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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Don Addington, *et. al.*,

Plaintiffs,

v.

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

Defendants.

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

US Airline Pilots Association's Opposition to US Airways' Motion for Leave to Intervene

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MEMORANDUM OF POINTS AND AUTHORITIES

By order dated July 19, 2013, this Court granted US Airways' motion to dismiss. Doc. 122. US Airways now seeks leave of Court for "limited intervention". Defendant US Airline Pilots Association ("USAPA") submits the application should be denied. While the application is based to a significant degree on the hubristic notion that the Ninth Circuit's wayward decision in *Addington I* resulted from US Airways' lack of participation therein (Doc. 128, at 6), it is apparent from US Airways' papers that it has no "legally protectable interest" in either the DFR claim or the claim by the plaintiffs that they should be permitted separate representation under the MOU's seniority integration proceedings between USAPA and the American Airlines pilots' union. There is also no need for it to be granted separate status as intervenors in this action as they propose to advance positions that they have already fully briefed, and that basically mirror those being advocated by plaintiffs. Moreover, having been dismissed from the only claim of the complaint (and amended complaint) in which it was implicated, there is no basis for it to intervene in the remaining claims of the amended complaint, which are purely intra-union disputes as to which US Airways has repeatedly affirmed that it is "neutral" (a stance that it reiterates here, *see* Doc. 128 at 4). For these and other reasons, the motion for limited intervention should be denied.

POINT I

INTERVENTION IS UNWARRANTED IN THAT THE POSITIONS US AIRWAYS ADVANCES ARE CONSISTENT WITH PLAINTIFFS' POSITIONS AND ALREADY BEFORE THE COURT

US Airways argues it has a "significant protectable interest" in this proceeding, namely that "plaintiffs' claims against USAPA are resolved promptly and on the merits". Doc. 128, at 5-6. In this regard, US Airways refers the Court to the schedule for initiation and completion of seniority integration contained in the MOU (Doc. 122, at 4), which it posits as its "strong and continuing interest" and a significant basis for its

application. *Id.* at 6.

However, "when an applicant for intervention and an existing party have the same ultimate objective, a presumption of adequacy of representation arises. If the applicant's interest is identical to that of one of the present parties, a *compelling* showing should be required to demonstrate inadequate representation." *Prete v. Bradbury*, 438 F.3d 949, 956 (9th Cir. 2006) (citing *Arakaki v. Cayetano,* 324 F.3d 1078, 1086 (9th Cir. 2003)) (emphasis added).

In this case, the interests that US Airways identifies and that it seeks to advance by intervention here basically echo the positions of plaintiffs. The record before the Court leaves no doubt that plaintiffs are fully capable of representing – and have represented -- the interest of seeking prompt resolution of their claims on the merits and to that end, plaintiffs sought, *inter alia*, a preliminary injunction consolidated with trial on the merits specifically on the grounds that it was necessary to obtain prompt resolution of their claims. *See* e.g. Doc. 124, at 2-3. To be sure, in that document, plaintiffs referred to the MOU and American's plan of reorganization, just as US Airways does here.[1] Moreover, the principal "protectable interest" that US Airways identifies -- prompt resolution of the dispute so that it does not affect the MOU timeframe for resolution of seniority integration process -- has been ruled upon by the Court when it ordered that "[i]n hopes of bringing a swift end to the parties' disputes, the Court will advance the trial on the merits and consolidate it with a preliminary injunction hearing on September 24, 2013."

[1] Therein, plaintiffs argued: "There is a timely need to resolve the McCaskill-Bond dispute. The Bankruptcy Court will hold a hearing on August 15, 2013, to consider approval of AMR Corporation's plan of reorganization. (Doc. 121). The process of pilot seniority integration will begin soon after the Bankruptcy Court grants such approval. Ideally so as to not delay or otherwise interfere with that process, a court should resolve the McCaskill-Bond dispute within the next few months." Plaintiffs' Motion for Leave to File Amended Complaint, Case No. 2:13-cv-00471-ROS, Doc. 124, July 25, 2013, at 2-3.

Doc. 122, July 19, 2013 Order, at 1. Accordingly, there is no longer any need for advocacy on that score.[2]

Three observations are in order with respect to US Airways' argument it should be granted intervenor status because it "may be substantially affected if this action does not promptly generate a disposition on the merits of plaintiffs' claims . . ." Doc. 128, at 6. First, and without belaboring the point made above, it is unclear how US Airways' repetition of the points made by plaintiffs advances its interest in a prompt resolution of the merits of plaintiffs' claims. Second, US Airways entered into the MOU with open eyes and full knowledge of the long-standing pendency of the seniority integration dispute and the litigation it spawned. To the extent that US Airways is advancing a concern that could have or should have been contained in or provided for in the MOU, it had the opportunity to do so when it negotiated the MOU with USAPA, American Airlines, and the APA. To the extent US Airways now seeks to enforce or modify the terms of the MOU, this action is not the time or place to do so. Third, while US Airways raises concerns about the schedule under the MOU, this point has already been addressed by the trial schedule the Court has ordered.

In sum, as the positions that US Airways seek to advance are already being advanced by plaintiffs herein and have already been addressed by the Court, there is no practical basis in fact for the intervention.

POINT II

US AIRWAYS HAS NO "PROTECTABLE INTEREST" IN THE MERITS OF THE INTRA-UNION DISPUTE THAT REMAINS IN THE AMENDED COMPLAINT

US Airways successfully moved for dismissal with respect to Claim II of the

[2] US Airways appears to acknowledge this point, even as it asserts it has a strong and ongoing interest. *See* US Airways' Intervention Pleading, Doc. 128-1, ¶9, p.6. It is respectfully submitted that regardless of the strength of its interest, to the extent the Court has ruled on this issue, there is no basis for it to be granted intervenor status.

complaint (and the amended complaint), the only claim in which it was implicated. The remaining claims of the amended complaint are disputes between plaintiffs and USAPA – alleged breach of the duty of fair representation and whether a faction of the union is entitled to separate representation in the McCaskill-Bond process. By operation of law and under the MOU, US Airways must remain neutral with respect to this intra-union dispute.

Under ¶ 5 of the MOU, US Airways has the obligation to "continue to recognize and treat with USAPA as the representative of the pilots employed by US Airways…" Doc. 77-8, ¶5, at 2. Being legally and contractually committed to recognize USAPA as the exclusive representative of US Airways pilots defeats any claim by US Airways that it somehow has a "legally protectable interest" advocating for "a prompt determination that the West Pilots have the right under the federal McCaskill-Bond statute **to full and separate representation in the upcoming seniority-integration proceedings** between the pilots employed by US Airways and American Airlines, Inc. . . ." Doc. 128, at 2 (emphasis added).

The remaining claims of the amended complaint likewise reflect purely internal union matters between plaintiffs and USAPA and, under the RLA, US Airways is prohibited from interfering with USAPA's status as the exclusive bargaining representative. *Virginian Ry. Co. v. System Federation No. 40*, 300 U.S. 515, 548, 57 S.Ct. 592, 599-600 (1937) (holding that a carrier is prohibited from dealing with any representative other than the certified bargaining representative with respect to "rates of pay, rules, or working conditions of the craft or class.")

Similarly, under the RLA, it is impermissible for US Airways to lend its support for a minority faction of USAPA to have a separate seat at the table in the McCaskill-Bond process. Such advocacy undermines USAPA's status as the exclusive bargaining representative and the carrier's obligation to treat with the exclusive bargaining agent and

not a faction thereof. *See Hendricks v. Airline Pilots Assn' Int'l*, 696 F.2d 673, 677 (9th Cir. 1983) ("Under the collective bargaining system, selection of a union as the bargaining representative substantially reduces the ability of individual employees to deal directly with their employer. Hence, federal labor policy 'extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interests of all employees.'" (quoting *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180, 87 S.Ct. 2001, 2006 (1967)). Moreover, US Airways' improper insistence in a voice in this intra-union dispute raises severe doubts as to their supposed "neutrality."

US Airways' intervention will have the effect, if not the purpose, of advocating on behalf of plaintiffs. At the least, US Airways proposes to intervene to advance positions that are, for all intents and purposes, the same as those advanced by plaintiffs on a record where it is clearly unnecessary for it to do so in that plaintiffs are capable of making their own arguments. Moreover, in seeking intervention, US Airways belies its profession of neutrality and impermissibly treads upon the province of USAPA as the exclusive bargaining representative of its pilots. US Airways' position of neutrality, which it repeatedly affirms, is best served by denying intervention.

POINT III

US AIRWAYS FAILS TO INTERPOSE A PROPER INTERVENTION PLEADING

A party seeking intervenor status as of right or permission must submit a proposed "pleading that sets out the claim or defense for which intervention is sought." Fed. R. Civ. P. Rule 24(c). Pleadings are defined in Rule 7(a) as one of the following: a complaint or an answer, an answer to a counterclaim, an answer to a cross-claim, a third-party complaint, or an answer to a third-party complaint. Fed.R.Civ.P. 7(a).

US Airways' intervention pleading neither sets forth a claim for relief that tracks

the amended complaint nor joins issue with the allegations of the amended complaint. It is not a pleading as defined in Rule 7(a). Rather, US Airways interposes what can only be described as a brief or memorandum of law that contains its arguments and case authorities in support of the legal positions that it wants the Court to adopt. S*ee generally* Doc. 128-1. Plaintiffs have made all the relevant arguments; intervention is not appropriate just to allow the proposed intervenor to pile on with respect to arguments already made; and US Airways has failed to propose a pleading setting out a cognizable claim or defense for which intervention is sought. *See Arakaki v. Cayetano*, 324 F.3d 1078, 1087 (9th Cir. 2003) (holding that proposed intervenors had not met their burden because the present parties had demonstrated that they were capable and willing to make all of their arguments).

USAPA is aware of authority that holds there are circumstances under which intervention may be granted even in the absence of a pleading. *See e.g., Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 474 (9th Cir. 1992). However, it is respectfully submitted that this exception to the express provision of Rule 24(c) should be followed only where the proposed intervenor expressly adopts the pleading of one of the parties. US Airways has not done that here and the exception is not applicable. *See State of California Dep't of Soc. Servs. v. Thompson*, 321 F.3d 835, 847 (9th Cir. 2003).

CONCLUSION

For the foregoing reasons, USAPA respectfully requests that the Court deny US Airways' Motion for Limited Intervention.

Respectfully submitted this 6th day of August, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2013, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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