NATIONAL MEDIATION BOARD
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Re: NMB Case No. R-6970
Frontier Airlines, Inc.

Gentlemen:

This determination addresses the October 13, 2003, Motion for Reconsideration filed by Frontier Airlines, Inc. (Frontier or Carrier). Frontier seeks reconsideration of the National Mediation Board's (Board) October 9, 2003 decision finding that Aircraft Appearance Agents (Appearance Agents) and Maintenance Cleaners (Cleaners) are part of the Mechanics

and Related Employees craft or class. *Frontier Airlines, Inc.*, 31 NMB 11 (2003).

The International Brotherhood of Teamsters, Airline Division (IBT or Organization), filed its opposition to the Motion for Reconsideration on October 23, 2003. For the reasons discussed below, the Board finds that Frontier's Motion fails to state sufficient grounds to grant the relief requested.

I.

CONTENTIONS

FRONTIER

The Carrier argues that the Board's determination in *Frontier, above,* was made in error since it overlooked the Board's policy to make "craft or class determinations on a carrier by carrier basis." Frontier asserts that the Board "failed to consider [its] unique approach, its evolving way of conducting business, and the particular circumstances of the [Appearance] Agents and Cleaners." Instead, Frontier contends that the Board based its decision primarily on the fact that, traditionally, the Board has included "employees with some similar job duties into the craft or class of Mechanics." The Carrier requests the Board reconsider its decision and find that Frontier's Appearance Agents and Cleaners are not properly within the Mechanics and Related Employees craft or class.

The Carrier also contends that the Board's decision in *Ross Aviation, Inc.*, 22 NMB 89 (1994), to forego elections where the employees at issue were already covered by Board certification "violate[d] the spirit and intent of the Railway Labor Act (RLA)." Frontier asserts that application of the Board's decision in *Ross Aviation, above,* would "diminish . . . the representational rights of affected employees." Moreover, Frontier argues that the "majority" of its employees within the Mechanics and Related Employees craft or class "never chose the IBT as their representative."

IBT

The IBT asserts that Frontier's Motion for Reconsideration merely reasserts arguments previously presented to the Board and fails to identify any material error of law or fact. In addition, the IBT argues that the Board's accretion procedures do not violate the RLA because Section 2, Ninth, of the RLA grants the Board broad discretion to determine who may represent a group of employees.

II.

DISCUSSION

A. Motion for Reconsideration

The Board's Representation Manual (Manual) Section 11.0 states:

> Any motions for Reconsideration of Board determinations must be received by the Chief of Staff within two (2) business days of the decision's date of issuance. An original and one (1) copy of the motion must be filed with the Chief of Staff. The motion must comply with the NMB's simultaneous service requirements of Manual Section 1.201. The motion must state the points of law or fact which the participant believes the NMB has overlooked or misapplied and the grounds for the relief sought. Absent a demonstration of material error of law or fact or circumstances in which the NMB's exercise of discretion to modify the decision is important to the public interest, the NMB will not grant the relief sought. The mere reassertion of factual and legal arguments previously presented to the NMB is insufficient to obtain relief.

The Board finds that Frontier has stated sufficient grounds to grant reconsideration.

B. Decision on Reconsideration

The Board only grants relief on Motions for Reconsideration in limited circumstances:

> The Board recognizes the vital importance of the consistency and stability of the law as embodied in . . . NMB determinations . . . . Accordingly, the Board does not intend to reverse prior decisions on reconsideration except in the extraordinary circumstances where, in its view, the prior decision is fundamentally inconsistent with the proper execution of the NMB's responsibilities under the Railway Labor Act.

Virgin Atlantic Airways, 21 NMB 183, 186 (1994).

The Carrier alleges that the Board failed to follow its policy of making craft or class determinations on a case by case basis since Frontier has a "unique approach" with an "evolving way of conducting business." The Carrier initially argued that "Frontier, like all airlines, must keep costs low and attention to customer service high in order to survive. One of the many ways Frontier has succeeded in keeping costs low while maintaining high-quality customer service is through its own internal organization. Frontier has cast aside the worn out and ineffective methods of simply lumping groups of employees together." Then, as now, the Board finds that Frontier failed to support its argument that Frontier has a "unique approach." Furthermore, the Board does not find Frontier's operations to be unique or unusual. Therefore, the Board is not persuaded by Frontier's argument that Frontier has an "evolving way of conducting business."

In *Frontier, above,* the Board applied the standard announced in *Ross Aviation, above,* and based its accretion determination upon a work-related community of interest,

rather than upon a showing of interest.* The Board described the duties of the Mechanics and Related Employees craft or class in *United Airlines, Inc.*, 6 NMB 134 (1977), in part, as follows:

> - Mechanics who perform maintenance work on aircraft, engine, or accessory equipment;
> - Ground service personnel who perform work generally described as follows: Washing and cleaning airplane, engine and accessory parts in overhaul shops, . . . cleaning and maintaining the interior and exterior of aircraft; and
> - Plant maintenance personnel.

The Board examined the actual duties and responsibilities of Frontier's Appearance Agents and Cleaners and found that employees in both positions primarily perform maintenance-related work. Frontier's Appearance Agents: clean aircraft cabins, stock the cabin with safety cards, magazines, lavatory supplies, pillows and blankets, and; assist in boarding and deplaning individuals as necessary. Frontier's Cleaners are responsible for parts cleaning of Base Maintenance, support shops, and facilities cleaning, and, the daily interior cleaning and exterior washing of aircraft necessary to perform inspection, maintenance, and provide a clean appearance for passenger travel.

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* On October 16, 2003, three days after the Board's decision in *Frontier, above,* an Aircraft Appearance Agent submitted a petition signed by several Appearance Agents and Cleaners stating that these employees did not want IBT representation. The Board has never considered petitions when making its determinations. *See United Parcel Service Co.*, 27 NMB 3 (1999) (Board determined that a petition signed by employees stating that the employees did not wish to be accreted was irrelevant to the Board's accretion determination). Furthermore, the Board makes its accretion determinations upon a work-related community of interest. Therefore, the Board will not consider the petition in this case.

In *United Airlines, Inc.*, 6 NMB 464, 468 (1978), the Board determined that "it is the functional connection between Mechanic classifications and those employees performing related maintenance operations that has historically formed a basis for their identity as a single craft or class." After evaluating Frontier's Appearance Agents' and Cleaners' responsibilities, and applying Board precedent, the Board finds that Frontier's Appearance Agents and Cleaners are properly within the Mechanics and Related Employees craft or class.

Finally, in its Motion, Frontier argues that the Board's accretion procedures violate the RLA. As the Board stated in *United Parcel Serv. Co.,* 30 NMB 84 (2002), "the Board has broad discretion to determine the manner in which it conducts investigations in representation disputes." *See Ry. Clerks v. Ass'n for the Benefit of Non-Contract Employees*, 380 U.S. 650, 669 (1965). Furthermore, the Court held that with respect to representation matters, the RLA "leaves the details to the broad discretion of the Board with only the caveat that it 'insure' freedom from carrier interference." *Id.* at 699.

The authorization cards submitted by the IBT state, in heavy black print, "REQUEST FOR EMPLOYEES REPRESENTATION ELECTION UNDER THE RAILWAY LABOR ACT." Beneath this is a space for the name, job title, address, station, employee number, and hire date of the employee. This is followed by the language:

> I authorize the Airline Division of the International Brotherhood of Teamsters to request the National Mediation Board to conduct an investigation and a representation election, also to represent me in all negotiations of wages, hours and working conditions in accordance with the Railway Labor Act. This authorization revokes any prior authority.

At the bottom of the card there is a space for the date, telephone number, email address, signature, and printed name of the employee.

Although the card authorizes the IBT to represent the signer in collective bargaining, the authorization also requests that the Board conduct an investigation and a representation election. In the future, the Board may not accept authorization cards "requesting a representation election" for accretion applications or certification by card check. In the present case, however, the Board will not reconsider its well-established accretion policy.

CONCLUSION

The Board has reviewed Frontier's and the IBT's submissions. Frontier has failed to demonstrate a material error of law or fact or circumstances in which the Board's exercise of discretion to modify the decision is important to the public interests. Furthermore, the Board finds that Frontier has failed to show that the prior decision is fundamentally inconsistent with the proper execution of the Board's responsibilities under the RLA. Accordingly, any relief upon reconsideration is denied.

By direction of the NATIONAL MEDIATION BOARD.

Mary L. Johnson
General Counsel

Read Van de Water, dissenting,

The Carrier argues that the Board's determination in *Frontier, above,* was made in error since it overlooked the Board's policy to make "craft or class determinations on a carrier by carrier basis." Frontier asserts that the Board "failed to consider [its] unique approach, its evolving way of conducting business, and the particular circumstances of the

[Appearance] Agents and Cleaners." Instead, Frontier contends that the Board based its decision on the fact that, traditionally, the Board has included "employees with some similar job duties into the craft or class of Mechanics." The Carrier requests the Board reconsider its decision and find that Frontier's Appearance Agents and Cleaners are not properly within the Mechanics and Related Employees craft or class.

The Carrier also contends that the Board's decision in *Ross Aviation, Inc.*, 22 NMB 89 (1994), to forego elections where the employees at issue were already covered by Board certification "violate[d] the spirit and intent of the Railway Labor Act (RLA)." Frontier asserts that application of the Board's decision in *Ross Aviation, above,* would "diminish . . . the representational rights of affected employees." Moreover, Frontier argues that the "majority" of its employees within the Mechanics and Related Employees craft or class "never chose the IBT as their representative."

Had I been a Member of the Board at the time of the original decision, I would have opposed the Board's decision. The Carrier makes a persuasive argument that the Board is mired in the pit of precedent by insisting on holding Frontier in 2004 to an outdated precedent established for United in 1977. This automatic decision fails to recognize both that carriers could have individual structures and that many changes, including deregulation, have occurred in the industry. The Board would be well-served to more thoroughly acknowledge and respect variations within a rapidly changing industry and truly make its decisions on a carrier by carrier basis.

Nonetheless, the Board only grants relief on Motions for Reconsideration in limited circumstances:

> The Board recognizes the vital importance of the consistency and stability of the law as embodied in . . . NMB determinations . . . . Accordingly, the Board does not intend to reverse prior decisions on reconsideration except in the extraordinary circumstances where, in its view, the prior decision

> is fundamentally inconsistent with the proper execution of the NMB's responsibilities under the Railway Labor Act.

Virgin Atlantic Airways, 21 NMB 183, 186 (1994).

On October 16, 2003, an Aircraft Appearance Agent submitted a petition, signed by more than 50 percent (not just several, as stated in the majority opinion) of the Appearance Agents and Cleaners, stating that these employees did not want IBT representation. Although the Board does not generally consider petitions when making accretion determinations, there are extraordinary circumstances in this case that warrant consideration of the petition.

Upon close inspection, I found that the language on the authorization cards submitted by the IBT is ambiguous. The cards state in heavy black print "REQUEST FOR EMPLOYEES REPRESENTATION ELECTION UNDER THE RAILWAY LABOR ACT." Beneath this is a space for the name, job title, address, station, employee number, and hire date of the employee. This is followed by the language:

> I authorize the Airline Division of the International Brotherhood of Teamsters to request the National Mediation Board to conduct an investigation and a representation election, also to represent me in all negotiations of wages, hours and working conditions in accordance with the Railway Labor Act. This authorization revokes any prior authority.

(emphasis added).

Although the card authorizes the IBT to represent the signer in collective bargaining, the authorization is negated by the language on the card authorizing the IBT "to request the Board to conduct an investigation and a representation election." It cannot be determined from the content of the cards what the employees intended when they signed them.

Indeed, contacts with individuals who signed the authorization cards verified the confusion.

In my opinion, the ambiguous authorization cards submitted by the IBT clearly establish circumstances in which the Board's exercise of discretion to conduct further investigation is important to both the public interest and the rights of the individual employees. Although the other two Board Members acknowledge the confusion generated by the cards and, indeed, request clarification for future cards, they refuse to extend discretion to these employees. I regret that the Board is not upholding the intent of the RLA by failing to ensure the representation rights of employees.