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U.S. DISTRICT COURT
DISTRICT OF NEVADA
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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DAVID W. ALLEN, et al.,) CV-N-99-539-DWH(RAM)
)
Plaintiffs,)
) ORDER
v.)
)
AMERICAN AIRLINES, INC., and ALLIED)
PILOTS ASSOCIATION,)
)
Defendants.)

Before the court are defendants' motions for summary judgment. American Airlines, Inc. ("American") filed its motion for summary judgment (#35) on November 22, 2000; Allied Pilots Association filed its motion (#36) the same day. Plaintiffs filed papers in opposition to defendants' motions (#'s 44 & 45, respectively) and defendants replied (#'s 49 & 50, respectively). Having reviewed the submissions of the parties, the court concludes that these matters are appropriate for decision without oral argument. See LR 78-2. For the reasons stated below, the court grants defendants' motions.

I. Factual Background

This dispute arises from defendant American Airlines' ("American") purchase of Reno Air, Inc. ("Reno Air") in late 1998. Plaintiffs, who are almost 240 in number, are pilots employed by American who were formerly employed by Reno Air. The majority of plaintiffs are based in Reno

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1 and Las Vegas, Nevada. The gravamen of plaintiffs' complaint involves a dispute over the
2 combination of the two airlines' pilot seniority lists and arises under the Railway Labor Act, 45
3 U.S.C. § 151, *et seq.* According to plaintiffs, "[s]eniority merger is important because relative pilot
4 seniority governs all facets of pilot employment at American, including the award of promotional
5 opportunities for higher paying assignments, the monthly bidding of work schedules, and protection
6 from lay off." Amended Complaint, #4, ¶ 8.

7 Plaintiffs allege that, after announcing its intention to acquire Reno Air in November 1998,
8 American consummated the acquisition of Reno Air on December 23, 1998, by buying 80% of the
9 outstanding shares of Reno Air. *See* #4, ¶ 6. Plaintiffs allege that, to induce the Reno Air pilots to
10 tender the shares of Reno Air stock to American, it represented to plaintiffs that pilot lists would be
11 merged on a "fair and equitable" basis. *See id.* at ¶ 9. Plaintiffs also allege that American
12 represented to them that the merged list of pilots would not result in the "displacement if any
13 incumbent pilot from any position currently held." *Id.* at ¶ 10.

14 While plaintiffs were employed as pilots at Reno Air, the terms and conditions of their
15 employment were governed by a collective bargaining agreement. They had elected Air Line Pilots
16 Association ("ALPA") as their union representative. The terms and conditions of American's pilots
17 are also governed by a collective bargaining agreement. Defendant Allied Pilots Association
18 ("APA") is the union representing American pilots.

19 Plaintiffs allege that, on or about December 23, 1998, APA undertook to represent the
20 interests of the Reno Air pilots by negotiating on their behalf the terms of a merger agreement with
21 American. *See* #4, ¶ 6. Plaintiffs allege that APA represented to them that APA would meet and
22 discuss seniority integration with plaintiffs' representatives before entering into negotiations with
23 American on the subject. *See id.* at ¶ 12. Plaintiffs further allege that in January 1999, American
24 and APA began negotiations for the pilot merger agreement to establish the terms and conditions
25 under which the Reno Air pilots and the American pilots would be combined. *See id.* at ¶ 7.
26 Plaintiffs allege they were excluded from these and other negotiations involving the merger of the
27 pilot lists. *See id.* at ¶ 13.

28 Plaintiffs allege that the seniority proposal which was later agreed upon by defendants was

1 arbitrary and unreasonable and not “fair and equitable” to them. *See id.* at ¶ 13. According to
2 plaintiffs, the merged pilot list agreed upon by defendants put plaintiffs at the bottom of the seniority
3 list. *See id.* at ¶ 17.

4 In a decision issued August 30, 1999, the National Mediation Board (“NMB”) determined
5 that, effective August 31, 1999, Reno Air and American were “operationally merged.” *See*
6 *American & Reno Air*, 26 NMB No. 85 (1999). As determined by the NMB, as of August 31, 1999,
7 Reno Air ceased to exist and APA became the exclusive bargaining unit for pilots (including former
8 Reno Air pilots) employed by American. *See id.* The Merger Agreement was not signed by APA
9 and American until November 18, 1999.

10 Plaintiffs filed their complaint on October 1, 1999. They state four causes of action: breach
11 of duty of fair representation against APA (Count 1); breach of duty of fair representation against
12 American (Count 2); breach of promise against American (Count 3); and misrepresentation against
13 American (Count 4). As indicated above, before the court are defendants’ motions for summary
14 judgment.

15 **II. Analysis**

16 **A. Summary Judgment Standard**

17 Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to
18 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
19 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of
20 law.” FED.R.CIV.P. 56(c). The burden of demonstrating the absence of a genuine issue of material
21 fact lies with the moving party. *See Zoslaw v. MCA Distr. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982),
22 *cert. denied*, 460 U.S. 1085 (1983). For this purpose, the material lodged by the moving party must
23 be viewed in the light most favorable to the nonmoving party. *See Adickes v. S.H. Kress and Co.*,
24 398 U.S. 144, 157 (1970); *Baker v. Centennial Ins. Co.*, 970 F.2d 660, 662 (9th Cir. 1992). A
25 material issue of fact is one that affects the outcome of the litigation and requires a trial to resolve
26 the differing versions of the truth. *See S.E.C. v. Seaboard Corp.*, 677 F.2d 1301, 1306 (9th Cir.
27 1982).

28 Once the moving party presents evidence that would call for judgment as a matter of law at

1 trial if left uncontroverted, the respondent must show by specific facts the existence of a genuine
2 issue for trial. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

3 [T]here is no genuine issue of fact for trial unless there is sufficient evidence favoring
4 the nonmoving party for a jury to return a verdict for that party. If the evidence is
5 merely colorable, or is not significantly probative, summary judgment may be
6 granted.

7 *Id.* at 249-50 (citations omitted). “A mere scintilla of evidence will not do, for a jury is permitted to
8 draw only those inferences of which the evidence is reasonably susceptible; it may not resort to
9 speculation.” *British Airways Bd. v. Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978), *cert. denied*,
10 440 U.S. 981 (1979). Moreover, if the factual context makes the nonmoving party’s claim
11 implausible, that party must come forward with more persuasive evidence than otherwise would be
12 necessary to show there is a genuine issue for trial. *See Matsushita Elec. Indus. Co., Ltd. v. Zenith*
13 *Radio Corp.*, 475 U.S. 574, 587 (1986); *California Architectural Bldg. Prods. v. Franciscan*
14 *Ceramics, Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987), *cert. denied*, 484 U.S. 1006 (1988).

14 **B. Application of the Standard**

15 **1. Duty of Fair Representation - Counts 1 & 2**

16 In Count 1 of their complaint, plaintiffs allege that APA breached its duty of fair
17 representation imposed by the Railway Labor Act, 45 U.S.C. § 151, *et seq.* (“RLA”). Specifically,
18 plaintiffs allege that APA violated its duty of fair representation by “(a) failing and refusing to
19 engage in meaningful discussions with plaintiffs’ representatives regarding seniority list integration,
20 despite representations that it would do so; (b) excluding plaintiffs’ representatives from negotiations
21 between APA and American regarding seniority list integration; (c) proposing and securing
22 acceptance from American of an integrated seniority list, and a system for displacing Reno pilots,
23 that were arbitrary, and not fair and equitable; (d) using a merged seniority list, and Reno pilot
24 displacements, to punish plaintiffs for layoffs of APA members for which Reno [Air] pilots were not
25 responsible; and, (e) making material and intentional misrepresentations to plaintiffs’
26 representatives.” #4 at ¶ 18. In count 2, plaintiffs allege that American “participated in, colluded
27 with, and knowingly facilitated APA’s breach of its duty of fair representation. . . .” #4, ¶ 20.

28 As an initial matter, American correctly states that its liability under Count 2 is dependent on

1 whether defendant APA breached its duty of fair representation to plaintiffs. Both defendants argue
2 that they are entitled to summary judgment in their favor because APA did not owe plaintiffs a duty
3 of fair representation. Alternatively, both defendants argue that, if APA owed plaintiffs a duty of fair
4 representation throughout the negotiation of the merged pilot list, it did not breach its duty. Finally,
5 defendants argue that they are entitled to summary judgment in their favor because plaintiffs' claims are
6 barred by RLA's six-month statute of limitations. Because the court agrees with defendants' first
7 and second arguments, it need not reach defendants' third argument.

8 The RLA governs the rights and responsibilities as between air carriers and their employees.
9 See 45 U.S.C. § 181. Pursuant to Section 2, Ninth of the RLA, the National Mediation Board has the
10 sole authority to certify collective bargaining representatives. See *Switchmen's Union v. National*
11 *Mediation Bd.*, 320 U.S. 297, 303 (1943). The duty of fair representation arises from a union's
12 statutory role as the exclusive bargaining unit of employees. See *Vaca v. Sipes*, 386 U.S. 171, 177
13 (1967). "A union breaches its duty of fair representation only when its conduct toward a member of
14 the collective bargaining unit is 'arbitrary, discriminatory, or in bad faith.'" *Peterson v. Kennedy*,
15 771 F.2d 1244, 1253-54 (9th Cir. 1985) (citing *Vaca*, 386 U.S. at 190). The Ninth Circuit has held
16 that the RLA imposes upon a union the duty to provide fair representation to all members of its
17 collective bargaining unit when negotiating an integrated seniority list. See *Bernard v. Air Line*
18 *Pilots Ass'n Int'l*, 873 F.2d 213, 216 (9th Cir. 1989).

19 The court has stated, however, it is axiomatic that a union's duty of fair representation
20 extends only to the employees it represents. See *Dycus v. Nat'l Labor Relations Bd.*, 615 F.2d 820,
21 827 (9th Cir. 1980) ("[a] labor organization that is not the exclusive representative of a bargaining
22 unit . . . owes no duty of fair representation to the members of the unit."). Correlatively, the RLA
23 forbids an employer from negotiating with any representative other than the exclusive
24 representative. See *Bathelemy v. Air Lines Pilot Ass'n*, 897 F.2d 999, 1007 (9th Cir. 1990) ("the
25 RLA imposes the affirmative duty on the employer to treat only with the true representative, and
26 hence the negative duty to treat no other.") (internal quotations omitted).

27 Here, in support of its motion for summary judgment, APA argues that it owed no duty of
28 fair representation to plaintiffs when it negotiated the merged pilot list with American because

1 plaintiffs were not members of APA, but rather, they were members of ALPA. Correlatively,
2 American argues it owed no duty to plaintiffs, and, by statute, could not negotiate with plaintiffs
3 because they were not members of APA, the exclusive bargaining unit for American's pilots (i.e., the
4 only bargaining unit with whom American could negotiate).

5 In contrast, plaintiffs contend that APA owed them a duty of fair representation throughout
6 its negotiations of the seniority list with American because, as early as December 23, 1998, APA
7 held itself out as plaintiffs' collective bargaining representative by stating publicly that Reno Air's
8 flights were covered by the term of APA's collective bargaining agreement. Plaintiffs also argue
9 that APA further asserted itself as plaintiff's bargaining unit on June 18, 1999, when it filed a "single
10 carrier" petition with the NMB seeking a declaration from the NMB that APA was the lawful
11 representative of American and Reno Air pilots. Third, plaintiffs argue that the merger agreement
12 was not signed until after August 31, 1999 – the date that APA officially became plaintiffs'
13 exclusive bargaining agent – and, therefore, APA breached its duty of fair representation to plaintiffs
14 by placing them at the bottom of American's pilot seniority list when it signed the Merger
15 Agreement on November 18, 1999.

16 To determine whether APA violated its duty of fair representation, the court must decide
17 whether (1) APA represented plaintiffs and thus owed plaintiffs a duty of fair representation, and (2)
18 APA breached that duty. *See Bernard*, 873 F.2d at 216. The court finds that plaintiffs' first two
19 arguments regarding APA's alleged breaches occurring prior to August 31, 1999 fail because APA
20 was not plaintiffs' bargaining unit and, therefore, owed them no duty of fair representation before
21 August 31, 1999. *See Dycus*, 615 F.2d at 827. Similarly, because APA was the sole bargaining unit
22 with whom American was authorized to negotiate at the time the integrated pilot seniority list was
23 negotiated, American also owed plaintiffs no duty prior to August 31, 1999. *See Piedmont-Empire*
24 *Acquisition*, 1986 WL 69768 (D.O.T. Jan. 23, 1986) ("... "the relief demanded by the [merged
25 airline representatives] is inconsistent with applicable labor law. The [merged airline
26 representatives] request us to direct Piedmont to negotiate with them over their wages and working
27 conditions. The Railway Labor Act, however, allows Piedmont to bargain only with the
28 representatives certified by the National Mediation Board.").

1 As to plaintiffs' third argument that APA and American breached a duty of fair
2 representation from August 31, 1999 to November 18, 1999 (the date the merger agreement was
3 formally executed), the court finds this contention to be unavailing. Although APA was plaintiffs'
4 bargaining unit as of August 31, 1999, and, therefore, owed plaintiffs a duty of fair representation,
5 the court finds there was no breach of that duty.

6 Plaintiffs contend that APA and American were in negotiations over the integrated seniority
7 list *after* August 31, 1999. The facts alleged by plaintiffs, however, demonstrate that defendants
8 were *implementing* the integrated seniority list, not *negotiating* such list. For example, the notion
9 that APA breached its duty of fair representation to plaintiffs from August 31, 1999 -- the day APA
10 officially became their exclusive bargaining unit -- to November 18, 1999, is belied by the date this
11 action was commenced: October 1, 1999. Plaintiffs' argument that defendants were negotiating the
12 seniority list after August 31, 1999, is further discredited by the allegation in their amended
13 complaint which states, "[o]n August 31, 1999, American merged, within this district and division,
14 the flight operations and pilot groups of Reno Air and American. *In so doing, the company*
15 *implemented APA's proposals by placing all former Reno pilots on the bottom of the seniority list.*
16 *In addition, on August 31, 1999 American began the process of displacing and demoting former*
17 *Reno Captains, based in Reno and Las Vegas, to First Officer rank, and awarding their Captain*
18 *positions to APA members who are First Officers. The company similarly began displacing former*
19 *Reno First Officers from their bases. The effective date of the foregoing displacements and*
20 *demotions is November 1, 1999."* # 4, ¶ 17 (emphasis added).

21 As the district court found in *McNamara-Blad v. Ass'n of Professional Flight Attendants*, No.
22 C 99-4831 CRB (N.D. Cal., Mar. 8, 2000) (attached to #36, Ex. D), there is no violation of the duty
23 of fair representation where the exclusive bargaining unit (APA) of the merged airline (American)
24 and that airline (American) implement the seniority integration agreement that they negotiated prior
25 to the bargaining unit's representation of the newly-merged employees (plaintiffs) of the former
26 airline (Reno Air). *See id.* at 5; *see also Riser Foods*, 309 NLRB 635, 636 (1992). Plaintiffs do not
27 point to any evidence indicating that further negotiations regarding the integrated seniority list took
28 place after August 31, 1999, or that plaintiffs attempted to participate in the negotiations, but were

1 denied access.¹

2 Based on the above, the court finds that APA did not owe plaintiffs a duty of fair
3 representation prior to August 31, 1999, and that APA did not breach any duty after August 31,
4 1999. As such, plaintiffs cannot state a claim against either defendant and their respective motions
5 for summary judgment are granted as to plaintiffs' first and second claims for relief.

6 **2. Plaintiffs' State Law Claims - Counts 3 & 4**

7 As for the state law supplemental claims, the court declines to exercise jurisdiction over
8 them, having granted defendants' motions for summary judgment with respect to plaintiffs' RLA
9 claims. *See* 28 U.S.C. § 1367(c)(3); *see also Moore v. Kayport Package Express, Inc.*, 885 F.2d
10 531, 533 (9th Cir. 1989) ("Nor did the district court err in dismissing the pendent state claims against
11 the accountant, lawyer and stockbroker defendants once the court had dismissed the federal
12 [securities] claim on which federal jurisdiction was predicated."); *McCarthy v. Mayo*, 827 F.2d 1310,
13 1317 (9th Cir. 1987) (it is generally better to dismiss pendent state claims after federal claims have
14 been dismissed). Thus, the state supplemental claims will be dismissed without prejudice.

15 **III. Conclusion**

16 Accordingly, **IT IS ORDERED** that defendant American Airlines, Inc.'s motion (#35) be
17 **GRANTED**.

18 **IT IS FURTHER ORDERED** that defendant Allied Pilots Association's motion (#36) be
19 **GRANTED**.

20 DATED: This 14th day of September, 2001.

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22 
23 UNITED STATES DISTRICT JUDGE
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25 ¹Plaintiffs direct the court to the deposition testimony of Michael Mellerski at pages 13-14 apparently to
26 demonstrate that negotiations over the seniority agreement were ongoing until November 18, 1999. *See* #45, Vol. 1.
27 However, after reviewing the deposition transcript, the court finds no indication in his testimony of seniority negotiations
28 taking place after August 31, 1999. Plaintiffs also direct the court to a May 14, 1999 letter from Captain Richard T. LaVoy,
President of APA, addressed to American indicating that, at that time, APA apparently objected to piece-meal
implementation of various compromises achieved in negotiations and mediation "in an attempt to reach a comprehensive
agreement on a number of items." *See id.* at Vol. 2, Ex. 32. This letter also does not demonstrate that any negotiations
between defendants over the integrated seniority lists occurred after August 31, 1999.