NATIONAL MEDIATION BOARD
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30 NMB No. 41
April 30, 2003

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Re: NMB Case No. R-6933
United Airlines, Inc.

Gentlemen and Ms. Coyne:

This determination addresses the "Motion to Stay Representation Proceedings" filed by United Airlines, Inc. (United or Carrier) on April 1, 2003. For the reasons discussed below, the Carrier's Motion is denied and the investigation, including an election, will proceed.

PROCEDURAL BACKGROUND

On March 6, 2003, the Aircraft Mechanics Fraternal Association (AMFA) filed an application with the National Mediation Board (Board), alleging a representation dispute pursuant to the Railway Labor Act[1] (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth), among United's Mechanics and Related Employees. At the time this application was received, these employees were represented by the International Association of Machinists & Aerospace Workers, AFL-CIO (IAM). On March 7, 2003, the Board docketed the case and assigned Sean J. Rogers and Zachery Jones to investigate. On March 21, 2003, the Carrier submitted the List of Potential Eligible Voters and signature samples. On April 2, 2003, the Board received United's April 1, 2003, Motion for a six-month stay of the proceedings. Also on April 2, 2003, the Board sent a letter to AMFA and the IAM requesting responses to the Carrier's Motion by April 16, 2003. AMFA filed a response opposing United's Motion on April 3, 2003. On April 14, 2003: Investigator Mary L. Johnson was assigned to replace Investigators Rogers and Jones; United requested the opportunity to file a reply to AMFA's and IAM's responses by April 30, 2003; AMFA filed a letter opposing the Carrier's request to file a reply; and IAM filed its response in support of the Carrier's Motion to Stay. On April 15, 2003, the Board granted United's request to file a reply, but set a deadline of April 22, 2003. That same date, United withdrew its request to file a reply.

CONTENTIONS

United

The Carrier requests a "brief stay" of 180 days based on a combination of circumstances. Those circumstances include the Carrier's bankruptcy filing on December 9, 2002, the war in Iraq,

[1] 45 U.S.C. § 151, *et seq.*

and the "enormous" size of the craft or class (over 14,000 Mechanics and Related Employees). According to United, if efforts to save the airline fail, "there will be no craft or class to represent." In support of its position, the Carrier cites the Board's policy of ensuring labor relations stability, as enunciated in such Board determinations as *Trans World Airlines*, 14 NMB 218 (1987). United asserts that the "extraordinary and exigent" circumstances preclude the maintenance of the laboratory conditions the Board requires in representation disputes. The Carrier cites the Board's decision in *Security '76, Inc.*, 5 NMB 234 (1976) to support its assertion that the Board has stayed representation proceedings in "circumstances less compelling than those here." United argues that the only way to harmonize the RLA's purposes with those of the Bankruptcy Code (Code)[2] is to stay the representation proceedings.

IAM

The IAM also asserts that the Board should take cognizance of the bankruptcy proceedings. According to the IAM, since the bankruptcy filing there have been "non-stop negotiations . . . over restructuring collectively bargained agreements." IAM cites the following sequence of events: on January 10, 2003, United was granted interim relief under § 1113(e) of the Code to "avoid irreparable damage to its estate"; on March 17, 2003, United filed a Motion under § 1113(c) on the grounds that reorganization would not be possible without substantial modification of the agreements; and on April 11, 2003, United and IAM reached tentative agreement on modifications to their agreement covering Mechanics and Related Employees. The ratification vote was scheduled for April 29, 2003. IAM argues that the ratification process and subsequent negotiations which would occur whether or not the agreement is ratified "should . . . be insulated from

[2] 11 U.S.C. § 1101, *et seq.* One of the purposes of the Code is to provide debtors the opportunity to reorganize while sheltered from financial and other pressures.

representation electioneering and campaigning." According to the IAM, the RLA "contemplates and calls for nothing less."

AMFA

AMFA objects to United's Motion and argues that the Board should not permit any delay, even a short one.[3] AMFA argues that the Board has exclusive authority over representation investigations and that the bankruptcy proceedings, therefore, are not relevant. According to AMFA, the Carrier's Motion reflects "bias" in favor of the IAM and, therefore, contaminates the laboratory conditions. Under these circumstances, AMFA asserts that the investigation should "be expedited, not sabotaged . . . ." AMFA also contends that the Carrier ignores Board precedent holding that bankruptcy proceedings do not provide a basis for delaying representation elections. In support of its contention, AMFA cites two Board decisions which deal with the juxtaposition of bankruptcy proceedings and representation cases: *Eastern Airlines, Inc.,* 17 NMB 432 (1990), and *Continental Airlines*, 11 NMB 46 (1983). AMFA further maintains that the Carrier's citation of *Security '76, above,* is inapposite. Finally, AMFA urges the Board to direct United "to maintain its mandated neutrality" and requests the Board to notify the participants of its authorization of election.

DISCUSSION

It is the Board's long-standing policy, consistent with Section 2, Ninth, to resolve representation disputes as expeditiously as possible. In *Continental Airlines Corp.*, 50 B.R. 342 (S.D. Tex. 1985), *aff'd*, *per curium*, 790 F.2d 35 (5th Cir. 1986), the Federal District Court for the Southern District of Texas overturned a stay of a representation election issued by a Bankruptcy Court. The District Court recognized that:

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[3] AMFA also opposed the two-week period the Board provided for responses to the Carrier's Motion.

> [T]he RLA furthers Congress's strong policy of guaranteeing employees the right to organize and collectively bargain free from any carrier interference or influence. Yet delays in NMB precertification proceedings seriously hamper such organizational efforts . . . .
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> . . . .
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> Speed is accordingly an RLA "objective of the first order," *Railway Clerks*, 380 U.S. at 668; and the damage caused by staying an NMB election is often substantially greater than that caused by allowing an election to go ahead . . . .

In *Eastern Airlines, above*, the Board applied this policy in rejecting carrier arguments that the Board must refrain from investigating representation disputes because of a bankruptcy filing. The Board stated, "bankruptcy petitions do not suspend investigations." *Above* at 444. In *Eastern,* the Carriers had cited *Security '76,* 5 NMB 234 (1976), in support of their arguments. In *Security '76*, the Board delayed the processing of representation applications for two reasons. First, in light of the Company's extensive non-airline-related activities, the Board needed to resolve the threshold jurisdictional issue. Second, during the Board's investigation, the Board learned that *Security '76* would undergo corporate re-structuring into two separate and distinct corporations, one airline-related and one not airline-related. The Board found that "it would have been difficult, if not impossible, to determine a precise list of eligible employees in accordance with Section 2, Ninth . . . ." *Id.* at 235-236. Such is not the case here.

It is the Board's consistent practice to proceed with representation elections unless the Board itself finds it necessary to delay due to unusual or complex issues, or is barred by court order. *Tower Air,* 16 NMB 326, 328 (1989); *Air Florida,* 10 NMB 294, 295 (1983). *See also Chatauqua Airlines, Inc.,* 21 NMB 226,

227-228 (1994); *Sapado I,* 19 NMB 279, 282 (1992); *USAir,* 17 NMB 69, 72 (1989); and *USAir,* 15 NMB 369, 394 (1988). The Board notes that as a result of United's Motion, the processing of this representation case already has been delayed for four weeks. During that time, United and the IAM reached a tentative agreement with modified terms for the Mechanics and Related Employees. That agreement was ratified on April 29, 2003. Further delay of these proceedings would be inappropriate and is not justified.

CONCLUSION AND AUTHORIZATION OF ELECTION

The Board finds no basis to further delay the representation proceedings. Accordingly, United's Motion to Stay is denied. The Board finds a dispute to exist among the craft or class of Mechanics and Related Employees, and authorizes a Telephone Electronic Voting (TEV) Election using a cut-off date of March 1, 2003. Pursuant to the Board's Representation Manual Section 12.1, the Carrier is required to furnish, within five calendar days, alphabetized 1" x 2 5/8" peel-off labels bearing the names and current addresses of the employees on the List of Potential Eligible Voters. The Carrier must print the same sequence number from the List of Potential Eligible Voters beside each voter's name on the address label. The Carrier must use the most expeditious method possible, such as overnight mail, to ensure that the Board receives the labels within five calendar days. The tally will take place in Washington, DC.

By direction of the NATIONAL MEDIATION BOARD.

Benetta M. Mansfield

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Chief of Staff