



NATIONAL MEDIATION BOARD
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30 NMB No. 39
April 18, 2003

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Re: NMB Case No. R-6885
Pinnacle Airlines Corp.

Gentlemen and Ms. Robbins:

This determination addresses the Paper, Allied-Industrial, Chemical and Energy Workers International Union's (PACE) Motion for Reconsideration of the National Mediation Board's (NMB or Board) decision in *Notice to Fleet and Passenger Service*

Employees of Pinnacle Airlines, Inc., 30 NMB 252 (2003). PACE filed the motion on April 11, 2003. Pinnacle Airlines (Carrier) filed its response to the Motion for Reconsideration on April 14, 2003, opposing the motion.

In the *Notice to Fleet and Passenger Service Employees of Pinnacle Airlines, Inc.*, above, the Board found that a clerical error on the part of the Carrier resulted in voters being unable to vote using the election materials sent to them by the Board. The Board, therefore, cancelled the election in progress effective April 9, 2003, and ordered a re-run election by Telephone Electronic Voting. Notices were mailed to all employees at their home addresses on April 9, 2003, informing them of the cancellation. Notices and Sample Instructions for the new election are scheduled to be mailed to the Carrier and PACE on April 21, 2003. The Telephone Voting Instructions are scheduled to be mailed to employees on April 28, 2003, and the tally is scheduled to take place on May 28, 2003.

For the reasons set forth below, the Board grants reconsideration but denies relief.

I.

CONTENTIONS

PACE

PACE seeks “additional protection of voter free choice ... by utilizing a *Key* ballot or, alternatively, a *Laker* ballot and an on-site election, and preservation of evidence with respect to the cancelled election.”

PACE questions “why the Carrier’s errors, which were initially determined to be remedial within the initial time frame, were later cause for cancelling an election.” PACE is further concerned that employees’ free choice will be compromised from a delay in the election caused by the Carrier’s own error. PACE argues that “in the aborted election a majority of eligible voters were in the process of selecting union representation.”

PACE argues that the Carrier is responsible for the interference which cancelled the election. The Organization maintains that the Carrier may have better employee addresses than the ones provided to the Board because many employees had not received ballots but had received videos from the Carrier. The inaccurate Personal Identification Numbers (PIN’s), and faulty addresses, when considered in conjunction with the Carrier’s “serious objectionable conduct in discharging Union supporters” warrants a *Key* ballot. In the alternative, PACE states that a *Laker* ballot is appropriate regardless of whether or not the Carrier’s repeated errors are intentional since it is remedial not punitive. In support of this, PACE cites *Evergreen Int’l Airlines*, 20 NMB 675 (1993) and *Mesa Airlines, Inc.*, 26 NMB 373 (1998).

Finally PACE argues that “given the Carrier’s inability to provide accurate information for a mail ballot, an on-site election would avoid such potential interference in the next election. An on-site election could be scheduled so as not to further delay the election.”

Pinnacle

Pinnacle opposes PACE’s motion, arguing that PACE’s motion does not allege that the Board has made a material error of law or fact. Nor does it identify any circumstances in which modification of the Board’s decision is necessary to the public interest. Pinnacle states that PACE’s Motion for Reconsideration is merely a reassertion of factual and legal arguments previously presented.

Pinnacle argues that there is no substance to PACE's claim that the Carrier deliberately supplied incorrect addresses to the Board. The Carrier supplied an affidavit from Beverly Thomas, Pinnacle's Manager of Compensation and Benefits. Thomas states that the addresses supplied to the Board were the same addresses which the Carrier used to send videos to employees. These addresses were generated from Pinnacle's payroll system. The Carrier states that it sent its video to all customer service and gate employees, regardless of their eligibility to participate in the election. Thus, it may be the case, according to the Carrier, that the employees at issue received the video but not the voting instructions because they are not eligible to vote.

Pinnacle states that all errors regarding the PIN's were unintentional clerical errors. Pinnacle states that the NMB only recently began using telephonic voting and it is the first such election in which Pinnacle and its counsel have been involved. Pinnacle's counsel inadvertently sent PACE a copy of the list of eligible voters which included the PIN's in a good-faith effort to comply with the Board's simultaneous service requirement. The subsequent error that occurred regarding the PIN's was clerical as well.

Pinnacle maintains that PACE's concern that errors have interfered with the employees' ability to vote is amply addressed by the Board's April 9, 2003, determination. The Carrier argues that the Board should deny PACE's request for relief since PACE fails to satisfy the standards for a Motion for Reconsideration set forth in the Board's Representation Manual (Manual) Section 11.0.

II.

DISCUSSION

The Board finds that PACE has stated sufficient grounds to grant reconsideration pursuant to the Manual Section 11.0.

Manual Section 11.0 states:

Reconsideration may not be sought from the NMB's certification or dismissal. . . . The motion must comply with the NMB's simultaneous service requirements of Manual Section 1.201. The motion must state the points of law or fact which the participant believes the NMB has overlooked or misapplied and the grounds for the relief sought. Absent a demonstration of material error of law or fact or circumstances in which the NMB's exercise of discretion to modify the decision is important to the public interest, the NMB will not grant the relief sought. The mere reassertion of factual and legal arguments previously presented to the NMB is insufficient to obtain relief.

In *Virgin Atlantic Airways*, 21 NMB 183, 186 (1994), the Board applied this standard and stated:

[It] recognizes the vital importance of the consistency and stability of the law as embodied in . . . NMB determinations Accordingly, the Board does not intend to reverse prior decisions on reconsideration except in the extraordinary circumstances where, in its view, the prior decision is fundamentally inconsistent with the proper execution of the NMB's responsibilities under the Railway Labor Act.

A.

The Board's April 9, 2003, Notice

In its February 14, 2003, determination the Board ordered a re-run election. *Pinnacle Airlines Corp.*, 30 NMB 186 (2003). On April 9, 2003, the Board cancelled the re-run election which was currently in progress because of a clerical error on the part of the Carrier. This error resulted in incorrect assignment of PIN's to 179 of the 704 employees in the craft or class and, therefore, over 25 percent of employees in the craft or class were unable to vote using the Voter Identification Number (VIN)/PIN combination mailed by the Board. The Board attempted to maintain laboratory conditions while it investigated the extent of the clerical error.¹ Upon completion of its investigation, the Board concluded that cancellation of the re-run election was appropriate and re-scheduled the re-run election for May 28, 2003. The Board will generate new Instructions including new VIN's and PIN's for the May 28, 2003, tally.

The Board's determination in *Notice to Fleet and Passenger Service Employees of Pinnacle Airlines, Inc.*, 30 NMB 252 (2003) to cancel the re-run election and reschedule it with procedures in place to ensure that employees have the opportunity to vote maintains laboratory conditions in the re-run election. PACE has failed to state any points of law or fact that the Board misapplied or overlooked which would provide a basis for ordering a second

¹ The Board provided new VIN/PIN combinations to 26 employees by express mail. Once the Board ascertained the extent of the error, it determined that this method was not only cost prohibitive but did not adequately ensure that all members of the craft or class had the opportunity to vote.

re-run election using a *Key* ballot or an on-site election using a *Laker* ballot.

Absent a showing that the Board's April 9, 2003, determination is fundamentally inconsistent with the proper execution of the Board's responsibilities under the Railway Labor Act (RLA), the Board will not grant the requested relief. *American Trans Air, Inc.*, 28 NMB 260 (2001); *Virgin Atlantic Airways, above.*

B.

Incorrect Addresses

PACE asserts as part of its basis for requesting a *Key* or *Laker* ballot that the Carrier intentionally provided incorrect addresses to the Board. PACE did not provide the Board with any evidence to substantiate this claim.

The Board has procedures in place for dealing with incorrect addresses which are outlined in Manual Sections 14.206 and 14.207.

Manual Section 14.206 states:

Ballot packages returned to the NMB for incorrect addresses will be checked for accuracy. If a "better" address is obtained at least seven (7) calendar days prior to the count, the ballot package will be sent to the better address. Otherwise, the ballot package is undeliverable.

Manual Section 14.207 states in part:

The Investigator will verify the number of eligible voters prior to the count by making the following adjustments . . . removing names for those individuals whose ballot package was undeliverable . . .

In addition, the Carrier and the Organization will be provided copies of the Board's "Notice of Election" one week in advance of the mailing of the Instructions for the re-scheduled election. The Carrier is required to post this "Notice" throughout its system. The Notice instructs employees how to request a duplicate set of Instructions and VIN/PIN combination in the event that they do not receive their Instructions and VIN/PIN combination within a week of the mailing.

PACE cites *Mesa Airlines, Inc.*, 26 NMB 373 (1999), in support of its request for an on-site election with a *Laker* ballot. The facts in this case are distinguishable from *Mesa*. In *Mesa*, the initial set of addresses provided by the Carrier did not contain a single correct address. The Board in *Mesa*, therefore, determined that "Mesa's unprecedented action of providing wholly inaccurate labels seriously undermines the integrity of the Board's election procedures." *above* at 381.

There is no evidence that Pinnacle provided a "wholly inaccurate" or even a substantially inaccurate set of address labels. Therefore, the procedures set forth in *Mesa, above*, or the "remedy" requested by Pinnacle, specifically an on-site election with a *Laker* ballot, would be inappropriate at this time.

C.

PACE's Request for an On-site Election

PACE objects to the delay in the election caused by the Board's April 9, 2003, determination and argues that an on-site election is appropriate because it could be scheduled so as not to further delay the election and conduct the election on April 23, 2003, as originally scheduled. PACE is in error. Due to the Board's limited resources, and the logistics involved in deviating from the Board's standard balloting procedures and the fact that there are multiple stations involved, running a ballot box election would substantially delay the resolution of this matter. The RLA provides for the prompt settlement of representation disputes. 45 U.S.C. § 152, Ninth. Therefore, the public interest weighs against

granting the Motion for Reconsideration and delaying resolution of this matter further.

The Board will address any further errors or other actions which compromise the integrity of the voting process with any appropriate measures pursuant to the Board's authority under Section 2, Ninth, of the RLA. PACE is not precluded from filing any charges of election interference according to Manual Section 17.0 at the conclusion of the re-run election on May 28, 2003.

CONCLUSION

The Board has reviewed PACE's Motion for Reconsideration and the Carrier's response. The Board grants the Motion for Reconsideration but upon reconsideration, the Board affirms its decision and denies the relief requested. The Organization has failed to demonstrate a material error of law or fact or circumstances in which the NMB's exercise of discretion to modify the decision is important to the public interest.

By direction of the NATIONAL MEDIATION BOARD.

Benetta M. Mansfield
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Chief of Staff