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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

REPLY BRIEF IN SUPPORT OF INTERVENOR US AIRWAYS, INC.'S MOTION TO CORRECT COURT'S JUDGMENT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 60(A) AND TO MODIFY COURT'S ORDER PURSUANT TO RULES 52(B) AND 59(E)

ARGUMENT

The US Airline Pilots Association ("USAPA") and Plaintiffs affirmatively support all of the relief requested in US Airways, Inc.'s ("US Airways") motion – namely, that this Court's January 10, 2014 Judgment (Doc. No. 299) be corrected to "include and describe those whom the court finds to be class members," as required by Federal Rule of Civil Procedure 23(c)(3)(A), and that this Court's January 10, 2014 Order (Doc. No. 298) (the "Order") be modified by deleting Footnote 15. (*See* Doc. No. 301 at 1:27-2:3; Doc. No. 302 at 1:19-25.) As US Airways established in its motion, the deletion of Footnote 15 is necessary so that the Order cannot be construed to prohibit the Allied Pilots Association ("APA") from creating and delegating authority to separate merger committees to represent the disparate seniority interests of all pre-merger US Airways and pre-merger American pilots in formulating an integrated seniority list (including, if necessary, through arbitration) – as the APA intends, and as is consistent with normal practice in the airline industry under the McCaskill-Bond statute and duty of fair representation principles. (*See* Doc. No. 300 at 4:21-9:6.)

While acknowledging that Footnote 15 should be deleted, USAPA goes much further, inappropriately trying to convert its response to US Airways' motion into a motion of its own that would eviscerate this Court's ruling. USAPA insists that it cannot be precluded from representing all US Airways pilots throughout the entire McCaskill-Bond process – including during the period after it is decertified by the National Mediation Board ("NMB"). (*See* Doc. No. 301 at 2:5-24.) And to achieve its desired wholesale revision of this Court's decision, USAPA proposes to delete the following statements from the Order:

1. "It is crucial to note the terms of the MOU state that if arbitration pursuant to McCaskill-Bond is needed, it will not occur until after a new collective bargaining representative for all pilots is certified . . . . In other words, before a seniority arbitration can occur, a new certified representative will be in place for all the pilots." (Doc. 298 at 5 n 4.)

2. Footnote 13, which states in full: "Footnote 4 explains the Court's understanding of the timing issue." (*Id*. at 20 n 13.)

3. "It is almost certain USAPA will lose that election. Once that happens, USAPA will no longer be entitled to participate in the seniority integration proceedings." (*Id*. at 20:21-23.)

4. "And when USAPA is no longer the certified representative, it must immediately stop participating in the seniority integration." (*Id*. at 21:11-12.)

(*See* Doc. No. 301 at 4:21-5:9.)

Aside from being an improper request for relief made in a response to US Airways' motion, the purported reason for USAPA's plea – that the four statements it does not like are mere "dicta" – is incorrect. The statements challenged by USAPA flow inexorably from this Court's ruling, ***as urged by USAPA*****,** that only certified collective bargaining representatives may participate in the McCaskill-Bond seniority-integration process, thereby precluding separate representation in that process for the West Pilots. Throughout this litigation, USAPA has repeatedly so argued to this Court. (*See* Doc. No. 95 at 1:16-11:6; Doc. No. 108 at 1:5-8:6; Doc No. 211 at 11:2-15:3; Doc. No. 270 at 2:1-5:7, *see especially* at 4:13-17 ("Section 3 [of the *Allegheny-Mohawk* LPPs] expressly provides for agreement through collective bargaining between the carriers and the representatives of the employees affected. ***The only parties to the collective bargaining process are the certified union and the carrier.*** There are no outside groups or employees permitted in that process.") (citation omitted) (emphasis added), and at 5:4-7 ("the language of both the statute and Sections 3 and 13 are clear that the bargaining representative ***is the only participant on behalf of employees*** within the class or craft it represents") (emphasis added).) On three separate occasions, US Airways noted the incongruity in USAPA's position, given that "it is a certainty that, by the time the McCaskill-Bond arbitration begins, the APA will be certified to represent all post-merger pilots of the combined airlines and USAPA will no longer be the RLA collective-bargaining representative for any US Airways pilots." (Doc. No. 110 at 5-6 n.5; *see also* Doc. No. 212 at 7 n.6; Doc.

No. 277 at 1 n.1.) Undeterred, USAPA persisted in making its argument, ignoring the logical consequence that, if its argument succeeded, USAPA would lose ***its*** right to participate ***before*** the seniority-integration process was completed in accordance with the schedule prescribed by the MOU.

The four statements USAPA wants this Court to delete merely clarify the effect of USAPA's own argument. Having persuaded this Court that the West Pilots have no right to participate in the McCaskill-Bond process because allowing them to do so would interfere with USAPA's status as the legacy US Airways pilots' currently-certified collective bargaining representative, USAPA cannot be heard to complain about this Court's ruling that USAPA has no right to participate once the APA, and not USAPA, is the NMB-certified representative for those pilots. *See, generally, United States v. Johnson*, 256 F.3d 895, 915 (9th Cir. 2001) (en banc) (a holding is not dicta "where the court heard . . . argument from both parties, and specifically ruled on the issue"). It was well within this Court's authority to clarify the application of the legal principle that only collective bargaining representatives have the right to participate in the seniority-integration process and that, as a result, "when USAPA is no longer the certified representative, ***it must immediately stop participating.***" (Doc. No. 298 at 21:11-12 (emphasis added).)

USAPA publicly declared its intention to ignore this Court's directive almost immediately after it was issued and has continued to insist that it plans to fully participate in the McCaskill-Bond process even after its decertification:

- USAPA made a number of public pronouncements that it viewed these statements by the Court as "dicta" and that USAPA would continue to represent the legacy US Airways pilots throughout the entirety of the seniority-integration process, both before and after its decertification. (*See* Doc. No. 301 at 2:5-24.)

- In negotiations with APA and the Company pursuant to Paragraph 10 of the MOU for a protocol agreement regarding seniority integration, the initial USAPA proposal, dated January 28, 2014, expressly provided that USAPA's designated Merger Committee would "continue in existence"

even after decertification and, along with the APA Merger Committee, would be a full participant throughout the McCaskill-Bond process. (Declaration Of Robert A. Siegel ("Siegel Decl."), filed concurrently herewith, ¶ 2 & Ex. A (at ¶ 2(b) of attachment to Ex. A).) Later in the negotiations, USAPA proposed that "[f]urther elements of the seniority integration protocol may be established by written agreement ***of the parties***." (*Id.* ¶ 3 & Ex. B (at ¶ 18 of attachments to Ex. B) (emphasis added).) This proposal would have given USAPA veto power over any changes to the seniority-integration process that APA might deem appropriate after APA was certified as the single collective bargaining representative, and was thus plainly inconsistent with this Court's Order. In these negotiations, which ultimately broke down, USAPA's counsel stated that "USAPA will not waive its position on these issues [i.e., "a West merger Committee and any changes to the Protocol Agreement"], but we would agree to leave any dispute until when/if APA is certified." (*Id.* ¶ 4 & Ex. C.)

- Even though the time period under Paragraph 10(a) of the MOU for the parties to select a panel of three seniority-integration arbitrators is March 9-24, 2014, USAPA unilaterally filed a request with the NMB on February 20 seeking the selection of one arbitrator from a panel provided by the NMB. (*Id.* ¶ 5 & Ex. D.) This marked USAPA's first attempt to circumvent the provisions of the MOU mandating that the seniority-integration arbitration will not take place until after USAPA is decertified and a joint collective bargaining agreement has been negotiated. Both US Airways and APA have opposed USAPA's request before the NMB and have filed grievances under the MOU as well. (*See id.* ¶¶ 6-7 & Exs. E-F.)

- On February 27, 2014, USAPA filed a lawsuit in the District of Columbia seeking to invalidate all of the MOU's seniority-integration provisions on the grounds that the MOU contains no procedure for the selection of arbitrators and there is no signed Protocol Agreement. (*Id.* ¶ 8 & Ex. G.)

Consistent with this Court's observation, "USAPA [has] change[d] its position when it needs to do so to fit its hard and unyielding view on seniority." (Doc. No. 298 at 20:23-21:1.) Although it obviously does not agree with this Court's ruling that it has no right to participate in the seniority-integration process once it is decertified as the collective bargaining representative for the pre-merger US Airways pilots, USAPA should be expected to abide by this Court's Order or, alternatively, seek relief from that Order with a proper motion of its own. USAPA's request to delete the additional statements

from this Court's Order will only facilitate further contumacious behavior on its part. The request should be denied.

CONCLUSION

For the foregoing reasons, US Airways respectfully requests that the Court grant its motion to correct the Court's Judgment pursuant to Rule 60(a) and to modify the Court's Order pursuant to Rules 52(b) and 59(e) by deleting Footnote 15 – and only Footnote 15.

Dated: March 3, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2014, I caused to be electronically transmitted the attached Reply Brief In Support Of Intervenor US Airways, Inc.'s Motion To Correct Court's Judgment Pursuant To Federal Rule Of Civil Procedure 60(a) And To Modify Court's Order Pursuant To Rules 52(b) And 59(e) to the Clerk's office using the CM/ECF System for filing and transmittal.

/s/ Robert A. Siegel
Robert A. Siegel

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