



NATIONAL MEDIATION BOARD

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Re: NMB Case No. R-7104
Timber Rock Railroad

Gentlemen:

This is in response to Timber Rock Railroad's (Timber Rock or Carrier) request that the National Mediation Board (Board or NMB) stay the proceedings in this case.

I.

On September 26, 2006, the United Transportation Union (UTU or Organization) filed an application seeking to represent the craft or class of Train and Engine Service Employees of Timber Rock. Kendrah L. Davis was assigned to

investigate. On October 16, 2006, the Carrier filed a request to stay the proceedings. On October 20, 2006, the UTU submitted its response requesting that the Board deny the Carrier's request to stay and move forward with the proceedings.¹

In its stay request, the Carrier argues that there will be a "dramatic change in the composition of the craft or class of employees at issue" due to a cancellation of a lease transaction with BNSF Railway (BNSF). According to the Carrier, it is currently in negotiations with BNSF to cancel "a portion of the lease that constitutes a significant portion of the business of Timber Rock Railroad." The Carrier submitted a copy of the notice, dated October 9, 2006, announcing this transaction to customers and employees. The Carrier contends that while "the notice reflects [early February, 2007] as the latest possible date for consummation, [it] expects the transaction to close earlier." The Carrier also contends that until the consummation of the transaction with BNSF, proceeding with the election would make it impossible to determine the eligible voters, and "would not effectuate the purposes of the Act."

In its response, the Organization asserts that allowing a stay will cause substantially greater harm than allowing the election to proceed because "without this election proceeding as originally scheduled, UTU . . . will not be able to aid these employees through this complex process"

II.

It is the Board's longstanding policy, consistent with 45 U.S.C. § 152, Ninth, of the Railway Labor Act² (Act) to resolve representation disputes as expeditiously as possible. See *Brotherhood of Ry. & S.S. Clerks v. Assoc. for the Benefit of Non-Contract Employees*, 380 U.S. 650, 668 (1965) (speed is accordingly an RLA "objective of the first order"). It is the

¹ The Carrier and the Organization, respectively, filed additional responses on October 25 and 27, 2006.

² 45 U.S.C. § 151, *et seq.*

Board's consistent practice to proceed with representation elections unless the Board itself finds it necessary to delay due to unusual or complex issues, or is barred by court order. *Northwest Airlines, Inc.*, 33 NMB 195, 199 (2006); *United Airlines, Inc.*, 30 NMB 278, 282 (2003); *Chautauqua Airlines, Inc.*, 21 NMB 226, 227-28 (1994); *Tower Air*, 16 NMB 326, 328 (1989); *Air Florida*, 10 NMB 294, 295 (1983).

The Carrier cites *Pan American World Airways, Inc.*, 7 NMB 174 (1980), in support of its position. In *Pan American*, the Board conducted a three-year investigation for purposes of determining whether "Production Supervisors" were employees or management officials. However, during the investigation, Pan Am and National Airlines were approved for merger. As a result, the Board declined to authorize an election, noting that:

[O]ne result of the merger [between Pan Am and National] will be the combining of the Production Supervisors on Pan Am with similar personnel on National, and because the Board has determined that these personnel on National are not employees or subordinate officials, it is apparent that an election on Pan Am would not effectuate the purposes of the Act.

Id. at 190.

The facts in the present case are distinguishable from those in *Pan American*. In *Pan American*, a change in the system occurred while the Board's investigation was ongoing. A more applicable case is *SAPADO I*, 19 NMB 279, 281 (1992), where the Board rejected the Carrier's request to delay the election due to a planned sale, stating, "[w]hen the Board conducts an election, it conducts an election on the present system, not a former or future system." Here, Timber Rock is requesting a stay based upon a future transaction that may or may not change the composition of the craft or class. The speculative nature of this event is insufficient to delay an election in this matter.

III.

Based on the Board's review of the record and in light of applicable precedent, the Carrier's request for a stay is denied.

Accordingly, the Board finds a dispute to exist in R-7104 among Train and Engine Service Employees at Timber Rock Railroad, sought to be represented by UTU and presently not represented. A Telephone Electronic Voting election is hereby authorized using a cut-off date of September 22, 2006. Pursuant to Section 12.1 of the NMB Representation Manual, the Carrier is hereby required to furnish, within 5 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 expeditious method possible, such as overnight mail, to ensure that the Board receives the labels within five calendar days. The tally will take place in Washington, DC. The Carrier must provide this information no later than **4:00 p.m., ET, Monday, November 6, 2006.**

By direction of the NATIONAL MEDIATION BOARD



Mary L. Johnson
General Counsel