



NATIONAL MEDIATION BOARD
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39 NMB No. 48

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VIA EMAIL

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Re: NMB Case No. R-7310
American Airlines/CWA

Participants:

On April 19, 2012, the National Mediation Board (NMB or Board) authorized an election in the above-referenced case and ordered American Airlines (American or Carrier) to produce mailing labels on April 24, 2012. On April 20, 2012, the Board set the dates for the election and stated that notice and sample instructions would be issued on May 10, 2012, voting instructions would be mailed on May 17, 2012, and the voting period would be from May 17, 2012 through June 19, 2012. The Carrier requested, and the Board granted, both of the Carrier's requests for extensions of time in which to file the address labels. In the second request, the Carrier asked for an extension until Wednesday, May 2, 2012, to file the address labels. The Board granted that extension and the address labels were due on Wednesday, May 2, 2012.

On May 2, 2012, the Carrier filed a Complaint in the United States District Court for the Northern District of Texas, seeking a declaratory judgment and stating that the Carrier “intends to defer compliance with the Board’s request that [the Carrier] submit mailing labels, pending resolution of this action.”

On May 15, 2012, the Communications Workers of America (CWA) filed mailing labels for the Board’s use in conducting the representation election. The CWA requested that the Board “allow voters to submit requests for ballots by mail, telephone, facsimile, and email.” The CWA also requested that the Board require American to post any instructions regarding the voting process at all job locations. Finally, the CWA requested that the Board extend the voting period. The Carrier responded on May 22, 2012 and stated that the NMB should reject the CWA’s mailing labels and not proceed with an election until after the Court has ruled. The Carrier argued that mailing ballots before the matter is resolved in Court would be a Constitutional violation. The CWA filed a response on May 23, 2012, and the Carrier filed an additional response on May 24, 2012.

As of this date, the Carrier has failed to submit the mailing labels as required by the Board’s order of April 19, 2012. The Carrier has not requested a stay, nor has a stay been obtained. Therefore, the Board has determined to proceed with the election in this matter.

Section 2.2 of the Board’s Representation Manual (Manual) states, in pertinent part: “The NMB has a statutory right to have access to and to make copies of carrier books and records (Section 2, Ninth).”

Manual Section 12.1 states, in pertinent part:

When the NMB authorizes an election, the carrier is required to furnish, within five (5) calendar days of the date of authorization, alphabetized peel-off labels bearing the names and current addresses of all employees on the list of potential eligible voters. The labels must be provided in hard copy and may not be filed electronically.

45 U.S.C. §152, Ninth, states:

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

influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election **and establish the rules to govern the election** The Board shall have access to and have power to make copies of the books and records of the carrier to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

In interpreting this section, the Supreme Court has held that the Railway Labor Act (RLA)* “leaves the details to the broad discretion of the Board with the only caveat that it ‘insure’ freedom from carrier interference.” *BRAC v. Ass’n for the Benefit of Non-Contract Employees*, 380 U.S. 650, 658-659 (1965). As noted above, the Carrier had numerous opportunities to comply with the Board’s order to produce the mailing labels.

It is the NMB's longstanding policy consistent with 45 U.S.C. § 152, Ninth, to resolve representation disputes as expeditiously as possible. See *Brotherhood of Ry. & S.S. Clerks*, 380 U.S. 650, 668 (1965) (speed is an RLA “objective of the first order”); *In re Continental Airlines Corp.*, 50 B.R. 342, 358 (S.D. Tex. 1985), *aff’d per curiam*, 790 F.2d 35 (5th Cir. 1986) (“The RLA furthers Congress's strong policy of guaranteeing employees’ the right to organize and collectively bargain free from any carrier interference or influence...delays in NMB pre-certification proceedings seriously hamper such organizational efforts...”). The Board notes that as a result of American’s Motion, the processing of this representation case has already been delayed for four weeks.

Furthermore, it is the 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. *Tower Air*, 16 NMB 326, 328 (1989); *Air Florida*, 10 NMB 294, 294 (1983). See also *Chautauqua Airlines, Inc.*, 21 NMB 226, 227-28 (1994); *Sapado I*, 19 NMB 279, 282 (1992); *USAir*, 17 NMB 69 (1989). The RLA and Board policy require the Board to continue to investigate representation disputes during the pendency of litigation unless enjoined by the court. *Air Florida, above*. In *Air Florida*, there was no stay or injunction preventing the Board from acting, therefore, the Board proceeded with the investigation. Additionally, in *Tower Air, above*, the Board proceeded with an election despite the fact that the Carrier had filed a Motion to Stay. The Board stated, “The mere filing of a Motion to Stay an election does not halt the Board’s proceedings. Nor is the Board required to stay an investigation or election pending resolution of a request to stay. *Tower Air, above*, at 328. In the present case, the Board does not find it necessary to

* 45 U.S.C. § 151, *et seq.*

further delay the election nor has a stay requiring a delay been granted by the Court.

Citing *CSX Transp., Inc.*, 25 NMB 245 (1998); *Consol. Rail Corp. & Monongahela Ry. Co.*, 25 NMB 178 (1998); and *Del. & Hudson Ry. Co., Inc.*, 25 NMB 176 (1998), the Carrier contends that, “In prior cases, the NMB has held proceedings in abeyance pending the outcome of litigation.” These cases are easily distinguished from the present case. In the cases cited above, the unions were seeking a permanent injunction in court. In the instant case American is not seeking an injunction or a stay, nor is there a court order in effect preventing the Board from proceeding with the election in this case. In the Carrier’s Amended Complaint before the District Court for the Northern District of Texas, American stated that it intended to “defer compliance” with the Board’s order to produce mailing labels. However, the mere filing of a Motion seeking declaratory judgment does not halt the Board’s proceedings.

It is well-settled that the Board’s actions in representation matters are generally unreviewable. *Switchmen’s Union v. Nat’l Mediation Bd.*, 320 U.S. 297 (1943). Judicial review is only available where the plaintiff has established that the Board’s decision involved “patent official bad faith”; violated the constitutional rights of an employer, employee, or union; or was a “gross violation” of the RLA. *Internat’l Assoc. of Machinists and Aerospace Workers v. TransWorld Airways*, 839 F.2d at 811 (citing *Railway Clerks*, 380 U.S. at 658-60, 661-662); *Professional Cabin Crew Ass’n v. Nat’l Mediation Bd.*, 872 F.2d 456, 459 (D.C. Cir. 1989); *Internat’l Assoc. of Machinists and Aerospace Workers v. Nat’l Mediation Bd.*, 180 F. Supp.2d 188, 190 (D.D.C. 2002). The Board’s decision to authorize an election in this case does not constitute “bad faith”; nor did the Board act in “gross violation” of the RLA or violate the constitutional rights of the participants.

As noted above, the Carrier’s actions in this case have already delayed the election by more than four weeks. The RLA requires “the prompt and orderly settlement” of labor-management disputes. 45 U.S.C. §§ 151a, 181-87. Additionally, the Board has a duty to protect the stability of the voting process. *Delta Air Lines, Inc.*, 37 NMB 337 (2010); *Continental Airlines, Inc.*, 35 NMB 42 (2008); *United Air Lines, Inc.*, 27 NMB 221 (2000). The Carrier has presented an insufficient basis for the Board to further delay the election in this case. Since American refuses to comply with the Board’s orders, the Board exercises its authority pursuant to 45 U.S.C. § 152, Ninth, to “utilize any appropriate method” and will proceed with the election using the mailing labels provided by the CWA.

The election will be conducted by Telephone Electronic Voting and Internet Voting. The Notice and Sample Instructions will be sent out on **June 14, 2012**. The Voting Instructions will be mailed to the employees on **June**

21, 2012. The voting period will be from **12:01 a.m., ET, June 21, 2012** through **August 2, 2012.** The tally will take place at the Board's offices on **August 2, 2012, at 2 p.m., ET.**

Pursuant to Manual Section 12.3, participants must submit changes in eligibility status to the Investigator. Status changes will not be considered without supporting documentation including the effective date of the change. Status changes provided less than seven (7) calendar days before the scheduled count will not be considered, absent extraordinary circumstances.

As stated in Manual Section 13.1, "The Carrier must post the Notice on Carrier bulletin boards and at all locations where other notices to employees usually are posted. At least one Notice per station must be posted." The CWA's request to allow voters to submit duplicate ballot requests by email or other means is denied. Pursuant to Manual Section 13.206, "Voters may request duplicate Instructions . . . by contacting the NMB in writing. The request must be in an individual envelope . . . Requests by telephone, facsimile or electronic mail are not accepted. Requests received less than five (5) days before the tally will not be honored. Requests dated or received prior to the mailing of the Instructions will not be honored."

By direction of the NATIONAL MEDIATION BOARD.

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

Mary L. Johnson
General Counsel