



**NATIONAL MEDIATION BOARD**

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33 NMB No. 33

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Re: NMB Case No. R-7082  
Air Logistics, LLC

Gentlemen:

This determination addresses the April 27, 2006 appeal filed by Air Logistics, L.L.C. (Air Logistics or Carrier) of Investigator Maria-Kate Dowling's eligibility ruling. For the reasons discussed below, the appeal is denied.

**I. Procedural Background**

On March 8, 2006, the Office and Professional Employees International Union (OPEIU or Organization) filed

an application pursuant to the Railway Labor Act (RLA or Act), 45 U.S.C. § 152, Ninth (Section 2, Ninth), alleging a representation dispute involving the Mechanics and Related Employees of Air Logistics L.L.C. (Air Logistics or Carrier). On March 21, 2006, the Carrier provided a Potential List of Eligible Voters (List). The Board found that a dispute existed and authorized an election with a tally set for May 8, 2006.

On April 10, 2006, OPEIU filed its challenges to the List. The Organization alleged, inter alia, that employee Joey Desormeaux had resigned his employment with Air Logistics, and was, therefore, not eligible to vote. On April 18, 2006, Air Logistics filed its response, stating Mr. Desormeaux should be eligible to vote because he was employed on the cut-off date and rehired on April 8, 2006, prior to the tally.

On April 25, 2006, the Investigator ruled on the Organization's challenges and held, inter alia, that since Mr. Desormeaux had severed his employee-employer relationship with the Carrier, he was ineligible to vote.

## **II. Investigator's Ruling**

OPEIU asserted that Mr. Desormeaux had resigned his employment. In its response, the Carrier stated that Mr. Desormeaux was employed with Air Logistics on the cut-off date and he is currently employed. The Carrier provided a declaration from its Human Resources Director, Edie E. Hunt, stating that following the eligibility cut-off date, Mr. Desormeaux resigned from his employment with Air Logistics; that his last day of work following his resignation was March 14, 2006; that he worked for an employer in Houston, Texas, for approximately one week; and that he sought and obtained re-employment returning to work for Air Logistics on April 8, 2006 with the same pay and benefit levels. The Carrier also submitted copies of personnel actions for the resignation and rehire of Mr. Desormeaux. The personnel action for the rehire is stamped "new hire entered." The Carrier also submitted a National Labor Relations Board (NLRB) decision. In that

decision, *Leather by Grant, Inc.*, 206 NLRB 961 (1973), the NLRB found that an employee who terminated his employment in the middle of the payroll eligibility period, but was rehired before the election and working on the day of the election, was eligible to vote.

The Investigator ruled that Mr. Desormeaux was ineligible to vote because he had severed his employment relationship with Air Logistics. The Investigator found that his subsequent re-hire did not alter the fact that he resigned from his job and ended the employee-employer relationship. The Investigator also noted that the documents submitted by the Carrier identify him as a “New Hire.” Finally, the Investigator noted that while both the RLA and the National Labor Relations Act (NLRA) recognize the right of employees to be represented for collective bargaining purposes, the statutes are inherently dissimilar. Accordingly, the Investigator found that the NLRB decision cited by the Carrier is in no way binding on the Board.

### **III. Air Logistic’s Appeal**

In its April 27, 2006 appeal, Air Logistics argues that Mr. Desormeaux is eligible since it is undisputed that he was employed on the eligibility cut-off date, was properly included on the list and is currently employed with the Carrier. Noting that the basis for the ruling is that he resigned and worked for one week for a different employer, the Carrier further argues that the Investigator erred in relying on the boilerplate language “New Hire Entered” stamped on the re-hire paperwork. Citing *USAir, Inc.*, 21 NMB 402, 406 (1994), the Carrier contends that the Board has repeatedly held that the titles or captions are not as important as the underlying facts in eligibility rulings. Since Mr. Desormeaux’s pay, benefits and seniority were maintained, Air Logistics argues he is not comparable to a new hire. While acknowledging that NLRB decisions are not binding on the Board, the Carrier argues that such decisions provide guidance.

#### IV. Discussion

Section 9.2 of the NMB Representation Manual (Manual) provides that “individuals working regularly in the craft or class on and after the cut-off date are eligible to vote.” The eligibility of employees who leave the craft or class because of furlough or leave of absences depends on their retaining an employee-employer relationship. Sections 9.204 and 9.205 of the Manual. In the instant case, Mr. Desormeaux resigned his employment with Air Logistics. In doing so, he severed his employee-employer relationship with the Carrier. His subsequent re-hire does not alter this fact.

*US Air, Inc., above*, cited by the Carrier, involves an appeal of whether employees in three different job positions were eligible to vote in the Passenger Service craft or class. It is well-settled law that, in determining whether an employee is eligible to vote in a particular craft or class, the Board looks to the actual duties and responsibilities of the employee’s position, not merely the job title. The issue in this case, however, is not whether Mr. Desormeaux is employed in the Mechanics and Related craft or class but whether he retained an employee-employer relationship with the Carrier. There is no dispute that Mr. Desormeaux resigned his employment and was subsequently re-hired after working for another employer. The Carrier’s decision to allow him to retain seniority and benefits, does not alter the fact that he did not retain the necessary employee-employer relationship with the Carrier. Accordingly, Mr. Desormeaux is the equivalent of a new hire, and, since his date of re-hire is after the cut-off date, he is not eligible to vote.

By direction of the NATIONAL MEDIATION BOARD.



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General Counsel