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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Don Addington; John Bostic; Mark Burman; Afshin Iranpour; Roger Velez; Steve Wargocki; Michael J. Soha; Rodney Albert Brackin; and George Maliga, on behalf of themselves and all similarly situated former America West Pilots,

Plaintiffs,

vs.

US Airline Pilots Ass'n, an unincorporated association,

Defendant.

US Airways, Inc.

Intervenor.

Case No. 2:13-cv-00471-ROS

INTERVENOR US AIRWAYS, INC.'S MOTION FOR SUMMARY JUDGMENT - CLAIM REGARDING MCCASKILL-BOND STATUTE

(Oral Argument Requested)

Intervenor US Airways, Inc. ("US Airways") hereby moves this Court for summary judgment, pursuant to Fed. R. Civ. P. 56(a) and (c), granting a Declaratory Judgment on the claim in its Intervention Pleading for a "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. ("American") – contrary to the position that [Defendant US Airline Pilots Association] has recently taken in this litigation." (ECF No. 197 at 1:19-23 (internal, not ECF, pagination for all citations to documents in the Court's docket); *see also id.* at 6:3-7:24.)

US Airways bases this motion on the following Memorandum of Points and Authorities, a Separate Statement of Undisputed Facts, and an appendix of supporting documents and deposition transcripts.

Dated: October 11, 2013.

For O'Melveny & Myers LLP

By: /s/ Robert A. Siegel
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I. PRELIMINARY STATEMENT

US Airways, Inc. ("US Airways") and American Airlines, Inc. ("American") intend to merge. Pilot seniority integration following the effective date of the merger will be governed by the McCaskill-Bond statute, which incorporates the longstanding airline merger principle that pilot seniority lists must be integrated "***in a fair and equitable manner***," including, if necessary, through a final and binding arbitration. Defendant US Airline Pilots Association ("USAPA"), the certified collective bargaining agent of the US Airways pilots, asserts that only it may represent the interests of US Airways pilots (East and West) in the seniority-integration process, and that such a proceeding would be fair and equitable. Yet USAPA has also made clear that it will advocate for a seniority list based upon its constitutionally-mandated date-of-hire principles, and that it will oppose the presentation of a previously-arbitrated seniority list (the "Nicolau Award") that is vigorously supported by the certified class of West Pilots.

US Airways takes no position on whether USAPA or the West Pilots have the better of the argument regarding how the relative seniority of East and West Pilots should be determined in connection with a US Airways/American seniority integration. It does, however, have a strong interest in ensuring that the seniority-integration process is fair and equitable as required by the McCaskill-Bond statute, so that it brings a prompt end to over five years of litigation between the West Pilots and USAPA. Fairness and equity under the unique circumstances of this case require that the West Pilots be permitted to fully participate with separate representation in the McCaskill-Bond negotiation and arbitration process, thereby allowing the West Pilots' argument regarding the Nicolau Award to be presented for consideration by the McCaskill-Bond arbitration panel. Such separate representation is not precluded by any provision of the McCaskill-Bond statute or by the Railway Labor Act. Such separate representation is also consistent with historical practice under the labor protective provisions incorporated into the McCaskill-Bond

statute, which permitted separate representation of employee groups with disparate seniority interests, such as exist here.

Accordingly, based on the undisputed facts in this case, US Airways moves for summary judgment on its claim that the McCaskill-Bond statute's "fair and equitable" standard requires separate representation for the West Pilots in the seniority integration process that will take place upon closing of the US Airways/American merger.

II. FACTUAL BACKGROUND

A. US Airways/America West Pilot Seniority Integration Process.

The predecessor to the current US Airways merged with America West pursuant to an agreement executed in May 2005. (Stip.[1] ¶ 1.) At the time, the Air Line Pilots Association, International ("ALPA") represented the US Airways pilots ("East Pilots") and the America West pilots ("West Pilots") in two separate units. (*Id.* ¶ 5.) US Airways employed approximately 5,100 East Pilots, approximately 1,700 of whom were on furlough at the time of the merger, and America West employed approximately 1,900 West Pilots, none of whom were then on furlough. (*Id.* ¶¶ 2, 4.)

Following the merger, US Airways, America West, their respective corporate parents, ALPA, the US Airways Master Executive Council, and the America West Master Executive Council entered into a Transition Agreement which governed, among other things, the integration of the East Pilots and West Pilots seniority lists. (*Id.* ¶¶ 7, 16.) The Transition Agreement mandated that "[t]he seniority lists of America West pilots and US Airways pilots will be integrated in accordance with ALPA Merger Policy and submitted to the Airline Parties for acceptance," and further required that "[t]he Airline Parties will accept such integrated seniority list, including conditions and restrictions, if such list and the conditions and restrictions comply with" certain criteria specified in the Transition Agreement. (Sep. Stmnt.[2] ¶ 4; Stip. ¶ 16.) Those criteria were related to

[1] "Stip ¶" refers to the Parties' Proposed Final Pretrial Order for Bench Trial, Section F. Stipulations and Undisputed Facts (ECF No. 206), filed on October 9, 2013.

[2] "Sep. Stmnt. ¶" refers to US Airways' Separate Statement of Undisputed Facts,

limiting the operational and financial consequences on US Airways as a result of the seniority integration, and were wholly unrelated to the ultimate ordering of pilots on the integrated seniority list. (Sep. Stmnt. ¶ 4.)

Pursuant to ALPA's Merger Policy, if two pilot groups were unable to agree on an integrated seniority list through direct negotiations or mediation, the next step was to integrate the pre-merger seniority lists on a "fair and equitable" basis through an arbitration award that "shall be final and binding on all parties to the arbitration." (*Id.* ¶ 1) ("The purpose of arbitration shall be to reach a fair and equitable resolution consistent with ALPA policy."); (Stip. ¶ 21) ("The Award of the Arbitration Board shall be final and binding on all parties to the arbitration and shall be defended by ALPA.").) The East Pilots and West Pilots were unable to agree on an integrated seniority list, and thus they participated in a seniority-integration arbitration pursuant to ALPA's Merger Policy (as incorporated by the Transition Agreement). (*Id*. ¶¶ 16, 22, 23.) This process resulted in an arbitration award issued on May 1, 2007 known as the "Nicolau Award." (Stip. ¶ 24.)

The Nicolau Award did not integrate pilots based strictly on each pilot's "date of hire" with their pre-merger airline, as the East Pilots had sought, but instead fashioned what Arbitrator Nicolau concluded was a "fair and equitable" seniority integration – attributing "considerable importance" to the pilots' "career expectations" at each pre-merger airline, while also giving "consideration" to the "Date of Hire" factor. (Sep. Stmnt. ¶¶ 2, 3.) The Nicolau Award placed approximately 500 East Pilots at the top of the seniority list, 1700 furloughed East Pilots at the bottom of the list, and blended the remainder of East Pilots with West Pilots generally according to their relative positions on their pre-merger seniority lists. (Stip. ¶ 25, 27, 29).

On December 20, 2007, US Airways accepted the integrated seniority list generated through the Nicolau Award, as it was required to do by the terms of the Transition Agreement. (Stip. ¶ 30.) The integrated seniority list, however, has never

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submitted herewith.

taken effect because the Transition Agreement prohibits post-merger US Airways from using an integrated seniority list prior to "Operational Pilot Integration," and because "Operational Pilot Integration" cannot occur under the Transition Agreement until after the negotiation of a single CBA applicable to the integrated pilot groups – which, largely because of the unresolved seniority dispute, has not happened to this day. (Ex. C to the Declaration of Chris A. Hollinger In Support of Intervenor US Airways, Inc.'s Motion For Summary Judgment - Claim Regarding McCaskill-Bond Statute (filed concurrently), at IV.C at 6, VI.A at 8.) Accordingly, US Airways continues to operate with two separate seniority lists – one for the West Pilots and one for the East Pilots. (Stip. ¶ 9.)

B. USAPA's Formation and Constitutionally-Mandated Position Regarding Seniority Integration.

The East Pilots believed that the Nicolau Award was less favorable to them as a group than the "date-of- hire" integrated seniority list they had sought from Arbitrator Nicolau. (Sep. Stmnt. ¶ 5; Stip. ¶ 35.) The East Pilots formed a new union, USAPA, whose constitutional "objectives" include "maintain[ing] uniform principles of seniority based on date of hire and the perpetuation thereof, with reasonable conditions and restrictions to preserve each pilot's un-merged career expectations." (Stip. ¶ 36, 39, 50.)[3] Following a representation election between USAPA and ALPA, the National Mediation Board ("NMB") certified USAPA as the new collective bargaining representative for both the East Pilots and the West Pilots on April 18, 2008. (*Id.* ¶ 41, 44.) Thereafter, USAPA and US Airways engaged in collective bargaining negotiations for a single labor contract. In September 2008, USAPA made its first and only seniority list proposal, which consisted of a non-Nicolau seniority list that combined the existing East and West

[3] A USAPA founder envisioned that USAPA would advocate for seniority integration based upon date-of-hire principles in any future merger involving US Airways, such as the pending merger between US Airways and American. (Sep. Stmnt. ¶ 6.)

seniority lists by date-of-hire, without regard to whether a pilot was on furlough at the time of the merger.[4] (*Id.* ¶¶ 54, 56, 59.)

C. Pilot Seniority Integration Process in the Proposed US Airways/American Merger.

In February 2013, US Airways Group, Inc. (US Airways' corporate parent) and AMR Corporation (American's corporate parent) entered into a merger agreement that contemplates the combination of US Airways and American. (Stip. ¶ 70.) In connection with the merger, US Airways, American, USAPA, and the union representing American's pilots, the Allied Pilots Association ("APA"), entered into a Memorandum Of Understanding Regarding Contingent Collective Bargaining Agreement ("MOU"). (*Id.* ¶¶ 86, 87, 115.) The MOU was ratified by 75% of the valid votes cast in referendum balloting among USAPA's membership. (*Id.* ¶ 127.) The MOU, which will become effective if and when the merger closes, provides generally that the seniority of the American pilots and the US Airways (East and West) pilots shall be integrated on a "final and binding" basis in a manner consistent with the McCaskill-Bond Amendment to the Federal Aviation Act. (*Id.* ¶ 86, 147, 148.) Under the MOU, the separate East and West seniority lists will remain in effect until the McCaskill-Bond seniority-integration process between the US Airways pilots and the American pilots is completed. (*Id.* ¶¶ 96, 137.) The MOU does not specifically address the Nicolau Award or the relative ordering of East and West Pilots as part of the overall US Airways/American seniority-integration process. (Sep. Stmnt. ¶ 7.) It does, however, mandate that the seniority-integration process begin "as soon as possible" after the close of the US Airways/American merger. (Stip. ¶ 147.) It mandates further that the integrated seniority list generated through the McCaskill-Bond

[4] In *Addington v. US Airline Pilots Ass'n*, No. CV 08-1633-PHX-NVW, 2009 WL 2169164, at *8 (D. Ariz. July 17, 2009), *dismissed on ripeness grounds*, 606 F.3d 1174 (9th Cir. 2010), the jury held that USAPA had violated its duty of fair representation to the West Pilots because it "cast aside the result of an internal seniority arbitration solely to benefit East Pilots at the expense of West Pilots," and "failed to prove that any legitimate union objective motivated its acts."

process among the pilot representatives must satisfy certain criteria that are related to limiting the operational and financial consequences on the post-merger airline as a result of pilot seniority integration. (Sep. Stmnt. ¶ 10.) The MOU expressly requires that both US Airways and American remain neutral throughout the McCaskill-Bond process with respect to "the order in which pilots are placed on the integrated seniority list." (*Id.* ¶ 11.)

The USAPA Board of Pilot Representatives ("BPR") will determine USAPA's negotiating position vis-à-vis the APA regarding seniority integration with American's pilots, and the BPR's negotiating position will be advanced by USAPA's Merger Committee during the seniority-integration process. (*Id.* ¶ 12.) The USAPA BPR is comprised of a majority of East Pilots, and this majority will support an integrated seniority list based upon date-of-hire principles (with some conditions and restrictions), and it will oppose presentation of the Nicolau Award during the seniority-integration process. (*Id.* ¶ 13; Stip. ¶ 55.) Indeed, following this Court's decision in *Addington II*,[5] USAPA officers stated that USAPA was under no legal obligation to consider implementing the Nicolau Award. (Sep. Stmnt. ¶ 14.)

The USAPA Merger Committee, which is made up of a majority of East Pilots, cannot deviate from the position approved by the USAPA BPR or negotiate with the APA in a manner that is contrary to USAPA's Constitution. (Stip. ¶¶ 153-155; Sep. Stmnt. ¶ 15.) Because the USAPA Constitution requires seniority integration based upon date-of-hire principles (with conditions and restrictions), the Merger Committee is prohibited from advocating for the Nicolau Award (which is not a date-of hire seniority list) as the proposed US Airways pilot seniority list during the McCaskill-Bond process. (Sep. Stmnt. ¶¶ 15, 16.)

If the West Pilots are able to participate through separate representation of their own choosing in the McCaskill-Bond seniority integration process, they will argue that

[5] *US Airways, Inc. v. Addington*, No. CV–10–01570–PHX–ROS, 2012 WL 5996936 (D. Ariz. Oct. 11, 2012).

the Nicolau Award should be the sole basis to determine the relative seniority of US Airways (East and West) pilots. (*Id*. ¶ 17.) If the West Pilots are not able to participate through separate representation, the West Pilots' argument regarding the Nicolau Award will be not be presented to the McCaskill-Bond arbitration panel. (*Id*. ¶¶ 13, 15, 16.) USAPA opposes separate participation by the West Pilots, contending that such separate participation would undermine USAPA's status as the collective bargaining agent for US Airways' pilots.[6] (*Id*. ¶ 17; Stip. ¶ 160.)

III. LEGAL ARGUMENT

A. McCaskill-Bond Requires A Fair And Equitable Seniority Integration.

Subsequent to the US Airways/America West merger, Congress enacted the McCaskill-Bond statute addressing airline industry mergers.[7] McCaskill-Bond was enacted in response to the experience of Trans World Airlines, Inc. ("TWA") employees after TWA's assets were acquired by American, and half of the TWA pilots and all of the flight attendants were placed at the bottom of the post-acquisition integrated seniority list. *See, generally, Comm. of Concerned Midwest Flight Attendants for Fair and Equitable Seniority Integration v. Int'l Bhd. of Teamsters*, 662 F.3d 954, 957 (7th Cir. 2011) ("[McCaskill-Bond] grew out of American Airlines' acquisition of Trans World Airlines" and the "contentious" seniority integration of TWA's former employees that followed).

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[6] After the merger between US Airways and American is complete, a new collective bargaining agent will be certified by the NMB for all pilots of the merged carrier. The APA, not USAPA, will, in all likelihood, be certified through this process given the far greater number of pilots currently represented by APA at American. (Sep. Stmnt. ¶ 28.) Under the MOU, the McCaskill-Bond seniority-integration arbitration among the pilot groups will not even occur until after this NMB process is completed. (Stip. ¶¶ 135. 137.)

[7] Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). When resolving a motion for summary judgment, a court is not required to "scour the record in search of a genuine issue of triable fact." *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir.1996). This Memorandum establishes that there is no genuine issue of material fact that would preclude this Court from granting US Airways' request for summary judgment.

McCaskill-Bond requires that where, as here, employees of the pre-merger carriers are represented by different unions, "sections 3 and 13 of the labor protective provisions ["LPPs"] imposed by the Civil Aeronautics Board in the Allegheny-Mohawk merger (as published at 59 C.A.B. 45) shall apply to the integration of covered employees of the covered air carriers." Pub. L. No. 110-161, § 117, 121 Stat. 1844, 2382 (2007). Those two sections govern the process for negotiation and, if necessary, arbitration of seniority-integration disputes. Section 3 provided:

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

Allegheny-Mohawk, 59 C.A.B. 45, 45 (1972) (emphasis added). Section 13, in turn, provided for arbitration, which "shall be final and binding on the parties," if negotiations under Section 3 failed to result in an agreement. *Id.* at 49. Therefore, pursuant to McCaskill-Bond, as it incorporates Sections 3 and 13 of the *Allegheny-Mohawk* LPPs, there must be an "integration of seniority lists in a ***fair and equitable manner***" through participation by "representatives of the employees affected." *Id.* at 45 (emphasis added).

B. Integration of the American and US Airways East and West Seniority Lists Cannot Be Fair And Equitable if the West Pilots are Denied Separate Participation and Representation.

The undisputed facts make clear that a seniority-integration process in which all of the US Airways pilots (East and West) are represented only by USAPA will not be "fair and equitable." USAPA was created as a new union following the East Pilots' disagreement with the seniority list generated by what was to be the "final and binding" Nicolau Award under the ALPA Merger Policy. USAPA's Constitution prohibits USAPA from implementing or advocating for the Nicolau Award. There is no dispute, therefore, that USAPA will be ***prohibited*** from presenting the West Pilots' position in the McCaskill-Bond process. In such a circumstance, USAPA has a demonstrable conflict of interest with the West Pilots, and, without separate West Pilots participation, the seniority-

integration process cannot be fair and equitable as required by the McCaskill-Bond statute. *Cf. Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625-27 (1997) (where "the interests of those within the single class are not aligned," class could not be fairly and adequately represented by named parties without any "structural assurance of fair and adequate representation for the diverse groups and individuals affected"); *Gen. Tel. Co. of Nw., Inc. v. EEOC*, 446 U.S. 318, 331 (1980) (class cannot be adequately represented by same plaintiff where "conflicts might arise, for example, between employees and applicants who were denied employment and who will, if granted relief, compete with employees for fringe benefits or seniority").

Pilot seniority integration here is unique in that the pilots of the two merging carriers are faced with integrating three separate seniority lists as a result of a five-year dispute among the pilots of one of the two merging carriers. The West Pilots have been deemed a single unified group, as demonstrated by this Court's decision to again certify the class of approximately 1,600 West Pilots in this litigation, all of whom "are on the America West seniority list currently incorporated into the West Pilot's collective bargaining agreement." (ECF. No. 194, at 1:16-3:19.) In certifying the class, this Court recognized the continuing nature of the seniority dispute between USAPA and the West Pilots, and also determined that "the representative parties [of the West Pilots] will fairly and adequately protect the interests of the class" in this litigation. (*Id.*, at 2-3.) The West Pilots representatives, by analogy, should also be deemed to be the appropriate representatives of the West Pilots' seniority interests in the McCaskill-Bond seniority-integration process. *Cf. Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 856 (1999) ("[I]t is obvious after *Amchem* that a class divided . . . requires division into homogeneous subclasses under Rule 23(c)(4)(B), with separate representation to eliminate conflicting interests of counsel").

Only if the West Pilots are permitted a separate seat at the seniority-integration table to present and advocate for the Nicolau Award can the US Airways/American pilot seniority integration process be fair and equitable – whatever the substantive outcome of

that process may be (a question on which US Airways takes no position). By permitting the West Pilots a seat at the table, this Court would ensure that representatives of pilots on each of the three seniority lists to be integrated are present, and would further Congress' goal of fair and equitable seniority integration in airline mergers.

C. There is No Statutory Limitation on the Designation of Employee Representatives When Needed to Ensure Fairness and Equity Under McCaskill Bond.

USAPA has argued, and presumably will do so again, that "[s]eniority is a subject wholly committed to the exclusive bargaining representative and there is no authority to grant separate representation to a group of employees who are part of a craft or class which has a certified exclusive bargaining representative" under Section 2, Ninth of the Railway Labor Act ("RLA"). (ECF No. 205, at 2:8-12.) As explained below, USAPA's assertion that it is *per se* unlawful to permit separate representation of distinct seniority interests within a craft or class in the McCaskill-Bond process misses the mark.

1. The Railway Labor Act Does Not Limit Employee Representation in the McCaskill-Bond Seniority-Integration Proceedings between Groups of Affected Employees.

Section 2, Ninth of the RLA requires that US Airways bargain exclusively with USAPA, as the certified representative of the US Airways pilots, regarding the pilots' terms and conditions of employment. *See Gvozdenovic v. United Air Lines, Inc.*, 933 F.2d 1100, 1105 (2nd Cir. 1991) ("Under the RLA, terms and conditions of employment for unionized employees are established through collective bargaining between the employer and the union representative for the bargaining unit."); *cf. Air Line Stewards & Stewardesses Ass'n. v. Am. Airlines, Inc.*, 490 F.2d 636, 642 (7th Cir. 1973) ("[E]xcept for the area of collective bargaining and its necessary incidents, the union has no unique authority to compromise the rights of its members."). US Airways has complied with that requirement by negotiating the terms of the MOU with USAPA – a ratified collective bargaining agreement that sets the post-merger terms and conditions of employment, including pay, benefits, and work rules, and a requirement that the post-merger integrated seniority list will be formulated pursuant to the McCaskill-Bond statute.

The RLA collective bargaining between US Airways and USAPA related to seniority integration in this case – including setting an expedited timeline for the seniority integration in order to further the parties' interests in integrating operations, ensuring US Airways' and American's neutrality with respect to the order of the pilots on the integrated seniority list, and requiring that the integrated seniority list meet certain criteria limiting the financial and operational consequences on the post-merger airline – has therefore ***already been completed***. What remains is a negotiation and arbitration process under the McCaskill-Bond statute***, not the RLA***, to formulate the integrated pilot seniority list. And in that process, the MOU expressly indicates that "US Airways, American or New American Airlines . . . shall remain neutral regarding the order in which pilots are placed on the integrated seniority list," thereby leaving the formulation of the integrated seniority list to the merger representatives of the pilot groups. (Sep. Stmnt. ¶ 15.)

In these circumstances, therefore, permitting separate representation of the West Pilots in the McCaskill-Bond process does not in any manner interfere with USAPA's status as the certified collective bargaining agent under the RLA. USAPA's status under the RLA will remain intact, while the West Pilots' rights under McCaskill-Bond to a fair and equitable seniority integration will be enforced.

2. McCaskill-Bond Does Not Limit Employee Representation in Seniority Integration.

There is no language in McCaskill-Bond that would preclude the West Pilots from having independent representation in the seniority integration proceedings. Although McCaskill-Bond defines "covered employee" as "a member of a craft or class that is subject to the Railway Labor Act," which certainly includes the West Pilots, it merely provides that seniority integration must occur according to the Allegheny-Mohawk LPPs and the LPPs are similarly silent on the issue of who may serve as an employee representative for purposes of the McCaskill-Bond process. *See* Pub. L. 110–161, § 117(b)(2), 121 Stat. 1844, 2382 (2007).

While the text of McCaskill-Bond is silent as to employee representation, as explained in previous filings on this issue (*see* ECF Nos. 98, 110), decisions of the Civil Aeronautics Board (the "CAB") applying Sections 3 and 13 of the *Allegheny-Mohawk* and similar LPPs demonstrate that there was a practice of separate participation for employee subgroups that had separate seniority interests.[8] *See, e.g. Am.-Trans Caribbean Merger*, 57 C.A.B. 581, 586 n.10 (1971) (concluding that "there may be a certain divergence of interest between the active and furloughed pilots of both [pre-merger carriers, who were both unionized], and accordingly we would expect that all such groups of pilots or flight engineers would be entitled to have separate or additional representation in the event they so desire"); *United-Capital Merger Case*, 40 C.A.B. 903, 907 (1964) (concluding that, where subgroup of flight crew employees had "been offered to participate as a full party in the [seniority-integration] arbitration" and where they did in fact participate, the seniority-integration procedures had been fair); *Nat'l Airlines Acquisition, Arbitration*, 95 C.A.B. 584, 594-595 (1982) (concluding that procedures were "fair and equitable" where subgroup of union members on furlough had been accorded separate participation in seniority arbitration, even though they were also represented in that arbitration by their union's Master Executive Council); *Braniff Mid-Continent Merger Case*, 17 C.A.B. 19, 20-21 (1953) (even though both employee groups were represented by the Air Line Dispatcher's Association pre- and post-merger, the CAB accorded separate "party" status to a group formed by the pre-merger Braniff employees to challenge a date-of-hire integrated seniority list adopted by the union).

[8] Because McCaskill-Bond expressly incorporates Sections 3 and 13 of the *Allegheny-Mohawk* LPPs and specifically cites the CAB's decision, it is appropriate to infer that Congress intended for the courts to look for guidance to CAB decisions interpreting and applying Sections 3 and 13. *Cf. Huffman v. Comm'r*, 978 F.2d 1139, 1145 (9th Cir. 1992) ("Words with a fixed legal or judicially settled meaning, where the context so requires, must be presumed to have been used in that sense"); *United States v. Consol. Prods., Inc.*, 326 F. Supp. 603, 605 (C.D. Cal. 1971) ("[W]here Congress uses a term of art in a statute there is a presumption that it retains its traditional meaning absent some contrary expression of congressional intent, either explicit or implied from the history and purposes of the statute.") (*citing Morissette v. United States*, 342 U.S. 246, 250 (1952)).

The existence of this practice as recognized by the CAB, whether or not such separate representation was acquiesced in by the certified labor unions, rebuts USAPA's argument that such separate representation would undermine the exclusive representation rights of a certified collective bargaining representative under the RLA. Moreover, the CAB itself expressly stated on at least one occasion that it did not equate "representative" for the purposes of seniority integration under the LPPs with a certified bargaining representative under the RLA. *See Braniff-Mid-Continent Merger Case*, 17 C.A.B. at 21-22 ("we are unable to interpret the word 'representative' . . . to import the meaning of that term under the [RLA]").

IV. CONCLUSION

For the foregoing reasons, US Airways respectfully requests that the Court grant its motion for summary judgment on the issue of the West Pilots' right to participate in the McCaskill-Bond seniority integration process among the pilots of US Airways and American.

Dated: October 11, 2013.

For O'Melveny & Myers LLP

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CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2013, I caused to be electronically transmitted the attached Intervenor US Airways, Inc.'s Motion For Summary Judgment and Memorandum in Support.

/s/Robert A. Siegel

Robert A. Siegel