



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the

UNITE HERE

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

involving employees of
UNITED AIRLINES, INC.

45 NMB No. 31

CASE NO. R-7513

FINDINGS UPON
INVESTIGATION
AUTHORIZATION OF
ELECTION

August 22, 2018

This determination addresses the application of UNITE HERE (Organization) alleging a representation dispute pursuant to the Railway Labor Act (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth).¹ The Organization alleged a representation dispute among “Flight Kitchen, Commissary, Catering & Related Employees” of United Airlines, Inc. (United or Carrier). The applied-for employees are currently unrepresented.

For the reasons set forth below, the National Mediation Board (NMB or Board) concludes that the authorization cards presented by the Organization were not tainted by fraud, threats, or coercion and that the proper craft or class for the employees covered by the application is all Flight Kitchen, Commissary, Catering & Related Employees (Catering Employees) at the six locations where the Carrier employs such workers.

¹ 45 U.S.C. § 151, *et. seq.*

PROCEDURAL BACKGROUND

On January 24, 2018, UNITE HERE filed an application alleging a representation dispute involving Flight Kitchen, Commissary, Catering & Related Employees at United. The application was assigned NMB Case No. R-7315 and Norman L. Graber was assigned as the Investigator.

On February 8, 2018, United filed its List of Potential Eligible Voters (List) and a position statement claiming that the craft or class applied for by the Organization was not proper and that the authorization cards submitted in support of its application were invalid based on fraud, threats, or coercion. On February 20, 2018, the Organization filed a response. On February 26, 2018, the Carrier filed a reply. On February 28, 2018, the Organization responded to the Carrier's reply. On April 10, 2018, Investigator Graber requested additional information from the Carrier on the craft or class issue; and the Carrier responded on April 24, 2018. On April 30, 2018, United filed additional allegations of fraud, threats, or coercion.

In addition, both participants filed allegations of election interference. Barring extraordinary circumstances, the Board does not take action on allegations of election interference until the end of the voting period. *See, e.g., Delta Air Lines, Inc.*, 38 NMB 13 (2010); *Piedmont Airlines*, 38 NMB 11 (2010); *Delta Air Lines, Inc.*, 38 NMB 7 (2010). Because the Board does not find extraordinary circumstances that would require Board action at this time, any allegations regarding conduct during the election period will be addressed, if appropriate, at the end of the voting period consistent with the Board's usual practice. *See* Section 17.0 of the Board's Representation Manual.

On May 16, 2018, Investigator Graber requested information from United and the International Association of Machinists and Aerospace Workers (IAM) regarding the 1948 NMB certification in Case No. R-1980 of the IAM as the exclusive bargaining representative of United's Dining Service Employees. On May 29, 2018, IAM filed its position statement.

On March 29, 2018, the Board's General Counsel notified the participants that an investigation was necessary to determine whether the showing of interest was tainted. From April through July 2018, Investigators Norman L. Graber and Maria-Kate Dowling conducted an on-site investigation and interviewed United management officials, employees named in United filings, randomly selected employees, and UNITE HERE witnesses in Newark,

New Jersey (EWR); Honolulu, Hawaii (HNL); San Francisco, California (SFO); Denver, Colorado (DEN); Cleveland, Ohio (CLE); and Houston, Texas (IAH).

The Investigators took statements from employees and UNITE HERE organizers who worked in each of the locations where the Organization conducted its organizing campaign.² A Vietnamese language interpreter was present one day at DEN, and a Spanish language interpreter was present for the interviews at IAH for any employees who are not fluent in English.

ISSUES

Were the authorization cards presented by the Organization tainted by misconduct? What is the proper craft or class for employees at United covered by the application?

CONTENTIONS

United

United contends that the authorization cards submitted by UNITE HERE in support of its application are tainted by both misconduct and the lack of understanding on the part of employees who signed cards. Specifically, United alleges, inter alia, that UNITE HERE organizers visited employee homes and told employees that they were United representatives conducting a poll; that the Organization told employees they would be fired if they did not sign authorization cards or vote for the Organization; and that many employees do not speak English as their primary language and, therefore, might not have understood the authorization cards they signed. Accordingly, United requested an investigation into the validity of the Organization's showing of interest for an election.

Although United submitted a List including employees that it presumes UNITE HERE is seeking to represent, it argues that many of these employees are properly placed in the Dining Service Employees, Fleet Service Employees, and Mechanics and Related Employees crafts or classes that are already represented under Board certifications.

² The Organization did not conduct any official organizing at the SFO facility. The investigation revealed, however, that at least one SFO employee was contacted by an employee at another location at some point in time and asked to be the Organization's point person at SFO. That SFO employee declined the request.

UNITE HERE

UNITE HERE contends that its showing of interest is valid, disputing United's allegations regarding taint. The Organization also argues that Catering Employees is the proper craft or class.

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.

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

II.

UNITE HERE is a labor organization and/or representative as provided by 45 U.S.C. § 151, Sixth, and § 152, Ninth.

III.

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."

IV.

45 U.S.C. § 152, Ninth, provides that the Board has the duty to investigate representation disputes and shall designate who may participate as eligible voters in the event an election is required.

BACKGROUND

On January 24, 2018, UNITE HERE filed an application alleging a representation dispute involving the Catering Employees of United. The employees on the List work in flight kitchens or warehouses at EWR, IAH, DEN,

HNL, CLE, and SFO. At the time the application was filed, the List reflected that there were 1,122 employees at EWR, 854 employees at IAH, 561 employees at DEN, 135 employees at HNL, 69 employees at CLE, and 16 employees at SFO. Many of the employees are originally from countries across the globe and some primarily speak their non-English language of origin.

In 1993, United sold most of its existing kitchens and outsourced its catering operations. Prior to 2010, the group of employees at issue worked in facilities that were operated under the name Chelsea Food Services (Chelsea) by Continental Airlines (Continental). They were not represented by a union. When United and Continental merged in 2010, the Chelsea workers became employees of United.

SHOWING OF INTEREST

Facts:

UNITE HERE's organizing activities followed the same general pattern in the five cities where the Organization conducted its organizing drive. Beginning in the Summer or Fall of 2017, the Organization sent organizers to the homes of United's Catering Employees. The organizers did not identify themselves as either UNITE HERE or United employees, but said they were conducting a survey about airports. In this manner, the Organization began collecting information about the work issues that were important to the employees. The Organization also used these visits to identify the employees that they would ask to become part of the employee organizing committee (leaders). UNITE HERE ultimately recruited about ten percent of the Catering Employees in each of the five cities to be leaders. The leaders were chosen from diverse backgrounds so that all employees could be effectively communicated to in their primary language in case they were not fluent in English. The organizers held regular meetings with the leaders during the Fall of 2017, in which they trained the leaders to approach employees in their departments and from their own national backgrounds. Leaders were advised to ask employees what they wanted to see improved in the catering division at United, and to explain the reasons they themselves were in favor of bringing in an organization. Leaders were told to stress the themes of equality, dignity, and respect; and told not to make any promises beyond describing what the Organization would attempt to do for employees if it was selected as the representative. The organizing discussions generally took place at the work site, although there were also telephone calls to employee homes and home visits.

In mid- to late-December 2017, the Organization had the leaders sign authorization cards. The main Organization drive to obtain signed authorization cards from non-leader employees occurred in mid-January 2018. UNITE HERE rented space at hotels or meeting halls near the airports and had employees come to these locations to review Organization literature and sign authorization cards. Some employees also signed cards at their homes, in the parking lots outside the facilities where they work, or in non-work areas of those facilities. The authorization cards were primarily in English, although there were also versions of the cards in Spanish, French, and Vietnamese. In addition to the authorization cards, employees were asked to sign a separate card giving the Organization permission to take the employees' photograph. The photographs were amassed in leaflets to show support for the Organization across the system.

At the hotel or meeting hall locations, the information regarding unionization was presented to employees in multiple languages. Because leaders had organized among employees with whom they worked directly and with whom they spoke a common language, the discussion about signing cards generally happened in employees' primary languages, when employees were not fluent in English. Statements taken by the Investigators from leaders indicate that the leaders followed the protocol laid out for them by the UNITE HERE organizers. Statements from non-leader employees largely corroborated the organizers' and leaders' information about the method of organizing.

Contemporaneous with UNITE HERE's organizing activities, United issued a series of memoranda. In August 2017, United issued memoranda to employees at EWR, IAH, and DEN advising that the individuals conducting home visits and asking about their United employment were not representatives of the Carrier, and that the interviews were not authorized by United. The same memorandum was issued in December 2017 to employees at CLE. On January 12, 2018, United issued a memorandum to all employees advising that UNITE HERE organizers were not United representatives or employees. Further, all of the authorization cards have "UNITE HERE" written at the top of the cards.

The statements of the employees named in United's declaration largely do not substantiate the facts as stated by the United managers and supervisors. When interviewed by the Investigators, the employees in question clearly understood the difference between UNITE HERE and United; and in almost all cases, these employees understood the significance of the cards they signed, and were not threatened or coerced into signing the cards. Interviews with randomly selected employees who had signed cards produced the same

information. Numerous employees explained their reasons for signing an authorization card. Many employees identified specific concerns that they thought the Organization could help them address with United. A common response was from an employee who said that they went to the UNITE HERE meeting, talked with other employees, and so they understood what they were doing.

Further, according to the leaders and the vast majority of other employees interviewed, the organizers and the leaders discussed the bargaining process and potential gains with employees, but did not make promises of any particular benefits that would accrue from obtaining union representation. Typical statements to the Investigators included: that the employee knew the Organization had to negotiate with the company to get any changes; that the Organization supporters just explained what a union was, and talked about fairness and being treated like other United employees; that the employee had been a unionized employee before and understood the benefits; and that the leaders did not promise anything, but merely said that employees will decide what they want and UNITE HERE will help them negotiate with United.

A significant number of employees expressed fear about their jobs. But, contrary to United's allegations that employees were threatened with discharge if the Organization won the election and the employees did not vote for them, these employees stated they were afraid of being fired if the Carrier discovered that they supported the Organization.

The Investigators also spoke with many employees who did not support the Organization. These employees did not sign cards and most did not feel any pressure to do so. As expressed by one employee, "I knew what I wanted for myself, so I didn't feel any pressure." Another common sentiment among many employees, both for and against the Organization, was the dislike of home visits by the Organization. The employees who complained about the home visits tended to characterize the visits as disturbing and/or disrespectful. Most of these employees did not object because the visits were from the Organization, but because the visits were uninvited, unannounced, and intrusive. In fact, many employees who complained about home visits also signed cards at the hotel or meeting hall locations. And many of these employees wondered how the Organization obtained their names and addresses.³

³ It appears that the Organization obtained employee names through speaking with United Catering Employees they already had identified. Some of the employee addresses were given to UNITE HERE by co-workers, and some were obtained by internet searches. United made it clear to employees that it did not give the

Discussion:

United has asserted that the Organization's showing of interest is tainted by various forms of misconduct on the part of UNITE HERE organizers and employee supporters of the Organization. The behavior alleged includes people coming to employees' homes without identifying themselves or misidentifying themselves as United employees and claiming to conduct a survey relating to airports; and UNITE HERE representatives getting employees to sign cards by telling them that they were the organization representing employees in another United craft or class. There is no evidence that employees did not understand that UNITE HERE was a union and was not a representative of United. United issued memoranda to employees notifying them that the UNITE HERE organizers were not representatives of United, and the Investigators uncovered no evidence of any such confusion. Further, no one interviewed by the Investigators stated that UNITE HERE misidentified itself as the representative of another craft or class at United.

United also alleged that Organization representatives threatened or coerced employees by going to employee homes and refusing to leave until the employee signed a card; employees being told by Organization supporters that they would be fired if they did not sign cards or vote for the Organization; Organization representatives threatening an employee that they would not get a transfer to another department if they did not join with the Organization; Organization supporters telling employees that if they were not with them, they were against them; pro-Organization supporters intimidating and/or threatening employees and pressuring them to sign cards; employees signing cards because they were told and believed that United required it; and pro-Organization employees harassing other employees who were not wearing UNITE HERE insignia. Employees gave the Investigators only negligible accounts of employees who were threatened or coerced into signing cards, or of employees who thought that they were required to sign a card. Almost universally, employees either signed a card out of a desire to support the Organization's campaign or they declined to sign a card without feeling pressured.

United contends that employees who are non-English speakers signed cards without understanding what they were signing. The record in this case contains job postings for Catering jobs. The postings state that the Carrier

information to the Organization. And the NMB, which did not have employee names until the List was filed by United on February 8, 2018 and currently is not in possession of employee addresses, played no role whatsoever in disseminating employee information.

requires the ability to read, speak, and write English. Moreover, the investigatory interviews revealed only de minimis evidence of non-English speaking employees who did not understand the authorization cards that they signed.

United cites *American Airlines, Inc. and US Airways, Inc.*, 42 NMB 80 (2015), as Board authority in support of its argument that the authorization cards are tainted in this case. In that case, however, the Board rejected authorization cards and dismissed an application “where employee[s] receive[d] an item of substantial value during the laboratory period . . . from the union” *Id.* at 105. In effect, employees received a quid pro quo for signing authorization cards. There is no allegation or evidence in this matter of the Organization giving anything to employees, including items of substantial value, in order to obtain their signatures on authorization cards. Accordingly, reliance on *American Airlines* is unavailing.

Based on this evidence, the Board finds that the cards presented by UNITE HERE represent the actual intent of the employees who signed and may be used to support the statutory showing of interest requirement. By proceeding to an election on the basis of the showing of interest, the Board is not binding the rights of the employees to decide the question of union representation. The Organization and the Carrier have provided and likely will continue to provide ample information on the potential benefits and drawbacks of union representation; and the determination regarding union representation will be made by the eligible employees in a secret ballot election.

CRAFT OR CLASS

Facts:

In 1948, the Board certified IAM as the exclusive bargaining representative of United’s Dining Service Employees in NMB Case No. R-1980. As noted above, in 1993, United sold 15 of its 17 kitchens; and in 2010, the unrepresented Chelsea employees of Continental became United employees when the airlines merged. In 2011, the Board certified IAM as the exclusive representative of United’s Fleet Service Employees in NMB Case No. R-7286. *United Air Lines/Continental Airlines*, 38 NMB 285 (2011). In 2013, the Board certified the International Brotherhood of Teamsters as the exclusive representative of United’s Mechanics and Related Employees in NMB Case No. R-7363. *United Air Lines/Continental Airlines*, 40 NMB 253 (2013). The Carrier contends that the appropriate craft or class is Flight Kitchen Employees, that the Board consider the 1948 certification of IAM for the Dining Service craft or class, that transportation employees on the List are part of the Fleet Service

craft or class, and that maintenance and mechanic employees on the List are part of the Mechanics and Related craft or class.

Regarding the IAM's certification for United's Dining Service Employees, in March 2016, IAM reached an agreement with the Carrier that IAM:

shall not seek to represent any United Airlines, Inc. employees working in the Food Services Division, otherwise known as "Chelsea," pursuant to the certification issued by the National Mediation Board for the craft or class of Dining Service Employees in Case No. R-1980 or to file an application with the NMB at any future time to represent employees in flight kitchen, dining service or food service/catering job classifications. It is agreed that if in the future United staffs the employee cafeterias at the Company's Elk Grove, IL office (OPC), O'Hare Airport (ORD), the Denver Flight Training Center (DENTK), or the San Francisco Maintenance Base (SFOMB) with United Airlines employees, the IAM retains the right under the certification to represent only those Food Service Employees.

IAM advised the Board that it does not assert the right to represent any of the employees covered by the UNITE HERE application in this case.

The Carrier alleges that certain transportation and maintenance jobs belong in the Fleet Service and Mechanics and Related crafts or classes. The participants agree, however, that none of the employees on the List in these job categories are covered by the collective-bargaining agreements negotiated under the certifications for Fleet Service or Mechanics and Related employees.

Catering Operations is a separate division within United, with its own management structure and work rules. A separate employee handbook covers all Catering Operations employees, and these employees have different terms and conditions of employment than other United employees. Catering Operations employees have their own separate shift and vacation bidding processes, separate rules for transferring within the division, and separate disciplinary processes; and they are subject to the rules of other divisions when attempting to transfer out of the division. Catering Operations employees do not have seniority rights within any other craft or class at United. The Organization notes that all of the job categories contained on the List comprise the appropriate craft or class at the companies where United subcontracts its

catering work. United argues that the appropriate craft or class at a contractor may not be the appropriate craft or class for the airline's own employees.

Discussion:

In determining the proper craft or class for a group of employees, the Board considers a number of factors, including functional integration, work classifications, terms and conditions of employment, and work-related community of interest. *Columbia & Cowlitz, Ry., LLC and Patriot Woods R.R., LLC*, 38 NMB 264 (2011); *Florida Northern R.R.*, 34 NMB 142 (2007); *Frontier Airlines, Inc.*, 29 NMB 28 (2001); *United Airlines, Inc.*, 28 NMB 533 (2001). The Board makes craft or class determinations case by case, based upon Board policy and precedent. *USAir*, 15 NMB 369 (1988); *Simmons Airlines*, 15 NMB 124 (1988).

Because craft or class determinations are made on a case by case basis, the Carrier is correct that the craft or class at a contractor does not necessitate the same craft or class finding for the airline itself. And United is also correct that transportation and mechanic employees on the List perform similar work to employees in the Fleet Service and Mechanics and Related crafts or classes. Job duties alone, however, will not serve to establish a work-related community of interest.

The Catering Employees at issue here work within a common management structure; and they have the same terms and conditions of employment that differ from other crafts or classes, including bidding, seniority, and discipline. And, during the course of the investigation, it was clear that Catering Division management has access to and control over all employees on the List requested to be interviewed by the Investigators.

Because the evidence clearly establishes that all employees on the List share a work-related community of interest and are functionally integrated, the Board finds that the appropriate craft or class at United is Flight Kitchen, Commissary, Catering & Related Employees.

ELECTION METHOD

The Organization has requested certification by card check in response to its allegations of election interference and the delay in proceeding to an election based on the investigation. The Carrier opposes that request, and has asked for an on-site ballot box election. In support of its request, United

contends that a significant portion of the eligible voters are not proficient in written English; and that many do not have access to or experience with computer-based programs. United has made further allegations that the Organization has been interfering with the voting process by offering to train employees how to vote or to assist them with casting a vote. UNITE HERE opposes the Carrier's request for a ballot box election in lieu of the Board's traditional telephone and internet election, claiming that it is unwarranted and would result in even further delay in determining the representation wishes of the Catering Employees. The Organization asserts that although the company has presented some minor evidence of employees without computer-based skills, there is no evidence that these employees do not know how to utilize a telephone.

United's allegation that the Organization has been training employees how to vote and offering to assist them in voting relates more generally to its allegations of election interference, which will not be investigated at this time. During the investigation about the authorization cards, however, the Investigators were told by multiple employees that the Organization was providing employees with information on how to navigate the Board's voting process in the event that an election was held. Employees told the Investigators that the Organization was not directing employees to cast a vote in any direction, and no employees told the Investigators that anyone offered to cast their vote for them.

The Board has held that its "duty is to choose the appropriate method to reliably measure employee choice in representation disputes. Section 2, Ninth's broad language contemplates the exercise of judgment by the Board as to the circumstances under which a representation dispute is ongoing and the appropriate method required in those circumstances to determine employee choice." *Lufthansa Technik Puerto Rico*, 44 NMB 208, 211 (2018). In *International Air Services Co. Ltd.*, 19 NMB 130 (1991), the Board declined to hold a ballot box election when its practice for at least 10 years had been to hold mail ballot elections. The Board stated:

In addressing the Board's authority under Section 2, Ninth, of the Railway Labor Act, the Supreme Court, in *Brotherhood of Railway Clerks v. Association for the Benefit of Non-Contract Employees*, 380 U.S. 650, 662 (1965), stated that "Congress has simply told the Board to investigate and has left to [the Board] the task of selecting the methods and procedures which it should employ in each case."

19 NMB 130, 131.

Given that the Board is not addressing any allegations of election interference at this time, there is no basis to allow for a certification by card check. Further, the Board's normal practice for many years now has been to conduct elections by telephone and internet voting. The only exception to that practice occurred in *Lufthansa Technik Puerto Rico*, 45 NMB 91 (2018), where the Board conducted an on-site ballot box election. In that case, however, the on-site election was necessary because the devastation caused by Hurricane Maria left the island of Puerto Rico, where the carrier and its employees were located, without electricity, or reliable telephone or postal service for a long period of time. Inasmuch as the Board could not guarantee that employees would receive ballots in the mail, have access to functioning computers, or access to telephone service, the Board held an on-site ballot box election rather than wait for restoration of the services necessary for a telephone and internet election. Absent extraordinary circumstances like these, the Board finds it unnecessary to deviate from its normal practice, and will conduct the voting in this case by a telephone and internet election.

FOREIGN LANGUAGE BALLOTS

In response to inquiry from Investigator Graber, the Organization requested that the Board provide election materials in English and Spanish. Based on the Carrier's response to the inquiry with a suggested list of 23 possible foreign languages, Investigator Graber requested the number of employees who exclusively speak each foreign language. The Carrier responded with its request for eight foreign language ballots and the number of employees who primarily speak those languages. United requested that the Board provide materials in Spanish (more than 200 employees), Chuukese (more than 50 employees), Vietnamese (more than 20 employees), Marshallese (more than 15 employees), Filipino (more than 10 employees), Ilocano/Tagalog (more than 10 employees), Palauan (more than 5 employees), and French (more than 5 employees).

As noted above, the Carrier's job postings require employees to read, write, and speak English. Additionally, United acknowledges that it generally provides written materials, which would include information about employee safety and food preparation safety, to its employees in English. The Investigators spoke with many employees for whom English was not their primary language; and they were able to take statements from many of those employees without an interpreter. In particular, employees whose languages of origin were among the Micronesian dialects were generally very proficient in

English. In the Investigators' experience, Spanish-speaking employees were the only numerically significant group with whom they were unable to communicate adequately in English. Based on the participants' requests, the numbers of employees involved, United's own communications with its employees, and the experience of the Investigators, the Board will provide election materials in English and Spanish.

CONCLUSION

The Board finds that the authorization cards submitted by UNITE HERE are valid and that the proper craft or class at United is Flight Kitchen, Commissary, Catering & Related Employees.

Based on the authorization cards submitted by the Organization, the Board further finds that a dispute exists regarding the representation in that craft or class, and the Board authorizes an election among the craft or class of Flight Kitchen, Commissary, Catering & Related Employees, employees of United, using a cut-off date of January 20, 2018.

Pursuant to Manual Section 12.1, the Carrier is hereby required to furnish within five calendar days, 1" X 2 5/8", peel-off labels bearing the alphabetized names and current addresses of those employees on the List of Potential Eligible Voters. The Carrier must print the same sequence number from the List of Potential Eligible Voters beside each voter's name on the address label. The Carrier must also provide to the Board the name and sequence number of those potential eligible voters on military leave who are serving in foreign countries or who reside outside of the United States. The Carrier must use the most expeditious method possible, such as overnight mail, to ensure that the Board receives the labels within five calendar days.

By direction of the NATIONAL MEDIATION BOARD.


Mary L. Johnson
General Counsel

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