



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the Application of the	42 NMB No. 17
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS	CASE NO. 7431 (FILE NO. CR-7134)
alleging representation disputes pursuant to Section 2, Ninth, of the Railway Labor Act, as amended involving employees of	FINDINGS UPON INVESTIGATION- DISMISSAL
SOUTHWEST AIRLINES	May 1, 2015

FINDINGS UPON INVESTIGATION

This determination addresses the application of the International Association of Machinists and Aerospace Workers (IAM or Organization) alleging a representation dispute pursuant to the Railway Labor Act¹ (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth), among Source of Support Representatives (SOS Reps) at Southwest Airlines (SWA or Carrier). IAM is the certified representative of the Passenger Service Employees craft or class at SWA (NMB Case No. R-5302). *Southwest Airlines*, 9 NMB 446 (1982). IAM asserts that the SOS Reps are part of the Passenger Service Employees craft or class.

For the reasons set forth below, the National Mediation Board (Board or NMB) concludes that the SOS Reps are already covered by IAM's certification. Therefore, the Board dismisses the application.

PROCEDURAL BACKGROUND

On January 15, 2015, IAM filed an application alleging a representation dispute involving the "Source of Support Representatives" at Southwest Airlines. The Organization is requesting that the Board accrete these

¹ 45 U.S.C. § 151, *et seq.*

employees into the Passenger Service Employees craft or class and supports this request with authorization cards. The application was given NMB File No. CR-7134 and Angela I. Heverling was assigned as the Investigator. The Board requested that the Carrier provide it with a list and signature samples for the SOS Reps, which it provided, along with an initial position statement on February 5, 2015. IAM responded on February 20, 2015, and SWA provided another submission on February 27, 2015.

ISSUE

Are SWA's SOS Representatives a part of the Passenger Service Employees craft or class?

CONTENTIONS

SWA argues that SOS Reps are not part of the Passenger Service Employees craft or class because they are not functionally integrated and do not share a work-related community of interest. In addition, SWA argues that SOS Reps do not have sufficient contact with SWA customers to be included in the Passenger Service Employees craft or class. IAM contends that there is a history of employees in the Passenger Service Employees craft or class performing the type of duties performed by the SOS Reps and that the SOS Reps share a work-related community of interest with the Passenger Service Employees craft or class.²

FINDINGS OF LAW

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

I.

SWA is a common carrier as defined in 45 U.S.C. § 181.

II.

The IAM is a labor organization and/or representative as provided by 45 U.S.C. § 151, Sixth, and § 152, Ninth.

² The participants also raise arguments related to language in the collective bargaining agreement (CBA) between IAM and SWA and language from Passenger Service CBAs at other carriers. The Board does not address these arguments because it is only bound by its own precedent and not by bargaining history at this or any other carrier. *See, e.g., United Airlines*, 6 NMB 134, 140 (1977).

III.

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.”

IV.

45 U.S.C. § 152, Ninth, provides that the Board has the duty to investigate representation disputes and shall designate who may participate as eligible voters in the event an election is required.

STATEMENT OF FACTS

In *Southwest Airlines*, 9 NMB 446 (1982), the Board certified IAM as the representative of the Passenger Service Employees craft or class at SWA. At that time, the position of SOS Rep did not exist. The Passenger Service Employees craft or class includes Customer Service Agents (CSAs) and Customer Representatives (CRs). The CSAs’ main function is providing customer service at airports by handling ticketing, baggage check-in and claims, and reservations. They greet customers and provide accurate information about fares, reservations, arrivals and departure times, and other issues arising for customers at the airport terminal. CSAs are in the Ground Operations Department and work at 86 airports in the United States. CRs work in the operational side of the Customer Support and Service Department and are located in Reservations Centers in Phoenix, Albuquerque, Chicago, Oklahoma City, San Antonio, Houston, and Atlanta. They communicate with customers primarily over the telephone.

The Passenger Service Employees craft or class at SWA was further defined in *Southwest Airlines*, 20 NMB 116 (1992), following the filing of a representation application seeking to represent “customer service agents.” The organization seeking to represent the CSAs argued that they should be in a separate craft or class from the CRs due to different work locations and because CRs only had telephone contact with passengers, while the CSAs met passengers at the airport. The Board determined that these differences did not warrant fragmenting the craft or class stating that “[e]mployees who have passenger or customer contact have been grouped in the same craft or class whether they have initial telephone contact with passengers when making a

reservation or contact at the airport gate when the passengers board the plane.” *Id.* at 124.

The Source of Support Department was created in 1994 following the advent of ticketless travel. When problems arose with electronic tickets, the CSAs and CRs were not equipped to resolve these problems. SWA created the department to resolve these issues. As will be described in further detail below, much of the SOS Reps’ work involves errors in electronic tickets.

The SOS Rep job description describes the primary function of the position as follows: “Provide Legendary Customer Service by effectively handling Internal or External Customer inquiries, providing information and support regarding multiple Southwest Airlines computer applications and systems.” Sherrie Mullikin, Senior Manager of the SOS Department at SWA provided a declaration. According to Mullikin, SOS Reps have no regular contact with SWA customers; rather, they handle “internal inquiries from Southwest employees about ticketing applications and systems.” In its submissions, SWA refers to SOS Reps as a “Help Desk” for ticketing operations, providing support for other employees. The “External Customer” referred to in the position description describes certain travel agents and government officials who contact the SOS Department infrequently for assistance with ticketing, and the phrase does not refer to SWA customers. SOS Reps do have occasional contact with SWA customers when a CSA asks one to speak directly to a customer. The SOS Reps are trained to speak with the customer only briefly.

Unlike the CRs and CSAs, SOS Reps do not receive Complaint Resolution Officer training, which is legally required for employees who handle customers with disabilities. According to Mullikin, this is because “their job duties do not require them to have any contact or interaction with Southwest Customers.”

SOS Reps work in the Training and Operational Support building at the Carrier’s headquarters in Dallas. They are scheduled so that they are available 24 hours a day. According to Mullikin, SOS Reps received over 500,000 inbound calls last year, with the majority coming from CRs and CSAs. During most of these calls, SOS Reps provide assistance to CRs with reservation and ticketing application errors. Assistance to CRs also involves refunding tickets, removing a “hold status” on a gift card or voucher, or releasing Rapid Rewards points. They provide support to CSAs when there are issues related to customer check-ins, stand-by tickets, and overbookings. SOS Reps also receive calls from employees in other departments at SWA, including Finance, Technology, Refunds, and the Executive Office. Less than one percent of these calls are from the External Customers discussed above.

In addition to taking calls, SOS Reps respond to over 600,000 emails from other SWA employees requesting the same kind of assistance. SOS Reps are also assigned to work on queues, completing reservations and bookings when there has been an error. After SOS Reps complete an assignment, the customer is emailed a receipt with information about the ticket.

CRs and CSAs do not have the specific training or access to software applications necessary to complete much of the work performed by SOS Reps. SOS Reps must be proficient in over 30 software applications in addition to having knowledge of the Carrier's ticketing policies and procedures. SOS Reps also have the ability to change or manipulate when a ticket is counted as revenue for the company. This ability is not granted to CRs and CSAs because the Carrier must limit the number of employees who can perform this function.

DISCUSSION

Craft or Class Determination

In determining the proper craft or class for a group of employees, the Board considers a number of factors, including functional integration, work classifications, terms and conditions of employment, and work-related community of interest. *Louisville & Indiana RR*, 41 NMB 82 (2014); *Indiana Southern RR*, 37 NMB 226 (2010); *Florida Northern Railroad*, 34 NMB 142 (2007); *United Airlines, Inc.*, 28 NMB 533 (2001). The Board makes craft or class determinations case by case, based upon Board policy and precedent. *USAir*, 15 NMB 369 (1988); *Simmons Airlines*, 15 NMB 124 (1988).

In determining whether SOS Reps are appropriately part of the Passenger Service Employees craft or class, it is necessary to consider how the Board has defined this craft or class. The Board described the principal responsibilities of Passenger Service Employees in *United Airlines*, 6 NMB 180 (1977), stating that “[t]hese employees are those Carrier personnel who most directly service the customers’ immediate requirements for flight arrangements.” *Id.* at 186. Their duties included the following:

- 1) Answers inquiries and furnishes information regarding rates, schedules, routings and services;
- 2) Accepts and confirms flight reservations and notifies customers of flight delays or cancellations;
- 3) Arranges special services required by passengers including auto

or hotel reservations; 4) Transports individual customer baggage in immediate vicinity of ticket office, terminal building, off-premises baggage claim facility, and terminal ramp area; 5) Announces flights, directs customers to appropriate check-in counters or boarding gates and services Carrier pre-flight lounges; 6) Computes fares, issues tickets and processes payments and refunds; 7) Weighs and checks baggage; 8) Processes direct receipt of freight from customers including accepting payment; 9) Records necessary booking and passenger information in centralized information systems; 10) Collects tickets and checks in passengers at boarding areas; 11) Initiates and coordinates enplaning and deplaning of passengers; 12) Assists customers in resolving service difficulties including misplaced tickets, flight irregularities and lost or damaged baggage.

Id. at 185. Due to industry and technological changes in recent years, Passenger Service Employees at many carriers no longer perform some of these functions while others are performed using more advanced technologies.

At SWA, the switch to electronic tickets in the 1990s led to a change in the way these duties were performed and necessitated employees who were trained in ticketing applications and computer systems. The evidence indicates that SOS Reps perform some of the functions that were previously performed by Passenger Service Employees. In 1992, the Board's description of the craft or class at SWA included duties similar to those performed by SOS Reps, such as "handle ticketing and reservations transactions" and "makes cancellations and changes to reservations." *Southwest Airlines*, 20 NMB 116, 119 (1992). Prior to electronic ticketing, reservation agents would correct booking errors themselves. Now SOS Reps correct errors in the booking process.

SWA argues that SOS Reps are not appropriately part of the Passenger Service Employees craft or class because they do not have adequate customer contact. SWA cites cases where the Board has referenced "customer contact" as a defining feature of the Passenger Service Employees craft or class. Many of those cases, however, involve Board decisions on whether to separate Passenger Service from Fleet Service employees, who perform weight, balance, and load planning duties. *See, e.g., AirTran Airways, Inc.*, 28 NMB 500, 507-08 (1998); *National Airlines, Inc.*, 270 NMB 550, 556 (2000).

Here, SWA argues that SOS Reps are more similar to Help Desk employees in an information technology department who would be appropriately in an Office Clerical Employees craft or class, because they primarily provide support to fellow employees. SOS Reps perform work related to ticketing and reservations and the evidence indicates that the purpose of their work is customer-oriented even though they have little direct customer contact. In *China Airlines*, 6 NMB 434, 440 (1978), where the Board decided to separate the Office Clerical Employees from “customer service employees,” it stated the following about the distinction between the two crafts or classes:

In essence, the office clerical employees’ basic concern is with the internal functioning of the carrier while the customer service employees are primarily responsible for providing a direct service to customers of the carrier either as passengers, cargo shippers or receivers of cargo. Any clerical duties exercised by customer service employees flow derivatively from their principal responsibilities of dealing with the public rather than from a clerical orientation of the position.

The duties performed by the SOS Reps at SWA are done with the purpose of directly assisting the flying public, which the Board has held is the defining feature of Passenger Service Employees. Although SOS Reps’ duties may be similar to those performed by employees in an Office Clerical Employees craft or class at certain carriers or by information technology professionals as argued by SWA, these duties are not performed for the purpose of furthering the internal functioning of the Carrier; rather, they are performed to assist customers or passengers in flying. Technological advances have changed the way ticketing and related problems are resolved for passengers and SOS Reps at SWA are essential to correcting passenger problems.

Although SOS Reps do not work at the same locations as CSAs and CRs, this has not been considered a defining factor in the craft or class at SWA. See *Southwest Airlines*, 20 NMB 116, 124 (1992). SOS Reps share a work-related community of interest with CSAs and CRs. All of these employees are in constant contact with each other addressing customers’ needs via telephone and email.

Accretion

The Board’s broad discretion to determine the manner in which it conducts investigations in representation disputes was upheld conclusively in *Brotherhood of Ry. & S.S. Clerks v. Ass’n for the Benefit of Non-Contract Employees*, 380 U.S. 650 (1965). In *Ross Aviation, Inc.*, 22 NMB 89 (1994), the

Board dismissed an organization's application because the employees it was seeking to represent were already covered by a Board certification, and, therefore, an election was unnecessary. The Board consistently follows this policy where it finds that an application covers employees who are members of a certified craft or class because these employees perform job functions traditionally performed by employees in that craft or class. *See, e.g., Frontier Airlines, Inc.*, 41 NMB 202 (2014); *Southwest Airlines*, 39 NMB 246 (2011); *Southwest Airlines*, 38 NMB 87 (2011).

The Board requires all applications in representation matters to be supported by an adequate showing of interest. In this case, the IAM supported its application with the requisite 50 percent showing of interest and accretion is appropriate.

CONCLUSION

The Board finds that SWA's SOS Reps are covered by the IAM's certification in NMB Case No. R-5302. As there is no further basis for investigation, NMB File No. CR-7134 is converted to NMB Case No. R-7431 and dismissed.

By direction of the NATIONAL MEDIATION BOARD.



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Member Geale, dissenting.

I write separately because the Board's accretion policy should be reconsidered as I pointed out in a previous decision, *Frontier Airlines, Inc.*, 41 NMB 202, 222 – 225 (2014), and because I believe the merits narrowly disfavor placing the employees at issue in the Passenger Service craft or class.

First, I believe allowing an accretion by the mere collection of cards does not comport with our statutory duty³ to protect the employees' freedom of association rights. As the Seventh Circuit has stated, "Workers sometimes sign union authorization cards not because they intend to vote for the union in the election but to avoid offending the person who asks them to sign, often a fellow worker, or simply to get the person off their back." *NLRB v. Village IX Inc.*, 723 F.2d 1360, 1371 (7th Cir. 1983).

A majority at the NMB has not yet agreed with that position, and has even allowed a card-based accretion when evidence suggested the employees preferred an election. See *Frontier Airlines*, 31 NMB 247, 253 - 255 (2004) (discussing the Board's decision to deny a Motion for Reconsideration supported in part by a petition signed by more than 50 percent of employees being accreted). There are also various examples of an organization failing to win the election even though the organization had a 50 percent showing of interest. See, e.g., *Union Pacific R.R.*, 41 NMB 15 (2013); *Union Pacific R.R.*, 41 NMB 7 (2013). Thus, the signing of a card does not always mean the employee wants representation by that organization. The only way to know that for sure is to have a secret ballot election.

I acknowledge that a secret ballot election may result in fragmentation of a craft or class in some instances, and that the NMB has a general policy of not fragmenting a craft or class where possible. See, e.g., *American Airlines, Inc.*, 21 NMB 60 (1993); *Eastern Air Lines, Inc.*, 12 NMB 29 (1984); *Galveston Wharves*, 4 NMB 200 (1962). Based on the above Seventh Circuit case and the priority of workplace democratic rights both in terms of the placement in our statute and the U.S. Constitution, however, it is better to have a fragmented craft or class than to have the rights of employees to a secret ballot denied.

The second reason I write separately is that I do not agree with the majority finding of a work-related community of interest with the Passenger Service Employees craft or class. The majority relies on *United Airlines*, 6 NMB 180, 185 (1977), which outlines the twelve principal responsibilities of Passenger Service Employees. Tacit or explicit in each of the twelve is direct interaction with customers, but SOS Reps do not regularly or as a group have direct contact with the end-user or customer.⁴ In fact, of the twelve responsibilities listed in the *United* case, SOS Reps may perform a portion of a couple items and probably not on a regular basis. They do not appear to

³ See 45 U.S.C. §152, Fourth and Ninth.

⁴ Direct end-user contact would be required for nine of the twelve duties (#1, 2, 3, 4, 5, 7, 8, 10, and 11 probably).

directly issue tickets, process payments, or compute fares for individual outside customers.⁵ They do repair errors in the centralized information system when performing “queue” work, which is conducted approximately two days a week by each SOS Rep. This, however, cannot be construed as customer contact as the end-user would never speak to them or even know they did anything.

Based on submissions by both parties any “queue” work arrives because of errors on the SWA website during a purchase – rendering the work more akin to information technology debugging or internal clerical work. Indeed, if repairing errors in a database or program are enough to put SOS Reps in the Passenger Service Employee craft or class, should the Board also accrete all SWA’s programmers and web page maintainers as the customers would not have been also able to purchase tickets without them?⁶ Finally, while the SOS Reps may resolve service difficulties, they do so for CSA’s, CR’s, other internal SWA users, some travel agents from an affiliated SWA company, and the Federal Air Marshal program – apparently not the actual Air Marshals themselves. None of those categories meet the definition of an end user customer flying with SWA as a common carrier.

As suggested by the carrier, the SOS Rep job classification may more closely tie into the Office Clerical craft or class because of a lack of contact with the end-user. The filings by the carrier state that SOS Reps will not have contact with the end-user of the airline if the other two employee groups are properly performing their jobs. An almost complete lack of contact with customers generally suggests employees are not Passenger Service employees but instead performing other services, including “handling the internal operations of the carrier” as part of the Office Clerical craft or class. *British Airways*, 7 NMB 369, 387 (1980) (holding that splitting the traditional Passenger Service employees, Fleet Service employees, and Office Clerical employees craft or class is appropriate on a larger carrier where the duties do not necessarily overlap). Thus, I find the Carrier’s argument slightly more

⁵ According to the submissions, SOS Reps assist the people who do issue tickets and process payments if an error occurs in the SWA computer system.

⁶ While SOS Reps “[p]rovide Legendary Customer Service” according to their position description, SWA provided several other job descriptions, all of which do not belong in the Passenger Service Employees craft or class, that also include the same language regarding “Legendary Customer Service.” It is in fact part of the Carrier’s culture and that everyone who works at SWA – regardless of what they actually do – is responsible for “Legendary Customer Service.”

persuasive that the SOS Reps should not be placed in the Passenger Service craft or class.

Accordingly, I respectfully dissent with regard to the accretion policy and the craft or class determination in this case. With that said, I cannot fault my colleagues for continuing to follow what is a relatively longstanding precedent on our accretion policy, or weighing the evidence on the craft or class determination slightly differently.