



NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

May 5, 2010

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VIA EMAIL

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Re: NMB Case No. R-7230 (CR-6959)
Delta Air Lines, Inc./IAM

Participants:

On August 13, 2009, the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM) filed an application requesting the National Mediation Board (NMB or Board) to investigate whether Delta Air Lines, Inc. (Delta) and Northwest Airlines (Northwest or NWA) were operating as a single transportation system for the craft or class of Simulator Technicians (or Sim Techs). The Board found Delta and Northwest were a single transportation system known as Delta for the craft or class of Simulator Technicians and proceeded to address the representation of the craft or class. *Northwest Airlines, Inc./Delta Air Lines, Inc.*, 37 NMB 88, 112 (2009). On January 11, 2010, the Board authorized an election in this matter with the IAM on the ballot. On January 12, 2010, the Board scheduled the tally for February 25, 2010, with the voting period beginning on February 3, 2010.

The February 25, 2010 Report of Election results reflected that less than a majority of eligible voters cast valid votes for representation, with 43 valid votes out of 91 eligible voters. Therefore, the Board issued a Dismissal on March 1, 2010. *Delta Air*

Lines, Inc., 37 NMB 142 (2010).

On March 5, 2010, pursuant to the Board's Representation Manual Section 17.0, the IAM filed allegations of election interference and are seeking a rerun election using a *Laker** ballot. Delta responded on March 22, 2010. IAM filed an additional response on April 7, 2010, and Delta replied on April 9, 2010.

Manual Section 17 provides that "allegations of election interference must state a prima facie case that the laboratory conditions were tainted and must be supported by substantive evidence." In determining whether a *prima facie* case has been established the Board considers whether the allegations and evidence, if true, might reasonably taint the laboratory conditions. *Delta Air Lines, Inc.*, 35 NMB 271, 283 (2008); *Express One Int'l*, 25 NMB 420, 426 (1998) (citing *Fox River Valley R.R.*, 20 NMB 251, 259 (1993)).

The IAM supported its contentions with multiple exhibits, a declaration from a Simulator Technician, and a declaration from Thomas J. Regan, Grand Lodge Representative for the IAM. Specifically, the IAM asserts the following:

1. **Pay Raise.** Delta announced a pay raise for non-contract employees on February 4, 2010, the first full day of voting in the election. IAM states that this increase would amount to a 10 percent increase for Delta Sim Techs and a 16 percent increase for NWA Sim Techs at the top of the scale. In addition, the announcement was made eight months before it would go into effect (October 2010), which is a deviation from Delta's standard practice of making announcements at most four months before the effective date. Delta has refused to apply the raise to the Northwest Simulator Technicians despite the IAM's approval of such an increase.
2. **Change in Work Schedules.** During the election period, Delta announced a promise to change work schedules. Specifically, some Delta managers promised Sim Techs that they would adjust their schedules so they would have more weekends off, consistent with what the NWA Sim Techs receive per the IAM contract.
3. **Use of Seniority Integration Committees.** Delta prematurely used seniority integration committees to offer Sim Techs more favorable seniority integration (relative blend seniority) than the IAM's standard integration procedure of straight seniority.

* In certain instances of election interference, the Board has authorized the use of a "Laker" ballot in which employees vote yes or no, and a majority of those voting determine the result. *Laker Airways, Ltd.*, 8 NMB 236, 253 (1981) (remedy developed in response to one of "the most egregious violations of employee rights in memory").

4. **Delta routinely misstated Board procedures, rulings and law which had the effect of confusing employees.**
5. **One-on-One Meetings.** A Delta Supervisor conducted one-on-one meetings designed to influence Sim Techs not to vote for the union.
6. **Surveillance.** Delta had managers conduct surveillance to discourage employees from talking about the benefits of a union contract.
7. **Discriminatory Treatment.** IAM alleges instances of discriminatory treatment including denying a union representative access to Atlanta break rooms and allowing the distribution of a petition during work hours contending that Sim Techs were properly in the Mechanics and Related Employees craft or class.

Delta submitted numerous declarations with its response, including those from EVP, Human Resources and Labor Relations, Michael H. Campbell; VP, Compensation, Benefits and Services, Robert Kight; Director of Technical and Operations Support, Michael Wysocki; Supervisor-Simulator Support, Barbara Price; and Supervisor, Simulator Support, Richard Maas. Delta also provided numerous exhibits and contends the following:

1. **Pay Raise.** Delta provided documents and declarations showing that beginning in April 2008 when the merger had been approved, then CEO and President Richard Anderson publicly committed to Delta's noncontract employees that "upon closing of the merger, Delta front line employees will receive pay increases that will continue our progression toward industry-standard pay for all work groups by the end of 2010." Delta stated that it did not accept the IAM's offer to increase pay rates provided in the NWA-IAM Sim Tech agreement as it wanted to align pay, benefits and work rules but would not piecemeal the process.
2. **Use of Seniority Integration Committees.** Delta contends that it was legally required under the McCaskill-Bond legislation to create seniority integration committees even before representation was resolved.
3. **The various statements complained about by the IAM are truthful and protected by the First Amendment.**
4. **IAM's assertions are unspecific, and in some instances hearsay, and are not supported by substantive evidence as required by the Board's Manual Section 17.** Delta provided declarations denying the allegations made by the IAM regarding promises to change work schedules, one-on-one meetings, surveillance, and discriminatory treatment.

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Delta concludes by stating that the IAM's campaign was robust and utilized multiple forms of communication. Finally, Delta comments that the allegations do not justify a *Laker* ballot.

After reviewing the submissions provided by Delta and the IAM, I find that because the IAM's allegations and supporting evidence if true, would warrant a finding of election interference, the IAM has presented a *prima facie* case of election interference. The Board will commence its investigation and will be in contact with the participants to schedule interviews and an on-site investigation.

Sincerely,

A handwritten signature in blue ink that reads "Mary L. Johnson". The signature is written in a cursive style with a large, looped initial "M".

Mary L. Johnson
General Counsel