



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

UNITED AIR LINES

39 NMB No. 46

CASE NO. R-7286

FINDINGS UPON
INVESTIGATION

June 4, 2012

This determination resolves election interference allegations filed by the International Brotherhood of Teamsters (IBT) involving employees of United Airlines (United or Carrier). The IBT filed allegations of interference against both the Carrier and the International Association of Machinists and Aerospace Workers (IAM). For the reasons below, the National Mediation Board (NMB or Board) finds that the laboratory conditions were not tainted but that IAM's conduct in violating the Board's hyperlink policy warrants a shortening of the dismissal bar.

PROCEDURAL BACKGROUND

On January 19, 2011, IAM filed an application alleging a representation dispute involving the craft or class of Fleet Service Employees at the merging carriers of United, Continental, and CMI. Fleet Service Employees at United were represented by IAM and Fleet Service Employees at Continental and CMI were represented by IBT. The Board issued its single carrier determination on April 28, 2011. *United Air Lines, Inc./Continental Airlines, Inc.*, 38 NMB 185

(2011). The Board authorized an election with a tally scheduled for August 12, 2011 with IAM and IBT on the ballot. The Report of Election Results reflected that a majority of votes was cast for IAM. *United Air Lines, Inc./Continental Airlines, Inc.*, 38 NMB 285 (2011).

On August 22, 2011, pursuant to the Board's Representation Manual Section 17.0, IBT filed allegations of election interference against United and IAM, seeking a re-run election. United and the IAM responded on September 16, 2011. The IBT submitted an additional response on November 4, 2011 and IAM replied on December 14, 2011. On January 18, 2012, the Board notified the participants that an investigation was necessary to determine whether laboratory conditions had been tainted.

Investigators Angela I. Heverling and Maria-Kate Dowling conducted on-site interviews and investigated at Chicago O'Hare International Airport (ORD) and Denver International Airport (DEN).

ISSUE

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

CONTENTIONS

IBT

The IBT's interference allegations include the following:

- IAM ran a campaign that included intimidation and voter harassment, particularly in United's ORD and DEN bases.
- United engaged in a pattern of supporting and providing greater access to IAM, including condoning intimidating conduct by IAM supporters and advocates.
- The IAM inserted a hidden hyperlink to the BallotPoint website in violation of NMB policy and providing IAM's website administrator with the opportunity to track the identity of individuals voting from that link.

IBT alleged that this conduct contaminated the laboratory conditions necessary for a fair election and requests a rerun election.

IAM

IAM responded that IBT's allegations of intimidation and harassment were vague and based on rumors and unsubstantiated statements by IBT advocates. IAM also argued that IBT's allegation of favoritism by United are untrue and contradicted by the evidence. Regarding the hyperlink issue, IAM provided evidence that the unauthorized hyperlink was caused when an employee changed the hyperlink code on IAM's website, unaware that this violated the Board's policy. IAM argued that there is no evidence that this inadvertent hyperlink was used by anyone to vote or that the security of voters' identities was compromised in any way.

UNITED

United responds that IBT failed to demonstrate a pattern of carrier support for IAM. United maintains that it enforced a policy of strict neutrality towards the IAM and IBT during the election period and this policy was communicated to all supervisors.

FINDINGS OF LAW

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

I.

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

II.

IBT and IAM are labor organizations and/or representatives as defined in 45 USC § 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.

Applicable Legal Standard

Under Section 2, Ninth of the Act, the Board is charged with the responsibility of assuring that employees are provided the opportunity to make a choice concerning representation free of interference, influence, or coercion. Where there are allegations of interference, the Board has the responsibility to investigate such claims. 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 the investigation. In such an evaluation, each conclusion may not constitute interference in and of itself, but when combined with other factors the totality may evidence improper interference. *Delta Air Lines, Inc.*, 37 NMB 281 (2010); *Frontier Airlines, Inc.*, 32 NMB 57 (2004); *Piedmont Airlines, Inc.*, 31 NMB 257 (2004). 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 Int’l Airlines*, 20 NMB 675 (1993); *America West Airlines, Inc.*, 17 NMB 79 (1990).

Coercive conduct by unions may also taint the laboratory conditions necessary for a free and fair election. The Board recognizes, however, that carriers possess unique power and authority in the workplace, and therefore,

while the test for carrier and union interference is the same, its application to identical factual situations may lead to different conclusions. *United Air Lines, Inc.* 39 NMB 385 (2012); *United Air Lines, Inc.*, 22 NMB 288, 318 (1995). Thus, certain campaign activity, when engaged in by an organization rather than by a carrier, does not have the same coercive effect on employees. *Federal Express Corp.*, 20 NMB 659 (1993).

II.

Campaign of Intimidation and Harassment

According to IBT, IAM's campaign in the Fleet Service craft or class election included "shameful threats, system-wide destruction of property, bullying and defamation of Fleet Service employees . . ." The IBT alleges that IAM specifically targeted the former United hubs, such as ORD and DEN, where the IAM already represented a majority of the employees. Declarations submitted by IBT supporters included allegations of IAM shop stewards "patrolling" company property at ORD while campaigning and suppressing support for IBT. There were allegations that IAM advocates plastered stickers over the work stations of IBT supporters, made threats against IBT supporters in DEN, and helped individuals vote at work. One declarant described an incident where upon his entry into the United cafeteria at ORD, he and another IBT supporter were surrounded by about 20 shouting IAM supporters, one of whom carried a baseball bat. Much of the other evidence provided by the IBT in the form of declarations was based on rumor and hearsay rather than firsthand knowledge.

IAM responds that the incidents discussed above were either isolated incidents or merely rumors. IAM argues that there is no evidence that the alleged actions were connected to the election or to a coordinated campaign by the IAM.

The investigation revealed that there were incidents of inappropriate conduct between supporters of both organizations with IAM supporters being particularly aggressive at ORD and DEN. Management at both airports reported receiving numerous complaints about both organizations' campaigning activities. United supervisors reported that they received reports of IAM stickers covering IBT's bulletin boards and reports of aggressive behavior by IAM activists. At ORD and DEN, many of the lead ramp servicemen are also IAM shop stewards. Active IBT supporters reported feeling uncomfortable if these leads were aware of their support for the IBT. Lead ramp servicemen, however, do not have the authority to discipline or hire or fire

employees and are members of the voting craft or class. No employees reported that they changed their vote due to pressure or coercion. Regarding the incident in the United cafeteria at ORD, the declarant did not specifically allege that a baseball bat was used to threaten or pressure anyone and the investigation confirmed that it was not. Randomly selected employees who were not affiliated with either organization were generally not aware of the incidents reported by IBT and did not report feeling intimidated or pressured to change their vote. These employees were often aware of the animosity and conflict between the active supporters from each organization but reported that it did not influence whether or how they voted.

Some employees stated that the only campaigning they witnessed was away from the work areas. Activists for both organizations, for example, campaigned in the employee parking area in DEN. Some employees reported that they were more aware of the IBT campaign than the IAM campaign. Employees reported receiving literature from both organizations and seeing information about both on bulletin boards. Employees reported home visits from IBT supporters. Additionally, there is no credible evidence that employees voted from work computers or telephones at the urging of IAM supporters.

Applying the Board's standard for evaluating union conduct, there is insufficient evidence that IAM's activities tainted the laboratory conditions. The Board has noted that

while the test for union interference and carrier interference are the same-whether the laboratory conditions have been contaminated-because of the unique power and authority which carriers possess in the workplace, application of the standard to effectively identical factual situations involving alleged union vis-a-vis carrier interference may lead to different conclusions.

Air Wisconsin, 16 NMB 235, 239-40 (1989). In addition, as the Board has cited in previous cases, the legislative history of the RLA indicates that union conduct does not have the same effect on laboratory conditions as carrier conduct. The legislative history of the 1934 amendments to the RLA includes the following statement by Joseph B. Eastman, Federal Coordinator of Transportation:

When employees are dealing with employees, the situation is quite different from 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.

Cited in *United Air Lines, Inc.*, 22 NMB 288, 319 (1995).

It is apparent that IAM conducted an aggressive campaign and that individual IAM supporters may have targeted IBT activists for this behavior. There is no credible evidence, however, that ties many of the incidents described in the IBT's allegations to a coordinated campaign on the part of IAM leadership. The investigation revealed that to the extent that the allegations against IAM were true, any aggressive behavior was among the most active advocates of each organization and the conduct did not influence how and whether employees voted. Aggressive campaigning, as the Board has stated before, is not a basis for finding interference. *Delta Air Lines*, 39 NMB 53, 89 (2011). Even if some of the IBT's allegations are true, there is insufficient basis for the Board to order a re-run election. The investigation revealed that laboratory conditions were not tainted by any such conduct.

III.

Carrier Favoritism

IBT alleges that the Carrier "tainted the election by engaging in a pattern of support for the IAM." According to IBT, the conduct by IAM advocates discussed above was condoned by the Carrier's management. The IBT alleges that management failed to enforce its policies in a neutral manner, allowing the IAM greater access to employees than the IBT. According to IBT, this "conduct likewise clearly signaled to the hundreds of affected employees at those locations that they supported the IAM and expected their employees to vote for the IAM or not to participate in the election at all."

IBT alleged that two pre-merger Continental employees who were also IBT supporters were removed from United property at ORD even though they were authorized to be in the area. One of these individuals reported that IAM supporters were never reprimanded or asked to leave the property during the election period even though they engaged in campaigning activities. IBT alleged that IAM shop stewards and committeepersons were often present in work areas when not conducting union business, rather; they were campaigning in violation of United's policies. IBT alleged that United gave a security badge to a retired IAM official who used it to campaign at ORD. Another IBT supporter reported that aggressive behavior by the IAM was

reported to supervisors in DEN, who did not follow up or take any action against the IAM.

United responded that the IBT relies on “assertions in declarations concerning random, isolated events” rather than specific instances of improper conduct. The Carrier stated that, throughout the campaign, it maintained a policy of strict neutrality towards the two organizations seeking to represent the employees. United’s policies, conveyed to management, included a memorandum to United and Continental Airport Operations Leadership dated January 31, 2011 from Scott Dolan, Senior Vice President-Airport Operations. The “Guidelines for Leadership During a Representation Dispute” provided that managers should ensure that all unions are treated evenhandedly during representation disputes. Following the Board’s authorization of an election, Mr. Dolan sent another memorandum reminding management to remain neutral.

United’s policies prohibit individuals not employed by United from entering company property to solicit or distribute literature. The guidelines instruct supervisors to allow the incumbent union normal access to equipment and facilities for representational activities. Travel benefits and company resources are restricted to the incumbent union’s representation activities and should not be used for campaigning. In addition, the policies only permit the distribution of cards, flyers, or campaign literature in non-working areas. Postings on union bulletin boards are restricted to union business and supervisors are instructed to remove any organizing or campaign materials. Supervisors at both airports reported that they were briefed on these policies.

Robert Reynolds, Managing Director-Airport Operations Concourse at ORD, reported that management received numerous complaints about both IBT and IAM supporters campaigning. All complaints were investigated. He reported that a retired IAM official was given a security badge as alleged by IBT but this was done prior to the election period and the retired official was permitted on company property for training and collective bargaining purposes only. Mr. Reynolds reported that the pre-merger Continental employees described above were removed from company property because they had no legitimate employment reason for being there and were disrupting the workplace by campaigning for the IBT. The supervisor involved in the incident confirmed this.

Steve Jaquith, Managing Director-Airport Operations Concourse at DEN, also reported receiving the memoranda from Mr. Dolan. He reported receiving numerous complaints about campaigning activities of both IAM and IBT. He

reported that during the campaign, IBT was given bulletin boards for materials. Mr. Jaquith reported that management looked into every incident of aggressive behavior by the IAM. Complainants often did not provide the names of the individuals involved in the incidents so specific action could not be taken. Rather, complaints had to be addressed “generically” by reminding supervisors to enforce the policies. Mr. Reynolds also reported that unauthorized IBT supporters had to be removed from the property for campaigning in work areas. Another DEN supervisor reported incidents of asking IAM advocates to stop handing out materials in work areas.

The investigation revealed that there were isolated incidents of the policies described above not being enforced. For example, because they were the certified representative, IAM representatives were able to speak following briefings. Employees reported that the election was discussed on occasion during these briefings in addition to work-related and contract issues. A supervisor at DEN reported that both organizations brought in employees from other locations to campaign and sit at tables in “ready rooms.” This contradicted statements from the managing director that this type of conduct was not permitted in DEN. Employees in ORD reported that representatives from both organizations came into break rooms to campaign and talk with employees. Some reported that there was campaigning in “ready rooms” and lunch areas. It was not always clear whether the representatives were members of the craft or class or whether this was unauthorized campaigning. Supervisors in Chicago reported that campaigning was not allowed in break rooms or the cafeteria.

In general, employees reported that supervisors did not express a preference for either union and did not discuss the election with them. The randomly selected employees had differing views about which organization, if any, United favored to win the election.

The Board has previously stated that a “pattern of carrier support” for one union over another is necessary for a finding of carrier interference where union favoritism is alleged. *Northwest Airlines, Inc.*, 14 NMB 49, 56 (1986). Inconsistent statements from supervisors and differing reports from employees do not indicate a pattern of support for either union. Rather, there seemed to be some confusion over what activities were permitted, despite the instructions received by management. Management was instructed to remain neutral and generally did so.

As the incumbent organization at ORD and DEN, IAM had more access to employees.¹ In a case with similar allegations, the Board recognized that an incumbent organization will often have greater access to employees during an election campaign, stating that a “greater degree of access is inevitable due to the organization’s status as the incumbent.” *United Air Lines, Inc.*, 22 NMB 288, 317 (1995). This greater access is not sufficient to find interference by the Carrier.

Even if there were isolated incidents of supervisors allowing IAM to use company resources for campaigning, this would not evidence a pattern of support. The Board has previously determined that isolated incidents of a carrier allowing the incumbent union access to property or equipment for activities other than official business during a campaign does not indicate a pattern of support. *See, e.g., Northwest Airlines, Inc.*, 14 NMB 49, 56 (1986). For an interference finding, the Board requires evidence of a pattern of such support that is not present in this case.

IV.

Hyperlink Issue

IBT also alleges that IAM deliberately inserted a hidden hyperlink to the Board’s BallotPoint voting website on one of its own websites. The IBT alleges that IAM disguised this link as a link to the NMB website. According to IBT, “[b]y sneaking the BallotPoint voting website into its fleet service electronic campaign material, the IAM flouted the NMB’s December 1, 2009 direction to all election participants, both carrier and labor organizations, not to include” the hyperlink in their own voting materials. The IBT alleges that this conduct contaminated the laboratory conditions and warrants a re-run election. The IBT argues that, although, the Board generally applies a different standard in determining whether union conduct violates laboratory conditions relative to carrier conduct, the violation of a blanket rule that prohibits conduct of carriers and unions alike rises to the level of interference.

The IAM responds that there was a single inadvertent incident of the hyperlink being used on its website. According to the IAM, it had “a rigorous

¹ The Investigator did not conduct an on-site investigation anywhere other than ORD and DEN; however, information received from employees indicated that the IBT likely had greater access to employees where it was the incumbent union such as in Houston (IAH). Some of the IBT activists who complained of IAM having greater access at ORD or DEN admitted that they campaigned at IAH.

approval method to ensure that everything that was printed or posted on-line complied with NMB procedure.” All communications were reviewed by Joe Tiberi, IAM’s Transportation Department Communications Representative, and by the legal department. District Lodge 141, which posted the link, had received instructions not to do so. The hyperlink to the BallotPoint website was labeled as a link to the NMB’s site, www.nmb.gov, and was included in an answer on a Frequently Asked Questions (FAQ) page. Tiberi sent the FAQ document to District Lodge 141 to post on the www.voteiam.com website and District Lodge 141 Communicator Michael Mancini posted it properly with a link to the NMB website. On June 3, 2011, Mancini was revamping the website and the link was changed to direct those who clicked on it to the BallotPoint website. Mancini reported in a declaration that he does not recall changing the link but he must have done it because “it would be most convenient for users to link directly to the BallotPoint voting site instead of having to go through nmb.gov.” Mancini admitted that Tiberi had instructed him not to link directly to the BallotPoint site. The hyperlink remained until August 5, 2011, when the Association of Flight Attendants notified the IAM of its existence in connection with another representation dispute.

IAM reports that the FAQ page on its website was seldom visited. The IAM does not have information on the individuals who visited the FAQ page or whether they clicked on the hyperlink.

Following the implementation of Internet Voting in 2007, the Board addressed the use of hyperlinks to its voting website. In 2008, the Board decided to remove the hyperlink to the voting website from the NMB website and instructed voters to type an internet address (URL) to access the voting website. *Removal of Internet Voting Hyperlink on Board’s Website*, 35 NMB 92 (2008). In addition, the Board requested that participants not post a hyperlink to the Board’s voting website, noting that “the Board may consider hyperlinks to the voting website as possible evidence of election interference.” *Id.* Subsequently, the Board revised its policy and reinstated the hyperlink to the voting website on NMB’s website. *National Mediation Board’s Policy on use of Hyperlinks to its Voting Website*, 37 NMB 65 (2009). The Board also stated that “[p]articipants may provide hyperlinks to the Board’s website, www.nmb.gov, and may post the text address of the voting website if they wish to direct employees where to vote in an NMB election.” 37 NMB at 73. In the interests of safeguarding the secrecy and integrity of the ballot process, the Board continued “to direct participants *including any carrier or organization, and individual involved in the election*, not to post a hyperlink to the Board’s voting website.” *Id.* Thus, the posting of a hyperlink to the voting website may constitute interference.

Section 2, Ninth of the Act provides that when investigating a representation dispute:

[T]he Mediation Board shall be authorized to take a *secret ballot* of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as *shall insure the choice of representatives by the employees without interference, influence, or coercion*

(emphasis added) As the Board stated in *United Air Lines*, 39 NMB 385, 394 (2012), the Board's goal in administering secret ballot elections is to allow each employee the opportunity to express his or her preference for or against representation in private without the fear of interference, coercion or influence from others. Accordingly, the Board has long held that interference with or compromising the NMB voting process is a basis for setting aside an election. *Washington Cent. R.R.*, 20 NMB 191, 231 (1993); *Metroflight, Inc.*, 13 NMB 284 (1986); *Laker Airways, Ltd.*, 8 NMB 236 (1981).

This violation of Board policy did not rise to the level of compromising the voting process in this case, but it has the potential to destroy the secrecy of the Board's election process as described in *United Air Lines*, 39 NMB 385 (2012). The policy prevents not only the actual tracking of votes by carriers or organizations, it prevents the appearance of such tracking, which can lead to rumors and fear about vote tracking among employees. There was no evidence that IAM intended to use the hyperlink to track votes, but the fact remains that the hyperlink's inclusion on IAM's website was a violation of Board policy.² The IAM's actions in this case, however, do not justify setting aside the election. In view of the circumstances of this case, the Board will shorten the normal bar period on IAM's certification as set forth in Section 1206.4(a) of the Board's Rules. The bar period in this case will expire 18 months from the August 12, 2011 certification.

V.

IBT's Other Allegations

² Due to the Board's concerns about compromising the voting process, it will be changing its voting system to prevent individuals from voting from any hyperlink other than that on the NMB's website. A notice detailing this change will be issued in the near future. *See also United Air Lines*, 39 NMB 385 (2012).

The IBT submitted arguments regarding other allegations. The Board finds that these allegations are either not supported by sufficient credible evidence or, if true, do not constitute interference.

CONCLUSION

Based upon the totality of circumstances, the Board finds that the conditions necessary for a fair election were not tainted. IAM's actions, however, involving the use of a hyperlink to the Board's voting website raise serious concerns about the confidentiality of the voting process and therefore call for responsive action. Accordingly, the Board will shorten the bar period set forth in Section 1206.4(a) of the Board's Rules as discussed above. As there is no further basis to proceed, the Board closes its file in this matter.

By direction of the NATIONAL MEDIATION BOARD.



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