UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

AMERICAN AIRLINES FLOW-THRU PILOTS COALITION, et al.,

Plaintiffs,

v.

ALLIED PILOTS ASSOCIATION, et al.,

Defendants.

Case No. 15-cv-03125-RS

ORDER DENYING MOTION IN LIMINE

As discussed in prior orders, the named plaintiffs in this putative class action are five individual pilots and an unincorporated association of more than 150 similarly-situated pilots who originally were employed by "American Eagle"—a collective name for several regional affiliates of American Airlines.[1] In 1997, Eagle pilots became eligible to become pilots at American by virtue of a so-called "Flow-Thru Agreement" executed among the airline companies and the affected unions. Plaintiffs, who refer to themselves and the class members as "Flow-Thru-Pilots" (FTPs), acquired certain rights under that agreement with respect to when and how they would be offered positions flying for American, and what their seniority status would be among American pilots. The FTPs were to come under the representation of the union for American pilots,

[1] Hereinafter "Eagle" will be used to refer to American Eagle, and "American" will denote American Airlines.

defendant Allied Pilots Association ("The Union"), once they began flying at American.

Plaintiffs contend that the Union subsequently discriminated against them and all other FTPs in connection with (1) the integration of former TWA pilots into the American workforce in the early 2000s, and (2) the more recent and ongoing absorption of former US Airways pilots into American employment. In essence, plaintiffs allege that the Union placed the interests of former TWA and US Airways pilots above those of the FTPs in subsequent bargaining with American, with resulting negative impacts to the FTPs' seniority status, service credits, pay, and other benefits.

In prior motion practice, the Union obtained a ruling that plaintiffs' claims are limited to those arising from the negotiation of so-called "Letter G."[2] The Union now seeks a ruling *in limine* that various evidentiary matters are inadmissible, because they do not directly relate to the circumstances under which Letter G was negotiated.

In opposition, plaintiffs fault the Union for either supposedly attempting to re-litigate matters presented in its motion for summary judgment, or for seeking premature rulings on issues that more appropriately should be decided after trial has commenced, or closer to the trial date. In the abstract, the Union's effort to resolve these issues prior to trial is entirely appropriate as a matter of procedure. "*In limine*," means "at the outset." Black's Law Dictionary 803 (8th ed. 2004). A motion *in limine* is a procedural mechanism to limit in advance testimony or evidence in a particular area. *See United States v. Heller*, 551 F.3d 1108, 1111–12 (9th Cir. 2009). "In the case of a jury trial, a court's ruling 'at the outset' gives counsel advance notice of the scope of certain evidence so that admissibility is settled before attempted use of the evidence before the

[2] Under "Letter G" of the 2015 collective bargaining agreement, pilots returning to American from furlough are eligible for up to two years of "LOS credit," which represents a change from prior practice that such credit did not accumulate during furlough. The credit has apparently been made available to certain former TWA pilots, even if they were furloughed from TWA, and thus had not previously flown for American *per se*. Plaintiffs complain that the same or similar "LOS credit" should be available to them, as they were essentially in the same position as the TWA pilots—waiting for openings at American.

jury. *Id.* Here, the Union sought and was granted leave to present its motion *in limine* earlier than might ordinarily be expected. Accordingly, there is no procedural defect.

That said, the motion is fundamentally misdirected. The Union relies, in part, on footnotes 2 and 3 of the summary judgment order. Note 2 states:

> The Union, of course, may contend that it had every right to be in an adversarial relationship with FTPs prior to the time they became employed at American. Resolution of that issue must await a later day.

Note 3 provides:

> In light of this conclusion, the Union's further argument that it owed no duty of representation to the FTPs at the time of the events in question will not be reached. As noted above, the Union may still offer that argument to explain why the prior history does not show improper prejudice or discrimination.

The Union's present motion *in limine* focuses exclusively on attempts to establish, as a matter of law, that it owed no duty to plaintiffs prior to the time the FTPs came under the representation of the Union. *See* Dkt. No. 111 at 14 ("As we show below, [the Union] owed [plaintiffs] no duty during that time . . ."), *id.* at 15 ("[The Union] owed no duty to Plaintiffs until they actually began working for American"); *id.* at 18-19 (rebutting argument that representation arose prior to the time plaintiffs began flying for American).

While it remains unnecessary and premature to issue any conclusive ruling that the Union could have *no* duties towards the FTPs before they began flying for American, this motion *in limine* must be denied even assuming plaintiffs have no basis to charge the Union with any wrongdoing whatsoever prior to the time they came under the aegis of the Union's representation. Contrary to the very premise of the Union's motion, the relevant issue is *not* whether it had any duties towards plaintiffs at the time of the events it seeks to exclude from evidence. The question is whether evidence of alleged prior alignments, positions, and conduct is probative and not otherwise inadmissible.

Plaintiffs' theory, at least in part, is that *historically*, the Union—and the American pilots

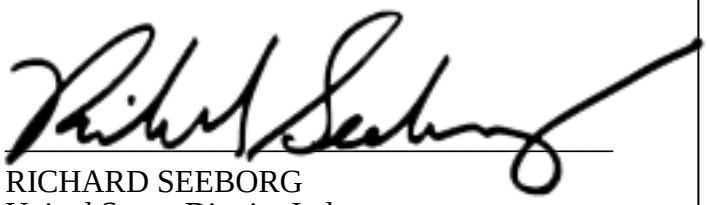
who made up its membership—held American Eagle pilots in less regard. Evidence relating to periods of time prior to the negotiation of Letter G is relevant and not unduly prejudicial to the extent plaintiffs offer it to show they were not given fair representation, at least in part as the result of such historical views regarding non-"mainline" pilots. The Union's motion seeks a determination as a matter of law that no reasonable trier of fact could infer any prior antipathy towards the FTPs persisted even after they came under the umbrella of APA representation. Neither human nature nor the law support such a conclusion. The trier of fact is entitled to hear the historical evidence and draw appropriate conclusions. The motion *in limine*, as framed, therefore must be denied, without prejudice to subsequent rulings at trial that particular evidence lacks probative value or is otherwise inadmissible, or is excludable under Evidence Code Section 403.[3]

All that said, the Union will certainly be entitled to argue to the trier of fact that it had every legal right to oppose the interest of plaintiffs prior to the time they began flying for American—and even a legal *duty* to do so to the extent their then-members' interests conflicted with those of plaintiffs. If necessary, the Union may seek an instruction to ensure the jury understands that APA's vigorous representation of its then-members is not a basis for liability. Plaintiffs are also cautioned that the ruling on this motion is not *carte blanche* to re-litigate any historical disputes, and that cumulative or otherwise prejudicial evidence regarding historical events not directly at issue may not be admitted.

[3] Similarly, APA's complaint that some of the evidence is no more than "stray remarks" of individuals who do not reflect the APA's views depends on the particular circumstances, and does not support a conclusion at this juncture that it necessarily must be excluded. Nothing in this order, of course, precludes a finding at trial that a particular piece of evidence is inadmissible.

IT IS SO ORDERED.

Dated: June 28, 2018



RICHARD SEEBORG
United States District Judge

United States District Court
Northern District of California