



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the

INTERNATIONAL ASSOCIATION
OF MACHINISTS AND
AEROSPACE WORKERS, AFL-CIO

alleging a representation dispute
pursuant to Section 2, Ninth, of
the Railway Labor Act, as
amended

involving employees of

DELTA AIR LINES, INC.

39 NMB No. 9

CASE NO. R-7258

FINDINGS UPON
INVESTIGATION –
DISMISSAL

November 28, 2011

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 Air Lines, Inc. (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 30, 2010, the IAM filed an application with the Board pursuant to the Railway Labor Act¹ (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth), requesting the Board to investigate whether Delta and Northwest Airlines, Inc. (Northwest) were operating as a single transportation system for the craft or class of Stock and Stores Employees.² The investigation established that Delta

¹ 45 U.S.C. § 151, *et seq.*

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

and Northwest constitute a single transportation system for the craft or class of Stock and Stores Employees. *Northwest Airlines, Inc./Delta Air Lines, Inc.*, 37 NMB 397 (2010). On September 27, 2010, the Board authorized an election in this matter. On September 28, 2010, the Board scheduled the tally for November 22, 2010 with the voting period beginning on October 25, 2010.

The November 22, 2010 Report of Election results reflected that a majority of votes cast was for no representation, with 439 employees voting for no representation and 168 employees voting for representation.³ Therefore, the Board issued a Dismissal on November 23, 2010. *Delta Air Lines, Inc.*, 38 NMB 33 (2010).

On December 9, 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 safeguards to ensure true choice of representation."⁴ Delta responded on January 25, 2011. In its response, Delta

³ The TechOps Stores group employs more than 900 management and front line employees in 27 domestic stations (ATL, BDL, BOS, BWI, CHS, CVG, DCA, DEN, DTW, EWR, FLL, HNL, JFK, LAS, LAX, LGA, MCO, MEM, MSP, PHL, PHX, SAN, SAV, SEA, SFO, SLC, and TPA). Before the challenge and objection period, there were 673 potential eligible voters in the Stock and Stores craft or class, with the largest groups of employees in Atlanta (371) and Minneapolis (145) and Detroit (57). Employees are classified by two positions: (1) Supply Attendants (PMDL)/Stock Clerks (PMNW); and (2) Stores Utility Employees, who are only found in Atlanta Main Base Stores (PMDL).

⁴ The IAM seeks the following remedies from the Board: 1) a re-run election using a mail ballot; 2) mandating 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; 3) mandating that IAM representatives and Delta employees be allowed to post pro-IAM materials on bulletin boards and workplace walls and to freely distribute materials in the break rooms; 4) mandating that pro-IAM employees be allowed to wear t-shirts, pins, and hats displaying their support; 5) mandating that IAM representatives and Delta employees be allowed to address employees during briefings to promote the union; 6) mandating that IAM should be permitted to host a page on DeltaNet talking about the benefits of the union; 7) ordering Delta to give the IAM an updated mailing list of all eligible voters and access to Delta employee email addresses for eligible Stock and Stores employees; and 8) the Board should issue a notice, mailed to employees' homes and posted at the workplace, emphasizing 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.

raised questions about IAM's conduct during the election. The IAM filed an additional response on March 8, 2011, and Delta replied on March 21, 2011. Participants submitted sworn statements and other documentary evidence in support of their positions. On June 6, 2011, the Board notified participants that an investigation was necessary to determine whether laboratory conditions had been tainted.

Between July and September, 2011, in-person and phone interviews with Delta management officials, IAM representatives, and randomly-selected employees were conducted in Atlanta, Detroit, Minneapolis, Boston, Salt Lake City, Seattle, and Honolulu by Investigator Cristina Bonaca and other Board staff. This determination is based upon the entire record in the case.

ISSUES

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

CONTENTIONS

IAM

The IAM made a number of allegations which it argues, in aggregate, tainted the laboratory conditions required for a fair election. The IAM believes the actions of Delta necessitate a re-run election with additional safeguards.

IAM charged that: 1) Delta engaged in surveillance and intimidation making employees fearful of supporting the IAM; 2) Delta coerced Stock and Stores Employees into voting from Carrier computers creating, at a minimum, the impermissible impression of surveillance; 3) Delta discriminatorily denied IAM equal access to Stock and Stores Employees and prohibited employees from posting pro-IAM information, discussing union matters, and wearing pro-IAM clothing or insignia; 4) Delta held daily captive audience meetings and one-on-one meetings throughout the system to convey anti-IAM information and misinform employees about voting; 5) Delta refused to provide an up to 20% pay increase to IAM members despite the IAM's express approval of such an increase; 6) Delta commanded that employees "MUST VOTE" in the election; 7) Delta deceptively represented to Stock and Stores Employees that the Carrier was part of the official NMB voting process; 8) Delta engaged in a massive, omnipresent, and misleading anti-IAM campaign designed to

suppress employees' free choice; and 9) Delta routinely misrepresented Board precedent, rulings, and the RLA in an effort to confuse employees.

DELTA

Delta responded that the IAM's election interference filing in this case was unsupported by substantive evidence or specific factual allegations and relied entirely on its filing in the Fleet Service Employees case. Further, Delta noted that an overwhelming majority of Stock and Stores Employees voted against IAM representation in the November 2010 election. Delta argues that none of the actions complained of by the IAM undermined the laboratory conditions necessary for a fair election. Finally, Delta raised questions about the IAM's conduct in the election.

FINDINGS OF LAW

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

I.

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

II.

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

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, Inc.*, 37 NMB 281 (2010); *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 July 30, 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. *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. *Delta Air Lines, Inc.*, 37 NMB 281 (2010); *Frontier Airlines, Inc.*, 32 NMB 57 (2004); *Piedmont Airlines, Inc.* 31 NMB 257 (2004); *Mercy Air Serv., Inc.*, 29

NMB 55 (2001). The Board makes an evaluation of the facts developed from its investigation including submissions provided by the organization and the carrier and past Board experience. *Midway Airlines, Corp.*, 26 NMB 41 (1998); *Evergreen International Airlines*, 20 NMB 675 (1993); *America West Airlines, Inc.*, 17 NMB 226 (1990).

III. Surveillance

a. Increased Supervisory Presence

IAM alleged that Delta management took part in a widespread effort to suppress the “yes” vote by making it clear that Delta knew who supporters were and that supporters were harassed, intimidated, or threatened by the many Delta Performance Leaders (PLs) present in the workplace before and during the election period. However, the investigation found no evidence of this in the Stock and Stores Employees craft of class.

b. Surveillance – Voting on Company Computers

i.

IAM contends that Delta coerced employees into voting from company computers, creating improper surveillance or an impermissible impression of surveillance. The Organization alleged that whenever an employee logged into DeltaNet⁵ using their company issued user identification name and their password, Delta knew precisely who was accessing DeltaNet and when they did so. Flowing from this assumption, IAM then contends that Delta could have known if an employee logged into DeltaNet and then accessed the NMB’s voting site during the election period.

IAM stated that even if Delta was not tracking employees who visited the voting website, the Carrier gave the appearance of being able to monitor voting. IAM stated that this is further supported by Delta’s own privacy disclaimer which provides that “Delta reserves the right to access or monitor – without notice -- any access to the Internet or intranets and any transmission made via the Internet.” In addition, IAM contends that Delta is a customer of

⁵ Delta’s Intranet for employees which requires login and password for access to certain portions.

Netwitness, a monitoring program that allows Delta to recreate everything done on its computers.⁶

IAM further argued that the appearance of surveillance was 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.” Finally, IAM stated that Delta reactivated phone lines and computers in Atlanta in time for the election, creating its own private polling place. In the event of a re-run election, the IAM believes a mail ballot would best ensure the integrity of the voting process.⁷

ii

Delta first responded that it repeatedly urged its employees to vote from the privacy of their own homes, but did not prohibit employees from voting from work computers or telephones if they wished to do so. In a mailing to employees Delta stated: “We encourage you to vote in the privacy of your own home. Doing so will ensure you’re able to make your own decision without outside pressure from anyone.”

Delta contends that voting from the workplace was not challenged by any organization in the previous four post-merger representation elections held at Delta where the only option was to vote yes. Further, the Carrier argued that prohibiting voting from workplace computers and telephones would lead to a double standard assuming that unions and their supporters could still provide telephones and computers to facilitate voting.⁸

Delta argued that IAM’s allegations about the misuse or abuse of technology on Delta’s premises are entirely speculative. Further, Delta contends that IAM’s allegations are an unfounded attack on the integrity and security of the NMB’s procedures for telephone and Internet voting.

⁶ 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. Jay Fredericks, Delta’s Managing Director, Information Technology, described NetWitness as a tool on the network part of the infrastructure that logs connectivity between Delta and the outside world.

⁷ See footnote 4 for the IAM’s requested remedies in the event of a re-run election.

⁸ In its sur-reply, IAM clarified that it believes that prohibiting voting from workplace computers is only necessary in the event of a re-run election due to election interference.

Like nearly all employers, Delta reserves the right to monitor or investigate possible misuse of its systems or equipment. Delta has policies which allow it to monitor employees' computer use. Delta's Extranet policy includes the following stipulations, which employees agree to by logging in:

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).

Delta's Human Resources Manual, as noted by the IAM, also states that "Delta reserves the right to access or monitor – without notice – any use of the Internet or intranet and any transmission made via the Internet or intranet, including review of individual files maintained by users on hardware, tape, or diskette."

Delta has approximately 45,000 personal computers system-wide. Fredericks 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, does not have information regarding how or where Stock and Stores Employee voted, and has not "accessed or used, and will not access or use, computerized historical data to determine how many persons have used company computers to access any

website connected with a representation dispute.” Further, DeltaNet has no “memory” and does not retain information about the websites users visit. In addition, Fredericks denied that Delta installed large numbers of telephones or computers in preparation for the elections.

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 voting website. Fredericks stated that Delta only monitors computer usage that is viewed detrimental to the environment and then only pursuant to a request from HR or corporate security (i.e., triggered by an employee engaging in bad usage at work). Even when Delta is monitoring an employee using NetWitness software, if an employee were to go to an SSL⁹ encrypted website like BallotPoint¹⁰, NetWitness “could not get insight – you would see data but it wouldn’t be readable in terms of data.”

In addition to establishing that Delta did not monitor how employees voted, the investigation also established that the vast majority of Stock and Stores Employees did not vote on Delta computers. In fact, the Investigator’s review of the election data revealed that only 174 Stock and Stores Employees actually voted from a company computer.

It should also be noted that, 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,¹¹ the only way to vote “no” was to not vote so that ascertaining that an employee had 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.

⁹ 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.

¹⁰ BallotPoint is the NMB’s voting website.

¹¹ On July 1, 2010, following notice and comment rulemaking under the Administrative Procedure Act (APA), the NMB’s representation rule change (Rulemaking or 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.

DISCUSSION

The Board has held that surveillance can be the basis of an interference finding, however usually only as part of a “totality of the circumstances” analysis. The Board has found that “the appearance or impression of surveillance has a chilling effect on employee behavior.” *Pinnacle Airlines, Corp.*, 30 NMB 186, 223 (2003). While the Board has stated on occasion that surveillance is a per se violation of laboratory conditions, it has also refused to make this finding in the absence of egregious carrier actions. See *Union Pacific R.R.*, 34 NMB 21 (2006); *American Trans Air, Inc.*, 28 NMB 163, 180 (2000); *Petroleum Helicopters, Inc.*, 25 NMB 197 (1998). 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 generally found that an increased supervisory presence during the election period is not interference. *Delta Air Lines, Inc.*, 30 NMB 102, 117-18 (2002) (insufficient evidence to support that Delta increased the presence of supervisors in order to engage in or give the appearance of surveillance; further, no nexus between the alleged surveillance and any pattern of egregious activity such as discharge); *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.”).

Increased Supervisory Presence

The interviews with Stock and Stores Employees revealed that in the hubs that were primarily PMNW, like Detroit and Minneapolis, there was a perception that there were more supervisors around during the election period. The investigation revealed that this perception stemmed from the different management structures of PMDL and PMNW. The PMNW structure was more informal with a senior front-line employee (Lead or Chief) helping to direct day-to-day activities. The PMDL workplace was more structured with supervisors holding periodic meetings and assisting with the work to be completed. Thus, as Delta began to integrate the PMNW hubs with its culture, it placed more PLs in the PMNW hubs. There was also some testimony that there were more frequent visits from Tony Charaf, the President of TechOps, and Tim Dugger, General Manager Delta TechOps, during the election period – mostly in the context of town hall meetings.

Most employees interviewed, including some union witnesses, stated that supervisors did not discuss the election except for reminding people to vote. A couple of the comments from the Stock and Stores Employees were: “Supervisors seemed very closed mouth about it [the election]. I could say anything I wanted but it was like they were sworn to secrecy not to say anything about it;” “Managers were really careful to not interfere”; and “Managers stayed neutral and just reminded us to vote.” One employee stated: “Throughout the day we discussed the election. We were able to talk about it in working areas. I felt free to talk about it in break rooms without fearing that supervisors were watching.”

Based on the investigation, there is an insufficient basis to find that Delta engaged in a systematic effort to monitor the IAM’s activities by having more supervisors in the workplace during the election period. The investigation revealed that the expansion of the Delta management structure into the PMNW hubs explained the increase in supervisory presence reported by some of the Stock and Stores Employees.

Voting on Company Computers

The employee interviews unanimously reflected that there was no pressure or preference stated by Delta management that employees vote from work. Employees stated that they could vote from work if they wanted to but “it wasn’t pushed.” Interviews reflected that employees were aware that there was a link to the NMB’s website, but they stated there was no directive that they follow it. Finally, most employees understood that they had limited privacy on a company computer. This is also evidenced by the small number of Stock and Stores Employees who actually voted from Delta computers.

Fredericks stated that banks of telephones and computers were not set up in preparation for the representation elections, and the employee interviews support his statement.

The investigation reveals that Delta did not create the impression of surveillance among Stock and Stores Employees. Further, there is no evidence that Delta monitored how the Stock and Stores Employees voted.

IV. Advocacy Policy

i.

The Organization contends 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. As an example of Delta's discriminatory application of the advocacy policy, the IAM produced a declaration from a Stock and Stores Employee in Minneapolis. The employee stated that Paul Williams, Minneapolis Stores Operational Manager, asked him to remove his "union yes" button.

ii.

Delta provided a declaration from Williams regarding his enforcement of the advocacy policy. Williams stated that in December 2009, he had a conversation with a Stock Clerk who was working in the Central Order Filling Area (a work area) and was wearing a button that said "Union Yes" on his uniform. Williams stated that he asked the employee to remove the button and when the employee asked him why he stated: "We wanted to be consistent with our policy and if someone wore a 'no union' button, then I would tell them to remove it as well."

Delta responded that it applied its advocacy policy evenhandedly throughout 2009 and 2010. Through 2009, the PMNW advocacy policy remained in effect. The Northwest/IAM Equipment Service and Stock Clerk (ESSC) collective bargaining agreement (CBA) allowed union bulletin boards in agreed-upon locations but expressly limited postings to notices of social events, internal union elections, and other union business. All other postings were expressly prohibited.¹² Randall Ohm, Delta's Senior Labor Counsel-Ground

¹² Article 26.F of the CBA ("When requested, a bulletin board for Union use, marked 'International Association of Machinists and Aerospace Workers' will be provided by the Company . . . and shall be reserved for the exclusive use of the Union for posting notices restricted to: 1) Notices of Union recreational and social affairs; 2) Notices of Union elections and the results thereof; 3) Notices of Union meetings and appointments; 4) Informational bulletin (non-political, non-propaganda) issued by the President/Directing General Chair of the District Lodge. There shall be no other distribution or posting by employees hereunder of advertising or political matter, notices or any kind of literature upon the Company's property."); *See also* June 16, 2009 letter to Stephen Gordon, then President/General Chair of IAM, from then Senior Labor Counsel Randall Ohm, describing the PMNW advocacy policy ("...the policy in effect at pre-merger Northwest prohibited the IAM from distributing or posting on company premises any material except materials related to the IAM's administration of the contract, routine meeting notices or non-political, non-propaganda informational bulletins. . . . Any

Minneapolis during the election period, provided a declaration and was interviewed by a Board Investigator about the advocacy policy. Ohm stated that the practice after August 2009 was to allow professional and non-inflammatory campaign-related material and articles on union bulletin boards.

In February 2010, shortly after the FAA issued a single operating certificate to Delta, the Carrier issued an advocacy policy for the merged airline. The new policy provided that active employees in the station to which they were assigned could advocate and distribute literature in support of or in opposition to union representation and wear or display union insignias in non-work and non-operational areas during non-working time provided that they were not unprofessional, offensive, or inflammatory.¹³

Ohm stated that after the merger between Northwest and Delta, there was a significant increase in the number and duration of “union business leave”¹⁴ requests. According to Ohm, between May 2009 and November 2010,

campaign activity or solicitation in work areas during work time will be regarded as a serious violation Northwest’s rules prohibit the posting or affixing of campaign stickers or literature to walls, bulletin boards, and any other Company property Company rules permit employees to wear a single union insignia pin on their uniform so long as the pin is of appropriate size (1 1/2 inch or less in diameter).”

¹³ In relevant part, the new advocacy policy provides: “Solicitation or advocacy activities by Delta people on Delta premises are permitted only in non-work and non-operational areas, such as lounges and break rooms, and only during a person’s non-working time If an area in a lounge or break room is used for work and non-work purposes, solicitation or advocacy activities are permitted in that area only when it is not being used for work purposes. Solicitation or advocacy activities may never be undertaken in a harassing manner or in a manner that interferes with people who do not wish to be solicited. Advocacy materials must not be unprofessional, offensive or inflammatory. Materials may not be left unattended. . . . Unless the activities are sponsored by Delta, solicitation or advocacy activities by people who do not work for Delta are no permitted on Delta premises at any time. . . . Items that advocate a position (such as . . . material for or against a union) are not permitted on bulletin boards or on walls or other areas on Delta premises. Other than Delta-sponsored programs or initiatives, no buttons or other items (including caps, shirts, jackets, or any other clothing) that convey a message or advocate a position or cause may be worn or displayed in work areas or on work time. The single exception is a small lapel pin equivalent to a piece of jewelry and no larger than the Delta service award pin.”

¹⁴ Union business leave is a leave of absence granted to an employee from their normal employment duties to conduct union business or attend conferences or conventions on behalf of the IAM.

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.

Ohm further stated that 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 as long as they provided the Carrier “advance notice” and the intent was to investigate complaints and grievances. According to Ohm, 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 confirmed that “union business leave” did not entitle shop committee members to actively campaign on the property.

DISCUSSION

A carrier is permitted to have an access and solicitation policy reasonably restricting employees’ rights to solicit during work hours and on carrier property. *Delta Air Lines, Inc.*, 37 NMB 281, 311 (2010); *Delta Air Lines, Inc.*, 30 NMB 102, 134-35 (2002). In *USAir*, 17 NMB 377 (1990), the Board found that the carrier’s policy against soliciting on company property was only applied to union campaign materials and therefore, interfered with employee free choice. Where there is insufficient evidence of systematic, uneven, or discriminatory enforcement of the carrier’s rules on solicitation and access, the Board will not find interference. *Delta Air Lines, above*; *American Airlines*, 26 NMB 412 (1999).

The majority of interviews with employees reflected that in hubs where the advocacy policy was enforced, it was enforced uniformly with respect to employees campaigning for or against representation. Some of the IAM members interviewed were unhappy about the advocacy policy, i.e., that unattended materials in break rooms could be thrown away or that shirts advocating a position could not be worn in working areas.

In the PMNW hubs, managers were generally more lenient about enforcing the advocacy policy but became more stringent about enforcing it as the election neared. Several Detroit and Seattle employees stated that there was no enforcement of the advocacy policy as they were permitted to wear IAM buttons and patches in working areas until 2011. One Minneapolis employee stated that he encountered employees campaigning on the floor, in break rooms, everywhere. “People were able to voice their opinions.”

In the instant case, the Board finds insufficient evidence of widespread systematic discriminatory application of Delta's Advocacy Policy. There were only one or two isolated incidents in which IAM supporters and "no representation" advocates were treated in an unequal manner. *See American Airlines*, 26 NMB 412 (1999) (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.).

V. Captive Audience and One-on-One Meetings

i.

IAM contends that Delta held daily captive audience meetings and one-on-one meetings throughout the system to convey anti-IAM information and misinform employees about voting. Specifically, IAM alleged that Delta supervisors or managers conducted daily voluntary briefings at the end of operational work briefings where they discussed the union campaign and the representation election. IAM argued that while employees were sometimes told they could leave the voluntary briefing, employees were not left with much of an option. "First, leaving identified the employee as pro-IAM Second, there wasn't anywhere to go because the briefings were in the break room."

Managers were instructed to brief employees using notes provided by Delta management. The IAM contends that during these briefings, Delta Leaders discussed: a response to the IAM regarding pay increases; flyers comparing IAM's National Pension Plan and Delta's 401K, Delta's response to the rule change, and other topics.

ii.

Gil West, Senior Vice President, Airport Customer Service (ACS) described the voluntary briefings as "optional communication briefings for our employees" led by PLs usually at the conclusion of the Operational Briefing. West stated that when any topic regarding union activity or campaign-related needed to be discussed, Delta ensured these topics were covered in the voluntary briefings. West confirmed that PLs would always make an announcement at the end of the Operational Briefing that employees were free to leave if they did not desire to participate in the voluntary briefing. Further, all PLs were trained "on the appropriate ways to clearly communicate to all employees that they were going to conduct voluntary briefings"

Tim Dugger, General Manager Delta TechOps -- Materials and Logistics in Atlanta, stated that PLs conducted daily operational briefings to discuss safety and other pertinent information about the operation. Dugger stated that he was aware of voluntary briefings conducted at the conclusion of the daily operational briefings by PLs. In terms of frequency, Dugger said it depended on whether there was something relevant to share with employees. Leaders were provided with bullet points from Corporate Communications but generally nothing was passed out to employees. Dugger also stated that employees were allowed to ask questions during the voluntary briefings, including IAM supporters, and there were places to go if an employee did not want to stay and hear the information.

DISCUSSION

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.

“[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).

Employee interviews revealed that there were no one-on-one meetings between individual employees and managers in the Stock and Stores Employee craft or class. Some operational briefings were followed by voluntary briefings in the PMDL hubs, mainly Atlanta, but testimony from the employees interviewed reflected that managers always stressed that the meetings were voluntary and gave people an opportunity to leave before beginning the discussion. One employee stated: “People did feel free to leave the meeting if they didn’t want to hear the information.” Another stated: “They [supervisors] gave us information on how to vote, it didn’t steer us in any direction. . . . There

were people who had questions that were not answered – they said they should get information from other sources. Management was surprisingly neutral.” Further, no employees interviewed testified that they had suffered any adverse action as a result of their not participating in a voluntary briefing.

The majority of employees interviewed at PMNW hubs commented that there were no operational and subsequent voluntary briefings; instead they had monthly safety meetings. Interviews reflected that the main message that supervisors communicated at the monthly safety meeting was to remind employees to vote. In hubs with small groups of Stock and Stores Employees, supervisors communicated more informally and often via email and telephone. One Union representative interviewed spoke about meetings in a PMNW hub: “. . . [W]e had crew meetings once a month where we would talk about operational issues. The managers stayed neutral and just reminded us to vote.”

There were some town hall meetings around the time of the election where Tony Charaf and other Delta management would discuss the merger, the state of the company, and respond to questions including questions about the election. The town hall meetings were conducted in both PMNW and PMDL hubs and had occurred with some frequency since the merger.

In the instant case, the Board finds insufficient evidence that the voluntary briefings were mandatory or coercive, and no evidence that there were any one-on-one meetings with supervisors. While some employees reported that the voluntary briefings increased as the election period came to a close, all employees interviewed reiterated that the meetings were voluntary. In sum, the Board finds that the voluntary briefings did not taint the laboratory conditions.

VI. Pay Increase

i.

The IAM contends that the pay increase for non-contract employees on October 1, 2010, was done to persuade Stock and Stores Employees to vote against the union. Further, Delta’s communications to employees clearly linked the pay raise to the election by stating that union members would not receive the raise.

After the announcement, 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 which stated that it was 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, IAM contends that supervisors in the largest hubs told employees that they would only receive the raise if they voted no to representation.

ii.

Delta stated that the pay increases were pre-planned, and since its emergence from bankruptcy, it had consistently and publicly committed to its non-contract employees that they would receive industry-wide standard pay by the end of 2010. Post-merger, Delta had consistently communicated that until resolution of representation issues, the packages of pay, benefits, and work rules would be maintained separately for PMDL and PMNW employees. The Carrier stated that it did not accept the IAM's offer to increase pay rates for its contract employees as it wanted to align pay, benefits, and work rules and would not piecemeal the process.

Delta contends that it continued to honor the prior contracts in place. Delta stated that it made payments to IAM contract employees consistent with the PMNW CBA's. The Northwest-IAM agreement for ESSC employees contained a side-letter agreement in which Northwest committed to distribute a total amount of \$13 million to ESSC employees in December 2010. In June, Delta confirmed its intention to make this payout when due, regardless of the outcome of any representation election. The actual payout was announced on December 19, 2010 and paid on December 30, 2010.

Delta relied on the Board's election interference decision involving the Simulator Technicians¹⁵ 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 of the February 4, 2010 announcement, particularly with a delayed effective date until October 1, 2010.").

¹⁵ *Delta Air Lines, Inc.*, 37 NMB 281 (2010).

Delta produced a number of documents supporting its contention that the pay raise was planned much prior to the filing of IAM's representation application. On April 14, 2008, Delta's CEO Richard Anderson and President Ed Bastian issued an internal memorandum to its U.S. based employees that states:

Upon closing of the merger, Delta frontline employees will receive pay increases that will continue our progression toward industry-standard pay for all workgroups by the end of 2010. . . .

During the integration of the two carriers, Delta's frontline employees will continue to receive pay increases in keeping with Delta's commitment to move frontline employees to industry-standard by the end of 2010. Northwest's contract employees will continue to receive pay increases in accordance with their existing collective bargaining agreements.

Delta stated that the Q&A document that accompanied the February 4, 2010 pay increase announcement further bolsters the fact that the increase was pre-planned. Question number eight of the Q&A asked why the premerger Northwest employees represented by the IAM and AFA are not getting the raise. The answer provided:

Just as we are honoring the commitment made to Delta people three years ago, we also have continued to honor the packages of pay, benefits and work rules provided for in the contracts still in place in workgroups where representation has not yet been resolved. When representation is resolved, we plan to begin the process of fully aligning the pay, benefits and work rules of employees in those groups. Those elements represent a total package

Delta also provided a transcript from an employee conference held at the time of the merger announcement, April 2008. Richard Anderson states: "...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 2010." In addition, Delta offered a Compensation Fact Sheet for Non-Contract Tech Ops Employees from November 12, 2008, which provided that, "Delta is committed to paying industry-standard pay rates by the end of 2010."

Delta further contends 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.*

DISCUSSION

The Board has found that changes in wages or benefits during the laboratory period which were not planned prior to an organizing drive or that were timed to affect the outcome of an election have tainted laboratory conditions. *See Stillwater Central R.R., Inc.*, 33 NMB 100, 141 (2006); *Petroleum Helicopters, Inc.*, 25 NMB 197, 232 (1998).

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 Investigation disclosed that since there were only monthly safety meetings for the PMNW employees, and few voluntary briefings for the PMDL employees, there were also fewer opportunities for supervisors to discuss the pay increase and other issues related to the election. Several employees stated that supervisors did mention the pay increase in voluntary briefings and explained that only the non-contract employees would receive it as Delta was abiding by the CBA for the contract employees. While many of the PMNW employees interviewed were displeased that they had not received the general pay increase, they understood that Delta was still abiding by the PMNW CBA.

The Board has previously found that Delta 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. *Delta Airlines, Inc.*, 37 NMB 281, 308 (2010) (finding the timing of the announcement of the pay increase, rather than decision to give the pay increase constituted interference). In this case, there is no allegation regarding the timing of the announcement. With respect to Delta’s communications to employees regarding the pay increase, it is true that Delta

did not miss an opportunity to remind employees of its plan to bring them to “industry-wide standard,” but the communications were factual. As such, the pay increase for only PMDL Stock and Stores Employees did not taint laboratory conditions.

VII. Carrier Communications

The IAM made a number of allegations regarding Delta’s communications during the election campaign, characterizing them as misleading, massive, and overwhelming.

Delta responded that its communications with employees were truthful, protected by the First Amendment, and always identified Delta as their source. Delta argued that it trained its managers and supervisors about obligations under the RLA and allowed the IAM many forums through which to communicate with employees. Further, Delta stated that a large component of its communications in this election were in response to communications from IAM or IAM supporters which misrepresented facts of importance to voters.

The representation election in the Stock and Stores Employees craft or class at Delta would be among the first elections run under the new election rule.

a. “Must Vote” Message

IAM argued that Delta “commanded” employees “MUST VOTE” through pop-ups on DeltaNet, through communications from CEO Richard Anderson, and through communications from PLs who made announcements to the effect that “the rules have changed and now everyone must vote.” In an election pamphlet mailed to employees, Delta stated: “The Voting Rules Have Changed. TO BE COUNTED YOU MUST **VOTE**.” In an October 15, 2010 communication from Richard Anderson on DeltaNet, he 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 when an employee logged into DeltaNet during the election period, the first thing that popped up was a box that read “Decision 2010 - Whether you are casting a YES or NO vote you MUST VOTE to be counted. Click here for more information.” A July 1, 2010 memo from TechOps President Tony Charaf to Stock and Stores Employees stated: “Now under the new voting rules, in order to vote ‘no’ to IAM representation, you must submit a ‘no’ ballot. In other words, to have your voice heard, you must

cast a ballot.” IAM alleged that Stock and Stores Employees were coerced into thinking that abstention was not an option.

Delta responded 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. In addition, the Carrier asserts that the message “You must vote to be counted” was fundamental to making employees aware of the rule change.

b. Biased NMB

IAM alleged that Delta communicated to employees the message that the Board and its members are biased. Specifically, IAM refers to a September 23, 2009 memo from Richard Anderson titled “ATA, Delta Opposed Request to Change Union Election Voting Rules.” In the memorandum, Anderson states: “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 5 asks:

Has the NMB ever considered this type of rule change in the past?
Yes this issue has come up four times in the past 75 years since the majority rule has been in effect. Each time the NMB decided that the majority rule should not be changed Nothing has changed except the composition of the NMB. Politics is not a good enough reason to change a rule that has worked well for 75 years.

Further, the IAM asserted that Delta management 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.

Relying on the D.C. Circuit's decision in *US Airways, Inc. v. NMB*, 177 F.3d 985 (D.C. Cir. 1999), Delta responded that an employer has a First Amendment right to express its views on union representation issues, and further that employees have the right to petition their government for "redress of their grievances."

c. Misrepresented Not Voting

IAM alleged that Delta misrepresented the meaning of not voting to suppress the "yes" vote. IAM alleged that Delta told employees in Atlanta that if they did not vote, it would amount to a vote for the union. Specifically, IAM provided evidence that PL, ACS, James Prather stated at a voluntary briefing in the fall of 2010 that "under the new rules it would count as a yes vote if you elect not to participate in the vote."

Delta responded through a declaration from James Prather where he acknowledged that he had "mistakenly said that failure to vote was like a 'yes' vote." After being challenged by several union representatives in the audience and conferring with a PL present, he apologized for the misstatement. "I then re-emphasized that in order to be counted under the NMB's new voting rules, an employee would have to actually vote."

d. Decertification

The IAM stated that Delta told employees that if the IAM won the election, 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 message to employees that there was no procedure for decertification was communicated by various managers in direct communications, memorandum, videos on DeltaNet, and phone updates.

A May 10, 2010 Letter from Gil West stated:

What's even more concerning [about the new voting 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 vote out the union entirely. We strongly believe that you should always have the right to an equal process to decertify a union and return to union-free status.

In addition, Delta distributed a flyer to employees titled “Keys to the Game, 10 Big Game Changers.” One bullet stated: “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.

e. Write-in Vote

IAM stated that Delta misrepresented the “write-in” vote option and encouraged employees to vote no. In a “Decision Time” flyer where the Carrier outlined the voting options, it stated: “This is the WRITE-IN OPTION and is likely to be considered either a vote for representation or a non-vote, either of which could help the IAM win.”

IAM argues that the message Delta communicated was that a “write-in” vote would help the IAM, so they encouraged employees to instead vote “No.” West sent a memorandum to employees discussing the rule change and representation elections and stated: “Under the new voting rules, the election results will be based on the ‘majority of people voting.’ This means that under the new rules if you do not want IAM representation, you will have to vote ‘NO’.”

Delta responded that it truthfully told employees that write-in votes could affect the outcome of the election, and help IAM win the election. Delta contends this statement is both objectively true and constitutionally protected.

f. Delta Represented it was part of the Official Voting Process

IAM argued that the Carrier represented that it was part of the official voting process. The Organization contends that the three-step voting process, outlined in the “Decision 2010” page on DeltaNet during the election period, deceptively represented that Delta was part of the official voting process. Delta instructed its employees that the first step in the process was to visit the employee’s departmental page or talk to the employee’s supervisors “to get the facts.” The second step was the NMB mailing the voting instructions, and the third step was going to the voting website and casting a vote.

Further IAM contends that Delta repeatedly misinformed employees that speaking to their supervisors was part of the official process. For example, in briefings and in a flyer, Delta stated: “If you do not receive your VIN and PIN from the NMB, please contact your leader for information on how to request it.” Also according to the IAM, leaders in Boston and Atlanta also encouraged employees to see their supervisors for help voting. Finally, a series of videos were shown on DeltaTube that were titled “Instructions for Voting” which walked employees through the voting process.

Delta responded that encouraging employees to ask Leaders if they had questions is both indicative of the Delta culture and a result of their education campaign as a result of the rule change. West stated that:

[C]ommunications with our employees has always been an essential part of Delta’s uniquely strong culture of employee relations. . . . The tone and the content of Delta’s communications in connection with the election had three principal purposes: (i) voter education about the election process, (ii) correction of misrepresentations or misinformation circulated by IAM representatives or frontline employees, and (iii) expression of Delta’s own views with civility and professionalism.

Delta additionally stated that it provided the NMB’s contact information to employees who had not received their Instructions, and posted the election Notices as it was required to do.

g. April 2009 Charaf Memorandum

The IAM alleged that an April 29, 2009 memo from Tony Charaf to the Stock and Stores Employees “misrepresented NMB precedent, rulings and the RLA in an effort to confuse Stock Clerks.” In a section describing the NMB’s voting process, the memorandum stated: “Under the NMB’s voting process, if an employee does not want union representation, they would simply not vote. There is no place to vote ‘no’.”

Delta responded that Mr. Charaf accurately described the Board’s voting rules *prior* to the rule change, which was effective for elections starting on or after September 17, 2010.¹⁶

¹⁶ See 29 CFR Parts 1202 and 1206; See also *Materials for the National Mediation Board’s New Voting Procedures*, 37 NMB 344 (2010) (NMB’s voting procedures for representation

h. Authorization Card Flyer

IAM asserted that Delta told Stock and Stores Employees that they did not need to fill out IAM authorization cards when the union application was pending because of the Delta-Northwest ratio and that there would be an election regardless of authorization cards. A flyer was distributed to Stock and Stores Employees in August of 2010 which stated, in relevant part:

The IAM 'A-Card' is not a Ballot. You do not have to sign one. Employees have asked if the IAM A-card is a ballot for voting in the union election or if they have to sign one to be eligible to vote. The answer to both questions is NO! When it's time to vote, voting will be by telephone or Internet only . . . Eligibility in the election is not tied to signing an A-card. If the NMB authorizes an election in your workgroup, you will be eligible to vote if you were hired prior to July 23, 2010. . . . If you support a direct relationship with leaders, and you don't want to be represented by the IAM, then there is no need to sign a card.

Delta's GM Material and Logistics for Stores, Tim Dugger, responded that in response to questions from employees, Delta distributed a flyer and held a voluntary briefing where it explained that an authorization card was not a ballot and signing it did not determine eligibility in the election. Dugger said that employees had received authorization cards in the mail and had questions. "We explained that the A-card was not a ballot and that they would receive voting instructions if the NMB authorized the election."

i. Other Specific Communications to Employees

IAM attached several communications from Delta supporting its contention that the Carrier's campaign was misleading and coercive: 1) a flyer to Stock and Stores Employees addressing wage differences¹⁷ between PMDL and PMNW Stock and Stores Employees; 2) a flyer stating that \$1,300 was

elections were changed to add a 'No' option and to provide that the majority of valid votes cast would determine the outcome of an election. The new procedures only apply to applications filed on or after July 1, 2010, and the new voting system will be implemented for elections starting on or after September 17, 2010.)

¹⁷ The flyer states that PMDL Supply Attendants Top of Scale Pay is \$21.46 per hour and that PMNW Stock Clerks Top of Scale Pay is \$18.91 per hour.

spent in dues by PMNW employees since November 2008¹⁸; and 3) instructions for voting under the new rules, highlighting “write-in” votes and stressing the difficulty of decertifying a union under the RLA.

In response, Delta stated that the communications at issue: accurately explained top of the scale pay for PMDL Supply Attendants compared to PMNW Stock Clerks; provided an estimate of dues paid by PMNW employees; and accurately provided information about the voting process. Further, all communications noted that Delta was their source.

Some of the other misrepresentations that IAM complained of were: implying that IAM could put dues money towards employee pensions; distributing flyers of things IAM cannot do in an election, implying that IAM would in fact do those things; distributing flyers telling people what they could do if the IAM was harassing them at home; and distributing flyers stating that IAM has increased its dues without telling members.

Delta responded that all of the communications complained of were both truthful and protected by the First Amendment. Delta contends that it was correct when it told its employees that the union dues were raised “without any official notification to its members” as evidenced by the IAM’s Local Lodge 1833 January/February newsletter which told its members of the increase after the fact.

j. Massive and Overwhelming Communications Campaign

i.

The IAM alleged that the Carrier’s massive communication campaign was so overwhelming and misleading that employees’ free choice was suppressed. 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.

IAM alleged that the Stock and Stores Employees were overwhelmed by the many links and anti-union messages on the TechOps homepage and DeltaNet, and were particularly susceptible because they are required to be on

¹⁸ There is a note at the bottom of the flyer stating that dues range by station.

the computer for much of their day. IAM contends that when a Stock and Stores Employees logged on to DeltaNet during the election period, they were confronted by a pop-up box that read: "Whether you are casting a YES or NO vote you MUST VOTE to be counted. Click here for more information."

The IAM provided a declaration from a Stock Clerk who stated that in order to perform his job duties he is required to log on to DeltaNet with his personal ID and password. The declarant further stated that: 1) the majority of Stock Clerks are required to logon to DeltaNet on a daily basis to perform job functions and check email; 2) DeltaNet times out after 5 minutes of non-use requiring an employee to logon again; 3) during the voting period, every time he logged on to DeltaNet, election-related pop-up messages appeared; and 4) the TechOps home page was filled with a variety of messages and links from Delta about the pending representation election.

ii.

Delta stated that its campaign was truthful and sought to educate its employees about the changed election procedures. Further, Delta contends that its relatively few communications to employees stand in contrast to the IAM's massive and relentless campaign which ran from 2008 through November 2010.

Delta responded through a declaration and interview with Tim Dugger, General Manager Delta TecOps – Materials and Logistics in Atlanta. With respect to carrier campaign material in the workplace, Dugger stated that for the Stock and Stores Employees, typically only one Delta campaign poster was displayed on a bulletin board and, further that Delta did not post campaign material in the Stock and Stores break rooms. Dugger also stated that Delta only had "Get the Facts" informational stands in 7 out of the 27 domestic stations where there are Stock and Stores Employees.

Dugger stated that after the July 31, 2010 filing and during the election period, the only election-related information displayed on the TechOps homepage was a countdown clock that reflected the number of days left until the voting period ended. There were links to Delta campaign information on the homepage if an employee chose to access them.

In response to IAM's allegation that Stock Clerks were vulnerable to interference because of the amount of time they spend in front of the computer, Dugger stated the following:

Stock Clerks and Supply Attendants based outside of ATL Main Base Stores are required to log into DeltaNet only once during their shift to check their Revision Notification System (RNS) queue Supply Attendants and Stores Utility Employees working in Atlanta Main Base Stores are not required to log into DeltaNet at all to access RNS. Instead, pertinent information from RNS is disseminated to them through requested briefings by Stores Leaders.

Dugger stated that a Stock and Stores Employee might access DeltaNet to get a phone number from a Delta directory, to get a flight number of an aircraft to ship or receive material, or to get station information but can also access this information using DeltaTerm, a separate system that provides this information. Stock and Stores Employees also use two other inventory systems during the day but are responsible for and perform many other duties in addition to work at the computer, including: order picking, “put aways,” receipts, physical bin counts, parts delivery, meeting flights, shipments, component removal and installation recording. The many other daily activities of Stock and Stores Employees make it “impossible” for an employee to sit in front of his/her computer for any significant portion of the day.

DISCUSSION

A carrier is free to communicate its views regarding representation in a non-coercive manner during an election to its employees. *Federal Express Corp.*, 20 NMB 659 (1993); *USAir/Shuttle*, 20 NMB 162 (1993); *USAir*, 17 NMB 377 (1990). However, the Board also has found that a carrier's right to communicate is “not without limit, and even conduct which is otherwise lawful may justify remedial action when it interferes with a representation election.” *Air Logistics, L.L.C.*, 27 NMB 385, 404 (2000) (quoting *Laker Airways, Ltd.*, 8 NMB 236, 253 (1981)).

The Board examines the content of carrier communications to determine whether the communications are coercive, contain material misrepresentations, particularly about the Board’s processes or the Act, or combined with other carrier actions, influence the employees in their choice of representative. Typically, the Board has found interference where the communications include threats about consequences of voting for an organization. See *Petroleum Helicopters*, 25 NMB 197 (1998); *USAir, Inc.*, 18 NMB 290 (1991); *Mid Pacific Airlines*, 13 NMB 178 (1986); *Allegheny Airlines, Inc.*, 4 NMB 7 (1962).

The Board has found no interference in situations where the carrier's comments had a factual basis, and where review of the materials was voluntary. *Delta Air Lines, Inc.*, 37 NMB 281, 314-316 (2010); *Delta Air Lines, Inc.*, 35 NMB 271, 286 (2008). While carriers must refrain from making statements that are inaccurate or misleading, carriers may accurately portray the way an employee can vote no, and disseminate publications expressing their views on a representation election. *Delta Air Lines, Inc.*, 30 NMB 102, 127-132 (2002); *Express Airlines I, Inc.*, 28 NMB 431, 453-454 (2001).

“Must Vote” Message

Delta's communications campaign clearly put a strong emphasis on encouraging 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. 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. The interviews reflected that employees did get the message from both Delta and the IAM that you must vote to have your voice heard. In sum, because all employees received the Board's Voting Instructions which clearly state that “no employee is required to vote,” and because Delta's communications were neutral and non-coercive, the Board finds no interference with regards to this claim.

Carrier Communications

Biased NMB

With respect to the contention that Delta communicated to employees that the Board was biased, the Board finds no interference. The employee interviews reflected that some read articles and saw videos on DeltaNet and others heard from managers about the NMB's rule change. It was clear that Delta did not support the Rulemaking. It is also clear that Delta expressed this view to employees. But Delta's position was also expressed in its comments during the Rulemaking and is addressed by the Board in the final rule. Moreover, no employees remember specific comments about the Board being biased. Most employees remember the discussion of the rule change in the context of the message that “you must vote to be counted.”

Misrepresenting Not Voting

With respect to Delta misrepresenting the meaning of not voting, one misstatement by a management official that was promptly cured is not sufficient to interfere with the laboratory conditions. 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). Further, none of the employees interviewed, even in Atlanta where Prather made the comment, stated that they believed failing to vote was like a yes vote.

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. While Delta mistakenly suggests that decertification under the RLA was altered by the Rulemaking, Delta’s campaign material accurately describes the “straw man” process.

Delta did not suggest as the carrier did in *USAIR*, 17 NMB 377, 390 (1990) that the Board has no process for decertification or that there was no process to vote the union out as in *Era Aviation*, 27 NMB 321, 338 (2000). In addition, none of the Stock and Stores Employees interviewed remembered hearing any discussion of the decertification process by managers or reading material about decertification on DeltaNet. Accordingly, 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 Vote”

Delta did accurately describe how a “write-in” vote could contribute to an IAM victory, communicating to employees that a “write-in” vote could be considered a vote for representation or a void vote. Moreover, only two of all the Stock and Stores Employees interviewed remembered any discussion of “write-in” votes.

Delta Represented it was part of the Official Voting Process

The Board does not find that Delta represented it was part of the official voting process. The communications do not state or imply that Delta was running the campaign. Delta did post the required election Notices in work areas and provided the NMB's contact information for employees who had questions or needed duplicate Voting Instructions; this information was also provided in the Voting Instructions mailed to all eligible employees. Stock and Stores Employees confirmed that they understood that the NMB was running the representation election.

April 2009 Charaf Memorandum

At the time the April 2009 memorandum was circulated to employees, it was an accurate description of the Board's voting procedures prior to the Rulemaking. Both Delta and IAM circulated many materials clarifying the Board's voting rules after the May 2010 rule change. Moreover, the memo predates the laboratory period which began in July of 2009. Therefore, the Board finds no evidence of interference.

Authorization Card Flyer

Nothing in the authorization card flyer circulated by Delta in August of 2010 misrepresents the Board's processes. The flyer accurately states that an authorization card is not a ballot and that eligibility was determined by an employee's hire date. As such, the flyer did not taint laboratory conditions.

Other Communications

Upon careful review of the other communications presented by the IAM, the Board finds that they did not taint laboratory conditions. The campaign material did not contain threats of reprisal or promises of benefits. The information presented was within the knowledge of the employees to whom they were addressed or was otherwise obtainable by those employees if they sought to test the veracity of the information. Additionally, throughout the campaign, Delta and IAM had and took the opportunity to clarify perceived inaccurate information or falsehoods. *See Delta Air Lines, Inc.*, 39 NMB 53 (2011). Moreover, the employees were sophisticated enough to understand that both Delta and IAM were presenting their side of the facts, with one union organizer referring to the communications as "the truth with a twist."

Delta's Communication Campaign

IAM asserts that Delta's campaign suppressed employees' free choice, and that the Stock and Stores Employees were particularly susceptible because of the amount of time they spend on the computer each day. 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." *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).

While Delta's campaign was certainly voluminous, the communications had a factual basis and the most prevalent messages ("You must vote to be counted") stated a neutral "get out the vote" message. See *Delta Air Lines*, 35 NMB 271, 286 (2008); *American Airlines*, 26 NMB 412, 448-49 (1999). Further, the communications were not coercive or threatening and did not contain "material" misrepresentations of the Board's processes or the RLA. In addition, employees were under no obligation to review the advocacy materials on the Decision 2010 page on DeltaNet, or the materials circulated at work or sent to their homes. Employee interviews revealed that they received a large number of communications from both Delta and IAM. In the Stock and Stores Employees craft or class, there was much less Delta signage in the workplace than found with respect to other craft or classes, and many managers in PMNW hubs allowed more pro-IAM signage and advocacy material. While the interviews reflected that employees did tire of the propaganda from both sides, none of the employees indicated that the campaign materially impaired or interfered with their free choice in the election.

The most prevalent messages, pop-ups reminding employees to vote, and the countdown clock which noted the number of days left in the election period, were neutral messages which could be easily closed. When Stock and Stores Employees were on DeltaNet, most did notice pop-ups and links to the Decision 2010 page with more articles and information related to the election. Some employees stated that the pop-ups were a nuisance but also acknowledged that they could be easily closed. As such, the Board finds that the carrier's communications did not amount to an impermissibly pervasive campaign.

VIII. 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.

IX. Interference by the IAM

Delta contends 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. Delta stated 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. Delta argued that the IAM's campaign was voluminous and utilized rumors, whisper campaigns, and unannounced home visits. 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 IAM used paid company leave to conduct its campaign.

IAM responded that Delta's implication that it interfered in the election was merely a ploy to distract the Board from the actual issues in the case. Further, IAM contends that Delta did not actually charge the IAM with interference.

DISCUSSION

The Board 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. *See America West Airlines, Inc.*, 30 NMB 310, 347 (2003); *Delta Air Lines, Inc.*, 30 NMB 102 (2002); *United Air Lines, Inc.*, 22 NMB 288 (1995); *Air Wisconsin*, 16 NMB 235, 239-240 (1989). When applying this principle in cases involving allegations of union interference, the Board has found that certain campaign activity, including ballot collection, engaged in by an organization, rather than a carrier, is not coercive because it does "not

produce the same effect on employees.” *United, above*, at 319, citing *Federal Express Corp.*, 20 NMB 659, 665 (1993).

While the IAM did conduct a strong campaign, the Board finds that this is not a basis for finding interference. *See United Airlines, above*, at 319. The interviews reflected that the Stock and Stores Employees received approximately the same amount of mail from the IAM at home as they did from Delta. Some employees reported receiving calls from the IAM at home but there was no evidence that the calls were harassing or coercive. Employees saw much less IAM advocacy material at work as it was primarily limited to attended break room tables, union bulletin boards, and the union office. There was no evidence of coercion or intimidation by the IAM’s communications. While some IAM advocates may have campaigned in an aggressive manner, this was not reflected in the interviews with the Stock and Stores Employees, with no employees reporting any harassment or unannounced home visits.

CONCLUSION

Based upon the totality of circumstances, the Board finds that the laboratory conditions required for a fair election were not tainted.¹⁹ This conclusion is based on the totality of circumstances.

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson
General Counsel

¹⁹ 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.

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