



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572

(202) 692-5000

<p>In the Matter of the Application of the</p> <p><b>INTERNATIONAL BROTHERHOOD OF TEAMSTERS</b></p> <p>alleging a representation dispute pursuant to Section 2, Ninth, of the Railway Labor Act, as amended</p> <p>involving employees of</p> <p><b>AMERICA WEST AIRLINES, INC.</b></p>	<p>30 NMB No. 47</p> <p>CASE NO. R-6905</p> <p>FINDINGS UPON INVESTIGATION</p> <p>May 19, 2003</p>
---	--

This determination resolves election interference allegations filed by the International Brotherhood of Teamsters (IBT or Organization). For the reasons below, the National Mediation Board (Board) finds that the laboratory conditions required for a fair election were not tainted. The IBT's request for a "Key" ballot election or a certification based upon a check of authorization cards is denied.

PROCEDURAL BACKGROUND

On August 21, 2002, the IBT filed an application with the Board pursuant to the Railway Labor Act<sup>1</sup> (RLA), 45 U.S.C. § 152, Ninth, (Section 2, Ninth), alleging a representation dispute involving Passenger Service Employees of America West Airlines, Inc. (America West or Carrier). At the time the application was received, these employees were unrepresented.

---

<sup>1</sup> 45 U.S.C. §151, *et seq.*

The Board assigned Mary L. Johnson to investigate. On September 20, 2002, the Board found that a dispute existed and authorized a Telephone Electronic Voting (TEV) election. Voting Instructions (Instructions) were mailed on October 11, 2002, and the tally was conducted on November 8, 2002. The results of the tally were as follows: of 3,619 eligible voters, 1,572 cast valid votes for representation. This was less than a majority required for Board certification. On November 12, 2002, the Board dismissed the IBT's application.

On November 22, 2002, the IBT filed a charge of election interference pursuant to the Board's Representation Manual (Manual) Section 17.0. On November 25, 2002, Investigator Eileen Hennessey was assigned to continue the investigation. On December 16, 2002, the Carrier responded, denying the IBT's allegations.

On January 9, 2003, the Board found that the IBT's allegations stated a prima facie case that laboratory conditions were tainted and the Board would conduct further investigation. The Board established a schedule for further filings. On January 16, 2003, the IBT filed a supplement to its allegations of election interference. The Carrier responded to the IBT's supplemental submission on January 24, 2003. The IBT responded to the Carrier's January 24, 2003 submission on January 31, 2003. The Carrier filed its final submission on February 7, 2003.

### ISSUES

Did America West's actions taint the laboratory conditions required by the Board for a fair election?

### CONTENTIONS

#### IBT

The IBT asserts that the Carrier engaged in the following behavior which tainted laboratory conditions:

Threatened employees with loss of benefits if they selected union representation;

Interrogated employees in one-on-one and group sessions regarding their positions and attitudes about the union;

Subjected employees to frequent mandatory anti-union meetings where any pro-union sentiment was met with harsh rebukes by managers;

Inundated employees with massive amounts of vitriolic anti-union literature both by distribution at the work place and by mail to employees' homes;

Provided misleading and false statements to employees concerning Board processes, including the procedures to replace or remove the union and the security of the TEV process;

Failed to provide the Board with correct addresses for employees while anti-union literature was sent to the correct addresses;

Failed to post the required Board notices and voting instructions or surrounded and obscured the notices with anti-union postings;

Promised that pay raises were about to be implemented for employees;

Surveilled employees who support the union or created the impression of surveillance; and

Intimidated and harassed employees for expressing union support by wearing pins or buttons on their uniforms.

The IBT argues that even if the Carrier stated the loss of benefits “could” or “might” be lost through collective bargaining, these statements constitute thinly veiled threats and led employees to believe that such benefits “*would* [be] lost.”

The IBT requests a re-run with a *Key* ballot or a certification based upon the authorization cards submitted. The IBT argues that such measures are supported by the history of election interference at America West. *America West Airlines, Inc.*, 25 NMB 127 (1997); *America West Airlines, Inc.*, 17 NMB 79 (1990).

#### America West

The Carrier denies that employees were required to attend anti-union meetings. The Carrier states that its managers and supervisors attended training sessions during which they were instructed that meetings and discussions about union issues must be voluntary. America West asserts that the IBT’s evidence supports this contention, as many of the employees who submitted declarations for the IBT stated that they chose not to attend these meetings. Furthermore, the Carrier notes that the IBT has not alleged that employees were disciplined for not attending the “mandatory” meetings.

America West states that it facilitated voluntary meetings for its passenger service employees to receive information from the Carrier regarding the IBT organizing campaign. In these meetings, employees participated in a group discussion, generally following a question-and-answer format, and, although there was a healthy debate about the issues, there is no evidence that any employee suffered any consequences for expressing pro-union views.

The Carrier states that it did not threaten employees with loss of benefits or positions if the union were elected. Instead, the Carrier contends that it accurately stated that some employee benefits could be reduced or lost as a result of the collective bargaining process. The Carrier notes that employee statements

submitted by the IBT support this assertion. Furthermore, the Carrier also notes that its communications regarding collective bargaining and employee benefits contained legally and factually accurate observations about both the collective bargaining process and the IBT's collective bargaining record.

The Carrier denies that it interrogated employees in one-on-one and group sessions. America West states that during training for its managers and supervisors regarding appropriate conduct during the IBT's organizing campaign, the managers and supervisors were specifically instructed that they could not interrogate employees about their views regarding the union election. The Carrier further states that the managers and supervisors followed the guidance from the training sessions.

America West denies that it inundated employees with massive amounts of vitriolic anti-union literature. The Carrier asserts that it sent "two or three" short letters to employee homes and made a series of one-page flyers available to employees at voluntary meetings. Employees were free to take the flyers or ignore them. While the contents of these communications may have been perceived by the IBT as negative or otherwise unflattering, "that does not convert the [Carrier's] legitimate expression of its views into 'vitriolic anti-union literature' or otherwise render impermissible the Carrier's exercise of its First Amendment rights."

The Carrier denies it promised employees that pay raises were to be implemented. The Carrier states that it responded to an employee question about the Carrier's annual review of its compensation package.

America West states that the IBT has provided no substantive evidence that it engaged in surveillance of union supporters. The IBT's assertion, according to the Carrier, amounts to "virtually nothing but paranoia" on the part of two employees.

The Carrier admits that local management, on a few occasions at one location, misapplied company policy and instructed passenger service employees to remove their pins. America West states that corporate management promptly intervened in these situations and the local management then advised employees that they were free to wear their union pins. The Carrier further notes that “although these episodes were unfortunate, a mistaken application of Company policy and practice in one location on a few days does not taint the laboratory conditions in an election involving several thousand employees throughout the United States.”

The Carrier denies any misrepresentation of Board procedures. The Carrier’s campaign materials addressed the subject of union decertification, stating that while it is not impossible to decertify a union, it is a difficult process. The Carrier also states that the communications stated that under the RLA and the Board’s procedures, there is no formal mechanism for decertification of a union, and that it is difficult and unusual for a certified union to be replaced by another union or for a union-represented work group to return to non-represented status.

America West asserts that there is no evidence supporting the IBT’s contention that the Carrier purposely provided the Board with incorrect employee addresses. The Carrier argues that this contention was previously considered and rejected by the Board in connection with the Board’s denial of the IBT’s motion for an extension of the voting period and the Board should again deny this argument. The Carrier further asserts that it had no logical reason to provide incorrect addresses because if voting instructions were returned as “undeliverable, the employee would be removed from the eligibility list and the IBT would need fewer votes to win the election.”

Finally, the Carrier asserts that the IBT attempted to coerce employees into voting for union representation by “inter alia, threatening employees with adverse consequences if they do not vote in favor of the union, telling employees that the IBT knew

which employees had voted in favor of the union and attempting to compile a list of the employees who had voted.” In addition, America West argues that the IBT “trampled upon the secrecy of the National Mediation Board’s voting process by organizing a ‘drawing/lottery’ for those employees who voted in favor of the union.”

### FINDINGS OF LAW

Determination of the issues in this case is governed by the RLA, as amended, 45 U.S.C. § 151, *et seq.* Accordingly, the Board finds as follows:

#### I.

America West is a common carrier by air as defined in 45 U.S.C. § 181.

#### II.

The IBT is a labor organization and/or representative as provided by 45 U.S.C. § 151, Sixth.

#### III.

45 U.S.C. § 152, Third, provides in part: “Representatives . . . shall be designated . . . without interference, influence, or coercion . . . .”

#### IV.

45 U.S.C. § 152, Fourth, gives employees subject to its provisions, “the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter.” This section also provides as follows:

No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees . . . or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization . . . .

FINDINGS OF FACT

I.

Promises or Threats of Changes in Benefits and Working Conditions

A.

Scheduling and Shift Assignments

The IBT submitted declarations from sixteen employees at the following stations: Albuquerque, Atlanta, Las Vegas, Phoenix, Tempe, Reno, and America West Vacations located in Phoenix. These employees stated that they were told that part-time positions would be lost if the IBT was certified. According to the declarations, supervisors stated that “Teamsters got rid of thousands of part-time jobs at UPS and would do the same thing at America West.” One affidavit stated that a supervisor told employees that “IBT did not support part-time positions” and that if employees supported the Teamsters, the employees “would vote [themselves] out of a job.” Another employee declared that a supervisor stated that if IBT were the chosen representative, the “company would have to eliminate part-time and temp[orary] employees.”

The Organization submitted declarations from 34 employees who stated that they were told by supervisors that benefits would be lost if the union were elected. According to the



affidavits, employees were told that if the IBT won the election, all flexibility and teamwork would be lost. One employee was told that the employee would not be able to receive schedule accommodations for the employee's medical condition if the union were chosen. Employees stated that the Carrier told them that parking benefits, medical insurance, flight benefits, "APEX: bonuses," and "AUTO" time off would be lost if the IBT won the election. Employees at the America West Vacation Center in Phoenix stated that they were told that the Carrier would eliminate the home agents program and their commission structure if the union prevailed.

America West submitted declarations from management officials denying employees' statements that they were threatened with loss of part-time positions. These declarations state that supervisors routinely told employees that everything - including part-time positions - was negotiable during collective bargaining. The declarations also state that supervisors referred to or read verbatim from America West Fact sheets.

During the election campaign the Carrier maintained a website at [www.awatoday.com](http://www.awatoday.com). This Carrier website contained information about the election campaign. Some of this information was in a question and answer format. The web site contained the following information:

Q. You stated "seniority rules could seriously disadvantage junior and part-time employees"- what kind of disadvantages are you referring to, and how does the impact of union representation differ for part-time and full-time employees?

A. Unions generally negotiate provisions that make seniority a determining factor in many routine decisions, and less senior employees can therefore be negatively affected- such provisions are contained in all of the AWA union contracts.

- Shift and Day Assignments- whether it is shift or work schedules trades or bids, or vacation requests, the most senior employees have the first choice under existing AWA contracts. Currently, non-union employees have the flexibility to work out trades among themselves, giving everyone a fair chance to make schedule changes as their needs might require.
- Overtime Assignments- senior employees have the first right to accept or reject mandatory overtime under AWA union contracts, leaving less senior employees with no choice. Uncovered overtime can result in mandatory overtime assigned to less senior employees, with little or no flexibility for individual needs or situations.
- AUTOs [Authorized Unpaid Time Off]- under AWA union contracts, senior employees must be given the first opportunity to AUTO, leaving less senior employees fewer opportunities to AUTO on either a daily or advanced basis. Currently, there are several different approaches to AUTOs for non-unionized employees, based on the department, that often include “first come, first served” options that give everyone a fair chance.

As for part-time employees, we can point out that there are no part-time mechanics and no provisions in the AWA Teamsters contract for part-time jobs. You can also discover that in the past two contract negotiations between the Teamsters and UPS, the Teamsters demanded reductions in the number of part-time employees. In fact, in 1997, after a bitter strike, an agreement was reached that resulted in the loss of jobs for approximately 10,000 part-time employees when 20,000 jobs were combined and converted into full-time jobs. In 2002, the Teamsters insisted that part-time jobs be limited even more, and UPS agreed to convert 10,000 part-time jobs into full-time jobs, resulting in potential loss of jobs for about 5,000 part-time employees. Also, as we have pointed out in several of our fact sheets, the dues or service charge for part-time employees is the same as for full-time employees - part-time employees pay full-time dues or service charges under the Teamsters' rules.

B.

APEX Commissions and Home Agent Program

With regard to the APEX (commission) program, the Carrier stated the following on its website:

All compensation is subject to collective bargaining. While we do not know what the union will do in bargaining, all unions at AWA - including the Teamsters - have bargained for seniority-based hourly rates in their contracts instead of variable compensation based on an individual employee's performance.

The web site stated the following about the home-agent program:

As with commissions, we do not know what the Teamsters will do in bargaining regarding home agents. However, we do know that the Teamsters have refused to agree to even part-time, on-site positions in other groups at AWA.

C.

Pay Scale Increase

The web site also contained the following information with regard to changes in salary:

Q. We are mostly interested in having a wage scale, so what will AWA do if we don't vote for the Union?

A. Unfortunately, during the entire period of time that the union is organizing and/or an election is scheduled, we cannot make any promises about what we would do if the union is not voted in to represent the employees. Making a statement at this time could result in a ruling by the National Mediation Board that would overturn the results of the election.

According to two employees, Mike Shamblin, Senior Director, Central Region visited the El Paso station and told employees during the election period that a pay-scale increase was planned for all employees. One employee stated:

Mr. Mike Shamblin, director of customer service, came to our station a few days before our union voting and told us that a pay-scale increase package is in the works for all of us. I have never heard of, or received any pay-scale package in the past and it seemed conveniently presented to us just weeks away from our election.

Another employee stated:

On October 17, 2002, Mr. Mike Shamblin, Central Region Director, came to our station for a meeting. He stated to our group that we had a salary increase package sitting on Mr. Doug Parker's desk. The reason they had not told us in the past was because the Board of Directors needed to know their intentions first.

Mike Shamblin submitted an affidavit that stated that he became the Senior Director, Central Region for America West Airlines, effective September 19, 2002. Mr. Shamblin stated the following:

I have significant experience and training with respect to union organizing campaigns. Before I came to America West, I was a shop steward for the Amalgamated Transit Union and I worked for American Airlines for 12 years. During my time at American, I was involved in three separate organizing campaigns and received extensive training from American Airlines regarding what I could and could not say and do in the context of a union election. With regard to the present union campaign, I participated in weekly conferences specifically regarding what America West's management personnel could say and do about the union campaign. My training included instructions not to threaten or interrogate employees, conduct mandatory meetings, contact employees at home or make promises during the election process regarding working terms or conditions.

Shamblin stated that after he became Senior Director in September 2002, he visited each of the 24 stations in the Central Region. Each visit included a meeting with non-supervisory personnel to allow them to raise concerns. The meetings with non-supervisory employees lasted 30-90 minutes and were voluntary. On October 17, 2002, Shamblin conducted a meeting

with El Paso non-supervisory employees. Approximately 25-30 employees attended.

Shamblin stated that the October 17 meeting lasted approximately two hours, and about 15 minutes of that time was devoted to responding to questions about union issues. Shamblin also stated the following:

I received fact sheets and notices that I used as a “script” when talking to employees. My discussions regarding unionization were always consistent with the fact sheets and notices. . . .

In response to a question regarding pay increases, I advised that America West reviews wages and benefits annually to determine whether the company is competitive with the rest of the airline industry. I further advised that Doug Parker and America West’s Board of Directors must approve any proposed increase in wages and benefits. Those statements are a general description of America West’s established procedures regarding wage and benefit increases. I absolutely did not state or imply that a pay increase was “in the works” or “on Doug Parker’s desk”, or the “Board of Directors needed to know the employees’ intentions” before implementing a pay increase.

II.

Interrogation, Intimidation, and Surveillance

Approximately eight employees submitted declarations in which they stated that they were approached and interrogated about the union by a supervisor. These statements came from employees based at numerous stations, including Albuquerque, Atlanta, Denver, Las Vegas, and at American West Vacations in Phoenix. Some of these employees stated that they were asked by their supervisors how to vote “no” for the union. Additionally, four employees stated that during the election period there was a heavy presence of management officials at meetings.

America West submitted declarations from supervisors which stated that employees were not “spied on,” and that supervisors routinely walk around the reservations floor. Other supervisors declared that they never approached and questioned employees about their union views, but rather only discussed the union with those employees who first raised the issue.

The IBT also contends that employees were interrogated by supervisors in one-on-one encounters as to the employees’ level of union support. The IBT states that at America West Vacations in Phoenix and at the reservations center in Reno, supervisors created the impression that the union supporters were under surveillance.

One employee at the Reno station stated:

When several of us committee members wore our Teamsters T-shirts to work . . . [Michael Schulze, a supervisor and] Blandin Nardinger also a supervisor . . . apparently were taking note of those of us who wore our Teamster shirts to work. They were both walking up and down each aisle which is not something that they do together each and everyday. I felt intimidated by this particular action, and I’ve also noticed that these two fellows seem to take on a

certain attitude or slight air of hostility towards us since the first day of wearing the shirts.

Another employee at the Reno Reservation Center stated:

[T]hings have changed since the employees have stated that we would like a union here within the Reno Reservation Center. I noticed one day that one of the supervisors was giving me dirty looks and the center manager give [sic] several meetings about how part-time employees would be fired if the union came into the center.

### III.

#### Mandatory Meetings

More than 16 employees submitted statements that asserted that the Carrier held mandatory meetings regarding the union campaign. At these meetings, the employees stated, Carrier officials and anti-union employees freely expressed their views while the Carrier refused to allow union supporters to speak. Several employees stated that these meetings “increased exponentially” during the election period.

One employee stated:

[A] team meeting was called to discuss the union and what it will do to me. Team meetings are mandatory. When we questioned why we had to listen to the negative reasons we should not vote for the union, they corrected themselves and said the union portion of the meeting is voluntary, so I left.



Another employee stated:

Since I have been employed at America West, we have mandatory team meetings once a month. The subject of these meetings normally consisted of updates to computers, new code share partners, new routes for the airline, and other operational revisions. They normally lasted 30 minutes to an hour but were never longer than that. Many of my coworkers had told me that their mandatory team meetings had turned into meetings about the union as early as August, however this did not happen in my team meeting until the month of October. By this time, we were also required to attend 2 team meetings a month. . . .

[At one meeting in the beginning of October] I raised my hand and pulled out a copy of the Railway Labor Act. I explained how in section 4, paragraph 1, it not only guarantees us the right to organize, but it guarantees the right to bargain collectively through the agent of our choice. I asked if they were familiar with the Railway Labor Act, and they said they were, but not the specifics of this section. They asked me to sit back down, and proceeded to explain that the Teamsters would be making decisions for us, and that they eliminated all of the part time jobs for the mechanics at America West, and would do the same thing for us. . . . There were approximately 25 employees in this meeting and it lasted for over 2 hours. The first ten minutes were spent on normal operational things, but after that, the entire meeting was transformed into a union session.

Another employee stated that during the first week in October he attended a "State of the Airline" meeting. The employee stated that these meetings came to be called "Union Informational Meetings." The meeting lasted approximately two hours and employees were paid to attend. This employee stated

that America West was “paying employees to go to these meetings all day. This went on for weeks, until they were sure that everybody had been to them. Every time they took 20-30 employees off the phones, we were shorthanded and the[ number] of callers on hold would go up.”

The Carrier states that beginning in September 2002, it facilitated voluntary “State of the Airline” meetings to discuss the overall performance of the airline and union issues the employees might have. The Carrier stated that it held the meetings because many agents commented that they were not hearing anything from the company on union issues.

Larry LeSuer, Vice President of the Phoenix Hub stated:

Every “State of the Airline” meeting followed the same format, and I always relied on company-generated fact sheets and notices as the source of my information. At the start of every meeting, I clearly explained that the meeting was voluntary and that employees could leave at any time. Based on my observation of the number of employees at each meeting, I estimate that at least 200-300 employees out of 700 employees did not attend these meetings. No effort was made to determine who did not attend the meetings because the meetings were entirely voluntary.

In addition to the “State of the Airline Meetings,” the Carrier continued to hold briefings and team meetings during the election period. Thelma Oleson, Operations Supervisor, Phoenix, stated the following about a briefing which took place on October 24, 2002:

The meeting began at 5:00 p.m. with a briefing conducted by two employees from the training department regarding customer service. . . . The training briefing was referred to as the “Friendly and Helpful” briefing. It lasted until approximately 6:40

p.m. After the training briefing ended, I explained to the employees that they could remain to ask any questions that they might have regarding the union campaign. I explained, however, that they were not required to stay. . . . All employees were given an opportunity to speak. I did not direct the course of the discussion. The discussion regarding union issues lasted approximately 25 minutes.

The Carrier submitted affidavits from management officials most of which stated that the official attended training regarding the union campaign. During this training, the officials were instructed not to threaten, interrogate, make promises to, or spy on employees with regard to the union campaign. The officials also stated that they were instructed during training that any meetings regarding unionization must be open and voluntary and not to initiate discussion with employees regarding unionization. The officials were instructed that they could answer questions posed to them. Officials were told to limit comments regarding unionization to the information contained in America West's fact sheets and notices.

#### IV.

##### Misrepresentation of Board Procedures

Several employees stated that the Carrier misrepresented Board procedures and the RLA. According to these statements, the Carrier told employees that "once the union was voted in it could not be removed." Other employees stated that the Carrier questioned the security of the Board's voting process.

The Carrier stated the following on its web site:

Q. I keep hearing that once a union is voted in, you can never get rid of them. What does that mean? Can the reservation agents change from the Teamsters to TWU, or can they only change the persons who serve as Union officials such as the "shop stewards"?

A. Voting to get rid of union representation altogether is called "decertification". The Railway Labor Act (RLA) does not have a formal procedure for decertification once a union has been voted in. The most common procedure to "decertify" a union is for another union, or sometimes an individual, to petition the NMB for a new "certification" election. If the union in place has a contract, then to get an election the challenging union must have signed authorization cards from a majority (50% plus 1) of the employees in the entire group. Once there is an election, however, if less than a majority of employees cast votes, the result will be that no union is certified and the employees will become "union free." This process is very difficult to bring about, and frankly, it has seldom occurred. Usually, when there is an election between two unions, a majority of employees vote in favor of one union or the other, and the NMB certifies the union which gets the most votes. Incidentally, these elections must involve the entire "craft or class" of employees. Individuals or small groups of employees cannot use the procedure on their own.

You should also know that the NMB generally imposes a two-year "certification bar" once a union has been elected. This means that for a period of two years the NMB generally will not process a petition filed by another union.

Finally, you should remember that the union which represents employees will probably not want to be replaced, and will apply pressure to prevent that from happening.

The decision you make now about union representation is a very important decision that will be very difficult, if not almost impossible, to undo in

the future - so you should be very careful about the decision you make!

The Carrier posted the following information on the website regarding the Board's voting procedures:

Q. Is it true that the best and safest way to vote "NO" is to not call the voting number and not cast any vote?

A. Yes. What you were told is true, the best and safest way to vote "NO" is to do nothing at all - there is no option for a "NO" vote in the NMB's Telephone Electronic Voting procedure. If you don't want the union, then you should not call the voting number or attempt to vote! Under the voting procedure that will be used for this election, voting instruction letters will be mailed by the NMB to employees on October 11, 2002.

Here is what the NMB has said (in italics and quotes as shown) about the new telephone voting procedure in its official "NOTICE OF TELEPHONE VOTING ELECTION" and sample "TELEPHONE VOTING INSTRUCTIONS":

- "No employee is required to vote."
  - Note that if you do not want the union, it is best to do nothing at all since no one is required to vote and there is no option for a "NO" vote!
- "If less than a majority of employees cast valid votes, no representative will be certified."
  - Note that a union will only be certified if a majority of eligible

voters actually casts a valid vote  
in favor of union representation!

- "Should a majority vote to be represented, the representative that receives a majority of the votes cast will be the representative."
- Note that the Teamsters could win if only 50% plus 1 of the almost 4,100 eligible employees (about 2,051) voted in favor of representation by some union, and 50% plus 1 of those who voted (about 1,026) did so for the Teamsters. This means that about 1,026 employees (only about 25% of all employees in the passenger service group) could legally bind all 4,100 employees to union representation!
- "To maintain the confidentiality and integrity of the voting process, do not share your VIN with anyone."
- Note: according to the NMB, the use of anyone else's voter identification number is a violation of Federal law. You should destroy the voting instruction letter with your confidential voting number if you want to be sure this information does not fall into someone else's hands.
- The NMB's sample "TELEPHONE VOTING INSTRUCTIONS" state that there will be only two options for voting: "Follow the prompts to cast your vote for International Brotherhood of Teamsters or Any Other Organization or Individual."

- Note: there is no option for a "NO" vote!

This is not like most elections you might have voted in. As you have been told, if you do not want the union, the best way to be sure you help defeat the union is to not call the voting number, and not attempt to vote. And, if you want to ensure that no one else votes using your voter identification number, the safest thing to do is to destroy the voting instructions when they arrive so that no one else can have access to your confidential voting information. If you want additional information about the NMB's Telephone Electronic Voting (TEV) process, you can visit [www.nmb.gov](http://www.nmb.gov).

Regarding the TEV election, America West posted the following information on their web-site:

Q. When is the union election?

A. The National Mediation Board (NMB) has authorized an election to decide if our "passenger service" employees want representation by the Teamsters or not. The NMB has said that it will mail voting instructions to employees on October 11, 2002. The vote count will be on November 8, 2002. The NMB has said that it plans to conduct the election by "Telephone electronic voting" in which the last four digits of an employee's social security number and a special voter identification number will be used to vote by calling a designated telephone number. This voting process is new, and has not been tested by the NMB in an election involving such a larger [sic] number of employees. (note: AWA is concerned about the use of the new telephone voting process for your election, and the privacy and security of the process. In addition, we are uncertain about the accuracy of this process in such a large election, and we will formally express our concerns

to the NMB in writing. We do not anticipate that there will be any significant delays in the conduct of the election.) The best way to vote "NO" union, is not to vote at all. There is no option in the "Telephone electronic voting" system to cast a "NO" union vote. In fact, the safest way to be sure that no one else uses confidential voting information to cast your vote by telephone, is to destroy the voting instructions when they arrive at your home so that they will not fall into wrong hands. If you do not want the Teamsters to win the election, then you should not vote at all.

V.

Posting of Board Notices

At the Minneapolis station, an employee asserts that the Board's Notice of Election was not posted. Two employees at the Sacramento station stated that the Notice was removed by a supervisor at the Sacramento station and employees were informed that any similar items would be removed. Additionally, an employee at America West Vacations in Phoenix stated the Notice at the Vacation Center in Phoenix was partially obscured by anti-union literature. This employee submitted photographs of a Carrier bulletin board with the NMB's notice posted on it. The notice is surrounded by "America West Fact Sheets". The Fact Sheets are flyers produced by the Carrier communicating its position on various union issues.

According to an affidavit submitted by Phil Isaacs, Employee Relations Manager:

I was responsible for facilitating the Company's distribution of the National Mediation Board's Notice of Telephone Voting Election and Telephone Voting Instructions (the "Notice"). Immediately after the Notice was received from the National Mediation Board, the Notice was scanned into an electronic



document and delivered by e-mail to all managers with responsibility over passenger service employees. Those managers were instructed to immediately post the Notice in a secure area. A confirmation of receipt of this message was received by e-mail from each worksite. . . .

During the course of the organizing campaign, senior management from America West invited the IBT to submit evidence of any conduct it believed to be inappropriate so that the Company could remedy any problems that may have existed. Based on my information, the IBT never provided such evidence.

The Carrier states that it can not confirm or deny that the notice was posted in Minneapolis. America West states that if it was not posted it was due to a clerical oversight.

William C. Ervin, Supervisor of the Sacramento station, stated that he did not remove official NMB Notices and Sample instructions. Ervin states that he removed IBT literature including IBT voting instructions which were posted on a Carrier bulletin board in the fleet service break room.

Manual Section 13.1 states:

The NMB will provide copies of the Notice of Election/Telephone Voting Instructions (Notice) to the participants at least five calendar days before the Telephone Voting Instructions (Instructions) are mailed to the eligible voters. The Carrier must post the Notice on Carrier bulletin boards and all locations where other notices to employees usually are posted. At least one Notice per station must be posted.

VI.

IBT Pins

According to an affidavit provided by Phil Isaacs, the Carrier's general practice was to allow Passenger Service Employees to wear IBT pins, as long as the pins did not deface the Carrier's logo or the employee's nametag. Isaacs stated that on or about September 11, 2002, he learned that employees were being told that they could not wear union pins. Isaacs stated that he told management that employees were allowed to wear the pins. It is Isaacs' understanding that this information was conveyed to employees that same day. Isaacs states that Passenger Service Employees wore the pins throughout the election campaign.

In September 2002, the Organization distributed pins to Customer Service employees. The pins depicted an American flag with the words "United We Stand" underneath. According to statements provided by several Customer Service Agents (CSAs), CSAs are permitted to wear pins with the American flag, "red, white and blue or other patriotic symbols" "to show remembrance and support for the American citizens who died or were catastrophically affected by the events of September 11, 2001." This message was disseminated through bulletin boards and other company locations.

Six employees at the Las Vegas station complained that America West supervisors ordered them to remove the American flag pins that were distributed by the IBT. These incidents took place during September and October 2002.

The Carrier submitted statements from four supervisors at the Las Vegas station. Kathy Panero, Human Resources Manager, Las Vegas station, stated that it was "not a flag pin - it actually had the IBT logo on it" and told an employee and a Customer Service Supervisor that employees could not wear union pins while in a customer contact position. Later that same day, Panero was informed by the Carrier's Labor Relations

department that employees could wear their pins. Panero stated that she told the Customer Service Supervisor that employees could wear the pins and requested that the supervisor immediately inform employees that they could wear the pins.

Other supervisors submitted statements that they told employees to remove the pins because the supervisors thought that employees could only wear pins issued by the Carrier. When the supervisors learned that was not Carrier policy, these supervisors stated they immediately informed employees they could wear the pins. No employee was disciplined for wearing the pins, and employees did wear the pins during the election campaign.

VII.

Employee Addresses

The Organization previously argued in this case that the Board should extend the voting period in this election in order to “increase the likelihood that all eligible employees for whom the Carrier has supplied newly corrected addresses will receive their . . . voting materials and have sufficient time to vote if they so choose” due to a high number of incorrect addresses. The Board denied the IBT’s request for an extension stating that there was “insufficient substantive evidence to support a finding of ‘extraordinary circumstances’ to justify extending the voting period.” *America West Airlines*, 30 NMB 72, 77 (2002).

In its allegations of election interference, the IBT provided several statements from employees who stated that they did not receive ballots from the Board but received anti-union literature from the Carrier. The IBT also asserts that employees at the Minneapolis and Sacramento stations and the America West Vacations in Phoenix were deprived of meaningful notice of how to request a duplicate ballot since the Notices at those stations were obscured or taken down.

DISCUSSION

## I.

During election campaigns, a carrier must act in a manner that does not influence, interfere with, or coerce the employees' selection of a collective bargaining representative. *Metroflight, Inc.*, 13 NMB 284 (1986). When considering whether employees' freedom of choice of a collective bargaining representative has been impaired, the Board examines the totality of the circumstances as established through its investigation. *Mercy Air Serv., Inc.*, 29 NMB 55 (2001); *US Airways*, 26 NMB 323 (1999); *Petroleum Helicopters, Inc.*, 25 NMB 197 (1998); *Evergreen Int'l Airlines*, 20 NMB 675 (1993); *America West Airlines, Inc.*, 17 NMB 79 (1990).

In investigating allegations of carrier interference, the Board examines whether the employees' freedom of choice has been impaired. The use of a modified ballot by the Board in response to established interference is designed to mitigate the effects of an election environment in which the voters' "independence of judgment" has been eroded by the carrier's conduct. *Evergreen, above at 715.*

For example, in *Laker Airways, Ltd.*, 8 NMB 236 (1981), the Board found that the carrier had violated the Act by actions such as soliciting employees to turn in their ballots to carrier officials; increasing pay immediately prior to the election period; and polling employees as to their representation choice. As a remedy, the Board ordered a re-run election using a "Laker" ballot. A "Laker" election involves the use of a "yes" or "no" ballot. No write-in space is provided, and the majority of votes actually cast determines the outcome of the election. A "Laker" election was also used as a remedy in *Mid Pacific Airlines*, 13 NMB 178 (1986), where the Board found the carrier had violated the Act by polling its employees and by implying that its financial future hinged on the employees' rejection of union representation.

In *Key Airlines*, 16 NMB 296 (1989), the Board ordered a different remedy for carrier interference. In *Key*, the Board found that the carrier had violated the Act by: discharge and reassignment of leading union organizers; denial of a scheduled pay increase to one group of employees immediately after a representation application was filed; granting of a pay increase to another group of employees immediately prior to the filing of its application; and threats to employees' job security should they vote for representation. This was the second time in three years that the Board found that Key Airlines had violated its employees' representation rights. As a remedy in the *Key* case, the Board ordered a new election in which the organization would be certified unless a majority of eligible voters returned votes opposing union representation. No write-in space was provided.

In contrast, “isolated incidents” of potentially questionable carrier activities are insufficient to warrant a finding that the laboratory conditions necessary for a fair election have been tainted. See *Northwest Airlines, Inc.*, 19 NMB 94 (1991) (During an organizing campaign, supervisors may have been involved in certain incidents favoring one union over another but this is insufficient to warrant any remedial action by the Board); *USAir, Inc.*, 18 NMB 290 (1991) (The carrier’s disparate enforcement of its policy on access to employee break rooms is an insufficient basis for a finding of interference).

## II.

### A.

#### Promises or Threats of Changes in Benefits and Working Conditions

In *Mercy Air Serv., Inc.*, 29 NMB 55, 73 (2001), the Board cited its long-standing policy on carrier campaign communications:

Carriers have a right to communicate with their employees during election campaigns, but this right is “not without limit, and even conduct which is

otherwise lawful may justify remedial action when it interferes with a representation election.” In reviewing communications, the Board examines their content to see if they are coercive, contain material misrepresentations about the Board’s processes or the Act, or combined with other Carrier actions, influence the employees in their choice of representative.

(Citations omitted.)

Two El Paso employees stated that Shamblin stated a pay-scale increase was “in the works” at one meeting. Shamblin denies this, stating that he has significant labor relations experience under the RLA and received additional training from the Carrier prior to the election. Shamblin went to 24 stations during the election period. Only two employees at one station stated that he promised a pay raise conditional on the outcome of the election. There is insufficient evidence that America West coerced employees by promising them a pay raise if they did not vote for the IBT.

The information on the Carrier’s website states that pay and benefits would be subject to collective bargaining. The affidavits submitted by the management officials stated that when they spoke to employees they used the “script” provided by the Carrier. This script follows the information provided on the web site. Many of the statements provided by employees corroborate the affidavits provided by the Carrier. The IBT argues that even if the Carrier stated the loss of these benefits “could” or “might” be lost through collective bargaining, these statements constitute thinly veiled threats and led employees to believe that such benefits “*would* [be] lost.” The overwhelming evidence is that the Carrier repeatedly told employees that if a union were elected, employee benefits would be subject to the collective bargaining process. This is not inaccurate or coercive. *Express Airlines I, Inc.*, 28 NMB 431 (2001). Therefore, the Carrier’s statements regarding pay and benefits did not taint laboratory conditions.

The IBT asserts that the Carrier inundated employees with massive amounts of vitriolic anti-union literature both by distribution at the work place and by mail to employees' homes. This assertion is not supported by the record.

B.

Interrogation, Intimidation, and Surveillance

The Board has held that surveillance is a per se violation. *American Trans Air, Inc.*, 28 NMB 163 (2000); *Petroleum Helicopters, Inc.*, 25 NMB 197 (1998); *Arkansas and Missouri R.R. Co.*, 25 NMB 36 (1997); *Sky Valet d/b/a Commercial Aviation Servs. of Boston, Inc., (Sky Valet)* 23 NMB 276 (1996); *Egyptair*, 19 NMB 166 (1992); *Key Airlines*, 16 NMB 296 (1989). In addition, as the Board first stated in *Laker Airways, Ltd.*, 8 NMB 236 (1981), the appearance or impression of surveillance is a sufficient basis for a finding of interference. However, in the cases where the Board found the carrier interfered by surveillance, there were other egregious carrier actions, such as ballot collection in *Laker, above*. In *Sky Valet, above*, a management official informed employees she knew who signed authorization cards and that those individuals would be discharged. Employees actually *were* discharged for signing authorization cards. See *Sky Valet, above*.

In other cases, where organizations asserted that the laboratory conditions were tainted due to increased supervisory presence, the Board has found insufficient evidence of interference. In *Delta*, the Board stated "it is not unusual for carrier management to increase their presence in . . . crew lounges during particular time periods to ensure compliance with carrier policies." *Delta Airlines, Inc.*, 30 NMB 102, 117 (2002). The Board further found in *Delta* that there was no nexus between the alleged surveillance and any pattern of egregious activity such as discharge. See also *Aeromexico*, 28 NMB 309 (2001); *American Trans Air, above*; *American Airlines, Inc.*, 26 NMB 412 (1999); *Federal Express Corp.*, 20 NMB 7 (1992).

America West employees stated that they felt that management scrutinized their work more closely when they were wearing IBT shirts or pins. This is insufficient to support an allegation of surveillance. *Delta, above. But see Pinnacle Airlines Corp.*, 30 NMB 186 (2003) (Board found interference where management officials stood outside of several union meetings observing employees as they entered and left the meeting).

The IBT claims that the Carrier interrogated and intimidated employees in one-on-one and group sessions. The evidence supplied by the Union does not support this. Most of the instances of “intimidation” came during group meetings where supervisors were asked questions about the election process and they responded with an answer from a “script.” The answers were not inaccurate or misleading. IBT supporters may have disagreed with the answers provided. The record, in fact, showed that IBT supporters did challenge or respond to the Carrier’s statements. One employee even got up and quoted from the RLA. No employee was disciplined for supporting the IBT.

Employees may have been uncomfortable with the answers that the Carrier provided regarding the collective bargaining process. This discomfort does not sustain an allegation of interrogation, intimidation or coercion in violation of the RLA. The RLA requires that the Carrier not coerce employees or otherwise influence employees in their choice of representative or make material misrepresentations about the Board’s processes or the RLA. The RLA does not require silence on the Carrier’s part during an organizing campaign. The record in this case does not support a finding that the Carrier interrogated, intimidated or surveilled employees.

C.

#### Mandatory Meetings

Carrier meetings with employees are not improper unless they are mandatory, coercive, or significantly increase in frequency during the election period. *Mercy Air Serv., Inc.*, 29



NMB 55 (2001); *LSG Lufthansa Serv., Inc.*, 27 NMB 18 (1999). In addition, the Board examines the content of carrier communications at the meetings to determine whether the communications are coercive, contain material misrepresentations, or combined with other carrier actions, improperly influenced the employees in their choice of representative. Additionally, the Board has consistently found that "one-on-one" meetings with members of the craft or class, where anti-union opinions are expressed by management officials during the laboratory period, are inherently coercive. *Aeromexico*, 28 NMB 309 (2001); *Key Airlines*, 13 NMB 153 (1986); *Zantop Int'l Airlines, Inc.*, 6 NMB 834 (1979).

The Board has stated:

When rank and file employees are interviewed in carrier offices in small groups by carrier officials . . . discussion of antiunion opinions take on a meaning and significance which they might not otherwise possess. The coercive effect may be subtle, but it is nonetheless present. Such a technique in and of itself is conduct which interferes with a free choice by employees of a representative.

*Allegheny Airlines, Inc.*, 4 NMB 7, 13 (1962).

The statements provided by the employees to support this allegation fall far short of the level needed to support a charge of carrier interference. The record demonstrates that the "State of the Airline" meetings were voluntary and that many employees did not attend those meetings. The record contains statements regarding mandatory team meetings where the subject of the election was raised. However, the IBT's own statements show that employees were told that portion of the meeting was voluntary. IBT supporters were permitted and did ask questions at these meetings. Therefore, there is insufficient evidence that the Carrier conduct of meetings tainted laboratory conditions.

D.

Misrepresentation of Board Procedures

Inaccuracies, misstatements and misleading statements about the Board's procedures have been held to constitute election interference. *Allegheny Airlines, Inc., above.*

The IBT alleges that the Carrier provided false or misleading statements to employees concerning Board processes including the procedures to replace or remove a union and the security of the TEV process.

These statements about the RLA and the TEV process are not inaccurate, nor are they misstatements or misleading statements about the Board's procedures. America West had corresponded with the Board expressing concerns about the TEV process. The Carrier did not taint laboratory conditions by making inaccurate or misleading statements about Board procedures, or by stating its concern regarding the privacy, security or accuracy of the TEV process.

E.

Posting of Board Notices

The Board requires that its Notice be posted on Carrier bulletin boards and all locations where other notices to employees usually are posted. At least one Notice per station must be posted. The Carrier states that it can not confirm or deny that the notice was posted in Minneapolis. America West states that if it was not posted it was due to a clerical oversight. The Carrier's statement that in Sacramento it removed IBT literature and not the Board's Notice is credible. The photographs submitted by the IBT show that the Notice on one bulletin board at America West Vacations in Phoenix was surrounded by America West Fact Sheets. It is not possible to tell from the photographs if the bottom part of the Notice is obscured.

The Manual is clear that the Notice must be posted at all stations. Implicit in the posting requirement is that the Notice not be obscured. The Carrier states that it had a plan in place to ensure that the Notice was posted at each station. Furthermore, it states that it invited the IBT to inform the Carrier of any behavior the IBT considered inappropriate so that the Carrier could remedy it. There is no evidence that the IBT complained of the notice posting during the election period when it could have been remedied. If the IBT thought that the Carrier was not complying with the Board's posting requirement it should have contacted the Board and the Carrier during the election while the matter could be investigated and remedied. These two instances do not constitute a basis for re-running the election.

F.

IBT Pins

The record establishes that some employees were told to remove IBT pins was contrary to the Carrier's policy. No disciplinary action was taken against these employees. In addition, the Carrier immediately informed employees that they could wear their pins and employees did in fact wear these pins during the election campaign. These isolated incidents did not taint laboratory conditions.

G.

Employee Addresses

The Board's investigation in *America West Airlines*, 30 NMB 72 (2002), established that as of November 1, 2002, the cut-off for processing returns, 163 sets of election materials had been returned by the Postal Service as undeliverable. This represents approximately 4.5 percent of the electorate. Of the 163 returned, 129 were re-mailed with corrected addresses. On the day of the tally, pursuant to Manual Section 13.210, the names of employees with "undeliverable" Instructions were removed from

the list of eligible voters. At the time of the tally approximately one percent of the craft or class was “undeliverable.”

The Carrier and the Organization were provided copies of the Board’s “Notice of Election” one week in advance of the mailing of the Instructions.

The Carrier was required to post this “Notice” throughout its system. The “Notice” provides, in part:

If you do not receive your VIN (Voter Identification Number) by October 18, 2002, you may contact the NMB to request a duplicate VIN. Your request must be in writing and signed by you. The request must be in an individual envelope. No group requests are accepted. . . . Mail the request to: National Mediation Board, Office of Legal Affairs, 1301 K St., NW., Suite 250 East, Washington, D.C. 20005. **No requests will be accepted after November 1, 2002.**

In *America West, above*, the Board stated:

As of November 1, 2002, the Board processed 84 duplicate requests from eligible voters, which is approximately 2.3 percent of the electorate. All properly executed duplicate requests received by November 1, 2002 were processed and mailed to the eligible voters. All eligible individuals whose Instructions were returned as undeliverable and for whom the Board was able to obtain better addresses were re-mailed Instructions by November 1, 2002. Because TEV elections do not involve returning mail to the Board, every person whose Instructions were re-mailed or who was mailed a duplicate will have sufficient time to vote, if he or she so chooses, before the election ends at 2:00 p.m. on November 8, 2002.

The IBT primarily reiterates arguments rejected by the Board in *America West, above*, specifically that the Carrier

deliberately provided a large percentage of incorrect addresses to the Board. In addition, the IBT provided statements from employees who received information from the Carrier regarding the election but did not receive their ballot.

The Board has procedures in place for requesting duplicate ballots and removing the names of voters from the list for whom instructions were undeliverable. The record demonstrates that employees were aware of and utilized these procedures. There is an insufficient basis to find that the Carrier deliberately provided the Board with inaccurate addresses in order to interfere with the election. The investigation revealed, to the contrary, that the Carrier provided updated addresses of its own volition.

H.

#### IBT Communications

The Carrier asserts that the IBT attempted to coerce employees into voting for union representation by “inter alia, threatening employees with adverse consequences if they do not vote in favor of the union, telling employees that the IBT knew which employees had voted in favor of the union and attempting to compile a list of the employees who had voted.” In addition, America West argues that the IBT “trampled upon the secrecy of the National Mediation Board’s voting process by organizing a ‘drawing/lottery’ for those employees who voted in favor of the union.”

The IBT submitted a declaration from an employee stating that there was some discussion of conducting a drawing for travel passes. In order to enter the drawing, employees would have to submit their confirmation numbers indicating that they had voted in the election. This employee stated that after some discussion “it was decided that it was a bad idea and never happened.”

The record contains statements from employees objecting to material that the Carrier distributed concerning the IBT. The record also contains statements from employees objecting to the

material distributed by the IBT about the Carrier. There is insufficient evidence that either the Carrier's communications or the IBT's communications interfered with employees ability to select a representative. Further, the lottery never took place and in fact few employees knew that it was even a possibility.<sup>2</sup>

CONCLUSION AND ORDER

The Board finds that the laboratory conditions required for a fair election were not tainted. This conclusion is based on the totality of the circumstances. Therefore, as there is no further basis to proceed, the Board closes its file in this matter.

By direction of the NATIONAL MEDIATION BOARD

*Benetta M. Mansfield*

Benetta M. Mansfield  
Chief of Staff

Copies to:  
Chris A. Hollinger, Esq.  
Robert A. Siegel, Esq.  
Mr. Don Treichler  
Ms. Victoria Gray  
Roland P. Wilder, Jr., Esq.

---

<sup>2</sup> Effective March 26, 2003, the Board discontinued use of confirmation numbers.