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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Don Addington; et al., Plaintiffs, vs. US Airline Pilots Ass'n, et al., Defendants.	No. CV-13-00471-PHX-ROS **PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Plaintiffs file their Proposed Findings of Fact and Conclusions of Law and concurrently file a supportive appendix of exhibits and deposition excerpts. An electronic copy of this filing will be emailed to chambers for the convenience of the court.

I. FINDINGS OF FACT

A. Merger of America West and US Airways

1. In May 2005, two airlines, America West and US Airways, agreed to merge to become a single airline known as US Airways (the "2005 Merger"). [Stipulated Fact ("SF") #1 (Doc. 206-1).]

2. At the time of the 2005 Merger, including pilots on furlough, there were about 5,100 pilots employed by US Airways ("East Pilots") and 1,900 pilots employed by America West ("West Pilots"). [SF # 2.]

3. At the time of the 2005 Merger, no West Pilots were on furlough. [SF # 3.]

4. But, approximately 1700 East Pilots were on furlough. [SF # 4.]

5. The Air Line Pilots Association ("ALPA") represented both pilot groups. [SF # 5.]

6. On September 23, 2005, ALPA and the two merging airlines entered into a contract referred to as the Transition Agreement. [SF # 6.]

7. Pursuant to the Transition Agreement, until certain conditions are satisfied, US Airways will conduct separate pilot operations according to the pre-merger collective bargaining agreements ("CBAs") and seniority lists for the two pilot groups. [SF # 8-9.]

8. The Transition Agreement provided, however, that US Airways would integrate its pilot operations within 12 months of the occurrence of the last of these three events: (a) obtaining a single operating certificate (which occurred in 2007); (b) creating a single seniority list according to ALPA Merger Policy (which also occurred in 2007 with the issuance of the Nicolau award); and (c) negotiation of the "Single Agreement." [SF # 19.]

9. ALPA Merger Policy provided, if it was necessary to arbitrate the single seniority list, that "[t]he Award of the Arbitration Board shall be final and binding on all parties to the arbitration and shall be defended by ALPA." [SF # 21.]

10. In this instance, it was necessary to arbitrate a single seniority list because the two pilot groups tried but failed to create such a list through negotiation and mediation. [SF # 22-23.]

11. The arbitration board issued its award (the "Nicolau Award") on May 1, 2007. [SF # 24.]

12. The Nicolau Award placed the approximately 1700 East Pilots who were furloughed at the time of the 2005 Merger at the bottom of the list. [SF # 27.]

13. The Nicolau Award explained that "merging active pilots with furloughees, despite the length of service of some of the latter, is not at all fair or equitable." [SF # 28.]

14. On December 20, 2007, US Airways accepted the Nicolau Award as the single seniority list that would be used to integrate its pilot operations. [SF # 30.]

B. The Formation and Election of USAPA

15. East Pilots opposed the Nicolau Award. [SF # 35.]

16. In May 2007, East Pilot Stephen Bradford and other East Pilots formed a committee to consider forming a new union to take over representation of all US Airways pilots (East and West). [SF # 36.]

17. From the start, this committee was focused on creating a single airline union that East Pilots, as the majority faction, could control and use to prevent implementation of the Nicolau Award. [Ex. 36 (*Bradford email to R. Weber*, referring to the "next merger") (App. 53); Ex. 41 (Bradford telling East Pilots, "If ALPA is not there, the [Nicolau] award is not there.") (App. 57); Ex. 40 (Bradford telling East Pilots, '[T]he Nicolau Award won't die until ALPA dies") (App. 56); *Bradford depo.*, 69:24 to 71:24 (Sep. 18, 2013) (authenticating these exhibits) (App. 06-08).][1]

18. This committee then proceeded to form USAPA with the goal of having a single-airline union that could replace ALPA, be controlled by the East Pilot majority, and prevent implementation of the Nicolau Award. [SF # 39.]

19. Indeed, USAPA was created with a Constitution, which to this day does not allow it to use the Nicolau Award single seniority list. [SF # 50; *Pauley depo.*, 49:14 to 49:22 (Sep. 18, 2013) (Merger Committee Chairman) (App. 20).]

20. An election contest between ALPA and USAPA followed. [SF # 40.]

21. In the course of that election campaign, Mr. Bradford and other USAPA supporters made it very clear that the "centerpiece" of USAPA's policy would be to promote the date-of-hire seniority integration that put East Pilot who were furloughees in 2005 ahead of West Pilots who were active in 2005 – something that Mr. Nicolau found was neither fair nor equitable. [SF # 51; *Bradford depo.* at 75:4 to 75:22 (date-of-hire is

[1] Copies of excerpts of deposition transcripts and Exhibits cited herein are found in an appendix of evidence filed concurrently ("App."), designated by page number therein.

USAPA's "centerpiece") (App. 09); *id.*at 82:7 to 82:20 ("date-of-hire is a founding principal of this union") (App. 10).]

22. USAPA won the election and, on April 18, 2008, the National Mediation Board certified USAPA as the collective bargaining representative for the entire pilot craft or class (East and West Pilots) ("Craft or class" is the Railway labor Act term for a "bargaining unit."). [SF # 43-44.]

C. USAPA Seniority Policy

23. USAPA proposed a date-of-hire seniority list to US Airways in September 2008. [SF # 54.][2]

24. This seniority proposal combines the existing East and West lists by date-of-hire, without regard to whether a pilot was on furlough at the time of the merger. [SF # 59.]

25. For more than five years, USAPA has refused to take any steps towards implementing the Nicolau Award and the West Pilots have steadfastly maintained that USAPA has no legitimate union purpose to use a date-of-hire seniority list to integrate pilot operations. [SF # 51-52.]

D. Prior Litigation

26. In 2008, six West Pilots sued USAPA claiming that USAPA breached its duty of fair representation by repudiating the commitment to use the Nicolau Award. The case was certified as a class action and proceeded to trial where the West Pilots prevailed. On appeal, however, the case was dismissed as not presenting a ripe controversy. But in so doing, the Ninth Circuit indicated that there would be a ripe claim if and "[w]hen the collective bargaining agreement is finalized." *Addington v. US Airline Pilots Ass'n*, 606 F.3d 1174, 1180 n.1 (9th Cir. 2010).

[2] USAPA makes far too much of the fact that its seniority proposal contains conditions and restrictions. Such terms are of little value in the current setting because, as USAPA concedes, "Conditions and restrictions that apply to a pilot group before a merger may or may not carry forward in a seniority integration proceeding with another pilot group." [SF #58.]

27. On July 27, 2010, US Airways filed a declaratory judgment action, alleging that it required guidance, inter alia, as to whether it would be liable if it entered into a collective bargaining agreement with USAPA that did not implement the Nicolau Award. [SF # 61.]

28. Although in its ruling the Court did not fully resolve the East/West pilot seniority dispute at US Airways, it did provide substantial guidance as to what was required of USAPA. [Ex. 115 (App. 66-67).]

29. In its order on summary judgment in that action, the Court stated, among other things: "Discarding the Nicolau Award places USAPA on dangerous ground." [Ex. 115 (App. 66).]

30. Most importantly, it stated that USAPA's date-of-hire "seniority proposal does not breach its duty of fair representation provided it is supported by a legitimate union purpose." [Ex. 115 (App. 67).]

31. For whatever reason, USAPA's leaders and attorneys grossly misinterpreted the Court's ruling, thereby further strengthening the belief among many East Pilots that USAPA had an unrestrained legal right to impose a date-of-hire seniority list on the West Pilots—meaning that USAPA is free to disregard any and all commitments and obligations to implement the Nicolau Award. [*Hummel depo.*, 100:24 to 101:19 (Sep. 17, 2013) (identifying Ex. 19, a report to pilots that "as a result of Judge Silver's . . . ruling, USAPA is free to use whatever seniority list we want") (App. 21-22 & 47); *see also id.* 103:15 to 104:24 (same) (App. 23-24); *Crimi depo.* at 122:13 to 123:1 (Sep. 19, 2013) (same) (App. 32-33); *Bradford depo.* at 108:4 to 108:21 (same) (App. 14).]

E. Merger with American Airlines

32. On November 29, 2011, AMR Corporation ("AMR") and its subsidiaries, including American Airlines, Inc. ("American"), commenced a voluntary Chapter 11 case in the United States Bankruptcy Court for the Southern District of New York, In re AMR Corp., Case No. 11-15463. [SF # 69.]

33. On February 13, 2013, US Airways Group, Inc. (the corporate parent of US Airways) and AMR entered into an Agreement and Plan of Merger that contemplated the combination of US Airways and American. [SF # 70.]

34. By April 11, 2013, the Bankruptcy Court had approved the merger subject to conditions that are not at issue here. [SF # 71-73.]

F. The Memorandum of Understanding ("MOU")

35. While it was contemplating the merger with American, US Airways began negotiating labor contract terms with the Allied Pilots Association ("APA"), the union for American pilots, that would go into effect if and when there was a merger with American. [SF # 74.]

36. On April 23, 2012, APA and US Airways executed an agreement that has been referred to as the "Conditional Labor Agreement" ("CLA") or "APA Term Sheet." . [SF # 75.]

37. US Airways subsequently agreed to negotiate with USAPA concerning terms, conditions, and protections in addition to those stated in the CLA that would be guaranteed to US Airways pilots in the event of a merger. [SF # 76.]

38. US Airways required that any such agreement with USAPA would integrate the seniority of the American and US Airways pilots in a manner that complied with the 2007 McCaskill-Bond Amendment to the Federal Aviation Act, 49 U.S.C. § 42112, note, § 117(a). [SF # 77.]

39. USAPA assigned its Negotiating Advisory Committee ("NAC") the task of negotiating the labor terms and provisions regarding integration of US Airways and American pilots, in connection with a potential US Airways/American merger. [SF # 78.]

40. The outcome of these negotiations were memorialized in a document entitled "Memorandum of Understanding Regarding Contingent Collective Bargaining Agreement" ("MOU I"). [SF # 80.]

41. Negotiators for US Airways and USAPA tentatively approved MOU I on August 20, 2012. [SF # 81.]

42. In August 2012, the USAPA Board of Pilot Representatives ("BPR") concluded that there were deficiencies in MOU I and directed the NAC to negotiate further to address those deficiencies. [SF # 83.]

43. The BPR, however, did not identify any seniority-related deficiencies in MOU I. [*Colello depo.*, 35:4 to 38:1 (Sep. 20, 2013) (no mention of seniority concerns in goals for MOU I in a presentation to BPR (App. 34-37; Ex. 104 (excerpt of Colello's presentation) (App. 64); *Colello depo.* at 39:9 to 39:15 (BPR directed NAC to correct specific deficiencies in MOU I, none of which related to seniority) (App. 38); *Id.* at 47:20 to 48:7 (same) (App. 39-40); 54:21 to 56:14 (same) (App. 41-43); *Hummel depo*. at 158:6 to 160:19 (unable to identify anything other than economic terms and insurance needing further negotiation) (App. 25-27); *Crimi depo*. at 21:12 to 21:25 (same) (App. 28).]

44. Further negotiations between the NAC and US Airways were delayed until December 2012 by matters that are not at issue here. [SF # 84, 85.]

45. From December 10, 2012, through January 2, 2013, US Airways, USAPA and APA negotiated a tentative agreement titled "Memorandum of Understanding Regarding Contingent Collective Bargaining Agreement" ("MOU II). [SF # 86, 87.]

46. In the course of those negotiations, notwithstanding that the BPR did not direct the NAC to address seniority integration, USAPA negotiated seniority language in MOU II that gave rise to this litigation. [Ex. 25, 58, 99 (App. 52, 60, 62).]

47. MOU II (as did MOU I) provides that pilot seniority integration between pilots of US Airways and American Airlines will be governed by a process consistent with McCaskill-Bond. [SF # 92.]

48. In the negotiations for MOU II, USAPA initially proposed language for Paragraph 10(h) that was later changed. This initial language was: "This MOU is not intended to nor shall it constitute the 'Single Agreement' referred to in Paragraph VI.A. of the September 23, 2005 Transition Agreement." [SF # 95.]

49. USAPA then proposed in place of that language: "US Airways agrees that neither this Memorandum nor the JCBA [Joint Collective Bargaining Agreement] shall

provide a basis for changing the seniority lists currently in effect at US Airways other than through the process set forth in this Paragraph 10." [SF # 93.]

50. This became Paragraph 10(h) in MOU II. [SF # 93.]

51. Although MOU II contains substantial economic improvements for US Airways pilots [SF # 98], it did not provide any additional benefit or concession from the airline in exchange for Paragraph 10(h). [Trial testimony by Ken Holmes, member NAC.]

52. Although none of USAPA's officers and committee chairmen will admit to knowing why USAPA proposed the language in Paragraph 10(h), they all agree that it operates to allow the USAPA BPR to dictate that the seniority of US Airways pilots will be ordered by date-of-hire and not by the Nicolau Award when they are integrated with the seniority of the American pilots according to the procedures in the MOU. [*Pauley depo.* at 18:18 to 20:16 (that East Pilot dominated merger committee that is overseen by the East Pilot dominated BPR will decide East/West seniority integration) (App. 17-19); *Ciabatoni depo.* 50:7 to 50:15 (Sep. 17, 2013) (USAPA will submit date-of-hire list because it is required by the union's Constitution) (App. 46); *Crimi depo.* at 94:18 to 94:24 (recent effort to eliminate date-of-hire provision in union Constitution failed) (App. 29); *Bradford depo.* at 52:23 to 53:6 (USAPA will present date-of-hire seniority order for its pilots) (App. 04-05), *id.* at 126:2 to 126:7 (it will be up to the BPR to decide) (App. 15); *id.*at 162:2 to 162:19 (the effect of Paragraph 10(h) is to "take away the requirement" to use the Nicolau Award by amending the Transition Agreement) (App. 16).]

53. Indeed, there are those at USAPA who read Paragraph 10(h) as providing the "clean slate" that this Court told USAPA in October 2012 it did not have. [*Colello depo.* at 85:24 to 86:9 (App. 44-45).]

54. Despite the fact that USAPA plainly has a conflict of interest with the West Pilots in regard to implementing the Nicolau Award, it steadfastly refuses to consent to the West Pilots having an independent voice in the process of integrating seniority with

the American pilots. [*Bradford depo.* at 93:19 to 94:16, 97:7 to 97:11 (App. 11-13); *Crimi depo.* at 100:14 to 100:19, 102:1 to 102:15 (App. 30-31).]

55. Despite having an unsettled disagreement over East/West seniority integration, a substantial majority of the USAPA rank-and-file voted in favor of ratifying MOU II. [SF # 115.]

56. Nonetheless, approximately 600 West Pilots were not eligible to vote on the ratification issue [SF ## 129-30] and hundreds more who were eligible chose not to vote. [Trial testimony by Jeff Koontz.]

57. If the airline emerging from the US Airways/American merger and its pilots cannot reach agreement on a JCBA, or if the pilots do not ratify a negotiated JCBA, the MOU provides that the terms of the JCBA will be imposed through "final and binding" arbitration and that the arbitrator's award must be "consistent with the terms of the MTA" and "specifically shall adhere to the economic terms of the MTA and shall not change the MTA's Scope terms (Paragraph 25 of [MOU II]) or the modifications generated through the process set forth in Paragraph 24 of [MOU II]." [Ex. 24 (App. 48-50).]

58. Accordingly, the material terms and conditions of employment for both the East and West pilots following the merger are now known and fixed by the MOU. [Ex. 24]

59. The MOU, in other words, sets new compensation levels, new working conditions, new benefits and everything that a collective bargaining agreement provides. [Ex. 24.]

II. CONCLUSION OF LAW

A. Ripeness

"[A] litigant need not await the consummation of threatened injury to obtain preventive relief"; rather, "[i]f the injury is certainly impending, that is enough." *Addington v. U.S. Airline Pilots Ass'n*, 606 F.3d 1174, 1179-80 (9th Cir. 2010). Prior to ratification of the MOU, there may have been some question whether USAPA would disregard its duty to implement the Nicolau Award. But no longer. Ratification of the

MOU—a contract that fixes the material terms of pilot employment for years to come—leaves no question whether some increased benefit would be offered by the airline to justify abandoning the Nicolau Award. All possible material contract benefits are in place. Moreover, there is no question that USAPA has firmly decided that, as soon as it can, it will use a date-of-hire seniority list in the MOU McCaskill-Bond process, to the detriment of the West Pilots. USAPA claims it is free to do so without regard to the Transition Agreement seniority provisions because it sees the MOU as either amending or superseding the seniority provisions in the Transition Agreement. Consequently, as USAPA sees it, the MOU (and in particular Paragraph 10(h) frees it from all obligations to implement the Nicolau Award. Injury to the West Pilots, therefore, is unquestionably "impending" unless they obtain relief from this Court. Consequently, questions related to whether USAPA has an objectively legitimate union purpose for its actions taken and its actions planned are plainly ripe for decision by this Court.

B. Duty of Fair Representation

Union conduct "unrelated to legitimate union interests" is wrongful. *Robesky v. Oantas Empire Airways Ltd.*, 573 F.2d 1082, 1090 (9th Cir. 1978). Unions are particularly constrained in regard to altering seniority rights because such action inherently "favor[s] some members at the expense of others." *Laborers & Hod Carriers Loc. No. 341 v. NLRB*, 564 F.2d 834, 840 (9th Cir. 1977). In that respect, bargaining for seniority differs from bargaining for wages, hours, or working conditions, or other items that can benefit the bargaining unit as a whole. Consequently, when a union bargains to reorder seniority it must show it has a "legitimate purpose." *Id.*; s*ee also Rakestraw v. United Airlines, Inc.*, 981 F.2d 1524, 1533 (7th Cir.1992) ("[A] union may not juggle the seniority roster for no reason other than to advance one group of employees over another.").

A line of cases establishes that a union's "seniority decisions may not be made solely for the benefit of a stronger, more politically favored group over a minority group." *Barton Brands, Ltd. v. NLRB*, 529 F.2d 793, 798-99 (7th Cir. 1976). In *Barton*

Brands, for example, workers agreed to a final resolution of a seniority dispute that arose in the context of a merger, just as occurred here in 2005. *See id.* at 796. But, when layoffs began, the majority group insisted on reopening the seniority issue. *Id*. The union complied and re-formulated seniority, putting the minority group first in line for layoffs. *Id*. The Court strongly disapproved and required the union to "show some objective justification for its conduct." *Id.* at 800. USAPA too must have an objective justification—an objectively legitimate union purpose—for including Paragraph 10(h) in the MOU and for otherwise using the American merger to evade the agreement to use the Nicolau Award.

USAPA claims that its objectively legitimate union purpose was that the MOU overall provides improved wages and benefits. That, however, does not suffice here. If it did, then a union could evade its duty of fair representation by tacking illegal provisions that it could not make in isolation onto a contract that overall provides a legitimate benefit. Rather, a union must have an objectively legitimate union purpose for each and every contract provision that (as here) plainly favors the majority at the expense of the minority.

So what is a legitimate union purpose? *Rakestraw* explains that there is a legitimate purpose where the union reasonably anticipates that the specific provision at issue will result in increased wages or other benefits for the workers as a whole. *See* 981 F.2d at 1535. The union in *Rakestraw* had a legitimate reason to make a contract with a provision that "reduce[d] the advantages enjoyed by" a disfavored minority because to do so (under the unique circumstances of that case) "strengthen[ed] the hand of organized labor in future conflicts with management." *Id.*

USAPA also contends that the intransigence of the East Pilot majority—their perceived refusal to ratify any contract that could lead to implementation of the Nicolau Award—created an objectively legitimate purpose to include paragraph 10(h). USAPA, in other words, contends that it proposed Paragraph 10(h) so that it would not risk having East Pilot intransigence cause the ratification vote to fail. But, as a matter of law, a so-

called impasse created by majority intransigence cannot justify a union taking an action that favors the majority at the expense of the minority. Majority opposition cannot defeat the duty of fair representation, because the duty exists to restrain the majority. *Air Wisconsin Pilots Protection Committee v. Sanderson*, 909 F.2d 213, 216 (7th Cir. 1990) (Posner, J.); *see also Emporium Capwell Co. v. Western Addition Community Org.*, 420 U.S. 50, 64 (1975) ("In vesting the representatives of the majority with this broad power Congress did not, of course, authorize a tyranny of the majority over minority interests.").

Indeed, if USAPA's argument were correct, any union could use a similar argument to justify imposing unfair burdens on a disfavored minority as long as the majority insisting on such action threatened to obstruct the collective bargaining process. Discrimination and bad faith would be permitted as long as a zealous majority of union members insisted. That is not how it works.

Federal labor law obliges a union to stand up to its membership where, as is the case here, a majority of that membership is insistent on having the union take action that would breach its duty of fair representation. In such matters, a union cannot encourage majority intransigence and then yield to it. Rather, it must explain to the membership in clear terms that its duty limits majority will.

USAPA did otherwise. Failing to heed clear warnings from this Court, USAPA misled the East Pilot majority by telling them that this Court's order from last October gave USAPA the power and right to improve their seniority prospects at the expense of the West Pilots. USAPA cannot now use the results of such misinformation to justify its actions.

USAPA has not proven that the East Pilots would have voted in sufficient numbers to prevent ratification an MOU that did not purport to amend or supersede the Transition Agreement seniority provisions. But, even if that were the case, it would be so only because USAPA mismanaged East Pilot expectations. East Pilot intransigence, therefore, did not give USAPA a legitimate purpose for Paragraph 10(h).

The Court, therefore, finds by a preponderance of the evidence that USAPA breached its duty of fair representation because it did not have a legitimate union purpose to make a contract that purportedly amended or superseded the Transition Agreement's seniority provisions. Where a union has so breached the duty of fair representation, the district court has broad authority to take affirmative action to make the aggrieved workers whole. *Franks v. Bowman Transportation Co.*, 424 U. S. 747, 769 (1976) ("[R]emedies constituting authorized 'affirmative action' include an award of seniority status, for the thrust of 'affirmative action' redressing the wrong incurred by an unfair labor practice is to make 'the employees whole. . . ."). As remedy here, the Court will not construe Paragraph 10(h) to have illegal meaning and effect. *Cf. Walsh v. Schlecht*, 429 U.S. 401, 408 (1977) (noting that "contracts should not be interpreted to render them illegal and unenforceable where the wording lends itself to a logically acceptable construction that renders them legal and enforceable"). The Court holds, therefore, that Paragraph 10(h) does not allow USAPA to evade the Transition Agreement seniority provisions that require good faith use of the Nicolau Award. The Nicolau Award must be used in the pending MOU McCaskill-Bond process.

C. McCaskill-Bond

USAPA plans to preclude implementation of the Nicolau Award include excluding the West Pilots from the McCaskill-Bond seniority integration with the American Airlines pilots. This will not be allowed.

The McCaskill-Bond amendment to the Federal Aviation Act, 49 U.S.C. § 42112, note, § 117, incorporates Section 3 and 13 of the Labor Protective Provisions ("LPPs"), which controlled seniority integration in airline mergers when the industry was regulated by the Civil Aeronautics Board. *See Allegheny-Mohawk*, 59 C.A.B. 19, 45 (1972). The purpose of the LPPs was to "ward off labor strife that could impede or delay a route transfer or merger, or detrimentally affect a carrier's stability or efficiency." *Braniff Master Exec. Council of the APA v. C.A.B.*, 693 F.2d 220, 223 (D.C. Cir. 1982). That same purpose underlies McCaskill-Bond.

LPP § 3 required that "provisions shall be made for the integration of seniority lists in a fair and equitable manner." It also provided, if "employees affected" by a merger cannot agree on how to merge their seniority lists, that "the dispute may be submitted by either party for adjustment in accordance with section 13." And LPP § 13(a) provides that such adjustment shall be by neutral arbitration. The same is required by McCaskill-Bond.

Without question, the West Pilots are "employees" affected by the merger of US Airways and American Airlines. As such, they must be represented in the seniority integration process from initial negotiation of a protocol all the way through to neutral arbitration (if needed). But the East and West Pilots cannot even agree on how to merge their respective seniority lists. With such disagreement and conflicting interests, how can they be jointly represented in the seniority integration with the American pilots? Surely, the West Pilots cannot be represented by the same USAPA Merger Counsel who opposes them in this action?

It is inherent to the concept of legal representation that it be free of material conflicts of interest. It is clear here that USAPA is strongly aligned with East Pilot seniority interests that conflict with West Pilot interests in implementing the Nicolau Award. USAPA, therefore, neither can directly represent the West Pilots in the seniority integration with the American pilots nor can it choose their representative. It can no more provide unconflicted representation to the West Pilots in the integration with the American pilots than it could have represented the West Pilots in this litigation.

"The District Court has jurisdiction to enforce by injunction petitioners' rights to nondiscriminatory representation by their statutory representative." *Graham v. Bdh. of Firemen*, 338 US 232, 240 (1949). This Court, therefore, orders that the West Pilots shall have full party status in the MOU seniority integration process and shall have representatives of their choosing. The Court retains jurisdiction to address any dispute that may arise among the West Pilots concerning the selection of those representatives.

Dated this 14th day of October, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of October 2013, I electronically transmitted the foregoing document to the U.S. District Court Clerk's Office by using the ECF System for filing and transmittal.

/s/ Andrew S. Jacob

By _____