



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the  
Application of the

**TRANSPORT WORKERS UNION  
OF AMERICA, AFL-CIO**

alleging a representation dispute  
pursuant to Section 2, Ninth, of  
the Railway Labor Act, as  
amended

involving employees of

**AMERICAN EAGLE AIRLINES**

33 NMB No. 43

CASE NO. R-7096  
(File No. CR-6898)

FINDINGS UPON  
INVESTIGATION –  
AUTHORIZATION OF  
ELECTION

June 21, 2006

This determination addresses the application filed by the Transport Workers Union of America, AFL-CIO (TWU or Applicant) alleging a representation dispute pursuant to the Railway Labor Act<sup>1</sup> (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth). TWU seeks to represent the craft or class of Ground School Instructors at American Eagle Airlines (Eagle or Carrier).

For the reasons discussed below, the National Mediation Board (Board or NMB) finds that Eagle's Ground School Instructors are not management officials and accordingly, the Board authorizes an election.

PROCEDURAL BACKGROUND

On March 15, 2006, the TWU filed an application with the Board alleging a representation dispute involving the Ground School Instructors at Eagle. On April 10, April 28, and May 18, 2006, TWU filed position statements in this matter.

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

Eagle submitted position statements on April 11 and May 9, 2006.

On March 20 and April 20, 2006, the Air Line Pilots Association (ALPA), which represents the craft or class of Pilots at Eagle (NMB Case No. R-6384) filed position statements with the Board. ALPA requests the Board to recognize its right to represent any Eagle Pilots who also serve as Ground School Instructors.

### ISSUE

Are Eagle's Ground School Instructors management officials ineligible for representation?

### CONTENTIONS

#### I. Eagle

Eagle urges the Board to dismiss the TWU's application as it contends that its Ground School Instructors are management officials. The Carrier states that its Ground School Instructors are Level III management employees who receive pay and benefits of other managers at that level. Further, Eagle contends that since 2003, the role of Ground School Instructors has changed, and that they in essence operate as the Training Department Managers described in the Eagle Instructor/Check Airman Guide.

Eagle argues that its Ground School Instructors: interact closely with the Federal Aviation Administration (FAA) in developing the actual curriculum used to train pilots; enforce Carrier policy and the Flight Manual Part 1; and have responsibility for supervising crew members during training periods including the authority to recommend discipline. Eagle additionally contends that its Ground School Instructors, as employees of a regional carrier, enjoy a much different role and a higher level of authority than their counterparts at the larger legacy carriers.

As such, the Carrier urges the Board to dismiss the TWU's application as its Ground School Instructors are management officials ineligible for representation.

The Carrier provided two declarations from John Saady, Eagle's Director of Flight Training, and an Eagle Ground School Instructor job description in support of its position.

## II. TWU

TWU disagrees with Eagle's position that its Ground School Instructors are management officials. The Applicant argues that Eagle's Ground School Instructors are not creating Carrier policy when they develop a curriculum based on set policies and a pre-approved syllabus. In addition, TWU disputes the Carrier's contention that these employees have the authority to impose discipline; rather they report "troublesome" conduct to a Training Department Manager and it is the Manager who determines whether and what type of discipline to impose. The Applicant urges the Board to consider precedent and the actual duties of the Ground School Instructors and, assuming there is a sufficient showing of interest, proceed towards an election.

The TWU provided declarations from two Eagle Ground School Instructors in support of its position.

## III. ALPA's Position

ALPA argues that while no Eagle Pilots are currently serving in Ground School Instructor positions, the Carrier has placed Pilots in those positions when they are temporarily unable to fly but are expected to resume line service. Accordingly, ALPA states its position that, "should the carrier choose in the future to place any Eagle pilots in the Eagle Ground Instructor positions, those pilots would remain represented by ALPA pursuant to the terms of the Eagle-ALPA collective bargaining agreement and the long prior practice of the parties."

ALPA cites a 1997 Letter of Agreement, part of the current Eagle-ALPA collective bargaining agreement (CBA), which states that Pilots assigned as Ground School Instructors will remain covered by the ALPA CBA. ALPA also cites a 2003 grievance pending before the ALPA/Eagle System Board of Adjustment, regarding the Carrier's replacement of Pilot/Ground Instructors with Pilot/Ground Instructors who were not on the Pilots' System Seniority List. The grievance is unresolved but ALPA notes that "it continues to discuss resolution of this preexisting grievance with the carrier seeking settlement terms that involve restoration of pilot Ground Instructors whose seniority and service would be governed . . ." by the Eagle-ALPA CBA.

ALPA additionally advised the Board that it believes it has the right to enter into an agreement with Eagle to resolve the preexisting grievance and that it is "in no way precluded by the petition filed by the TWU for certification as representative of the current American Eagle Ground Instructors."<sup>2</sup>

In response to ALPA's arguments, the TWU states that under the RLA, an elected representative must exclusively represent the entire craft or class of employees. Further, the TWU argues that the Board has made clear its "substantial presumption against splitting crafts and classes." *American Airlines, Inc.*, 21 NMB 60 (1993).

TWU also points out that there are no Pilot/Ground School Instructors in the current craft or class at Eagle. TWU argues: "[I]t cannot be that without any actual pilots in Ground Instructor positions there could be some retained right of ALPA to split the unit at a future time when there might be

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<sup>2</sup> ALPA produced a Letter of Agreement, *Letter 6*, effective September 1, 1997, which applied to Pilots assigned to Eagle Ground School Instructors positions and provides, in relevant part, that, "all the provisions of the Basic Agreement . . . will apply to a pilot(s) who . . . is assigned as a Ground School Instructor." ALPA additionally produced a copy of a 2003 grievance pending before the Eagle/ALPA System Board of Adjustment, regarding the Carrier's "Elimination of Bargaining Unit Pilot Ground Instructors."

pilot Ground Instructors.” TWU notes that in 1997, Eagle’s Ground School Instructors were unrepresented; however, now that there is a representation proceeding before the Board, prior private agreements are no longer controlling.

The Carrier maintains that ALPA’s request is contrary to the RLA’s concept of exclusive representation. Eagle states that in the past it had allowed some of its Pilots, who were temporarily unable to fly, to work as Ground School Instructors and ALPA continued to represent them. However, the Carrier points out that this was a private arrangement between it and ALPA at a time when the Ground School Instructors were unrepresented. Eagle states in conclusion, “Such a private arrangement cannot survive should the . . . TWU receive sufficient support in an NMB election.”

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.

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

II.

TWU and ALPA are labor organizations and/or representatives as provided by 45 U.S.C. § 151, Sixth, and § 152, Ninth.

III.

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 purposes of this chapter.”

IV.

45 U.S.C. § 152, Ninth, provides that the Board has the duty to investigate representation disputes and shall designate who may participate as eligible voters in the event an election is required.

STATEMENT OF FACTS

I.

TWU produced two declarations from current Eagle Ground School Instructors who stated:

[W]e develop the training materials in accordance with a syllabus that has already been prepared for us and for compliance with various manuals and policies. We cannot simply teach what we want; we do not have discretion to decide what to teach. We are essentially classroom instructors, we do not set policy.

. . . .

[O]ur role with respect to company policy is to convey it to pilots during the training. We do not discipline trainees. We may recommend that someone be disciplined but our role is to report conduct that is troublesome to the Training Department Manager who will decide whether to take action and what sort of action to take.

II.

Eagle provided a job description for its Ground School Instructors. The description provides that a Ground Instructor employee:

Conducts pilot ground school for aircraft systems and operational subjects as well as cockpit systems integrations training. Ground instructors additional responsibilities include but are not limited to:

- Development of courseware for associated ground training programs including instructor outline and media.
- Responsible for completing all training reports and records associated with training conducted in required time limits.
- Ground instructors may certify crewmembers on the satisfactory completion of ground training segments.
- Teach Human Factors (CRM) segments of training.
- Coordinate changes to existing programs, course outlines, or lesson plans with all interested agencies (Internal and External).
- Ensure the course content and instruction given in class complies with the American Eagle's Approved Training Manual.
- Prepare, update, and maintain the operations of the computer-based training programs.
- Identify, research, and initiate improved training and equipment requirements, and coordinate their development.

The Carrier also provided two declarations from John A. Saady, Eagle's Director of Flight Training. In his first declaration, Saady testified:

At Eagle there are eight Levels of management employees and Ground Instructors have been placed at Level 3 by the Company in recognition of the critical and unique role they play as management training specialists . . . .

The first management Ground Instructor was hired March 1, 2003 and the last one was hired on June 16, 2004. As a condition of hire, anyone who was a member of a unionized bargaining group was required to surrender their union seniority. . . .

All instructors are paid a salary . . . enjoy all the benefits of other Level III managers . . . . and are not eligible for over-time pay.

The Instructors are responsible for developing curriculums (including lesson plans and multimedia presentations) for ground training segments for pilots and ensuring that the course content and instruction complies with the Company's FAA-Approved Training Manual. During training periods, Ground Instructors supervise crew members, enforce Company Policy and the Flight Manual Part I, recommend discipline, enforce company rules of conduct, and have the authority to remove pilots from the classroom for violations of such rules. They work closely with the FAA regarding checklist procedures, coursework content and the presentation of training to crew members. They collaborate with aircraft Fleet Managers regarding procedural changes, check list procedures and updates to the Aircraft Operations Manual.

The Ground Instructors also identify, research, and initiate improved training and equipment requirements, and coordinate their development and/or procurement.

In Saady's second declaration, he stated that:

[The Eagle] Instructor/Check Airman Guide, with regards to ground instructors, has not been updated since 2003, when [Eagle] converted from using pilot ground instructors to management

instructors . . . . the ground instructors became the “Training Department Managers.”

. . . .

During training, the Managers of Training and Standards . . . serve as the alter ego of the Chief Pilot in charge of training and their decisions carry the same weight as those of the Chief Pilot.

### DISCUSSION

#### I. Are Eagle’s Ground School Instructors Management Officials?

Section 9.211 of the Board’s Representation Manual (Manual) details factors to be considered in determining whether an individual is a management official and ineligible to vote. These factors include:

- (1) the authority to dismiss and/or discipline employees or to effectively recommend the same;
- (2) the authority to supervise;
- (3) the ability to authorize and grant overtime;
- (4) the authority to transfer and/or establish assignments;
- (5) the authority to create carrier policy; and
- (6) the authority to commit carrier funds.

The Investigator also considers:

- (1) whether the authority exercised is circumscribed by operating and policy manuals;
- (2) the placement of the individual in the organizational hierarchy of the carrier; and
- (3) any other relevant factors regarding the individual’s duties and responsibilities.

*See also Pan American World Airways, Inc.*, 5 NMB 112 (1973) (the factors the Board examines are considered cumulatively).

The Board generally has found Ground Instructors to be either an appropriate craft or class, or part of a larger craft or class of Flight Training employees. *U.S. Airways, Inc.*, 30 NMB 54 (2002) (Board recognized separate craft or class of Inflight Training Specialists/Ground Instructors who developed and delivered curriculum, in-flight training materials, course outlines, and lesson plans); *American Airlines, Inc.*, 30 NMB 30, 34-35 (2002) (Board held that single craft or class of Instructors (Ground School and Pilot Simulator) was appropriate for representation; Ground School Instructors duties included: classroom training on aircraft systems, FAA regulations, and carrier procedures; evaluating “student progress each day and tak[ing] appropriate corrective action and/or mak[ing] referral”; and assisting in the development of materials); *Continental Airlines, Inc./Continental Express, Inc.*, 27 NMB 99, 110 (1999) (Board found Ground School Instructors, who trained pilots in aircraft systems and procedures, to be employees eligible for representation); *Delta Air Lines, Inc.*, 26 NMB 391, 402-03 (1999) (Board recognized craft or class of Pilot Ground Training Instructors whose duties included: academic instructing in the classroom; ground training; developing curriculum, syllabi, and training materials; and supporting multimedia).

In a number of decisions, the Board has also considered whether Instructors were management officials, concluding that the Instructors were employees eligible for representation. In *Comair, Inc.*, 22 NMB 175 (1995), the Board found that Training Department Personnel were not management officials. These Instructors’ duties included conducting flight and ground instruction in accordance with the COMAIR Training Manual, and continuously evaluating the training program for suitability. *Id.* at 177. The Board stated: “While instructors communicate carrier policy as part of classroom instruction, they do not play a role in creating or recommending carrier policy . . . . Instructors do not have the authority to hire, discipline, or discharge . . . .” *Id.* at 178.

In *United Air Lines, Inc.*, 4 NMB 30 (1965), the Board found Flight Instructors to be employees eligible for representation, rather than management officials. These

employees instructed flight crews in accordance with FAA and carrier policies, and evaluated the performance of employees. *Id.* at 42. The Board noted that management was responsible for the formulation of policy and training curricula; Flight Instructors merely carried out the actual training based on pre-approved policy and curricula. *Id.* at 44-45. Further, the Board stated:

It is true that the Flight Instructors must use independent judgment to some extent in “grading” the trainees . . . and [Instructors] are called upon to submit recommendations in cases where the trainee is not considered to be making satisfactory progress . . . . However . . . the final decision in such matters rests with levels of administrative officials designated in the manual . . . .

*Id.* at 45.

Eagle contends that its Ground School Instructors create Carrier policy when, through meetings with the FAA and reference to Flight Manuals and Carrier policies, they develop the curriculum used to train pilots. Further, the Carrier contends that the Ground School Instructors are in essence Training Department Managers and have responsibility for supervising crew members during training periods, including the authority to recommend discipline should Carrier policy be violated. Finally, the Carrier asserts that these employees receive pay and benefits equivalent to all Level III management employees.

TWU responded that in fact, the Instructors are not creating Carrier policy when they develop curriculum based on set policies and a pre-approved syllabus. Two current Eagle Ground Instructors testified: “We develop the training materials in accordance with a syllabus that has already been prepared for us and for compliance with various manuals and policies.” TWU additionally disputes the employees’ authority to impose discipline. At the most, the Ground School Instructors report conduct to Managers who determine whether and what type of discipline is appropriate.

The job description for Eagle's Ground School Instructors describes a number of tasks related to the teaching and training of pilots, including: developing courseware, outlines, media; completing training reports; certifying crewmembers after successful completion of training; coordinating program changes with external and internal agencies; and ensuring that course content and instruction is in compliance with Eagle's various policy and training guides.

The evidence demonstrates that Eagle's Ground School Instructors are not creating Carrier policy when they develop training materials from an approved syllabus provided to them, and in accordance with Eagle's Approved Training Manual and other Carrier policy.

The Carrier job description for Ground School Instructors does not indicate that these employees have the authority to impose discipline. Two current Eagle Ground School Instructors stated: "We do not discipline trainees . . . our role is to report conduct that is troublesome to the Training Department Manager who will decide whether to take action and what sort of action to take." Director of Flight Training, Saady, stated that the Instructors recommend discipline and, further, that the Instructors have in essence become the Training Department Managers who ultimately decide whether and how to discipline employees. Most relevant here, as the TWU stated in one of its position statements, is that all of the employees being trained have actual supervisors. The Ground School Instructors run the classroom while the employees being trained are present, and when the training is over, those employees go back to their regular jobs and supervisors.

Eagle's Ground School Instructors do not have the authority: to authorize or grant overtime; to transfer and/or establish assignments; or to commit Carrier funds. As discussed above, the Instructors do not "create" policy when they develop teaching materials based on a set curriculum and pre-approved Carrier policies. Even granting that these Instructors have some limited disciplinary authority, and receive benefits and salary comparable to other Level III

Managers, this is not enough to render Eagle's Ground School Instructors management officials. Further, there are a significant number of Board decisions finding Instructors with the same responsibilities, of developing training materials, controlling the classroom, and effectively recommending discipline, to be employees eligible for representation. *American Airlines, Inc.*, 30 NMB 30, 34-35 (2002); *Delta Air Lines, Inc.*, 26 NMB 391 (1999); *Comair, Inc.*, 22 NMB 175 (1995); *United Air Lines, Inc.*, 4 NMB 30 (1965).

Considering the evidence cumulatively, the Board finds that Eagle's Ground School Instructors are not management officials.

## II. ALPA's Representation Rights

One of the key foundations of the RLA is that a selected representative is the exclusive representative of the entire craft or class of employees. Flowing from this principle, the carrier can only "treat with" or bargain with this exclusive representative. *Virginian Ry. Co. v. System Fed'n No. 40*, 300 US 515, 548 (1937). In addition, the Board has a longstanding policy "not to fragment traditional employee crafts or classes into smaller sub-groups." *American Airlines, Inc.*, 21 NMB 60 (1993).

Further, while a carrier is free to voluntarily recognize a particular union or enter into other private agreements with groups of employees, those agreements are no longer controlling once a dispute is brought before the Board. *Northern Ind. Commuter Transp. Dist.*, 27 NMB 512, 520 (2000) ("Board does not determine the propriety of a craft or class based on internal union conduct."); *Union Pacific R.R.*, 8 NMB 434 (1981). Once a proceeding has been initiated under Section 2, Ninth, the statute, NMB rules, and NMB precedent control. *Summit Airlines v. Teamsters Local 295*, 628 F.2d 787, 795 (2d. Cir 1980).

In addition, the Board has long held that the RLA deals with the present status and present interests of employees. *Raytheon Travel Air*, 29 NMB 181 (2002); *Wings West Airlines*,

15 NMB 283 (1988); *Trans World Airlines*, 13 NMB 146 (1986); *Airborne Express, Inc.*, 9 NMB 54 (1981). Manual Section 9.202, discusses eligibility of employees and states: “Only employees with a *present interest* in the craft or class in dispute are eligible to vote.” (*emphasis added*).<sup>3</sup>

As stated above, once a proceeding has been initiated under Section 2, Ninth – the statute, NMB rules, and precedent control. *Summit Airlines, above*. Further, it is the Board’s longstanding policy not to issue advisory opinions. *Petroleum Helicopters, Inc.*, 32 NMB 179 (2005); *Conrail*, 15 NMB 80 (1988); *Trans America Airlines/Trans Int’l Airlines*, 12 NMB 204 (1985). Since there were no Pilots serving as Eagle Ground School Instructors at the time the application was filed, the Board will not address ALPA’s arguments.

### CONCLUSION

As discussed above, Eagle’s Ground School Instructors are employees eligible for representation under the RLA. As such, NMB Case No. CR-6898 is converted to NMB Case No. R-7096.

The Board finds a dispute to exist in NMB Case No. R-7096, among Ground School Instructors of American Eagle Airlines, sought to be represented by the TWU and presently unrepresented. A TEV election is hereby authorized using a cut-off date of February 28, 2006.

Pursuant to Manual Section 12.1, the Carrier is hereby required to furnish, within five calendar days, 1” X 2 5/8”, peel-off labels bearing the alphabetized names and current addresses of those 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

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<sup>3</sup> ALPA provided no Board decisions or other precedent in support of its position that it should be able to “retain a right” to represent any future Eagle Pilots/Ground School Instructors. Instead, ALPA emphasized the language in its 1997 Letter of Agreement regarding Pilot/Ground School Instructors.

expeditious method possible, such as overnight mail, to ensure that the Board receives the labels within five calendar days. Tally in Washington, D.C.

By direction of the NATIONAL MEDIATION BOARD.

A handwritten signature in cursive script that reads "Mary L. Johnson".

Mary L. Johnson  
General Counsel

Copies to:  
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