



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the Applications of the	45 NMB No. 26
INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS (SMART)	CASE No. R-7482 CASE No. R-7483
alleging representation disputes pursuant to Section 2, Ninth, of the Railway Labor Act, as amended involving employees of	FINDINGS UPON INVESTIGATION- DISMISSAL
GOLDEN ISLES TERMINAL RAILROAD	July 3, 2018

This determination addresses election interference allegations filed by Golden Isles Terminal Railroad (GITR or Carrier) involving the Yardmasters and Train and Engine Service Employees employed by the Carrier. For the reasons set forth below, the National Mediation Board (NMB or Board) finds that the laboratory conditions were not tainted.

PROCEDURAL BACKGROUND

On February 6, 2017, the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART or Organization) filed applications pursuant to the Railway Labor Act, as amended, 45 U.S.C. § 152, Ninth (RLA or ACT), for the Yardmasters and the Train and Engine Service Employees at the Carrier. At the time the application were received, neither craft or class was represented.

The Board assigned Eileen M. Hennessey to investigate. On April 5, 2017, the Board found that representation disputes existed involving the Train

and Engine Service Employees craft or class (R-7482) and the Yardmaster craft or class (R-7483) of the Carrier and authorized an election.

On May 11, 2017 the tallies were conducted. The results of the tally in R-7482 showed that out of 28 eligible employees, there were 17 valid votes: 11 were cast for SMART and 6 for no representation. The results of the tally in R-7483 showed that out of 7 eligible employees, there were 5 valid votes: 3 were cast for SMART and 2 for no representation. On May 12, 2017, the Board certified SMART as the duly designated and authorized representative of the craft or class of Train and Engine Service Employees and the craft or class of Yardmasters at the Carrier. *Golden Isles Terminal R.R.*, 44 NMB 102 (2017); *Golden Isles Terminal R.R.*, 44 NMB 104 (2017).

On May 19, 2017, the Carrier filed allegations of union interference in both elections. On May 26, 2017 SMART filed its response to the Carrier's allegations. On February 22, 2018, the Board notified the participants that further investigation was necessary to determine whether laboratory conditions were tainted. Investigator Eileen M. Hennessey conducted in-person interviews in Savannah, Georgia with Golden Isles employees during the week of May 22, 2018. Additional interviews with SMART representatives were conducted during May 2018.

ISSUE

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

CONTENTIONS

Golden Isles

The Carrier states that during the voting period, SMART held a meeting with employees. The Carrier asserts that at that meeting a SMART official informed "employees in attendance that if they chose not to vote it would be treated as a 'No vote.'" The Carrier argues that this misinformation may have caused employees who did not want representation to not vote. The Carrier further contends that since the number of employees not voting in each election – 2 Yardmasters and 11 Train and Engine Service Employees-

“exceeded SMART’s margin of victory, and had the employees voted, the outcome of the election may have been different.”

SMART

SMART states that the Carrier’s allegations are based on uncorroborated hearsay. SMART further argues that it is well known to its officers that the Board changed its voting procedures in 2010 and none of its officers told employees that if they chose not to vote it would be treated as a “No vote”. On the contrary, SMART states that it encouraged all eligible voters to vote both during a union meeting and in a letter to employees sent during the voting period.

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.

Golden Isles Terminal Railroad is a common carrier as defined in 45 U.S.C. § 151, First.

II.

SMART 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.”

FACTS

On April 13, 2017, the Board sent a Notice and Sample Instructions to the Carrier to be posted in the work place in both R-7482 and R-7483. The Notice and the Sample Instructions in each case state in part:

No employee is required to vote. If you choose to vote, you will have the opportunity to vote for representation by an organization or individual or for “no representative.” The way to vote for representation is to select one of the “Yes” options. The way to vote for no representation is to select the “No” option for no representative. If an organization or individual receives a majority of the valid votes cast, it will be certified as the representative. If 50 percent or more of the votes cast are for no representation, no representative will be certified. The RLA states that elections shall be free from interference, influence, or coercion. It is unlawful for a carrier to interfere with the organization of its employees. Alleged violations may be reported in writing to the NATIONAL MEDIATION BOARD (NMB), Office of Legal Affairs, 1301 K Street, NW, Suite 250 East, Washington, DC 20005.

In a letter dated April 19, 2017, SMART Director of Organizing, Richard Ross, notified employees of the upcoming election, stated that the NMB would be mailing a voting packet with instructions to all eligible employees and encouraged all employees to vote for SMART. This letter also gave employees detailed instructions on how to obtain duplicate Voting Instructions and access code in the event an employee did not receive the instructions.

On April 20, 2017, the Board sent Voting Instructions to all eligible voters in each election which reiterated the language in the Notice and Sample Voting Instructions quoted above. This language is standard on all NMB Sample Ballots and Voting Instructions as well as the actual Voting Instructions sent to employees.

The Carrier provided affidavits from its General Manager David Pope and Trainmaster James West in which Pope and West stated that a Yardmaster approached them and told them he had attended a union meeting with other Yardmaster and Train and Engine Service employees during the election period. According to Pope and West, the Yardmaster told them that an

unnamed union official at the meeting told employees that “if they chose not to vote in the election, that was okay and that their vote would be counted as a ‘No’ vote.” Pope stated that he told the employee that he did not “believe that the information from the Union was correct.” West stated that he told the employee that “[West] did not believe that the information was correct based on what I had read on the NMB election poster.” Both Pope and West stated that they encouraged all the employees to vote.

According to SMART, two union meetings were held on May 3, 2017 at Carey Hilliard’s Restaurant in Savannah, Georgia. SMART submitted affidavits from all of the eight SMART officers who attended these meetings. Each union official denied making any statement that non-votes would be counted as no votes and each union official denied hearing any such statement at the union meeting.

During the month of May 2018, the Board Investigator interviewed 4 SMART officials. Each of these officials had previously provided a statement to the Board in May 2017 and their previous statements are incorporated by reference into their May 2018 statements.¹ The Investigator interviewed 2 Carrier officials; one official, Trainmaster, James West, had previously provided a sworn statement to the NMB in May 2017 and this statement is incorporated by reference into his May 2018 statement. In addition, the Investigator took sworn statements from 4 of the 7 Yardmasters who were eligible to vote in R-7483 and 12 of the 28 Train and Engine Service Employees eligible to vote in R-7482. Twelve employees stated that they had voted in the elections and six employees stated that they did not vote in the election.

In total, the Board considered four sworn statements from three management officials. None of these officials attended the union meeting and none of these officials could name the SMART official who allegedly told employees that not voting would be counted as a “no” vote. Trainmaster West stated that he heard from several employees in both the Yardmaster and the Train and Engine Service Employees crafts or classes that “not voting at all was like voting no.” West further stated that he

¹ Statements from four additional SMART officials were provided by SMART as part of its May 26, 2017 submission to the Board.

remember[ed] telling ... employees that they had to vote 'No' if they wanted to vote 'No'. We went back and forth. He [an employee] said 'no, we were told we did not have to vote if we didn't want the union.' This conversation took place right at the end. The Notice of Election and Instructions were posted in the work place. But not everyone read everything like they should have.

Richard Ross was the SMART Director of Organizing at the time of the May 3, 2017 meeting with Golden Isles employees. Larry Grutzius was a full-time employee Organizer with SMART.² At the time of the meeting, Ross had been the Director of Organizing for approximately 7 years and Grutzius had been an Organizer for over 2 years. According to SMART, it is well known to its officers that the Board modified its voting procedures in 2010 to include a "No" option and to provide that the majority of valid votes cast would determine the outcome of an election.

Grutzius gave two sworn statements in this matter and he stated that both he and Ross attended the May 3rd meeting. According to Grutzius' 2018 statement:

Rich Ross, ... started the presentation. Some of the local SMART officers spoke about benefits and how the union operates -- some spoke about the benefits they have because they belong to a union. We also had a general big group conversation and one person would answer the question depending on each SMART official's level of expertise . . . I think about 22-24 GTR and SPT [Savannah Port Terminal Railroad employees] were there.

...

I remember someone asking if they had to vote and we answered that we encouraged them to vote but that they did not have to vote. One of the employees said they did not get a ballot and we gave them instructions on how to secure a duplicate ballot.

...

² Ross has since retired and Grutzius became SMART Director of Organizing in January of 2018.

I spoke at between 10-15 [organizing] meetings during the 2015-2017 time period. ...When explaining the voting process, we give an example of a craft or class of 20 employees and if all 20 vote then we need 11 employees to vote in order to be certified. That is a general example; we do it relative to the particular property we are organizing. If everyone votes we need a majority of the votes cast. I understand the distinction between the majority of the eligible voters voting for SMART and the majority of the votes cast voting for SMART. I say 'we need a majority of the votes cast'. We also go over duplicate ballot process.

Eight of the employees interviewed by the Investigator attended the May 3, 2017 meeting at Carey Hilliard's Restaurant. None of these employees stated that they were told by SMART officials at the meeting that not voting was the same as casting a "No" vote. Fifteen of employees interviewed stated that they remember receiving Voting Instructions sent to their homes and/or posted in the work place.³

Of the individuals interviewed who did not vote, their reasons for not voting included the following:

- I didn't vote because I did not plan on being here that much longer;
- It didn't matter to me at the time;
- I don't vote for religious reasons;
- I don't really vote. ... I pretty much will go along with what the majority wants;
- I didn't vote because I was really really sick. It was the worst time in my life. I didn't not vote because I thought I was like casting a 'No' vote. I was sick, voting was the last thing on my mind; and
- I didn't want to vote one way or another for something I did not really know about.

³ One individual, a conductor, stated that he did not receive instructions sent to him at home or see them posted in the work place. He was aware of the election from conversations with co-workers but stated that he did not request a duplicate ballot.

DISCUSSION AND FINDINGS

The Act establishes that employees have the right to organize and bargain collectively through representatives of their own choosing free from interference, influence or coercion. The Board has long held that interfering with or compromising the NMB's voting process is a basis for setting aside an election. *E.g.*, *United Airlines, Inc.*, 39 NMB 385 (2012); *Washington Cent. R.R.*, 20 NMB 191 (1993); *Metroflight, Inc.*, 13 NMB 284 (1986); *Laker Airways, Ltd.*, 8 NMB 236 (1981). *USAir*, 17 NMB 377 (1990); *Zantop Int'l Airlines*, 6 NMB 834, (1979); *Allegheny Airlines, Inc.*, 4 NMB 7 (1962). In *Zantop*, above, the Board stressed the importance of communicating the accuracy of NMB procedures in maintaining laboratory conditions stating, "[t]he Board seeks to promote 'laboratory conditions' in conducting representation elections. Employees should be given accurate information concerning the method of voting and the consequences of voting." *Id.*, at 835.

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. 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. *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).

The Carrier alleges that the Organization tainted laboratory conditions by giving GTR employees misleading information. The investigation establishes, however, no evidence that the employees who chose not to vote did so acting in reliance of misleading information from the Organization.

All of the SMART officials who attended the meetings denied stating that not voting would be a "No" vote. Ross and Grutzius, experienced union organizers familiar with the Board's voting procedures stated their standard response to questions regarding the election process. None of the May 3rd meeting's attendees interviewed during the investigation stated that a union

official told them at that meeting that not voting was the same as voting “No”. Employees who did not vote provided diverse reasons for not voting but none cited information provided by SMART-- either at the May 3rd meeting or otherwise provided during the voting period -- as the reason they did not vote.

Moreover, any alleged misrepresentation of the Board’s voting process was immediately and broadly refuted. Both Pope and West stated in their affidavits that they told the employees that the purported statement by the Organization was incorrect. Pope and West further stated that they encouraged employees to vote. The Voting Instructions posted in the work place and sent to each employee clearly state, “[t]he way to vote for representation is to select one of the ‘Yes’ options. The way to vote for no representation is to select the ‘No’ option for no representative.” Almost every employee interviewed specifically remembers seeing the Voting Instructions. In addition, the Organization distributed a letter from its Director of Organizing encouraging employees to vote, and providing employees with accurate written information on how to obtain duplicate Voting Instructions.

Therefore, we find no evidence that SMART officials misled employees. On the contrary, the record demonstrates that both the Carrier and the Organization encouraged employees to vote. In addition, employees had access to accurate information regarding the Board’s voting procedures both in the workplace and sent to their homes.

CONCLUSION

The Board finds that the laboratory conditions required for a fair election were not tainted. The Board further finds, having carefully considered the record in this case, no basis to grant the relief requested by the Carrier. Therefore, as there is no further basis to proceed, the Board closes its file in this matter.

By direction of the NATIONAL MEDIATION BOARD.

A handwritten signature in black ink that reads "Mary L. Johnson". The signature is written in a cursive style and is contained within a thin black rectangular border.

Mary L. Johnson
General Counsel

Copies to:
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