



NATIONAL MEDIATION BOARD

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34 NMB No. 10
December 22, 2006

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Re: NMB File No. C-6903
Dobbs International Services, Inc. d/b/a Gate Gourmet

Gentlemen:

This will acknowledge the requests, motions and responses submitted to the National Mediation Board (NMB or Board) commencing with the International Association of Machinists and Aerospace Workers' (IAM) Request for Clarification of the NMB's Certification in *Dobbs Int'l Servs., Inc. d/b/a Gate Gourmet*, 28 NMB 7 (2000), filed on April 13, 2006, and concluding with Gate Gourmet's (Gate Gourmet or Carrier) Response filed on May 23, 2006.

On April 13, 2006, IAM requested the Board to clarify that under the NMB's October 11, 2000 certification of Kitchen, Commissary, Catering, and Related Employees craft or class at Gate Gourmet, IAM is designated as the collective bargaining

agent for the Tampa, Houston, and Boston kitchens, that Gate Gourmet is obligated to treat with IAM at these locations, and that IAM's bargaining relationship with Gate Gourmet remains as it was at the time of the NMB's certification. On May 9, 2006, IBT/HERE Employee Representatives' Council, (Council) filed a Motion to Dismiss IAM's Request for Clarification for lack of jurisdiction. The Council asserts that IAM has failed to allege the existence of a representation dispute. The Council states that the only dispute alleged by IAM is one between IAM, the Council, and Gate Gourmet over the revocability of the bargaining authority designated by the Council to IAM. The Council further asserts that the clarification sought by IAM would require the Board to render an advisory opinion and/or adjudicate the dispute between IAM, the Council, and Gate Gourmet. On May 23, 2006, Gate Gourmet filed its Response. Gate Gourmet also asserts that the Board lacks jurisdiction since IAM has not raised a representation dispute and even if the Board did have jurisdiction, IAM's contentions "fly in the face of the NMB's policy and practice of system-wide representation." On June 12, 2006, IBT/HERE and IAM each filed a response to Gate Gourmet's submission.

Until 2000, when SAir Group, an air carrier, acquired total ownership of it, Gate Gourmet, then known as Dobbs International Services, Inc., operated under the National Labor Relations Act, 29 U.S.C. §§ 151, *et seq.* (NLRA). Approximately 80 percent of its employees were represented, but under the NLRA, each of its facilities was considered a separate bargaining unit and it had collective bargaining agreements with several different unions. Of those represented employees, one-third were covered by collective bargaining agreements between the Carrier and the IBT and one-third were covered by collective bargaining agreements between the Carrier and HERE. The remaining represented employees were covered by collective bargaining agreements between the Carrier and several other AFL-CIO labor organizations, including IAM. Subsequently, IBT and HERE formed the Council and on May 15, 2000, the Carrier voluntarily recognized the Council as the representative of employees in the craft or class system-wide.

The Council and the Carrier also negotiated a National Master Agreement (Master Agreement) and agreed that certain existing local collective bargaining agreements (Local Agreements) would continue, with certain caveats, at those facilities. The Council also designated, pursuant to Section 2, Third, of the Railway Labor Act (RLA or Act) 45 U.S.C. § 152, Third, AFL-CIO labor organizations that had represented employees under the NLRA at certain local facilities as the Council's agents for collective bargaining purposes at those facilities. The IAM was so designated at Gate Gourmet's Boston, Houston and Tampa facilities.

On May 18, 2000, the Council filed an application with the Board pursuant to Section 2, Ninth, of the RLA, 45 U.S.C. § 152, Ninth, alleging the existence of a representation dispute among the Carrier's Kitchen, Commissary, Catering, and Related Employees and requesting that the Board certify, without an election, the Council as the exclusive bargaining representative of the employees in the craft or class.

The Board confirmed RLA jurisdiction in *Dobbs Int'l Servs., Inc.*, 27 NMB 537 (2000). In *Dobbs Int'l Servs., Inc.*, 28 NMB 7 (2000), the Board certified the Council as the representative of the system-wide craft or class. The Board stated that its investigation disclosed that an established collective bargaining relationship existed between the Carrier and the Council, that the Carrier and the Council agreed in writing to certification without an election pursuant to the Board's Representation Manual, and that the Council was the only organization involved in the representation dispute. *Id.* at 10. The Board noted that the voluntary recognition agreement and the Master Agreement cover all employees in the craft or class formerly represented by HERE and IBT separately as well as the unrepresented employees and the employees represented by other labor organizations pursuant to certifications under the NLRA. *Id.* With regard to the other labor organizations, the Board noted that these organizations had been designated as the Council's agents for collective bargaining purposes. *Id.* at 10, fn. 3. The Board, however,

rejected the IAM's request to defer its certification pending meetings between the Council and the other labor organizations concerning the collective bargaining agreement with the Carrier. *Id.* The Board stated that such "meetings are immaterial to the NMB's investigation of the Council's application." *Id.* On the basis of its investigation, the dues authorization in the Master Agreement between the Council and the Carrier, and the authorization cards submitted from the previously unrepresented employees, the Board determined that a "majority of the craft or class has determined that the Council shall be the representative of the craft of class of Kitchen, Commissary, Catering, and Related Employees" for the purposes of the RLA. *Id.* at 10 -11.

The Master Agreement became amendable in 2004. During negotiations, the Council and Gate Gourmet disagreed over what effect the Local Agreements would have under the new Master Agreement. In August 2005, after failing to reach agreement on a new Master Agreement, the Council and Gate Gourmet agreed to interest arbitration. One of the issues for the arbitration was application of the new Master Agreement to the Local Agreements. Further, the interest arbitration agreement between the Council and Gate Gourmet provided that the arbitration award would be binding on all Gate Gourmet employees in the Kitchen, Commissary, Catering and Related Employees craft or class.

IAM filed two briefs with the arbitrator arguing that any decision rendered would be inapplicable to the locations for which the IAM was the Council's designated collective bargaining agent. The arbitrator's award issued on December 19, 2005, and became effective December 31, 2005. The award provided that the Master Agreement would be the principal collective bargaining agreement and the Local Agreements would control only with respect to the administration of non-economic or non-operational provisions at the local facilities. With respect to the IAM's contentions, the arbitrator found that:

[T]he certification by the National Mediation Board is the controlling document insofar as the statutory responsibilities and obligations are concerned. The National Mediation Board certified the Council as the representative of the entire craft or class, and as such the Council has the authority to negotiate with Gate Gourmet for collective bargaining agreement provisions which may have system-wide applicability or less than system-wide applicability.

The Board may not conduct a representation investigation pursuant to Section 2, Ninth, without evidence of a “dispute” among the subject employees. Such a dispute is normally characterized by the filing of an Application for Investigation of a Representation Dispute, accompanied by a sufficient showing of interest, pursuant to Section 1203.2 of the Board’s Rules. In the instant case, IAM has not filed an application. IAM concedes, and it is clear from the Board’s certification, that the Council is the exclusive bargaining representative for Gate Gourmet’s Kitchen, Commissary, Catering, and Related Employees craft or class. Thus, there is no dispute among employees as to their exclusive representative. IAM’s dispute is with the Council as to the collective bargaining arrangement with Gate Gourmet. This dispute regarding the collective bargaining arrangement was immaterial to the Board’s original certification and it is no basis for finding the existence of a representation dispute in

the instant case.¹ Accordingly, the Board finds that IAM's Request for Clarification is a request for an advisory opinion. The Board's longstanding policy is to decline ruling on the merits of such Requests. *See generally Petroleum Helicopters, Inc.*, 32 NMB 179, 185 fn. 3 (2005); *Air Florida, Inc.*, 8 NMB 587 (1981).

For the above reasons, the IAM's Request for Clarification of Certification is dismissed.

By direction of the NATIONAL MEDIATION BOARD.



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¹ *Grand Trunk Western Railroad Co.*, 19 NMB 226 (1992) and *Burlington Northern Railroad*, 19 NMB 449 (1992), relied on by IAM, are inapposite. In those cases the Board noted its authority to "clarify" a previous decision, but only in narrow circumstances: "to correct misunderstandings about particularly important or difficult cases or to resolve continuing representation questions. 19 NMB 449, at 451 (citing *Burlington Northern Railroad*, 19 NMB 288 (1992) and *Grand Trunk Western Railroad*, 19 NMB 226 (1992)). Neither circumstance is presented in the instant case. Further, both *Grand Trunk Western* and *Burlington Northern* involved the Board's merger procedures which were rejected in *RLEA v. NMB*, 29 F.3d 655 (D.C. Cir. 1994), cert. den., 514 U.S. 1032 (1995) (finding Board's statutory authority to address representation disputes arises only when it receives requests from or on behalf of employees).