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18 **IN THE UNITED STATES DISTRICT COURT**
19 **DISTRICT OF ARIZONA**

20 Don Addington, *et. al.*,)
21 *Plaintiffs,*)
22 v.)
23 US Airline Pilots Association, *et. al.*,)
24 *Defendants.*)

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

**US Airline Pilots Association's
Controverting Statement of Facts
and Additional Statement of
Undisputed Facts**

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27)
28)

1 Pursuant to LR Civ. 56.1(b), Defendant US Airline Pilots Association (“USAPA”)
2 submits the following controverting statement of facts in response to the Separate
3 Statement of Undisputed Facts submitted by US Airways in support of its Motion for
4 Summary Judgment (Doc. 215) and additional statement of facts that precludes summary
5 judgment in US Airways’ favor:
6

7 1. Pursuant to ALPA’s Merger Policy, if two pilot groups were unable to
8 agree on an integrated seniority list through direct negotiations or mediation, the next step
9 was to integrate the pre-merger seniority lists on a “fair and equitable” basis through an
10 arbitration award that “shall be final and binding on all parties to the arbitration.”

11 Disputed. USAPA objects on the grounds of relevancy. The former union’s
12 merger policy is neither relevant nor material to the issue presented on this motion for
13 summary judgment. To the extent the Court considers ¶1, USAPA avers that this alleged
14 undisputed fact does not indicate what version of ALPA Merger Policy is referred to, but
15 whatever version of ALPA Merger Policy is at issue, the document speaks for itself.
16 USAPA further avers that the ALPA Merger Policy in effect at the time of the merger
17 between US Airways and America West did not explicitly allow consideration of length
18 of service in its definition of “fair and equitable” and that, as a result of the problems
19 caused by the Nicolau Award, that policy was later amended to explicitly include length
20 of service as a factor to be considered in integrating seniority. Compare ALPA Merger
21 Policy in effect in 2008 (US Airways Ex. A to Motion for Summary Judgment) with 2009
22 ALPA Merger Policy (Ex. “1” to the Declaration of Patrick J. Szymanski, dated
23 November 13, 2013 (“Szymanski Decl.”); UAL-CAL Seniority Integration Decision, pp.
24 19-20 (Ex. “2” to Szymanski Decl.).

25 2. In the US Airways/America West seniority integration proceeding, “The
26 US Airways [merger representatives’] initial proposal was “grounded on a pilot’s Date of
27 Hire adjusted for Length of Service. That proposal placed the most senior America West
28 pilots below some 900 US Airways pilots and integrated a number of furloughed US
Airways pilots with active America West pilots.”

1 Disputed. USAPA objects on the grounds of relevancy. A proposal by
2 representatives serving under the former union’s merger policy is neither relevant nor
3 material to the issue presented on summary judgment. To the extent the Court considers
4 ¶2, USAPA admits that ¶2 selectively quotes a portion of the Nicolau Award. Disputed
5 that this selective quote accurately describes the proposal of East ALPA Merger
6 Committee and aver, in particular, that it entirely omits that the East ALPA Merger
7 Committee proposal included conditions and restrictions that protected the rights of
8 former America West pilots to continue to bid and hold former America West flying. *See*
9 Nicolau Award (US Airways Ex. “B”).
10

11 3. The Nicolau Award did not integrate pilots based strictly on each pilot’s
12 “date-of-hire” with their premerger airline but instead fashioned what Arbitrator Nicolau
13 concluded was a “fair and equitable” seniority integration – attributing “considerable
14 importance” to “career expectations” at each pre-merger airline, while also giving
15 “consideration” to the “Date of Hire” factor.

16 Disputed. The Nicolau Award speaks for itself and did not give any positive
17 consideration to date of hire. The Nicolau Award clearly states that it is based on the
18 criteria contained in the ALPA Merger Policy in effect at the time. USAPA disputes that
19 the Nicolau Award gave any “consideration” to “Date of Hire” or longevity other than to
20 reject it as a factor to be considered in reaching a “fair and equitable” integration as
21 defined by the APLA Merger Policy in effect at the time of the decision. *See* Nicolau
22 Award, pp. 26-27 (US Airways Ex. B). As a result of the problem caused by the Nicolau
23 Award, ALPA Merger Policy was subsequently revised to include longevity as a factor to
24 be included in seniority integration. *See* 2009 ALPA Merger Policy (Ex. “1” to the
25 Szymanski Decl.); UAL-CAL Seniority Integration Decision, pp. 19-20 (annexed as Ex.
26 “2” to Szymanski Decl.).

27 4. The Transition Agreement mandated that “[t]he seniority lists of America
28 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

1
2 “[t]he Airline Parties will accept such integrated seniority list, including conditions and
3 restrictions, if such list and the conditions and restrictions comply with” certain criteria
4 specified in the Transition Agreement.

5 Disputed. This alleged undisputed fact selectively quotes sections of the 2005
6 Transition Agreement and these selective quotes are misleading because they ignore
7 various additional preconditions to implementation of the results of the ALPA Merger
8 Policy such as negotiation of ancillary provisions concerning the implementation and
9 operation of the list, a joint collective bargaining agreement, and separate ratification by
10 the East and West MECs. Transition Agreement (US Airways Ex. C to Motion for
11 Summary Judgment).

12 5. The Nicolau Award integrated seniority list has never been implemented
13 because the Transition Agreement prohibits post-merger US Airways from using an
14 integrated seniority list prior to “Operational Pilot Integration,” and because “Operational
15 Pilot Integration” cannot occur under the Transition Agreement until after the negotiation
16 of a single collective bargaining agreement applicable to the integrated pilot groups.

17 Admitted in part. USAPA further avers that the Nicolau Award integrated
18 seniority list has never been implemented because it was never included in a single
19 collective bargaining agreement that applied to the combined operations of America West
20 and US Airways, because it was never separately ratified by each pilot group, because
21 USAPA, as a newly certified bargaining representative, is not bound by any ALPA
22 proposal or agreement, and because the collective bargaining parties were free to modify
23 the Transition Agreement, which both sides agree they have done. *See* Doc 206-1,
24 Stipulations and Undisputed Facts, ¶176.

25 6. The East Pilots perceived the Nicolau Award to be far less favorable to
26 them as a group than the “date-of-hire” integrated seniority list they had sought from
27 Arbitrator Nicolau.

28 Disputed in part. East Pilots opposed the Nicolau Award for many reasons,
including, but not limited to, the fact that it violated ALPA Merger Policy, was unfair to a

1 majority of US Airways pilots on several objective measures, gave West Pilots
2 significant windfalls in seniority and increased career compensation at the expense of
3 East Pilots, and failed to give any weight to length of service. Bradford Dep., 48:6-10
4 (Ex. “3” to Szymanski Decl.).

5
6 7. USAPA was formed in 2007, in part to advocate for seniority integration
7 based upon date of hire in any future merger between US Airways and another carrier.

8 Disputed. USAPA objects on the grounds of relevancy. The formation of
9 USAPA in 2007 is neither relevant nor material to the issue presented on summary
10 judgment. To the extent the Court considers ¶7, while USAPA was founded *in part* to
11 insure that length of service was considered in any seniority integration proceeding, there
12 were many other reasons US Airways Pilots wanted to replace ALPA. For example,
13 ALPA agreed to eliminate the defined benefit retirement plan, job protections and made
14 other concessions in wages, retirement and other benefits without obtaining “snapback”
15 guarantees in the event of improved economic performance. ALPA’s governing
16 documents allowed the MEC’s to agree to changes affecting pilot working conditions
17 without requiring pilot ratification. And the ALPA national organization was not
18 controlled by or answerable to the US Airways pilots. The ALPA seniority proposal was
19 just the final straw and the catalyst for representational change. Bradford Dep., 48:6-10;
20 83:21-84:3 (Ex. “3” to Szymanski Decl.).

21 8. The Memorandum of Understanding regarding Contingent Collective
22 Bargaining Agreement (“MOU”) is silent as to what seniority list or lists will be used to
23 determine the relative ordering of US Airways pilots in the McCaskill-Bond seniority-
24 integration process with the American Airlines (“American”) pilots.

25 Disputed in part. The MOU provides that the parties thereto agree to “[a] seniority
26 integration process consistent with McCaskill–Bond”. The process is a contractual one,
27 devised by the four parties to the MOU as expressly authorized by the statute, which
28 provides, in relevant part: “the requirements of any collective bargaining agreement that
may be applicable to the terms of integration involving covered employees of a covered

1
2 air carrier shall not be affected by the requirements of this section as to the employees
3 covered by that agreement, so long as those provisions allow for the protections afforded
4 by sections 3 and 13 of the Allegheny-Mohawk provisions.” 49 U.S.C. §42112, Note
5 117(a)(2). Section 3 of the labor protective provisions imposed by the Civil Aeronautics
6 Board in the Allegheny-Mohawk merger further provides for agreement through
7 collective bargaining between the carriers and the representatives of the employees
8 affected. 59 C.A.B. 45.

9 9. The MOU is silent as to who will represent the US Airways pilots in the
10 McCaskill-Bond seniority integration process.

11 Disputed. The MOU explicitly provides that the parties to the Agreement are
12 USAPA, US Airways, American, and APA. MOU Attachment C explicitly refers to
13 APA and USAPA and no other parties as the participants in the seniority integration
14 process. MOU, Attachment C (US Airways Ex. “I”).

15 10. The MOU mandates that the integrated seniority list meet certain criteria
16 that are related to limiting operational and financial hardships on the post-merger airline
17 as a result of seniority integration.

18 Disputed. Paragraph 10.b of the MOU speaks for itself. MOU, ¶10.b (US
19 Airways Ex. “I”).

20 11. The MOU expressly requires that both US Airways and American remain
21 neutral throughout the McCaskill-Bond process with respect to “the order in which pilots
22 are placed on the integrated seniority list.”

23 Admitted that ¶11 accurately quotes a portion of MOU ¶10.b.

24 12. The USAPA Board of Pilot Representatives (“BPR”) will determine
25 USAPA’s negotiating position regarding seniority integration with the American pilots
26 and this negotiating position will be advanced by USAPA’s Merger Committee during
27 the McCaskill-Bond seniority-integration process.

28 Admitted that the USAPA BPR will determine USAPA’s position regarding
seniority integration throughout the seniority integration process set forth in ¶10 of the

1 MOU, and that the Merger Committee will advance the position(s) as determined by the
2 BPR. Disputed that the process is anything other than a collectively bargained process
3 set forth in the MOU that is consistent with McCaskill-Bond. It is a contractual seniority
4 integration process. See USAPA’s Response to ¶8, *supra*. See MOU, ¶10 (US Airways
5 Ex. “I”); Hummel Dep., 12:19-13:7 (Ex.”4” to Szymanski Decl.); Pauley Dep., 19:2-
6 19:14, 53:24-54:8 (Ex. “5” to Szymanski Decl.).
7

8 13. The USAPA BPR is made up of a majority of East Pilots, and this majority
9 will support a seniority list based upon date of hire (with some conditions and
10 restrictions), and will oppose presentation of the Nicolau Award during the seniority-
11 integration process.

12 Admitted that a majority of the USAPA BPR is made up of East Pilots and that
13 this proportional majority will likely oppose presentation of the unmodified Nicolau
14 Award during the seniority-integration process set forth in ¶10 of the MOU. Otherwise
15 disputed because it is pure speculation as to what proposal will be recommended to the
16 BPR by the Merger Committee or what proposal the BPR will support. The USAPA
17 Merger Committee has and will continue to analyze multiple seniority integration
18 methodologies. The USAPA Merger Committee believes its position vis á vis APA is
19 stronger if it is not committed to one inflexible proposal. Pauley trial testimony, pp. 406-
20 408 (Ex. “9” to Szymanski Decl.); Davison trial testimony, pp.414-415 (Ex. “10” to
21 Szymanski Decl.); Bradford Dep., 54:3-54:18 (Ex. “3” to Szymanski Decl.), and Hummel
22 Dep., 19:3-20:15; 106:10-107:9 (Ex. “4” to Szymanski Decl.).

23 14. Following this Court’s decision in *Addington II*, both Captain Hummel and
24 Mr. Bradford stated that USAPA was under no legal obligation to consider implementing
25 the Nicolau Award.

26 Disputed, except admitted that both Captain Hummel and Mr. Bradford oppose
27 implementation of the unmodified Nicolau Award, and that following the decision issued
28 in *US Airways v Addington*, 2:10-cv-01570-ROS, in October, 2012, stated that USAPA
was free to depart from the Nicolau Award in negotiations with US Airways within the

1 boundaries of the duty of fair representation. Bradford Dep., 47:3-12; 108:22-109:9;
2 125:18-22 (Ex. “3” to Szymanski Decl.); Hummel Dep., 152:22-153:13 (Ex. “4” to
3 Szymanski Decl.).
4

5 15. The USAPA Merger Committee, including the two West Pilot members,
6 cannot deviate from the negotiating position approved by the USAPA BPR or negotiate
7 contrary to USAPA’s Constitution.

8 Admitted that the USAPA Merger Committee is bound to follow the direction of
9 the USAPA BPR and USAPA’s Constitution, and aver that the objective stated in the
10 USAPA Constitution concerning date of hire principles and respect for pre-merger career
11 expectations is not a straightjacket that prevents the Merger Committee and the BPR
12 from considering a wide range of alternative integration methodologies. In fact, the BPR
13 previously authorized the settlement Ad Hoc Committee to negotiate with the Plaintiffs in
14 this case without any such restriction. Bradford Dep. 41:21-42:15 (Ex. “3” to Szymanski
15 Decl.); Hummel Dep., 18:13-18:21; 25:4-16 (Ex. “4” to Szymanski Decl.); Pauley Dep.,
16 49:14-22; 51:25-52:5 (Ex. “5” to Szymanski Decl.); Crimi Dep., 19:2-20:3 (Ex. “6” to
17 Szymanski Decl.); DiOrio Dep., 46:1-25 (Ex. “7” to Szymanski Decl.); Pauley Trial
18 testimony, 375 (Ex. “9” to Szymanski Decl.); Hummel Declaration dated November 13,
19 2013 (“Hummel MSJ Decl.”), ¶17.

20 16. The USAPA Constitution requires seniority integration based upon date of
21 hire (with conditions and restrictions) and, therefore, prohibits the USAPA Merger
22 Committee from advocating for the Nicolau Award as the proposed US Airways pilot
23 seniority list during the McCaskill-Bond process because the Nicolau Award is not a
24 date-of-hire seniority list.

25 Disputed. As set forth in response to the previous alleged undisputed fact (¶15),
26 the USAPA Constitution does not require seniority integration based on date-of-hire and
27 does not prohibit the Merger Committee or the BPR from considering a wide range of
28 seniority integration methodologies. Several USAPA officers and representatives have
indicated that they oppose the unmodified Nicolau Award because it does not represent

1
2 the best interests of the entire pilot group and it is unlikely that USAPA would ever
3 approve the use of the unmodified Nicolau Award as a starting point for any pilot
4 integration process. Bradford Dep. 41:21-42:15 (Ex. “3” to Szymanski Decl.); Hummel
5 Dep., 18:13-18:21; 25:4-16 (Ex. “4” to Szymanski Decl.); Pauley Dep., 49:14-22; 51:25-
6 52:5 (Ex. “5” to Szymanski Decl.); Crimi Dep., 19:2-20:3 (Ex. “6” to Szymanski Decl.);
7 DiOrio Dep., 46:1-25 (Ex. “7” to Szymanski Decl.); Hummel MSJ Decl. ¶13-15.

8 17. If the West Pilots are able to participate through separate representation of
9 their own choosing in the McCaskill-Bond seniority-integration process, they will argue
10 that the Nicolau Award — unmodified — should be the sole basis to determine the
11 relative seniority of US Airways pilots.

12 Admitted.

13 18. USAPA believes that participation by the West Pilots in the McCaskill-
14 Bond seniority-integration process, through counsel of their own choosing, will
15 undermine USAPA’s status as the collective bargaining agent for US Airways pilots, and
16 USAPA opposes separate participation by the West Pilots on this basis.

17 Admitted that USAPA opposes separate participation in the seniority integration
18 process set forth in the MOU not only by any separate group of West Pilots but also by
19 any other subgroup of US Airways Pilots. West Pilots have proportionate representation
20 on the Merger Committee and are currently participating through the internal union
21 structure. The basis for opposing separate representation is not limited to the reason
22 stated by US Airways and includes the fact that allowing separate representation will
23 make it much more difficult, if not impossible for the collective bargaining parties to
24 reach agreement on a fair and equitable seniority list that would be ratified by US
25 Airways pilots and undermines the strength of USAPA in dealing with the much larger
26 APA pilot group. Separate representation was also unanimously opposed by all members
27 of the Merger Committee including the West Pilots serving on the six member Merger
28 Committee. Bradford Dep., 38:7-38:25 (Ex. “3” to Szymanski Decl.); Hummel Dep.,
8:17-13:17 (Ex. “4” to Szymanski Decl.); Pauley Dep., 18:18-19:6 (Ex. “5” to Szymanski

1 Decl.); Crimi Dep., 99:23-100:4 (Ex. “6” to Szymanski Decl.); DiOrio Dep., 51:14-
2 51:23 (Ex. “7” to Szymanski Decl.); Pauley Trial testimony, 382:18-23 (Ex. “9” to
3 Szymanski Decl.); Hummel MSJ Decl. ¶¶16-18.

4
5 19. Shortly after the merger between US Airways and American is completed,
6 a new collective bargaining agent will be certified by the National Mediation Board for
7 all pilots of the merged carrier and it is expected that APA — not USAPA — will be
8 certified through this process given the greater number of pilots currently represented by
9 APA at American.

10 Disputed. Any prediction concerning a possible future decision of the National
11 Mediation Board (“NMB”) is purely speculative.

12 **ADDITIONAL UNDISPUTED FACTS**

13 20. USAPA has never proposed a strict date-of-hire seniority system. Pauley
14 Dep., 94:23-95:8 (Ex. “5” to Szymanski Decl.).

15 21. The USAPA Constitution does not require a date-of hire seniority
16 integration. USAPA Constitution and Bylaws (US Airways Ex. “A” to Szymanski
17 Decl.); Hummel Dep., 24:15-20 (Ex. “4” to Szymanski Decl.); DiOrio Dep., 46:1-12 (Ex.
18 “7” to Szymanski Decl.); Hummel MSJ Decl. ¶¶13-15.

19 22. The USAPA Constitution gives the organization, the BPR and the Merger
20 Committee wide latitude in proposing and accepting various methods of seniority
21 integration. USAPA Constitution and Bylaws (Ex. “8” to Szymanski Decl.); Pauley
22 Dep., 53:24-56:1, 92:6-15 (Ex. “5” to Szymanski Decl.); Hummel MSJ Decl. ¶13.

23 23. USAPA has fully and fairly represented all US Airways pilots with respect
24 to MOU negotiations, and other issues. Hummel Dep., 158:24-159:25 (Ex. “4” to
25 Szymanski Decl.).

26 24. The members of the USAPA Merger Committee fairly represent a cross-
27 section of US Airways pilots with respect to seniority, status, and domicile and are highly
28 knowledgeable and experienced. Hummel Dep., 20:5-15; 107:1-9 (Ex. “4” to Szymanski
Decl.); Pauley Dep., 18:18-19:1 (Ex. “5” to Szymanski Decl.); Hummel MSJ Decl. ¶18.

1
2 25. Approximately one-third of US Airways pilots are former America West
3 pilots who are assigned to the Phoenix Domicile. Hummel Dep., 107:1-9 (Ex. “4” to
4 Szymanski Decl.).

5 26. One-third of the members of the Merger Committee are West Pilots based
6 in Phoenix, one of whom was the chairman of the ALPA America West merger
7 committee and proponent of the Nicolau award. Bradford Dep., 55:1-3, 23-24 (Ex. “3” to
8 Szymanski Decl.); Hummel Dep., 108:1-109:9 (Ex. “4” to Szymanski Decl.); Hummel
9 MSJ Decl. ¶6.

10 27. The members of the Merger Committee, including Ken Stravers and Rocky
11 Calveri, the two West Pilots, unanimously oppose allowing any group of US Airways
12 pilots to separately participate in the seniority integration proceeding. Hummel Dep.,
13 109:5-20 (Ex. “4” to Szymanski Decl.); Pauley Trial testimony, 382:18-23 (Ex. “9” to
14 Szymanski Decl.).

15 28. The only disagreement between USAPA and the West Pilots is over the
16 unmodified Nicolau Award. Hummel MSJ Decl. ¶19.

17 29. USAPA has made numerous attempts to discuss resolution of the seniority
18 issue with the West Pilots and their representatives. In each case, the West Pilots and
19 their representatives have insisted on the unmodified Nicolau list and have refused to
20 discuss any other resolution. Hummel Dep., 108:14-110:1 (Ex. “4” to Szymanski Decl.);
21 Hummel MSJ Decl. ¶16. See also Doc 206-1, Stipulations and Undisputed Facts, ¶52.

22 30. The status quo at US Airways with respect to seniority is a two list system
23 with the entire pilot group represented by USAPA. Pauley Trial testimony, p 372 (Ex.
24 “9” to Szymanski Decl.).

25 31. The Merger Committee intends to present the two existing seniority lists
26 that comprise the status quo to APA along with additional information for each pilot as
27 the data on which any integration proposal will be based. Pauley trial testimony, p.
28 372:16-24 (Ex. “9” to Szymanski Decl.).

32. Starting with the existing two seniority lists gives the Merger Committee

1 and USAPA more options concerning the proposals that will best serve the interests of all
2 US Airways pilots in the seniority integration proceeding with APA. Pauley Trial
3 testimony, pp. 406:23-407 (Ex. “9” to Szymanski Decl.).
4

5 33. The Merger Committee is committed to representing the entire US Airways
6 pilot group effectively and fairly. Pauley Trial testimony, p. 383:15-23 (Ex. “9” to
7 Szymanski Decl.); Hummel MSJ Decl. ¶¶18-19.

8 34. USAPA and its officers understand the obligations imposed by the duty of
9 fair representation and are committed to representing the entire pilot group effectively
10 and fairly. Hummel MSJ Decl., ¶¶18-19.

11
12 Respectfully submitted this 13th day of November 2013.

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2 **CERTIFICATE OF SERVICE**

3 I hereby certify that on November 13, 2013, I electronically transmitted the
4 attached document to the Clerk's Office using the CM/ECF System for filing and
5 transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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