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RE: NMB Case No. R-7557
American Airlines/TWU/IAM Association and AMFA

Participants:

This determination addresses the July 12, 2021 appeal filed by the Aircraft Mechanics Fraternal Association (AMFA) of Investigator Josie G. M. Bautista's June 25, 2021 eligibility rulings. For the reasons discussed below, AMFA's appeal is granted in part and denied in part. AMFA's application is dismissed due to an insufficient showing of interest.

I. PROCEDURAL BACKGROUND

On November 13, 2020, AMFA filed an application with the National Mediation Board (NMB or Board) pursuant to the Railway Labor Act, 45 U.S.C. § 152, Ninth (Section 2, Ninth)[1], alleging a representation dispute involving the Mechanics and Related Employees of American Airlines, Inc. (Carrier). The employees in question are currently represented by the Mechanic and Related Employees Association, TWU/IAM (TWU/IAM Association).

[1] 45 U.S.C. §151, *et seq.*

On November 30, 2020, AMFA filed a position statement in which it alleged that a provision in the mechanic's collective bargaining agreement (CBA) interfered with its right to collect authorization cards and affected AMFA's chances in securing a representation election. The CBA provision gave the Carrier the right to modify the existing Legacy US Airways Medical Plan in the event the TWU/IAM Association loses the ability to represent the Mechanics and Related Employees. The mechanics ratified that CBA in March 2020.

On December 4, 2020, the Carrier filed a List of Potential Eligible Voters (List) and signature samples of the potential eligible voters. The List contained 13,213 potential eligible voters. Two names were duplicative (Randy Fernandez and Jay Norman Wood) which brought the total to 13, 211.

While the authorization cards were being reviewed by the Investigator and before a determination was made to conduct pre-authorization challenges and objections, the TWU/IAM Association filed challenges and objections on December 23, 2020 and asserted that the List provided by the Carrier excluded the following four categories of employees: Flight Simulator Engineers (135 employees); employees on furlough (496 employees); Fleet Service Employees working preponderantly in the craft or class (656 employees); and employees on "pay continuation" status (397 employees). The TWU/IAM Association amended its initial filing on January 14, 2021, asserting that it has identified 16 additional employees who were performing work that falls into the Mechanics and Related Employees craft or class.

On February 26, 2021, the Investigator set forth the schedule for submitting challenges and objections. The Investigator's letter directed the Organizations to file challenges to the List or objections with regard to any other matters by March 15, 2021. Further, the Investigator's letter directed both Organizations to incorporate by reference any previously filed challenges, objections and supporting data. Both the TWU/IAM Association and AMFA submitted challenges and objections on March 15, 2021.

On April 1, 2021, American Airlines filed a List of Challenged employees that included the names of an additional 2001 employees (List 2). American Airlines, TWU/IAM Association and AMFA responded to the Organizations' challenges and objections on April 2, 2021.

On April 7, 2021, the Investigator sent the Carrier a detailed Request for Information and informed all Participants that she was accepting a Reply to the Responses to the Challenges and Objections should any Participant choose to file a Reply. AMFA and the TWU/IAM Association filed Replies on April 22, 2021. In its Reply, the TWU/IAM Association identified 118 employees that were excluded from List 2.

The Investigator sent the Carrier additional requests for information and directed the Carrier to respond to the assertion that 118 employees were excluded from List 2. The Carrier filed Supplemental Declarations and evidence on May 11, 2021. The Carrier also filed a third List (List 3) that consists of all employees challenged by both AMFA and the TWU/IAM Association who were alleged to have been excluded from the List. List 3 contains the names of 1,861 employees. All 1,861 employees were challenged by the TWU/IAM Association. Of the 1,861, two of the employees were also challenged by AMFA as excluded from the List.

II. CHALLENGES AND OBJECTIONS

A. AMFA

AMFA challenged the exclusion of Daniel Bassaure and Kamran Qaiser and asserted that both employees were working regularly in the craft or class of Mechanics and Related Employees. AMFA also alleged that approximately 261 of the individuals included on the List were ineligible to vote. AMFA identified the ineligible voters as follows: 13 deceased employees; one (1) employee working for another carrier; eight (8) retired employees; one (1) management official; six (6) employees working in the craft or class of Fleet Service Employees; two (2) employees working in the Stock and Store Employees craft or class; three (3) employees working in the Passenger Service Employees craft or class; and 233 employees who participated in the Carrier's Voluntary Early Out Program (VEOP) and have irrevocably resigned from American Airlines.

B. TWU/IAM ASSOCIATION

The TWU/IAM Association's objections alleged that 1,861 eligible employees were omitted from the List. Specifically, the TWU/IAM Association identified the following employees: 135 Flight Simulator Engineers whom the Board found to be included in the craft of class of Mechanics and Related Employees in its 2015 decision in *American Airlines, Inc.*, 42 NMB 35; 496 furloughed employees; 647 Fleet Service Employees performing Mechanics and Related Employees work; 397 employees who were on pay continuance and elected a future separation date from the Carrier; 158 employees who were on authorized leave of absence; and 28 employees who were terminated by the Carrier but have active grievances challenging their terminations.

C. INVESTIGATOR'S RULING

Investigator Bautista issued her rulings on June 25, 2021. She initially ruled that, contrary to AMFA's position, the standard for determining the eligibility for inclusion on the List for the purpose of calculating the showing of interest is based on working in the craft or class as of the eligibility cut-off date, which in this case is November 6, 2020. She further ruled as follows:

1. Of the 13 individuals alleged to be deceased, only one (1) employee passed away before the cut-off date and that Individual will be removed from the List. Eight (8) individuals passed away after the cut-off date so those eight individuals will remain on the List for the purpose of calculating the showing of interest. Three employees were on furlough status and one employee is an active employee working in the Mechanics and Related Employees craft or class, so all four (4) remaining employees remain eligible and will remain on the List.

2. Of the eight (8) employees alleged to have retired, three (3) employees are on furlough with recall rights, three (3) elected to take a VEOP in 2020 but were not formally separated until after the cut-off date, and two (2) employees are active employees working in the Mechanics and Related Employees craft or class. All eight (8) employees are eligible to vote and will remain on the List.

3. Of the 233 employees challenged by AMFA as ineligible, 203 employees are "12 Month Active VEOP" recipients who retain an employer-employee relationship with the Carrier and are eligible to vote; 26 employees are active employees; and, four (4) are on a leave of absence. All 233 employees are eligible and will remain on the List for the purpose of calculating the showing of interest.

4. There was insufficient evidence to justify the removal of William Demko as working for another carrier, as alleged by AMFA.

5. Of the six (6) employees alleged to be Fleet Service Employees, all six employees are ineligible and will be removed from the List.

6. Of the three (3) employees alleged to be Passenger Service Employees, all three are ineligible and will be removed from the List.

7. Of the two (2) employees alleged to belong to the Stock and Store Employees craft or class, both employees are ineligible and will be removed from the List.

8. Dennis R. Watson is a Management Official and therefore is ineligible.

9. Daniel Bassaure and Kamra Qaiser are eligible and both names will be added to the List.

10. Of the 135 Flight Simulator Engineers that the TWU/IAM Association alleged should be included on the List, 130 of them are

eligible and will be added to the List; and the remaining five (5) employees are Management Officials and, therefore, ineligible.

11. Of the 28 terminated employees alleged by the TWU/IAM Association to have been improperly excluded from the List, all 28 employees had active grievances challenging their terminations and will be added to the List.

12. Of the 496 employees alleged to be furloughed, 71 were legacy American Airlines (LAA) furloughed employees with recall rights and therefore eligible; three (3) were furloughed but have returned to work and are eligible; and nine (9) are legacy US Airways (LUS) employees, were furloughed with recall rights, and are eligible.

13. Of the 397 employees alleged to have been excluded from the List, 387 of them are on "12 month Active VEOP" and are eligible to vote; and one (1) employee, Steven Olsakovsky, is an active employee and will remain on the List.

14. Of the three (3) employees alleged to be excluded but are active employees, all three (3) employees are eligible. Kamran Qaiser was already added to the List under Paragraph 9, above.

15. 90 Fleet Service Employees engaged in lavatory service are performing Mechanics and Related Work and are eligible to vote.

16. 19 fuelers covered by the Fleet Service CBA perform work within the Mechanics and Related craft or class and are eligible to vote.

17. 250 Fleet Service "Tow Team" employees engaged in aircraft movement are performing Mechanics and Related work and are eligible to vote.

18. 177 Fleet Service employees engaged in the function of deicing exclusively are performing Mechanics and Related work and are eligible to vote.

19. Of the 158 alleged to be on an authorized leave of absence: 118 employees are retired/resigned; 21 are deceased; 10 were terminated; and, nine (9) are Management Officials. All 158 employees are ineligible and will not be added to the List.

20. AMFA's allegation of carrier interference was not filed by the deadline established by the Investigator and was not considered by the Investigator.

III. APPEAL

A. AMFA

AMFA appeals the Investigator's rulings that the following employees are eligible to vote: (1) Joseph Diangelis #3030, Donnie Gulledge #4703, James Dunn #3315, and David A. Jones #5954 are deceased; (2) Josh Davis #2825, Mark McCadden #7564, and Paul Miller #7974 are retired; (3) 233 "VEOP" participants alleged by AMFA to have permanently separated from the Carrier; (4) Wiliam Demko #2973 AMFA alleges works for another Carrier; (5)130 Flight Simulator Engineers AMFA alleges belong to a separate craft or class; (6) 387 "VEOP" Participants AMFA alleges to have permanently separated from the Carrier; (6) 250 "Tow Team" employees engaged in aircraft movement AMFA alleges belong in the Fleet Service Craft or class; and, (7) 117 employees engaged in deicing work AMFA alleges belong in the Fleet Service craft or class.

AMFA also appeals the Investigator's Ruling regarding its allegation of carrier interference that was not considered by the Investigator because it was not filed by the deadline.

Neither the TWU/IAM Association nor the Carrier appealed the Investigator's rulings.

B. TWU/IAM ASSOCIATION RESPONSE

The TWU/IAM Association filed a Response on July 26, 2021. It asserts that the Investigator conducted a thorough factual investigation which included consideration of multiple evidentiary submissions by the Participants. The TWU/IAM argues that AMFA failed to present relevant substantive evidence or sound legal argument which could satisfy its burden of proof on appeal. The TWU/IAM requests that the Board deny AMFA's appeal in its entirety.

C. REBUTTAL

AMFA requested leave on July 26, 2021 to file a Rebuttal to the TWU/IAM's Response. The Acting General Counsel granted AMFA's request. AMFA filed its Rebuttal on August 2, 2021.

IV. DISCUSSION

The Investigator correctly found that the standard for eligibility when calculating a showing of interest is working in the craft or class as of the cut-off date. *See American Airlines, Inc.*, 31 NMB 539 (2004); *United Airlines*, 28 NMB 533 (2001); *USAir, Inc.*, 24 NMB 38 (1996). Accordingly, the Board upholds the Investigator's rulings in which she included on the List employees who were eligible as of the cut-off date of November 6, 2020.

A number of AMFA's appeals involve the question of which jobs are part of the Mechanics and Related Employees craft or class. In *National Airlines, Inc.*, 1 NMB 423, 428-29 (1947), the Board stated the following definition of the Mechanics and Related Employees craft or class:

> A. Mechanics who perform maintenance work on aircraft, engine, radio, or accessory equipment.
>
> B. Ground service personnel who perform work generally described as follows: Washing and cleaning airplane, engine, and accessory parts in overhaul shops; fueling of aircraft and ground equipment; maintenance of ground and ramp equipment; maintenance of buildings, hangars, and related equipment; cleaning and maintaining the interior and exterior of aircraft; servicing and control of cabin service equipment; air conditioning of aircraft; cleaning of airport hangars, buildings, hangar and ramp equipment.
>
> C. Plant maintenance personnel – including employees who perform work consisting of repairs, alterations, additions to and maintenance of buildings, hangars, and the repair, maintenance and operation of related equipment including automatic equipment.

As the Board has observed, "[i]n the years since this decision, the craft or class findings for Mechanics and Related Employees has not been seriously challenged. On the contrary, throughout the industry, this grouping of employees constitutes the prevailing pattern for representation in collective bargaining relationships between carriers and unions." *Aircraft Serv. Int'l Group*, 31 NMB 508, 517 (2004). Therefore, determinations regarding employees' inclusion on the List, based on contentions about the placement of their work in the Mechanics and Related Employees craft or class, will be decided in accord with *National Airlines*, above.

In representation cases, the burden of proof required to overrule an investigator's preliminary determination rests with the participant appealing that ruling. *Continental Airlines / Continental Express, Inc.* 26 NMB 343, (1999); *Northwest Airlines, Inc.*, 26 NMB 77 (1998); *Atlantic Southeast Airlines, Inc.*, 23 NMB 23 (1995); *USAir, Inc.*, 21 NMB 402 (1994).

A. Deceased Individuals

AMFA appealed the Investigator's ruling regarding Joseph Diangelis #3030, Donnie Gulledge #4703, and James Dunn #3315. AMFA contends that these three individuals died before November 6, 2020 and must be removed from the List for the purpose of calculating the showing of interest. AMFA also contends that David A. Jones #5954 died after November 6, 2020 and must be removed from the List as a status change. AMFA asserts that the Carrier's

evidence that Diangelis, Gulledge, and Dunn were previously furloughed is not sufficient to rebut AMFA's evidence consisting of online obituaries and a Memoriam Publication by American Airlines that the three individuals are ineligible deceased individuals.

The TWU/IAM Association responds that the Investigator properly rejected AMFA's challenges as not supported by substantive evidence and that AMFA's unsponsored and unexplained documents do not overcome the presumption of eligibility based on the Carrier's records.

The issue on appeal is whether the evidence before the Investigator established that Diangelis, Gulledge, and Dunn are all deceased. An examination of AMFA's evidence does not show that the individuals mentioned on the online obituaries for Diangelis and Dunn are in fact the same individuals whose names appear on the List. The Memoriam publication by American submitted by AMFA showing that a "Donnie Gulledge" died in September 2020 also does not conclusively show that the individual who died on September 2020 is the same individual whose name appear on the List under entry # 4703. The Carrier provided the Declaration from James B. Weel, Managing Director, Labor Relations that the information he provided was obtained from the Carrier's Human Resource Information System (HRIS). The Carrier's HRIS system provided that Diangelis, Gulledge, and Dunn were on furlough status. The Carrier's HRIS system did not provide the date of death for these three individuals the same way it provided date of death for other individuals challenged by AMFA in this same category. Based on the evidence submitted by AMFA and the Carrier, the Investigator did not have sufficient information to justify removing the three individuals from the List.[2] Accordingly, the Investigator did not err in retaining them on the List, and the Investigator's rulings concerning Diangelis, Gulledge, and Dunn are upheld.

AMFA appealed the Investigator's Ruling regarding David A. Jones #5954 and asserts that David Jones died on January 28, 2021. In its appeal, AMFA concedes that David A. Jones may be counted for the purpose of calculating the showing of interest but should be removed as a status change. The Investigator ruled that David A. Jones is an active employee working in the position of Aviation Maintenance Technician and will therefore remain on the List. An examination of the evidence obtained during the investigation establishes that the David A. Jones identified by AMFA in Exhibit B2 accompanied by the

[2] It is important to note that the Investigator made further inquiries to the Carrier regarding the status of the employees in this category. To the extent that the Carrier could verify the information provided by both Organizations, the Investigator included those verifications in her ruling.

Declaration of Donald Rogers with an employee ID 54448 is not the same David A. Jones who is identified as an active employee in Exhibit K to the Weel Declaration and is on the List under entry #5954. The David A. Jones on the List has an employee ID 456082. Accordingly, the Investigator's ruling is upheld and David A. Jones will remain on the List.

B. Flight Simulator Engineers

AMFA appealed the Investigator's ruling that employees working as Flight Simulator Engineers are part of the Mechanics and Related craft or class. The TWU/IAM Association argues that the Investigator properly applied binding NMB precedent to include the Flight Simulator Engineers. The Carrier agreed in its Response to AMFA's initial challenge that the Flight Simulator Engineers are part of the Mechanics and Related craft or class and "should therefore be included on the List."

Following the merger of US Airways and American Airlines, the Board addressed the exact question of whether or not Flight Simulator Engineers are "part of the Mechanic and Related craft of class at the New American" and the Board ruled in the affirmative. *American Airlines, Inc.*, 42 NMB 35, 62 (2015). The Board considered the facts and circumstances of the Flight Simulator Engineers, including the nature of their work and the prior patterns of representation. AMFA has failed to submit any substantive evidence demonstrating any change in circumstances that would warrant a departure from the Board's 2015 Determination. Accordingly, the Investigator's ruling is upheld and the Flight Simulator Engineers will remain part of the Mechanics and Related Employees craft of class.

C. Employees Working for Another Carrier

Section 9.207 of the Manual states: "Employees working for another carrier other than the carrier involved in the dispute are ineligible."

AMFA appealed the Investigator's ruling that she could not justify the removal of William Demko, # 2973 from the List. AMFA argued that it provided substantive evidence demonstrating the ineligibility of William Demko and it was not contested by either the TWU/IAM Association or the Carrier. AMFA argued further that "because the TWU/IAM Association and the Carrier did not contest the requested exclusion of William Demko from the eligibility list, AMFA should not be held to a higher standard of proof by the Investigator than for the substantial evidence that was provided for an employee working at another carrier since October 31, 2005." Thus, "AMFA requests that William Demko, who is working for another carrier, not be added to the Eligibility List and not be counted for the purpose of calculating AMFA's showing of interest."

Contrary to AMFA's assertion, the Carrier responded that "it does not have information to either confirm or refute AMFA's assertion that William Demko is working for Southwest Airlines." Further, the TWU/IAM Association in its Response to AMFA's appeal, argued that "AMFA provided no evidence that the employee at Southwest was in fact the same person as the employee at American, nor did it produce evidence – if it was the same person- he was working at Southwest as of the cutoff date." The TWU/IAM Association concluded that the "Investigator correctly ruled that AMFA's submission did not present substantive evidence sufficient to overcome the carrier's submission that this individual was in fact eligible to vote as of the cut-off date."

Even if AMFA's assertion is correct and the Carrier and the TWU/IAM Association did not contest the requested exclusion of William Demko, the "pertinent question is not whether a participant's allegations went unchallenged, but whether there was sufficient evidence before the Investigator to support her ruling." *American Airlines, Inc.,* 31 NMB 539, 564 (2004). A review of the evidence submitted by AMFA demonstrates that the Investigator correctly ruled that the burden of proof concerning the ineligibility of William Demko falls on AMFA and that AMFA failed to provide sufficient evidence for the Investigator to determine that the individual pictured on AMFA's exhibit is the same employee listed under entry #2973. Accordingly, the Investigator's ruling regarding William Demko is upheld.

D. Voluntary Early Out Program ("VEOP") Recipients

AMFA appealed the Investigator's ruling regarding the 203 employees included on the List and the 387 employees who were added to the List by the Investigator's eligibility ruling. AMFA alleged that all VEOP Participants have permanently separated from the Carrier and all irrevocably resigned upon execution of severance agreements/general releases before the cut-off date of November 6, 2020 and all are therefore ineligible.

In response to the COVID–19 pandemic, the Carrier instituted a variety of "early out programs" and offered the programs to its represented employees, including the employees at issue in this case. The specific terms of the VEOP depended on whether the employee chose the lump sum option or elected to receive payment for 12 months. Those employees who opted for the lump sum payout were separated and recorded as having resigned on the effective date, or commencement of their VEOP, in either March or August 2020. Those who chose to receive bi-weekly payments over a 12-month period remained on the Carrier's payroll during that period, and their separation date will be at the end of the 12 month period.

In its appeal, AMFA noted that "the so-called 'active' adjective ascribed in Ruling 3 to the 12 month VEOP participants is not descriptive language used by

the Company anywhere to describe its program and is not anywhere in evidence." AMFA argued further that the Investigator's "use of the 'active' adjective is an affirmative mischaracterization of the actual facts presented to the Investigator by AMFA because VEOP participants are not in fact active employees of the Carrier but instead are ex-employees." In its Response to AMFA's Appeal, the TWU/IAM Association asserted that "the undisputed evidence amply supported the ruling that employees who elected the Active VEOP have the present status and interests of active employees." It argues further that "employees who elect this Active VEOP agree to a future separation date from the Carrier, but until such date they remain employees who receive active medical coverage and travel benefits, participate in the employee 401(k) plan, pay union dues, and remain represented by the TWU/IAM Association." The TWU/IAM Association asserts that the Investigator properly rejected AMFA's attempt to exclude participants in the "Active VEOP"" from the List.

The Investigator properly concluded that the "12 Month Active VEOP" recipients retain an employer-employee relationship with the Carrier and are eligible to vote as of the cut-off date. The Investigator's ruling is based on the undisputed fact that the formal separation dates for these employees occurred after the cut-off date. The severance agreements and general releases executed by these employees did not vitiate the compensation and benefits received by the employees for the 12 month VEOP period. That 12 month period includes the cut-off date of November 6, 2020. The record is replete with evidence demonstrating that during the 12 month VEOP period, these VEOP recipients receive bi-weekly payments and receive medical, dental & vision, life insurance, and travel benefits as if they are active employees. They contribute to their 401(k) plans like active employees and they retain their employee IDs like active employees. They remain members of their union and are obligated to pay union dues like active employees. Essentially, they enjoy all of their contractual benefits like active employees with the exception of sick and vacation leave accrual. Accordingly, the Investigator's ruling is upheld and all employees classified under the status of "12 Month Active VEOP" are eligible to vote and will remain on the List as ruled by the Investigator.

AMFA also appealed the eligibility of Larry Swimmer, whom AMFA alleged as deceased before the cut-off date. Similar to the deceased individuals discussed in Paragraph A. above, the evidence before the Investigator did not conclusively establish that the Larry Swimmer on List 3 in the category of "12 Month Active VEOP" recipient is the same person mentioned in the September 2020 In Memoriam publication by American Airlines. The Weel Declaration provided by the Carrier on April 2, 2021 shows Larry Swimmer as "PD VEOP – Salary continuance." Accordingly, consistent with the ruling above, Larry Swimmer is eligible and will remain on the List as ruled by the Investigator.

E. Retired Employees

Section 9.210 of the Board's Representation Manual (Manual) provides: "Retired employees are ineligible."

AMFA appealed the Investigator's ruling that Josh Davis #2825, Mark McCadden #7564, and Paul Miller #7974 are not retired. A review of the evidence submitted by the Carrier shows that the three employees are recipients of the "12 Month Active VEOP" discussed above. Their formal separation date, albeit irrevocable, will not occur until after the 12 month VEOP period is completed. Once the 12 month VEOP period is completed, these employees may retire from the Carrier as demonstrated by the Weel Declaration and pursuant to the terms of the VEOP. Because these employees were in the "12 Month Active VEOP" status as of the cut-off date, they are eligible to vote and will remain on the List. Accordingly, the Investigator's ruling regarding Davis, McCaden, and Miller is upheld.

F. Fleet Service Employees Engaged in Aircraft Movement

AMFA appeals the Investigator's ruling that 250 Fleet Service "Tow Team" Employees engaged in aircraft movement are eligible to vote and added to the List for the purpose of calculating the showing of interest. AMFA argues that the "Tow Team" employees "do not perform any maintenance whatsoever" and the work is not related to the maintenance function. AMFA further argues that the Board's 1947 definition of the craft or class of Mechanics and Related Employees "does not cover employees who perform functions on Tow Team positions."

The TWU/IAM Association responds that the Investigator properly included the 250 "Tow Team" employees on the List for preponderantly performing mechanics and related functions as of the cut-off date. TWU/IAM Association asserts that the evidence submitted establishes that the work performed by Tow Team employees falls squarely within the Mechanics and Related craft or class.

A review of the evidence before the Investigator, including the first declaration of Lynn Vaughn, Managing Director of Labor Relations, dated April 1, 2021, demonstrates that Tow Team employees are "dedicated on a full-time basis to functions relating to the repositioning of aircraft as well as the operation of tugs and tractors." The Declaration of Thomas Regan, Grand Lodge Representative, also confirmed the Tow Team employees "have the full-time responsibility to move aircraft among and between gates, hangars, and other areas for repositioning aircraft." Further, declarations from numerous Tow Team employees also confirmed that they are "responsible for the movement of aircraft among and between gates, hangars, and other areas" and they spend their "shift working full time on the ground movement of aircraft."

The work performed by the Tow Team is based on the checklists maintained on American's "maintenance and engineering" website. To become eligible to bid for Tow Team positions, employees must go through a separate training program and be found qualified by the Carrier to perform the work. Mr. Regan confirmed that when performing towing functions, Tow Team employees "are required to perform exterior safety checks for, among other things, tire condition, fuel leaks, structural damage and gear pins. These employees are then responsible for attaching a tow bar if appropriate, obtaining clearance to tow, pulling wheel chocks and then safely moving the aircraft to either a gate or to a hangar, and performing a post-taxi walk around inspection."

The Tow Team employees also perform the brake riding function, which AMFA acknowledges is a function performed by Mechanics. AMFA's contention that the work performed by Tow Team employees is not related to the maintenance function is contradicted by evidence it provided in this case. Specifically, AMFA provided the Mechanics CBA which confirmed the towing and brake riding functions performed by mechanics. That CBA also provides that "towing, including brake riding, may be performed by any qualified Association members as directed by the Company", allowing for the brake riding function to be performed by the Tow Team employees. A review of the recognition and scope provisions of the Mechanics CBA also demonstrates that mechanics perform this work.

In *United Airlines*, 6 NMB 134 (1977), cited by the Investigator, the Board discussed the overlapping functions performed by mechanics and ramp employees. The Carrier in that case "specified such common operations to include chocking of aircraft, attaching power units and wave-in duties among numerous others" which are functions that are very similar to the functions performed by the Tow Team employees (e.g. chocking of aircraft). In that case, the Board stated "[i]t is not uncontested that many if not all of these shared operations are in fact performed by both Mechanics' Agreement personnel and Ramp Service employees." In *United*, the Board did not include the ramp employees in the mechanics craft or class because it found that the principal duties of the ramp servicemen in that case were related to the Carrier's cargo and baggage functions and not the ground maintenance functions such as chocking of aircraft and wave-in duties.

The Investigator also relied upon the *Eastern Airlines* case in her ruling to support her finding that the functions of Tow Team employees are in fact related to the maintenance function. In *Eastern Airlines*, the Board stated, that:

> The related employees in the present craft or class [Mechanics and Related Employees], while of different skill levels from the mechanics, nonetheless are closely related to them in that they are

> engaged in a common function- the maintenance function on an airline of which the maintenance of airplanes and the maintenance of mobile ground equipment or of fixed facilities are all integral parts.

Eastern Airlines, 4 NMB 54, 63 (1965).

In *Eastern Airlines*, AMFA petitioned the Board to find one distinct craft or class of "Aircraft Mechanics" at Eastern, United, and Seaboard Word Airlines. The Board in that case denied AMFA's request and determined that there was no historical basis for AMFA's request to split the established craft of class that constitutes the structure for representation of Mechanics and Related Employees in the industry. The Board confirmed its policy, "reflecting the intent of the Railway Labor Act, is to honor such customary groupings in class or craft determinations absent a showing of markedly changed conditions or other good cause to justify alteration of the established patterns of bargaining." *Id.* at 63. The Board in that case actually expanded the craft or class of Mechanics and Related employees for Eastern Airlines and Seaboard airlines to include all Ramp Service employees. Accordingly, the Investigator's ruling regarding the sufficient connection between the Tow Team employees and the mechanics is upheld and all 250 Tow Team employees are eligible and will remain on the List.

AMFA also contends that the 250 Tow Team employees "may not be added to the List if it cannot be independently verified that any such individual from another craft or class were in fact doing the Mechanics and Related Employees work at American Airlines on the November 6, 2020 cut-off date and who also did so for a preponderance of their work time…". A review of the Investigator's ruling shows that her findings were based on the Tow Team employee's declaration that they were performing Tow Team work full time and the Carrier's confirmation of that work on a full-time basis. As noted by the Investigator, her findings are consistent with the Board's 2004 determination which upheld the investigator's determination that a declaration from the Carrier's managing director of labor relations was adequate to establish that certain employees performed work in the craft or class. *American Airlines, Inc.*, 31 NMB 539, 547 (2004). Thus, the preponderance requirement has been met and the Investigator's ruling regarding the 250 Tow Team employees is upheld.

G. Fleet Service Employees Engaged in Deicing

AMFA also appeals the Investigator's ruling that 117 Fleet Service Employees engaged exclusively in deicing work are eligible and adding them to the List. AMFA does not dispute that deicing work is part of the Mechanics and Related Employees craft or class. Instead AMFA contends that no deicing work existed because the weather did not require it. AMFA argues further that the Carrier merely identified employees who bid into the deicing work assignments

and did not confirm that the successful bidders were actually performing deicing work.

The TWU/IAM Association contends that the basic definition of the Mechanics and Related craft or class includes "ground personnel who perform work . . . cleaning and maintaining the exterior of aircraft," *United Airlines*, 6 NMB 134, 135 (1977), and argues that all parties recognized that deicing, which involves the cleaning of ice and related debris from aircraft exteriors to allow for safe operations, fall squarely within this category. The TWU/IAM Association asserts that the Investigator was provided with substantive evidence in the form of bid sheets, work schedules, and employer and employee declarations which together established that significant numbers of fleet service employees had specifically bid for deicing positions and were performing the work of deicing as of the cut-off date. AMFA did not submit substantive evidence to the contrary, according to the TWU/IAM Association, and the Investigator properly rejected AMFA's arguments. The TWU/IAM Association argued further that AMFA focused exclusively on the Carrier's initial statement that no employee performed deicing work in the 60 days prior to the cut- off date and ignored the supplemental evidence that the Carrier provided in response to the Investigator's Information Request.

Through the first Vaughn declaration, the Carrier submitted evidence that the "American –TWU/IAM Fleet Association agreement provides that, in five locations – Boston Logan International Airport (BOS), Ronald Reagan Washington National Airport (DCA), John F. Kennedy International Airport (JFK), La Guardia Airport (LGA), and O'Hare International Airport (ORD) -- deicing functions are to be performed by Fleet Service Employees who bid for and are awarded positions devoted exclusively to deicing." In her second declaration dated May 7, 2021, Vaughn confirmed the employees who bid for the deicing assignments for a specific period. A review of the evidence before the Investigator demonstrates that the Investigator only included the employees in the locations where employees bid for and were awarded deicing positions exclusively for bid periods that included the cut-off date of November 6, 2020. The Investigator properly included the employees from BOS, DCA, JFK, LGA, and ORD, and properly rejected the employees in St. Louis Lambert International Airport (STL) because those employees were not in a location where deicing is performed exclusively and the assignment was not in a bid period that included the cut-off date. The Carrier's confirmation of those bids by the employees along with the Carrier's declaration that deicing work is performed exclusively in those locations were sufficient for the Investigator to conclude that those employees were performing Mechanics and Related work. Furthermore, there is no evidence showing that the employees who bid for the deicing assignments were reassigned

by the Carrier pursuant to the CBA or that any of these employees requested to or did transfer to another position before the November 6, 2020 cut-off date.

The Investigator's ruling regarding the eligibility of the employees performing deicing work is upheld. The only exception to this determination concerns the eligibility status of Theresa Kizer. A review of the evidence shows that the Carrier never confirmed Ms. Kizer's bid into the deicing position and the Investigator erred when she ruled Ms. Kizer eligible. Accordingly, Theresa Kizer is removed from the List and will not be counted for the purpose of calculating the showing of interest.

H. Crew Chiefs

AMFA appeals the Investigator's failure to address its objection regarding the Fleet Service Agent Crew Chief position. It contends that Crew Chiefs do not perform the work of their crew and are therefore ineligible.

A review of the Investigator's ruling confirms that she did not address the Crew Chiefs as a separate group in her ruling. Instead, she ruled on each individual's eligibility based on the combination of evidence submitted by the employees, the TWU/IAM Association, and the Carrier and her ruling included the Crew Chiefs. Making the distinction between the Crew Chiefs and a working crew was not necessary because the second Vaughn declaration confirmed that "crew chiefs are working members of their assigned crew, which means they perform the same work of their crew while also leading and directing the work of their assigned crew."

Because the Crew Chiefs are working members of their assigned crew and perform the same work of their crew, the Investigator's decision in ruling on each individual's eligibility status is upheld. With the exception of Theresa Kizer addressed above, all Crew Chiefs are eligible and will be counted for the purpose of calculating the showing of interest.

I. Interference Allegation

AMFA appeals the Investigator's ruling regarding its carrier interference allegation based on AMFA's failure to file its objection by the deadline set by the Investigator. AMFA's allegation of carrier interference concerned a provision of the Mechanics CBA that gave the Carrier the right to modify the existing legacy US Airways Medical Plan in the event the TWU/IAM Association loses the ability to represent the Mechanics and Related Employees craft or class. AMFA contends on appeal that it made the allegation of carrier interference early and should not have to "cut and paste the contents of its Initial Statement into AMFA's Challenges and Objections to have it considered," and argues that such a requirement is a "specious assertion at best." It contends further in its rebuttal that the TWU/IAM and Investigator are wrong that this is a "waivable issue" and

it asserts its right to raise the issue at any time prior to the election in this matter.

The issue in this Appeal is whether or not the allegation of carrier interference was properly considered by the Investigator. A review of the record shows that AMFA raised is allegation of interference on November 30, 2020 in its Initial Statement. While the Investigator was conducting a review of the authorization cards and before she made the determination to conduct pre-authorization challenges and objections, the TWU/IAM Association filed challenges and objections alleging that certain employees were excluded from the List. The TWU/IAM Association filed those challenges and objections on December 23, 2020 and again on January 14, 2021. Pursuant to Section 8.1 of the Manual, the Investigator informed the Participants in writing on February 26, 2021, of the schedule for filing challenges and objections. The Investigator directed the TWU/IAM Association and AMFA to file challenges to the List or objections with regard to any other matters by March 15, 2021. The Investigator's letter directed both Organizations to incorporate by reference any previously filed challenges, objections, and supporting data. A review of AMFA's March 15, 2021 challenges and objections submission shows that the issue regarding AMFA's allegation of interference was not mentioned by AMFA. AMFA's allegation of interference was also not mentioned in its April 2, 2021 Responses to challenges and objections. It was not until AMFA filed its Reply on April 22, 2021 that AMFA raised the issue when it stated that "[i]n AMFA's Initial Position Statement, dated November 30, 2020, which AMFA incorporates by reference herein…"

Section 8.0 of the Manual states:

> The Investigator will inform the participants in writing that they may raise challenges or objections during the investigation. Challenges involve issues concerning employee eligibility but do not include employment status changes. Status changes are governed by Manual Section 12.3. Objections involve all other issues or questions.

Section 8.1 of the Manual provides, in pertinent part: "Absent extraordinary circumstances, challenges and objections not filed by the deadline will not be considered." In this case, the record is clear that AMFA failed to file its objections regarding its allegation of carrier interference by the March 15, 2021 deadline set by the Investigator. Further, the Board's procedures regarding challenges and objections exist to provide an orderly and fair structure for establishing voter eligibility. Departures from this procedure can only be justified by extraordinary circumstances. AMFA failed to present any extraordinary circumstances in this case.

Even if AMFA had properly raised its objection, the Board's policy is to defer the investigation of carrier interference until after an election. Section 17.0 of the Manual provides: "Except in extraordinary circumstances, the NMB will only investigate allegations of election interference when filed by participants after the tally." No extraordinary circumstances are present in this case that would require the Board to deviate from its long standing practice of not considering interference allegations until an election has been held. *See*, *e.g.*, *Delta Airlines*, 38 NMB 7 (2010).

The Investigator's ruling found 14,403 Potential Eligible Voters in this case. Based on the Board's decision in this matter, one employee has been removed from the List, establishing that there are 14,402 Potential Eligible Voters.

CONCLUSION

The investigation established that AMFA failed to support is application with the required number of authorization cards from the employees in the craft or class as set forth in 29 C.F.R. § 1206.2(a) of the Board's rules. Therefore, the Board finds no basis upon which to proceed in this matter and the application is hereby dismissed subject to 29 C.F.R. § 1206.4(b)(2) of the Board's Rules.

By direction of the NATIONAL MEDIATION BOARD.

Maria-Kate Dowling
Acting General Counsel