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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

DON ADDINGTON, ET AL.,) No. CV-1300471-PHX-ROS
PLAINTIFFS,)
v)
US AIRLINE PILOTS ASS'N, ET AL.,)
DEFENDANTS.)

DEPOSITION OF JAY MORGAN
(TAKEN by PLAINTIFFS)
CHARLOTTE, NORTH CAROLINA
SEPTEMBER 19, 2013

REPORTED BY: Meredith R. Johnson
Court Reporter
Notary Public

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A P P E A R A N C E S

For the Plaintiff:

ANDREW S. JACOB, ESQ.
MARTY HARPER, ESQ.
Polsinelli
One East Washington Street
Suite 1200
Phoenix, AZ 85004
602-650-2000
602-264-7033 Fax
ajacob@polsinelli.com

For the Defendant:

BRIAN J. O'DWYER, ESQ.
O'Dwyer & Bernstein
52 Duane Street
5th Floor
New York, New York 10007
212-571-7100
212-571-7124 Fax
bodwyer@odblaw.com

1 Deposition of Jay Morgan, taken by the plaintiffs at
2 Huseby, Inc., 1230 West Morehead Street, Charlotte, North
3 Carolina, on the 19th day of September, 2013, at 9:01 a.m.,
4 before Meredith R. Johnson, Notary Public.

5

6

C O N T E N T S

7

The Witness: JAY MORGAN

8

Examination By Mr. Jacob4

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I N D E X of the E X H I B I T S

11

NUMBER	DESCRIPTION	PAGE
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12

Exhibit 1100	E-mail dated 1/23/13	21
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1 P R O C E E D I N G S

2 Whereupon,

3 JAY MORGAN,

4 having been duly sworn,

5 was examined and testified as follows:

6 EXAMINATION BY COUNSEL FOR PLAINTIFFS

7 BY MR. JACOB:

8 Q Good morning, Jay.

9 A Good morning.

10 Q I just want to say for the record that we've
11 exchanged our first names. My name's Andy Jacob. I'm
12 one of the attorneys representing the plaintiffs in
13 this lawsuit. And we're taking your deposition today.

14 Could you state your full name for the
15 record, please?

16 A It's Jay, just a middle initial, that is the
17 full name, Morgan.

18 Q Okay. I understand you're the chairman of
19 the ballot certification committee of USAPA. Is that
20 correct?

21 A Correct.

22 Q Is that the first time you've been in a
23 position on a committee or officer of a union?

24 A Yes.

25 Q Okay. So just to be sure. When you were a

1 member of ALPA, you didn't hold any office or anything
2 like that?

3 A No.

4 Q What are the duties that you have as the
5 chairman of the ballot certification?

6 A We run the technical aspects and as well as,
7 I guess, the legal and maintain the rules for both the
8 elections and referendums.

9 Q And what fraction of your time is spent doing
10 that?

11 A It depends on -- it depends on the day and
12 what we have going on. There's times when we have
13 multiple elections going on, which I'll work 12,
14 14 hours a day. And then there's, like, this month I
15 haven't dealt with a single issue other than the legal
16 aspects that we're dealing with now. So it just
17 literally depends on if we have an election or
18 referendum.

19 Q Does your committee play a role in reporting
20 the results of elections?

21 A We do. We do. We have the interface with
22 the system. So we will officiate the election. We
23 have the results, and then we send them to COM to
24 distribute.

25 Q When you say "the system," what are you

1 referring to?

2 A We use a third party called BallotPoint.
3 They maintain the servers that we use for members that
4 can either call in and use a voice response system or
5 they can go online to vote in the election or the
6 referendum.

7 Q Do you have access to all the information
8 that BallotPoint has?

9 A Oh, no, not even close.

10 Q What is the -- what are the categories of the
11 voting result information that you get from
12 BallotPoint?

13 A We have -- when we look at it, our rosters
14 have attributes. And an attribute would be a domicile,
15 a position, a -- let's see. Domicile, essentially
16 seat, and, oh, what are the others? I would have to
17 look at the roster. But the only one we use is
18 domicile because we don't differentiate by seats when
19 we vote. I just can't recall the other attributes.

20 Q Do you have access to information such as
21 whether a pilot casts a vote or not?

22 A Absolutely not.

23 Q And you obviously don't get what the pilot's
24 vote was.

25 A No.

1 Q But you do get on a routine basis with every
2 vote -- that's what I mean by "routine basis." With
3 every vote does BallotPoint report to you how many
4 pilots cast votes from each of the domiciles?

5 A Yes. When we pull the results, yes, that's
6 one of the attributes.

7 Q And you get a breakdown of what the votes
8 were from the domicile?

9 A Correct.

10 Q But you don't get a breakdown as to how the
11 captains voted compared to the first officers?

12 A That might be an attribute that's in there.
13 So we might be able to look at that, but I've never
14 looked at it.

15 Q What are the guidelines that you -- strike
16 that, please.

17 Are there guidelines that you operate by that
18 set the rules for how you report the results of a vote?

19 A Yes and no. There are guidelines. As for
20 the Department of Labor it is required to be a secret
21 ballot if it's a Title IV election. Now, if it's a
22 referendum, an internal vote, then there are no
23 guidelines.

24 Q So there's a guideline from the Department of
25 Labor. But as far as the union goes, are there

1 guidelines as to what form the reporting that comes out
2 of your committee would be in?

3 A No.

4 Q Okay. I notice that you shook your head.
5 And when we're taking a deposition, you then verbalized
6 an answer. That's what we have to do.

7 A Okay. Yeah. No.

8 Q Are there guidelines that tell you when you
9 report the vote that you state the question that was
10 voted on at the time that you report the vote?

11 A No, no guidelines.

12 Q When you state -- do you state the question
13 that's reported on when you report a vote?

14 A We -- yes. And the way we do it, it's a
15 direct copy and paste into our -- the COM piece that we
16 use because we want the pilots to see the results as
17 we're seeing them.

18 Q I'm aware that when there are elections of
19 officers that apply to the entire union that you don't
20 break the reported vote down by domicile; is that
21 correct?

22 A Correct.

23 Q Is there a written policy that tells you to
24 do that or not do that?

25 A No. There's Department of Labor regulations

1 that do not allow us to compromise the secret ballot.
2 So in order to do that, we don't know the results of
3 the vote obviously beforehand. So we make a policy
4 that we're not going to. And the reason being, we've
5 got some small domiciles. If you have somebody running
6 that everyone likes, somebody else running that people
7 don't like, then you could have an issue. In other
8 words, if 100 percent of your domicile votes for this
9 person, then you have just given away everybody's --
10 how they voted. You've compromised their secret
11 ballot.

12 Q So it's a Department of Labor rule that you
13 don't break down a unionwide election vote by
14 geographic areas?

15 A No. It's not a Department of Labor rule.

16 Q It's an internal rule of the union that you
17 don't do that.

18 A To comply with the Department of Labor
19 regulations, correct.

20 Q Okay. Could you comply with the Department
21 of Labor regulations and report the vote results for
22 the president by domicile?

23 A Could we comply in another manner?
24 Potentially. But I would have to -- that's not
25 something I could answer on the spot. We'd have to

1 talk about it. We'd have to consult with the DOL.

2 Q How long have you been the chairman of the
3 ballot certification?

4 A I guess a little over two years.

5 Q And in your role did you look over past
6 reports of elections for the union?

7 A For -- no.

8 Q Okay. Are you aware how the vote was
9 reported in 2008 or 2009 or 2010?

10 A Going -- you know, I've looked back through
11 looking at other data but not necessarily how it was
12 reported. In fact, I don't even have access to how it
13 was reported. All I have is data that I look at.

14 Q When I say "reported," I mean reported to the
15 membership of the union.

16 A I don't even have those reports. I wasn't
17 chairman. I don't write the reports.

18 Q Okay. When did you become a member of USAPA?

19 A I believe right after it started. So I can't
20 answer the question exactly.

21 Q It started -- on April 18th of 2008 is when
22 it took over as the representative.

23 A Okay.

24 Q And you became a member on or about that
25 date?

1 A It would have been after that date by the
2 time I got my paperwork in.

3 Q What? Do you think you got it in by the end
4 of April?

5 A I don't recall.

6 Q Were you an active pilot in April of 2008?

7 A Yes, I was.

8 Q Okay. Were you on furlough prior to
9 April 2008?

10 A I was.

11 Q When did you get recalled?

12 A I believe that would have been January 2008
13 or -- I don't recall if it was 2008 or 2007.

14 Q Okay. Were you an active pilot at the time
15 that the Nicolau Award was announced?

16 A I believe so, yes.

17 Q Were you involved at all in the formation of
18 USAPA or the activities to get USAPA elected to replace
19 ALPA?

20 A No.

21 Q As far as you know, have any of the national
22 officer election results been reported to the
23 membership by domicile?

24 A As far as I know, no.

25 Q As far as you know, prior to 2013, have any

1 voting results of the members of USAPA been reported by
2 domicile?

3 A Yes.

4 Q Which ones?

5 A I ran the pension investigation committee,
6 the third one. That was the first referendum that I
7 ran as acting chairman at that point because the
8 chairman had already resigned. So that one was
9 definitely reported like I would have reported any
10 other one.

11 Q And when did that report come out
12 approximately?

13 A I believe that was the end of 2010.

14 Q And who decided to report that vote by
15 domicile?

16 A Well, it probably would have been myself in
17 there. I just -- I copy and paste the results and
18 write the brief COM piece and send it to
19 communications.

20 Q Do you copy and paste the results when you
21 get a national officer result?

22 A I do.

23 Q When you get the national officer results,
24 does it come to you where it is broken down by
25 domicile?

1 A Yes.

2 Q So when you report the national officer
3 results, do you report by domicile?

4 A No. We report total.

5 Q So why did you report this one by domicile
6 but not the national when, if you were to cut and
7 paste, you would report both that way?

8 A Well, we can cut and paste in different
9 manners. I can look at total. I can look by domicile.
10 And the referendum, like I said, the last one I did, we
11 looked by domicile, just a quick copy paste, and I send
12 to COM.

13 The national officer election, we know that
14 we've got a -- we've got federal regs that we need to
15 comply with. So we keep it just total.

16 Q Do the federal regs say that you have to keep
17 it by total?

18 A No. They specify the secret ballot
19 requirement.

20 Q Okay. Do you believe that you don't have a
21 secret ballot if you report it by domicile?

22 A Potentially do not have a secret ballot,
23 depending on the results.

24 Q Does the membership know that that's not
25 going to be a secret ballot when they vote on a

1 referendum?

2 A I wouldn't know what they know.

3 Q Do you inform the membership before they vote
4 on a referendum that it's not going to be a secret
5 ballot?

6 A Well, we're still -- I would say no because
7 to me it's been a nonfactor.

8 Q Does the USAPA constitution allow for the
9 membership to vote without a secret ballot?

10 A No. Let me understand the question better.
11 Does it allow them -- say that one more time.

12 Q Does the USAPA constitution require a secret
13 ballot vote?

14 A No, I don't -- I don't believe it addresses
15 it with referendums.

16 Q It would be your responsibility, though, as
17 the chairman of the ballot committee to conduct
18 elections consistent with the USAPA constitution; is
19 that correct?

20 A If it's a -- yes.

21 Q And if the -- does the USAPA constitution
22 have a separate provision talking about voting on
23 referendum?

24 A I don't recall. I'd have to look at it. We
25 don't do many referendums.

1 Q Would you be concerned as to how you've been
2 reporting the results of referendum if the USAPA
3 constitution required secret ballots for referendum?

4 A Not in this case, no.

5 Q Which case are you talking about?

6 A You're talking -- we had the pension
7 investigation. And knowing the results, absolutely
8 not. And I don't believe there is a secret ballot
9 requirement.

10 Q Right. But if there was, would you be
11 concerned that you violated the secret ballot
12 requirement if you reported the pension referendum by
13 domicile?

14 A If I -- definitely. If I made a mistake, I
15 would always be concerned.

16 Q Okay. Did anybody instruct you to report the
17 pension referendum by domicile?

18 A No.

19 Q You said that was the third vote of the
20 pension referendum issue; is that correct?

21 A Yes.

22 Q Okay. Were the first two votes on pension
23 referendum issues reported by domicile?

24 A That, I don't know. I don't have the
25 communications pieces.

1 Q Did you look back at the time you decided to
2 report that by domicile to see if the others had been
3 reported that way?

4 A No.

5 Q Would you be concerned if the others hadn't
6 been reported that way and the first one that was was
7 the one that you handled?

8 A No. We ran a -- I believe it was a
9 Title IV election concurrent with a referendum. And
10 the feedback I got from the BPR is we want the results.
11 I believe -- I don't know if it was the previous
12 chairman, but I believe they reported as total. And
13 the feedback we got was we want it by domicile. We
14 need to know how to represent our members. So the
15 first one I ran, knowing that, that they wanted them by
16 domicile, I reported it by domicile.

17 Q So you got that feedback before you reported
18 the election that was under your coverage?

19 A The pension investigation, yes.

20 Q Did you get that feedback in a written form?

21 A I don't believe so. You know what? I don't
22 recall.

23 Q But you don't have any document that's in
24 your file that you know of that tells you to report a
25 referendum by domicile?

1 A No.

2 Q Before the referendum on the MOU, was there
3 information that your committee provided to the
4 membership on that vote?

5 A The only thing -- let me -- we sent out the
6 voting material, what we call the voting notice and
7 instructions. And I do not recall if we enclosed the
8 MOU or if that was sent separately. I believe that was
9 sent separately. So I don't recall specifically.

10 Q Did you conduct the vote as far as how the
11 pilots were to vote in the same way that you conduct a
12 vote for union officers?

13 A Mm-hmm.

14 Q They use the same kind of call-in number?

15 A Mm-hmm.

16 Q Same kind of identification?

17 A Mm-hmm.

18 Q What was the time period for the vote? How
19 long a time was it open to vote?

20 A 21 days.

21 Q Was that the same as when you vote for
22 officers?

23 A Mm-hmm.

24 Q Were the pilots told in any way that the
25 mechanism of the referendum on the MOU was going to be

1 different than when they vote for officers?

2 A The mechanism, I would say, no, it was
3 strictly an announcement that the referendum was open
4 and instructions on how to vote.

5 Q Were the pilots told that the vote wasn't
6 going to be a secret ballot?

7 A No.

8 Q Were they told that it was a secret ballot?

9 A No.

10 Q When you vote for the president, are they
11 told it is a secret ballot?

12 A Not in our announcement.

13 Q It's just understood that it's a secret
14 ballot.

15 A Well, I don't know what they understand.

16 Q Really?

17 A Yeah. We -- no, I don't.

18 Q So you honestly think that there's pilots
19 who, when they vote with a I.D. number and things like
20 that, they think for all they know everybody knows what
21 their vote is?

22 A I would say no but I'm not willing to talk
23 about what they understand.

24 Q No. But what do you understand what you
25 think they understand?

1 A That's what I'm saying.

2 MR. O'DWYER: Objection as to form.

3 BY MR. JACOB:

4 Q Okay. So you're telling me under oath that
5 the chairman of the ballot committee has no opinion as
6 to whether the pilots believe their votes are secret
7 votes?

8 A I won't talk about what the pilots believe.
9 But I will tell you there's a system in place, we call
10 it a VIN, a voter identification number; a PIN, that we
11 do not have access to. And if they lose that VIN and
12 PIN, we still don't have access to it. We give them a
13 third set of numbers that allows them to go into the
14 system. So I would hope that they would understand
15 that we have no access to their personal information.
16 But I'm not willing to talk about what they understand.

17 Q And the referendum on the MOU was conducted
18 in the same way that you just described to me?

19 A Yes. They have the same set of credentials,
20 yes.

21 Q Okay. Who decided to report the MOU
22 referendum by domicile?

23 A It wasn't a big thought process. It would
24 have been myself, the other committee members, Wes
25 Yount, and Andy Hunt. We pulled up the results. And

1 I'm not sure if I wrote the COM piece or if one of them
2 wrote the COM piece. But we just strictly copy and
3 paste the results.

4 Q Did anybody talk to you about how to report
5 before you wrote the COM piece with the results?

6 A No.

7 Q Were you all sitting in the same room when
8 you decided to do that?

9 A Mm-hmm.

10 Q Did you have any discussion about it?

11 A No. It wasn't even a factor. It was no more
12 of a discussion than the font we used to report it. It
13 was just strictly we saw the results, a copy, a paste,
14 and send it to COM.

15 Q Did anybody talk to you prior to that time
16 about whether or not you would report the results by
17 domicile?

18 A No.

19 Q Were there any inquiries from anybody to you?

20 A You know, I'm not saying there wasn't, but I
21 don't recall. We had three elections/referendums going
22 on right there at the same time. But I don't recall
23 anything specific.

24 Q And you didn't defer to anybody else as to
25 whether that would be reported by domicile?

1 A No. And like I said, if I did, it wasn't
2 something that I would remember. And I don't see why I
3 would have.

4 (Off the Record 9:26 a.m. to 9:30 a.m.)

5 (Exhibit 1100 Marked for Identification)

6 BY MR. JACOB:

7 Q Jay, you have in front you Exhibit 1100. Do
8 you recognize that?

9 A I can't say specifically. But, yeah, I can
10 see what it is. It's an e-mail.

11 Q It's an e-mail from Steve Crimi to you?

12 A Mm-hmm.

13 Q And what is he asking you in that e-mail?

14 A "Will there be a breakdown of voter
15 participation by base and how they voted?"

16 Q And that e-mail is dated January 23, 2013?

17 A Mm-hmm.

18 Q Yes?

19 A Yes.

20 Q And what was your response to him?

21 A "We will leave it up to the NAC. We are
22 running this for them. We will have access to the
23 data. I assume it will be released. I will find out
24 more and get back to you."

25 Q Does this e-mail seem to be inconsistent with

1 the answers that you gave me earlier?

2 A Not at all.

3 Q In this e-mail are you saying that your
4 committee will decide whether to report the results by
5 base?

6 A No. I'm saying that we are running this for
7 the NAC, the Negotiating and Advisory Committee. So
8 it's up to them. They could be using this. This is
9 part of the negotiations. So if they say we don't
10 release the results, we hold onto the results for
11 whatever reason, then it's their results.

12 Q Did the NAC tell you to break down the votes
13 by base?

14 A I don't recall.

15 Q But in this e-mail am I correct that you're
16 stating that the NAC is going to decide whether you're
17 going to report the vote by base?

18 A I wouldn't say specifically, no. My point
19 was that the NAC will decide what we do with the vote.
20 So we could close the referendum, and that could be it.
21 The NAC holds onto the results. It's their results.
22 If they want to release it, they release it. If they
23 don't, they don't.

24 Q Does this e-mail say that the NAC is going to
25 decide whether there will be a breakdown of voter

1 participation by base and how they voted?

2 A I don't -- I don't read that.

3 Q Steve asked you, "Will there be a breakdown
4 of voter participation by base and how they voted." Is
5 that correct?

6 A Yes.

7 Q And you answered, "We will leave that up to
8 the NAC." Is that correct?

9 A That's correct.

10 Q Did you leave that up to the NAC?

11 A We -- yes. It was their vote. Now -- yeah,
12 we left it up to the NAC whether we were going to
13 release the results.

14 Q That's not what I asked you.

15 A Okay. What did you ask me?

16 Q I asked you, did you leave it up to the NAC
17 to decide whether there will be a breakdown of voter
18 participation by base and how they voted?

19 A No.

20 Q So what you told Steve on January 23rd turned
21 out to not be true?

22 A No, that's not a true statement. We didn't
23 have the facts at the time.

24 Q Right. It turned -- not that it was -- not
25 that you knew it was untrue on January 23rd. But on

1 January 23rd you predicted that you would leave it up
2 to the NAC to decide whether there would be a breakdown
3 of voter participation by base and how they voted.

4 A No. I'm not going to get that specific. We
5 left it up to the NAC how they were going to release
6 the results. Now, I believe I had a discussion with
7 Dean Colello at some point, I believe it was verbally,
8 saying what do you want us to do with the results. He
9 said you can release them.

10 Q Did Dean tell you to release the results by
11 base?

12 A No. He said release the results.

13 Q So no one told you to release the results by
14 base?

15 A No.

16 Q Did anyone discuss with you that it was
17 advantageous to the efforts to prevent implementation
18 of the Nicolau to release the result by base?

19 A No.

20 Q Have you ever had that discussion with
21 anybody?

22 A Never.

23 Q Did you read the pleadings that were filed in
24 this case?

25 A No.

1 Q You've not read them?

2 A No.

3 Q Did you read the order that came out from
4 Judge Silver last night?

5 A No.

6 Q Have you heard about that order?

7 A No.

8 Q Just a couple more questions and I'll be
9 done. What was the period that you were on furlough
10 for?

11 A It would have been 2002 to -- I don't recall.
12 I believe I was officially back in 2007.

13 Q And what did you do for work during that time
14 period?

15 A I flew as a captain at another airline.

16 Q Which airline?

17 A PSA.

18 Q How concerned were you in the summer of 2007
19 that you could potentially be furloughed again?

20 A Not a bit.

21 Q What was your approximate income per year as
22 a captain at PSA?

23 A I guess about 80,000.

24 Q And what's the approximate income that you
25 have per year now?

1 A Maybe about 90-.

2 Q And are you flying as a captain now or as a
3 first officer?

4 A First officer.

5 Q How did you come to be appointed the chairman
6 of the ballot certification?

7 A It's definitely not something I was seeking.
8 A friend asked if I could help on the committee. And
9 when he resigned, by default I was the only one that
10 had been working, doing this type of work with him.

11 Q And who was that friend?

12 A Dave Tobin. He started the committee.

13 Q Have you been involved in working on the
14 campaigns for any of the officers of USAPA?

15 A No.

16 Q Were you involved in the campaign to have
17 USAPA elected to replace ALPA?

18 A No.

19 MR. JACOB: Thank you very much for coming
20 in.

21 THE WITNESS: You're welcome.

22 (Signature reserved.)

23 (Whereupon, at 9:38 a.m., the taking of the
24 instant deposition ceased.)

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Signature of the Witness

SUBSCRIBED AND SWORN TO before me this _____ day of
_____, 2013.

NOTARY PUBLIC

My Commission Expires: _____

CERTIFICATE OF REPORTER

STATE OF NORTH CAROLINA)

COUNTY OF MECKLENBURG)

I, MEREDITH R. JOHNSON, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

This, the 20th day of September, 2013.



MEREDITH R. JOHNSON
Notary Public in and for
County of Mecklenburg
State of North Carolina
Notary Number 200814200186

	close 6:9	constitution	days 17:20
C	22:20	14:8,12,	dealing 5:16
call 6:4	Colello 24:7	18,21 15:3	dealt 5:15
17:6 19:9	committee	consult 10:1	Dean 24:7,
call-in	4:19,23	copy 8:15	10
17:14	5:19 8:2	12:17,20	decide 22:4,
called 6:2	12:5 14:17	13:11	16,19,25
campaign	17:3 19:5,	20:2,13	23:17 24:2
26:16	24 22:4,7	correct	decided
campaigns	26:8,12	4:20,21	12:14 16:1
26:14	communications	7:9 8:21,	19:21 20:8
captain	12:19	22 14:19	default 26:9
25:15,22	15:25	15:20	defer 20:24
26:2	compared	22:15	Department
captains	7:11	23:5,8,9	7:20,24
7:11	comply 9:18,	COUNSEL 4:6	8:25 9:12,
case 15:4,5	20,23	couple 25:8	15,18,20
24:24	13:15	coverage	depending
cast 7:4	compromise	16:18	13:23
casts 6:21	9:1	credentials	depends
categories	compromised	19:19	5:11,17
6:10	9:10	Crimi 21:11	deposition
ceased 26:24	concerned	cut 13:6,8	4:13 8:5
certification	15:1,11,15		26:24
4:19 5:5	16:5 25:18	D	differentiate
10:3 26:6	concurrent	data 10:11,	6:18
chairman	16:9	13 21:23	direct 8:15
4:18 5:5	conduct	date 10:25	discuss
10:2,17	14:17	11:1	24:16
12:7,8	17:10,11	dated 21:16	discussion
14:17	conducted	Dave 26:12	20:10,12
16:12 26:5	19:17	day 5:11,14	24:6,20
	consistent		
	14:18		

DON ADDINGTON, ET AL. vs. US AIRLINE PILOTS ASS'N, ET AL.

Jay Morgan on 09/19/2013 Index: distribute..implementation

distribute 5:24	election 5:17,22 6:5 7:21 9:13 11:22 13:13 16:9,18	facts 23:23 federal 13:14,16 feedback 16:10,13, 17,20 file 16:24 filed 24:23 find 21:23 flew 25:15 flying 26:2 font 20:12 form 8:1 16:20 19:2 formation 11:17 fraction 5:9 friend 26:8, 11 front 21:7 full 4:14, 17 furlough 11:8 25:9 furloughed 25:19	give 19:12 Good 4:8,9 guess 5:7 10:4 25:23 guideline 7:24 guidelines 7:15,17, 19,23 8:1, 8,11
document 16:23			
DOL 10:1			
domicile 6:14,15,18 7:8 8:20 9:8,22 11:23 12:2,15,25 13:3,5,9, 11,21 15:13,17, 23 16:2, 13,16,25 19:22 20:17,25	elections 5:8,13,20 8:18 10:6 14:18 elections/ referendums 20:21 enclosed 17:7 end 11:3 12:13 entire 8:19 essentially 6:15 everybody's 9:9		
domiciles 7:4 9:5			
duly 4:4			
duties 5:4			
<hr/> E <hr/>	EXAMINATION 4:6 examined 4:5 exchanged 4:11 exhibit 21:5,7	G gave 22:1 geographic 9:14	<hr/> H <hr/> handled 16:7 head 8:4 heard 25:6 hold 5:1 22:10 holds 22:21 honestly 18:18 hope 19:14 hours 5:14 Hunt 19:25
e-mail 21:10,11, 13,16,25 22:3,15,24			<hr/> I <hr/> I.D. 18:19 identification 17:16 19:10 21:5 implementation 24:17
earlier 22:1			
efforts 24:17			
elected 11:18 26:17	fact 10:12 factor 20:11		

DON ADDINGTON, ET AL. vs. US AIRLINE PILOTS ASS'N, ET AL.

Jay Morgan on 09/19/2013

Index: income..necessarily

income 25:21,24	<hr/> J <hr/>	likes 9:6	17:4
inconsistent 21:25	Jacob 4:7,11 19:3 21:6	literally 5:17	middle 4:16
inform 14:3	26:19	long 10:2 17:19	mistake 15:14
information 6:7,11,20 17:3 19:15	January 11:12 21:16 23:20,25 24:1	looked 7:14 10:10 13:11	Mm-hmm 17:13,15, 17,23 20:9 21:12,17
initial 4:16		lose 19:11	month 5:14
inquiries 20:19	Jay 4:3,8, 16 21:7	<hr/> M <hr/>	Morgan 4:3, 17
instant 26:24	Judge 25:4	made 15:14	morning 4:8, 9
instruct 15:16	<hr/> K <hr/>	maintain 5:7 6:3	MOU 17:2,8, 25 19:17, 21
instructions 17:7 18:4	kind 17:14, 16	make 9:3	multiple 5:13
interface 5:21	knew 23:25	manner 9:23	
internal 7:22 9:16	knowing 15:7 16:15	manners 13:9	
investigation 12:5 15:7 16:19	<hr/> L <hr/>	Marked 21:5	<hr/> N <hr/>
involved 11:17 26:13,16	Labor 7:20, 8:25 9:12, 15,18,21	material 17:6	NAC 21:21 22:7,12, 16,19,21, 24 23:8, 10,12,16 24:2,5
issue 5:15 9:7 15:20	lawsuit 4:13	mechanism 17:25 18:2	
issues 15:23	leave 21:21 23:7,10,16 24:1	member 5:1 10:18,24	
IV 7:21 16:9	left 23:12 24:5	members 6:3 12:1 16:14 19:24	name's 4:11 names 4:11
	legal 5:7,15	membership 10:15 11:23 13:24 14:3,9	national 12:21,23 13:2,6,13 necessarily 10:11

Negotiating 22:7	officially 25:12	period 17:18 25:9,14	9:24 13:22 25:19
negotiations 22:9	officiate 5:22	person 9:9 personal 19:15	predicted 24:1
Nicolau 11:15 24:18	online 6:5 open 17:19 18:3	piece 8:15 12:18 20:1,2,5	president 9:22 18:10
night 25:4	operate 7:17		prevent 24:17
nonfactor 14:7	opinion 19:5	pieces 15:25	previous 16:11
notice 8:4 17:6	order 9:2 25:3,6	pilot 6:21 11:6,14	prior 11:8, 25 20:15
number 17:14 18:19 19:10	<hr/> P <hr/>	pilot's 6:23	process 19:23
numbers 19:13	paperwork 11:2	pilots 7:4 8:16 17:11,24 18:5,18 19:6,8	provided 17:3
<hr/> O <hr/>	part 22:9	PIN 19:10, 12	provision 14:22
O'dwyer 19:2	participation 21:15 23:1,4,18 24:3	place 19:9	PSA 25:17, 22
oath 19:4	party 6:2	plaintiffs 4:6,12	pull 7:5
Objection 19:2	past 10:5	play 5:19	pulled 19:25
office 5:1	paste 8:15 12:17,20	pleadings 24:23	<hr/> Q <hr/>
officer 4:23 11:22 12:21,23 13:2,13 26:3,4	13:7,8,11 20:3,13	point 12:7 22:18 24:7	question 8:9,12 10:20 14:10
officers 7:11 8:19 17:12,22 18:1 26:14	pension 12:5 15:6,12, 17,20,22 16:19	policy 8:23 9:3	questions 25:8
	people 9:6	position 4:23 6:15	quick 13:11
	percent 9:8	potentially	

	referendums	10:9,12,	result 6:11
R	5:8 14:15,	13,14	12:21
	25	11:22	24:18
ran 12:5,7		12:1,9	results
16:8,15	referring	15:12,23	5:20,23
	6:1	16:3,6,12,	7:5,18
read 23:2		16,17	8:16 9:2,
24:23	regs 13:14,	20:25	21 11:22
25:1,3	16		12:1,17,
reason 9:4	regulations	reporting	20,23
22:11	8:25 9:19,	5:19 8:1	13:3,23
	21	15:2	15:2,7
recall 6:19	release	reports	16:10
11:5,13	22:10,22	10:6,16,17	19:25
14:24	23:13		represent
16:22	24:5,9,10,		20:3,5,13,
17:7,9	12,13,18	representative	16 22:4,
20:21,22		10,11,21	23:13
22:14	released	10:22	24:6,8,10,
25:11	21:23	representing	12,13
recalled	remember	4:12	role 5:19
11:11	21:2		10:5
recognize	replace	require	room 20:7
21:8	11:18	14:12	roster 6:17
record 4:10,	26:17	required	rosters 6:13
15 21:4	report 7:3,	7:20 15:3	routine 7:1,
referendum	18 8:9,10,	requirement	2
5:18 6:6	13 9:21	13:19	rule 9:12,
7:22 12:6	12:11,14	15:9,12	15,16
13:10	13:2,3,4,	reserved	rules 5:7
14:1,4,23	5,7,21	26:22	7:18
15:2,3,12,	15:16	resigned	run 5:6
17,20,23	16:2,24	12:8 26:9	running 9:5,
16:9,25	19:21	response 6:4	6 21:22
17:2,25	20:4,12,16	21:20	
18:3	22:4,17	responsibility	
19:17,22	reported	14:16	
22:20	8:13,20		

DON ADDINGTON, ET AL. vs. US AIRLINE PILOTS ASS'N, ET AL.

Jay Morgan on 09/19/2013

Index: seat..verbalized

22:6	specific	19:8,16	total 13:4,
	20:23 24:4	20:4,15	9,15,17
<hr/>			16:12
S	specifically	talking	
	21:9 22:18	14:22	true 23:21,
seat 6:16	spent 5:9	15:5,6	22
seats 6:18	spot 9:25	technical	turned
secret 7:20	started	5:6	23:20,24
9:1,10	10:19,21	telling 19:4	type 26:10
13:18,21,	26:12	tells 8:23	<hr/>
22,25	state 4:14	16:24	U
14:4,9,12	8:9,12	testified	understand
15:3,8,11	statement	4:5	4:18 14:10
18:6,8,11,	23:22	thing 17:5	18:15,23,
13 19:6	stating	things 18:19	24,25
seeking 26:7	22:16	thought	19:14,16
send 5:23	Steve 21:11	19:23	understood
12:18	23:3,20	time 4:22	18:13
13:11	strictly	5:9 8:10	union 4:23
20:14	18:3 20:2,	11:2,14	7:25 8:19
separate	13	14:11 16:1	9:16 10:6,
14:22	strike 7:15	17:18,19	15 17:12
separately	summer 25:18	20:15,22	unionwide
17:8,9	sworn 4:4	23:23	9:13
servers 6:3	system 5:22,	25:13	untrue 23:25
set 7:18	25 6:4	times 5:12	USAPA 4:19
19:13,19	19:9,14	Title 7:21	11:18 12:1
shook 8:4	<hr/>	16:9	14:8,12,
signature	T	Tobin 26:12	18,21 15:2
26:22		today 4:13	26:14,17
Silver 25:4	taking 4:13	<hr/>	V
single 5:15	8:5 26:23	told 17:24	
sitting 20:7	talk 10:1	18:5,8,11	verbalized
small 9:5	18:22	23:20	8:5
		24:13	

verbally	22:12	
24:7		voting 6:11
VIN 19:10,	12:1 14:22	
11	17:6	
violated		
15:11		<hr/> W <hr/>
voice 6:4		wanted 16:15
vote 6:5,		Wes 19:24
19,21,24		words 9:8
7:2,3,18,		work 25:13
22 8:9,10,		26:10
13,20 9:3,		working
13,21 10:8		26:10,13
12:14		write 10:17
13:25		12:18
14:3,9,13		written 8:23
15:19		16:20
17:4,10,		wrote 20:1,
11,12,18,		2,5
19,21		<hr/> Y <hr/>
18:1,4,5,		
10,19,21		year 25:21,
22:17,19		25
23:11		years 10:4
voted 7:11		Yount 19:25
9:10 21:15		
23:1,4,18		
24:3		
voter 19:10		
21:14		
22:25		
23:4,17		
24:3		
votes 7:4,7		
9:8 15:22		
19:6,7		