



NATIONAL MEDIATION BOARD

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31 NMB No. 18
December 15, 2003

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Re: NMB Case No. R-6971
National Railroad Passenger Corporation (Amtrak)

Gentlemen:

This determination addresses the November 17, 2003 appeal filed by the American Federation of Railroad Police

(AFRP) of Board Investigator Eileen M. Hennessey's November 10, 2003 ruling in this case. For the reasons set forth below, the AFRP's appeal is denied.

PROCEDURAL BACKGROUND

On August 7, 2003, the Fraternal Order of Police, Amtrak Lodge No. 189 (FOP), filed a completed application with the National Mediation Board (Board), alleging a representation dispute pursuant to the Railway Labor Act* (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth) involving employees of National Railroad Passenger Corporation (Amtrak or Carrier). The employees included in the application were "Police Officers Below the Rank of Captain, Security Officers, and Communications Officers."

At the time this application was received, these employees were represented by the AFRP.

On August 22, 2003, the AFRP filed a position statement challenging the FOP's application. The Carrier responded to the AFRP's initial position statement on September 5, 2003. The FOP responded on September 8, 2003. The Board found a dispute to exist and authorized an election using Telephone Electronic Voting (TEV) on October 17, 2003.

On November 10, 2003, Board Investigator Hennessey ruled on the issues raised by the AFRP in its initial position statement. On November 17, 2003, the AFRP filed an appeal to that ruling and asked the Board to suspend the scheduled election. On November 24, 2003, the FOP filed its response to the AFRP's appeal. The Carrier filed no response to the appeal.

The Notice of Election and Sample Instructions were mailed to the parties on November 17, 2003. Voting Instructions were mailed on November 24, 2003 and the tally is scheduled to take place on December 15, 2003.

* 45 U.S.C. § 151, *et seq.*

INVESTIGATOR'S RULING

In her ruling, Investigator Hennessey stated, in part:

To the extent that the AFRP raises this issue as a matter of the FOP's compliance, either present or future, with the LMRDA [Labor Management Reporting and Disclosure Act], this issue is not properly before the NMB. Matters regarding LMRDA compliance are not within the NMB's jurisdiction.

To the extent that the AFRP raises this issue for the NMB to determine whether the positions of Communications Officer and Security Officer are properly within the craft or class of Police Officers Below the Rank of Captain, the Investigator finds that both positions are properly within the applied for craft or class.

AFRP'S APPEAL

The AFRP appeals Investigator Hennessey's ruling that the Board does not have jurisdiction to rule on the FOP's compliance with the LMRDA. The AFRP states that the Board has the responsibility to ensure that elections comport with the requirements of the LMRDA. The AFRP cites *Int'l Bhd. of Teamsters v. National Mediation Board*, 1977 WL 1817 (S.D.N.Y. 1977), 83 Lab.Cas.P 10,432 (*Teamsters*), for the proposition that Investigator Hennessey should have conducted a more thorough investigation to determine the FOP's compliance with the LMRDA. The AFRP asserts that the Investigator was obligated to do more than accept the statements of the FOP. The AFRP contends that documentary evidence should have been provided to ensure LMRDA compliance. The AFRP requests that the Board delay the election in this case "and requests that this matter be returned to the investigation stage prior to the authorization of an election."

FOP'S RESPONSE

The FOP states that AFRP's appeal should be denied and Investigator Hennessey's ruling should be sustained. In support of this, FOP cites *DHL Airways, Inc.*, 18 NMB 117 (1991), in which the Board stated: "The Board does not consider whether an applicant or a representative is a 'legally valid' labor organization . . . while the requirements of the LMRDA remain in effect, it is the function of the Department of Labor to ensure compliance with these requirements." The FOP states that "clearly there is no basis upon which to sustain the AFRP's appeal."

DISCUSSION

I. Compliance with the LMRDA

From January 19, 1982 until July 29, 1987, the Board's Representation Manual (Manual), Section 1.0, required "an application . . . be dismissed within 90 days of the filing of the application unless the procedural requirements of the Labor Management Reporting Disclosure Act (LMRDA), 29 U.S.C. § 401, *et seq.*, are satisfied." However, in 1987, the Board stated in *Chamber of Commerce of the United States*, 14 NMB 347 (1987):

Several participants pointed to Section 1.0 of the Board's Representation Manual as a provision which makes it difficult for an individual or organization to file an application in order to displace an incumbent. The Board has reached the same conclusion independent of these proceedings. Section 1.0 will be revised to delete all references to the LMRDA.

Id. at 360. The Board subsequently revised the Manual to delete all references to the LMRDA. *NMB Representation Manual – Section 1.0*, 14 NMB 374 (1987). The Board no longer requires compliance with the LMRDA to authorize an election. Therefore, insufficient investigation of compliance with the

LMRDA cannot be grounds for revoking an authorization of election or delaying an election. The Board has stated that “it is the function of the Department of Labor to ensure compliance with these requirements.” *Id.* at 374.

The *Teamsters* case cited by the AFRP in its appeal involved a similar challenge to the eligibility of an intervening union on the grounds that its bylaws prohibited it from representing the sought-after group of employees. The district court in *Teamsters* found that in conducting its investigation, the Board was supplied with documents that showed the union’s articles of incorporation did not preclude it from representing those employees. *Teamsters* does not change the Board’s determination in this matter. The court’s decision in that case did not impose an obligation on the Board to seek documentary evidence, it merely noted that the Investigator in that case had done so. *See Teamsters, above.* Furthermore, although LMRDA compliance may have been required at that time, the Board has since affirmatively rejected this practice.

II. Request to Postpone Election

It is the Board's consistent practice to proceed with representation elections unless the Board finds it necessary to delay due to unusual or complex issues that must be decided, or is barred by court order. *See also Chatauqua Airlines, Inc.*, 21 NMB 226, 227-228 (1994); *Sapado I (aka Dobbs Int'l Ass's)*, 19 NMB 279, 282 (1992); *USAir*, 17 NMB 69, 72 (1989); *Tower Air*, 16 NMB 326, 328-329 (1989); *USAir*, 15 NMB 369, 394 (1988); *Air Florida*, 10 NMB 294, 295 (1983). This appeal does not present an unusual or complex issue that must be decided prior to the election. Nor is the Board barred by a court order from proceeding with an election.

CONCLUSION

The AFRP’s request to delay the election pending a more thorough investigation is denied. The Board finds that LMRDA compliance is not required prior to election authorization. Therefore, further investigation is not required prior to this

election being conducted and Investigator Hennessey's ruling is upheld. The election authorized by the Board in this case will proceed as scheduled on December 15, 2003.

By direction of the NATIONAL MEDIATION BOARD.

Benetta M. Mansfield

Benetta M. Mansfield
Chief of Staff