



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

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Chris A. Hollinger, Esq.
Robert A. Siegel, Esq.
Counsel for America West
Airlines, Inc.
O'Melveny & Myers, LLP
400 South Hope Street
Los Angeles, CA 90071-2899

Mr. Gregory M. Garger
VP-LR
America West Airlines, Inc.
4000 East Sky Harbor
Boulevard
Phoenix, AZ 85034

Mr. Don Treichler, Director
National Airline Division
Ms. Victoria Gray
Int'l Representative
International Brotherhood of
Teamsters
6242 Westchester Parkway
Suite 250
Los Angeles, CA 90045-4820

Roland P. Wilder, Jr., Esq.
Baptiste & Wilder, PC
1150 Connecticut Ave., NW.
Suite 500
Washington, DC 20036

Re: NMB Case No. R-6905
America West Airlines

Gentlemen and Ms. Gray:

This determination addresses the October 28, 2002 letter from the International Brotherhood of Teamsters (IBT or Organization) in which the Organization requests the Board to extend the voting period in the election among American West's (Carrier) Passenger Service Employees. For the reasons discussed below, the Organization's request is denied.

I.

Procedural Background

On August 21, 2002, IBT filed an application seeking to represent the craft or class of Passenger Service Employees on America West Airlines. The Board found a dispute to exist on September 20, 2002, and authorized a Telephone Electronic Voting (TEV) election. Voting Instructions (Instructions) were mailed October 11, 2002, and the tally is scheduled for November 8, 2002. There are approximately 3,600 eligible voters.¹

On October 28, 2002, IBT sent a letter to the Board requesting a seven day extension of the voting period. The Carrier responded on October 31, 2002.

II.

IBT's Position

The Organization argues that the extension is necessary in light of a Carrier letter dated October 23, 2002, which indicated that America West was providing the Board with updated addresses for some of the employees in the craft or class. The IBT asserts that "extension of the voting period will increase the likelihood that all eligible employees for whom the Carrier has supplied newly corrected addresses will receive their . . . voting materials and have sufficient time to vote if they so choose." In support of its argument, the Organization states that there are "extraordinary circumstances" which warrant the extension. First, IBT contends that America West "admitted it provided inaccurate addresses to the Board" but "waited until nearly half the voting period had elapsed before it . . . made a partial effort to correct the matter." The Organization asserts that the Carrier's

¹ Although the original list of potential eligible voters contained over 4,000 names, due to turnover approximately 400 individuals were removed from the list.

“negligence . . . can only be remedied by the . . . extension.” The Organization also maintains that because America West has a “history of . . . election interference”, its “repeat offender status” also justifies “remedial measures.” The IBT cites *Zantop Int’l Airlines*, 21 NMB 18 (1993), in support of its position.

III.

America West’s Position

The Carrier argues that the Organization failed to establish the Board’s “extraordinary circumstances” standard for extending the voting period, and cites *American Airlines, Inc.*, 26 NMB 101 (1998), in support of this position. According to the Carrier, the addresses it provided the Board for the election are those which the Carrier uses for official company correspondence. The Carrier provided a declaration from Lewis Nelson, Manager-Human Resources Information Systems, who states, in part:

Pursuant to the carrier’s policy, employees are required to keep their employer advised of any changes to their mailing address. The employee retains ultimate responsibility for compliance with this requirement. After the carrier’s original submission of mailing labels in late September 2002, the United States Postal Service began to return as ‘undeliverable’ pieces of correspondence that we had mailed to employees on the list of potential eligible voters. When this happened, we attempted to update our records This was done either based on information provided by the Postal Service . . . or based on new addresses provided by the employees after I was able to track down the employees in question. The substantial majority of the outdated mailing addresses, which were updated and sent to the National Mediation Board on or about October 23, 2002, were identified during the second week of October. Those mailing addresses were thereafter updated.

The Carrier states that after the new addresses were obtained, it “voluntarily and proactively” provided the addresses to the Board. America West asserts, contrary to the IBT’s contention, that “as far as the carrier knew, the mailing addresses in its business records were accurate, and, as soon as inaccuracies were discovered and remedied, the new information was forwarded to the Board.”

The Carrier also asserts that the Board’s Notice of Telephone Voting Election, posted throughout the Carrier’s system, provides a mechanism for employees who do not receive their Instructions and VINs to obtain duplicates. In addition, the Carrier argues that because the Board is using TEV, “the employee can vote instantly upon receipt of the voting materials” and that, therefore, “requesting a duplicate set of voting materials . . . provides sufficient time . . . to cast a vote” Finally, the Carrier contends that the IBT is engaging in campaign activities designed to misinform and intimidate employees, and that the IBT would use an extension of the voting period to “pressure” those employees “who have not succumbed to the IBT’s tactics.”

IV.

Discussion

A.

In *American Airlines, Inc.*, 26 NMB 101, 103 (1998), the Board examined whether an Organization requesting an extension of the voting period provided “substantive evidence” of “extraordinary circumstances” which would justify extending the election period. The Organization asserted that 10 percent of the eligible voters did not receive ballots, but did not provide substantive evidence in support of its assertion. The Board’s investigation established that, in fact, approximately 1.2 percent of the eligible electorate had “undeliverable” ballots, and that further, the names of all employees whose ballots were “undeliverable” were removed from the list. The Board, therefore, found insufficient substantive evidence to support a finding of

“extraordinary circumstances” to justify extending the voting period.

The Board’s investigation in this case has established that as of November 1, 2002, the cut-off for processing returns, 163 sets of election materials had been returned by the Postal Service as undeliverable. This represents approximately 4.5 percent of the electorate. Of the 163 returned, 129 were re-mailed with corrected addresses. The Board was unable to ascertain different addresses for 34 employees, which is approximately 0.94 percent of the craft or class. The names of any employees with “undeliverable” Instructions will be removed from the list of eligible voters, pursuant to Section 13.210 of the Board’s Representation Manual (Manual).²

B.

The Carrier and the Organization were provided copies of the Board’s “Notice of Election” one week in advance of the mailing of the Instructions. The Carrier was required to post this “Notice” throughout its system. The “Notice” provides, in part:

If you do not receive your VIN (Voter Identification Number) by October 18, 2002, you may contact the NMB to request a duplicate VIN. Your request must be in writing and signed by you. The request must be in an individual envelope. No group requests are accepted. . . . Mail the request to: National Mediation Board, Office of Legal Affairs, 1301 K St., NW., Suite 250 East, Washington, D.C. 20005. **No requests will be accepted after November 1, 2002.**

As of November 1, 2002, the Board processed 84 duplicate requests from eligible voters, which is approximately 2.3 percent of the electorate. All properly executed duplicate requests received by November 1, 2002 were processed and mailed to the

² The Manual was revised, effective November 1, 2002.

eligible voters. All eligible individuals whose Instructions were returned as undeliverable and for whom the Board was able to obtain better addresses were re-mailed Instructions by November 1, 2002. Because TEV elections do not involve returning mail to the Board, every person whose Instructions were re-mailed or who was mailed a duplicate will have sufficient time to vote, if he or she so chooses, before the election ends at 2:00 p.m. on November 8, 2002.

CONCLUSION

The Board finds insufficient substantive evidence to support a finding of “extraordinary circumstances” to justify extending the voting period. The tally will take place as scheduled at 2:00 p.m., Friday, November 8, 2002.

By direction of the NATIONAL MEDIATION BOARD.

Benetta M. Mansfield

Benetta Mansfield
Chief of Staff