided who will then represent both sides or is it
10 clear that it has to be three parties? 11:45:29

11 MR. SIEGEL: Again, from my perspective, the way it
12 works under the precedence is that each pilot group forms a
13 merger representatives committee and hires a lawyer. That's
14 actually what happened when US Airways merged with America West
15 in 2005. That was the East Pilots, the US Airways pilots 11:45:46
16 formed a merger -- they were both represented by ALPA but ALPA
17 was not a party in that arbitration that they had. That was
18 not under McCaskill-Bond because the federal law didn't exist
19 at that time. So that was under the union policy but it
20 tracks. What happened there was they had a Merger Committee at 11:46:08
21 US Airways. They hired a lawyer. They had a Merger Committee
22 at America West. They hired a lawyer and then they conducted
23 the Nicolau arbitration.

24 Under McCaskill-Bond, it's not all that different.
25 The American pilots will form a Merger Committee and they will 11:46:23

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1 hire a lawyer. In fact, I know the lawyer that they have hired 11:46:26
2 already.

3 The unique part about this situation is that the US
4 Airways pilots have a split and that -- this isn't the first
5 time that has happened and that's why the CAB years ago had to 11:46:37
6 consider whether a situation like this warranted separate party
7 status for a segment like the West Pilots and the CAB, on more
8 than one occasion, said, yes, it did.

9 And in those occasions, each of those two groups that
10 here would be East and West, had a Merger Committee and hired 11:46:54
11 two lawyers so you have a three-party process.

12 THE COURT: Okay. So, then, if they hire two
13 separate lawyers and they took the position that they are
14 taking basically now which is Nicolau or no Nicolau, obviously
15 they can't reach an agreement between them, then it goes to 11:47:12
16 arbitration and that's what you want resolved as soon as
17 possible?

18 MR. SIEGEL: That's right. I think it has been made
19 but just to make it even more clear, what they are arguing
20 about is a first state dispute. What normally happens in 11:47:26
21 McCaskill-Bond is that you have normally just two seniority
22 lists and the panel is going to, as Mr. Harper said shuffle,
23 figure out how to combine two lists. The problem that they are
24 fighting about is that there's not one list on the US Airways
25 side. There's an American list and they are talking about the 11:47:48

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1 first step and they are saying -- I believe Mr. Harper is 11:47:51
2 saying under the duty of fair representation, he thinks that
3 the USAPA must use the Nicolau list to then shuffle with the
4 American list and I believe Mr. Syzmanski is telling that you
5 he intends to do nothing of the sort because the constitution 11:48:07
6 of USAPA says it's aligned only with date of hire and not
7 Nicolau so he wants to come in with the current East list and
8 West list and make it a three-list shuffle, and that's the
9 dispute we're having. And they are basing it on principles of
10 DFR law under the Railway Labor Act and they are asking the 11:48:27
11 federal court to resolve it and so that's why we're here, I
12 believe.

13 From my perspective, at least as a matter of
14 jurisdiction and ripeness, I believe that your comments on the
15 Ninth Circuit opinion are absolutely correct, Your Honor. I 11:48:44
16 believe that the Ninth Circuit did not have the carriers'
17 perspective. We were not a party in the Ninth Circuit and I
18 know the briefs. I was at oral argument and the whole issue of
19 the conundrum created by just saying go off and negotiate and
20 ratify a Collective Bargaining Agreement and didn't find out 11:49:04
21 whether it's legal or not was just not considered in that
22 opinion because it wasn't brought up as part of the advocacy.

23 I've looked at the Ninth Circuit opinion and I agree
24 with the Court's comments. But for certain the Ninth Circuit
25 said in -- particularly in footnote four there is no disputing 11:49:21

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1 that this case would be the first time we allowed a DFR suit to 11:49:25
2 proceed in a collective bargaining negotiate context before the
3 CBA at issue was ratified.

4 Well, we've -- the new facts that have occurred here,
5 which I think are important to the Court, and the jurisdiction 11:49:40
6 of the Court, is that since the last decision, we have
7 negotiated the Collective Bargaining Agreement. That MOU is a
8 Collective Bargaining Agreement and it is contingent, of
9 course, on the closing of the merger. But it's a five-year
10 Collective Bargaining Agreement. It provides substantial pay 11:49:58
11 increases for all of the pilots, pension improvements, a \$40
12 million lump sum to the US Airways pilots. It was a good deal.
13 It was ratified.

14 THE COURT: So there's nothing left to negotiate?

15 MR. SIEGEL: We have -- under that Collective 11:50:17
16 Bargaining Agreement, the one issue was the seniority lists
17 that was relegated -- and when I say the seniority lists, I
18 mean the combined US Airways list that was relegated to the
19 federal law, the McCaskill-Bond. There was one other piece
20 that some of the briefs have referred to which says that once 11:50:29
21 we have -- the National Mediation Board decides which of the
22 unions will actually represent the combined group of pilots at
23 the new single carrier.

24 Once that has been decided, there is a process
25 between that newly certified single union and the new carrier 11:50:51

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1 for what they call a Joint Collective Bargaining Agreement. 11:50:55

2 But -- and this is important, but the parties agreed what the
3 terms would be for that Collective Bargaining Agreement in
4 advance in the MOU. We've got the pay raise. We've got the
5 pension. It's a 500-page Collective Bargaining Agreement. 11:51:10

6 THE COURT: Everything has been resolved --

7 MR. SIEGEL: Except the seniority list and it's
8 actually a rather elegant part of the merger. It doesn't
9 usually happen that way but it was agreed to in advance, the
10 MOU, not the entire document. It actually incorporates a very 11:51:25
11 extensive Collective Bargaining Agreement. It actually
12 incorporates largely the American APA Collective Bargaining
13 Agreement by some modifications but it's what was ratified.

14 So what we have now -- what we have now that we
15 didn't have before is a ratified Collective Bargaining 11:51:43
16 Agreement.

17 THE COURT: So even though it's only called an MOU,
18 you're saying it's a Collective Bargaining Agreement?

19 MR. SIEGEL: It's a Memorandum of Understanding
20 regarding the continuing Collective Bargaining Agreement. 11:51:52

21 THE COURT: So what you're saying, it has been agreed
22 to everything but seniority and that is not going to change
23 between now and --

24 MR. SIEGEL: We're done negotiating. We've succeeded
25 in doing what we've tried to do for a while and the merger was 11:52:09

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1 a catalyst and -- 11:52:13

2 THE COURT: And the vote of some 98 percent is all of

3 the --

4 MR. SIEGEL: The USAPA took what I'll call the

5 Memorandum of Understanding regarding contingent Collective 11:52:27

6 Bargaining Agreement and they took it out for ratification East

7 and West. It was approved by about 75 percent of the entire

8 pilot group and by -- and by a majority, a majority of the West

9 Pilots who were involved in this dispute.

10 THE COURT: Okay. So all of that except for 11:52:47

11 seniority?

12 MR. SIEGEL: We've left the one issue, the one issue

13 that we can't resolve as to which there's competing arguments

14 under the DFR principles of the Railway Labor Act. I can't

15 think of a more ripe dispute. 11:52:59

16 THE COURT: Let me go back. Mr. Siegel, this is very

17 helpful to me. Let me go back to the issue of resolving under

18 McCaskill, resolving this seniority issue.

19 It is your position that the case law provides that

20 USAPA may not be the only party at the negotiation table with 11:53:22

21 American, the American union or whoever is representing

22 American. It may also be the West Pilots.

23 MR. SIEGEL: That is our position. That is our -- we

24 haven't briefed it to the Court but we have read the CAB

25 precedents when you have a situation like this and that's what 11:53:44

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1 we think those precedents indicate. 11:53:47

2 THE COURT: Okay.

3 Is that because, just for a little more education, do
4 those cases say that the reason for that is because the
5 union -- you have these disparate interests that are so 11:54:04
6 unresolvable that both sides have to be there and present?

7 MR. SIEGEL: That's pretty much it. Those situations
8 where all mergers, railroads or airlines -- excuse me, and CAB
9 would be airlines, but those -- before 1978 the CAB used to
10 require this kind of process of seniority integration as a 11:54:31
11 condition of approval of the merger. This was before the
12 industry was deregulated. Congress and McCaskill-Bond came
13 back and essentially, by reference, incorporated, adopted this
14 Allegheny-Mohawk standard. And from time to time, back in the
15 CAB days, there would be a -- as Your Honor just said, if I 11:54:52
16 could -- like a dissonant group within the Collective
17 Bargaining Agreement who advocated a different seniority list
18 should be integrated with the other merger partner. This isn't
19 the first time that --

20 THE COURT: Okay. And so then how did the Court 11:55:11
21 resolve that the union that represented everybody did they make
22 a finding that they could not possibly represent everybody
23 because they were standing -- they were taking the positions
24 unequivocally? I mean, it's almost as if their making the
25 finding was that they could not act in good faith. 11:55:35

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1 MR. SIEGEL: So that wouldn't have been a court 11:55:38
2 decision. They were CAB decisions. The agency had the
3 authority and it was not a -- it wasn't a finding of a breach
4 of duty of fair representation. It's not that. It was just
5 the fact that there was a provision allowing for the 11:55:56
6 representatives of the employees to participate in the
7 seniority integration process.

8 THE COURT: Is that something that I can order? Do I
9 have the authority to do that?

10 MR. SIEGEL: I think that we are -- it's a good 11:56:12
11 question, Your Honor. I think that this is -- we are now
12 talking about implementation and interpretation of
13 McCaskill-Bond which is a federal statute.

14 So there is no CAB administering it so I believe the
15 federal courts have authority to interpret and enforce the 11:56:28
16 McCaskill-Bond.

17 THE COURT: Has a court then -- in interpreting a CAB
18 precedence, have they then ordered at this stage that both
19 sides be represented for the purpose, of in this case,
20 seniority? 11:56:46

21 MR. SIEGEL: What I am aware of standing here,
22 without having briefed it to the Court, is CAB decisions have
23 ordered that. I would have -- we would have to check to see if
24 a Court --

25 THE COURT: Educate me on that. When a CAB decision 11:56:58

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1 is -- has been ordered or a CAB decision is issued, is that
2 potentially litigatable in the federal courts?

11:57:00

3 MR. SIEGEL: Well, this only occurred before 1978
4 because the CAB was disbanded when they deregulated the airline
5 industry. So the CAB hasn't been in business since 1978.

11:57:21

6 But in that situation, the CAB would hear disputes
7 prior to going to the arbitration process about who could be a
8 party and it would make rulings.

9 THE COURT: So you're really relying on something
10 that is before 1978, a process?

11:57:40

11 MR. SIEGEL: That's the precedent. But, Your Honor,
12 '78 until recently this area was not regulated by federal law
13 and then there was a big dispute when -- frankly, when American
14 and TWA merged and Congress went back to McCaskill-Bond and
15 when they passed McCaskill-Bond, they incorporated expressly by
16 reference that we will now go back and use the Allegheny-Mohawk
17 labor protective provision process that used to be administered
18 by the CAB. They just did not re-create the agency. They just
19 passed the law.

11:58:02

20 THE COURT: So, then, arguably, the precedent
21 previously --

11:58:20

22 MR. SIEGEL: That's why I've cited it to Your Honor.

23 THE COURT: Okay. Thank you.

24 Okay. Well -- I see a hand.

25 MR. HARPER: May I re-approach? On what Mr. Siegel

11:58:37

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1 just said, we have also looked at -- Mr. Jacob has looked at it 11:58:40
2 and I think we are in agreement with the way that he has
3 articulated.

4 THE COURT: I can't hear you.

5 MR. HARPER: We are in agreement with the way he has 11:58:50
6 articulated the prior precedence that allows us to participate.

7 THE COURT: And do you agree that that prior
8 precedent would now be binding on the Court?

9 MR. HARPER: Well, we haven't -- if you want to reach
10 out and look at them on a judicial notice basis or whatever the 11:59:04
11 case may be, yes, but legally that issue has not been --
12 practically that issue has not been teed up in the current

13 plan. Now, we can do that if you want us to do that so that --

14 THE COURT: Well is, that acceptable to your client?
15 Is that what has been proposed? 11:59:25

16 MR. HARPER: If indeed we have to go to the
17 McCaskill-Bond without the Nicolau, then, yes, participating in
18 that process is the next opportunity that we would have open
19 fully to argue the Nicolau.

20 But I just remembered when I sat back down, and I 11:59:44
21 can't remember the precise date, but third week in February
22 when I was writing to I think Airways, I proposed that in order
23 to overcome the impediment that we had at that point of what
24 list was to be used, I suggested, on behalf of the West Pilots,
25 that we would be willing at that point in time to enter into a 12:00:09

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1 quick arbitration to resolve the question about what list was 12:00:13
2 going to be presented to the arbitrators in McCaskill-Bond and
3 we made that proposal I think February 20 or something like
4 that.

5 My recollection was it was acceptable to Airways. 12:00:31
6 They thought that that was a good idea.

7 So Mr. Siegel tried to broker an agreement to do
8 that. My understanding was that it was rejected by the union.

9 Now, as an alternative for the pilots going back and
10 trying to negotiate something quickly in between those two 12:00:51
11 documents or something else, I put back on the table the offer
12 to have the West Pilots go to that arbitration, arbitrate what
13 list is to be used in the McCaskill-Bond arbitration provided
14 that that arbitration comes out with one list so that we are
15 now going to McCaskill-Bond ready to shuffle. 12:01:19

16 THE COURT: All right. Thank you.

17 Mr. Syzmanski?

18 MR. SZYMANSKI: First of all, Your Honor, that whole
19 last discussion was in the circumstances of a discussion of
20 settlement. And that is really not appropriate. 12:01:34

21 THE COURT: Wait a minute, wait a minute. Oh, you
22 mean -- oh. Okay.

23 MR. SZYMANSKI: About the discussions that
24 Mr. Siegel, Mr. Harper and myself, absolutely not appropriate
25 to be before this Court. 12:01:48

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1 THE COURT: I guess it's not appropriate indeed. 12:01:50

2 It's not appropriate unless it somehow is relevant to the issue
3 of whether or not there was a violation of the duty of fair
4 representation.

5 MR. HARPER: I'm sorry. My letter to Mr. Siegel was 12:02:04
6 not in settlement because we have nothing to settle with
7 Airways.

8 THE COURT: Thank you.

9 MR. SZYMANSKI: Your Honor, I just have three or four
10 very brief points. I mean, the first one I've said previously 12:02:16
11 that ripeness depends not on the negotiation or ratification of
12 a Collective Bargaining Agreement but on an actual integrated
13 seniority list that is about to go into effect. That is number
14 one.

15 Number two, you've heard Mr. Siegel say there's 12:02:34
16 nothing more to negotiate here. USAPA Exhibit 133, which is
17 this document that has the timeline in it, which is the
18 timeline which was agreed to by all of the parties, and it
19 talks about Joint Collective Bargaining Agreement negotiations
20 to happen after the POR date. 12:02:55

21 THE COURT: What else is left?

22 MR. SZYMANSKI: There are a number of different
23 things. There are all sorts of things about resolving the
24 situation or circumstances of provisions under the USAPA
25 agreement and the American agreement like lock hours, scope 12:03:11

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1 provisions, training, jump seats, scheduling. 12:03:16

2 THE COURT: Let me ask you, are those disputed,
3 though? Is there anything in dispute there where the company
4 has said, "No. We're taking a different position"?

5 MR. SZYMANSKI: I don't know yet, Your Honor. They 12:03:27
6 haven't even started those negotiations yet.

7 THE COURT: Is that correct?

8 So, in other words, Mr. Syzmanski is saying that
9 there is still something to negotiate. Are those disputed?

10 MR. SIEGEL: He's not saying this accurately, Your 12:03:49
11 Honor. First of all, and I mentioned it from the podium, I'll
12 repeat it and I'll say it very specifically. There is a
13 provision in the MOU that is triggered when a single union is
14 certified after there is a ruling by the National Mediation
15 Board for one union to represent the combined group of pilots, 12:04:07
16 and the provision in the MOU says when that occurs, there will
17 be a process to negotiate what is called a joint Collective
18 Bargaining Agreement. But -- and it's the big but. But the
19 MOU already says, requires, that that JCBA will be consistent
20 with -- consistent with all of the terms of the MOU, will not 12:04:37
21 change the economics of the MOU, and will be focused on just
22 how to implement the MOU.

23 THE COURT: Thank you.

24 MR. SIEGEL: And it will not be subjected to
25 mandatory ratification. Thereafter, if there's any little 12:04:51

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1 dispute, it will go to arbitration. That's the process.

12:04:54

2 THE COURT: Thank you. Thank you.

3 MR. SZYMANSKI: Number three, Your Honor, when I was

4 here in October, I said we were going to fulfill our duty of

5 fair representation. We were going to try to get the West

12:05:07

6 Pilots to participate with us. You've heard Mr. Harper say

7 here that it has to be the Nicolau Award that is in the MOU.

8 You've heard him say that that is the agreement that the only

9 provision that is appropriate as far as he's concerned. He's

10 admitted that there are others but he's saying -- his client is

12:05:28

11 saying that this is the one that they have to have.

12 THE COURT: He's saying that's the remedy he wants.

13 MR. SZYMANSKI: That's the remedy he wants. To the

14 extent that is the remedy he wants on the motion for

15 preliminary injunction, I am here to say to you, as we said in

12:05:42

16 our opposition to the motion for preliminary injunction, that

17 negotiating a Memorandum of Understanding that did not include

18 the Nicolau Award that was neutral with respect to seniority

19 was absolutely not a breach of USAPA's duty to represent the

20 employees. It was a reasonable decision for the union to make

12:06:06

21 to go out and get all of the economic benefits of that

22 Memorandum of Understanding and separate them from this

23 long-standing dispute.

24 That contract over six years gives our pilots \$1.6

25 billion. There's a \$40 million initial signing bonus. There

12:06:29

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1 is retrospective pay at the American rates for our pilots 12:06:33
2 beginning on February 8, the date that we ratified the
3 contract. There's immediate parity with the American pilots
4 when that POR date comes. There's an increase from 10 percent
5 currently to 14 percent of wages with respect to contributions 12:06:50
6 on our defined contribution retirement plan when the merger is
7 approved on the POR date. And it goes to 16 percent on January
8 1 of 2013.

9 There's furlough protection for all of our pilots
10 that is in that Memorandum of Understanding and there are 12:07:09
11 additional wage increases every year during that agreement
12 including an industry parity agreement on January 1 of 2016 of
13 16 percent on average. And for narrow-body captains, it's in
14 the neighborhood of \$30,000 to \$40,000 per year.

15 For the plaintiffs to suggest that the union was 12:07:35
16 supposed to take a risk and roll the dice on ratification of an
17 agreement that gave our pilots that kind of benefit, economic
18 benefit, and to do it over the seniority dispute, which
19 everybody agrees here the MOU is neutral about, was certainly
20 not a breach of the union's duty of fair representation. It 12:07:56
21 was clearly within the wide range of reasonableness for the
22 union to do that.

23 And as I've said, it was approved by the Board of
24 Pilot Representatives unanimously. It was approved by our
25 pilots by 75 percent. I think that it's absolutely clear that 12:08:16

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1 that is not a breach of the duty of fair representation. 12:08:19

2 And that's the, basically, and in principle the
3 argument about failure to be able to prevail on the merits of
4 their claim with respect to the claim that they are making on
5 the preliminary injunction motion. 12:08:36

6 So I would just finish by saying that we are
7 absolutely still committed to trying to do this. We are in the
8 process of forming a Merger Committee with West Pilots on it.
9 We will have those discussions. The way federal law is set up
10 is that you have an exclusive bargaining representative. There 12:08:56
11 are difficult issues for that bargaining representative to
12 resolve and we've tried to resolve them but what we've had here
13 is we've had a group of our pilots who have said we're not
14 willing to resolve it. We want the Nicolau Award, as
15 Mr. Harper has said, here or nothing else. We're not willing 12:09:14
16 to discuss anything else.

17 And we thought that when we were before the Court
18 before the Court said consider something else other than the
19 Nicolau Award and they said no.

20 What would be helpful to get this process going on is 12:09:35
21 for them to understand that they are supposed to sit down and
22 talk with us about this rather than just simply insist on this
23 one Nicolau Award, which was an airline pilots proposal that
24 was made by the -- I'm going to start doing what Mr. Harper
25 wants to do which is to relitigate the last case and I don't 12:09:55

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1 want to relitigate the last case. 12:09:58
2 Thank you, Your Honor.
3 THE COURT: Okay. What about American Airlines?
4 They have a motion to intervene. Anybody have an objection to
5 allowing them to intervene? 12:10:14
6 MR. SZYMANSKI: Your Honor, we're the one party who
7 hasn't filed anything on this and we're not going to object to
8 it.
9 THE COURT: I'm sorry?
10 MR. SZYMANSKI: We are not going to object to it. 12:10:29
11 THE COURT: Okay. All right. Thank you.
12 All right. This is what I --
13 MR. SIEGEL: Your Honor, I'm sorry. I don't want to
14 leave the prior discussion without just asking the Court
15 whether it would want us to brief the Court on those 12:10:41
16 McCaskill-Bond procedures.
17 THE COURT: Here's what I need: Briefing on
18 McCaskill-Bond issues and that is the applicability of the 1978
19 CAB precedence now as to whether or not there is a -- this
20 Court -- those precedents are now applicable and whether this 12:11:06
21 Court has the authority to then order what occurred previously,
22 that is before 1978 where everybody, whether there was a
23 substantial difference of opinion amongst the employees, the
24 material employees, whether or not everybody had a right to be
25 at the table for the purpose of determining here seniority. 12:11:29

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1 And the second thing, counsel -- don't answer this 12:11:35
2 today but are you going to stipulate to the facts that are
3 relevant for the Court determining whether or not there is a
4 violation of the duty of fair representation? I have heard --
5 it has been briefed to some extent but I have heard here today 12:11:53
6 that there perhaps would be a stipulation as to what those
7 facts are or are we going to have to have a hearing where I'm
8 going to have to make credibility determinations which is only
9 going to slow the process down, and I don't think it's going to
10 be of benefit to anyone. 12:12:12

11 Finally, if I were to find a violation of the duty of
12 fair representation, I want briefed what the remedy could be or
13 should be.

14 And then, finally, number four, as we did the last
15 time, there has been at least some suggestions by both counsel 12:12:32
16 in good faith that you might be able to work this out. I am
17 going to strong recommend that you do that if you can and do so
18 in short order so that this issue of seniority will finally be
19 resolved and we can go forward with this merger and fairly and
20 equitably be resolved as I ordered previously. And I am not 12:13:04
21 going to repeat my order.

22 So you are -- I am going to order you to meet,
23 confer, and inasmuch as, Mr. Siegel, this is obviously
24 something that is very important to you and American Airlines,
25 if you can engage in the negotiations, apparently -- you're not 12:13:23

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1 an arbitrator but apparently perhaps you have tried to do this 12:13:31
2 because of your own interest, the company's interest. Let's
3 get it done.

4 So today is the 14th and let me hear from you on --
5 by the end of the day on the 21st. 12:13:45

6 All right.

7 And in terms of briefing on those issues, I want that
8 done on an expedited basis on the issues that I mentioned and
9 that would be -- the opening briefs on that will be on this
10 Friday, the 17th, closing briefs on the 24th. Maybe on the 12:14:10
11 21st you'll tell me there's nothing for me to resolve.

12 All right. We're adjourned.

13 COURTROOM DEPUTY: All rise.

14 (Whereupon, these proceedings recessed at 12:14 p.m.)

15 * * * * * 12:14:21
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C E R T I F I C A T E

12:14:21

I, ELAINE M. CROPPER, do hereby certify that I am
duly appointed and qualified to act as Official Court Reporter
for the United States District Court for the District of
Arizona.

12:14:21

I FURTHER CERTIFY that the foregoing pages constitute
a full, true, and accurate transcript of all of that portion of
the proceedings contained herein, had in the above-entitled
cause on the date specified therein, and that said transcript
was prepared under my direction and control, and to the best of
my ability.

12:14:21

DATED at Phoenix, Arizona, this 14th day of May,
2013.

12:14:21

s/Elaine M. Cropper

12:14:21

Elaine M. Cropper, RDR, CRR, CCP