



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the

INTERNATIONAL ASSOCIATION
OF MACHINISTS AND
AEROSPACE WORKERS, AFL-CIO
AND INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

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

involving employees of

US AIRWAYS/AMERICA WEST
AIRLINES

33 NMB No. 56

CASE NO. R-7078

FINDINGS UPON
INVESTIGATION-
DETERMINATION OF
CERTIFICATION

August 11, 2006

This determination addresses the July 10 and 12, 2006 appeals filed by the International Brotherhood of Teamsters (IBT) of Investigator Norman Graber's June 28, 2006 eligibility rulings. For the reasons discussed below, the IBT's appeals are denied. This determination also addresses the representation consequences of the applications filed by the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM) and the IBT (collectively the Organizations) for the craft or class of Mechanics and Related Employees, employees of US Airways.

The IBT's application is dismissed due to an insufficient showing of interest. The Board finds that the IAM is the certified representative of Mechanics and Related Employees in the single transportation system. Therefore, the Board extends the IAM's certification issued in NMB Case No. R-4593 to include all Mechanics and Related Employees on the US Airways system.

I.

PROCEDURAL BACKGROUND

On September 30, 2005, the IAM filed an application alleging a representation dispute involving, inter alia, the Mechanics and Related Employees. The IAM asserted that US Airways, Inc. (East) and America West Airlines, Inc. (West) (collectively the Carriers) are operating as a single transportation system known as US Airways. The application was assigned NMB File No. CR-6886.

On January 30, 2006, the Board determined that East and West operate as a single transportation system for representation purposes and docketed the IAM's application for Mechanics and Related Employees as NMB Case No. R-7078. *US Airways/America West Airlines*, 33 NMB 49 (2006). Pursuant to the Board's Representation Manual (Manual) Section 19.6, this investigation addresses the representation consequences of that decision.

The Board's January 30, 2006 determination stated that the Organizations "have 14 days from the date of this determination to file an application supported by a showing of interest of at least 35 percent of the single transportation system or to supplement the showing of interest in accordance with Manual Sections 19.601 and 19.603." *US Airways, above*, at 73.

On February 13, 2006, the IAM supplemented its September 30, 2005 application, submitting proof of representation of approximately 86 percent of the system in the form of a copy of the existing IAM-East collective bargaining agreement (CBA) for the Mechanics and Related Employees craft or class. The IAM requested that the Board certify it as the representative of the post-merger craft or class of Mechanics and Related Employees. Also on February 13, 2006, the IBT filed an application alleging a representation dispute involving the Mechanics and Related Employees of the Carrier. The IBT submitted a showing of interest consisting of its Board certification, in Case No. R-6420, of the West

Mechanics and Related Employees and authorization cards from East Mechanics and Related Employees.

On February 14, 2006, the Board directed the Carrier to file the Potential List of Eligible Voters (List) and signature samples for all employees in the craft or class as of the last day of the payroll period prior to September 30, 2005. On February 28, 2006, the Carrier filed the List, identifying 6,414 employees. The Carrier filed the signature samples on March 8, 2006. In a series of filings between February 17, 2006 and March 31, 2006, the IBT submitted additional authorization cards.

On March 20, 2006, the Investigator directed the parties to file challenges and objections to the List by April 3, 2006. On March 23, 2006, in response to an IBT request, the Investigator extended the due date until April 17, 2006.

On February 28, 2006, the IBT submitted its initial position statement. On April 17 and 18, April 21, April 28, May 16, and May 23, 2006, the IBT also filed challenges and objections to the List; supplements to its challenges and objections; a position statement regarding authorization cards it submitted on March 31, 2006; and a response to the IAM's and the Carrier's filings. On February 15, 2006, the IAM filed a letter regarding the acceptance of authorization cards from the IBT. On March 17, 2006, the IAM filed a response to the IBT's initial position statement. On April 17, May 1, May 23, and May 25, 2006, the IAM also filed challenges and objections to the List; a response to the IBT's position statement on the authorization cards filed on March 31, 2006; and responses to the IBT's challenges and objections. On February 27, 2006, the Carrier submitted its initial position statement. On April 28, May 11, June 8, June 13, June 15, and June 26, 2006, the Carrier also submitted its response to the parties' challenges and objections, as well as additional information requested by the Investigator.

II.

CHALLENGES AND OBJECTIONS

A. IBT¹

The IBT's challenges and objections alleged, inter alia: (1) that it was permitted, under Manual Section 3.3, to provide additional authorization cards until the day the Investigator received the applicable List and signature samples; (2) that the eligibility cut-off date should be determined based on the parties' February 13, 2006 filings rather than based on the IAM's September 30, 2005 application; and (3) that in excess of 184 employees on the List were ineligible because they were working for other carriers. In support of its positions, the IBT supplied declarations from numerous Carrier and IBT employees, as well as a variety of other documents.

B. Responses

1. Carrier

In its responses, the Carrier addressed the challenges and objections of both organizations. The Carrier did not discuss, however, the three issues being considered on appeal. The Carrier took no position on the questions regarding the submission of authorization cards or the eligibility cut-off date. Further, the Carrier advised that furloughed employees were under no obligation to report employment with other carriers, and that it had no knowledge regarding such employment.

¹ The IAM also submitted challenges and objections. None of the Investigator's rulings on those matters was appealed.

2. IAM

The IAM disputed the IBT's contention that it could submit authorization cards until the Carrier submitted the List and signature samples, arguing instead that Manual Section 19.603 requires authorization cards to be filed with the NMB within 14 days of the Board's single transportation system determination. The IAM also disagreed with the IBT's position concerning the eligibility cut-off date. The IAM argued that the eligibility cut-off date is dictated by its September 30, 2005 application, and that the NMB does not change the customary date absent unusual circumstances. Finally, the IAM contended that the IBT submitted inadequate proof that employees were working for other carriers, or that the other employers in question were not carriers under the RLA.

C. Investigator's Ruling

Investigator Graber issued his rulings on June 28, 2006. He ruled that eligibility for inclusion on the List for purposes of calculating a showing of interest is based on working in the craft or class as of the eligibility cut-off date. He further ruled, inter alia, as follows:

1. Manual Section 19.603 and the Board's single transportation system determination require the submission of authorization cards no later than 14 days from the date of the Board's determination. Absent a showing of extraordinary circumstances justifying the late filing of such material, authorization cards were due on February 13, 2006, rather than the later dates on which the Board received the List and the signature samples.
2. Pursuant to Manual Sections 2.3 and 19.603, the eligibility cut-off date is based on the IAM's initial application dated September 30, 2005.
3. Of the more than 184 employees alleged to work for other carriers, the IBT provided adequate evidence of such employment regarding only three

employees. The IBT's evidence regarding the other employees was based on hearsay statements and other carrier's seniority lists that inadequately identified the other carrier's employees as the individuals on the List. Because the evidence was not adequate to justify removing employees from the List, there was no consideration of the question of whether all the alleged subsequent employers were, in fact, carriers under the RLA.

III.

APPEALS

A. IBT

The IBT appeals the Investigator's rulings that: (1) authorization cards were due no later than February 13, 2006; (2) the IBT's showing of interest would be determined as of September 25, 2005, rather than February 13, 2006; and (3) the evidence submitted by the IBT regarding employment with other carriers was inadequate to justify those employees' removal from the List.

The IBT asserts that the Investigator's ruling regarding the deadline for authorization cards was based on an unreasonably narrow reading of Manual Section 19.603. In particular, the IBT contends that the reasoning behind Manual Section 3.3 is just as applicable in merger situations as it is in non-merger situations. The IBT concludes, therefore, that all of the cards it submitted on or before March 8, 2006, the date on which the Carrier provided the signature samples, should be counted in accordance with Manual Section 3.3.

The IBT also contends that the standard for calculating the showing of interest in a merger case should be different from a non-merger case. It argues that the Investigator's ruling requires it to provide a showing of interest based in part on employees whose connection to the Carrier was severed before the Board's single transportation system determination. The IBT further argues that because the merged craft or class did

not exist until the Board's January 30, 2006 determination, employee eligibility should not be based on employee status prior to that date. Otherwise, the IBT contends, it is required to demonstrate a showing of interest in a craft or class that did not exist at that time. Moreover, the IBT argues that calculating a showing of interest even partially on the basis of people who have left the craft or class is contrary to the Board's showing of interest rationale: determining whether there is a sufficient employee interest to justify the use of NMB resources to conduct an election. The IBT asserts that inasmuch as it clearly has provided an adequate showing of interest for the employees in the craft or class as of the last day of the last payroll period prior to the parties' February 13, 2006 filings, an election should be ordered in this proceeding.

Lastly, the IBT argues that it provided adequate information for the removal from the List, pursuant to Manual Section 9.207, of over 184 individuals that it alleged were working for other carriers. The IBT relies on *Continental Airlines, Inc.*, 24 NMB 433 (1997), to demonstrate that the Board accepts declarations and carrier seniority lists as evidence of employment with another carrier. The IBT contends that its evidence met a "clear and convincing" standard, and that to require more would present an organization with a nearly insurmountable burden. Moreover, the IBT argues that because the Board "has the authority . . . to access the books and records of carriers subject to its jurisdiction to obtain and utilize information necessary for it [to] carry out its duty to investigate representation disputes," it is the Board's duty to investigate further when presented with the type of information submitted by the IBT in this matter. The IBT also submitted additional, new information, apparently obtained after the Investigator's ruling, regarding some of the employees in question.

C. Responses

The Carrier, as during the initial investigation, has not taken any position on these particular matters, and has not filed a response to the IBT's appeal.

The IAM filed a response brief addressing the issues raised by the IBT. The IAM argues that the Investigator correctly applied Manual Section 19.603 in requiring authorization cards to be filed within 14 days of the Board's single transportation system determination. Moreover, the IAM contends that the IBT's suggestion, that Manual Section 3.3 is the appropriate guideline, is misguided. The IAM argues that, inasmuch as that section makes no mention of the "incumbents" who are clearly addressed in Manual Section 19.603 dealing with mergers, it is the language of Manual Section 19.603 that governs.

The IAM also contends that Manual Section 2.3 mandates the eligibility cut-off date of September 25, 2005. The IAM notes that the IBT was collecting authorization cards in advance of the Board's single transportation system determination, and that the IBT arguments regarding its inability to collect cards before the determination are "disingenuous." The IAM provides new evidence to support its allegation regarding the IBT collection of authorization cards. The IAM also argues that the IBT raised this issue late in the challenge and objection process, and that the IBT cites no precedent to support its position.

Finally, the IAM argues that the IBT failed to provide substantive evidence regarding employees allegedly working for other carriers. The IAM argues that *Continental Airlines, above*, is distinguishable from the present circumstances. The IAM further argues that the IBT's challenges and objections on this matter are "unsupported allegations," within the meaning of Manual Section 8.2, that should not be considered. Moreover, the IAM argues that, pursuant to Manual Section 10.2, the new evidence submitted by the IBT should not be considered by the Board.

IV.

DISCUSSION

A. Authorization Card Due Date

Manual Section 19.603 provides that:

If not already filed with the initial application, organizations (Incumbents and Intervenors) have fourteen (14) calendar days from the date of the NMB's single transportation system determination to submit evidence of a showing of interest or to supplement the showing of interest on the single transportation system.

Applications that do not meet the showing of interest requirements will be dismissed.

Manual Section 3.3 provides that “[a]n applicant or intervenor may present the Investigator with additional authorizations up until 4 p.m., Eastern Time, on the day the Investigator receives the applicable list and signature samples.”

The IBT's appeal focuses on an organization's ability, pursuant to Manual Section 3.3, to submit authorization cards until the list and signature samples are received by the Investigator. The IBT argues that this ability to continue submitting cards should be applied to the Manual Section 19.603 requirement to file a showing of interest within 14 days of the Board's single transportation system determination.

The Investigator found that Manual Section 3.3 does not apply to merger cases and the Manual Section 19.603 requirement. The burden of persuasion in an appeal from an Investigator's eligibility ruling rests with the participant appealing that determination. *Northwest Airlines, Inc.*, 26 NMB 77, 80 (1998). As noted by the Investigator, in addition to the requirements of Manual Section 19.603, the Board's single transportation system determination in this matter stated that “[t]he IAM . . . and IBT have 14 days from the date of this

determination to file an application supported by a showing of interest” *US Airways/America West Airlines*, 33 NMB 49, 73 (2006). Given the explicit direction in the Board’s determination, there could be no confusion as to the deadline confronting the Organizations. Moreover, the Board’s normal procedure in merger cases has been to require the showing of interest within the prescribed 14 day period. The IBT has not cited any precedent suggesting otherwise. The Board finds no reason to vary from its stated requirements at this juncture in time. Accordingly, the Board upholds the Investigator’s ruling on this matter, and the due date for the Organizations’ showings of interest remains February 13, 2006.²

B. Eligibility Cut-Off Date

The standard for eligibility when calculating a showing of interest is working in the craft or class as of the cut-off date. See *United Airlines, Inc.*, 28 NMB 533 (2001); *USAir, Inc.*, 24 NMB 38 (1996). Further, Manual Section 2.3 provides that “[f]or determining eligibility to vote, the cut-off date is the last day of the payroll period ending before the day the NMB received the application.” Based on these two elements of NMB operational procedure, the Investigator ruled that the eligibility cut-off date on which a showing of interest would be determined was September 25, 2005: the last day of the payroll period ending before the IAM’s September 30, 2005 application alleging a representation dispute involving the Mechanics and Related Employees craft or class of East and West.

The IBT argues on appeal that merger cases do not present the same circumstances as the standard representation matters governed by Manual Section 2.3. The IBT contends that the craft or class did not exist until the Board’s January 30, 2006 single transportation system determination, and that it is unfair to require the IBT to

² The Investigator accepted 24 authorization cards submitted after the February 13, 2006 deadline because of extraordinary circumstances justifying their late filing. There was no appeal of this ruling.

provide a showing of interest based on employees who left the craft or class prior to the Board's determination.

As noted by the Investigator, Manual Section 19.603 provides that “[i]f not already filed with the *initial application*, organizations . . . have fourteen (14) calendar days . . . to submit evidence of a showing of interest or to *supplement the showing of interest* on the single transportation system.” (Emphasis added.) Based on the Board's decision, the IBT, which had not yet filed an application, was required to file an application and a showing of interest. The IAM, however, already had filed an application in September 2005, and its subsequent obligations were determined by Manual Section 19.603: a supplement based on its initial application. In fact, the IAM's February 13, 2006 filing specifically states that it is supplementing the September 30, 2005 application referred to in the Board's single transportation system determination. Accordingly, the Board's selection of September 25, 2005 as the eligibility cut-off date complies with the Board's customary procedures. Additionally, the Board announced its selection of the eligibility cut-off date in its February 14, 2006 letter to all of the participants. The IBT did not object to the eligibility cut-off date until its letter dated May 23, 2006.

On appeal, the IAM has submitted a document indicating that the IBT engaged in extensive collection of authorization cards in advance of the Board's single transportation system determination. The IAM argues, therefore, that the IBT's claims of unfairness are disingenuous and should be dismissed.

Manual Section 10.2 provides, in pertinent part: “Absent extraordinary circumstances, evidence submitted on appeal will not be considered by the NMB unless it was submitted to the Investigator.” The IAM did not provide the IBT document in question to the Investigator during the challenge and objection process. Accordingly, the Board will not consider the document in making its decision.

Nevertheless, the evidence gathered during the investigation establishes that the IBT began obtaining authorization cards at least as early as August 2005, even before the filing of the IAM's initial application. Accordingly, it is clear that the IBT understood the need to obtain authorization cards even before the issuance of the Board's single transportation system determination. In fact, the IBT did not raise the issue of the cut-off date until well after the initial deadline for challenges and objections. Accordingly, the Board finds no unfairness to, or undue burden on, the IBT by establishing the eligibility cut-off date based on the IAM's initial application on September 30, 2005. The Board's normal processes dictate the use of the September 2005 date to determine the eligibility cut-off date; and there is no showing of extraordinary circumstances in this case to justify a departure from the normal procedure.³

The IBT also cites *Eastern Airlines, Inc./Continental Airlines, Inc./Continental Airlines Holdings, Inc.*, 17 NMB 432 (1990), where the Board stated:

Initially, the Board must determine the precise scope of the particular craft or class, which includes investigating and determining whether the applicable transportation system encompasses more than one carrier. It is only after the scope of the potential employee electorate has been determined by such an investigation that the Board has the necessary factual basis to assess whether an applicant has satisfied its showing of interest for purposes of conducting an election.

Id. at 436.

³ Extraordinary circumstances have been found in *USAir, Inc.*, 10 NMB 495 (1983) (where there was a 100 percent turnover in the craft or class) and in *Piedmont Airlines*, 9 NMB 41 (1981) (where there was a five-year delay between the original cut-off date and the election because of protracted litigation).

The IBT's reliance on this case is misplaced. Although the Board discusses the need to determine the scope of the craft or class in the first instance, it does not state that the showing of interest will be based on the employee complement at the time of the Board's determination. The showing of interest, when eventually analyzed, is based on the employees working in the craft or class at the time of the initial application.

The IBT also appears to argue that because the 35 percent requirement for a showing of interest is not dictated by statute, the NMB should find that the IBT has presented a significant showing of interest that justifies proceeding to an election. In the circumstance of this case, where there has been no showing of unusual circumstances, the Board declines to waive its showing of interest requirements. Accordingly, the Board upholds the Investigator's ruling and finds that the showings of interest will be evaluated based on the employees working in the craft or class on September 25, 2005.

C. Working for Other Carriers

Manual Section 9.207 provides that "[e]mployees working for another carrier other than the carrier involved in the dispute are ineligible."

In its challenges and objections, the IBT alleged that more than 184 employees on the List were working for other carriers. The evidence provided by the IBT in support of its challenges and objections consisted of declarations from IBT employees or Carrier employees, as well as seniority lists from other carriers. Some of the declarations merely asserted the fact that the employees in question worked for other employers alleged to be carriers. Other declarations stated that the declarant spoke with the challenged individuals regarding their employment status. Some, but not all, of the declarations provided an alleged date of hire. The Carrier stated that it had no information regarding such other employment for its furloughed employees.

The Investigator, citing *American Airlines*, 31 NMB 539, 568-569 (2004), concluded that the IBT's hearsay declarations and the seniority lists, which did not definitively identify the named individuals as the same people on the List, were inadequate to support the IBT's challenges and objections. In the three instances where the seniority lists identified individuals by social security numbers and provided their seniority dates, the Investigator confirmed that those three individuals were the same as the employees on the Carrier's List; and he removed them from the List.

The IBT contends that it provided more evidence than the organization in *American Airlines, above*. Moreover, it argues that in *Continental Airlines, Inc.*, 24 NMB 433 (1997), the Board removed employees from an eligibility list based on the type of evidence it submitted in this proceeding.

The IBT submitted both declarations and seniority lists in this proceeding, whereas the organization in *American Airlines, above*, provided only one or the other regarding challenged employees. That difference, however, is not dispositive. Manual Section 8.2 provides, in part, that "[a]ll challenges and objections must be supported by substantive evidence." Although the IBT provided evidence regarding the challenged employees, it was not sufficient to establish that the individuals alleged to be working for other carriers were the same individuals who appeared on the List.

The IBT's reliance on *Continental Airlines, above*, is similarly misplaced. In that case, there was no appeal of the Investigator's ruling that employees were removed from the eligibility list based on employment with other carriers. The Board merely considered the failure to remove certain employees from the eligibility list. Because the Board did not consider or rule on the propriety of removing employees from the List based on the evidence presented to the Investigator during the investigation, the case has no precedential value for the proposition that such evidence is sufficient to remove employees from the List. Moreover, the Investigator in *Continental Airlines, above*, considered evidence in addition to seniority lists from other carriers. The carrier in that case

provided declarations which documented conversations with the other carriers alleged to be employing individuals on the eligibility list. The carrier contested the removal from the list of those employees it ascertained, in consultation with the other carriers, were not employed by the other carriers. *Id.* at 439-442, 449. Given the totality of the evidence before the Investigator in *Continental Airlines, above*, there was sufficient certainty regarding the identity of employees alleged to be working for other carriers. The evidence in this case lacks that degree of certainty.

The IBT, citing *International In-Flight Catering Co. v. NMB*, 555 F.2d 712 (9th Cir. 1977), argues that the NMB should have investigated its allegations further, rather than requiring it to provide the information necessary to establish its claims. *International In-Flight Catering Co., above*, involved the NMB certification of an organization based solely on authorization cards that requested an election. There, the Board conducted no investigation beyond verifying the authorization card signatures and calculating the percentage of interest demonstrated. In this case, the IBT submitted at least seven sets of position statements, challenges and objections, or responses to the IAM's and the Carrier's filings, all of which were considered by the Investigator. Further, the Investigator spent weeks determining the validity of dozens of challenges and objections, considering hundreds of employees on an individual basis. The Investigator also ruled on challenges and objections that collectively affected over a thousand employees. *International In-Flight Catering Co., above*, does not require the Board, in this instance, to conduct an investigation with multiple carriers regarding close to 200 individuals, in addition to verifying the carrier status of numerous employers alleged to be carriers. The IBT failed to provide sufficient evidence to prove its allegations; and it cannot shift the burden of proof to the Board.

In its appeal, the IBT provides information documenting the social security numbers of individuals challenged as working for other carriers. Although this information might provide an adequate basis for removing individuals from the List, the data was not presented to the Investigator during the

challenge and objection process. As indicated above, Manual Section 10.2 provides, in pertinent part: “Absent extraordinary circumstances, evidence submitted on appeal will not be considered by the NMB unless it was submitted to the Investigator.” The new evidence submitted on appeal will not be considered, and the Board upholds the Investigator’s rulings on this subject.

V.

REPRESENTATION CONSEQUENCES

A. Statements of Fact

At East, the Mechanics and Related Employees are represented by the IAM pursuant to Board certification in Case No. R-4593. IAM represents approximately 86 percent of the employees covered by this application. The Mechanics and Related Employees at West are represented by the IBT pursuant to Board certification in Case No. R-6420. The IBT represents approximately 14 percent of the employees covered by this application. Additionally, the IBT submitted authorization cards from East employees in the Mechanics and Related Employees craft or class. Based on the eligibility determinations in these proceedings, the investigation revealed, however, that the combination of employees covered by the IBT’s certification as the West representative and the employees who signed valid authorization cards did not meet the required showing of interest of 35 percent.⁴

⁴ Based upon the Board’s eligibility rulings in this decision, the total number of Potential Eligible Voters is 6,011, as indicated in the conclusion of the Investigator’s eligibility ruling.

B. Discussion

The IBT's application failed to provide an adequate showing of interest. Accordingly, the Board dismisses that application; and turns its attention to the remaining representation consequences of its previous single transportation system finding. *US Airways/America West Airlines*, 33 NMB 49 (2006).

The Board has consistently extended an organization's certification to cover employees in the craft or class on the entire system when the applicant does not represent all of the employees, but the numbers of employees on each part of the system are not comparable. For example, in *Continental Airlines/Continental Express*, 20 NMB 582 (1993), the Board extended the certification of an incumbent which represented 6,994 Flight Attendants to include 423 unrepresented Flight Attendants. See also *American Airlines, Inc./TWA Airlines, LLC*, 29 NMB 260 (2002); *Continental Airlines/Continental Express*, 20 NMB 580 (1993); *SAHSA/TAN*, 19 NMB 17 (1991); *Air Wisconsin, Inc./Aspen Airways, Inc.*, 18 NMB 336 (1991); *Alaska Airlines, Inc./Jet America, Inc.*, 15 NMB 42 (1987).

The Board finds that the number of IAM-represented Mechanics and Related Employees on East and IBT-represented Mechanics and Related Employees on West are not comparable.

VI.

CONCLUSION

The Board finds that the IAM is the certified representative of the entire craft or class of Mechanics and Related Employees in the single transportation system. The IAM's certification in NMB Case No. R-4593 is extended to cover the entire craft or class of Mechanics and Related Employees on the combined US Airways system. The Board

extinguishes the IBT's certification issued in NMB Case No. R-6420. Accordingly, NMB Case No. R-7078 is closed.

By direction of the NATIONAL MEDIATION BOARD.

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

Mary L. Johnson
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