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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 AMERICAN AIRLINES FLOW-THRU)
17 PILOTS COALITION, et al.,)

18 Plaintiffs,)

19 v.)

20 ALLIED PILOTS ASSOCIATION, et al.,)

21 Defendants.)

Case No. 3:15-cv-03125-RS

**[PROPOSED] ORDER GRANTING
DEFENDANT ALLIED PILOTS
ASSOCIATION’S MOTION IN LIMINE TO
EXCLUDE EVIDENCE**

Date: March 29, 2018
Time: 1:30 p.m.
Courtroom: 3 - 17th Floor
Judge: Hon. Richard Seeborg

1 The Motion in Limine to Exclude Evidence filed on February 22, 2018, by Defendant Allied
2 Pilots Association (“APA”) came on regularly for hearing on March 29, 2018. Having considered the
3 argument and evidence presented by the parties, the Court grants the motion for the following reasons.

4 APA’s motion seeks to exclude certain evidence of APA’s conduct in collective bargaining
5 negotiations and arbitrations that occurred long before the January 2015 negotiation of “Letter G,” the
6 agreement challenged by Plaintiffs’ sole claim in this case. APA’s motion also seeks to exclude
7 evidence of epithets and remarks made by rank-and-file American Airlines pilots (allegedly impugning
8 Eagle pilots and their flying ability) dating back to the 1990s, during a dispute regarding whether pilots
9 at American Airlines or pilots at American Eagle should fly newly-acquired regional jets.

10 In this case, Plaintiffs challenge APA’s negotiation of Letter G as a breach of APA’s duty of
11 fair representation (“DFR”) to Plaintiffs and the class of “Flow-Through Pilots” they represent. In
12 order to prevail on that claim, Plaintiffs must prove, *inter alia*, that APA’s conduct with regard to the
13 Letter G negotiations was arbitrary, discriminatory, and/or in bad faith. *Air Line Pilots Ass’n v.*
14 *O’Neill*, 499 U.S. 65, 67 (1991). In order to attempt to make that showing, Plaintiffs seek to present
15 evidence of APA’s conduct in the pre-Letter G negotiations and arbitrations that they believe shows
16 APA’s animus against the Flow-Through Pilots, which they contend demonstrates that APA acted
17 discriminatorily in the Letter G negotiations.

18 APA’s motion seeks to exclude this evidence on three grounds. First, APA argues that the
19 evidence is not relevant under Federal Rule of Evidence 401 because APA’s conduct merely
20 demonstrates its compliance with the DFR it owed to the pilots it represented at that time – the
21 American Airlines pilots (including those who formerly flew for TWA). While Plaintiffs argue that
22 APA’s positions in the pre-Letter G negotiations and arbitrations were adverse to the Flow-Through
23 Pilots, there is no dispute that the affected Flow-Through Pilots were still flying for American Eagle at
24 the time. APA did not become the collective bargaining representative of the Flow-Through Pilots
25 until they ceased flying for American Eagle and began flying for American Airlines. APA was legally
26 obligated to advance the interests of the pilots it represented, and to privilege those interests over those
27 of all others (including the Flow-Through Pilots). *See, e.g., McNamara-Blad v. Ass’n of Prof’l Flight*
28 *Attendants*, 275 F.3d 1165, 1169-73 (9th Cir. 2002). Because the law required APA to seek to advance

1 the interests of the American pilots over those of the Flow-Through Pilots who were still flying at
2 Eagle, the Court agrees that APA's conduct in that regard cannot evidence animus toward the Flow-
3 Through Pilots and therefore is not relevant under Rule 401.

4 Second, APA argues that evidence of the pre-Letter G negotiations and arbitrations, as well as
5 evidence of "stray remarks" made long ago by persons other than the negotiators of Letter G, is
6 irrelevant to show animus on the part of those negotiators. Again, the caselaw supports APA's
7 argument, *see, e.g., Vasquez v. County of Los Angeles*, 349 F.3d 634, 640 (9th Cir. 2003); *Souter v.*
8 *Int'l Union, UAW, Local 72*, 993 F.2d 595, 599 (7th Cir. 1993); *Johnson v. U.S. Postal Service*, 756
9 F.2d 1461, 1466 (9th Cir. 1985), and the Court agrees that the evidence in question is not relevant
10 under Rule 401

11 Finally, APA argues that even if the evidence in question has some marginal relevance, it
12 should be excluded under Federal Rule of Evidence 403 because it would be likely to prejudice,
13 confuse, and mislead the jury, and waste the time of the Court and the parties by engendering a series
14 of "mini-trials" over each of the pre-Letter G negotiations and arbitrations, and the stray remarks,
15 notwithstanding that the Court has already ruled on summary judgment that those incidents are time-
16 barred from serving as the predicate for liability. Again, the Court agrees.

17 For the foregoing reasons, the Court hereby grants APA's Motion in Limine to Exclude
18 Evidence and orders that Plaintiffs shall not be permitted at trial to elicit or introduce evidence of
19 APA's representation of other pilots prior to the negotiation of the January 2015 Letter G or of
20 statements made by persons who did not participate in that negotiation.

21 **IT IS SO ORDERED.**

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23 Dated:

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RICHARD SEEBORG
United States District Judge