



**NATIONAL MEDIATION BOARD**  
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Re: NMB Case No. R-6931  
Atlantic Coast Airlines, Inc./TWU

Gentlemen:

This determination addresses the April 25, 2003 appeal filed by the Transport Workers Union of America (TWU or Organization) of Investigator Susanna F. Pequignot's eligibility

rulings. For the reasons discussed below, the TWU's appeal is denied.

### PROCEDURAL BACKGROUND

On February 27, 2003, the TWU filed an application pursuant to the Railway Labor Act<sup>1</sup> (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth), seeking to represent the craft or class of Flight Dispatchers of Atlantic Coast Airlines (ACA or Carrier). On March 12, 2003, the Carrier provided the National Mediation Board (Board) with a List of Potential Eligible Voters (List) in this case. The Board authorized a Telephone Electronic Voting (TEV) election on March 13, 2003. On March 14, 2003, the Investigator sent a letter to the Carrier and the TWU setting a schedule for challenges and objections and the election period. On March 24, 2003, the Organization challenged the exclusion of 16 Team Leaders from the List. ACA responded on April 4, 2003. On April 22, 2003, the Investigator ruled on all challenges. The TWU appealed the Investigator's rulings on April 25, 2003. The Carrier responded to the appeal on April 29, 2003.

The TEV Instructions were mailed out April 7, 2003. The tally is scheduled to take place on May 5, 2003.

### Investigator's Ruling

The TWU challenged the exclusion of 16 Dispatch Team Leaders from the List. The TWU asserted that these employees "are working group leaders required to have dispatch licenses" and "do not resolve personnel or departmental disputes . . . ." In support of its position, TWU provided a portion of ACA's System Control Procedures Manual with the Carrier's System Control organizational chart and relevant job descriptions.

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<sup>1</sup> 45 U.S.C. § 151, *et seq.*

In ACA's April 4, 2003 response, the Carrier asserted that Team Leaders are management officials with the following responsibilities:

- supervise and direct the work of dispatchers
- supervise the pod
- resolve grievances and complaints
- counsel and discipline
- perform written evaluations
- establish and transfer assignments
- effectively recommend employees for promotion
- interview and hire dispatchers
- participate in the budget process
- authorize and grant overtime
- create Carrier policy
- commit Carrier funds
- create, maintain and monitor the Dispatcher schedule
- act as Dispatch Operations Managers (OMs) if the Carrier is short on OMs

In support of its position, the Carrier submitted declarations from two management officials and four Team Leaders. ACA also submitted other Carrier documents to demonstrate that Team Leaders possess and exercise managerial authority.

The Investigator ruled the individuals ineligible to vote pursuant to the Board's Representation Manual (Manual) Section 9.211 which deals with management officials. The Investigator found that "the Carrier submitted documents establishing that the 16 Team Leaders challenged by the TWU have managerial responsibilities." The Investigator also stated "the evidence establishes that the . . . individuals are management officials."

### TWU'S APPEAL

In its April 25, 2003 appeal, TWU asserts that “Team Leaders have almost uniformly been found to be part of the work group they direct” and cites *America West Airlines, Inc.*, 25 NMB 10 (1997); *Carnival Airlines, Inc.*, 24 NMB 256 (1997); *USAir, Inc.*, 19 NMB 423 (1992); and *Pan American World Airways*, 7 NMB 174 (1980). The Organization also argues that in the Team Leaders’ affidavits submitted by the Carrier, “while each Team Leader recounted a few instances in which recommendations for promotion or the handling of employees in his/her Team were followed, no Team Leader testified that he/she was invested with independent authority to make such decisions.”

TWU also argues in its April 25, 2003 appeal that it should be “afforded the right to submit counter affidavits, or in the alternative, arrange to have the Board Investigator privately interview Team Leaders who are not handpicked by management.”

### ACA's Response

The Carrier responded to the TWU’s appeal on April 29, 2003. ACA argues that the Team Leaders are management officials and, therefore, properly excluded from the List, and the Investigator’s decision should be affirmed. The Carrier also argues that the “voluminous, undisputed evidence” contained in its April 4, 2003 submission supports the Investigator’s ruling.

### DISCUSSION

#### I.

#### Team Leaders’ Responsibilities

According to the position description supplied by ACA, Team Leaders’ “Principal Accountabilities” include:

- Supervising system control personnel (two dispatchers and a crew scheduler);
- Assuming the responsibilities of the Oms during their absence, such as emergency notification;
- Conducting dispatcher annual reviews; and
- Ensuring that flight follow the CRJ operations and assures the CRJ team has proper fuel load, alternate airports designated and adjusts the schedule to accommodate requirements.

Edward Stephens, Director of the Operations Command and Control (OCC), submitted an affidavit stating, “the Dispatch Team Leader position has been in place since the Spring of 1998. At that time, ACA was growing and needed supervisors in OCC that were able to make sound economic decisions. That was the impetus for implementing the Team Leader position.” While Team Leaders are paid hourly, they receive a \$3.50 premium per hour above the Dispatcher pay scale. Stephens states, “this premium is much higher than the industry ‘lead’ standard of \$1.00 or \$2.00. ACA instituted this premium due to the independent judgment and discretion required of an individual who holds the Team Leader position.” For example, the Carrier submitted evidence that one Team Leader oversees the dispatch training function of the ACA System Control office including developing and maintaining dispatch training programs; schedules and conducts operational training including new-hire, recurrent and remedial training; supervises “On the Job Trainers”; and is directly involved in the interviewing and hiring of Dispatchers.

ACA Team Leaders participate in training sessions offered solely to managers and attend meetings with the Director of Operations Command and Control to discuss management issues. Team Leaders have the authority to counsel Dispatchers and are not required to seek permission prior to counseling or disciplining a Dispatcher. In fact, Team Leaders conduct “Reports of Counseling” in which they discipline Dispatchers for performance issues. Team Leaders can take further disciplinary action up to and including termination.”

Team Leaders perform audits of the releases prepared by the Dispatchers in order to evaluate the Dispatchers' performance and counsel the Dispatchers as needed. Team Leaders perform Dispatchers' six-month and annual reviews and issue written warnings. In addition, Team Leaders establish and transfer Dispatcher assignments and have the authority to authorize overtime and commit ACA funds to purchase fuel and other supplies as needed. They are also authorized to sign for hotel rooms for flight crews. Team Leaders have the authority to recommend Dispatchers to Team Leader positions. For example, in an affidavit supplied by the Carrier, one Team Leader recommended a Dispatcher for a Team Leader position to which he was promoted. Team Leaders and Operations Managers (OMs) do not perform Dispatcher duties except in emergency situations.

## II.

### Management Officials

Manual Section 9.211 provides:

Management officials are ineligible to vote. Management officials include individuals with:

- (1) the authority to dismiss and/or discipline employees or to effectively recommend the same;
- (2) the authority to supervise;
- (3) the ability to authorize and grant overtime;
- (4) the authority to transfer and/or establish assignments;
- (5) the authority to create carrier policy; and
- (6) the authority to commit carrier funds.

The Investigator also considers:

- (1) whether the authority exercised is circumscribed by operating policy manuals;
- (2) the placement of the individual in the organizational hierarchy of the carrier; and
- (3) any other relevant factors regarding the individual's duties and responsibilities.

See also *Pan American World Airways, Inc.*, 5 NMB 112, 115 (1973) (the factors the Board examines are considered cumulatively).

In *American Airlines, Inc.*, 24 NMB 521 (1997), the Board determined that American's Maintenance Supervisors were management officials based on the fact that they directed and assigned work through a Crew Chief, had the authority to discipline employees, and in fact, regularly exercised such authority. In addition, the record established that American's Maintenance Supervisors played a "key role in the investigation of incidents" which "might lead to discipline," and were involved in the hiring process, possessing the authority to "effectively recommend hiring decisions." Other factors which the Board considered persuasive included the fact that Maintenance Supervisors evaluated the Crew Chiefs (who supervised the Mechanics), could grant or deny a grievance, authorized and granted overtime and participated in the budget process.

In *Aerovias de Mexico*, 20 NMB 584 (1993), the Board found that Maintenance Supervisors were management officials. Similar to the Maintenance Supervisors in *American, above*, Aerovias' Maintenance Supervisors granted overtime and evaluated the performance of the Assistant Aircraft Maintenance Supervisors (AAMSS), including decisions on hiring and discipline.

In *British Airways, Inc.*, 7 NMB 369, 390 (1980), the Board applied *Pan American, above*, and found the “Purchasing Stores Supervisor” was “not an employee or subordinate official” and accordingly was not an eligible voter. The Supervisor assigned work, authorized overtime, and approved invoices up to \$250,000 per year. In addition, the Supervisor, along with the Department Manager and Stores Superintendent, interviewed job applicants and was responsible for initiating disciplinary action.

Most recently, in *United Airlines, Inc.*, 30 NMB 9 (2002), the Board found that United’s Lead Engineers were management officials. The Board found that the level of demonstrated authority exercised by the Lead Engineers was similar to that of the supervisors in *American, above*, and *British, above*. The Board further found that Lead Engineers directed work, participated in the hiring process; evaluated employee performance; effectively recommended promotions; played a role in disciplinary proceedings including issuing letters of warning; approved overtime; and, to varying degrees, committed Carrier funds.

In contrast, in *America West Airlines, Inc.*, 25 NMB 10 (1997), the Board also applied *Pan American, above*, and Manual Section 9.211 in determining that Team Leads were not management officials. The record in that case established that Team Leads assigned work, and participated in interviewing candidates for Lead positions. Unlike ACA’s Dispatch Team Leaders, America West’s Team Leads did not have authority to discipline or discharge, assign overtime, or expend carrier funds.

In *USAir, Inc.*, 19 NMB 423 (1992), the Board found that individuals who had no authority to hire or discharge, or commit significant carrier funds were eligible employees. The level of disciplinary authority exercised in that case was “generally limited to initiating . . . discussions over minor disciplinary problems.” While the record in *USAir* contained an assertion that the employees at issue had the authority to conduct performance evaluations, there was no evidence to support that assertion. In contrast, ACA submitted evidence that Team Leaders perform six-



month and annual performance reviews, in addition to the “Records of Counseling.”

Based on the cumulative record evidence, Manual Section 9.211, and the determinations cited above, the Board concludes that ACA’s Dispatch Team Leaders are ineligible. The Board makes this finding cognizant that Team Leaders are paid on an hourly, not salaried, basis. In addition, the Board notes that there are 16 Team Leaders for a craft or class of 42 employees which is an unusually large ratio.<sup>2</sup> However, the Board notes that the Dispatch Team Leaders are very similar to the Lead Engineers in *United Airlines, Inc.*, 30 NMB 9 (2002), where the Board found that the Lead Engineers were ineligible to vote. The record establishes the level of demonstrated authority exercised by the Team Leaders is similar to that of the Lead Engineers in *United Airlines, above*, and the supervisors in *American, above*, and *British, above*. Accordingly, the Investigator’s ruling is upheld, and the Dispatch Team Leaders at ACA are not part of the Flight Dispatchers craft or class.

### CONCLUSION

The Carrier produced evidence of demonstrated authority exercised by Team Leaders. In contrast, the TWU failed to produce adequate evidence of their assertion that these employees are eligible to vote in the Flight Dispatchers craft or class. The Board notes that the Organization had several weeks in which to gather evidence and affidavits as necessary to support its case. Furthermore, the Board finds sufficient evidence to make its decision based on the entire record in this case, without interviewing Team Leaders. Therefore, the Board upholds the Investigator’s ruling that ACA’s 16 Dispatch Team Leaders are

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<sup>2</sup> As noted in the text, the Carrier provided significant evidence in terms of volume and content in support of its position. The Organization’s evidence failed to sufficiently rebut the Carrier’s evidence.

ineligible to vote in the Flight Dispatchers craft or class. The Organization's appeal is denied.

The tally will take place as scheduled, at 2 p.m., ET, Monday, May 5, 2003.

By direction of the NATIONAL MEDIATION BOARD.

*Benetta M. Mansfield*

Benetta M. Mansfield  
Chief of Staff