



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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41 NMB No. 1

October 17, 2013

VIA EMAIL

George Diamantopoulos, Esq.
Seham, Seham, Meltz & Petersen, LLP
445 Hamilton Avenue, Suite 1204
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Re: NMB Case No. R-7365
American Airlines

Dear Mr. Diamantopoulos:

This letter addresses the Aircraft Mechanics Fraternal Association's (AMFA) August 21, 2013 letter requesting that the National Mediation Board (NMB or Board) not apply the 29 C.F.R. § 1206.4 (b) (3) one-year bar to applications following the dismissal of the International Brotherhood of Teamsters (IBT) application in the above-referenced case.¹ For the reasons set forth below, AMFA's request is denied.

PROCEDURAL BACKGROUND

On May 28, 2013, IBT filed an application pursuant to 45 U.S.C. Section 152, Ninth, alleging a representation dispute among Mechanics and Related Employees of American Airlines (American or Carrier). These employees are currently represented by the Transportation Workers Union (TWU). IBT's application was docketed that same day as NMB Case No. R-7365. The docket letter directed the Carrier to provide a list of potential eligible voters (List) and signature samples by June 10, 2013. The letter further stated that "[u]ntil an applicable list and the signature samples are received by the Investigator, the Investigator will continue to accept additional authorization cards." The Board assigned Maria-Kate Dowling and Norman L. Graber to investigate.

Prior to 4 p.m. on May 28, 2013, American filed the List and signature samples with the Board. At 4:11 p.m. on May 28, 2013, the Board received a facsimile application from AMFA attempting to intervene in NMB Case No. R-7365 and AMFA's notice of appearance. The facsimile application was signed

¹ On August 26, 2013, IBT filed a response to AMFA's letter, opposing the requested actions.

by George Diamantopoulos. AMFA's application with original signatures accompanied by original authorization cards were received at the Board's office on May 29, 2013.

On May 31, 2013, Investigators Dowling and Graber issued a ruling rejecting AMFA's application. AMFA did not appeal this ruling to the Board. On August 16, 2013, during the investigation, IBT filed a letter indicating that it was withdrawing its application. On August 19, 2013, the Board dismissed the application and closed the case subject to the one-year application bar under 1206.4(b) of the NMB Rules.

DISCUSSION

AMFA contends that the IBT preempted AMFA's application to represent Mechanics and Related Employees at American and that the NMB rejected the subsequent AMFA application despite the fact that the NMB Representation Manual (Manual) provides for intervention by other unions. There is no merit to either contention. To be sure, the combination of the IBT's May 28, 2013 application and American's filing of a List and signature samples on the same day gave AMFA a narrow window of opportunity in which to timely file its application and authorization cards. The Board, however, has no control over when an organization files an application or when a carrier responds by filing a List and signature samples. Organizations choose to file applications for their own strategic reasons. The Carriers choose the speed of their response for similar strategic reasons, not the least of which is the desire to cut-off the filing of additional authorization cards. The timely submission of an application and authorization cards by a potential intervenor is thus an issue that presents itself in every instance where two unions are simultaneously organizing to represent the same craft or class of employees at a carrier but it is solely within the control of the potential intervenor.

Although AMFA filed an application within 24 hours of the IBT application, the Investigators rejected the application as failing to meet the requirements of Section 1203.2 of the NMB's Rules and Manual Section 1.02. As set forth in the May 31, 2013 letter from the NMB Investigators, under Manual Section 1.02, the Board does not accept facsimile applications, and the facsimile application filed by AMFA on May 28, 2013 was not a valid application. In addition, AMFA's May 28, 2013 application was neither supported by a showing of interest nor signed by AMFA's Chief Executive Officer or by an individual specifically authorized or designated by AMFA's Chief Executive Officer. AMFA's May 29, 2013 application was an original application and supported by an alleged showing of interest but it did not contain the required signatures. Further, the May 29, 2013 application and showing of interest were received after the Carrier had filed the List and signature samples. As the Investigators noted, it is the Board's longstanding practice and policy not to accept authorization cards after the List and

signature samples have been filed. Thus, AMFA did not properly file an application on either May 28, 2013 or May 29, 2013. Moreover, AMFA did not appeal the Investigators' ruling as provided under Manual Section 10.2. Accordingly, AMFA not only waived the right to contest the rejection of its application, but its contention that the NMB disregarded the Manual in rejecting the application is without merit.

AMFA also asserts an issue raised by TWU during the investigation, namely, that IBT committed fraud by submitting falsified authorization cards in support of its application. Based on TWU's allegations of fraud, AMFA requests that the NMB refer the matter to a prosecutorial authority and decline to impose the one-year bar based on the "unusual or extraordinary circumstances" exception to NMB Rule 1206.4 (b) (3).

IBT withdrew its application before the Board had completed its investigation. Accordingly the Board had not yet reached any conclusion regarding the existence of fraud connected to that application. By filing its withdrawal, the IBT has brought to a close the Board's investigation and, in the absence of an application alleging a representation dispute, there is no further basis upon which the Board can proceed.

Moreover, although there were allegations of falsified authorization cards being presented to the Board, there is no allegation or evidence that IBT filed its application for any purpose other than to obtain a representation election and attempt to win representation of American's Mechanic and Related Employees craft or class. An application filed without a genuine interest in obtaining a representation election, but merely to prevent another union from completing its organizing campaign, might well constitute unusual or extraordinary circumstances warranting the waiver of the one-year bar. That is not the case here. Although IBT's application, AMFA's untimely filing, and IBT's withdrawal resulted in AMFA's inability to file an application for one year from the dismissal of IBT's application, there is no evidence that IBT took the actions it did in order to bar AMFA from filing an application with the authorization cards it had already collected.

For these reasons, the Board will neither waive the one-year bar on representation applications for these employees at American nor refer the matter to a prosecutorial authority.

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson
General Counsel

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