



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the Application of the	39 NMB No. 15
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO	CASE NO. R-7257
alleging a representation dispute pursuant to Section 2, Ninth, of the Railway Labor Act, as amended	FINDINGS UPON INVESTIGATION— DISMISSAL
involving employees of	December 9, 2011
DELTA AIR LINES, INC.	

This determination resolves election interference allegations filed by the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM or Organization) involving employees of Delta Airlines (Delta or Carrier). For the reasons below, the National Mediation Board (NMB or Board) finds that the laboratory conditions were not tainted.

PROCEDURAL BACKGROUND

On July 1, 2010 the IAM filed an application with the Board pursuant to the Railway Labor Act¹ (RLA or Act), 45 U.S.C. §152, Ninth (Section 2, Ninth), requesting the Board to determine whether Delta and Northwest Airlines, Inc. (Northwest or NWA) were operating as a single transportation for the craft or class of Passenger Service Employees. At Northwest, the IAM was the certified representative of the Passenger Service Employees craft or class pursuant to NMB Case No. R-5663, *Northwest Airlines, Inc.*, 14 NMB 259 (1987). The employees in the Passenger Service Employees craft or class at Delta were

¹ 45 U.S.C. § 151, et seq.

unrepresented. The Board determined that Delta and Northwest were a single transportation system known as Delta for the craft or class of Passenger Service Employees² and proceeded to address the representation issues. *Northwest Airlines, Inc./Delta Air Lines, Inc.*, 37 NMB 382 (2010). On October 7, 2010 the Board authorized an election. The voting period began on November 2, 2010. The tally was held on December 7, 2010.

The December 7, 2010 Report of Election Results reflected that a majority of votes cast was for no representation. There were 15,436 eligible voters. Of the 12,518 votes cast, 3,638 were votes for the IAM, 134 were write-in votes for representatives other than the IAM, and 8,746 were votes for no representation. Therefore, on December 8, 2010, the Board issued a Dismissal. *Delta Air Lines, Inc.*, 38 NMB 35 (2010).

On December 16, 2010, pursuant to the Board's Representation Manual (Manual) Section 17.0, the IAM filed allegations of election interference seeking a re-run election with additional measures "to ensure true free choice of a representative." Delta responded on January 25, 2011. In its response, Delta raised questions about the IAM's conduct during the election. The IAM filed an additional response on March 15, 2011 and Delta replied on April 15, 2011. On June 6, 2011, the Board notified the participants that an investigation was necessary to determine whether laboratory conditions had been tainted.

From July through September 2011, Investigator Eileen M. Hennessey, along with other NMB Investigators, conducted an on-site investigation and interviews with Delta management, randomly selected employees, and IAM witnesses in Atlanta, Georgia; Salt Lake City, Utah; Tampa, Florida; Portland, Oregon; Seattle, Washington; Minneapolis, Minnesota; Hibbing, Minnesota; Boston, Massachusetts; Detroit, Michigan; New York, New York; Los Angeles, California; and Honolulu, Hawaii. In addition, the investigators interviewed Passenger Service Employees via telephone. This determination is based upon the entire record in this case.

ISSUES

Were the laboratory conditions for a fair election tainted? If so, what is the appropriate Board response?

² In this decision, the pre-merger Northwest employees are referred to PMNW and the pre-merger Delta employees as PMDL.

CONTENTIONS

IAM

The IAM's interference allegations include the following: Delta repeatedly commanded that their employees "MUST VOTE"; Delta deceptively represented that it was part of the official voting process; Delta's manipulation of employees into voting from company computers was improper surveillance, or at a minimum, created an impermissible impression of surveillance; Delta engaged in a massive and omnipresent anti-IAM campaign designed to so overwhelm employees that their free choice was suppressed; Delta discriminatorily denied the IAM equal access to employees, to post information, to discuss union matters, to wear pro-IAM insignia and the like; Delta held nearly daily captive audience meetings and one-on-one meetings throughout the system to convey anti-IAM information and misinform employees about voting; Delta managers system-wide made threats or promises tied to representation status; Delta habitually engaged in surveillance and intimidation designed to make employees fearful of supporting the IAM; Delta undertook unilateral changes attempting to convey that the IAM was not necessary and Delta would not negotiate with the IAM even when it had to; Delta refused to provide a nearly 10% pay increase to Northwest IAM members despite the IAM's approval of such an increase; Delta routinely misrepresented Board precedent, rulings, and the RLA in a methodical effort to confuse employees; and Delta is engaging in post-election interference.

The IAM seeks a re-run election using a mail ballot and the following remedies from the Board: 1) mandate that IAM representatives be allowed to hold meetings that are not monitored by supervisors in the workplace in non-work areas and during non-work time; 2) mandate that IAM representatives and Delta employees be allowed to staff "Ask Me" tables and post pro-IAM materials on bulletin boards and workplace walls and to freely distribute materials in the break rooms; 3) mandate that pro-IAM employees be allowed to wear t-shirts, pins, and wristbands and drink from coffee mugs displaying their support of the IAM; 4) mandate that IAM representatives and Delta employees be allowed to address employees during briefings and team meetings to promote the union; 5) mandate that IAM should be permitted to host a page on DeltaNet³ talking about the benefits of the union; 6) order Delta to give the IAM an updated mailing list of all eligible voters and access to Delta employee email addresses for eligible Passenger Service Employees; and 7) issue a Board notice, mailed to employees' homes and posted at the workplace, emphasizing

³ DeltaNet is Delta's internal website for employees that requires login and password for access to certain portions of the website.

that there is no requirement that any employee vote, that employees have the right to exercise a “write-in” option, and that if an employee chooses not to vote, that decision is not counted as a vote for or against representation. If the Board chooses not to order a re-run election with a mail ballot, the IAM seeks the following additional safeguards: prohibiting voting from Delta-issued computers or telephones (highlighted in its notice to employees) and prohibiting Delta from posting the NMB’s hyperlink on DeltaNet and in e-mails to employees.

DELTA

Delta responded to the IAM’s interference allegations with the following contentions: Delta’s statements were truthful and constitutionally protected; Delta leaders consistently urged employees to vote in the privacy of their homes; Delta does not monitor personal use of Delta telephones, computers, or Delta’s intranet portal, DeltaNet, by its employees, and does not know whether any employees have voted in NMB representation elections by means of company telephones or computers; the total number of IAM communications more than doubled the total number of Delta communications, and none focused on educating voters on the changed rules; Delta reminded its Leaders to follow the applicable Advocacy Policy; voluntary meetings discussing the election frequently followed “shift turnover” briefings, but all Leaders were trained to remind employees that the briefings were “voluntary”; Delta did not deny pay increases or promise pay increases to influence votes; the presence of supervisors in non-work areas does not amount to interference; Delta did not “undermine” the IAM by making changes to its payroll periods at LGA and JFK and did not hire new employees to undermine the IAM; Delta did not extend the 2010 pay increase to PMNW Passenger Service employees because Delta had committed to continue to apply the pay, benefits, and work rules specified by the pre-merger IAM contract as the status quo pending resolution of representation issues; and Delta did not misrepresent Board rules or procedures.

With regard to the allegations that the Carrier is engaging in post-election interference, Delta states that after the vote count employees asked for a process by which they could submit information about what had occurred during the election. Based on these requests, Delta created a place on DeltaNet where employees could voluntarily choose to submit information and to express their views about the IAM’s claims of interference. Finally, Delta alleges that the IAM mounted a massive two year campaign to scare and intimidate Delta employees.

FINDINGS OF LAW

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

I.

Delta is a common carrier as defined in 45 U.S.C. § 181, First.

II.

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

III.

45 U.S.C. § 152, Third, provides in part: “Representatives . . . shall be designated . . . without interference, influence, or coercion”

IV.

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.” This section also provides as follows:

No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees . . . or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization

DISCUSSION AND FINDINGS

I.

The Laboratory Period

The Board generally holds that laboratory conditions must be maintained from the date the carrier becomes aware of the organizing drive. *Delta Air Lines*, 39 NMB 53 (2011); *Stillwater Central R.R., Inc.*, 33 NMB 100 (2006); *Mercy Air Serv., Inc.*, 29 NMB 55 (2001). However, in the absence of extraordinary circumstances, the Board will not consider evidence of occurrences prior to one year before the application was filed. *Delta Air Lines, Inc.*, 30 NMB 102 (2002). Therefore, laboratory conditions had to be maintained beginning in July 2009, one year prior to the filing of the IAM's application.

II.

Applicable Legal Standard

During election campaigns, a carrier must act in a manner that does not influence, interfere with, or coerce the employees' selection of a collective bargaining representative. *Delta Air Lines, Inc.*, 37 NMB 281 (2010); *Cape Air (Hyannis Air Serv., Inc.)*, 37 NMB 35 (2009); *Stillwater Central R.R.*, 33 NMB 100 (2006); *AVGR Int'l Bus. Inc., d/b/a United Safeguard Agency*, 31 NMB 419 (2004); *Pinnacle Airlines Corp.*, 30 NMB 186 (2003). The Supreme Court in *Texas & New Orleans R.R. Co. v. Brotherhood of Ry. and Steamship Clerks*, 281 US 548, 568 (1930) defined the meaning of the word "influence" in Section 2, Ninth of the RLA as "pressure, the use of the authority or power of either party to induce action by the other in derogation of what the statute calls 'self-organization.'"

When considering whether employees' freedom of choice of a collective bargaining representative has been impaired, the Board examines the totality of the circumstances as established through its investigation. In such an evaluation, each conclusion may not constitute interference in and of itself, but when combined with other factors, the totality evidences improper interference. *Frontier Airlines, Inc.*, 32 NMB 57 (2004); *Piedmont Airlines, Inc.* 31 NMB 257 (2004); *Mercy Air Serv., Inc.*, 29 NMB 55 (2001).

III.

Carrier Communications

The IAM asserted that the Carrier conducted a massive, misleading and overwhelming anti-union campaign designed to suppress employee free choice. In addition, the IAM maintained that that the Carrier's "systematic abuse of its internal website ... 'DeltaNet' amounts to gross interference."

The Carrier responded that it was the IAM that mounted a massive campaign calculated to intimidate workers and that Delta's communications responded directly to the IAM's communications. Delta maintained that its communications with employees were accurate, constitutionally protected, and essential to educate employees to potentially misunderstood aspects of the Board's voting rules. Delta stated that it trained its managers and supervisors about obligations under the RLA. In addition, Delta asserted the IAM had numerous avenues of communication to Passenger Service Employees.

Employees "Must Vote"

The IAM argued that Delta repeatedly "commanded" employees that they "MUST VOTE" through pop-ups on DeltaNet, and through communications from Delta's Chief Executive Officer, Richard Anderson. On October 15, 2010, Anderson sent out a message to employees that was put up on DeltaNet. Anderson stated: "Every single person at Delta needs to cast a vote - I can't say it enough. Regardless of what your point of view is, everybody has to cast a vote." The IAM stated that this message "flowed down through every level of supervisor."

The IAM argued that DeltaNet is a password protected site and whenever an employee logs into DeltaNet, the Carrier knows precisely who is accessing the site. The IAM stated that since Passenger Service Employees typically log in and out of the computer system multiple times per day, an agent was "likely to see Delta's 'MUST VOTE' or 'Vote Now' pop-up anywhere from 125-750 times during the 5 week voting period alone!" The IAM concluded that hearing repeated messages that they "must vote" hundreds of times during the voting period coerced employees into thinking that abstention was not an option. The IAM stated that since one of the reasons for the NMB's rule change was to allow employees an abstention option, Delta's "MUST VOTE" message was a gross misrepresentation of the Board's rules.

Passenger Service Employees access DeltaNet for a variety of reasons. Generally speaking, Passenger Service Employees follow a log in sequence at

the start of a shift. First, they log into a computer system. Once they are logged into the computer, employees may log into a specific system. For example, Reservations Agents log into the Customer Management System (CMS) to make reservations for a passenger; a Customer Service Agent may log into Delta Term to check in a passenger or log into the Knowledge Management (KM) System for reference on visa requirements. Passenger Service Employees interviewed distinguished between logging into the system the “short way,” where you had access only to limited aspects of the system, such as checking in passengers, and logging into the system the “long way,” where you could access links to other sites within DeltaNet such as operational information, payroll and the KM reference pages.

Passenger Service Employees do not specifically log into DeltaNet; they click on the Explorer icon after initially logging into the computer system. The opening page of DeltaNet gives employees operational information. From this home page, Passenger Service Employees can click on links and go to other sections of DeltaNet. Some of these sections are further password protected such as sections dealing with pay and benefits or individual employee performance statistics. Employees can also access the email system from DeltaNet.

During the election period, when an employee logged into DeltaNet, a dialogue box popped up that read “Decision 2010 - Whether you are casting a YES or NO vote you MUST VOTE to be counted. Click here for more information.”

When the NMB voting rule changes became effective, the Carrier stated that it started a communications campaign focused on educating Delta employees who had unresolved representation questions about the new voting rules.⁴ Delta stated that the pop-up message which appeared on DeltaNet and in other communications, stating that an employee must vote in order to be counted, was accurate and truthful and “integral to try to ensure that employees knew that not voting was no longer considered as a vote against representation.”

⁴ On July 1, 2010, the NMB’s representation rule change became effective. Under the new rule, in order to be certified as the collective bargaining representative, a union must receive a majority of the valid ballots cast rather than valid votes from a majority of eligible voters. The representation election in the Passenger Service Employees craft or class at Delta was among the first elections run under the new election rule.

None of the employees interviewed believed that voting was mandatory. Employees stated that they understood the “you must vote” message to mean that they had to cast a vote in order to participate in the election.

Delta Undermined Employee Confidence in the Voting Process

The IAM argued that Delta undermined the voting process by implying to employees that elections using the new voting rules were unfair. On September 23, 2009, Anderson issued a memo to employees titled “ATA, Delta Opposed Request to Change Union Election Voting Rules.” In the memorandum, Anderson stated: “We do not believe the NMB has the authority to change the voting rules. If they were to adopt the requested change it would be an unprecedented exercise of authority.” The memo also contains Q & A’s that question the Board’s motivation in engaging in a rule change after 75 years. Q&A Number 3 asks:

Why does Delta believe this requested change is unfair?

We believe a union must have the support of a true majority of the entire workgroup in order to be effective and we believe politics is not a good enough reason to change a rule that has worked well for unions and employees. The NMB has agreed with this position for 75 years.

Delta management also encouraged employees to write the Board and oppose the rule change. Delta sent a memorandum and template letter to employees if they wished to voice their concerns about the rule change. The letter stated:

Regardless of your thoughts on the rule change itself, Delta has significant concerns that the NMB and the unions have targeted Delta and Delta people for discriminatory treatment. . . . If Delta people wish to express their views, they have the right to contact their elected officials and the NMB. There is absolutely no obligation to do so. However, in response to many employee requests, we offer the attached letter as a template if employees wish to use it to write to the NMB.

Delta stated that it has a First Amendment right to express its views on union representation issues. *US Airways, Inc. v. NMB*, 177 F.3d 985 (D.C. Cir. 1999).

The employee interviews reflected that some employees read articles and saw videos on DeltaNet and others heard from managers about the NMB's rule change. Most employees remembered the discussion of the rule change in the context of the message that "you must vote to be counted" rather than bias on the part of the NMB.

Delta said Not Voting was a Yes vote

The IAM alleged that Delta misrepresented the meaning of not voting to suppress the "yes" vote. The IAM alleged that Delta told employees that if they did not vote, it would amount to a vote for the union. Specifically, the IAM provided statements from two employees. One employee stated that he/she heard that a manager called an employee into the office and told the employee was that not voting was "like voting yes for the union." The other statement said that a manager in a briefing stated "if they did not vote it would be considered a 'yes' vote for the union."

Delta asserts that allegations of isolated incidents do not invalidate an election of 15,000 voters. For allegations to support a finding of interference by the Board, there must have been a "systematic carrier effort" to undermine employee free choice.

None of the employees interviewed stated that they thought that not voting was the same as voting for the IAM.

Decertification

The IAM argued that Delta told employees that if the IAM wins, the employees would be represented for life because the Board did not adopt an "equal" decertification procedure at the time it changed the rules. The IAM stated that "Delta repeated the myth of no decertification everywhere." The message to employees that there was no procedure for decertification was communicated by various managers in direct communications, memoranda, videos on DeltaNet and DeltaTube, and audio messages.

A May 10, 2010 Memo from Neel Shah, Vice President, Cargo, stated:

Even more troubling [about the new Board rules] is that the NMB did not provide employees with a comparable decertification process. By not including a comparable decert process in this change, the NMB has made it easier for the IAM to be voted in and nearly impossible for large workgroups like ours to return to union-free status. We strongly believe that you should always have

the right to an equal process to decertify a union and return to union-free status.

Similar memos from Allison Ausband, Vice President Reservations Sales and Customer Care and Gil West, Senior Vice President--Airport Customer Service (ACS), were sent out to Passenger Service Employees in other divisions on the same day.

Delta distributed system-wide a series of campaign flyers with a football theme entitled "Keys to the Game, 10 Big Game Changers." The fifth flyer in this series deals with the decertification process. One bullet states: "There's No Turning Back. Under the voting rules for airline employees, the decertification process is highly complex. History has shown that it is virtually impossible for a large, widespread group like ours, once unionized, to become non-union under rules like these."

Delta responded that it accurately described the Board's "straw man" process for decertification. The Carrier also stated that its communications accurately reported that based on its research it is not aware of the "straw man" process working to decertify any group larger than 145 employees.

Most of the Passenger Service Employees interviewed did not remember hearing any discussion of the decertification process by managers or reading material about decertification on DeltaNet. Some did recall hearing that it would be difficult to have another election.

Write-in Votes

The IAM stated that Delta misrepresented the "write-in" vote option, misdirecting employees to cast "no" votes instead. On July 1, 2010, West, Shah and Ausband communicated with employees in their respective divisions that the IAM had filed an application with the NMB seeking to represent the craft or class of Passenger Service Employees. The memos instructed employees that under the new rules "if you do not want IAM representation, you will have to vote 'No'."

During the election period, the Carrier communicated with employees regarding the write-in option during voluntary briefings, and through pamphlets, flyers, and DeltaNet. For example, the Carrier stated "[u]nder the NMB rules, almost anything entered into the write-in section by a voter - including a blank vote - may be considered either a vote for union representation or a non-vote, either of which could help the IAM win." Instructions the Carrier distributed, entitled "How to Vote by Internet",

contained examples of the representation voting options in NMB elections and under the write-in option the Carrier added the following parenthetical: “Write-in’ is likely to be considered either a vote for union representation or a non-vote, either of which could help the IAM win.”

Delta responded that it truthfully told employees that write-in votes could affect the outcome of the election, and could help the IAM win the election, both by reducing the number of “no” votes and because, under the Board’s rules, “no representative” could not be an alternative in a run-off election. Delta contends that its statements are both objectively true and constitutionally protected.

Most employees interviewed do not remember managers discussing “write-in votes” or run-off elections. Employees interviewed did not express any confusion about the write-in option and were able to distinguish between the choice to vote for no representative, the IAM, or write-in a vote for “any other organization or individual” to represent them.

Delta Represented That It Was Part of the Voting Process

Within DeltaNet the Carrier had a “Decision 2010” section containing information about the representation elections. Within the “Decision 2010” section, the Carrier describes a three step voting process: first, “visit your divisional “Decision 2010” page or talk to your leaders to get the facts;” second, “the NMB will mail voting instructions to your home;” and third, “go to nmb.gov to cast your vote. The rules have changed - vote to be counted.” The IAM argued that the Carrier misled employees into thinking that an important step in the voting process was listening to Carrier “propaganda.”

The IAM stated that the portrayal of the Carrier as part of the official voting process was not an isolated event limited to one posting on the “Decision 2010” page. In briefings, flyers, and messages from managers, employees were instructed: “[i]f you do not receive your VIN and PIN from the NMB, please contact your leader for information on how to request it.” Delta also issued a series of videos on DeltaTube, and a DVD sent to employees’ homes that were titled “Instructions for Voting” which purported to walk employees through the voting process. The IAM argues that “only the Board can issue official voting instructions and Delta’s effort to give the employees biased ‘instructions for voting’ attempted to usurp the Board’s role and misdirect the employees to believe that Delta was involved in the official voting process.”

Delta responded that the IAM’s allegations that the Carrier misled employees into thinking that the Carrier was part of the voting process are

erroneous. West stated that all Carrier communications to employees regarding representation matters clearly identified Delta as the source of the information and contained the Delta name and/or logo. West also stated that:

Delta has a unique culture and communication with our front line employees [is] an important part of that culture. We trained the PL's [Performance Leaders] to answer front line employees' questions regarding representation. It is reflective of Delta's culture that they (front line employees) view the PL as a supportive resource and that they be able to go to the PL for information. We stressed legal compliance and taking the high road. Again, that is part of the DNA of Delta's culture. If an employee had a problem voting or did not receive a ballot, our PL's would tell them to contact the NMB.

...

There was no effort to state don't talk to the NMB. But again the PL's are a go to source that the folks have about anything. The PL has the resources to answer any questions regardless if it was HR, or technical, or if it was about the voting process. We would never encourage employees not to reach out to the NMB or any other government agency. It is just part of the culture of Delta to value open communication. The Leaders view it as their role to provide support to front line employees.

The overwhelming majority of employees interviewed stated that they had no difficulty voting; that the instructions were easy to follow and voting on-line or by telephone was convenient and straightforward. While some employees could not identify the NMB as the government agency that was conducting the voting process, all stated that they thought the vote was a neutral process. Most employees stated that they did not need any assistance in casting their vote. Most employees stated that if they needed assistance, they would have asked a co-worker, a union representative or contacted the telephone number on the voting instructions.

Delta Made Misrepresentations to Undermine the IAM

The IAM argued that Delta made campaign misrepresentations blaming the IAM for doing things which Delta knew never happened. The IAM contended that Delta: issued communications which suggested the IAM should pay dues money towards employee pensions which would be illegal; issued communications where Delta lied and said that the IAM raised dues

without telling members; faulted the IAM for not creating jobs; and alluded to the IAM harassing employees in messages to employees but did not provide the IAM with information so it could investigate the allegations.

Delta stated that it did not lie to employees about the IAM's dues increases. Delta maintains that it was correct when it stated that IAM dues were raised without any official notification to members and that the IAM's own evidence supports Delta's contention. Delta also stated that the IAM made job security and the threat that Delta would eliminate jobs a major campaign theme and Delta was entitled to respond to these accusations with statements that the Carrier was adding jobs not taking them away.

DISCUSSION

In *Mercy Air Serv., Inc.*, 29 NMB 55, 73 (2001), the Board cited its long-standing policy on carrier campaign communications:

Carriers have a right to communicate with their employees during election campaigns, but this right is 'not without limit, and even conduct which is otherwise lawful may justify remedial action when it interferes with a representation election.' In reviewing communications, the Board examines their content to see if they are coercive, contain material misrepresentations about the Board's processes or the Act, or combined with other Carrier actions, influence the employees in their choice of representative.

(Citations omitted.)

The Board has found interference where the communications include threats about consequences of voting for an organization (*Mid Pacific Airlines*, 13 NMB 178 (1986)); promises or withholding of benefits (*Petroleum Helicopters*, 25 NMB 197 (1998)); or misrepresentations of Board procedures (*USAir, Inc.*, 18 NMB 290 (1991); *Allegheny Airlines, Inc.*, 4 NMB 7 (1962)).

With regard to the misrepresentations of its processes, the Board has admonished participants in Board-conducted representation elections to "present the full and accurate story when informing employees about the election procedures of the Board." *Zantop Int'l Airlines*, 6 NMB 834, 836 (1979). In *Zantop Int'l Airlines*, the Board found that the carrier contaminated the "laboratory conditions" necessary for a fair election by, *inter alia*, misinforming its employees about the Board's voting procedures. The misrepresentation was

the statement in posters and letters to employees that employees should vote “no union” without indicating that such action would invalidate those ballots.⁵ 6 NMB at 835. In contrast, the Board has also repeatedly held that accurately portraying the way an employee can vote against union representation is not interference. *Delta Airlines*, 39 NMB 92 (2011); *Delta Airlines*, 39 NMB 53 (2011); *Delta Airlines*, 35 NMB 360 (2008); *Delta Airlines*, 30 NMB (2002); *Express I Airlines*, 28 NMB 431 (2001).

Most of the IAM’s allegations regarding Carrier communications in this case are very similar, if not identical, to its arguments in cases involving the Fleet Service Employees and Stock and Stores Employees. *Delta Airlines*, 39 NMB 130 (2011); *Delta Airlines*, 39 NMB 92 (2011).

Employees “Must Vote”

As discussed in the Stock and Stores election interference decision, 39 NMB 92 (2011), and Fleet Service election interference decision, 39 NMB 130 (2011), Delta’s communications campaign strongly encouraged employees to vote. Delta believed it had to “get out the vote,” as the rule change now requires employees to affirmatively vote no against representation if they do not want to be represented. *See Delta Air Lines, Inc.*, 39 NMB 53 (2011). The Board finds that Delta’s neutral statements encouraging employees to vote in a representation election and stating that employees must vote to be counted are non-coercive. Delta’s communications did not state that voting is mandatory and did not contain threats of adverse action for failing to participate in the election. Further, none of the employees interviewed believed that voting was mandatory. In sum, because Delta’s communications were neutral and non-coercive, the Board finds that the Carrier’s “Must Vote” message did not taint laboratory conditions.

Delta Undermined Employee Confidence in the Voting Process

As discussed in the Flight Attendant, Stock and Stores and Fleet Service decisions, it is well documented that Delta did not support the Rulemaking and expressed this view to its employees. Delta’s position was also expressed in its comments during the Rulemaking process and is addressed by the Board in the final rule. When interviewed by Board investigators, most employees remembered the Carrier’s discussion of the rule change in the context of the

⁵ Prior to the Board’s adoption of its new voting rule, the Board’s practice required a majority of eligible voters to cast valid ballots for representation in order for a union to be certified. A void ballot did not count and under the procedures set forth in its Representation Manual, the Board would void a ballot cast for no representative.

message that “you must vote to be counted” rather than bias on the part of the NMB. The Board finds that Delta’s communications about the NMB and the rule change do not constitute election interference. *See also Delta Airlines*, 39 NMB 130 (2011); *Delta Airlines*, 39 NMB 92 (2011); *Delta Airlines*, 39 NMB 53 (2011).

Delta said Not Voting was a “Yes” vote

While there may have been isolated incidences where management officials misrepresented the meaning of not voting, none of the employees interviewed stated that they thought that not voting was the same as voting for the IAM. As the Board has found in prior cases, actions which might be objectionable if found to be part of “a systematic carrier effort,” do not taint laboratory conditions when they only occur in isolated instances. *USAir*, 18 NMB 290 (1991); *Northwest Airlines*, 19 NMB 94, 110 (1991).

Decertification

With regard to Delta’s statements about decertification, the Board finds that Delta did not materially misrepresent the process and interfere with the election. *Delta Airlines*, 39 NMB 130 (2011); *Delta Airlines*, 39 NMB 92 (2011); *Delta Airlines*, 39 NMB 53 (2011). *But cf. USAIR*, 17 NMB 377, 390 (1990); *Era Aviation*, 27 NMB 321, 338 (2000).

As the Board stated in recent determinations involving Delta Fleet Service Employees and Stock and Stores Employees “[w]hile Delta mistakenly suggests that decertification under the RLA was altered by the Rulemaking, Delta’s campaign material accurately describes the straw man process.” *See, e.g., Delta Air Lines, Inc.*, 39 NMB at 162. The basic information conveyed by Delta about the process for obtaining an election to replace or remove a certified union representative was not a misrepresentation of NMB processes.

Write-in Votes

Delta accurately described how a write-in vote could contribute to the IAM winning the election under the Board’s procedures. *See also Delta Airlines*, 39 NMB 130 (2011); *Delta Airlines*, 39 NMB 92 (2011); *Delta Airlines*, 39 NMB 53 (2011).

Delta Represented that it was part of the voting process

As the Board found in the other three Delta election interference decisions, Delta did not represent to employees that it was part of the official voting process. Carrier communications did not state or imply that Delta was

running the election. See *Delta Airlines*, 39 NMB 130 (2011); *Delta Airlines*, 39 NMB 92 (2011); *Delta Airlines*, 39 NMB 53 (2011). Moreover, Delta posted the required election Notices in work areas and provided the NMB's contact information for employees who had questions or needed duplicate Voting Instructions.

Delta Made Misrepresentations to Undermine the IAM

The IAM argues that Delta tainted laboratory conditions when it made "misrepresentations" regarding IAM dues, job creation and harassment of employees which "undermined" the IAM to employees. The Board finds that the statements made by the Carrier do not constitute interference. "Carriers have a right to communicate with their employees during election campaigns . . . [T]he Board examines their content to see if they are coercive, contain material misrepresentations about the Board's processes or the Act, or combined with other Carrier actions, influence the employees in their choice of representative." *Mercy Air Serv., Inc.*, 29 NMB 55, 73 (2001),

IV.

Surveillance

Surveillance of Computer Usage

i.

The IAM argued that the Carrier's manipulation of employees into using Delta equipment to vote was improper surveillance, or at a minimum, created an impermissible impression of surveillance. The Organization alleged that whenever an employee logged into DeltaNet using their company issued user identification name and password and then accessed the NMB's voting web site, the Carrier then had information about who accessed the voting web site. The IAM says that there is a distinction between voting at work and voting at work from a "password protected work site where the employee, through the password, has identified himself or herself." Because employees are being encouraged to vote after identifying themselves through their computer user identification and password, the IAM argues that the secrecy of the ballot was compromised or at least gives the appearance of being compromised.

The Organization stated that employees were warned that their computer usage *could be* monitored by Delta and that whether the Carrier actually monitored employee computer use is not relevant to the appearance issue.

The IAM cited disclaimers that Delta issues to employees which reference the Carrier's Human Resources Policy Manual:

3. Delta may monitor activity on the DeltaNet Employee Portal. Violations of company policy regarding the use of the DeltaNet Employee Portal may result in disciplinary action, up to and including termination of employment. To review the policy regarding corporate intranet use, please read HRPM1119.13

4. All transactional records, reports, email, software, and other data generated by or residing upon this system are the property of Delta Air Lines and may be used by Delta for any purpose. Report suspected violations immediately to the Information Security/Privacy Office (ISPO).

In addition to the Carrier's written disclosures to employees that employees have no expectation privacy when using a Delta computer, the IAM asserted that Delta acknowledged that it does monitor employees' computer usage in the Passenger Service Employees craft or class for a number of reasons including quality assurance and training purposes. The IAM also stated that Delta is a customer of NetWitness, a monitoring program that allows Delta to recreate everything done on its computers. The IAM further argued that the appearance of surveillance is heightened by the fact that many computers are located in secure areas of the airport where security cameras are omnipresent, "recording the image of every person who uses the computers and what time they did so."

ii.

Delta did not prohibit voting by means of company telephones or computers. However, Delta stated that it repeatedly urged employees "to vote in the privacy of their own homes." Delta argued that the IAM's allegations about misuse or abuse of technology on Delta's premises are entirely speculative and not supported by facts. Delta argued that the IAM provided no evidence that anyone at Delta breached the security of the NMB's encrypted voting website, or that anyone at Delta monitored voting activity. Delta also stated that the Board's procedures have been in place without any legitimate security concerns, for eight years. Delta contended that virtually all computers retain some form of electronic record of websites visited but that fact alone is meaningless absent evidence that this data was in fact accessed and monitored so as to interfere with a fair election. If the risk of monitoring is the basis for an interference finding, then Delta stated that any rules developed by the

Board must be equally applicable to computers and other devices provided by labor organizations.

Delta stated that it reserved the right to monitor or investigate possible misuse of its systems or equipment. Delta has approximately 45,000 personal computers and 90,000 telephones system-wide. Jay Fredericks, Delta's Managing Director, Information Technology, reported the following about whether Delta monitors employee use of computers:

All of these computers are enabled for some form of internet access. While there may be a record of what internet website(s) a user had accessed, Delta does not have the capability of monitoring how long the user was on an external website and what the user did once they accessed the website. If [an employee] used a Delta computer to link to the NMB website and from there went to the NMB voting website, it is not possible for Delta to monitor what the employee did when they accessed the NMB's voting website.

Fredericks stated that Delta does not routinely monitor personal use of Delta telephones, computers, or DeltaNet, by employees, and "does not know whether any employees have voted in the NMB representation election by means of company telephones or computers." Fredericks also stated that in the Reservations Department, "pursuant to a well-publicized policy, Delta does at times monitor the business use of Delta's reservations computers by Res agents as part of Delta's quality and performance evaluation process. Such monitoring is conducted, however, only when an agent is on call with a customer."⁶

Fredericks stated that Delta does not possess the technology that would allow the monitoring of employee system activities to determine how they voted or even if they voted on the encrypted BallotPoint website. Fredericks stated that Delta "only monitor[s] things that are viewed [as] detrimental to [the] environment – for example lots of activity could signal a virus, something exceptional or out of the norm. Or we monitor based on a formal request from HR/legal or corporate security" which would be triggered by an employee engaging in bad usage at work.

⁶ Reservations Agents are part of the Passenger Service Employees craft or class.

Fredericks stated that Delta uses NetWitness⁷ and described it as a “tool on the network part of the infrastructure that logs connectivity between Delta and the outside world. ... NetWitness watches the [computer] traffic between Delta and the outside world. NetWitness doesn’t identify who but could go back and link a computer to a website accessed. For an unencrypted website, NetWitness could get an approximate sense of what a person could have done. It would take a specially trained technician to do so and Delta did not attempt to do so with respect to the NMB voting process.” Fredericks further stated that if an employee were to go to an SSL⁸ encrypted website like BallotPoint, NetWitness “could not get insight – you would see data but it wouldn’t be readable in terms of data.” According to Fredericks, “NetWitness generates a huge amount of data which is overwritten often. If you had wanted me to track I am not sure we could have—[it would be] like tracking a needle in a haystack.”

Ausband stated that Reservations Agents were routinely monitored for “quality assurance” using a monitoring system by Equality. Ausband stated

A random percentage of our calls are recorded. Equality will put a percentage of each agent’s calls into a “bucket” and a manager is required to listen to 3 calls for each agent each month and the manager scores the agent’s performance on the call. When the manager evaluates these randomly selected calls they pull it up on the screen and can listen to the call and see what was on the screen that the agent was looking at while they were taking the call. So if the agent was looking at email or doing their banking, or on facebook, or on the NMB’s web site while taking a randomly selected, monitored call then the Manager could see that ---the manager could see whatever was on the screen that the agent was looking at. And the agents know this. We emphasize to agents that while they are taking a call they are to be focused on the customer.

In addition to establishing that Delta did not monitor how employees voted, the investigation also established that the vast majority of Passenger Service Employees did not vote on Delta computers. In fact, the Investigator’s

⁷ NetWitness is a Herndon, Virginia-based network security company that provides real-time network forensics and automated threat analysis solutions. It markets its flagship product NetWitness NextGen.

⁸ SSL is Secure Sockets Layer technology. Web servers and Web browsers rely on the Secure Sockets Layer (SSL) protocol to create a uniquely encrypted channel for private communications over the public Internet.

review of the election data revealed that 1,909 of the 12,518 votes cast were from a company computer.

iii.

In interviews, most employees stated that they voted using personal equipment. None of the employees interviewed stated that they felt pressured or coerced by the Carrier to vote using Delta equipment. Some employees interviewed stated that they were aware that there was a link to the NMB and then the voting website from DeltaNet but employees did not say that Delta directed or required them to use this link to access the voting website. Employees recognized that they had limited privacy on a company computer, and for this reason most employees interviewed stated that they preferred not to vote at work using Delta equipment. Employees also stated that they did not see voting banks of computers or telephones set up in the workplace during the election period. Nor did employees state that they witnessed group voting.

iv.

The Board has held that surveillance is a *per se* violation. *American Trans Air, Inc.*, 28 NMB 163, 180 (2000); *Petroleum Helicopters, Inc.*, 25 NMB 197 (1998). In addition, as the Board stated in *Petroleum Helicopters, Inc.*, *above*, the appearance or impression of surveillance is a sufficient basis for a finding of interference. However, in those cases where the Board found carrier interference based on surveillance, the Board also found other egregious carrier action such as ballot collection or discharging employees for signing authorization cards. *Sky Valet d/b/a/ Commercial Aviation Servs. of Boston, Inc.*, 23 NMB 276 (1996); *Laker Airways, Ltd.*, 8 NMB 236 (1981).

The Board has stated that employees should be “free to vote in the privacy of their own homes, without being subject to pressure from carrier or union officials.” See *Mercury Servs., Inc.*, 9 NMB 312, 320 (1982). The Board prohibits the creation of polling places and has long recognized the importance of providing employees with the opportunity to vote in private. Actions that impair the confidentiality of the voting process may constitute evidence of election interference. See *United Air Lines, Inc.*, 22 NMB 288, 320 (1995) (“The Board hereby reaffirms its policy that NMB elections are to be conducted in such a manner as to ensure ballot secrecy.”).

DISCUSSION

The IAM argued that since employees knew that Delta was capable of monitoring computer usage, this created the appearance of surveillance. While

few employees remembered specifically seeing a privacy disclaimer when signing into the Delta computer system, most employees stated that they were very aware that they had a limited expectation of privacy when using a Delta computer and thought that Delta had some capability to monitor computer use. Reservations employees, in particular, were aware of the Carrier's monitoring capabilities since their performance and computer use with regard to telephone sales is randomly monitored. Some employees stated during the interview that they chose to vote at home for privacy reasons. Employees were not manipulated into voting from Carrier computers. The investigation disclosed that employees voted where and how they felt most comfortable and for the overwhelming majority of Passenger Service Employees that did not include company computers or telephones.

As noted in the Fleet Service Employees decision and the Stock and Stores Employees decision, unlike in elections conducted prior to the NMB's rule change, whether an employee voted in this election did not indicate his or her support for the union. Before the rulemaking, the only way to vote "no" was to not vote so that asking an employee if they voted or discovering that an employee voted necessarily meant that the employee had voted for representation. With the rule change, voting no longer means voting for representation only. The mere fact that a person is known to have voted no longer carries the potential threat of reprisal and potential coercive effect that it did in prior elections. *See Delta Airlines, Inc.*, 39 NMB 130 (2011); *See Delta Airlines, Inc.*, 39 NMB 92 (2011).

The IAM equated Delta's permitting employees to vote using company equipment to "driving employees to the polling place", and collecting ballots or delivering ballots to employees, and thus compromised voter secrecy. The Board finds no credible evidence that Delta monitored its computer systems for employee voting activity or that the Carrier was capable of monitoring its systems to determine how or if employees voted. Therefore, the Board finds that Delta did not compromise the secrecy of the voting process by permitting use of its equipment to vote.

Surveillance of Union Activity

i.

The IAM also alleged that Delta engaged in physical monitoring of employees' union activities. Specifically the IAM stated the following: managers collected letters to the NMB from employees urging the Board not to change the rule and thereby monitored employee union support; managers approached union representatives when they were talking to members and asked questions

or otherwise attempted to intimidate employees; managers made it clear they were observing who took union materials or spoke with IAM supporters; PMDL employees were told not to talk with PMNW employees; and employees were told to deal directly with management.

ii.

The Carrier responded that IAM's claims of surveillance are unfounded and legally insufficient as evidenced by factually flawed declarations. Delta argues that the presence of supervisors in non-work areas does not amount to interference. Delta also asserted that monitoring of union activity on carrier property was necessary in order to enforce its Advocacy Policy.

iii.

Some employees stated to investigators that they perceived that they were more closely monitored by managers because of their union support. In Reservations, employees sign in at the beginning of a shift and must sign out using a specific code whenever they are not available to take calls during their shift. Some Reservations employees stated that they felt their time was more stringently monitored during the election period. PMNW agents at one call center reported that if they signed out under a union code to speak with their union representative, managers would ask them what they were speaking to the union representative about. IAM supporters interviewed stated that when they distributed material to employees in the workplace, they often did it covertly because they were being watched by management.

iv.

More active supervision of employees and increased monitoring of employee actions can be an element of surveillance or creating the impression of surveillance among employees. However, in those cases where the Board found carrier interference based on surveillance, the Board also generally found other egregious carrier action such as ballot collection or discharging employees for signing authorization cards. *Laker Airways, Ltd.*, 8 NMB 236 (1981); *Sky Valet d/b/a/ Commercial Aviation Servs. of Boston, Inc.*, 23 NMB 276 (1996). Where there is no connection between the alleged surveillance and any pattern of egregious activity such as discharge, the Board has found insufficient evidence of interference. *Delta Air Lines, Inc.*, 37 NMB 281, 313-14 (2010); *Delta Air Lines, Inc.*, 30 NMB 102, 117-18 (2002). *See also Aeromexico*, 28 NMB 309, 335 (2001) (Board found the evidence surrounding the organization's allegation of "surveillance, based on a heightened presence of management officials in hallways and break rooms, is contradictory and

speculative.”); *American Trans Air, Inc.*, 28 NMB 163, 176, 180 (2000) (A supervisor’s interaction with employees and a union organizer in smoking area did not support finding of interference based on surveillance).

As the Board has found in prior cases, actions which might be objectionable if found to be part of “a systematic carrier effort,” do not taint laboratory conditions when they only occur in isolated instances. *USAir*, 18 NMB 290 (1991); *Northwest Airlines*, 19 NMB 94, 110 (1991). The Board has also previously found that the increased presence of supervisors at very large carriers may be the result of normal business practices. See *Delta Air Lines*, 30 NMB at 117 (Stating that “it is not unusual for carrier management to increase their presence in . . . lounges during particular time periods to ensure compliance with carrier policies.”).

DISCUSSION

The majority of employees interviewed stated that they did not perceive an increased supervisory presence during the election period. To the extent that employees noted an increased supervisory presence, they generally noted it in the context that Delta managers gave voluntary briefings discussing the election and were available at certain times at “Resource Rooms” or “Ask Me” tables set up during the election (discussed in greater detail in allegations below).

The allegation of surveillance of union activity is interrelated with allegations involving the Carrier’s enforcement of its Advocacy Policy discussed in Section VI below. Union leaders interviewed stated that “we felt we were being watched and it was more difficult to talk to employees about the union. We had to sign out for union business and then go into a break room.” Richard Suarez the General Chairman of IAM District Lodge 143 stated, “basically under the new [Advocacy Policy] I could only speak with PMNW employees and only if I notified them (Delta management) in advance and then a manager would be present watching the employees who attended the meeting.”

At some stations during the election period, there was very little interaction between PMNW and PMDL employees because the work schedules and break rooms were not integrated. Some employees interviewed stated that they thought that this lack of integration was a deliberate tactic on the Carrier’s part to prevent PMDL employees from discussing the union with their PMNW counterparts. Some employees expressed the view that managers were monitoring interactions between PMNW and PMDL employees and that any interactions would be perceived as campaigning for the union or as support for

the union. However, most employees interviewed did not perceive that managers were engaged in surveillance for the purpose of monitoring union support. To the extent that employees noticed any change in managerial presence in the workplace, they attributed it to management's enforcement of the Advocacy Policy, or management communicating to employees about the election in voluntary briefings, "Resource Rooms" or "Ask Me" tables and not to surveillance. Based upon the investigation, there is insufficient evidence to find that Delta engaged in a systematic effort to surveil employees engaged in union activities.

V.

Pay Increase/Promises to Employees

i.

Delta announced on February 4, 2010 that "non-contract" (PMDL) employees would receive a pay increase effective October 1, 2010. The IAM argues that Delta linked the pay raise to the election by stating that union members (PMNW) would not receive the pay raise. The IAM argued that the Carrier's disparate treatment of PMNW employees with regard to the October 2010 pay increase was a calculated effort on the part of the Carrier to send a message to employees that if they voted against the union they would receive a large pay increase.

On February 5, 2010, IAM General Vice President Robert Roach wrote to Delta to remind it that nothing in the IAM contracts prevented it from providing these raises to contract employees. Delta responded with a letter posted on DeltaNet and accessible to all employees which stated that it was the IAM's failure "to support expedited resolution of post-merger representation issues and seniority integration that is preventing the alignment of the compensation package."

In addition, the IAM contended that Anderson and Ausband, made comments on the day the raise went into effect implying that the only way to get the raise was for Passenger Service Employees to vote against the union. The IAM also alleges that Carrier officials made comparisons to the Simulator Technicians who voted against the union and subsequently received a pay increase.

A transcript of Ausband's October 1, 2010 "Audioline" with Reservations employees stated in part:

When the issue of representation is resolved, regardless of the outcome, we'll immediately begin the work of aligning pay, benefits and work rules of all Reservations Sales employees. While we can't make promises or guarantee what will happen to pay, benefits, or work rules based on the outcome of the election, you can look at what has occurred in other pre-merger Northwest workgroups that have already resolved representation and have transitioned to Delta's non-contract pay and benefits. Those workgroups include the Aircraft Maintenance Technicians, meteorologists and most recently, just this week in fact, the Flight Simulator Technician or Sim Tech group. With the majority of Flight Simulator Technicians choosing to have a direct relationship with Delta's leaders, and the results of the second election conducted by the NMB going uncontested by the IAM, the Sim Techs have transitioned to the Delta pay scale. They will also now participate in the Delta profit sharing plan for the entire calendar year, without pro-ration, as well as now be eligible for the monthly Shared Rewards Program.

On October 1, 2010, Anderson issued a memo to Delta employees which stated that the "process of [pay] alignment began earlier this week for our flight simulator technician group, who recently voted against IAM representation."

ii.

Delta stated that the October 1, 2010 pay increase was pre-planned, and since its emergence from bankruptcy, the Carrier had consistently and publicly committed to its non-contract employees that they would receive "industry standard" pay by the end of 2010. In addition, Delta argued that it made payments to IAM contract employees consistent with the PMNW collective bargaining agreements (CBA's).

Delta asserted that it relied on the Board's election interference decision involving the Simulator Technicians⁹ which involved the same October 2010 pay increase. There the Board found that, "Delta provided ample evidence that it had consistently communicated to its employees, since emerging from bankruptcy, that it would provide pay increases so as to bring employees to industry-wide standard by the end of 2010." *Id.* at 308. In the Simulator Technicians case, the Board found the timing of the pay increase announcement on the first day of voting to be interference – not the pay increase itself. *Id.* at 309 ("there is insufficient evidence to support the timing

⁹ *Delta Air Lines, Inc.*, 37 NMB 281 (2010).

of the February 4, 2010 announcement, particularly with a delayed effective date until October 1, 2010.”). Therefore, Delta argued that its managers were not prohibited from telling non-contract employees that they would receive a pay increase, as it was pre-planned and had been found permissible in the Simulator Technician decision. *See Delta Air Lines, above.*

Delta offered numerous Carrier communications spanning over a three year period regarding its plans to increase pay rates to “industry standard” by the end of 2010. This compensation strategy was formulated in 2007 when Delta was emerging from bankruptcy. According to Robert Kight, Delta’s Vice President — Compensation, Benefits and Services:

Delta launched a major communications effort to make sure that all Delta employees became aware of the commitments which Delta was making to them. In January, 2007, Delta mailed a brochure to employee homes ... which included the following statement regarding pay:

Pay: It’s going up. We’re moving toward an industry standard pay structure to ensure your pay rate becomes and remains competitive with network and low-cost carriers. . . . While we won’t be able to do that all in one step, we’ll take the first step in that direction this summer. . . .

Kight further stated that Delta has followed a pattern of annual announcements about future pay increases. Delta increased pay in 2007 and 2008.

On April 14, 2008 Anderson, announced that “upon closing of the merger, Delta frontline employees will receive pay increases that will continue our progression toward industry standard pay for all work groups by the end of 2010.” Later in that year, on November 11, 2008, Delta announced pay increases for non-contract employees to be effective January 1, 2009. Kight states that as part of its budget process Delta reviews pay increases for 2010 in the Fall of 2009. Delta management officials repeated its commitment to increasing employee pay to the “industry standard” in employee forums during the Fall of 2009. In a forum on November 11, 2009, Delta President Ed Bastian responded to an employee question regarding future wage increases by stating: “[w]e’re in the middle of the 2010 budget planning cycle and decisions and timing on pay adjustments are part of that process. We expect to announce our plans by the end of this year.”

On February 4, 2010, Anderson sent a memo to Delta's employees entitled "Fulfilling Our Commitment: Industry Standard Pay" which announced the details of the 2010 pay increases and stated the following:

Over the past few years, we have frequently discussed our commitment to reach industry standard pay at the top of the scale by the end of 2010 and taken regular steps to reach that goal. On October 1, we will take the final step in fulfilling that commitment by giving pay increases to U.S.-based frontline, non-contract employees. . . . In addition to honoring the commitment made to Delta people three years ago. . .

The majority of the crafts or classes for which the IAM sought representation¹⁰ are located in the Airport Customer Service (ACS), Cargo and Reservations Divisions, which include almost all Delta employees classified in either Fleet Service Employees craft or class or the Passenger Service Employees craft or class. On the same day that Anderson announced the 2010 pay increase, senior management officials also communicated to employees in their respective divisions about the pay increase. These announcements went to both PMDL employees, who would be receiving the increase, and PMNW employees, whose pay was set out based on the pre-merger NWA/IAM CBAs and who would not be receiving the wage increase. In the announcements Delta stated "as we have said on countless occasions, we want to align ALL pay, benefits and work rules as quickly as possible, but we can only begin that process after representation is resolved." (Emphasis in the original).

Delta further asserted that it repeatedly emphasized that the pay increase for non-contract employees was not contingent on the outcome of the representation elections. In multiple statements that Delta issued during the election period, the Carrier addressed questions from employees dealing with what effect the outcome of the union election would have on pay increases. In publications called "Rumor Control", the Carrier responded to employee questions regarding pay and benefits. On April 15, 2010, the Carrier issued the following:

Rumor: If the union is voted in, will the [PMDL] employees have to take a pay cut while a contract is worked out? (04/15/10)

Response: Our pay increase announcement was not dependent on the outcome of union representation elections. If the IAM were to

¹⁰ During the election period for Passenger Service Employees, the IAM also sought to represent Stock and Stores Employees (R-7258) and Fleet Service Employees (R-7256).

be voted in to represent any combined post-merger workgroup before October 1 and if a new collective bargaining agreement was not in place before October 1, we believe that PMNW employees would continue to be paid based on the pre-merger NWA-IAM contract and PMDL employees would continue to be paid based on the Delta pay scale, which would include the new pay rates effective as of October 1, 2010. We do not know what position the IAM would take on that question.

Kight further stated that the calculation of the “industry standard pay rates” was transparent “in order to confirm to our employees that Delta was in fact delivering on its prior commitments and not in any way ‘adjusting’ the outcomes to Delta’s benefit.” Delta posted pay charts for PMDL ACS, Cargo, Reservations, and Stores employees which show the formula for determining the “industry standard pay rates” for each work group. Similar charts from 2007, 2008, and 2009 show Delta’s pay rates progressing toward the “industry standard.”

Kight maintained that the timing of the October 2010 pay increase was consistent with Delta’s longstanding practice. Kight states that Delta initially considered raising pay in two increments in 2010, one on July 1 and another at the end of 2010 but ultimately decided to make a single increase effective October 1, 2010, the midpoint between the two dates. Kight emphasized that at the time of the Carrier’s February 2010 announcement, Delta had no knowledge whether or when there would be representation elections for Fleet Service, Passenger Service or Stock and Stores Employees.

Kight stated that PMNW received contractual pay increases in 2008 and 2009. Kight further stated that the IAM’s argument that Delta should have extended the pay increases to PMNW employees is:

disingenuous at best. IAM is well aware that each of their collective bargaining agreements with Northwest was a complicated package of terms which in the aggregate establish the total costs of the contract. IAM knows that changing one item alone, such as increasing pay, works totally to the advantage of IAM, without allowing Delta the opportunity to align pay, benefits and work rules across the board. To have done so would have been to prefer the IAM represented employees and could well have led to charges of disparate treatment by the Delta non-contract employees.

iii.

Employees interviewed by the investigator stated that the pay increase was discussed at briefings and in flyers and in other material distributed by Delta. Employees stated that supervisors discussed the pay increase in briefings and explained that only the non-contract employees would receive it as Delta was abiding by the CBA for the contract employees. PMNW employees reported remembering the Carrier's discussions of the pay raise more than PMDL employees. Many of the PMNW employees interviewed were displeased that they had not received the general pay increase. Some employees interviewed stated that they accepted Delta's explanation that it was abiding by the PMNW CBA. Other employees stated that they felt Delta's reasons for not extending the pay increase to PMNW employees were a pretext and that Delta could have granted the pay increase to all employees.

iv.

The Board has found interference where a carrier grants or withholds benefits to influence the outcome of a representation dispute. *See, e.g., Petroleum Helicopters, Inc.*, 25 NMB 197, 229 (1998). *See also Delta Airlines* 39 NMB 92 (2011); *Delta Air Lines*, 39 NMB 53 (2011).

In *Petroleum Helicopters, Inc.*, above, the Board found the timing of an announcement dealing with a general wage increase, within weeks of the union's application, coupled with a memorandum reiterating the four percent general wage increase the day before the ballots were mailed, in concert with the fact that the general wage increase was derived at differently from past increases, constituted "promises to confer benefits in an effort to persuade employees to remain unrepresented." *See also Delta Air Lines*, 37 NMB 281, 308-309 (2010) (general wage increase was pre-planned and lawful but the timing of the pay increase announcement on the first day of voting in the election constituted election interference); *Stillwater Central R.R., Inc.*, 33 NMB 100, 141 (2006) (laboratory conditions tainted by a wage increase to 11 out of 20 employees in the craft or class during the laboratory period without any evidence that the pay increases were pre-planned or pursuant to a set schedule); *Evergreen Int'l Airlines*, 20 NMB 675, 706-707 (1993) (unscheduled increase in per diem rates was timed to effect the election); *Laker Airways*, 8 NMB 236 (1981) (increasing pay immediately before the election period was one of the factors contributing to a finding of election interference).

Changes in pay which were planned before laboratory conditions attached, or where there is "clear and convincing evidence of a compelling business justification," do not taint laboratory conditions. *Frontier Airlines*,

Inc., 32 NMB 57, 65 (2004) (pay increases were pre-planned and based on a compensation review showing wages to be below market rate); *Continental Airlines, Inc./Continental Express, Inc.*, 27 NMB 463, 477-478 (2000) (compensation procedure was based on a continued business practice); *Dakota, Minnesota & Eastern R.R. Co.*, 25 NMB 302, 315 (1998) (no interference when pay increases were granted as part of an audit done prior to commencement of organizing campaign). The Board reiterated this longstanding precedent in three recent cases involving this same carrier. *Delta Airlines* 39 NMB 92 (2011) (Stock and Stores); *Delta Air Lines*, 39 NMB 53 (2011) (Flight Attendants.); *Delta Air Lines*, 37 NMB 281, 318 (2010) (Sim. Techs.)

DISCUSSION

In this case, the Board has previously found that Delta has consistently communicated to its employees, since emerging from bankruptcy, that it would provide pay increases so as to bring employees to industry-wide standard by the end of 2010. *Delta Airlines, Inc.*, 37 NMB 281, 308 (2010) (finding timing of announcement of pay raise, rather than the decision to give pay raise, constituted interference). Here, there is no allegation regarding the timing of the announcement. Delta frequently reminded employees of its plan to bring employees to “industry standard pay rates.” However, there is ample evidence in the record before the Board that the pay increases at issue in this case were pre-planned.

The IAM also asserted that Delta’s statements regarding how it normalized pay in other work groups following the resolution of representation were coercive. The Board finds that Delta accurately stated how it had proceeded with other employee groups following the resolution of representation disputes following the Delta/Northwest merger either through NMB conducted representation elections (Meteorologists, Dispatchers, Simulator Technicians) or disclaimer (Mechanics). It is also true that, in its communications to employees, Delta did not miss an opportunity to emphasize that it was fulfilling its “commitment” to employees, but the Board cannot find interference based upon factual carrier statements of what occurred with other employee groups. Nor can the Board find interference because, as it was free to do, Delta chose not to pursue an alternative that the IAM would have preferred, bargaining with the IAM over whether a pay increase for PMNW Passenger Service Employees could be implemented consistent with the contract or with the permission of the IAM.

VI.

Access*i.*

The Organization contended that Delta discriminatorily: denied the IAM access to employees in the workplace; prevented it from posting information or discussing union matters; and prevented employees from wearing pro-IAM insignia. The IAM also stated that Delta regularly denied union leave while allowing employees to have leave for non-union matters. For example, an employee was granted company time off to attend the Detroit City Marathon and her shift was covered by overtime but during the election period union representatives were denied union time off to attend the local lodge meeting. In contrast to the lack of access the IAM had to employees, the Organization states that Delta held daily briefings about the election, allowed managers and employees to wear pro-Delta t-shirts and other items, and distributed and posted anti-IAM material throughout the workplace.

ii.

Delta maintains that it enforced its Advocacy Policy in an evenhanded manner. Prior to the merger, Northwest had a longstanding Advocacy Policy that prohibited any union organizing on Northwest premises. This policy was in place during the representation election campaigns involving the IAM and the Aircraft Mechanics Fraternal Association in the 1990's and in 2002. Randall Ohm, Delta's Senior Labor Counsel-Ground Minneapolis during the election period, provided a declaration and was interviewed by a Board Investigator about the Carrier's Advocacy Policy. Ohm stated that:

By August, 2009, the IAM began to frequently post election campaign bulletins and newsletters on the IAM bulletin boards on Company property. Despite the long standing PMNW advocacy policy and CBA, post-merger Delta agreed to permit ...[the IAM] to post campaign related material and articles on the Union bulletin boards, provided that the material was professional, non-inflammatory, and did not make personal attacks on Delta executives or other employees.

In February 2010, shortly after the FAA issued a single operating

certificate to Delta, the Carrier issued an Advocacy Policy for the merged airline. Ohm stated that the new Advocacy Policy for the merged airline:

was modeled on the [PMDL] Advocacy Policy and was significantly more liberal than the PMNW advocacy policy. Under the new policy, active employees in the station to which they were assigned could, among other things, advocate and distribute pro-union or pro-non-union literature in non-work and non-operations areas, such as lounges and break rooms, during non-working time provided that it was not unprofessional, offensive, or inflammatory. In addition, buttons and other items including caps, shirts, jackets, or other clothing that expressed support for or opposition to the union were permitted to be worn or displayed in non-work and non-operational areas and on non-working time, provided that it was not unprofessional, offensive, or inflammatory.

Under the new Advocacy Policy, employees who supported the union and employees who were opposed to union representation engaged in advocacy on non-work time and in non-work areas, such as break rooms, outside the employee parking lot, or at employee bus stops. Andrea Bowman, a General Attorney in Delta's Legal Department, who provided legal training regarding Delta's compliance with the RLA to Delta managers, testified that the Carrier provided training to managers regarding compliance with the RLA. As part of this training, local managers were regularly instructed to enforce the Advocacy Policy in an evenhanded manner. Bowman also stated that she discussed enforcement of the policy in conference calls with managers.

IAM shop committee members and General Chairs, employees designated by the IAM to investigate and handle verbal complaints or written grievances, were granted access to Delta property where employees were assigned. Ohm stated that as long as the IAM provided the Carrier "advance notice" and the intent was to investigate complaints and grievances, IAM officers were granted access to PMNW employees. According to Ohm, however, he received multiple reports that union representatives, who were granted access for union business, were in fact engaging in election campaign activity in break rooms and areas used by non-contract PMDL employees. Ohm stated that "union business leave" did not entitle shop committee members to actively campaign on the property. In addition, Ohm stated that after the merger between Northwest and Delta, there was a significant increase in the number and duration of "union business leave" requests. According to Ohm, between May 2009 and November 2010, the Carrier granted a total of 108,809 hours of leave; an amount which far surpassed the amount of leave taken during any comparable period.

iii.

Interviews with employees revealed that the Advocacy Policy was enforced less stringently at some stations. In addition, within the Passenger Service Employees craft or class there were few formal employee groups formed in opposition to the IAM. At some stations and Reservations Sales offices, employees reported that there were employees who handed out “vote no” or anti-IAM material, but system-wide employee anti-IAM or “vote no” advocacy was minimal. Within Passenger Service, some employees were told to remove pins or buttons. Employees wearing “vote no” pins were told to remove the pins in the work area and employees wearing IAM pins, t-shirts or buttons advocating a “yes” vote were told to remove the items. Many employees reported that while they were told to remove the pin, button or t-shirt they did not, or they removed it and put it back on at a later time. Employees also stated that in locations where the Advocacy Policy was enforced, it was enforced uniformly with respect to groups campaigning for the IAM or against the IAM -- unattended materials in break rooms were thrown away and t-shirts advocating a position could not be worn in working areas. Some of the IAM members interviewed stated that IAM officials should have been given the same access to employees that Delta managers had.

iv.

A carrier’s restrictions on union access in the work place are not *per se* evidence of interference. When combined with other anti-union carrier activity, however, a carrier’s disparate application of its access policy may be evidence of election interference, *USAir*, 17 NMB 377, 423-425 (1990). In *USAir*, the Board found interference where the carrier’s unequal enforcement of its access policy effectively sent employees the message unionization was harmful to their interests and futile, when combined with a pervasive and determined campaign against unionization and inaccurate and possibly misleading statements in carrier campaign material. *USAir*, *above at* 423-424. Where there is insufficient evidence of systematic uneven or discriminatory enforcement of the carrier’s rules of solicitation, the Board will not find interference. *Delta Air Lines, Inc.*, 30 NMB 102, 139 (2002) (carrier enforced its access, solicitation, and uniform policies in a “relatively even-handed” manner); *American Airlines*, 26 NMB 412 (1999) (carrier did not enforce access/solicitation rules in a manner which discriminated against the union).

DISCUSSION

In this case the IAM complains that Delta did not apply the Advocacy

Policy in an evenhanded manner and denied the Organization access to employees while granting access to groups with an anti-IAM or “vote no” message. In Passenger Service, there were few formal employee groups formed in opposition to the IAM. There were employees who handed out “vote no” or anti-IAM material at some stations and Reservations Sales offices, but system-wide employee anti-IAM or “vote no” advocacy was minimal. Employees who distributed this material stated that they had to comply with the Advocacy Policy; they had to distribute it on non-work time and in non-work areas. Employees who wore “vote no” or anti-IAM pins were also told to remove the pins while in work areas.

In addition to the absence of other Carrier anti-union activity, the Board finds insufficient evidence of widespread systematic discriminatory application of the Delta’s Advocacy Policy. The majority of interviews with employees reflected that in locations where the Advocacy Policy was enforced, it was enforced uniformly with respect to employees campaigning for or against union representation. In *American Airlines*, 26 NMB 412 (1999), the Board found no system-wide interference where variations in the carrier’s enforcement of its solicitation policy across stations resulted in isolated incidents of discrimination. The instant case involves approximately 15,000 Passenger Service Employees assigned to approximately 100 bases. The fact that some Passenger Service Employees were told to remove items that they arguably had the right to wear or post and that other Passenger Service Employees wore buttons they should not have worn does not establish widespread discrimination in the application of the Advocacy Policy.

The Organization also argues that Delta’s enforcement of the Advocacy Policy was discriminatorily applied against the IAM when compared to the Carrier’s treatment of its own managers who held daily briefings about the election, wore pro-Delta t-shirts and other items, and distributed and posted anti-IAM material throughout the workplace. The IAM’s argument that the Carrier interfered in the election by not applying the Advocacy Policy against its own communications is without merit. Delta’s Advocacy Policy applied to **employee** distribution of “pro-union or pro-non-union literature [and material] in non-work and non-operations areas” not to Carrier communications. (Emphasis added). A carrier is permitted to have a solicitation policy that reasonably restricts employees’ rights to solicit during work hours. *See Delta Air Lines, Inc.*, 30 NMB 102, 134-35(2002). If a carrier’s solicitation policy is applied unevenly, i.e., only enforced against labor organizations, the Board has found that this may be evidence of election interference, when combined with other anti-union carrier activity. *US Air*, 17 NMB 377, 423 (1990). Where there is insufficient evidence of systematic uneven or discriminatory enforcement of the carrier’s rules of solicitation, the Board will not find interference. *Delta*, 30

NMB 102, 134 (2002).

VII.

Captive Audience and One-on-One Meetings with Employees

i.

The IAM asserted that Delta had nearly daily captive audience meetings and one-on-one meetings throughout the system to convey anti-IAM information and to misinform employees about voting. According to the IAM, the daily briefings “reinforce[d] the coercion” of the carrier material posted in the workplace. While Delta said that these meetings were voluntary, the IAM stated that employees felt coerced to attend the meetings since they often took place in a break room and there was no place else for employees to go. The IAM also stated that leaving the briefing would identify those who left as union supporters.

The IAM asserted that managers had one-on-one meetings with individual Passenger Service Employees discussing the election. Moreover, the Organization maintains that the captive audience meetings were not just in-person because Delta arranged for electronic captive audience meetings by requiring employees to go onto DeltaNet to perform their work and then Delta posted anti-union materials there which the employees would have to see before they could do their work.

The IAM submitted “Above the Wing Briefing Notes” for Performance Leaders dated February 22, 2010. According to the IAM, these notes drafted by the Carrier’s Corporate Communications Department demonstrated “that bashing the IAM during mandatory briefings was coordinated, intentional and systemwide.” The relevant portion of the briefing notes stated the following:

Response to IAM regarding pay increases
Anderson Pay Letter

1. Please post the IAM letter dated 2/5/10 and Mike Campbell’s letter dated 2/18/10 on your company bulletin boards in every domestic station.
2. Also, please communicate to your employees during your daily operational briefings, both PMNW and PMDL, that these letters are posted on your bulletin boards in case they want to view the letters themselves.

During voluntary briefings, Delta managers also discussed flyers comparing IAM's National Pension Plan and Delta's 401K, Delta's response to the NMB's rule change, and other topics.

ii.

Delta stated that voluntary meetings frequently followed "shift turnover" or operational briefings, but all Delta leaders were trained to remind employees that the briefings were "voluntary" and to allow time for employees to leave the area. Delta argued that the IAM produced no evidence that these meetings were anything other than voluntary. Delta stated that the content of the meetings was non-coercive and informational and leaders were instructed to follow the provided script. Moreover, Delta argued that Board precedent states that meetings must be mandatory and coercive to be improper; isolated incidents do not amount to interference. Finally, Delta states that the number of meetings the IAM challenges is insufficient to constitute interference, even if they did occur.

Gil West stated that in the ACS and Cargo divisions, managers conducted daily operational briefings at the beginning of each employee shift start time. The topics discussed at the briefings generally involved airline safety and operational requirements. West described the voluntary briefings as follows:

When any topic regarding union activity or campaign related needed to be communicated, we ensured these topics were discussed in voluntary briefings. Voluntary briefings are optional communication briefings for our employees, usually conducted at the end of the Operational Briefing, after an announcement that the Operational Briefing was over and that employees were free to leave if they did not desire to participate in the voluntary briefing. Every ACS and Cargo leader attended training on the appropriate way to clearly communicate to all employees when they were going to conduct voluntary briefings so employees always recognized these communication sessions were voluntary and that no employee was required to attend unless the employee chose to do so.

Allison Ausband, stated that voluntary briefings "were not a big part of [Delta's] communications strategy in Reservations." The voluntary briefings for Reservations agents began in the Summer of 2010 and took place after the monthly operational briefings. The voluntary briefings typically would last 7-10 minutes. Ausband also stated that "every leader was trained on how to

conduct the voluntary briefings and was supplied with talking points from Corporate Communications.” According to Ausband “the voluntary briefings were more about the election process rather than about the IAM. The IAM was discussed only as it related to some misleading information that the IAM put out there that we were trying to correct.”

iii.

PMDL Customer Service Agents reported that they regularly attended daily operational briefings prior to the merger with Northwest. These operational briefings took place prior to the start of a shift, typically in the break room and lasted between 5-15 minutes. PMNW agents stated that they did not have daily operational briefings; they had operational briefings on an as needed basis. After the merger, the operational briefings continued for PMDL agents but during the election period PMNW agents’ attendance at operational briefings and voluntary briefings varied. PMNW agents initially were not expected to attend the briefings. At some stations PMNW agents stated that they felt that they were deliberately excluded from the operational briefings—because they were not told when the briefings were, or because the briefings took place while they were working a flight or check-in. At some stations where the PMNW and PMDL agents were more integrated both PMDL and PMNW attended daily briefings. At stations where there was less integration, usually the PMNW hubs, PMNW agents often did not attend the daily briefings.

In the Reservations Sales offices both PMDL and PMNW agents reported having monthly operational briefings followed by voluntary briefings during the election period.

Employee interviews revealed that the voluntary briefings were generally short. In Customer Service they usually lasted about five minutes. The voluntary briefings for Reservations Agents were less frequent than for Customer Service Agents but lasted longer. Reservations Agents often stated that they would stay for the voluntary briefings because it “kept them off the phones longer.” Most employees stated that the topics covered in the voluntary briefings were generally about the election process rather than campaigning. Many employees described the information provided during the voluntary briefing as “neutral” and “fact based.” Some employees stated that the IAM should have been given an opportunity to speak during the voluntary briefings. At some voluntary briefings, IAM supporters answered questions and voiced opinions. Agents also told investigators that at some voluntary briefings employees expressed views both pro-union and anti-union. No employees interviewed testified that they suffered any adverse action as a result of their not participating in a voluntary briefing.

iv.

Carrier meetings with employees are not improper unless they are mandatory, coercive, or significantly increase in frequency during the election period. *Mercy Air Serv., Inc.*, 29 NMB 55 (2001); *LSG Lufthansa Serv., Inc.*, 27 NMB 18 (1999). In addition, the Board examines the content of carrier communications at the meetings to determine whether the communications are coercive, contain material misrepresentations, or combined with other carrier actions, improperly influenced the employees in their choice of representative. Additionally, the Board has consistently found that "one-on-one" meetings with members of the craft or class, where anti-union opinions are expressed by management officials during the laboratory period, are inherently coercive. *Delta Air Lines*, 37 NMB 281, 312-313 (2010); *Stillwater Central R.R., Inc.*, 33 NMB 100, 138 (2006); *Aeromexico*, 28 NMB 309 (2001); *Key Airlines*, 13 NMB 153 (1986); *Zantop Int'l Airlines, Inc.*, 6 NMB 834 (1979).

"[I]solated incidents" of potentially questionable carrier activities are insufficient to warrant a finding that the laboratory conditions necessary for a fair election have been tainted. *Northwest Airlines, Inc.*, 19 NMB 94 (1991) (finding that although supervisors may have been involved in certain incidents favoring one union over another during an organizing campaign, the conduct was insufficient to warrant any remedial action by the Board); *US Air, Inc.*, 18 NMB 290 (1991) (finding that the carrier's disparate enforcement of its policy on access to employee break rooms is an insufficient basis for a finding of interference); *Pan American World Airways*, 5 NMB 16, 27 (1969) (no election interference found where incident is isolated and de minimis).

DISCUSSION

The IAM argues that any Carrier meeting and briefing with employees in which the election was discussed were coercive, because employees had no place else to go during the meetings or feared identifying themselves as union supporters if they left during the meeting. Delta clearly notified employees in advance when it was going to discuss the election and also clearly told employees that attendance was voluntary. Employees did have options if they did not want to attend the meeting and many employees interviewed stated that they did not attend all or some of the voluntary briefings. No employees interviewed testified that they suffered any adverse action as a result of their not participating in a voluntary briefing. In addition the voluntary briefings did not solely convey a "vote no" viewpoint. Most employees stated that the topics covered in the voluntary briefings were generally about the election process rather than campaigning; at some voluntary briefings IAM supporters answered questions and voiced opinions. Agents also told investigators that at some

voluntary briefings employees expressed views both pro-union and anti-union. There is no evidence that managers had one-on-one meetings with employees about the election. The voluntary briefings during the election were not coercive and did not taint laboratory conditions.

VIII.

Post Election Interference

i.

The IAM stated that Delta is soliciting employees to file complaints against the IAM and to submit forms supporting Delta and stating Delta did not interfere with the elections. The form was a post-election pop-up that employees saw when they logged into DeltaNet. The IAM asserted that the Carrier is asking employees to show their loyalty to Delta in an environment where the Carrier has already demonstrated that it will punish those who support the IAM and reward those who oppose the IAM. In addition, the IAM argued that Delta is “trolling” for information on how employees voted based on employees statements.

ii.

Delta responded to the IAM’s accusation by asserting that after the vote count employees asked for a process by which they could submit information about what had occurred during the election. Based on these requests, Delta created a place on DeltaNet where employees could voluntarily choose to submit information and to express their views about the IAM’s claims of interference.

iii.

During the course of the investigation, none of the employees interviewed by the Board’s Investigator complained about the post election pop ups. Nor did they state that they felt compelled to complete a form supporting Delta or condemning the IAM’s election conduct. None of the Passenger Service Employees interviewed by the Board’s Investigators stated that they were coached on what to say to the Investigator.

iv.

In *Petroleum Helicopters, Inc.*, 26 NMB 13 (1998), the Board addressed the question of whether laboratory conditions continued through its

investigation of allegations of election interference. The Board concluded that the question must be answered affirmatively stating:

[T]he purpose of requiring that laboratory conditions be maintained is to permit an election to take place free from interference, influence, or coercion. In the event that impermissible interference, influence, or coercion is alleged, a new election may be necessary to determine the choice of employees. That election too must be free from interference, influence, or coercion. Therefore, the laboratory conditions must extend through that election and any subsequent investigation.

Petroleum Helicopters, above at 35.

The IAM's argument regarding post-election interference cites the Board's ruling in *Aeromexico*, 28 NMB 309 (2001). In that case, to rebut allegations of election interference, the carrier selected and interviewed ten members of the craft or class and prepared eight affidavits, which the employees signed. These meetings were "one-on-one" interviews between Aeromexico's counsel and the employee, with a management official as an observer. When these employees were subsequently interviewed by the Board they stated that they "feared if they refused the interview, the Carrier would know how they voted. Employee statements also established that Aeromexico's interview process and conduct during the interviews engendered fear among the employees that their choice of a representative would be revealed in the interview." *Id.* at 341. The Board found that:

Aeromexico's interviews of employees in the craft or class interfered with the Board's investigation and powers set forth in 45 U.S.C. § 152, Ninth. ... [and] that these "one-on-one" interviews during the period when laboratory conditions must be maintained are inherently coercive and violated the secrecy of the ballot required by the RLA.

Id.

DISCUSSION

As stated in *Petroleum Helicopters, above*, laboratory conditions must continue through the Board's investigation of allegations of election interference. It is the Board's duty to conduct an impartial investigation into allegations of interference. In *Aeromexico, above*, the carrier conducted an investigation into allegations of election interference concurrent with the

Board's investigation, resulting in coercive one-on-one meetings between management officials and employees. In contrast, Delta's creation of a process by which employees could submit information electronically through DeltaNet about what had occurred during the election was voluntary. Unlike the carrier's actions in *Aeromexico*, there is no evidence that the Carrier met with employees for the purpose of securing sworn statements to refute the IAM's allegations or otherwise coerced employees participating in the investigation. Delta's creation of a forum on DeltaNet for employees to submit allegations of IAM interference was not coercive and did not taint laboratory conditions.

IX.

Pervasive Campaign

i.

The IAM alleged that the Carrier's "massive" communication campaign was so overwhelming and misleading that employees' free choice was suppressed. The IAM argued that the number of mailings to employees' homes, messages and pop-ups on DeltaNet, posters, flyers, memos at the workplace, and communications from leaders/supervisors at "voluntary" briefings and town hall meetings, overwhelmed employees to the extent that it suppressed their free choice. The IAM stated that there was no place you could go at work without being subjected to Delta's point of view. At the same time as it was conducting its "massive" anti-union communication campaign, Delta refused to allow IAM supporters to get out a pro-IAM message.

ii.

Delta argued that its communications did not overwhelm employees; rather they were necessary to respond to the IAM's campaign. The Carrier states that its communications were accurate, appropriate and necessary. Furthermore, the Carrier maintained that the volume of communication cannot be the basis for limiting freedom of speech. In addition, Delta stated that the total number of IAM communications more than doubled the total number of Delta communications, and none focused on educating voters on the changed rules. Finally the Carrier asserted that there were numerous IAM sponsored events as well.

iii.

Employee interviews revealed that they received a large number of communications from both Delta and IAM. The amount of signage varied from

location to location. At stations there were signs in the non-work areas and there were flyers in the break rooms. At some locations there were “Resource Rooms” or “Ask Me” tables with managers available to answer questions and provide information. Some employees reported that at some stations there was signage on the side of employee shuttle buses. The interviews reflected that employees did tire of the propaganda from both sides. Many employees stated that after a while they ceased to notice the material. IAM supporters often described the pop-ups in particular as “irritating” or “annoying.” None of the employees indicated they were overwhelmed in asserting their free choice in terms of selecting a representative.

Many Passenger Service Employees did notice pop-ups concerning the election on DeltaNet. The message in the pop-ups was non-coercive, reminding them to vote, or displaying a countdown clock noting the days left to vote. The pop-ups also provided links to the “Decision 2010” page which had information related to the election. Some employees stated that they found the pop-ups to be annoying but that pop-ups did not interfere with the performance of their job.

iv.

A carrier’s overwhelming and pervasive campaign can contribute to a finding of interference. The Board’s evaluation of a carrier’s campaign considers “whether the speech in the context of the ‘totality of the circumstances’ impermissibly interferes with employee free choice.” See *e.g. Delta Air Lines*, 39 NMB 53, 87 (2011); *American Airlines*, 26 NMB 412, 448 (1999). The Board has found that a campaign was so pervasive as to interfere with employee free choice when, for example, the campaign communications includes the message: “PLEASE DESTROY YOUR BALLOT!” and where carrier officials told employees in private or small group meetings that the company would go bankrupt if the union won the election. *Petroleum Helicopters*, 25 NMB 197, 205, 221 (1998).

DISCUSSION

The IAM’s argument that Delta’s campaign was so “massive” as to overwhelm employee free choice is without merit. As discussed above, Delta’s campaign message did not include material misrepresentations of the Board’s procedures, mandate that employees vote, or contain threats of reprisals or promises of benefits. While some of Delta’s campaign material expressed a viewpoint to vote “no”, many of Delta’s messages contained non-coercive messages, urging employees to vote in the election. In interviews with the NMB Investigators, employees stated that they could and often did ignore these messages. Although the IAM also complains that Delta refused to allow IAM

supporters to get out a pro-IAM message in the workplace, employees interviewed stated that they did have access to IAM material – through the internet, mailings to their homes, and through fellow employees. That the Carrier did not provide the Organization with equal access to the employees is not interference.

X.

IAM's Other Allegations

IAM submitted evidence and argument regarding several other allegations. The Board finds that many of these allegations are not supported by sufficient credible evidence. The other allegations, if true, do not constitute interference.

XI.

Allegations of Union Interference

i.

Delta stated that its communications campaign was necessary to respond to the IAM's massive two-year campaign which was intended to scare and intimidate Delta employees. According to Delta, the total number of communications from the IAM to Delta employees was more than double the number of Delta communications during the same time periods. Delta submitted to the Board over 1,300 separate print and electronic communications from the IAM to employees. In addition, Delta stated that the IAM engaged in "personal attacks viciously vilifying Delta's management or frontline employees" and that the IAM's "election campaign and overheated rhetoric ... harassed, disrespected, and intimidated Delta's employees."

Delta argued that the IAM's communications, in the form of billboards, DVDs, radio and television advertisements, campaign materials, events, newsletters, emails, hand billing, and picketing had the intent of attacking Delta management and created fear that if the IAM lost the election, Delta would outsource jobs, change work rules, benefits, and pay, and enforce arbitrary discipline and discharge. The Carrier asserted that the Organization attacked and retaliated against pro-Delta employees, and interrogated Delta employees as to how they voted or would vote. Delta also alleged that the IAM used paid company leave and company-paid travel to conduct its campaign. The Carrier also asserted that despite the IAM's "massive" communications campaign, the Organization made no attempt to educate employees on the new

voting rules.

ii.

The IAM responded that Delta failed to provide the Organization with any evidence of complaints about harassment so that the IAM could investigate and put an end to substantiated claims. The IAM argued that Delta's assertions of union interference represent Delta's effort "to justify its own obtrusive campaign materials."

iii.

The interviews reflected that the Passenger Service Employees received approximately the same amount of mail from the IAM at home as they did from Delta. Many employees stated that while they received mail from both sides throughout 2010, most of the mailings came after the IAM filed its application in July 2010. Many employees stated that they perceived that Delta and the IAM were responding to each other –if one side put out a mailing regarding the pay scale or dues, the other side responded. Some employees reported receiving calls from the IAM at home but there was no evidence that the calls were harassing or coercive. Very few employees reported that the IAM visited them at home. Employees stated that they saw less IAM material at work and it was primarily limited to attended break room tables, union bulletin boards, and the union office. Employees did not state that they were coerced or intimidated by the IAM's communications.

iv.

The Board frequently has stated that the same analysis of whether the laboratory conditions have been tainted applies to union interference and carrier interference. The carrier, however, has unique power and authority in the workplace. In this context, similar facts when applied to a carrier or a union could lead to different conclusions about whether the laboratory conditions have been tainted because the activity does "not produce the same effect on employees." *Federal Express Corp.*, 20 NMB 659, 665 (1993). See also *Delta Air Lines*, 30 NMB 102, 143 (2002); *United Air Lines, Inc.*, 22 NMB 288, 318 (1995); *Air Wisconsin*, 16 NMB 235, 239-40.

In *United Airlines*, above at 319, the Board noted the RLA's legislative history, particularly the statement of John B. Eastman, Director of Transportation, before the Senate Committee on Interstate Commerce on the 1934 amendments to the Railway Labor Act:

When employees are dealing with employees, the situation is quite different from what it is when companies are dealing with employees. Companies have power over the means of livelihood of employees, and that is where the danger lies. Employees have no such power over each other. When it comes to the organization of employees, it is entirely appropriate and proper that argument and electioneering be allowed.

DISCUSSION

It is clear from the record before the Board that the IAM engaged in a vigorous campaign to convey its views. The IAM's campaign did not, however, step out of the bounds of allowable "argument and electioneering" as described by Director Eastman above. The Carrier asserts that the IAM created an atmosphere of fear, and interrogated, attacked and retaliated against employees. The interviews with employees conducted by NMB investigators do not support these allegations. Some interviewed employees stated that they were not interested in receiving all or some of the information that the IAM was disseminating; some employees did not agree with the views expressed in IAM campaign material. Employees did not state in their interviews with NMB Investigators that they were coerced or intimidated by the IAM's communications or activities. Therefore, there no is basis for finding interference with regard to this allegation.

CONCLUSION

Based upon the totality of circumstances, the Board finds that the laboratory conditions required for a fair election were not tainted.¹¹ This conclusion is based on the totality of the circumstances. Therefore, as there is no further basis to proceed, the Board closes its file in this matter.

¹¹ Member Hoglander notes that the totality of the circumstances in the instant case is distinguishable from *Delta Air Lines*, 30 NMB 102 (2002). In his view, the Board's investigation in 2002 revealed carrier support for an anti-union group of employees known as the "Freedom Force" and widespread evidence that Delta did not even-handedly apply its Advocacy Policy to the union and anti-union advocates. In 2002, the record established multiple incidents of supervisors and managers taking notes and photographs of AFA activists and other flight attendants while the activists were in the lounges. There were no such allegations or evidence in the present case.

By direction of the NATIONAL MEDIATION BOARD.

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

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