



NATIONAL MEDIATION BOARD
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30 NMB No. 62
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Re: NMB Case No. R-6933
United Airlines, Inc.

Gentlemen and Ms. Coyne:

This determination addresses the appeal of Investigator Mary L. Johnson's eligibility rulings filed by United Airlines, Inc. (United or Carrier) on July 1, 2003. For the reasons discussed below, the Carrier's appeal is denied.

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 Act¹ (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 14, 2003, Investigator Mary L. Johnson was assigned to replace Investigators Rogers and Jones. On April 30, 2003, the Board found a dispute to exist and authorized an election using Telephone Electronic Voting (TEV). IAM and AMFA filed challenges and objections on May 21, 2003. The Carrier responded on June 12, 2003. The Investigator issued rulings on June 25, 2003. On July 1, 2003, United appealed the Investigator's ruling that 55 individuals on "Leave - Involuntary Furlough" are ineligible.²

CONTENTIONS

United

United argues that individuals on "Leave-Involuntary Furlough" are eligible because they these employees are on furlough and retain certain rights applicable to "non-contract" employees. Specifically, United states that these employees have competitive rather than seniority based recall rights.

¹ 45 U.S.C. § 151, *et seq.*

² The Carrier also appealed the Investigator's ruling that Sonny Alamazan, Sonia Arajulo, and Alex Gonzales are eligible to vote. The eligibility of these employees was addressed in the Investigator's status change letter of July 14, 2003.

United cites a carrier policy of “re-employment with seniority protection” that applies to employees who are not covered by a collective bargaining agreement.

United argues that the Investigator’s ruling disenfranchises employees and is contrary to Board precedent of “generally finding furloughed employees eligible to vote” and which holds that “absence from the seniority list is not dispositive” of eligibility.

IAM and AMFA

Neither the IAM nor AMFA filed responses to the Carrier’s appeal. However, both the IAM and AMFA argued in their initial challenges that these employees were ineligible.

In its initial challenges, AMFA argued that 75 employees with “Non-Contract Layoff” status were ineligible because they were laid off and do not retain rights under a collective bargaining agreement. The IAM agreed with AMFA that 69 of these individuals were ineligible. However, the IAM also asserted that six of the employees were mistakenly labeled as being unemployed, and thus should be eligible.

DISCUSSION

Section 9.204 of the Board’s Representation Manual (Manual) provides that “[f]urloughed employees are eligible to vote in the craft or class in which they last worked if they retain an employee-employer relationship and have a reasonable expectation of returning to work.”

While the employees at issue occupied positions that are within the Mechanics and Related Employees craft or class, these job titles were not covered by the collective bargaining agreement between United and the IAM. Therefore, these employees are covered under United’s policies which apply to

“non-contract” employees, including the provisions governing “management reduction in force.”

United’s “Management Reduction in Force” policy states:

Re-employment with Seniority Protection: Re-employment will be on a competitive basis. Laid off employees retain seniority protection for a period equal to the length of service at the time of layoff, but not to exceed 5 years. If the employee is re-employed during the seniority protection period, the employee’s seniority will be retained as if the employee had not been laid off.

Severance Pay: Employees who are laid off involuntarily will be paid severance in accordance with the schedule in Table 11-2. The amount of severance pay for which an employee is eligible is based on the employee’s length of service measured from his or her date of employment to the effective date of lay-off. . . .

The Carrier cites Board decisions which hold that furloughed employees are eligible as long as they retain recall rights, including those cases where there is no collective bargaining agreement (CBA). *See, e.g., United Airlines, Inc.*, 28 NMB 533, 571 (2001); *Continental Airlines, Inc.*, 23 NMB 118, 129 (1996); *America West Airlines, Inc.*, 21 NMB 293, 300 (1994).

The Board examines carrier policies in those instances where there is no CBA covering the individuals at issue. Unlike the cases cited by United, the employees at issue do not retain an employee–employer relationship and there is no evidence that these employees face a reasonable expectation of returning to work. The policy section submitted by United discusses “re-employment” not “recall.” Although laid-off employees retain seniority protection based on length of service, re-employment is on a competitive basis. Further, United’s policy provides for

severance pay based on length of service for employees who are laid off involuntarily. Therefore, there is insufficient evidence that these employees “retain an employee-employer relationship and have a reasonable expectation of returning to work” pursuant to Manual Section 9.204. *See also America West above* at 299-300 (1996); *USAir, Inc.*, 21 NMB 281, 284 (1994); *Evergreen Int’l Airlines*, 19 NMB 182, 184 (1992).

CONCLUSION

Based on the cumulative record evidence, Manual Section 9.204, and the determinations cited above, the Board concludes that the 55 employees in question are ineligible. The tally will take place as scheduled at 2:00 p.m. ET, Monday, July 14, 2003.

By direction of the NATIONAL MEDIATION BOARD.

Benetta M. Mansfield

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Chief of Staff