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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH**

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**LAWRENCE M. MEADOWS,**

Plaintiff,

**ALLIED PILOTS ASSOCIATION,**  
*a Texas Labor Association, and*

**AMERICAN AIRLINES, INC.,**  
*a Delaware Corporation,*

Defendants.

**PLAINTIFFS MOTION AND  
MEMORANDUM FOR RELIEF BASED  
ON MISTAKE, NEW FOUND  
EVIDENCE, FRAUD, AND  
MISREPRESENTATION UNDER RULE  
60(b); OR, ALTERNATIVELY USING  
THE COURT'S INHERENT POWERS  
UNDER RULE 60(d)**

**Case No. 2:14-cv-00115-DS  
Judge Dave Sam**

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**HEARING REQUESTED**

Verified Motion

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**PLAINTIFFS MOTION FOR RELIEF BASED ON MISTAKE, NEW FOUND EVIDENCE, FRAUD, AND MISREPRESENTATION UNDER RULE 60(b); OR, ALTERNATIVELY USING THE COURT'S INHERENT POWERS UNDER RULE 60(d)**

Lawrence M. Meadows ("Meadows"), Pro Se Plaintiff, in the above styled cause, hereby file this motion under the Fed. R. Civ. P., RULE 60. RELIEF FROM A JUDGEMENT OR ORDER; BASED on; ¶ (b) *GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, (1) "mistake, inadvertence, surprise, or excusable neglect", (2) "newly discovered evidence", and (3) "fraud, misrepresentation, or misconduct by an opposing party", or (6) "any other reason that justifies relief."* Alternatively, Meadows requests this Court exercise its inherent powers under Rule 60(d): *OTHER POWERS TO GRANT RELIEF, ¶ (3) to "set aside a judgment for fraud on the court."* Further, this motion is filed timely under ¶ (c) *Timing and Effect of Motion, (1) Timing. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding;* and it as it no more than one year since this Court issued its Final Order on August 31, 2015. Additionally, there is no time limit for Motions filed under Rule 60(d).

**Meet and Confer Certification**

I, Lawrence M. Meadows, Pro Se Plaintiff and moving party, made a good faith effort to confer with both parties to resolve the issues raised in the motion, but was unable to do so. email. Defendant APA responded that it does not consent, and American Airlines stated it objects to the instant motion.

**PLAINTIFFS MEMORANDUM FOR RELIEF BASED ON MISTAKE, NEW FOUND EVIDENCE, FRAUD, AND MISREPRESENTATION UNDER RULE 60(b); OR, ALTERNATIVELY USING THE COURT'S INHERENT POWERS UNDER RULE 60(d)**

**INTRODUCTION**

The Plaintiff is particularly disturbed by his discovery of newfound incontrovertible evidence showing that APA's former<sup>1</sup> General Counsel, Stephen Hoffman, of James & Hoffman has made multiple misrepresentation of material fact and law to this Court in violation of Rule 60 (b) and (d). Unfortunately, the Court inadvertently relied upon Mr. Hoffman's misrepresentations, and made a mistake by misapprehending both material facts and law which resulted an erroneous ruling, and caused the Plaintiff to suffer gross manifest injustice.

While not an attorney, the Plaintiff himself was a former U.S Air Force Officer, who served as a military pilot during Gulf War I, until he was honorably discharged and began his career as a professional airline pilot at American Airlines. As such, he has been held to the highest standards of honorable, professional, and ethical conduct. As such, he would in turn expect no less from Defendant APA's counsel, both as *pro hac vice* Officer of This Court and as required under the Utah Rules of Professional Conduct. Here Mr. Hoffman has violated his duty to verify facts and la and not file frivolous pleadings, and also violated dis duty of Candor toward the Tribunal. Meadows as a matter of professional courtesy made multiple written request to Defendant APA's counsel to meet and confer on his newfound evidence of fraudulent submissions to this Court, but said requests were rebuffed by Mr. Hoffman.

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<sup>1</sup> Tellingly, on July 1, 2016, APA's new president after conducting an audit, terminated APA's longtime (20+ years) General Counsel, James & Hoffman, due to its conduct and billing practices relating to this and another similarly situated MDD pilot's litigation. Which resulted in APA losing its E&O insurance and having to renew it at a 150% premium, with a substantially increased (10x0 deductible.



## SUMMARY OF FACTS

1. On July 22, 2015, Meadows filed his Amended Complaint in these proceedings, wherein he alleged that he was a member in good standing of Allied Pilots Association ("APA"), but that sometime in 2013 APA openly repudiated Meadows membership stating he was not a member and not owed a duty. (Exhibit 1, ¶¶ 2, 11 and 12).
2. On August 5, 2015, Defendant APA filed its Second Motion to Dismiss which contained several misrepresentations of fact and law, and erroneously asserted that Meadows was a member of APA, that the APA Constitution and Bylaw supersede the RLA, and that there exists an internal union remedy for LMRDA claims.
3. Between July 22<sup>nd</sup> – 23<sup>rd</sup>, well after Meadows had fully briefed his Rule 59 Motion (ECF. No. 41) he discovered newfound evidence, during a formal APA Appeal Board hearing, convened, to hear charges Meadows filed against AP A's President for unlawfully him and all other disabled pilots out of the APA website.
4. During those proceedings, APA's President also produced the *"Official Minutes of the [APA] Special Board of Director's Meeting"* held on April 22-24, which clearly showed that APA's General Counsel was present during the closed session of that meeting. When the BOD issued its directive that MDD pilots, to include Meadows, were not considered Members of APA. (Exhibit 2, at 4 and 5).
5. During those proceedings APA's President also produced an exhibit entitled "MDD Pilots", (Medical Disability Dropped from AA seniority list) dated April 22, 2014, and signed by APA Board of Director ("BOD") Officer, Captain Rusty Mc Daniels during a closed APA Special BOD Meeting session. Which stated;  
  
**"Per conversation with the BOD in the SBOD [Special BOD] meeting on 4-22-14 remove MDD pilot's access to the APA website. These pilots are not members**

**of the APA. are not on the seniority list, and do not have access to APA benefits. "** [Emphasis Added]. (Exhibit 3).

6. Indeed, during those proceedings, APA long-time Membership Committee Chairman, Capt. McDaniel's, affirmed via sworn testimony, that MDD pilots such as Meadows, "*are not covered under the C&B as either active or inactive members.*"
7. During those proceedings, APA also produce an exhibit, entitled "Member Profile" of Lawrence M. Meadows, which showed Meadows APA membership status to be "MDD" as of 10/24/2011. (Exhibit 4).
8. During those proceeding the APA's President also gave sworn testimony was that he had Revoked access of all "MDD" pilots, from the APA website on April 22, 2014, which included all medically disabled pilots such as Meadows, in accordance duty with his duty to uphold the 4-22-14 directive of the APA BOD.
9. Therefore, based on the APA BOD directive, Meadows could not have been Considered to be an APA member after 10/24/2011, and in fact according to APA's internal records he was not. Which was some three months before he individually filed Grievances 12-011, and two years prior to individually filing Grievance 13-064.
10. Despite first hand personal knowledge that the APA BOD did not consider Meadows to be a member and that he was not entitled to benefits, APA's General Counsel, James & Hoffman argued the inapposite. Erroneously misrepresenting in its pleadings that because Meadows is an APA member, he had ceded his statutory right to arbitrate his grievances before a RLA System Board of Adjustment, 45 U.S.C. § 184.

## ARGUMENT

### A. Legal Standard For Rule 60(b) and (d) Motions

Rule 60(b) strikes a balance between finality of judgments and fairness in the proceedings. R.C. by *Ala. Disabilities Advocacy Program v. Nachman*, 969 F. Supp. 682, 690 (M.D. Ala. 1997); *see also Drake v. Dennis*, 209 B.R. 20, 28 (S.D. Ga. 1996). *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991) (citing *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944)); *see also United States v. Buck*, 281 F.3d 1336, 1339 (10th Cir. 2002); *Abdur 'Rahman v. Bell (In re Abdur 'Rahman)*, 392 F.3d 174, 193 (6th Cir. 2004) (Siler, J., dissenting). Specifically, Rule 60(b)(3) codifies an “historic power of equity to set aside fraudulently begotten judgments’ . . . [which] is necessary to [uphold] the integrity of the courts . . . .” (Emphasis added). *See Chambers.*, 501 U.S. at 44 (quoting *Hazel-Atlas Glass Co.*, 322 U.S. at 238). Additionally, a sub-species of 60(b)(6), fraud upon the court, is subsumed in the broad language of 60(b)(6) and also in 60(d)(3). It implicates the court’s institutional integrity and enables the court to manage its own affairs. As discussed in section A(iii), protecting against fraud is an inherent power of the court.

Consequently, here, there is grounds for this Court to grant relief from judgment under both 60(b) (1), (2), (3) (6), and set aside its Final Order. Fraud upon the court is extended to officers of the court, and when an attorney exerts improper influence on the court [as was the case here] “the integrity of the court and its ability to function impartially is directly impinged.” R.C. by *Ala. Disabilities Advocacy Program*, 969 F. Supp. at 691 (citing *Broyhill Furniture Indus., Inc. v. Craftmaster Furniture Corp.*, 12 F.3d 1080, 1085-86 (Fed. Cir. 1993)). In addition, although 60(b)(3) seems to cover fraud, it only concerns fraud *of an adverse party*. *See FED. R.*



CIV. P. 60. Rule 60(b)(6), on the other hand, has very broad language: “any other reason justifying relief from the operation of the judgment.” FED. R. CIV. P. 60.

Protecting against fraud under this rule is the same as the court’s ability to impose sanctions through its Rule 11-like power. *See R.C. by Ala. Disabilities Advocacy Program*, 969 F. Supp. at 690. The fraud dealt with in Rule 11, in the inherent power to sanction discussed in Section III(iii), and in 60(b), is the same type of fraud; thus, the same issues of institutional integrity are relevant in all three contexts. The enforcement of Rule 60(b) and (d) is essential to the maintenance of social order.

**B. Court Made a Mistake And Detrimentially Relied Upon APA’s Misrepresentations Of Fact and Law And Inadvertently Entered And Erroneous Order**

As a result of the APA’s misrepresentation in C. below, the Court detrimentally relied on them, and unfortunately made a mistake and misapprehended the fact the Meadow was an APA member who cede his right to arbitrate his grievance under the APA C&B, that the C&B was supreme and superior to the RLA and that he failed to exhaust his internal union remedies before his LMRDA claim. But new found evidence shows that APA falsely misrepresented both key facts and law, causing the Court to inadvertently enter an erroneous judgement. The reality is that Meadows is not a member of APA, and thus not bound by the C&B, but instead has a individual statutory right to arbitrate his grievances under the RLA, 45 U.S.C. §184, and finally there was no internal LMRDA remedy to exhaust. Therefore, the Court should set aside its Orders, and enter a declaratory judgement to allow meadows to arbitrate his grievances, pursue his LMRDA claim. Finally, APA’s unethical fraudulent conduct was designed to obtain an ill0gooten judgement to Meadows detriment stripping of his statutory rights under the both the RLA and LMRDA; which amounts to a breach of Duty of Fair Representation (“DFR”) as alleged in Meadows other claim.

**C. APA’s Former General Counsel, Stephen Hoffman Made Several Material Misrepresentations Of Fact and Law In Signed Pleading To This Court**



Meadows discovered new-found evidence after his Rule 59 was filed. Meadows made a good faith diligent effort to discover all the evidence he had available to him. However, Meadows efforts were substantially hindered, because; discovery was never open in this matter, APA who refused to produce any documents despite having firsthand knowledge of their existence being a party or signor to all documents, and none of these documents were in the public domain, and were instead internal APA documents. Meadows was lucky to have obtained some documents during APA internal Appeal Board proceedings which took place after he briefed his Rule 59 motion (ECF. No. 41), and thereafter, he was also fortunate to be provided inter-union arbitration precedents by a union insider sympathetic to him.

### **1. APA General Counsel Misrepresented That Meadows was a Member Of APA**

Newly discovered documents, clearly show that APA considered member to be in MDD status on 11/24/11, and later reaffirmed at Special BOD meeting on April 22, 2014, that MDD pilots such as Meadows are not members of the APA. (SOF ¶¶ 4-10), which are material to these proceedings, as they fully support and coincide with allegations in in ¶¶ 11-12 of Plaintiff's Amended Complaint (ECF No. 21), which allege;

11. Immediately after his date of hire [1991], Meadows became a member in good standing of his pilots' union, the APA, and as a member of the craft or class of pilots employed by American. APA owes him a Duty of Fair Representation under the Railway Labor Act.
12. Meadows believes he is still an APA member in good standing, but starting in June 2013 during the pendency of his first grievance, APA's counsel began to assert that Meadows was in fact not a member, and therefore not owed a duty by APA. [Emphasis Added].

Facts in ¶11 and 12, plainly refute APA Counsel's misrepresentations that Meadows is a member of the APA. Plaintiff's amended complaint, clearly alleged that around June 2013, APA's counsel began treating him as a non-member, As the Judicially notice documents show, APA placed Meadows in MDD status effective 10/24/2011, and did not consider such MDD

pilots to be members, and further that MDD were not entitled to any APA benefits. However, despite APA's General Counsel having firsthand knowledge of APA's BOD repudiation of Meadows membership, Mr. Hoffman knowingly and falsely argued the inapposite, asserting that because Meadows an APA member he and bound by the C&B and had ceded his rights to have is grievance resolved by APA in its sole discretion.

When fact non-members such as Meadows are not bound by the C&B, and are in fact entitled to to individually arbitrate their grievances under the RLA; just as th APA non-member pilots, in *PETER D. BRADY, et al., VS. Plaintiffs, ALLIED PILOTS ASSOCIATION and AMERICAN AIRLINES, INC.*, (NDTX No. 3:03-CV-0984-D, Dec. 2003) Plaintiffs in Brady alleged, just as here APA violated plaintiffs' individual statutory rights under the Railway Labor Act, 45 U.S.C. § 151-188 ("RLA"), by failing to convene an System Board Of adjustment ("SBOA") to arbitrate their grievances. Further, in one claim they requested that the court order APA and AA to convene a SBOA. Initially, both AA and APA filed motions to Dismiss. On Dec. 15, 2003, Judge Sidney Fitzwater relying upon *Caprao, Pyles and Whitaker Id.*, entered a Memorandum and Order, Denying AA and APA's motion to dismiss and granting Plaintiff Brady the right to arbitrate his grievances before a System Board. Thus, Meadows is not an APA member, and legal precedent as shown in *Brady* exists for other APA non-members to individually arbitrate their grievances without the APA's consent.

## **2. APA General Counsel Misrepresented That the C&B was the Supreme Law Of The Union And Was Superior to Meadows Statutory Rights Under the RLA**

Meadows made a diligent attempt to discover the APA Appeal Board Case *Sproc v. APA National Officers* (AAA Case 71-300-00053-13 June 28, 2014), but was unable to find it and was unaware of it prior to filing his Rule 59 Motion, because is an internal APA document and not in the public domain. Regardless, APA's counsel had firsthand knowledge of that case and



its significant ruling, but failed to bring it to the Court's attention, as it undermined APA's fatally flawed argument that the APA C&B somehow superseded Meadows statutory rights under the Railway Labor Act. When in fact the Arbitrator in *Sproc* found that the APA C&B is governed by *Roberts Rules of Order Newly Revised* 11th ed. ("RONR"), and further held;

*"that rules prescribed by the applicable law have the highest precedence, followed by the corporate charter, followed by bylaws or constitution (See RONR 11th ed.). Thus the current provision Article I, Sec. 6, in the C&B acknowledges that the C&B is subordinate to applicable law, i.e. the RLA; and the RLA imposes the requirement of union participation in mediated negotiations [statutory right to arbitration before a SBOA]. Accordingly, the C&B cannot be read to preclude mediated negotiations [or any other statutory under the RLA.]" [Emphasis Added]. (Exhibit 5 at 20, 21, 26 and 36).*

Similarly, in this case the RLA, 49 U.S.C. §184, statutorily mandates the requirement of mandatory arbitration of an employee's grievances, and according to Roberts Rules, the APA C&B is and must be subordinate to the statutory law which outranks APA's C&B, as specifically provided for in APA's C&B Article I Sec. 6. It is disingenuous for APA to assert that its C&B is subordinate to the RLA for some purposes, but not for others. Arguendo, even if Meadows was a member of APA, as Mr. Hoffman falsely represents (which he is not), his right to arbitrate his individual grievances is controlled by the RLA and not the APA C&B>

### **3. APA General Counsel Misrepresented That Meadows Failed To Exhaust His Internal Union Remedies Prior To Filing His LMRDA claim In This Court**

APA's counsel misrepresented to the court the fact that I failed to exhaust internal union remedies prior of filing an LMRDA claim; misrepresenting in its Second Motion To Dismiss As Follows;

"LMRDA claim must be dismissed both because he failed to exhaust internal union remedies and because his exclusion from the APA's website was based on a reasonable union rule limiting website access to active union members. As authorized by 29 U.S.C. § 411(a)(4), the C&B requires a member whose access to the APA website has been restricted to obtain "mandatory review" through internal union administrative procedures prior to filing suit. See supra at 8, citing C&B,

Art. VII(D)(5). Meadows nonetheless fails to allege that he attempted to pursue, much less exhaust, that internal union remedy. His LMRDA claim must therefore be dismissed on that ground alone.” (ECF. No. 23 at 23).

The true fact is that the only APA internal union remedy that exists is the Article VII Proceeding in the APA C&B. However, that machinery is only intended to resolve individual charges by one pilot member against another pilot member for violations of the C&B only. In APA Article VII proceeding, *Annable v. Wissing* (AAA Case No. 71-300-00050-04, Jan. 10, 2005), Arbitrator Wolitz held, that the APA Article VII machinery; “*Are not proceedings in a court of law. They do not enforce lawful obligations or duties except as set forth in the Constitution & Bylaws. They do not enforce the labor laws of the land.*” [Emphasis Added]. (Exhibit 6 at 20).

Therefore, it was disingenuous for APA’s counsel to misrepresent that Meadows failed to exhaust his internal remedies, because the union Article VII machinery does not enforce the labor laws of the land. Thus, it could not resolve Meadows LMRDA, 49 U.S.C. §411, Union Member Bill Of Rights claims. Accordingly, the Court should allow Meadows to immediately proceed with his LMRDA claim .

**D. APA’s Former General Counsel Violated Duty To Verify Facts and Law Of The Case And His Duty of Candor Towards The Tribunal In Violation Of Utah Professional Rules And Committed Fraud Upon The Court**

The Plaintiffs' newfound evidence is clear and convincing, showing that Defendant APA’s Counsel, has made multiple misrepresentations in signed pleadings, and filed frivolous pleadings that were not meritorious with no basis in law or fact, in a bad faith attempt to obtain an ill-gotten judgment against Meadows legitimate claims. More specifically, APA’s General Counsel falsely misrepresented to this Court, that Plaintiff was member of the APA, that the APA C&B supersedes the RLA, and that an internal union remedy for MRDA claims exists. APA’s counsel, Stephen Hoffman was admitted *pro hac vice* in these proceedings and thus was subject to, and also violated the Utah Rules Of Professional Conduct (“URPC”). First, APA’s counsel violated URPC, Rule 3.1 Meritorious Claims and Contentions; which asserts in part that



a “lawyer shall not defend a proceeding or assert a issue therein unless there is a basis in law and fact for doing so that is not frivolous.” Here APA Motion to dismiss was frivolous because it had not basis in fact that he was a member or that an internal LMRDA remedy existed, and no basis in law that the C&B superseded the RLA. Second, APA’s Counsel violated URPC, Rule 3.3 Candor toward the Tribunal; which states in relevant part that, “a lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.” Here Mr. Hoffman as APA’s former general counsel had first hand personal knowledge while present at the APA BOD meeting that Meadows was not a member of APA, and had firsthand knowledge of internal union arbitration precedents, which plainly held the RLA is superior and supersedes the APA C&B under Roberts’ Rules of Order hierarchy of laws, and that the APA internal remedies under the C&B can not adjudicate claims under the labor laws of the land, including the LMRDA. Yet Mr. Hoffman knowingly misrepresented the inapposite to this Court, in an effort to obtain an ill-gotten ruling,

Regardless, to date, Meadows made multiple good faith requests for Mr. Hoffman to withdraw his material misrepresentations of fact and law in his pleadings, but he has refused to do so. Now Mr. Hoffman is liable for sanctions under Rule 60 and Rule 11, and this court should hold him accountable for violating the Utah Professional Rules of Conduct.

### CONCLUSION

Based on all the foregoing, and pursuant to Fed. Rule Civ. P. Rule 60 (b), and Plaintiff humbly submits that the Court should grant relief from its Final Order; based on newly discovered evidence of Defendant APA’s counsel’s misrepresentations, misconduct, and fraud, upon which this Court inadvertently relied and made a mistake in its ruling, or for any other reason that this court deems would justify such relief. Alternatively, Plaintiff request this Court

exercise its inherent powers under Rule 60(d), and set aside its Order and for APA counsel's fraud on this honorable Court. Moreover, it is clear from these new facts and evidence that Defendant APA's counsel also willfully disregarded its duties to verify the facts and law of the case, as breached its duty of Candor Towards The Tribunal. Here, Plaintiff submits there was also a willful disregard of the ethical discretion.

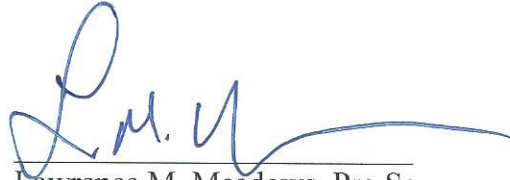
Therefore, Plaintiff respectfully requests the Court set aside its Orders granting Defendant APA's and American's Motions to Dismiss, and Denying Plaintiffs Rule 59 Motion (ECF. No. 35, 40, 50), and allow Plaintiffs Amended Complaint to move forward on all counts. Additionally, and any other relief this Court deems appropriate; to include awarding Plaintiff's fees and costs, sanctions against APA's counsel for bad faith unethical conduct. To do otherwise would be a travesty of justice, and leaving the Plaintiff wronged, harmed and left to suffer an incurable manifest injustice, in contradiction in direct contradiction to the strong congressional interest that RLA employees are not left "*remediless*" and without a forum to present their grievances. See *Vaca v. Sipes*, 386 U.S. 171, 185-86, 87 S.Ct. 903, 914, 17 L.Ed.2d 842 (1967).

Finally, although this matter was on appeal to the 10<sup>th</sup> Circuit, those proceedings have not been briefed and are currently abated pending bankruptcy court decision of Meadows second grievance #13-064. Regardless, under Fed. R. Civ. P Rule 62.1. Indicative Ruling; (a) RELIEF PENDING APPEAL. If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:(1) defer considering the motion; (2) deny the motion; or (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue. In the event the Court decides to grant this motion Meadows is seeking a remand for that purpose in accordance

with that Rule 62.1(c). Granting this motion would obviate the need for appellate proceedings, and preserve legal and judicial resources.

Signed: August 30, 2016

Respectfully submitted,



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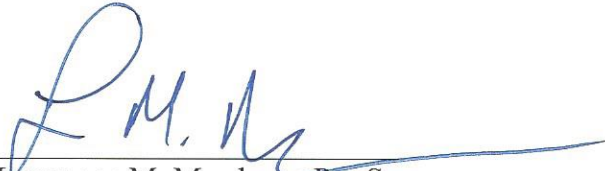
VERIFICATION

I, Lawrence M. Meadows, declare as follows;

I am on the Plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. With respect to the causes of action alleged by me, the same is true by my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the state of Utah that the foregoing is true and correct.


Date: August 30, 2016;

  
Lawrence M. Meadows, Pro Se



**Certificate of Service**

**I hereby certify**, that a true and correct copy of the foregoing was served by U.S. Mail and E-mail on August 31, 2016 on all counsel or parties of record on the Service List below.



Lawrence M. Meadows, Pro Se

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# **EXHIBIT 1**

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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH**

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**LAWRENCE M. MEADOWS,**

Plaintiff,

v.

**ALLIED PILOTS ASSOCIATION,**

a Texas Labor Association, and

**AMERICAN AIRLINES, INC.,**

a Delaware Corporation,

Defendants.

**Case No. 2:14-cv-00115**

**Magistrate Judge Evelyn J. Furse**

**FIRST AMENDED**

**VERIFIED COMPLAINT**

**JURY TRIAL DEMANDED**

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**COMES NOW**, the Plaintiff, Lawrence M. Meadows, who hereby, files the following First Amended Complaint to sue Defendant's and states as follows:

## I. JURISDICTION AND VENUE

1. Plaintiff's claims are filed pursuant to 28 U.S.C. § 1331 and § 1337(a) in that this suit seeks to enforce the Railway Labor Act ("RLA"), an Act of Congress regulating Commerce. Venue is proper under 28 U.S.C. § 1391 in that defendants have either substantial contacts, or, with respect to the Allied Pilots Association has members in the state of Utah; and the Meadows resides in the state of Utah and is subject to personal jurisdiction.

## II. PARTIES

2. Plaintiff, Lawrence M. Meadows resides in Utah, is a member of defendant Allied Pilots Association, and a pilot "employee" of defendant American Airlines, Inc., as defined under U.S.C 45 §151- Fifth. Railway Labor Act.
3. Defendant, Allied Pilots Association (hereinafter "APA" or "Union"), is a labor organization, and an unincorporated association headquartered in Texas, with members in Utah, and the "representative" of the pilots of American Airlines, Inc., as defined under 1 Sixth of the RLA, 45 U.S.C. § 151.Sixth. APA is also a "labor organization " as defined by the Labor-Management Disclosure Reporting Act (LMRDA), 29 U.S.C. 402.
4. Defendant, American Airlines, Inc (hereinafter "American Airlines", "American" or "Company"), is a foreign corporation with substantial business contacts in Utah and every other state in the United States, and is an air "carrier" under RLA § 1 First, (45 U.S.C. §151). As such, American Airlines is a required party under Rule 19(a), Fed. R. Civ. P., as it is mutually responsible for establishment of a System Board of Adjustment under the authority of RLA Section 204, (45 U.S.C. § 184).



and also exhibited animus and hostility toward Meadows, when it subsequently refused to arbitrate his company termination grievance claim before a System Board of Adjustment and denied Meadows his rights and privileges as an APA member; and 4) That APA has locked out Meadows and other disabled pilot members, from the APA's virtual union hall, violating their Union Member Bill of Rights under the LMRDA, 29 U.S.C. 411.

### **Employment History**

9. Meadows, graduated cum laude from Embry-Riddle Aeronautical University in 1985, with a B.S. Degree in Aeronautical Engineering. Upon graduation, he became a commissioned officer in the U.S. Air Force, and served on active duty as a military pilot flying T-37, T-38, and C-9A aircraft, until he was honorably discharged in 1991.
10. Meadows was hired by as a pilot employee by American Airlines in Oct. 1991, where flew DC-10, B-727, MD-11, and B-777 aircraft.
11. Immediately after his date of hire, Meadows became a member in good standing of his pilots' union, the APA, and as a member of the craft or class of pilots employed by American. APA owes him a Duty of Fair Representation under the Railway Labor Act.
12. Meadows believes he is still an APA member in good standing, but starting in June 2013 during the pendency of his first grievance, APA's counsel began to assert that Meadows was in fact not a member, and therefore not owed a duty by APA.

### **Disability History**

13. Starting in June 2004, Meadows suffered from a debilitating illness, which prevents him from obtaining the needed FAA medical certification to perform his duties as a pilot.

# **EXHIBIT 2**

APRIL 22 - 24, 2014

# Official Minutes of the Special Board of Directors Meeting

*APA Headquarters • O'Connell Building  
Fort Worth, Texas*



**ALLIED PILOTS ASSOCIATION**

## Notice to All APA Members from the Secretary-Treasurer

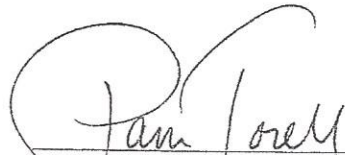
There were no changes made to the APA Policy Manual (#156 dated March 20, 2014) during the April 22–24, 2014, Special Board of Directors Meeting. Changes were made to the Constitution and Bylaws during the April 22–24, 2014, Special Board of Directors Meeting. There are pending changes to the Constitution and Bylaws. All Constitution & Bylaw changes are subject to a 100 day abeyance for member review prior to implementation. The current version, #80, is located at the link below.

The APA Constitution and Bylaws may be accessed via the APA website at <https://www.alliedpilots.org/Members/National/Documents/constitution.pdf>.

The APA Policy Manual may be accessed via the APA website at <https://www.alliedpilots.org/Members/National/Documents/polman.pdf>.

If you have any questions or concerns regarding any material contained within these meeting minutes, you may address them to your domicile representatives or contact me at [Secretary-Treasurer@alliedpilots.org](mailto:Secretary-Treasurer@alliedpilots.org).



  
FO Pam Torell  
Secretary-Treasurer



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**TUESDAY, APRIL 22, 2014**

**MEETING CALLED TO ORDER (1300)**

The meeting was called to order at 1300 by President CA Keith Wilson.

**ROLL CALL**

Since Secretary-Treasurer, FO Pam Torell was monitoring the referendum counting process, President CA Keith Wilson took the roll with the following national officers, board members, invited committee members, guests and APA employees present.

**National Officers**

PRESIDENT	CA Keith Wilson
VICE PRESIDENT	FO Neil Roghair
SECRETARY-TREASURER	FO Pam Torell

**Board of Directors**

BOS	CA Steve Bacon (CH) FO Jim Dillard (VCH)	LGA	CA Sam Mayer (CH) FO Mike Cummings (VCH)
DCA	CA Bill Gary (CH) CA Carl Jackson (VCH)	MIA	CA Ivan Rivera (CH) FO Brian Smith (DDR-CH) FO Thomas Copeland (VCH)
DFW	CA Rusty McDaniels (CH) FO Russell Moore (VCH)	ORD	FO Scott Abbott (CH) FO Todd Hooper (VCH)
LAX	CA Steve Roach (CH) CA Bill Boyd (VCH)	STL	CA Keith Bounds (CH) CA Marcus Spiegel (VCH)

**Board Support**

→ GENERAL COUNSEL	Mr. Ed James, Esq.
PARLIAMENTARIAN AND RECORDING SECRETARY	Ms. Kay Allison Crews, PRP, CP

**Staff Members**

STAFF	Ms. Amie Aronhalt, Exec. Assistant/Board Support Mr. Bennett Boggess, Esq., Director of Representation Mr. Phil Larussa, IT Support Mr. Gregg Overman, Director of Communications Mr. Jose Lopez, IT Support Mr. Andrew Solano, IT Support
-------	---

**Committees**

NEGOTIATING COMMITTEE	CA David Brown
APSEA NEGOTIATIONS	CA Tony Chapman
SENIORITY INTEGRATION COMMITTEE	CA Mark Stephens
GOVERNANCE PROJECT	FO Chris Ramsey FO David Harvey FO Randy Nuss FO Drew Blahnick
ASAP AUDIT REVIEW COMMITTEE	CA Kevin Elmore, Chairman
PRESIDENTIAL RESERVE TASK FORCE	CA Robert Reifsnnyder, Chairman
TRAINING COMMITTEE	CA Rob Fogel, Chairman CA Brian Tighe CA Hank Putek

**PRESIDENT'S REPORT**

President CA Keith Wilson

Secretary-Treasurer FO Pam Torell is monitoring the referendum ballot counting process.

Scheduling issues for the Spring Board of Directors Meeting, May 13-16, were discussed.

**MOTION to extend the Presidential Task Force:** A motion was made to extend the Presidential ad hoc Reserve Task Force. The motion was adopted without objection by those present.

MAKER: Mayer SECOND: Dillard  
PRESENT: Gary, Jackson, Spiegel, Bacon, Dillard, Mayer, Cummings, Rivera, Copeland, McDaniels, Moore, Roach, Boyd, Abbott, Hooper  
ABSENT: Bounds

**MOTION to meet in closed session (1315):** At 1315, a motion was made to meet in closed session with National Officers, Board of Directors, Board of Directors-elect, Legal, General Counsel, Negotiating Committee, Safety, Comm, and the Seniority Integration Committee. The motion was adopted 16-0-0-0.

MAKER: Mayer SECOND: Roach  
FOR: Gary, Jackson, Spiegel (P/Bounds), Spiegel, Bacon, Dillard, Mayer, Cummings, Rivera, Copeland, McDaniels, Moore, Roach, Boyd, Abbott, Hooper  
AGAINST:  
ABSTAIN:  
ABSENT:

**ASAP AUDIT REVIEW COMMITTEE UPDATE**

CA Kevin Elmore

This update was conducted in closed session.

**APA/APSEA NEGOTIATIONS UPDATE**

Mr. Bennett Boggess, Esq.; CA Tony Chapman

This update was conducted in closed session.

**LEGAL DEPARTMENT UPDATE**

Mr. Bennett Boggess, Esq.; CA Tony Chapman

This update was conducted in closed session.

# **EXHIBIT 3**



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**From:** Rusty McDaniels <rustymcdaniels@gmail.com>  
**Sent:** Tuesday, April 22, 2014 3:47 PM  
**To:** Duff, Andrea; Thompson, Russ  
**Cc:** President; Vice President; SECRETARY-TREASURER; West, Jim E.  
**Subject:** MDD Pilots

Per conversation with the BOD in the SBOD meeting on 4-22-14 remove MDD pilot's access to the APA web site.

These pilots are not members of APA, are not on the seniority list and do not have access to APA benefits.

*Captain Rusty McDaniels*  
*IT Steering Committee Chairman*  
*817-832-0909 Cell*  
*RustyMcDaniels@Gmail.Com*



# **EXHIBIT 4**



# Member Profile as of 07/23/2015

**Lawrence M. Meadows ,  
FO**

AMERICAN AIRLINES  
203 N. LaSalle St. Suite 2100  
Chicago, IL, 60601

Employee ID: 332713  
Informal:  
Gender: M  
Marital Status: S  
Birth Date: 3/8/1963

### Contact Information:

Email: lawrencemeadows@yahoo.com  
Email 2:  
Home Phone:  
Work:  
Cell: 312-917-6214  
Alternate Phone:

Email Pref: Y  
Email 2 Pref: Y  
Home Phone Pref: Y  
Cell Text Pref:  
Alternate Phone Pref: Y  
Address Pref: Y

### Additional Member Information:

Member Type: MBR  
APA Status: MDD  
AA Status: LINE  
Seniority : 0  
Base: MIA  
Current Position: FO  
Division: DOM  
Equipment: 777  
HQ Mail: Y  
HQ Email: Y  
Domicile Mail: Y  
Domicile Email: Y

Member Since:  
Join Date: 10/9/1991  
AA Status Date: 9/3/2008  
APA Status Date: 10/24/2011  
Hire Date: 10/3/1991  
Full Member Date: 10/9/1991  
Status Date: 10/24/2011  
Classification Date: 11/19/1991  
Retire Date: 3/8/2028  
Occupational Date: 11/19/1991  
Company Date: 10/3/1991

# **EXHIBIT 5**



**BEFORE THE AMERICAN ARBITRATION ASSOCIATION**

In the Matter of the Arbitration

between

**Captain Robert L. Sproc,**  
Accuser

and

**Allied Pilots Association Officers,**  
Accused

**AAA Case No: 71- 300-00053-13**

**Grievance: Violation of Constitution &  
Bylaws**

BEFORE:  
Edward B. Valverde, Esq. –

Arbitrator

**APPEARANCES:**

For the Accuser: Lloyd Hill, Representative of the Accuser; Robert L. Sproc,  
Accuser

For the Accused APA Officers: Scott Shankland, Representative of the Accused;  
Mark R. Myers, Staff Attorney, APA

Place of Hearing: Dallas, TX.

Date of Hearing: March 27, 2013

Date Hearing Closed: May 1, 2013<sup>1</sup>

Date of Award: June 28, 2013

Award: Grievance denied.

**Award Summary**

Accuser did not establish by preponderant evidence that the Accused violated Article II.I of the Constitution and Bylaws (C&B) by abiding by the Bankruptcy Court mediator's instructions to treat the mediated negotiations as confidential.



Edward B. Valverde, Esq.-Arbitrator

<sup>1</sup> The record was closed on upon arbitrator's receipt of the Accused and Accuser's briefs and supporting documents. Also, references to the transcripts of the two hearings will be as follows: AB hearing as (AB Tr. \_\_); arbitration hearing as (Arb. Tr. \_\_); and exhibits will be identified by party and exhibit number e.g., (Sproc Ex. \_\_).

## STATEMENT OF PROCEEDINGS

The arbitration proceeding commenced as scheduled on March 18, 2013<sup>2</sup> at the American Arbitration Association offices in Dallas, Texas. The parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence on the issues and to present oral arguments. Post hearing briefs were received from the parties on May 1, 2013.

Issues:

Whether the officers of APA violated Article II.I of the Constitution and Bylaws by agreeing to participate in mediated negotiations and agreeing to treat those negotiations confidential? If so, what is the appropriate remedy?

Did either party engage in bad faith conduct and if so, what is the appropriate remedy?

## BACKGROUND SUMMARY<sup>3</sup>

### Statutory Context

The Railway Labor Act (RLA)<sup>4</sup> governs the labor relations of the airline industry of which American Airlines (AA) and Allied Pilots Association (APA) are both parties. One of the general duties imposed by the RLA on the parties is the duty to exercise every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions and to settle all disputes related thereto in order to avoid any interruptions to commerce or a carrier's operations. (RLA, Sec. 152. First). In pursuit of this duty the RLA established the Nation Mediation Board (NMB) that exists to assist the parties when they are unable to negotiate agreements on their own. The parties, jointly or on their own, can request the services of the NMB and/or the NMB can proffer its services where it determines that a labor emergency is found to exist. (RLA, Sec. 155.

<sup>2</sup> All dates hereinafter refer to 2012 unless otherwise noted.

<sup>3</sup> This is a summary of applicable definitions, statutory and constitutional provisions. Only necessary detail relevant to the issuance of the award is included. Arguments raised by the parties but not specifically addressed in the award are to be treated as rejected by the arbitrator. Further, because the Policy Manual is subordinate to the C&B, it will not be relied upon or discussed here.

<sup>4</sup> RLA, 45 USC, Chapter 8 – Sections 151-188



First). As the name suggests, the NMB uses mediation as the technique to attempt to bring the parties to an agreement.

Mediation is a private dispute resolution process that allows parties in a dispute to use a neutral third party, i.e., a “mediator” trained in mediation techniques, to use those techniques to guide the parties through the mediation process in an effort to bridge the obstacles to agreement so that an agreement can be negotiated and agreed to. Whether sanctioned by a court or not, the mediation process is deemed confidential to protect the mediator from being enmeshed in the disputes if they later become public (e.g., court litigation) and to free the parties to deal with the mediator and each other more freely. It is through this cloak of confidentiality and the mediator’s use of mediation techniques that resolution (agreement) of the dispute(s) is facilitated. Once the NMB is involved (upon request of either party or the NMB) *neither party can refuse to participate in the mediation*. However, the NMB cannot order either party to an agreement. (RLA Sec. 155. First).

### **Organizational Structure**

The Allied Pilots Association (APA) is a labor organization that is the exclusive collective bargaining representative of the pilots and co-pilots of American Airlines. For purposes of self-governance, APA established a Constitution & Bylaws (C&B) that sets forth, *inter alia*, its organizational structure. The organization is two-tiered, consisting of domiciles (local chapters) and a national union. There are three national officers elected by the membership: a President, Vice President and Secretary-Treasurer. Each domicile elects a Chairman and Vice Chairman. The Board of Directors (BoD) is the governing body of the organization. Its membership consists of the Chairman and Vice Chairman from each domicile within the organization. Thus, these domicile officers also serve as members of the BoD.

### **RELEVANT CONSTITUTIONAL PROVISIONS**

#### **Article I – General –**

##### **Section 4. Government:**

A. This Constitution and Bylaws shall be the supreme law of APA. This Constitution and by laws establishes APA as a two-tiered labor organization consisting of domiciles and a national union. As Set forth in, and only insofar as consistent with, this Constitution and Bylaws, the National Officers direct the day-to-day affairs of APA

subject to review and direction by the Board of Directors, which has the authority to alter, amend and add to this Constitution and Bylaws...

B. The Board of Directors shall approve a Policy Manual for the Allied Pilots Association which will provide the mechanism whereby the collective and individual rights of the pilots in the APA are safeguarded through a formula for sound leadership and, at the same time, retention of control of the APA by the membership. All Association officers, committee members, agents, and employees are obligated to be aware of, understand, and conduct themselves consistent with the policies contained therein. The policies contained therein apply to the Board of Directors, even when the Board is in session. The Board of Directors does have the authority to alter the Policy Manual at any time or to deviate from the Policy Manual according the following standards:

1. The Board may vote, by simple majority, to take an action (or actions) that either explicitly or implicitly deviate(s) from the Policy Manual. (06/07/2006)
2. The Board may vote, by a two-thirds (2/3) majority, to make a permanent change to the Policy Manual. (06/07/2006)

At any time the Board takes either of the above actions, the membership will be informed within 24 hours using the APA Information Hotline. Such notice will describe the nature of the change or the deviation. Further, the specific substance of the change or deviation will be made electronically available within seven (7) days. (09/29/2000)

#### **Section 5. Governing Bodies**

The governmental powers of the APA shall be vested in the Board of Directors and the National Officers in accordance with the laws provided herein. The final control of the APA shall be vested in the membership.

#### **Section 6. Parliamentary Law and Rules of Order**

All questions on parliamentary law and rules of order which are not provided for in the Constitution and Bylaws or Policy Manual shall be decided according to the principles set forth in the current Robert's Rules of Order. (06/12/2004)

\*\*\*

#### **Article II – Objectives and Rights of APA**

- I. To disseminate information in any manner to enhance the professional status of the membership and to ensure a fully informed membership. A fundamental principle of APA's ability to effectively represent the interests of its membership is protecting APA's right to communicate with the membership without restriction or outside approvals. Therefore, no APA officer, committee member or staff employee shall agree to or participate in a communications "blackout" or other restriction of the flow of information from APA to the membership including proposals presented by APA or management during negotiations. [Italics and bold added]*

#### **Article III – Membership –**



were not in violation of the C&B. Further, because the APA is a union under the



jurisdiction of the RLA, it has a duty to engage in good faith efforts to reach agreements and is legally required by statute to engage in mediated negotiations when requested. Stated somewhat differently, the C&B cannot preclude that which the statute has mandated. Finally, the arbitrator finds that the APA officers' agreement to follow the mediator's instructions was reasonable. Each of these reasons for the C&B to allow mediated negotiations will be discussed further below.

### **Application of C&B as a Whole**<sup>13</sup>

Arbitrators use rules of interpretation when considering provisions of documents such as collective bargaining agreements or in this case, the C&B.<sup>14</sup> Specific provisions have precedence over general provisions when they have application over the same subject matter. In this case, the Accuser charged the Accused with violation of a general provision of the C&B that addresses communications between officers, committee members or staff with the membership:

A fundamental principle of APA's ability to effectively represent the interests of its membership is protecting *APA's right to communicate with the membership without restriction or outside approvals*. Therefore, no APA officer, committee member or staff employee shall agree to or participate in a communications "blackout" or other restriction of the flow of information from **APA to the membership** including proposals presented by APA or management during negotiations. (Art. II. I) [Bold and Italics added.]

Relying exclusively on this provision the Accuser asserts that the APA officers who agreed to engage in 'confidential' mediated negotiations during bankruptcy proceedings violated Article VII.A.2. of the C&B (i.e., engaged in willful violation of the C&B). However, the arbitrator finds that Accuser failed to consider another article of the C&B that specifically addresses what officers of the organization can and cannot do when engaged in negotiations for agreements.

Specifically, Article XII – "Negotiations and Agreements" addresses who will attend the meetings ("at least two elected members of the APA Negotiating Committee"), that the President of the organization or Chairman of the negotiating committee will notify and announce this to the management team and the NMB representative at the first

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<sup>13</sup> See, "How Arbitration Works", Sixth Edition, Elkouri & Elkouri, Chapter 9.3.A.viii; pp. 462-464.

<sup>14</sup> See, generally, How Arbitration Works, Sixth Edition, Elkouri & Elkouri, Chapter 9.



The arbitrator also finds the Accuser's interpretation of the C&B provision (to preclude mediated negotiations) is overly broad and outside the scope of the statutory context under which the APA exists. Specifically, the APA is subject to the RLA. The RLA requires that parties under its jurisdiction are required to participate in mediated negotiations once the RLA process has been invoked. (RLA, Sec. 155.First) In such circumstances, APA is not free to refuse to engage in mediated negotiations -- for the law requires it to so participate. The membership cannot amend the C&B to exclude such negotiations for it would be contrary to law.

Additionally, the C&B provides for Robert's Rules of Order to be the authority for all questions on parliamentary law and rules of order not specifically addressed in the C&B. (Art. I, Sec.6) Currently, there is nothing specifically addressing the relationship between the C&B and any applicable law. Consequently, review of RONR would be applicable in this instance. Under the ranking order of rules, RONR states that rules prescribed by applicable law have the highest precedence, followed by corporate charter (for incorporated groups), followed by bylaws or constitution. (See, RONR, 11<sup>th</sup> ed.). Thus, the current provision (Art. I. Sec. 6) in the C&B acknowledges that the C&B is subordinate to applicable law, i.e., the RLA; and the RLA imposes the requirement of union participation in mediated negotiations. Accordingly, the C&B cannot be read to preclude mediated negotiations.

### **The Accused Had No Option to Decline Mediation**

The Accused argue they were not in a position to ignore or decline a request by the bankruptcy judge to participate in mediated negotiations. The arbitrator agrees.

At hearing, the Accused provided the affidavit of James Eaton, a member who serves on the APA's Bankruptcy Advisory Committee. He also was apparently present when mediation was discussed in Bankruptcy Court. Eaton states that, "Judge Lane ordered several of the labor groups to mediation prior to his first ruling on the 1113 motion." He was also present at the mediation session where, "Judge Peck met with the APA representatives, including myself, and directed the parties that the details of mediation would be confidential. Specifically, he instructed us not to discuss proposals until they were final. He invoked the 'Chatham House Rule.' APA's representatives

The arbitrator finds the Accuser engaged in this behavior to intimidate and/or distract the AB panel from its duty – to hear and decide the matter before it fairly and objectively.<sup>34</sup> It also tainted the AB hearing by raising a substantive concern (i.e., conflict of interest) at a time and in such a manner that a cloud of suspicion was cast over the proceeding and subsequent decision. Doing so was dishonest for the Accuser knew or should have known that conflict of interest issues should have been administratively addressed. Accordingly, the arbitrator finds the Accuser’s conduct in this regard demonstrated bad faith.

### CONCLUSION<sup>35</sup>

The Accuser settled on a broad interpretation of a provision of the C&B and relied on that interpretation to file charges against APA leadership. It further sought to narrow review of the issue by insisting on the exclusion and consideration of applicable statutes. Both actions failed for review of C&B provisions requires placing those provisions in proper context, i.e. in the context of other applicable C&B provisions and applicable statutes, especially those referenced in the C&B. The arbitrator finds that reference to the NMB brings the RLA into consideration, as does inclusion of RONR in the C&B. Further, the APA officers who participated in the mediated negotiations reasonably recognized that they had a duty to the membership to follow the court and mediator’s instructions.

<sup>34</sup> The fact that the AB panel did not appear to be distracted or intimidated is beside the point. The fact that it was unnecessarily placed in a conflict of interest posture is.

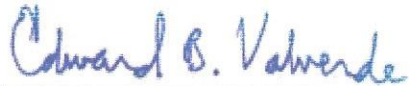
<sup>35</sup> The arbitrator also finds there is no merit to the Accuser’s allegation that the Accused engaged in a communications blackout. Review of Accused exhibits 10 and 11 reveals that from the time APA negotiators were involved in mediated negotiations with NMB mediators through the mediations conducted by the bankruptcy court’s mediator, the APA provided only general summaries of negotiation activity, but did not provide the actual proposals submitted by either party at these sessions. Thus, the Accuser’s contention that the C&B requires that actual proposals be provided to the membership during the negotiation process is rejected as not supported by the evidence.



**AWARD**

The arbitrator finds the Accuser failed by preponderant evidence to establish that the Accused violated the C&B by agreeing to follow the bankruptcy court mediator's instructions to maintain mediated negotiations confidential until completed. Also, as a result of the findings of bad faith conduct in the prosecution of this matter the arbitrator finds, *as provided for in the C&B*, that fifty percent (50%) of the cost of the arbitrator's fee and expenses should be paid by the Accuser.

Date of Award: June 28, 2013

A handwritten signature in blue ink that reads "Edward B. Valverde". The signature is written in a cursive style.

Edward B. Valverde, Esq.-Arbitrator

# EXHIBIT 6

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**In the Matter of the Arbitration****between****James Annable****V.****Todd Wissing**

---

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**OPINION AND AWARD****of the****ARBITRATOR****Case No.: 71 300 00050 04**

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Grievances: Violations of the C & R Acceptable Use Policy  
 Arbitrator: Louise Berman Wolitz  
 Dates of Hearing: August 3, 2004; August 4, 2004; September 9, 2004;  
 October 7, 2004  
 Place of Hearing: Allied Pilots Association  
 14600 Trinity Blvd., Suite 500  
 Fort Worth, TX 76155  
 Briefs Postmarked: December 7, 2004  
 Record Closed: December 7, 2004  
 Briefs Received: December 13, 2004  
 Date of Award: January 10, 2005

**APPEARANCES:**For James Annable

Jim Sovich	Captain; Representative/Advocate
Edward White	Captain; Representative/Advocate (10/7/04)
James Annable	Captain
Gary Boettcher	Captain
Gary Weller	Captain; Chairman of Appeal Board

For Todd Wissing

Lloyd Hill	Captain; Representative/Advocate
Todd N. Wissing	First Officer
Robert Ames	Captain
Mark Hunnibell	Captain
Dennis Petretti	Captain

**RELEVANT PROVISIONS:**

*1. CONSTITUTION AND BYLAWS, APA, Ratified and Approved by Allied Pilots*

*It is also helpful to realize what these proceedings are not. They are not proceedings in a court of law. They do not enforce lawful duties, obligations or liabilities except as set forth in the Constitution and Bylaws. They are not designed to enforce the labor agreement except when a vital union interest or discipline is at stake which the union as an organization must enforce. They do not enforce standards of morals, ethics or conduct except as contained in the Constitution and Bylaws. They do not enforce the labor laws of the land. They do not and may not supplant the democratic political process of the Association. They only enforce Association interests, as opposed to individual interests, absent a clearly stated contrary intention in the Constitution and Bylaws to do otherwise. (emphasis added)*

....

*The Constitution and Bylaws specifically provide in Article VII (A) that a member is subject to fine, suspension, or expulsion. It also provides in Article III, Section 5, that a member is in good standing so long as he pays his current dues and assessments. There is no other requirement for good standing status.*

*Members in good standing are*

*entitled to participate actively in all APA activities and ... to all the rights privileges, and benefits of membership in APA. (Article III, Section 7.)*

...

*Only members in good standing and retired members shall be eligible for national office. Only active members in good standing shall be eligible for the office of Domicile Chairman and Vice Chairman...at their domicile. (Article V, Section 2)*

*There is no basis under the Constitution and Bylaws whereby the Union or the Arbitrator, as a disciplinary measure, may bar a member who is current in the payment of dues and assessments from running for or holding any office in the Union. Such requested relief is beyond the Union's and the Arbitrator's authority to grant.*

*There was no willful violation of a pilot's working agreement under the Constitution and Bylaws provision because there was no vital union interest or discipline at stake because of the posting of the offending letter. The solidarity of the Union, it that is supposed to be the vital union interest involved in this case, was disturbed long before the offending letter was published.*

*While the labor contract between American Airlines and the union prohibits the posting of defamatory matter and of material containing personal attacks on bulletin boards furnished to the union on company property, the evidence clearly*



enforcement. Given the fact that the Appeal Board acknowledges that the Acceptable Use Policy is both routinely violated and not enforced, the charges against First Officer Todd Wissing for violating the Acceptable Use Policy should be dismissed. It is a well established principle in union-management arbitration that discipline must be for just cause. It is a further well established principle that a rule, to be enforced, must be consistently enforced and that people guilty of violating the same rule should be similarly disciplined for the violation. Rules cannot be selectively enforced. A person cannot be found guilty of violating a rule that is admittedly not enforced. The Appeal Board acknowledges that the policy is *not practically enforceable*. The Board further acknowledges that it would take a full time enforcement staff and a standing tribunal to hear cases of violations of the Acceptable Use Policy and that that would not be worth the union's time or resources. The Board itself has said that the policy is neither enforced nor enforceable. If that is so, then it surely is not enforceable through the machinery of Article VII, under which these proceedings have been conducted.

We further note that there is no evidence in this extensive record of any prior charge of a violation of the Acceptable Use Policy being brought up as far as the Appeal Board and sustained. We do not even know that anybody has ever been charged before this case with violating the Acceptable Use Policy. There certainly is no organizational history of such charges or enforcement thereof. Captain Annable cites some cases of members of the Board or committees being removed from their positions by the Board of Directors for violations of the Code of Ethics. This evidence further enhances the point that *Article VII* charges are not the vehicle through which to effect these political changes.

#### OPINION AND AWARD

We find that the Appeal Board itself said that there is no expectation of Soundoff privacy and that the Acceptable Use Policy is routinely violated without enforcement. (AN 52, p. 22). We find that a person cannot be found guilty of violating a policy which the promulgating organization itself has acknowledged is routinely violated and not enforced. An organization cannot selectively enforce a policy against one individual, even if it imposes no penalty. We find that even if First Officer Todd Wissing had violated the Acceptable Use Policy when he posted a Soundoff communication on a public union (electronic) bulletin board without permission, this would not fall into the category of an Article VII breach as defined in the APA's Constitution and By-Laws. We therefore dismiss all the charges against First Officer Todd Wissing.

We further find that all fees and expenses of the neutral arbitrator shall be borne by the Association in this case. We make no determination that the proceeding has been initiated, or the charges have been defended, in bad faith.

Louise Berman Wolitz, Arbitrator  
Travis County, Texas