



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572

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In the Matter of the  
Application of the  
  
TRANSPORT WORKERS UNION  
OF AMERICA  
  
alleging a representation dispute  
pursuant to Section 2, Ninth, of  
the Railway Labor Act, as  
amended  
  
involving employees of  
  
JETBLUE AIRWAYS  
CORPORATION

51 NMB No. 4

CASE NO. R-7596

FINDINGS UPON  
INVESTIGATION-  
AUTHORIZATION  
OF ELECTION

October 26, 2023

**FINDINGS UPON INVESTIGATION**

This determination addresses the application of the Transport Workers Union of America, AFL-CIO (TWU) alleging a representation dispute pursuant to the Railway Labor Act (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth),<sup>1</sup> among Instructors at JetBlue Airways Corporation (JetBlue or Carrier).

For the reasons set forth below, the National Mediation Board (Board or NMB) concludes that a representation dispute exists among Instructors, and authorizes an election using June 30, 2022 as the eligibility cut-off date.

**PROCEDURAL BACKGROUND**

On July 14, 2022, TWU filed an application alleging a representation dispute involving Instructors at JetBlue. TWU's application covered individuals with the job title of "Flight Instructor." At the time of the application, the Flight Instructors were not represented by any organization or individual. Relevant here, TWU's application did not cover individuals with the job title of "Pilot Instructor." The Air Line Pilots Association, International (ALPA) is the certified representative of Pilots at JetBlue. *See JetBlue Airways*, 41 NMB 52 (2014) (NMB Case No. R-7376). The

<sup>1</sup> 45 U.S.C. § 151, *et seq.*

application was given NMB File No. R-7596 and Andres Yoder was assigned as the Investigator.

On July 29, 2022, JetBlue submitted an Initial Position Statement; a declaration from Jeffrey Winter, Vice President of JetBlue University, dated July 28, 2022; a job description for Flight Instructor Simulator Instructors; an Organization Chart; an Instructor Seniority List, which tracks departmental seniority; and an agreement between JetBlue and ALPA known as Letter of Agreement 1 (LOA 1), which remains in effect concurrently with a collective bargaining agreement between JetBlue and ALPA that covers Pilots (ALPA CBA).

On September 2, 2022, TWU submitted a Response; a declaration from Gary Peterson, the Air Division Director and an International Vice President at TWU, dated September 2, 2022; excerpts from JetBlue's College of Flight Manual; and a copy of the ALPA CBA.

Finally, on September 28, 2022, JetBlue submitted a Reply and a second declaration from Winter, dated September 26, 2022.

### **ISSUE**

Do JetBlue's Flight Instructors constitute a craft or class of Instructors?

### **CONTENTIONS**

TWU asserts that JetBlue's Flight Instructors constitute a craft or class of Instructors.

JetBlue argues that its Flight Instructors do not constitute a craft or class of Instructors. Instead, JetBlue argues that its Flight Instructors and Pilot Instructors, together, constitute a craft or class of Instructors.

### **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.

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

#### II.

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

## 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. §151, Fifth, defines employee as “[E]very person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Surface Transportation Board now in effect....”

## V.

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**

JetBlue—an airline with headquarters in Long Island City, New York—employs about 4,500 Pilots who receive training in Orlando, Florida at the JetBlue University Training Center, College of Flight. The training is administered by 118 Pilot Instructors who are not covered by TWU’s application and by 32 Flight Instructors who are.

Both Pilot Instructors and Flight Instructors provide flight instruction, ground instruction, and evaluate pilots undergoing training. According to Winter, Pilot Instructors are currently qualified pilots who are listed on the JetBlue/ALPA Pilot Seniority List (Pilot Seniority List), which tracks Pilot seniority, and are also required to fly two days in revenue service per bid period. Their scheduling and bidding procedures are outlined in LOA 1, which is part of the ALPA CBA. Flight Instructors, however, are not required to be qualified pilots and are not listed on the Pilot Seniority List. According to Winter, Flight Instructors are “[i]n the vast majority of cases . . . former pilots who are not currently-qualified either due to age or due to their inability to hold a medical certificate because of a disqualifying medical condition.”

The following qualifications apply to the Pilot Instructor and Flight Instructor positions:

- High School Diploma or General Education Diploma
- Unrestricted Federal Aviation Administration (FAA) Airline Transport Pilot Certificate with airplane category and multiengine class ratings
- 1500 hours total flight time in aircraft
- 500 hours in fixed wing airplanes
- One year as an instructor or check airman in a certificate holder's approved program, or one year as Pilot in Command or Second in Command in a turbojet aircraft

In addition to sharing these qualifications, the Pilot Instructor and Flight Instructor positions (1) provide flight instruction, ground instruction, and evaluation of Pilots undergoing training events; (2) train newly hired Pilot Instructors and Flight Instructors; (3) receive the same training upon being hired; (4) work in the same location; and (5) are subject to the same management structure. Pilot and Flight Instructors bid together using their College of Flight seniority. According to Winter, the bidding and scheduling procedure is set forth in LOA 1. Winter states that although LOA 1 applies only to the Pilot Instructors, JetBlue has extended the same bidding and scheduling rules to the Flight Instructors.

Although there are similarities between the Pilot Instructor and Flight Instructor positions, there are also differences. First, Pilot Instructors are required to operate aircraft in revenue service two days per bid period, while Flight Instructors cannot. According to the Carrier, one of the purposes of revenue flying is to gain familiarity with operations. Flight Instructors gain this experience through observational flights every six months. Flight Instructors may perform test flights and non-revenue flights, and three Flight Instructors are currently qualified to do so. That said, even if a Flight Instructor met all the requirements to fly in revenue service—and currently none do—the ALPA CBA would prevent the Flight Instructor from doing so. Relatedly, and as noted above, Pilot Instructors appear on the Pilot Seniority List, while Flight Instructors do not.

Another difference between the Pilot Instructor and Flight Instructor positions is that, as Winter explained,

a minimum of 75% of the total JetBlue Instructors must be a Pilot Instructor or a JetBlue Pilot Retiree. Prior to a Pilot furlough, any reduction in the number of Pilot Instructors will come from the Pilot Instructor group down to the 75%/25% limitation in LOA 1. Also, in the event of a Pilot furlough, JetBlue will first fill any Pilot Instructor vacancy with a Pilot in accordance with LOA 1.

The final difference between the Pilot Instructor and Flight Instructor positions is that Pilot Instructors and Flight Instructors receive different pay and benefits. Pilot Instructors' pay is determined by the ALPA CBA and LOA 1, while Flight Instructors' pay is not. Pilot Instructors receive a 90-hour minimum pay guarantee that incorporates time spent flying revenue, and are paid at applicable rates, which are listed in the ALPA CBA. The ALPA CBA also determines annual salary increases. Pilot Instructors can also receive overtime and override pay, which are based on applicable rates, as well as paid time off, pay for e-learning, and per diem compensation. Meanwhile, Flight Instructors receive a starting salary at a set dollar amount, and can receive annual merit increases. They can also receive overtime and override pay of set dollar amounts per day, as well as paid time off, pay for e-learning, and per diem compensation.

### **DISCUSSION**

In determining the appropriate craft or class for employees, the Board is guided by NMB Representation Manual (NMB Manual) Section 9.1 which states:

In craft or class determinations, the NMB considers many factors, including the composition and relative permanency of employee groupings along craft or class lines; the functions, duties, and responsibilities of the employees; the general nature of their work; and the extent of community of interest existing between job classifications. Previous decisions of the NMB are also taken into account.

*See Air Methods*, 49 NMB 143 (2022). The factor of work-related community of interest is particularly important. *E.g.*, *Philippine Airlines*, 49 NMB 12 (2022). To evaluate this factor, the Board examines the actual duties and responsibilities of the employees, the environment in which the employees work, and the interaction among the employees involved. *E.g.*, *Wisconsin Central, Ltd.*, 48 NMB 18 (2020). The purpose of the community of interest test is to ensure that a particular grouping of employees “possess[es] a sufficiently distinct community of interest and commonality of functional characteristics to ensure a mutuality of interest in the objective of collective bargaining.” *Delta Air Lines*, 26 NMB 391, 406 (1999). The Board makes craft or class determinations case by case, based upon Board policy and precedent. *E.g.*, *Metro-North R.R.*, 49 NMB 94 (2022).

Although the Pilot Instructors and Flight Instructors perform many of the same job duties, they are not a well-integrated group of employees. The Carrier has treated Pilot Instructors and Flight Instructors differently, leading to differences in their terms and conditions of employment. Namely, Pilot Instructors are required to fly the line two days per bid period, while Flight Instructors cannot; Pilot Instructors are on the Pilot Seniority List, while Flight Instructors are not; Pilot Instructors and Flight Instructors do not have the same rights in the event of a furlough; and Pilot Instructors and Flight Instructors receive different pay and

benefits. *See also Continental Airlines/Continental Express*, 27 NMB 99 (1999) (recognizing separate crafts or classes of instructors in part due to differences in requirements for holding a commercial pilots license and differences in compensation and benefits); *United Airlines*, 10 NMB 458 (1983) (determining that differences in pay weigh against finding a community of interest).

Because the Pilot Instructors and Flight Instructors do not share a work-related community of interest, the Board finds that the applied-for Flight Instructors constitute a craft or class of Instructors. As noted above, the purpose of community of interest is to ensure a mutuality of interest in collective bargaining. In the instant case, where only Pilot Instructors can engage in revenue flying and the Carrier has treated the two groups of instructors differently with regard to furlough procedures and pay and benefits, a sufficient community of interest is not established. Accordingly, the Board finds that the applied-for craft or class is appropriate.

### **CONCLUSION**

The Board finds that JetBlue's Flight Instructors constitute a craft or class of Instructors.

Based on the authorization cards submitted by TWU, the Board further finds that a dispute exists regarding the representation of the Instructors craft or class, and the Board authorizes an election among the craft or class of Instructors, employees of JetBlue Airways Corporation, using a cut-off date of June 30, 2022.

Within five calendar days, the Carrier must provide the NMB with an Amended List of Potential Eligible Voters (Amended List) as a Microsoft-Excel file, and must send a separate Amended List in PDF format to each of the Participants. The Amended List should be alphabetized, and should identify the 32 Flight Instructors from the previously submitted List of Potential Eligible Voters.<sup>2</sup> The Carrier must also submit an attestation by a carrier officer (e.g., vice president of labor relations or equivalent) of the accuracy of the Amended List to the best of his or her knowledge.

Pursuant to Manual Section 12.1, the Carrier is hereby required to furnish within five calendar days, 1 X 2 5/8", peel-off labels bearing the alphabetized names and current addresses of those employees on the Amended List.

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<sup>2</sup> The July 15, 2022 Docket Letter in this case contains information about creating a List of Potential Eligible Voters. That information guides the creation of the Amended List as well.

The Carrier must print the same sequence number from the Amended List beside each voter's name on the address label. The Carrier must also provide to the Board the name and sequence number of those potential eligible voters on military leave who are serving in foreign countries or who reside outside of the United States.

By direction of the NATIONAL MEDIATION BOARD.

A handwritten signature in black ink, appearing to read "Maria-Kate Dowling". The signature is fluid and cursive, with the first name "Maria" and last name "Dowling" clearly distinguishable.

Maria-Kate Dowling  
General Counsel