



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the
Application of the

**ASSOCIATION OF FLIGHT
ATTENDANTS-CWA**

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

involving employees of

UNITED AIRLINES, INC.

39 NMB No. 45

CASE NO. R-7283

FINDINGS UPON
INVESTIGATION

May 30, 2012

This determination resolves election interference allegations filed by the International Association of Machinists and Aerospace Workers (IAM) involving the employees of United Air Lines, Inc. (United or Carrier). For the reasons below, the National Mediation Board (NMB or Board) finds that the laboratory conditions in the election involving United's Flight Attendants were not tainted and that the Carrier did not interfere with the election. However, the investigation further establishes that certain actions by the Association of Flight Attendants - CWA (AFA) raise concerns about the confidentiality of the voting process. While AFA's actions do not rise to the level of interference, coercion or influence, as discussed below, the Board finds that these actions jeopardized the secrecy of the NMB's ballot process.

PROCEDURAL BACKGROUND

On January 18, 2011, the AFA filed an application requesting the NMB to investigate whether United, Continental Airlines, Inc. (Continental) and Continental Micronesia (CMI) were operating as a single transportation system for the craft or class of Flight Attendants. At the time the application was filed,

the Flight Attendants on United were represented by AFA and Flight Attendants at Continental and CMI were represented by the IAM. The Board found United and Continental were a single transportation system known as United for the craft or class of Flight Attendants and proceeded to address the representation consequences. *United Air Lines, Inc./Continental Airlines, Inc.*, 38 NMB 124 (2011). On April 26, 2011, the Board authorized an election in this matter with IAM and AFA on the Ballot. The Board scheduled the tally for June 29, 2011.

The June 30, 2011 Report of Election results reflected that a majority of votes were cast for AFA. Of the 21,780 votes cast, 11,942 were votes for AFA, 9,745 were votes for IAM, 28 votes were write-in votes for representation other than AFA or IAM and 65 were votes against representation. The Board issued a Certification of AFA as the representative for purposes of the Railway Labor Act of the craft or class of Flight Attendants. *United Air Lines, Inc./Continental Airlines, Inc.*, 38 NMB 248 (2011).

On July 11, 2011, pursuant to the Board's Representation Manual (Manual) Section 17.0, IAM filed allegations of election interference on the part of AFA and the Carrier. IAM is seeking a re-run election and asks the Board to bar AFA from participating in the re-run election. AFA and United each responded on August 5, 2011. IAM filed a reply to AFA and United on September 12, 2011. AFA filed an additional response to IAM on September 16, 2011. On January 9, 2012, the Board notified the participants that further investigation was necessary to determine whether the laboratory conditions had been tainted.

From February through April 2012, Investigator Maria-Kate Dowling, along with other NMB Investigators, conducted an on-site investigation and interviewed management officials, randomly selected employees and AFA and IAM witnesses in Chicago, Illinois; San Francisco, California; and Chantilly, Virginia. In addition, the NMB interviewed numerous flight attendants based throughout the United system via telephone.

ISSUES

Were the laboratory conditions for a fair election tainted? Was the secrecy of the Board's voting process compromised? If so, what is the appropriate Board response?

CONTENTIONSIAM

IAM's interference allegations include the following: AFA provided a hyperlink to the NMB's voting website in direct violation of the Board's policy; AFA held voting parties; AFA misrepresented official voting materials in a manner that called into question the Board's neutrality; AFA polled employees and collected reports of how flight attendants actually voted; and AFA harassed and coerced flight attendants and interfered with their free choice in the election. IAM also alleged that the Carrier showed a significant bias in favor of AFA including providing AFA greater access to flight attendants and that the Carrier destroyed laboratory conditions with its May 12, 2011 announcement regarding the cross-hiring of furloughed United and CMI employees to fill vacancies at Continental.

AFA

In its response to IAM's interference allegations, AFA asserts that it did not destroy the secrecy of the ballot either through a mistakenly activated hyperlink or by polling flight attendants. AFA states that it did not sponsor, promote, or contribute any financial support to any alleged "voting parties" or misrepresent the Board's voting process since all AFA communications about the election clearly identified AFA as the source of the information. AFA also states that IAM's claims of harassment and intimidation by AFA are without merit and at most the evidence submitted by IAM establishes that IAM supporters were "annoyed" by AFA activists. Finally AFA states that it did not collude, conspire, or cooperate with the Carrier to gain favorable treatment during the election, noting that it was IAM not AFA that benefitted from Company favoritism.

United

United responded to IAM's interference allegations by stating that IAM failed to demonstrate the requisite pattern of carrier support for one union over the other to establish a claim of carrier election interference. The Carrier states that, throughout the election campaign, it maintained and enforced a policy of strict neutrality towards both AFA and IAM, and that its solicitation rules and other guidelines were applied in an even-handed manner. United also states that its announcements regarding a cross-over hiring system were driven by valid business reasons and that both AFA and IAM had the opportunity to, and did in fact, discuss the cross-over hiring program in campaign statements.

FINDINGS OF LAW

Determination of the issues in this case is governed by the Act, as amended, 45 U.S.C. § 151, *et seq.* Accordingly, the Board finds as follows:

I.

United is a common carrier as defined in 45 U.S.C. § 181, First.

II.

IAM and AFA are labor organizations and/or representatives as defined in 45 U.S.C. § 151, Sixth.

III.

45 U.S.C. § 152, Third, provides in part: “Representatives . . . shall be designated . . . without interference, influence, or coercion”

IV.

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 the purposes of this chapter.” This section also provides as follows:

No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees . . . or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization.

DISCUSSION AND FINDINGS

I.

The Laboratory Period

The Board generally holds that laboratory conditions must be maintained from the date the carrier becomes aware of the organizing drive. *Stillwater Central R.R., Inc.*, 33 NMB 100 (2006); *Mercy Air Serv., Inc.*, 29

NMB 55 (2001). In the absence of extraordinary circumstances, the Board will not consider evidence of occurrences prior to one year before the application was filed. *Delta Air Lines, Inc.*, 39 NMB 53 (2011); *Delta Air Lines, Inc.*, 30 NMB 102 (2002). Accordingly, laboratory conditions had to be maintained beginning in January 2010, one year prior to the filing of AFA's application.

II.

Applicable Legal Standard

The Board's responsibility under Section 2, Ninth of the Act is to assure that employees are provided with the opportunity to make a choice concerning representation free of interference, influence or coercion. Where there are allegations of interference, the Board has the responsibility to investigate such claims. The Board examines the totality of the circumstances, as established through the investigation, in order to determine whether the laboratory conditions which the Board seeks to promote have been contaminated. *Air Wisconsin*, 16 NMB 235, 239 (1989); *Continental Airlines*, 14 NMB 131 (1987). In such an evaluation, each conclusion may not constitute interference in and of itself, but when combined with other factors, the totality may evidence improper interference. *Delta Air Lines, Inc.*, 39 NMB 53 (2011); *Delta Air Lines, Inc.*, 37 NMB 281 (2010); *Frontier Airlines, Inc.*, 32 NMB 57 (2004).

Coercive conduct by unions may also taint the laboratory conditions necessary for a free and fair election. The Board also recognizes, however, that the carrier possesses unique power and authority in the workplace, and therefore while the test for carrier and union interference is the same, its application to identical factual situations may lead to different conclusions. *United Air Lines, Inc.*, 22 NMB 288, 318 (1995). Thus, certain campaign activity, when engaged in by an organization rather than by a carrier, does not have the same coercive effect on employees. *Federal Express Corp.*, 20 NMB 659 (1993).

III.

Allegations of Carrier Interference

IAM alleges that United allowed AFA broad access to employees that it denied access to by the IAM, and that the Carrier openly supported AFA over IAM. In particular, with regard to the cafeteria at Chicago O'Hare International Airport (ORD), IAM alleges that the Carrier changed its solicitation policy and informed AFA of those changes, but did not inform IAM. IAM also alleges that United made a controversial announcement regarding the cross-hiring of furloughed United and CMI flight attendants to fill vacancies at

Continental less than one week before the start of the voting period.

In its response, United states that it enforced and maintained a policy of strict neutrality throughout the election campaign, and applied its solicitation rules and other company policies in an even-handed manner. With regard to the cross-over hiring program, the Carrier states that the timing of the announcement was based on legitimate business reasons including the time required to address Continental's need for 900 additional flight attendants.

A. Disparate Access and Open Support

It was clear that each union enjoyed an advantage in different parts of the system based on incumbent status and collective bargaining agreements. The majority of flight attendants interviewed by the NMB during the investigation, however, stated that the electioneering was balanced and evenhanded. For example, one flight attendant stated, "[b]oth sides were in the domicile." Another stated, "I always saw both sides." One flight attendant stated "I thought the campaigning was equal. IAM on one side, AFA on the other. I felt free to talk to both sides and I saw no favoritism from the company." Many flight attendants did express the view that the Carrier allowed IAM supporters to wear IAM pins that did not conform to company policy. At San Francisco International Airport (SFO), flight attendants interviewed stated that supporters of both unions were in the concourse outside the elevators down to In-Flight. At Dulles International Airport (IAD), both sides campaigned in the rotunda outside the entrance to In-Flight.

At ORD, both unions had a presence in the cafeteria. Initially, the Carrier applied a policy of not allowing campaigning in the ORD cafeteria. Greg Orth, ORD Director – InFlight Services, stated that if the Carrier became aware of campaigning in the cafeteria, they stopped it. Subsequently in late March or early April 2011, the Carrier made a decision to permit election campaigning in the cafeteria, but as Orth stated, "I did not proactively notify either union. We just stopped addressing it." The flight attendants interviewed during the investigation stated that at first both unions were campaigning in the cafeteria, then for a short period neither union was campaigning in the cafeteria and subsequently both unions resumed campaigning in the cafeteria.

The Board has found that a carrier may interfere with employee free choice by a pattern of support for one of the competing organizations. In *Northwest Airlines, Inc*, 14 NMB 49 (1986), the applicant organization, AFA, argued that Northwest permitted the incumbent organization, International Brotherhood of Teamsters (IBT), to campaign in employee lounges without giving AFA the same opportunity and that Northwest provided IBT with the use of a Boeing 747 as background in a campaign film, issued free flight

passes to certain IBT representatives and access to bulletin boards reserved for official union business. Although the Board found evidence to support some of AFA's allegations that the carrier supported IBT, the Board stated that based on the totality of the circumstances there was no interference because there was no pattern of carrier support for IBT.

In a subsequent decision, *Northwest Airlines, Inc.*, 19 NMB 94 (1991), the Board found insufficient evidence of a "pattern of support" for one organization over another despite "isolated incidents" of support. The Board stated that

Northwest officials were undoubtedly aware that IAM representatives and AMFA [Aircraft Mechanics Fraternal Organization] representatives were engaging in campaign activity at the carrier's stations in violation of the carrier's election rules. By virtue of its incumbent status and its collective bargaining agreement with the carrier, the IAM had distinctly greater access to employees than did AMFA.

That is not to say that AMFA did not have access to the employees. In addition to the sanctioned campaign activity, AMFA representatives did campaign through literature which appeared in employee mailboxes, AMFA stickers and other campaign materials which were displayed on tool boxes and on lunchroom tables on the carrier's property, and in one-on-one discussions with employees.

19 NMB at 111.

In *United Air Lines, Inc.*, 22 NMB 288 (1995), the Board found that the record failed to find a pattern of support by United for the incumbent union IAM over the applicant AMFA. In reaching this conclusion, the Board noted that

[o]n a carrier of United's size, with a craft or class of over 14,000 employees, it would be virtually impossible for carrier officials to monitor campaign-related activities while engaging in the operation of the airline. As stated previously, the investigation revealed that

enforcement of carrier policy on such issues as access, solicitation of employees, distribution of literature, et al., varied from station to station. For example, at certain stations AMFA literature was far more prominently displayed, in violation of carrier rules, than IAM literature.

The Board also recognized that a greater degree of access was inevitable due to IAM's status as the incumbent.

Here, the investigation revealed no pattern of support by the Carrier for AFA. The Carrier attempted to and, for the most part, did interpret, apply and enforce its solicitation and other policies in a neutral and even-handed manner. The fact that there may have been isolated lapses from time to time between stations does not create a "pattern of support" given the size of United's system and the craft and class of employees at issue. Also as recognized by the Board in its prior decisions, there can be no doubt that each union enjoyed greater access on different parts of the system due to their incumbent status.

B. Announcement of Cross-Over Hiring

On May 12, 2011, approximately less than one week before voting period began, the Carrier sent a letter to "all Flight Attendants" stating that

Before Flight Attendants can be integrated into one group, we must also negotiate a single contract and implement a single seniority list. Until that time, our collective bargaining contracts remain in effect and restrict Flight Attendants to flying their own subsidiary aircraft As we look at the 2012 staffing requirements, we are going to be understaffed at Continental Subsidiary and overstaffed at United and CMI subsidiaries.

We want to do everything we can to ensure that Flight Attendants at both subsidiaries who want to work have the opportunity to do so. Next year, the Continental subsidiary will need approximately 900 more Flight Attendants to fly the schedule Based on current projections, we expect Flight Attendant overstaffing to

become an issue at the CMI subsidiary and to continue at the United subsidiaries.

We want to minimize the impact on our co-workers and seek to avoid furloughs resulting from excess staffing. To do this, we must structure a process by which we can most effectively manage the Flight Attendant imbalance between subsidiaries. . . . Because of the length of time this process will take, including potential transfers, ramp up of recruiting, hiring and training of Flight Attendants, we must start these processes now. We have contacted both the AFA and IAM to start conversations on how best to implement a cross-over hiring program for Flight Attendants.

Dan Casey, United's Vice President – Labor Relations stated that the concerns that lead to the implementation of the cross-over hiring program were “the length of time needed to accomplish the staffing and providing an opportunity and preference for current employees before we would hire from off the street.” Casey also stated very shortly after the decision was made to implement the cross-over hiring program in late April or early May, United contacted both IAM and AFA to discuss and negotiate the cross-over program.

IAM submitted a response to United's proposal that AFA posted on its unitedafa.org website that included “the results of a poll conducted on our United MEC website open from May 13, 2011 through July 7, 2011.” The poll posed the question; “Are you interested in being hired by Continental Airlines and working under the terms of the Machinist's Contract at the bottom of their seniority list?”

During the laboratory period when the status quo must be maintained, any change in working conditions may taint the laboratory conditions. The exception to this general policy is when these actions were planned before the laboratory conditions attached, or if there is “clear or convincing evidence of a compelling business justification.” *Continental Airlines, Inc./Continental Express, Inc.*, 27 NMB 463, 477 (2000); *Midway Airlines, Corp.*, 26 NMB 41 (1998); *Petroleum Helicopters, Inc.*, 26 NMB 13 (1998).

In the instant case, the cross-over hiring plan was not planned prior to the attachment of laboratory conditions. However, there is no evidence to support IAM's contention that the announcement of the cross-hire program was timed to affect the outcome of the election. To the contrary, the

Carrier presented consistent evidence in the May 12 letter itself and its subsequent statements that the timing of the announcement was due to legitimate business justifications, namely the time required to get the necessary staffing and to give preference to current employees. The gravamen of IAM's complaint is AFA's use of the cross-over program in its electioneering. As United noted, however, to the extent that AFA turned the cross-over program into an election issue, IAM responded with its own posts on its iamnow.org website. These posts stated IAM's position that employment under any cross-over program must be "on a purely voluntary basis" and that "[n]o flight Attendant's seniority, on any of [the] three airlines would be modified as a result of cross-over hiring." Accordingly, the Board finds that the Carrier's May 12, 2011 letter regarding cross-over hiring did not constitute election interference.

IV.

Allegations of Union Interference

A. AFA Interfered with or Compromised the Voting Process

Section 2, Ninth of the Act provides that when investigating a representation dispute:

[T]he Mediation Board shall be authorized to take a *secret ballot* of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as *shall insure the choice of representatives by the employees without interference, influence, or coercion, . . .*

(emphasis added.) The Board's goal in administering its secret ballot elections is to allow each employee the opportunity to express his or her preference for or against representation in private without the fear of interference, coercion or influence from others. Accordingly the Board has long held that interfering with or compromising the NMB voting process is a basis for setting aside an election. *Washington Cent. R.R.*, 20 NMB 191, 231 (1993); *Metroflight, Inc.*, 13 NMB 284 (1986); *Laker Airways, Ltd.*, 8 NMB 236 (1981).

IAM alleges that AFA's campaign interfered with or compromised the Board's voting process by including a hyperlink to the NMB's voting website (Ballotpoint) in its June 2, 2011 newsletter "Your AFA" Issue 31 and by posting

a hyperlink to the Board's voting website on its campaign and Local Executive Council (LEC) websites; by holding at least two "voting parties" in Los Angeles and Chicago; by polling flight attendants; and by misrepresenting the Board's voting process.

1. Hyperlinks to the Board's Voting Website

IAM alleges that AFA's June 2, 2011 "Your AFA" newsletter contained a hyperlink to the Board's voting website (www.ballotpoint.com/nmb) and that the newsletter was posted on the unitedafa.org website. By letter dated June 7, 2011, AFA acknowledged to the Board that it had mistakenly included a hyperlink to the voting website in the newsletter and that this hyperlink violated the Board's prohibition on posting hyperlinks to BallotPoint. AFA stated that it had

notified its activists that no AFA-generated e-communication should contain such a hyperlink. To the AFA's knowledge, no other Union e-newsletter or e-communication has been sent with a hyperlink to the BallotPoint site.

The investigation disclosed, however, that hyperlinks to the Board's voting website remained active on AFA campaign and LEC websites during the voting period.

Following the implementation of Internet Voting in 2007, the Board addressed the use of hyperlinks to its voting website. In 2008, the Board decided to remove the hyperlink to the voting website from the NMB website (www.nmb.gov) and instructed voters to type in internet address (URL) to access the voting website. *Removal of Internet Voting Hyperlink on Board's Website*, 35 NMB 92 (2008). In addition, the Board requested that participants not post a hyperlink to the Board's voting website, noting that "the Board may consider hyperlinks to the voting website as possible evidence of election interference." *Id.* Subsequently, the Board revised its policy and reinstated the hyperlink to the voting website from the NMB's website. *National Mediation Board's Policy on use of Hyperlinks to its Voting Website*, 37 NMB 65 (2009). The Board also stated, "Participants may provide hyperlinks to the Board's website, www.nmb.gov, and may post the text address of the voting website if they wish to direct employees where to vote in an NMB election." *Id.* at 73. In the interests of safeguarding the secrecy and integrity of the ballot process, the Board continued "to direct participants *including any carrier or organization, and individual involved in the election*, not to post a hyperlink to

the Board's voting website." *Id.* Thus, the posting of a hyperlink to the voting website may constitute interference.

Maintaining confidence in the integrity of its voting processes lies at the heart of the Board's statutory mission to ensure the employees can vote freely without fear of interference, coercion, or influence. In *United Air Lines, Inc.*, 22 NMB 288, 320 (1995), despite finding "no evidence that coercive tactics were utilized to collect the ballots, that no ballots which had been collected were discarded, or that there was interference in the balloting itself," the Board found that ballot collection by union stewards and committeemen at the San Francisco station, where a substantial majority of the eligible voters were based, raised concerns about the confidentiality of the voting process. In the instant case, as in *United Air Lines, above*, while there is no evidence that AFA used the hyperlinks to track whether or how flight attendants voted, the dissemination and continued presence of active hyperlinks to the Board's voting website creates the appearance of the potential of tracking votes and creates an attendant lack of trust and confidence in the Board's processes.

Due to the Board's concerns about compromising the voting process, the Board will be changing its voting system to prevent individuals from voting using any hyperlink other than that on the NMB website. A notice detailing this change will be issued in the near future.

2. Voting Parties

In support of its allegations of voting parties, IAM submitted photographs from two voting parties. In a picture from the Chicago party, taken from the Chicago AFA's Local Council 18 (Local 18) website, a woman is wearing what appears to be NMB voting instructions with the handwritten words "I voted AFA Today" hanging from a lanyard. In a picture from the Los Angeles party, a group of attendees are gathered on a roof top and Darren Shiroma, Executive Assistant to AFA President Veda Shook, is holding NMB voting instructions.

Chicago Kick-off Party

The investigation disclosed that on May 21, 2011, AFA sponsored a "Vote! Kick Off Party" at the Weather Mark Tavern in Chicago. The invitation was part of a Chicago LEC newsletter and according to one attendee, "most people who attended that I recognized were Chicago-based and had been involved in union activities over the years." The attendees also included United AFA MEC Vice President Linda Farrow, AFA Local Council 8 Representative Kathy Browne, Darron Shiroma, and AFA Local Council 8 Vice President David Hammonds. No attendees observed anyone voting at the party.

According to Linda Farrow, she noticed two women arrive at the party wearing what she described as “tags” that said “I voted AFA today.” Farrow stated that she did not look closely or scrutinize what documents the tags were made from. David Hammonds, who organized the Chicago party stated that he was outside the tavern and saw the woman pictured in the IAM submission arrive “with a copy of AFA’s postcard with voting reminders and instructions and the handwritten words ‘I voted AFA today!’ hanging from a lanyard around her neck. Hammonds supplied the Board with a clear color photo of the same woman in the IAM photographs wearing her lanyard and “I voted AFA today!” sign. This photograph plainly shows that the document in question is not NMB voting instructions but a piece of AFA campaign material entitled “Don’t Delay - Cast Your Vote for AFA Right Away” with words “I voted AFA today!” handwritten across it.

Los Angeles Party

On May 29, 2011, a party was given by a United Flight Attendant who was also an AFA supporter and activist. The invitation to this party which appeared in a Facebook posting stated: “Get Out The Vote – Hollywood Style! Roof top BBQ! Sunday, May 29th 2pm - ? . . . Pls bring your NMB Voting Instructions/VIN and PIN.”

Darren Shiroma stated that he was at the party from 2 p.m, until about 11 p.m, and that approximately thirty people attended. According to Shiroma, about “80% of the party goers were United Flight Attendants who are AFA supporters and activists.” He had been working on the AFA’s election campaign in Houston and came from the airport to the party with only a stop to collect his mail. Mr. Shiroma stated,

When I saw that I had received my voting instructions I just wanted to vote as soon as I could. So when I got to the party I voted, but I kept my instructions with me the whole time. There were people around me when I voted but I kept my VIN and PIN confidential even though I was surrounded by trusted friends and there were no strangers in the immediate vicinity who could see or hear my vote or my VIN and PIN.

Shiroma stated that he voted on an iPad borrowed from the owner of the apartment where the party was held. Shiroma also stated that he knew that one other attendee voted because he heard that individual “yell, ‘I just voted for

AFA.’” Shiroma also acknowledged that “I am pictured holding my voting instructions.”

After the party, the following was posted on Facebook:

The Get Out the Vote party yesterday was awesome. Thanks to those who came, but specially to the ones who Voted. Very thankful for sharing your voting experience with the group.

The Board has long held that NMB elections are to be conducted in such a manner as to ensure ballot secrecy. *United Air Lines, Inc.*, 22 NMB 288, 320 (1995). Employees must exercise their right to self-organization in an atmosphere free of pressure from carrier or union officials. It is no business of the carrier or the organization whether or how any employee votes. As discussed above, in *United Air Lines*, the Board found the mere act of collecting ballots compromised the secrecy of the ballot even though there was no evidence of tampering with the ballots themselves. In the instant case, there is no evidence that any voting occurred at the Chicago kick-off party. The evidence establishes, however, that at least two people voted at the Los Angeles party. While there is no evidence of a pattern of voting parties, the Board has held that “any actions that compromise the secrecy of the NMB ballot process will be met by appropriate agency responses.” *Id.* at 320. The NMB’s ballot, its voting instructions and its Manual all emphasize the need for confidentiality in the election process. Accordingly, while not a basis for refusing to certify the results of the election, the Board finds that the actions at the Los Angeles did compromise the secrecy of the ballot and merits responsive action.

Due to the Board’s concerns about actions that may compromise the voting process, as discussed above, the Board’s voting instructions will be modified to put voters on notice that this type of activity will not be tolerated.

3. AFA Polling

IAM alleges that AFA compromised the secrecy of the ballot by soliciting flight attendants to call and report or register their vote with AFA. IAM states that these requests were made to Flight Attendants through emails, regular mailings, and phone calls.

AFA concedes that it used its “Get-Out-The-Vote” (GOTV) program to gauge AFA support among flight attendants on the merged system. According to AFA, the GOTV program involved calls to flight attendants to determine whether they received their voting instructions, whether they had

voted, and reminders of the importance of voting. AFA also concedes that it established a toll free telephone number “to allow AFA supporters to voluntarily celebrate their vote and express why they had voted for AFA.”

The majority of Flight Attendants interviewed remembered getting calls from AFA asking them if they had received their voting instructions, asking them if they had any questions, and reminding them to vote. The calls from AFA were described as “informational.” According to one Flight Attendant, AFA “asked if I had any questions and if I had voted.” When he replied that he had not yet voted, the caller told him “the vote closes on x day, remember to vote.” Another Flight Attendant described the calls from AFA as “just reminders to vote. I didn’t get polled.” Some Flight Attendants also stated that they received calls from IAM. One Flight Attendant specifically stated that she had gotten a call from IAM and that “they asked me if I voted. I told them yes.” Another Flight Attendant stated that she got calls from both AFA and IAM but there was no “harassment from either side.” A Flight Attendant who stated that he got calls from AFA and IAM described the calls as “about being informed and knowing what you’re voting for.”

The Board views polling of employees during a representation election as one instance where the application of its laboratory conditions standard may lead to a different conclusion. For example, in *Federal Express Corp.*, 20 NMB 659 (1993), the Board found that while polling by a carrier is coercive because of the substantial and material ability of the carrier to act against the employee, polling by the union does not carry with it the same threat of imminent retaliation. In *Piedmont Airlines, Inc.*, 31 NMB 257 (2004), the organization called employees to ask whether they had received their voting instructions, to remind them to vote and to give them a toll free information number to call with questions. The Board concluded that although there was evidence that employees were irritated and annoyed by the telephone polling there was no evidence that the secrecy or confidentiality of the Board’s voting process was compromised.

In the instant case, it is clear that AFA did attempt to gauge its support among flight attendants by asking them to call and report their vote in favor of AFA. There is, however, no objective evidence that AFA’s polling through use of the toll free number was either coercive or compromised the secrecy of the ballot. See *Federal Express Corp.*, 20 NMB 486 (1993) (finding insufficient evidence that laboratory conditions were tainted where there was no objective evidence that union’s conduct had any effect on employees’ exercise of right to free choice of representative). As to the phone calls from AFA during the election, the investigation established that as in *Piedmont, above*, while flight attendants who favored IAM may have found the calls annoying, there was no

objective evidence that the flight attendants were asked how they voted or that the calls compromised the secrecy of the ballot.

B. AFA Misrepresented Impartiality of the NMB

IAM alleges that AFA attempted to mislead employees into believing that the NMB was not impartial by posting instructions on how to vote by internet on its webpage www.yourafa.org. According to IAM the screen shots of the NMB's official voting page with a red box around the AFA selection and a red arrow pointing to the selection gave the impression that voting for AFA was the "official way to vote."

In response, AFA noted that by letter dated May 11, 2011, AFA's General Counsel had requested and been granted a "mock election" which would allow all participants to experience the voting process prior to the start of the election in this case. AFA also requested leave to post screen shots of the NMB's voting website during the mock election on its website. That request was granted by the Board's General Counsel.

The screen shots at issue show the NMB's internet voting pages under the heading "Steps to Vote by Internet." The first step "Enter your VIN and PIN in the text boxes in the upper left hand corner of the screen" accompanies a reproduction of the Board's voting website with arrows indicating where a voter would enter his or her VIN and PIN. The next screen shot of the voting website includes an arrow pointing to the login button with the heading "Click on the Login button." The next step, "Check the second selection 'Yes, I vote for Association of Flight Attendants-CWA AFL-CIO (AFA)' by clicking on the box next to the statement" is illustrated by a screen shot of the voting page with the appropriate box highlighted in red and pointed to with an arrow. The next instruction "Click the 'Cast Vote' button" is illustrated by a screen shot with the cast vote button highlighted in red.

In *Long Island Rail Road*, 12 NMB 187 (1985), the Board found that the distribution of a letter from the United Transportation Union (UTU) instructing employees to vote for UTU with a copy of a sample ballot, with the box indicating a preference for UTU marked with an "X" and the words "Vote UTU A.F.L.-C.I.O" and the UTU's logo did not interfere with employees' rights under the Act. The International Brotherhood of Teamsters argued that the alteration of an official ballot for campaign purposes was a misrepresentation of the election process and impermissibly implied that the Board approved the literature. The Board disagreed and found that the sample ballot did not warrant setting the election aside. In this case, the screen shots were

posted on an AFA sponsored website and illustrated the steps an employee would take to vote for AFA. As in *Long Island Rail Road, above*, the screen shots neither misrepresented the Board's election process nor created the impression that the impartiality of the Board had been breached.

C. AFA Threatened, Harassed and Coerced Flight Attendants

IAM also alleged that AFA harassed and coerced flight attendants into voting for AFA and into refraining from voting for or supporting IAM. Flight Attendants who supported IAM stated that they "felt" intimidated by the actions of AFA supporters or expressed their concerns or fears that AFA kept "black lists" or "hit lists" of IAM supporters and might retaliate against them in unspecified ways because of their support for AFA.

Flight Attendants and activists for AFA also reported feeling harassed by IAM supporters and activists. In SFO, several AFA activists reported damage to the tires of their cars. A confrontation occurred at the employee cafeteria in ORD between an AFA representative and an IAM supporter that resulted in the AFA representative pursuing criminal charges. At SFO, IAM supporters stated that the AFA Local President in San Francisco photographed Flight Attendants who stopped to talk with or take literature from IAM supporters. AFA supporters in SFO stated that IAM supporters and activists routinely took pictures of the AFA activists, made rude and obscene gestures at them and engaged in physical intimidation.

The investigation disclosed that each side felt they took the "high road" and tried to address important work place issues while the other side violated "the rules," engaged in harassment and intimidation, and created a lot of "negativity." As one flight attendant stated, "[i]t was pretty repetitive after a while and then it stopped being a campaign and started being attacks against one another. It was no longer information just hate. And I was like 'enough guys.'" There is no doubt that there were strong emotions among employees on both sides in this election and that these emotions lead to some unpleasant incidents and verbal exchanges. Partisans of both sides engaged in conduct that at times exceeded the norms of polite behavior and discourse. There is however insufficient evidence of egregious or widespread pattern of misconduct that would justify setting aside the results of the election. *Federal Express, Corp.*, 20 NMB 486 (1993).

V. IAM's Other Interference Allegations

IAM submitted evidence and argument regarding a variety of other allegations of interference by the Carrier and AFA. The Board finds that these allegations, if true, do not constitute interference.

CONCLUSION

Based on the totality of the circumstances, the Board finds that the laboratory conditions in the election involving United's Flight Attendant craft or class were not tainted. The investigation establishes that the Carrier did not interfere with the election. AFA's actions, however, involving the use of hyperlinks to the Board's voting website and the voting parties raise serious concerns about the confidentiality of the voting process and therefore call for responsive action. Accordingly, the Board will shorten its normal bar period set forth in Section 1206.4(a) of the Board's Rules. The bar period in this case will expire 18 months after the date of AFA's certification.

By direction of the NATIONAL MEDIATION BOARD.

A handwritten signature in black ink that reads "Mary L. Johnson". The signature is written in a cursive, flowing style.

Mary L. Johnson
General Counsel