IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

THOMAS E. PEREZ, Secretary of Labor [now EDWARD HUGLER, Acting Secretary of Labor],	
Plaintiff,	Civil Action No. 4:16-CV-1057-A
v.	
ASSOCIATION OF PROFESSIONAL FLIGHT ATTENDANTS,	
Defendant.	

JOINT STATUS REPORT

The plaintiff, the Secretary of Labor, and the defendant, the Association of Professional Flight Attendants (APFA), submit the following joint status report pursuant to the Court's March 8, 2017 order:

(1) A brief statement of the nature of the case, including the contentions of the parties. This case arises out of a January 9, 2016 union officers election conducted by the APFA, which is the union for flight attendants employed by American Airlines. As relevant to this suit, the election was conducted using an internet-based electronic voting system in which voters cast their votes using the internet or by telephone.

The Secretary brought suit under the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 401 *et seq.*, which imposes certain requirements on the conduct of union elections. The Secretary contends that the APFA's

election failed to comply with the LMRDA in two respects. First, the Secretary contends that the voting system used in the election did not satisfy the LMRDA's ballot-secrecy requirement because: (1) the system stores union-member identifying information and the record of cast votes on two computer servers; (2) the information stored on the servers allows particular votes to be connected to particular voters, thus allowing for voters to be identified with their voting choices, because the system can send an email to the voter upon receipt of his vote; and (3) the Secretary was in fact able to match the names of 4,082 voters to their votes during a post-election investigation, by reviewing the information on the two election servers. Second, the Secretary contends that the election did not satisfy the LMRDA's requirement that candidates be permitted to have observers in the election, because the electronic voting system did not permit observers to verify that votes were recorded and tallied correctly. Based on the existence of these alleged LMRDA violations (either individually or in combination), the Secretary has asked the Court to declare the election at issue to be void and to order the union to conduct a new election under the Secretary's supervision, which is the type of relief specified by the LMRDA when a violation that may have affected the outcome of the election is found.

The APFA contends that the Secretary's factual allegations respecting the operation of the electronic voting system at issue and the Labor Department's "post-election investigation" are inaccurate and/or incomplete in several material respects. As an accurate and complete recitation of the facts will show, APFA did not violate the LMRDA in either manner claimed by the Secretary. Moreover, neither of the claimed violations may have affected the outcome of the January 9, 2016 election, thereby

precluding the grant of the relief prayed for by the Secretary.

(2) Any challenge to jurisdiction or venue. None.

(3) Any pending motions, an estimate of time needed to file any contemplated motions and a description of anticipated motions. There are no pending motions. The parties do anticipate filing cross-motions for summary judgment, and, accounting for the anticipated discovery that is discussed in more detail below, the parties estimate that they would be ready to file their cross-motions for summary judgment by late January 2018.

(4) Any matters which require a conference with the court. None at this time.

(5) Likelihood that other parties will be joined, identities of potential parties and an estimate of the time needed for joinder of such parties. The parties do not anticipate the joinder of additional parties, and anticipate no problems with the Court's standard timing for a joinder-of-parties deadline.

(6) Requested trial date, estimated length of trial, and whether jury has been demanded. The parties request a trial date of May 15, 2018. (This is requested with the idea that the pretrial conference date might then fall around mid-April 2018, and the deadline for summary judgment motions would then fall in or around late January 2018. The parties also agree that the requested trial date would accommodate their mutual need for extensive pre-trial discovery, including third-party and expert discovery, of a highly complex and technical nature, as described further below.) The estimated length of trial is 2–3 days. No jury has been demanded. (*See Wirtz v. Nat'l Maritime Union of Am.*, 399 F.2d 544, 548 (2d Cir. 1968); *Chao v. Local 54*, 166 F. Supp. 2d 109, 116 n.6 (D.N.J. 2001) (noting that the court, not a jury, is the trier of fact in LMRDA enforcement actions

brought by the Secretary).)

(7) A discovery plan as contemplated by Rule 26(f)(3) of the Federal Rules of Civil Procedure. Tracking the lettered sub-parts (A) through (F) found in Fed. R. Civ. P. 26(f)(3), the parties respond as follows:

(A) The parties have agreed to exchange initial disclosures under Fed. R. Civ. P. 26(a) by April 21, 2017, with no changes necessary in the form or requirement for these disclosures.

(B) The parties anticipate that discovery will focus on the operation of the electronic voting system at issue and its effect on ballot secrecy and observer requirements, including any facts developed in the Secretary's post-election investigation. The parties do anticipate that there will be third-party discovery, encompassing both document production and depositions, from at least two different sources: (1) the contractor (BallotPoint) that operates the electronic voting system at issue, which contractor is based in Portland, Oregon and has relevant employees located there who have knowledge of how the system operates and who will need to be deposed for this case, and (2) a second contractor, located in Michigan, that was responsible for the printing and mailing of election material to union membership (including things like instructions and access codes to be used for accessing the electronic voting system), and from whom depositions are also likely to be required. Both parties also anticipate the retention of experts and associated expert discovery. The parties estimate that discovery should be completed in 12 months.

Discovery need not be (i) conducted in phases, (ii) limited beyond the limits in the Federal Rules of Civil Procedure, or (iii) focused on particular issues.

(C) The parties anticipate that, to the extent electronically stored information may be produced in discovery, it will be produced in PDF format and in native format as appropriate (for things like Excel files).

(D) The parties are not aware at this time of any issues concerning privilege or trial-preparation protection. If applicable, the assertion of any such privilege or protection will be made in the normal course of discovery as contemplated by the Federal Rules of Civil Procedure and other applicable authority.

(E) The parties do not believe any changes are necessary in the limitations on discovery imposed under the Federal Rules of Civil Procedure and the local rules. The parties may craft mutual confidentiality obligations and other limitations on the use of certain documents or information in this case, as discussed in the following item.

(F) The parties anticipate that discovery may involve documents or information meriting protection due to the confidential or sensitive nature of the materials in question (e.g., information contained in, derived from, or about BallotPoint's electronic voting system). As noted above, the parties may enter into an appropriate agreement or agreements on such issues. Mindful of the Court's policy regarding involving itself in such matters, the parties do not intend to ask the Court to include such agreement(s) in any order.

(8) Any other matters relevant to the status and disposition of this case. None.

Respectfully submitted,

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Certificate of Service

On April 7, 2017, I served the foregoing document on defendant, the Association of Professional Flight Attendants, by mailing it by prepaid first-class mail to defendant's counsel of record, addressed as follows:

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