



NATIONAL MEDIATION BOARD

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Re: NMB Case No. R-6977
USA Jet Airlines

Gentlemen:

This determination addresses the January 6, 2004, objections filed by USA Jet Airlines (USA Jet or Carrier). USA Jet requests that the National Mediation Board (Board): (1) resend the Telephone Electronic Voting (TEV) Instructions; (2) delay the election, and; (3) post a notice to employees. The International Union, United Auto Workers (UAW or Organization), filed a response to the Carrier's objections on January 9, 2004. For the reasons discussed below, the Board declines to grant the relief requested.

I.

PROCEDURAL BACKGROUND

On November 13, 2003, the UAW filed an application pursuant to the Railway Labor Act (RLA)*, 45 U.S.C. § 152, Ninth (Section 2, Ninth), seeking to represent the craft or class of Pilots, employees of USA Jet. On November 26, 2003, the Carrier provided the Board with a List of Potential Eligible Voters (List) in this case. The Board authorized a TEV election on December 2, 2003 and required the Carrier to furnish mailing labels within five calendar days. Also on December 2, 2003, the Investigator sent a letter to the Carrier and the UAW setting a schedule for challenges and objections and the election period. On December 8, 2003, USA Jet notified the Board of its intention to object to the “election arrangements.” The Carrier also stated that “voter mailing labels will not be provided at this time.” The Carrier filed its objections to the election dates on December 12, 2003.

On December 15, 2003, the Investigator denied the Carrier’s request to delay representation proceedings. The Carrier appealed the Investigator’s ruling on December 18, 2003, and stated that USA Jet would not produce the mailing labels until the Board ruled on the appeal and until the Board ruled on the UAW’s objections “our response to which will be filed.”

On December 19, 2003, the Board issued an Order denying USA Jet’s appeal and ruling that that the TEV election would proceed as scheduled. The Board further ordered the Carrier to furnish mailing labels bearing the names and addresses of the employees on the List of Potential Eligible Voters. The Board ordered the Carrier to produce this information “no later than **4 p.m., ET, Monday, December 22, 2003.**” The Board further stated: “If the Carrier refuses to comply with this ORDER, the Board will take any action it

* 45 U.S.C. § 151, *et seq.*

deems necessary pursuant to its authority under Section 2, Ninth.”

The Carrier failed to submit the mailing labels as required in the Board’s Order. The Board mailed the Notice and Sample Instructions to the Carrier and the Organization on December 23, 2003. The Board mailed the TEV Instructions on December 30, 2003, using addresses supplied by the Organization. On January 2, 2004, the Board received the mailing labels from the Carrier. After comparing the list supplied by the Organization, with that of the Carrier, the Board mailed the TEV Instructions to those individuals who had not previously been sent TEV Instructions. Therefore, as of January 2, 2004, all individuals on the List of Potential Eligible Voters were mailed TEV Instructions.

II.

CONTENTIONS

USA Jet Airlines

The Carrier objects to the UAW’s submission of mailing labels “in violation of NMB policy by failing to simultaneously serve the Carrier and apparently omitting a significant number of employees included on the current list of potential eligible voters.” The Carrier cites Section 1.201 of the Board’s Representation Manual (Manual) in support of its contentions. The Carrier also asserts that the “Organization may have engaged in improper ex parte communications with the NMB regarding the mailing labels and by actually providing the labels to the NMB” in violation of Manual Section 1.301. USA Jet also contends that Manual Section 12.1 requires that the Carrier, not the Organization, furnish the mailing labels. The Carrier argues that the Organization’s failure to comply with Manual Sections 1.201, 1.301, and 12.1 requires the Board to resend the TEV Instructions using the address list supplied by the Carrier.

The Carrier requests the Board “exercise its remedial authority” and order that: (1) the TEV Instructions be resent using the address list supplied by the Carrier; (2) the election be delayed, and; (3) the Board post a Notice “notifying employees of the Organization’s actions and eliminating voter confusion and uncertainty.”

UAW

The UAW contends that the Carrier’s request to delay the tally should be denied.

III.

DISCUSSION

Section 12.1 of the Board’s Manual states that:

When the NMB authorizes an election, the carrier is required to furnish, within five (5) calendar days of the date of authorization, alphabetized peel-off labels bearing the names and addresses of all employees on the list of potential eligible voters.

The Board found a dispute to exist on December 2, 2003, and ordered the Carrier to produce the mailing labels by December 7, 2003. The Carrier refused to comply with the Board’s orders to produce the mailing labels on three occasions: December 8, 2003; December 18, 2003, and; December 22, 2003.

Section 2, Ninth states:

[T]he . . . Board shall be authorized to take a secret ballot of the employees involved, **or to utilize any other appropriate method** of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the

carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election **and establish the rules to govern the election** The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

In interpreting this section, the Supreme Court has held that the RLA “leaves the details to the broad discretion of the Board with only the caveat that it ‘insure’ freedom from carrier interference.” *BRAC v. Ass’n for the Benefit of Non-Contract Employees*, 380 U.S. 650, 658-659 (1965). The Board’s request for information from the Organization is within the authority granted to the Board under the RLA and does not constitute ex parte communication as asserted by the Carrier. Further, the Board took this action because USA Jet repeatedly failed to comply with the Board’s request to produce mailing labels.

Manual Section 1.201 states that:

Submissions . . . shall be simultaneously served on all representatives by the same method as used for service on the NMB Submissions not in compliance with the foregoing simultaneous service provisions will not be considered except in extraordinary circumstances.

The Organization did not simultaneously serve the Carrier with the names and addresses of employees because to do so would jeopardize the employees’ confidentiality. Furthermore, the Board consistently exempts employee addresses from its simultaneous service requirements.

Upon receipt of the Carrier’s mailing labels on January 2, 2004, TEV Instructions were mailed to those individuals on the List of Potential Eligible Voters who did not previously receive them. Therefore, TEV Instructions were mailed to all 94

individuals listed on the List of Potential Eligible Voters by January 2, 2004.

CONCLUSION

The Board has not received any inquiries from USA Jet employees indicating confusion in the voting process, or questioning the eligibility of voters in this case. Furthermore, the Board has reviewed USA Jet's and the UAW's submissions and does not find any reason to delay the tally or post a notice to employees. Accordingly, any relief requested is denied and the tally will take place, as scheduled, on January 20, 2004.

By direction of the NATIONAL MEDIATION BOARD.

A handwritten signature in cursive script that reads "Mary L. Johnson".

Mary L. Johnson
General Counsel