



NATIONAL MEDIATION BOARD

WASHINGTON, DC 20572

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In the Matter of the
Application of the

COMMUNICATIONS WORKERS
OF AMERICA

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

involving employees of

PIEDMONT AIRLINES, INC.

31 NMB No. 68

CASE NO. R-6954

FINDINGS UPON
INVESTIGATION-
DISMISSAL

February 25, 2004

This determination resolves election interference allegations filed by the Communications Workers of America (CWA or Organization) and Piedmont Airlines, Inc. (Piedmont or Carrier). For the reasons below, the National Mediation Board (Board) finds that the laboratory conditions required for a fair election were not tainted. The CWA's request for a *Laker* ballot election is denied. Piedmont's request for an extension of the application bar to 24 months is also denied.

PROCEDURAL BACKGROUND

On August 7, 2003, the CWA filed an application with the Board pursuant to the Railway Labor Act¹ (RLA or Act), 45 U.S.C. § 152, Ninth (Section 2, Ninth), alleging a representation dispute involving the Fleet and Passenger Service Employees of Piedmont. At the time the application was received, these employees were unrepresented.

¹ 45 U.S.C § 151, *et seq.*

The Board assigned Maria-Kate Dowling to investigate. On September 9, 2003, the Board found that a dispute existed and authorized a Telephone Electronic Voting (TEV) election. Voting Instructions (Instructions) were mailed on September 18, 2003, and the tally was conducted on October 24, 2003. The results of the tally were as follows: of 1121 eligible voters, 469 cast valid votes for representation. This was less than a majority required for Board certification. On October 27, 2003, the Board dismissed the CWA's application. *Piedmont Airlines, Inc.*, 31 NMB No. 20 (2003).

On November 10, 2003, the CWA filed allegations of election interference pursuant to the Board's Representation Manual (Manual) Section 17.0. On December 2, 2003, the Carrier responded, denying the CWA's allegations. Previously, on November 4, 2003, the Carrier had submitted allegations that certain conduct on the part of the CWA had compromised the integrity of the voting process. The CWA, in its November 10, 2003 submission, denied these allegations.

On December 5, 2003, the Board found that the CWA's allegations stated a prima facie case that the laboratory conditions were tainted and that the Board would conduct further investigation. The Board also continued its investigation into the Carrier's allegations that the integrity of the voting process was compromised. The Board established a schedule for further filings. On December 12, 2003, Piedmont filed a supplement to its allegations that certain CWA conduct compromised the integrity of the voting process. On December 23, 2003, the CWA submitted a letter stating that it would neither supplement its November 10, 2003 filing nor file a response to the Carrier's December 2, 2003 response. Both participants submitted affidavits and other documentary evidence in support of their positions.

ISSUES

Did Piedmont's actions taint the laboratory conditions required by the Board for a fair election?

Did the CWA's conduct compromise the integrity of the Board's voting process?

CONTENTIONS

CONDUCT AFFECTING EMPLOYEE FREE CHOICE

CWA

The CWA asserts that the Carrier engaged in the following conduct during the critical period which tainted the laboratory conditions:

Announcing on October 15, 2003, that employees at Ronald Reagan National Airport (DCA) were to sign up for a "new" employee committee, which would "voice their concerns and . . . submit suggestions directly to management";

Informing employees, during a mandatory work time meeting, at the Charlotte, North Carolina Airport (CLT), on October 9, 2003, that they were not allowed to discuss the CWA organizing effort or the election on company time or on company premises;

Removing two bulletin boards in two separate employee break rooms at CLT where employees were free to post messages and installing locked, glass-encased bulletin boards to which only Piedmont management had access and by removing union literature from the bulletin boards and break rooms, and;

Conducting a pervasive anti-union campaign, including: distributing campaign material that expressed Piedmont's opposition to the CWA and misrepresented the Board's voting procedure; holding meetings at Piedmont's largest stations to campaign against the CWA, and; stating at DCA that Piedmont would be able to find out how employees voted.

The CWA also asserts that numerous employees did not receive their voting materials and that this failure affected the outcome of the election.

Finally, the CWA requests a re-run election with a *Laker* ballot to discover the free choice of the Fleet and Passenger Service Employees without the Carrier's interference.

Piedmont

The Carrier denies that it engaged in any objectionable conduct and contends that the CWA's allegations of isolated incidents at two of the 30 stations it operated during the election are insufficient to warrant a finding that the laboratory conditions necessary for a fair election have been tainted.

Piedmont states that the DCA employee committee was never established since no meetings were held, no issues were discussed, no benefits were conferred, and no promises were made. Accordingly, the Carrier argues there was no effect on the free choice of either DCA agents or the agents system-wide.

The Carrier asserts that the CLT October 9, 2003 meeting was one of the twice daily briefings held to discuss operational and safety-related issues, and at that meeting, the Carrier clarified its own and CLT's solicitation rules in response to an incident involving a CWA organizer. The Carrier also asserts that following that meeting, it took steps to make sure that employees understood that they were permitted to discuss the Organization among themselves whenever they wanted on or off the job. Further, Piedmont contends that throughout the campaign, it repeatedly stressed in numerous written communications that employees were free to speak openly about the issue of unionization in order to make an informed free choice in the election.

The Carrier further asserts that it neither denied access to open community bulletin boards nor replaced community bulletin boards with locked glass-encased bulletin boards. Piedmont denies that it removed any pro-CWA information from open community bulletin boards during the campaign and notes that it received no complaints that pro-CWA information was destroyed or removed from the community bulletin boards. Finally, the Carrier asserts that the CWA has provided no

evidence that Piedmont managers either removed or condoned the removal of pro-CWA literature from the CLT station.

Piedmont contends that its written communications to employees during the campaign were lawful exercises of its free speech rights and did not interfere with the election process. Piedmont contends that its statements regarding the TEV process were accurate and not misleading. Piedmont also contends that the “town hall” meetings held during the election period were voluntary and did not involve the impending election or the CWA. The Carrier also asserts that the allegations involving a rumor spread by unidentified employees that DCA supervisors could determine how an individual voted can not constitute a basis for finding election interference.

Finally, Piedmont contends that the number of employees who are alleged not to have received ballots would not have affected the outcome of the election.

CONDUCT AFFECTING THE INTEGRITY OF THE
BOARD’S VOTING PROCESS

Piedmont

The Carrier asserts that the CWA’s conduct, including unlawful polling and statements to employees implying that the CWA could determine whether or not employees had voted, called into question the privacy and secrecy of the Board’s TEV voting process and impugned the integrity of the RLA election process as a whole. Piedmont contends that although the CWA’s actions did not taint the laboratory conditions, remedial action is necessary to protect the integrity of the election process and the public’s confidence in the Board’s ability to conduct a secret ballot election. Accordingly, Piedmont requests that the Board extend the dismissal bar to 24 months.

CWA

The CWA admits polling employees but denies that its conduct compromised the integrity of the Board’s voting procedures. Moreover, CWA notes that union polling is not

unlawful and that the Board has never held union polling to constitute election interference since a union lacks a carrier's power and authority in the workplace to create a threat of imminent retaliation. CWA also asserts that the evidence submitted by Piedmont fails to directly establish that any CWA organizer threatened employees or told employees that the CWA knew how or whether they voted.

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.

Piedmont is a common carrier by air as defined in 45 U.S.C. § 181.

II.

The CWA is a labor organization and/or representative as provided by 45 U.S.C. § 151, Sixth.

III.

45 U.S.C. § 152, Third, provides in part: "Representatives . . . shall be designated . . . without interference, influence, or coercion"

IV.

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 employers shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter." This section also provides as follows:

No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees . . . or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization

FINDINGS OF FACT

I.

Carrier's Conduct during the Election

A.

Announcement of New Employee Committee at DCA

The CWA submitted a copy of a notice dated October 15, 2003, announcing the creation of a new employee committee at DCA. The notice takes the form of a letter addressed to DCA agents and is signed by DCA Operations Manager (OM) Joseph Parsi-Graciani. The notice states: "We are looking for Ramp and Gate agents wishing to belong to a new committee which will be used as a forum for agents to voice their concerns and to submit suggestions directly to management." The notice also seeks volunteers to serve as agent representatives who will gather "suggestions, gripes, and concerns" from their peers and present them to management. The notice further states that all "[i]tems will be discussed and sent up the chain for further consideration as needed." According to the notice, the committee would meet once a month, include a manager and a supervisor, and be open to all employees. Employees were asked to "communicate to management your interest to belong to this important committee . . . by close of business on October 24, 2003. The first meeting is scheduled for Friday, October 31, 2003."

The CWA also submitted statements from two DCA employees. One individual, an employee of US Airways, states that he first saw the notice on October 17, 2003, on a bulletin board near the entrance to the Piedmont management suite and that on October 19, 2003, the notice was posted on the door to the Piedmont suite. This individual also states that he overheard “a number” of Piedmont employees commenting that the committee “might be a better way of communicating directly with management than union representation.” The other individual, a Piedmont Agent, states that “quite a number of employees” were impacted by management’s implementation of the committee and that after the election, “I learned from first hand information, that this committee worked diligently to undermine the election of the CWA.” Neither individual identifies the number of employees involved.

In response, the Carrier submitted declarations from DCA Station Manager Daryush Mazhari and OM Parsi-Graciani. According to both Mazhari and Parsi-Graciani, one of the issues discussed at the regularly scheduled weekly OM staff meeting on October 8, 2003, was the development of a new forum to address an apparent lack of communication on a variety of company, operational, and personnel issues among Piedmont’s DCA station management and employees. Parsi-Graciani agreed to take the lead on the project and on October 15, 2003, posted the notice regarding the implementation of a new communication forum open to Piedmont’s DCA employees.

While the notice was not mass distributed, it was posted in at least three locations at the station: near the time clock, on the administration office door, and on an employee bulletin board. Parsi-Graciani states that he might have posted it in one or two other locations. The next day, October 16, 2003, Piedmont’s Director of Field Services, Jeff Garver, contacted Mazhari and informed him that the Board’s rules did not permit the implementation of the new DCA forum during the election period. After Mazhari confirmed this with Eric Morgan, Piedmont’s Vice President of Customer Service, he directed Parsi-Graciani to halt the implementation of the new forum and to remove the posted notices. The notices were removed no later than October 20, 2003. The eight employees who had

expressed interest in the forum were told that the first meeting to discuss the forum was postponed until November 4, 2003. Following the tally on October 24, 2003, in anticipation of possible interference allegations, Piedmont advised the DCA managers to maintain the status quo. Mazhari told Parsi-Graciani to notify the eight interested employees that the first meeting on the forum was further postponed until November 21, 2003. Following the filing of interference allegations by the CWA, plans to implement the communication forum were put on hold indefinitely.

B.

Prohibition against Discussing the CWA on Company
Time and on Company Premises

The CWA states that on October 9, 2003, Piedmont held a mandatory meeting at its CLT station during working hours to address the organizing campaign and upcoming election. In support of its allegation, the CWA submitted statements from two CLT employees. According to one employee's statement, he "was in attendance with approximately 40 other Piedmont employees, at an employer sponsored meeting/briefing" at CLT. Approximately eight Piedmont supervisors were present along with three Piedmont management officials. At the meeting, the employee states that Ricky Jordan, a Piedmont Ramp Manager, "informed the employees that they were not to discuss the CWA organizing drive or the union anywhere or at any time on the Company premises." The employee states that he asked Jordan to clarify his position and to inform him where employees were allowed to discuss the Organization. According to the employee, Jordan responded that, "employees were not permitted to discuss the union at all on company time or on company premises." In his declaration, the other CLT employee states that Jordan told employees that "we can't talk about the union during company time or company property."

The Carrier states that the October 9, 2003 meeting was one of its regularly scheduled daily briefings at which operational and safety-related issues are discussed. As evidence, Piedmont submitted a declaration from Ricky Jordan.

According to Jordan, he was the highest management official present and the meeting included questions and comments unrelated to the organizing drive from the agents in attendance. At the end of the meeting, Jordan informed the agents that on October 7, 2003, a CWA organizer had been in the boarding area of the E Concourse without a permit or ticket/boarding pass and was attempting to talk to Piedmont Agents while they were working.² Jordan reminded agents that “non-employees are not permitted to solicit in working areas during working time.” Jordan states that an employee asked whether employees were allowed to discuss the CWA on working time and that he responded that: “Piedmont Agents were certainly permitted to talk about the union whenever and wherever they wanted, but that the Company would not tolerate outside solicitors in work areas interrupting our Agents while they worked and that job performance was our number one priority.” Jordan further states that on October 10, 2003, he received a copy of a CWA letter regarding his comments on October 9, 2003, and “for the next several days, I spoke to the Agents in the a.m. and p.m. briefings and told them that I wanted to make sure they understood that they were permitted and encouraged to speak about the union among themselves wherever or whenever they wanted, on or off the job.”

Piedmont also notes that its written communications to employees, submitted by the CWA as evidence in this proceeding, stressed that employees were free to speak openly to one another about the campaign. The September 19, 2003 memorandum from Eric Morgan, Piedmont’s Vice President of Customer Service, states, “I would like to stress that, no matter what position you take in this organizing drive, all of you should feel free to speak openly about this matter.” An October 20, 2003 memorandum from Morgan states “We have had a significant amount of open discussion on this matter and varying opinions have for the most part been presented

² With regard to this incident, Piedmont submitted a declaration from CLT Station Manager Michael Bernardo and e-mails each dated October 7, 2003, from OMs Cliff Smith and Ed Harris, describing the event and identifying CWA organizer James Tarlau as the individual involved.

professionally and for that, I am grateful. My thanks to each of you who took the time to understand the issues and respectfully share your opinions with your fellow workers.”

C.

Removal of Open Bulletin Boards and CWA literature at CLT

In support of its allegations, the CWA submitted a declaration from one CLT employee. According to that individual, on September 30, 2003, Piedmont replaced two open bulletin boards in the CLT employee break rooms with two locked, glass-encased bulletin boards. The individual further states:

The day the new locked cases were installed, all information that had previously been on the bulletin boards were placed in the locked cases, including some union materials. However, one day after the cases were installed, I observed that the union materials were removed, although all other material remained in the cases.

After the locked cases were installed, there continued to be bulletin boards on which employees could communicate with each other about “community events, items they wanted to sell, and the campaign for a union.” However, the employee states that overnight the union literature that he and others had posted would be removed and that it is his “belief that Piedmont managers or supervisors, who remained at the airport later than employees, would remove these items after employees had left for the day.”

In response, Piedmont submitted a declaration from CLT Station Manager Michael Bernardo including photographs of the open and the glass-encased bulletin boards. According to Bernardo, before, during, and after the election, Piedmont maintained two open “community” bulletin boards for use by CLT agents for their own purposes. These bulletin boards are located in the hallway between the main employee break room and the employee locker room. Bernardo states that during the

election a CLT agent twice asked if he was allowed to post pro-CWA literature and Bernardo told him that he was and showed him the community bulletin boards. In the main employee break room, located opposite of gate E-24, there are three bulletin boards restricted to material posted by the Carrier. One of these bulletin boards is glass-encased and was installed by the Airport in July 2003. The glass-encased bulletin board is used by the Carrier for business-related memoranda. The remaining two open bulletin boards are used for required state and federal notices and safety materials respectively.

Bernardo states that Piedmont's CLT station also maintains bulletin boards for posting business-related memoranda in two smaller rooms located across from Gates E-3 and E-5. Due to incidents of vandalism in these two rooms, Bernardo instructed the Airport to remove two open unlocked bulletin boards and replace them with two locking glass-encased bulletin boards. According to Bernardo, the glass-encased bulletin boards were ordered and received by the CLT station prior to the start of the CWA's card signing campaign and were installed a few months prior to the election. Employees did not use these bulletin boards, which were restricted to business-related purposes. Bernardo denies that union or CWA materials were removed from the bulletin boards. According to Bernardo, when the glass-encased bulletin boards were installed they contained only business-related information.

Bernardo also denies that the Carrier removed pro-CWA information from open bulletin boards during the campaign. Bernardo states that CLT management did not receive any complaints that CWA information was being removed from open bulletin boards and destroyed. An employee did complain to Bernardo that the pro-CWA literature which he had "papered" the CLT bag room walls with was removed. Bernardo contacted the bag room supervisor, Calvin Craig, who reported that other employees, not Piedmont managers, had removed the literature. Bernardo advised the complaining employee that he could not "indiscriminately paper" the CLT station with literature, but should use the open community bulletin boards.

D.

Piedmont's Anti-Union Campaign

In support of its allegation that Piedmont conducted “an overwhelming anti-union campaign,” the CWA submitted statements from an employee of US Airways at DCA and its Organizing Coordinator James Tarlau, as well as copies of campaign material distributed by Piedmont.

According to the CWA, Piedmont management told DCA employees that “the carrier would be able to ascertain who voted and who did not.” In his declaration, the US Airways employee states that three Piedmont DCA employees told him that “they had heard their co-workers saying they would not cast a vote in the election because they had been told that supervisors at Piedmont/DCA were able to find out how an individual had voted.” The employee further states that the Piedmont employees believed “that many of their colleagues were intimidated by the rumor . . . [which] . . . was started by the Piedmont supervisors and management, that they and the Company would know how an Individual had voted.”

With regard to the campaign material, the CWA submitted copies of two memoranda to employees from Eric Morgan, Piedmont's Vice President of Customer Service, and two memoranda to CLT employees from CLT Station Manager Michael Bernardo. The CWA asserts that these memoranda were distributed system-wide and express Piedmont's opposition to the CWA. The CWA also asserts that Morgan misrepresented the Board's TEV voting procedures in his October 20, 2003 memorandum by stating “[a]ny call made [to the NMB], whether completed or not, will likely count as a vote for ‘representation.’” According to the CWA, Bernardo also misrepresented the voting process in his October 15, 2003 memorandum by stating “[m]aking a call [to the NMB] means you've most likely cast a vote for representation.”

The CWA also relies on the flyers for a “Town Hall Meeting” with Morgan on October 2, 2003, at CLT. Organizer

Tarlau states in his declaration that Piedmont conducted “captive audience meetings sponsored by management and supervisors at all major Piedmont-staffed airports.” According to the flyer, the topic for the meeting was “What’s going on with your company – come and get the answers to your questions!” The CWA also submitted two other Piedmont flyers, “How the Voting Process Works,” and “Get the Facts,” but failed to state how these flyers constitute objectionable conduct.

Piedmont states that CWA has provided no substantive evidence regarding its allegation that employees were told that the Carrier would be able to ascertain how employees voted. The Carrier also states that its communications to its employees constituted the lawful exercise of its free speech rights and did not interfere with the election process. According to Piedmont, the statements by Morgan and Bernardo were cautions to employees that a call to the Board’s toll free voting telephone number may result in a vote for representation based on the Board’s decision in *America West*, 30 NMB 78 (2002), in which Piedmont contends that the Board counted four “silent” or hang up calls as valid votes for “any other” organization. The September 19, 2003, memorandum from Morgan advises:

Please be aware that the NMB does not have a method of voting ‘no union’. If you do not want to vote for the union, the only way to vote ‘NO’ is to do nothing at all. What that means is, if you prefer to continue working directly with our management team on the issues that concern you then simply don’t make that call to the NMB.

The October 15 Memorandum from Bernardo states:

Finally, some employees have come to me because they felt duped into calling the 1-800 number provided by the NMB because they were told there is a way to vote “No Union.” Don’t be fooled. Making a call means you’ve most likely cast a vote for representation. In a recent election, the NMB counted four different “silent” write-in calls as valid

votes after callers selected the option to pick a write-in, but then did not and hung up instead. The bottom line is this – if you do not want the CWA to act as your representative, then don't pick up that phone; don't make the call.

Piedmont states that the other flyers were neither coercive nor unlawful. Piedmont states that its flyer, "How the Voting Process Works," provides factual information regarding the date of the vote, the method for voting, and the secrecy and confidentiality of the voting process. The first paragraph of the flyer describes the Board's TEV voting procedure and gives the date of the tally. The remaining paragraphs state:

No employee is required to vote. In fact, the best way to vote 'NO' is very simple: Don't make the call.

Don't get tricked into phoning in a 'write-in' vote. A write-in for any individual, organization or labor union might be counted as a vote for representation. A write-in vote would help the CWA.

This is a secret election. In order to maintain the confidentiality and integrity of the voting process – DO NOT GIVE YOUR VIN TO ANYONE – not a co-worker, not a union organizer, not to anyone from management. It's unlawful for anyone to try to collect your VIN or vote on your behalf by using your VIN.

No one – not the CWA, not the Company and not your co-workers will know whether or not you called in to vote.

With regard to the "Get the Facts" flyer, Piedmont states that this flyer addressed CWA campaign claims. Finally, with regard to the town hall meetings, Piedmont states that the flyer did not mention the CWA or the pending election and simply announces the time, date, location, and topic of the meeting.

Piedmont also states that the CWA has provided neither a factual nor a legal basis for its allegation that the town hall meetings were unlawful interference. Piedmont states that Morgan conducted town hall meetings at DCA on October 1, 2003, and at CLT on October 2, 2003, but the topic of these voluntary discussions, that were open to all employees and supervisors, centered on the future of the Company and not the election. Piedmont also notes there is no allegation of one-on-one or closed door meetings.

II.

Employees' Failure to Receive Voting Materials

The CWA asserts that 30 employees did not receive Instructions and Voter Identification Numbers (VINs) even though they requested duplicates. As evidence, the CWA submitted a declaration from James Tarlau, its lead organizer, and five employees. Tarlau identified 30 employees who "had not received a ballot to vote in the representation election despite being eligible to vote and having requested that a duplicate ballot be mailed to them." Three of the five employees state only that they did not receive a VIN. The fourth states that she did not receive a VIN even though she called and requested a duplicate. The fifth employee states that she did not receive a Personal Identification Number (PIN) "in the allotted time." She further states that she:

[F]illed in the request and mailed it and did not receive a PIN number up to October 21, 2003, when I personally checked my mail. I filled in another card and gave [another] address because I was told a number would be overnighted to me. I never received this. I called an elderly neighbor . . . [and] asked her to check the mail and give me the number. I tried to use the number she gave me. It did not work. I called the NMB, they said they had no record of the number I was using and could not give me a number over the phone.

According to Piedmont, even if the Board finds that all 30 employees had properly requested but failed to receive duplicate Instructions/VINs, such a finding would not have materially affected the outcome of the election and would not constitute grounds for setting aside an otherwise valid election.

III.

CWA's Conduct During the Campaign

The Carrier contends that during the campaign, CWA organizers told employees that they knew whether or not employees had voted as of a certain date and time, asked employees why they had not voted and when they planned to vote, and gave employees a toll free number to call if they had questions, identifying that number as the Organization's toll free information number when it was the NMB's toll free number for voting. As evidence, Piedmont submitted three separate declarations from CLT Station Manager Bernardo regarding complaints concerning the conduct of CWA organizers made to him by employees.³ Bernardo states that five employees complained to him about CWA campaign activity. According to Bernardo, one employee "came to my office and said she wanted to speak about the union. . . . [She] said that she was very unhappy because she continued to receive unwanted telephone calls at her home from CWA organizers who asked her questions about how she was going to vote." Another employee told Bernardo that "he was being threatened by other employees who told him that if he did not vote for the CWA, they would concoct information about him and see to it that he got fired." Bernardo states that a third employee told him that "he was angry and upset because CWA organizers continued to call him at his home and told him that they knew he had not voted." According to Bernardo, this

³ One declaration from Bernardo was submitted with the Carrier's November 4, 2003 filing. The other two declarations were submitted on October 14, 2003 and October 24, 2003 respectively as attachments to letters from the Carrier requesting that the Board investigate the CWA's conduct during the election.

employee also said that CWA organizers had spoken with his spouse “and asked her if she would tell them” how he planned to vote. A fourth employee told Bernardo that the CWA continually called him at home and told him that the CWA knew he had not voted, and if he had any questions, he should call the CWA’s toll free information number. Bernardo states that according to the employee, the number given to him by the CWA was the “same 1-800 number that employees were given to call the NMB to vote in the pending election.” Finally, Bernardo states that Jenell Scott, who was promoted to a supervisory position in August 2003, complained to him that “CWA organizers continued to call her home telephone number to ask her whether or not she had voted in the election.”

Piedmont also submitted a declaration from Scott. According to Scott, “unknown individuals who said they were from the CWA” repeatedly called her even after she told them that she had been promoted to a supervisory position. Scott states: “Sometime, in order to get them to leave me alone I told the organizers that I had not voted yet and I was asked if I could find time to vote. During two of these calls, the organizers asked me if I had received my instructions and VIN number.” She also states that she “received several complaints from employees who said that prior to the election count they had been approached by members of the Piedmont organizing team and were told that the Union knew they had still not voted for the CWA.” According to Scott, one employee told her: “CWA organizers called his home and spoke to his wife and asked her if she knew whether [he] was going to vote and questioned whom he would vote for.” This employee also told Scott: “[W]hen he spoke to an organizer during one of the telephone calls, the organizer told him that they knew that he had not voted yet.” Finally, Scott states that another employee “reported that she was approached by employee organizers who told her that they knew she had not voted and also asked her why another employee . . . had not voted.”

The Carrier also submitted a copy of the script used by CWA organizers, which the CWA had previously submitted to the Board and the Carrier. The CWA script provides that the caller identify himself as a volunteer with the CWA. The caller

then states, "I want to make sure that you've received the ballot instructions from the National Mediation Board on how to vote in the union election. Have you received the material?" If the employee answers "yes," the caller responds:

That's good. Please make sure that all your co-workers vote. We need a majority of the Piedmont agents to vote in order to make sure that Piedmont agents get union representation. Thank you for your time.

If the employee answers "no," the caller asks, "Are you planning on voting soon?" If the answer is "yes," the scripted response is:

That's good. The election is very important for Piedmont agents and we need a majority of the agents to vote for union representation. We hope you will call the NMB right after you finish this call. Do you have any questions you'd like to ask us at this time?

If the employee has stated that he doesn't intend to vote, the CWA caller asks, "What are the reasons why you are not voting? Would you be willing to talk to someone regarding some of your concerns?" If the employee states that he has not received the election materials, the scripted response is:

You should be getting the ballot instructions any day now. If you have not gotten the information by Saturday October 4th, you should write the National Mediation Board for duplicate instructions. We have sent all the agents addressed stamped postcards for you to send to the National Mediation Board. If you don't get your instructions please make sure that you send in the request for duplicate instructions and pin number. If you haven't gotten the postcard from us by Saturday and still haven't gotten the instructions from the NMB, please give us a call at 800-424-

2872 and we will send you a card to send to the Mediation Board.

Piedmont also suggests that the CWA has the ability to determine whether calls were made to the Board's toll free number because of the "CWA's widespread representation in the communications industry." As support for this allegation, Piedmont submitted three flyers from the CWA, which state:

Who is CWA?

CWA (Communications Workers of America) a national union of more than 700,000 members in technical, professional and customer service occupations, represents nearly 10,000 US Airways passenger service agents at ticket counters and gates, reservations, city ticket offices, clubs, dividend miles service centers, and baggage call centers.

CWA also represents workers in the media (ABC/Disney, NBC, CBS, CNN, etc), in Telecommunications (AT&T, Bell South, Cingular, SBC, Verizon, etc.), in Newspapers and Journalism (Wall Street Journal, New York Times and Washington Post, etc.) in addition to workers at many other Fortune 500 Companies (GE, IBM, Lucent, etc.). The largest number of CWA members work in customer service occupations.

Finally, Piedmont notes that the CWA's own literature states that, "it is illegal to ask how an employee votes or if an employee votes." The flyer offered in support of this allegation states, in relevant part, "[i]t is illegal for the airline to ask you whether you signed a union authorization card or how you vote, or plan to vote, in an election."

The CWA concedes that it polled employees during the election, but states that union polling is not unlawful and that the Board has never held union polling to constitute interference. The CWA submitted a declaration from its

Organizing Coordinator James Tarlau. Tarlau states that he was:

[R]esponsible for overseeing CWA's telephone polling of Piedmont employees in the recent election. . . . I personally called many employees to poll them regarding their representational interests. Others under my direction called employees as well. All CWA pollers were told not to deviate from the script provided, and I never deviated substantially from this script or witnessed others under my direction doing so.

The CWA further argues that Piedmont cites no case in which a union that failed to win a majority of votes was disciplined for its conduct during the critical period. In the instant case, where Piedmont concedes that the CWA's conduct did not interfere with employee free choice, the CWA argues that Piedmont seeks to deny employees their right to seek representation for twice the period mandated by the Board's rules.

DISCUSSION

I.

Carrier's Conduct During the Election Period

During election campaigns, a carrier must act in a manner that does not influence, interfere with, or coerce the employees' selection of a collective bargaining representative. *Metroflight, Inc.*, 13 NMB 284 (1986). When considering whether employees' freedom of choice of a collective bargaining representative has been impaired, the Board examines the totality of the circumstances as established through its investigation. *Mercy Air Serv., Inc.*, 29 NMB 55 (2001); *US Airways*, 26 NMB 323 (1999); *Petroleum Helicopters, Inc.*, 25 NMB 197 (1998); *Evergreen Int'l Airlines*, 20 NMB 675 (1993); *America West Airlines, Inc.*, 17 NMB 79 (1990).

In investigating allegations of carrier interference, the Board examines whether the employees' freedom of choice has been impaired. The use of a modified ballot by the Board in response to established interference is designed to mitigate the effects of an election environment in which the voters' "independence of judgment" has been eroded by the carrier's conduct. *Evergreen, above*, at 715.

For example, in *Laker Airways, Ltd*, 8 NMB 236 (1981), the Board found that the carrier had violated the Act by actions such as: soliciting employees to turn in their ballots to carrier officials; increasing pay immediately prior to the election period; and polling employees as to their representation choice. As a remedy, the Board ordered a re-run election using a *Laker* ballot. A *Laker* election involves the use of a "yes" or "no" ballot. No write-in space is provided, and the majority of votes actually cast determines the outcome of the election. A *Laker* election was also used as a remedy in *Mid Pacific Airlines*, 13 NMB 178 (1986), where the Board found the carrier had violated the Act by polling its employees and by implying that its financial future hinged on the employees' rejection of union representation.

In contrast, "isolated incidents" of potentially questionable carrier activities are insufficient to warrant a finding that the laboratory conditions necessary for a fair election have been tainted. See *Northwest Airlines, Inc.*, 19 NMB 94 (1991) (finding that although supervisors may have been involved in certain incidents favoring one union over another another during an organizing campaign, the conduct was insufficient to warrant any remedial action by the Board); *US Air, Inc.*, 18 NMB 290 (1991) (finding that the carrier's disparate enforcement of its policy on access to employee break rooms is an insufficient basis for a finding of interference).

A.

Announcement of a New Employee Committee at DCA

The Board has traditionally held that the mere existence of employee committees is not evidence of interference.

Pinnacle Airlines Corp., 30 NMB 186 (2003); *American Airlines*, 26 NMB 412 (1999); *US Airways*, 24 NMB 354 (1997); *Continental Airlines/Continental Express*, 21 NMB 229 (1994). The Board looks to such factors as the timing of the formation of the committee and whether a carrier encourages employees to form committees as an alternative to unionization. In *US Airways, above*, for example, the Board found that when viewed in the “totality of the circumstances,” the carrier’s use of the employee committees to expand benefits or make other material changes tainted the laboratory conditions. See also *Delta Airlines*, 30 NMB 102 (2002); *Horizon Airlines*, 24 NMB 458 (1997).

In the instant case, Piedmont management officials at DCA decided to form a committee to address communication problems between employees and management at their station. Although notices soliciting employee representatives for the new committee were posted during the voting period, no committee was actually established. The day after the notices were posted, Piedmont’s Director of Field Services notified the DCA Station Manager that formation of such a committee during the critical period was prohibited. Implementation of the committee was halted, the notices were removed, and those employees who had responded to the notice were told that the first meeting to discuss the committee was postponed until after the election. Subsequently, those interested employees were told that the formation of the committee was postponed indefinitely. No meetings were held, no issues were discussed, and no changes to employee benefits were recommended or made. There is no evidence that employee committees were an issue in the campaign or that a focus of the Carrier’s campaign was that employee committees are an alternative or substitute for representation by a labor organization. The statement of a single DCA employee that “a number of employees [were] impacted by the Management and its implementation” of the committee and that the “committee worked diligently to undermine the election of the CWA” does not establish that the Carrier’s actions interfered with the employees’ freedom to select a representative.

B.

Prohibition against Discussing the CWA on Company
Time and on Company Premises

In *Mercy Air Serv., Inc.*, 29 NMB 55, 73 (2001), the Board cited its longstanding policy on carrier campaign communications:

Carriers have a right to communicate with their employees during election campaigns, but this right is “not without limit, and even conduct which is otherwise lawful may justify remedial action when it interferes with a representation election.” In reviewing communications, the Board examines their content to see if they are coercive, contain material misrepresentations about the Board’s processes or the Act or combined with other Carrier actions, influence employees in their choice of representative.

(Citations omitted).

Two employees stated that Jordan told employees at one regularly scheduled work-related meeting at CLT that they could not discuss the Organization on company time or company premises. Jordan denies making this statement. There is no evidence that such statements were repeated at other meetings. In fact, the Carrier’s campaign material submitted by the CWA contains statements from CLT Station Manager Bernardo and Vice President Morgan encouraging employees to freely discuss the union. Further, Jordan states, without contradiction, that following the meeting he took steps to assure employees of their right to discuss the Organization freely. Accordingly, there is insufficient evidence that Piedmont coerced employees by telling them that they could not discuss

the union campaign on company time and on company property.

C.

Removal of Open Bulletin Boards and CWA Literature at CLT

The evidence presented regarding the installation of glass-encased locked bulletin boards at the CLT station does not establish that the Carrier interfered with the laboratory conditions. Piedmont states, without contradiction, that it has always maintained bulletin boards for employee postings and separate bulletin boards for official documents. CLT Station Manager Bernardo stated that before, during, and after the election, open community bulletin boards were available to employees for posting notices. This is corroborated by the employee declaration submitted by the CWA which states that even after the glass-encased bulletin boards were installed, open community bulletin boards remained available. Further, Bernardo stated without contradiction, during the election, a CLT agent twice asked if he was allowed to post pro-CWA literature and Bernardo told him that he was and showed him the “community” bulletin boards. There is also insufficient evidence offered by the CWA to support the allegation that Piedmont removed or condoned the removal of CWA literature from the CLT break room.

D.

Piedmont’s Anti-Union Campaign

The CWA alleges that Piedmont’s pervasive anti-union campaign tainted laboratory conditions. The evidence, however, fails to establish that the Carrier’s campaign interfered with employee free choice. The CWA has offered insufficient credible evidence to conclude that Piedmont told its DCA employees that its supervisors were able to find out how an individual had voted.

Carrier meetings with employees are not improper unless they are mandatory, coercive, or significantly increase in

frequency during the election period. *Mercy Air Serv., Inc.*, 29 NMB 55 (2001); *LSG Lufthansa Serv.*, 27 NMB 18 (1999). In addition, the Board examines the content of carrier communications at the meetings to determine whether the communications are coercive, contain material misrepresentations, or combined with other carrier actions, improperly influenced the employees in their choice of representative. Relying only on the flyers announcing the meetings, the CWA contends that the holding of the meetings interfered with employee free choice. However, the town hall meetings held by Piedmont on October 1 and 2 were voluntary, open to all employees, and did not address the election campaign. The CWA has offered insufficient evidence that the Carrier's town hall meetings tainted laboratory conditions.

Inaccuracies, misstatements and misleading statements about the Board's procedures have been held to constitute election interference. *Allegheny Airlines, Inc.*, 4 NMB 7 (1962). However, there is no evidence that the statements contained in the Carrier's "Get the Facts" flyer are inaccurate. Piedmont has stated without contradiction that this flyer responded to CWA campaign material and the CWA has offered no evidence that this material was false or misleading. Further, the Carrier did not taint the laboratory conditions by making inaccurate or misleading statements about Board procedures or by stating its concerns regarding the privacy or accuracy of the TEV process.⁴ See *America West Airlines, Inc.*, 30 NMB 310 (2003) (finding no election interference where carrier campaign literature stated that "[t]he best way to vote 'NO' union is not to vote at all. There is no option in the 'telephone electronic voting' system to cast a 'NO' union vote If you do not want

⁴ While Piedmont's statements about TEV did not taint laboratory conditions, the Board notes that a call to its toll free voting number will not necessarily result in a valid vote unless the voter selects the prompt to vote for the union listed on the Notice of TEV Election/Instructions or chooses to "speak-in" at the prompt to vote for "any other organization or individual." "Speak-in" selections will be transcribed and recorded on the Report of Election results.

the Teamsters to win the election, then you should not vote at all.”).

II.

Employee’s Alleged Failure to Receive Voting Materials

The Board’s Notice of TEV Election, posted throughout the Carrier’s system, provides a mechanism for employees who do not receive their voting instructions and VINs to obtain duplicates. In this case, the Notice provided, in relevant part:

If you do not receive your VIN (Voter Identification Number) by **October 2, 2003**, 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. Requests by telephone or facsimile are not accepted. Mail the request to: National Mediation Board, Office of Legal Affairs, 1301 K St., N.W., Suite 250 East, Washington, DC 20005. **No requests will be accepted after October 17, 2003.**

The same information was provided in the Instructions mailed to each employee.

The Board’s investigation establishes that of the 30 employees who allegedly requested and did not receive duplicate Instructions/VINs, 22 did not in fact request duplicate Instructions/VINs and their original Instructions/VINs were not returned as undeliverable. One of these 30 employees mailed the request with another employee’s request. As clearly stated on the Notice and Instructions, each request must be in an individual envelope and group requests are not accepted. The Board received 60 timely, individually mailed, duplicate Instruction/VIN requests which were processed immediately. There were no untimely requests and no Instructions/VINs were returned as undeliverable.

Further, in three of the five employee statements submitted by the CWA, the employees do not claim that they requested duplicate voting materials. These employees state only that they did not receive a VIN. The fourth employee states that she telephoned the Board for duplicate voting materials but did not receive them. However, as clearly stated on the Notice and Instructions, the Board does not accept telephone requests for duplicate voting materials. With regard to the remaining employee, the investigation reveals that a written timely request for duplicate voting materials from her was received by the Board on October 15, 2003, and immediately processed and sent to her mailing address as she requested. She states that after October 21, 2003, she requested that duplicate voting materials be sent to another address. This request would have been untimely. She further states that she relied on an elderly neighbor to give her the information she needed to vote over the phone, since she had apparently received the voting materials at her mailing address. When she was unable to vote, she called the Board to request a duplicate and was told that she could not receive it over the phone. There is no evidence that the processing of employees' requests for duplicate voting materials affected the outcome of the election.

III.

Union Conduct During the Election Period

The Board has frequently stated that “while the tests for union interference and carrier interference are the same – whether the laboratory conditions have been [tainted] – because of the unique power and authority which carriers possess in the workplace, application of this standard to effectively identical factual situations . . . may lead to different conclusions.” *United Air Lines, Inc.*, 22 NMB 288, 318 (1995), *reconsideration denied*, 23 NMB 2 (1995), citing *Air Wisconsin*, 16 NMB 235, 239-40 (1989). The Board views polling of employees during a representation election as one instance where the application of its laboratory conditions standard may lead to a different conclusion. *Federal Express Corp.*, 20 NMB 659, 665 (1993). In *Federal Express*, the Board concluded that

while polling by a carrier is coercive because of the substantial and material ability of the carrier to act against the employee, polling by the union does not carry with it the same threat of imminent retaliation.

The Board has recognized that while certain labor organization conduct does not rise to the level of interference, coercion, or influence, it does require remedial action. One such remedial action is a reduction of the two-year certification bar contained in Section 1206.4(a) of the Board's Rules.

For example, in *United Air Lines, above*, the Board found that ballot collection by union stewards and committeemen at the San Francisco station, where a substantial majority of the eligible voters were based, raised concerns about the confidentiality of the voting process. The Board re-emphasized its policy that the collection of ballots is inconsistent with the maintenance of a secret ballot election. 22 NMB at 320. While the Board found that the union's activity compromised the secret ballot process, it also concluded that there was "no evidence that coercive tactics were utilized to collect the ballots, that any ballots which had been collected were discarded, or that there was interference in the balloting itself." *Id.* Accordingly, the Board reduced the certification bar by six months.

In *Midway Airlines, Corp.*, 26 NMB 154 (1999), the Board found that the union campaign material inaccurately attributed statements to a Board attorney that called into question the Board's neutrality. The Board also found that the union's misstatement did not taint the laboratory conditions. In order to protect the neutrality of the Board and the investigation processes it administers, the certification bar was reduced by 12 months.

In the instant case, as even Piedmont concedes, the CWA's polling did not taint the laboratory conditions. The remaining issue is whether the polling in any way compromised the confidentiality of the Board's voting process. It is undisputed that CWA callers gave employees a toll free information number to call with questions. Bernardo identifies

only one employee who claims that the toll free number was the same as the Board's toll free number for voting. Further, the statements from Bernardo and Scott identify only three employees who reported that CWA organizers told them that the Organization knew whether or not employees voted. In Scott's statement regarding her conversation with a CWA organizer, she admits that she told the organizer she had not voted. The only other support for Piedmont's allegation that the CWA had a "definitive means of determining who voted and who had not" is the fact that the labor organization represents other employees in the telecommunications field. While there is evidence that employees were irritated and annoyed by the CWA's telephone polling, there is insufficient evidence that the secrecy or confidentiality of the Board's voting process was compromised.

CONCLUSION

The Board finds that the laboratory conditions required for a fair election were not tainted. This conclusion is based on the totality of the circumstances. The Board further finds, having carefully considered the record in this case, no basis to grant the relief requested by the Carrier. Therefore, as there is no further basis to proceed, the Board closes its file in this matter.

By direction of the NATIONAL MEDIATION BOARD.



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