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31 NMB No. 111
September 21, 2004

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Re: NMB Case No. R-6998
American Airlines

Gentlemen:

This determination addresses the July 15, 2004 appeals filed by the Aircraft Mechanics Fraternal Association (AMFA) and the Transport Workers Union of America (TWU) of Investigator Eileen Hennessey's June 16, 2004 eligibility rulings. For the reasons discussed below, both AMFA's and TWU's appeals are granted in part and denied in part. AMFA's

application is dismissed due to an insufficient showing of interest.

I.

Procedural Background

On March 12, 2004, AMFA filed an application pursuant to the Railway Labor Act (RLA),[1] 45 U.S.C. § 152, Ninth (Section 2, Ninth), seeking to represent the craft or class of Mechanics and Related Employees on American Airlines, Inc. (American or Carrier). American's Mechanics and Related Employees are currently represented by TWU. On March 15, 2004, American provided a List of Potential Eligible Voters (List). The Investigator sent a letter to the parties on March 25, 2004, setting a schedule for filing challenges and objections.

On March 29, 2004, the Carrier submitted a list of 97 duplicate names included on the List. Also on March 29, 2004, AMFA requested, inter alia, an electronic version of the List, a list of the 16,501 American employees covered in NMB Case No. CR-6743,[2] and a six-week extension of time in which to file challenges and objections in this case. On March 31, 2004, the Investigator transmitted an electronic version of the List to AMFA and TWU, noted that the Board's General Counsel had informed AMFA that NMB Case No. CR-6743 contained no list such as the one requested by AMFA, and granted the parties a two-week extension of time in which to file challenges and objections.

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[1] 45 U.S.C. § 151, *et seq.*

[2] In *American Airlines, Inc./TWA Airlines, LLC.*, 29 NMB 240 (2002), the Board found the two airlines constituted a single transportation system. The Board's decision noted that 13,229 American employees and 3,272 TWA-LLC employees in the Mechanics and Related craft or class were covered by the application. *Id.* at 245.

In a letter dated April 13, 2004, AMFA requested the Board to direct American to produce the list of 16,501 employees from the prior case and to grant a further two-week extension of time for the filing of challenges and objections. On April 16, 2004, the Carrier filed a letter with the Board stating that the 16,501 American employees referred to by AMFA arose in the context of a single carrier investigation, and that number represented the employees who were working for American at that time. The number did not include all of the post-September 11, 2001 furloughed employees who would have been included if a List of Potential Eligible Voters were compiled at that time. Also on April 16, 2004, the Investigator denied AMFA's requests that the Board compel American to provide the alleged list of 16,501 employees and that AMFA be given a two-week extension of time.

AMFA and TWU filed challenges and objections to the List on April 22, 2004. American filed a request for a two-week extension of time in which to file a response to the challenges and objections. On April 29, 2004, the Investigator granted all of the participants a two-week extension to file responses. AMFA requested a further one-week extension of time. On May 14, 2004, the Investigator granted a four-day extension. American, AMFA, and TWU all filed responses on May 24, 2004, to the challenges and objections previously filed. In a letter dated May 28, 2004, AMFA alleged that American's response was not properly filed and should not be considered by the Board. AMFA also requested the opportunity to respond to TWU's response. On June 2, 2004, the Investigator found that American's response was properly filed and declined to allow further responses.

II.

Challenges and Objections

A. AMFA

AMFA's challenges and objections alleged that approximately 2,458[3] individuals included on American's List were ineligible to vote. AMFA identified 2,364 ineligible voters as follows: (1) 269 employees who have retired; (2) 140 employees who have resigned; (3) 118 stores employees who belong in the Stock and Stores Employees craft or class rather than the Mechanics and Related Employees craft or class; (4) 363 fleet service clerks who belong in the Fleet Service Employees craft or class rather than the Mechanics and Related Employees craft or class; (5) 91 probationary employees who have been furloughed; (6) 80 management officials; (7) 279 former TWA employees who have no recall rights at American; (8) 37 employees working for other carriers; (9) 16 deceased employees; (10) 49 furloughed employees who have either declined or waived their right to recall; (11) five employees who belong in the Passenger Service Employees craft or class rather than the Mechanics and Related Employees craft or class; (12) 72 employees who have been terminated; (13) approximately 233 fuelers who belong in the Fleet Service Employees craft or class rather than the Mechanics and Related Employees craft or class; and (14) 366 cleaners and 149 janitors who are identified as working at locations where these jobs functions were outsourced by American. AMFA also listed a miscellaneous category of other exclusions that identified no employees, but which requested the Investigator to examine AMFA's submitted declarations for further excludable employees.

[3] This number included the 97 employees who the participants agreed appeared twice on the List.

B. TWU

TWU's objections alleged that 2,087 eligible employees were omitted from the List and that 78 ineligible individuals were included on the List. TWU argued that 1,080 cabin cleaners or lavatory service employees are properly included in the Mechanics and Related Employees craft or class, that 1,007 employees furloughed from TWA and possessing recall rights to American in the Mechanics and Related Employees craft or class are eligible to vote, and that 78 employees on the List are management officials who are ineligible to vote. In a later filing, TWU advised the Board it had learned that 18 of the 1,007 furloughed TWA employees are deceased. TWU provided the names of the deceased employees so that their names could be removed from TWU's list of allegedly eligible employees to be added to the List.

C. Responses

1. American

In its response, American addressed the challenges and objections of both unions.

American agreed with AMFA regarding identification of deceased employees to be removed from the List. American disagreed with AMFA regarding the exclusion of fuelers, and argued that all fuelers should be retained on the List. American disagreed with AMFA regarding the exclusion of furloughed probationary employees, cleaners, and janitors; but it agreed that some employees in each category should be removed from the List. American agreed with AMFA regarding the exclusion of employees who have retired, employees who have resigned, stores employees, fleet service clerks, management employees, former TWA employees without recall rights, employees working for other carriers, furloughed employees who declined or waived their right to recall, employees working in the Passenger Service Employees craft or class, and terminated employees; but it disagreed that all

employees listed in these categories by AMFA should be removed from the List.

American agreed with TWU regarding management officials and furloughed TWA employees; but it contended that some of the alleged management officials should be retained and that most of the furloughed TWA employees should not be added to the List. American agreed with TWU's position regarding cabin cleaners and lavatory service employees; and it added 150 employees in these positions who were not listed by TWU.

2. AMFA

AMFA disputed TWU's contention that cabin cleaners and lavatory service employees are part of the Mechanics and Related Employees craft or class. AMFA argued that, although cabin cleaning and lavatory service falls within the Mechanics and Related Employees craft or class, these employees are largely fleet service clerks belonging in the Fleet Service Employees craft or class. Moreover, AMFA contended that TWU failed to provide substantive evidence that these fleet service clerks spent the majority of their time performing cabin cleaning or lavatory service in the 60 days preceding the voter eligibility cut-off date.

AMFA also disputed TWU's argument that TWA furloughees should be included in the craft or class of Mechanics and Related Employees. AMFA contended that TWU's position was based on a presumption and that it lacked the requisite specificity to include these individuals in the craft or class. Moreover, AMFA contended that the furloughed TWA employees lacked an employee-employer relationship with the Carrier and lacked recall rights; had retired from TWA; had resigned from TWA; already appeared on the Carrier's List; did not work in the Mechanics and Related Employees craft or class; were management officials; were deceased; or were entered twice on TWU's list of employees to be added to the List.

In its response, AMFA further requested the removal of 234 individuals from the List based on new information either gleaned from TWU's objections or from other sources. These 234 individuals fell into three categories, for two of which AMFA already had claimed other employees were ineligible. AMFA also repeated its request from the miscellaneous category in its challenges and objections, where AMFA identified no employees but requested the Investigator to examine AMFA's submitted declarations for further excludable employees.

3. TWU

TWU disputed six categories of AMFA's objections. First, TWU addressed AMFA's objection to including Title III Fleet Service fuelers on the List. TWU argued that it was not the Carrier's burden to explain these employees' inclusion on the List. Further, TWU contended that Title III fuelers do work previously classified as Title IV Ground Service work, which AMFA did not challenge. Second, TWU countered AMFA's objection to the inclusion of outsourced cleaners and janitors by contending that these employees have a reasonable expectation of returning to work. Third, TWU contested AMFA's arguments that furloughed probationary employees should be excluded from the craft or class. TWU alleged that these Carrier employees are subject to re-employment and have a reasonable expectation of re-employment if they have not exhibited performance problems on the job. Fourth, TWU disputed AMFA's objection to including certain furloughed fleet service clerks, arguing that these employees also retained recall rights from jobs in the Mechanics and Related Employee classification. Fifth, TWU claimed that some of the stores clerks objected to by AMFA have claims to reinstatement to mechanic positions. Sixth, TWU disputed AMFA's claim that certain individuals have no employment relationship with the Carrier because they do not appear on any TWA seniority roster. TWU provided evidence that some of those individuals appear on the final TWA Mechanics and Related Employee seniority rosters.

D. Investigator's Ruling

Investigator Hennessey issued her rulings on June 16, 2004. Initially, she ruled that, contrary to AMFA's position, eligibility for inclusion on the List for purposes of calculating a showing of interest is based on working in the craft or class as of the eligibility cut-off date. She further ruled as follows:

> 1. Of the 269 employees alleged to have retired, 243 employees did retire as of the cut-off date. Those individuals are not eligible.
>
> 2. Of the 140 employees alleged to have resigned, 120 employees did resign as of the cut-off date. Those individuals are not eligible.
>
> 3. Although some, if not all, of the 118 stores clerks might have claims to reinstatement to work in the Mechanics and Related Employees craft or class, they are all ineligible because they regularly work in a different craft or class.
>
> 4. Of the employees alleged to be fleet service clerks, 221 employees work in the Fleet Service Employees craft or class and are ineligible. However, 94 former TWA employees who never assumed a position with the Carrier have recall rights in the Mechanics and Related Employees craft or class, and they remain eligible.
>
> 5. American established a pattern of recalling furloughed probationary employees. Of the 91 furloughed probationary employees, two do not have a reasonable expectation of recall and are, therefore, ineligible. The other 89 employees do have a reasonable expectation of recall and remain eligible.

6. Of the 80 employees challenged as management officials, five employees are working in the Mechanics and Related Employees craft or class and remain eligible. The other 75 employees are management officials and are ineligible.

7. Of the 279 former TWA employees alleged to have no recall rights at American, seven employees either work at American or have recall rights at American. These seven employees remain eligible. The other 272 employees are ineligible.

8. Of the 37 individuals alleged to be working for other airlines, only 13 people were working for other carriers as of the cut-off date. Those 13 individuals are ineligible.

9. All 16 allegedly deceased employees died before the cut-off date and they are not eligible.

10. Of the 49 employees who allegedly waived or declined their recall rights at American, 24 individuals declined recall and are not eligible.

11. Of the five employees alleged to be working outside the craft or class, one employee is a furloughed cabin cleaner with recall rights in the Mechanics and Related Employees craft or class. The other four employees are ineligible.

12. Of the 72 employees alleged to have been terminated by American, three employees have pending grievances seeking reinstatement and remain eligible. The other 69 individuals are ineligible.

13. The approximately 233 fuelers covered by the Fleet Service collective bargaining agreement perform fueling and ground service work within the Mechanics and Related Employees craft or class.

> They are eligible, as are the additional 20 fuelers identified by the Carrier as having been inadvertently omitted from the List.
>
> 14. The cleaners and janitors whose jobs were outsourced by American have recall rights to the Mechanics and Related Employees craft or class and remain eligible.
>
> 15. Employees performing cabin cleaning and lavatory service for a preponderance of their work time are properly placed in the Mechanics and Related Employees craft or class. TWU and American identified 1,167 employees performing this work a preponderance of their time, they are eligible, and their names are added to the List.
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> 16. Of the 1,007 furloughed TWA employees alleged to be eligible, 957 individuals have retired, resigned, or refused recall and are, therefore, ineligible. The other 50 individuals are eligible and their names are added to the List.

On July 15, 2004, AMFA and TWU filed appeals with the Board regarding various portions of the Investigator's June 16, 2004 rulings. AMFA, TWU, and American filed responses on August 5, 2004. On August 5, 2004, AMFA requested the opportunity to file a rebuttal to American's and TWU's responses. The Board's General Counsel denied that request on August 6, 2004.

III.

Appeals

A. AMFA

AMFA appeals the Investigator's rulings that the following employees are eligible to vote: (1) 24 employees alleged by AMFA to have retired; (2) 20 employees alleged by

AMFA to have resigned; (3) 142 fleet service clerks alleged by AMFA to belong in the Fleet Service Employees craft or class; (4) 89 probationary employees who have been furloughed; (5) four employees alleged by AMFA to be management officials; (6) one former TWA employee alleged by AMFA to have no recall rights at American; (7) 24 employees alleged by AMFA to be working for other carriers; (8) 25 furloughed employees alleged by AMFA to have either declined or waived their right to recall; (9) one employee alleged by AMFA to belong in the Passenger Service Employees craft or class; (10) one employee alleged by AMFA to have been terminated; (11) 249 fuelers alleged by AMFA to belong in the Fleet Service Employees craft or class; (12) 366 cleaners and 149 janitors whose jobs were alleged by AMFA to be outsourced by American; (13) 244 employees now identified by AMFA as falling within its miscellaneous category of challenges and objections; (14) 1,167 cabin cleaning and lavatory service employees alleged by TWU and American to belong in the Mechanics and Related Employees craft or class; (15) 21 furloughed TWA employees alleged by TWU to have recall rights at American; (16) 46 employees identified by AMFA in its May 24, 2004 response to TWU's objections; (17) 36 employees alleged by AMFA in its response to TWU's objections to have retired; and (18) 150 employees alleged by AMFA in its response to TWU's objections to be former TWA employees without contractual recall rights at American.

AMFA asserts generally that the evidence it produced during the challenge and objection process was more specific and more reliable than American's evidence. In particular, AMFA contends that much of the documentation relied on by American contained a disclaimer that the documents were inaccurate for data after 1998.

AMFA further contends that, even if it does not have enough valid authorization cards to meet the requirements of the Board's Rules at 29 C.F.R. § 1206.2, the Board should waive its showing of interest requirement and conduct an election. AMFA argues that the extent of its showing of interest demonstrates that an election in this case would not be based on a frivolous claim, thus comporting with the rationale

underlying the Board's rule. Moreover, AMFA alleges that American, in effect, acted in bad faith to obscure the actual size of the craft or class.

B. TWU

TWU appeals the Investigator's rulings that the following employees are ineligible to vote: (1) 36 of the 221 employees removed from the List as belonging to the Fleet Service Employees craft or class; (2) 13 St. Louis lavatory and hangar crew employees whose names appear in a declaration, but not on the attachment listing cabin and lavatory personnel; (3) three employees who TWU claim were separated from Mechanics and Related Employees craft or class positions at American; and (4) one employee identified as a TWA retiree who is working in the craft or class at American.

C. Responses

American contends that an Investigator's rulings are upheld unless the appealing participant establishes that the rulings were incorrect based on Board law and the evidence presented to the Investigator. American argues that the Investigator's rulings are supported by the evidence presented in this case. Generally, American asserts that its evidence, overseen and attested to by Managing Director of Employee Relations James B. Weel, is more reliable than the evidence submitted by AMFA. Moreover, American disputes AMFA's claim that American's data was inaccurate after 1998 because it was not part of American's SHARP system. The Carrier asserts that the notations at the bottom of the "Employee History – View History" pages it submitted as evidence reveal that the information was obtained from the SHARP system which contains the most current information on employees. American also claims it used the same source of data in a neutral manner to address the challenges and objections of both unions in this matter. Finally, American's response states its position regarding each individual whose eligibility was appealed by AMFA and TWU.

Both AMFA and TWU filed response briefs addressing the individuals whose eligibility was appealed by the other union.

IV.

Discussion

A. Initial Matters

In many of its various appeals, AMFA repeatedly asserts that American's data is inaccurate. AMFA's claim is based on a statement contained on most of the documents submitted by American. The documents titled "Employee History – View History" contain the following notation above the employee name and related data:

> IMPORTANT: This employee history site was designed to provide historical employee information accrued through December 31, 1998 only. For information beginning January 1, 1999, please use SHARP.

AMFA argues that the information contained in these records is unreliable for the time period subsequent to December 31, 1998; and, therefore, the evidence it presented should be considered both superior and controlling. The documents in question, however, also contain the following notation at the bottom of each page: "http://sharp.americanair.com/EmpHist/viewhis.asp?" As alleged by American, these "Employee History - View History" documents, in fact, are SHARP documents from the Carrier's system containing current information. Review of the documents reveals that, except in instances of employees furloughed in 1998 or before, they all contain numerous entries for dates after December 31, 1998.

In addition to, or in a few instances in lieu of, the SHARP documentation, American relies on the attestation of Managing Director of Employee Relations James B. Weel to facts alleged

by the Carrier. Weel, or employees who work directly for him, assembled the information presented by the Carrier.

Inasmuch as the Carrier did provide current information in its responses to the challenges and objections, the Investigator's rulings will be upheld where they are founded on Board precedent and accurate data provided by American.[4]

A number of AMFA's appeals also involve the question of employee eligibility and the eligibility cut–off date. The Investigator correctly found that the standard for eligibility when calculating a showing of interest is working in the craft or class as of the cut-off date. *See United Airlines, Inc.*, 28 NMB 533 (2001); *USAir, Inc.*, 24 NMB 38 (1996). Accordingly, the Board upholds the Investigator's rulings including on the List those employees who were eligible as of the cut-off date of March 5, 2004.

Further, a number of AMFA's appeals involve the question of which jobs are part of the Mechanics and Related Employees craft or class. In *National Airlines, Inc.*, 1 NMB 423, 428-29 (1947), the Board stated the following definition of the Mechanics and Related Employees craft or class:

> A. Mechanics who perform maintenance work on aircraft, engine, radio, or accessory equipment.
>
> B. Grounds service personnel who perform work generally described as follows: Washing and cleaning airplane, engine, and accessory parts in overhaul shops; fueling of aircraft and ground equipment; maintenance of ground and ramp equipment; maintenance of buildings, hangars, and related equipment; cleaning and maintaining the interior and exterior of aircraft; servicing and control of cabin service equipment; air conditioning

[4] Where it is demonstrably incorrect, American's data will not support the Investigator's rulings.

of aircraft; cleaning of airport hangars, buildings, hangar and ramp equipment.

C. Plant maintenance personnel – including employees who perform work consisting of repairs, alterations, additions to and maintenance of buildings, hangars, and the repair, maintenance and operation of related equipment including automatic equipment.

As the Board stated recently, "[i]n the years since this decision, the craft or class findings for Mechanics and Related Employees has not been seriously challenged. On the contrary, throughout the industry this grouping of employees constitutes the prevailing pattern for representation in collective bargaining relationships between carriers and unions." *Aircraft Serv. Int'l Group*, 31 NMB 508, 517 (2004). Therefore, determinations regarding employees' inclusion on the List, based on contentions about the placement of their work in the Mechanics and Related Employees craft or class, will be decided in accord with *National Airlines*, *above*.

Additionally, the burden of persuasion in an appeal from an Investigator's eligibility ruling rests with the participant appealing that determination. *Northwest Airlines, Inc.*, 26 NMB 77, 80 (1998).

Parts B-T of the Discussion deal with the issues regarding employee placement on the List raised by AMFA and TWU.

B. Retired Employees

Section 9.210 of the Board's Representation Manual (Manual) provides: "Retired employees are ineligible."

AMFA has appealed the Investigator's ruling that 24 employees, out of 269 individuals alleged by AMFA to have

retired, remained eligible as of the March 5, 2004 cut-off date.[5] AMFA argues that the Investigator did not indicate whether she relied on the Carrier's evidence in making these determinations, but, in any event, the Carrier's data is less reliable than AMFA's American-based documentation.

American submitted documentation for those individuals, challenged by AMFA, who the Carrier claimed remained eligible as of the cut-off date. As noted above, the documentation submitted by American consisted of employee records that came from its SHARP system and was properly relied upon by the Investigator.

Of the 24 alleged retirees, AMFA contends that one, Rosa B. Aljiboori, was recalled to work after the eligibility cut-off date. In fact, American's supporting document, as correctly cited by AMFA, demonstrates that Aljiboori was recalled almost two years before the cut-off date and she remained an active employee beyond the cut-off date.

Next, AMFA contends that the Carrier's evidence did not establish that the following 17 alleged retirees had, in fact, not retired: Ronald Avery, David Baird, Richard T. Brown, Joseph J. Bunero, Jr., Jon D. Carlile, James K. Crawford, Thomas S. Duncan, Billy S. Edwards, Robert D. Fitzpatrick, James D. Ford, B.J. Gray, Albert T. Johnson, James R. Lang, Donald W. Palmer, George Sheppard, Gerald D. Williams, and Robert A. Zink. A review of American's documentation shows that the employee identification numbers on its SHARP records for these 17 individuals match the identification numbers on the spread sheet on which American stated its position regarding each alleged retiree. Further, each employee's name, the last four digits of their social security number, their job description, and their job location as listed on the spread sheet matches the information contained on the List. Accordingly, American's evidence established that it was addressing the correct

[5] The Investigator ruled that 26 alleged retirees remained eligible as of the cut-off date. AMFA concedes that two of these employees remained eligible.

employee in each instance.[6] Further, American's documentation shows that Bunero, Carlile, Crawford, Duncan, Edwards, Fitzpatrick, Gray, Johnson, Lang, and Palmer were in active status beyond the cut-off date; and it shows that Avery, Baird, Brown, Ford, Sheppard, Williams, and Zink were laid-off due to a reduction in operations. As of the eligibility cut-off date, all of the laid-off employees were within the 10-year period following layoff during which they retain a contractual right of recall to the craft or class.[7] Pursuant to Manual Section 9.204, these furloughed employees were properly included on the List.

Further, AMFA argues that American provided no documentation to disprove AMFA's allegations that the following six employees were retired: Willard D. Brown, Jerry L. Burlile, Harvey A. Counts, Jr., R.H. Horton, D.L. Morgan, and Annie L. Williams. In fact, American did provide SHARP data regarding two of these employees. The data, clearly relating to the challenged individuals on the List, established that Horton was in active status as of March 5, 2004 and Counts was laid-off in June 2003. AMFA's evidence regarding this group of employees was dated April 2004 and provided no specific retirement date. Although American provided no SHARP documentation regarding Brown, Burlile, Morgan, or Williams, Weel attested to the Carrier's assertion that each of these employees retired on a specified date between March 26, 2004 and April 30, 2004. AMFA's documentation was less specific and did not address the pivotal question of whether these employees had retired prior to the cut-off date. Inasmuch as American has provided a sworn statement identifying the retirement dates of these four individuals, the Investigator properly relied on that evidence in making her ruling.

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[6] All verification of the data submitted by American was performed in this manner.

[7] The record establishes that both American employees and former TWA employees have contractual rights of recall to jobs at American for a 10-year period following their furloughs.

For the reasons discussed above, the Investigator's rulings regarding these 24 individuals are upheld.

TWU appeals the removal of John C. Douglas from the List as a retired employee, alleging that he is an active overhaul mechanic rather than a retired TWA employee. American contends in its response that it identified the wrong employee in its response to AMFA's challenge and that Douglas should remain on the List. AMFA contends that its documentation showed John C. Douglas to be retired, and that TWU has not proved he should be added to the List.

The issue on appeal is whether the evidence before the Investigator established that John C. Douglas was a retired employee. An examination of AMFA's evidence shows that the John Douglas on its American-based document, alleged to be a retired employee, is not the same individual as the John C. Douglas on the List. Given that Weel's declaration addressed a different John Douglas and that AMFA's documentation does not support its allegation concerning the John C. Douglas on the List, the evidence does not support the Investigator's ruling. Accordingly, the Investigator's ruling is not upheld and **John C. Douglas** will be reinstated on the List.

C. Resignees

Section 9.2 of the Manual provides, in pertinent part: "All individuals working regularly in the craft or class on and after the cut-off date are eligible to vote in an NMB representation election." As noted above, an employee's inclusion on the List is determined by his eligibility as of the cut-off date. Employees who have resigned their employment prior to the cut-off date will not be included on the List.

AMFA has appealed the Investigator's ruling that 20 employees, out of 140 individuals alleged by AMFA to have resigned, remained eligible as of the March 5, 2004 cut-off date. AMFA argues that the Carrier's data is less reliable than AMFA's American-based and other documentation.

American submitted documentation for those individuals, challenged by AMFA, who the Carrier claimed remained eligible as of the cut-off date. As noted above, the documentation submitted by American consisted of employee records that came from its SHARP system and was properly relied upon by the Investigator.

Of the 20 alleged resignees, the Carrier's documentation and other evidence establishes the following: 11 employees, Pedro A. Batista, Jr., Leonard O. Beckett, Charles Cihak, Godfrey Ellis, Jonathan D. Hendricks, Nicholas D. Jaffe, Nicholas J. Kiaffas, Frank C. Lavacca, Marc S. Samsen, Jeffrey A. Wiemers and Marc Williams, were laid-off and, as of the eligibility cut-off date, retained a right of recall to the craft or class; four employees, Jacob Harrell, Troy Harrison, Charles Modlin, and Eddie Williamson, resigned but retained contractual rights of recall to jobs within the craft or class; three employees, Albert D. Bascombe, Bryan K. Rainbolt, and Dennis J. Storey, were in active status as of the cut-off date; and one employee, Edgardo L. Gonzalez, was on a leave of absence. Based on the clear Carrier documentation supporting her conclusions, the Board upholds the Investigator's rulings regarding these 19 employees.

AMFA also contends that employee David Butler resigned, and that American's evidence relates to another employee, David W. Butler. A review of the documentation establishes that American's claim that David Butler was an active employee was based on David W. Butler's records. TWU argues that, inasmuch as the code number on AMFA's own documentation showed the David Butler in question as having resigned with recall rights to another job, the employee should be retained on the List as were the other employees with the same code on their records. For those other employees, however, Weel's declaration asserted that they were properly included on the List. Weel made no such assertion regarding the David Butler challenged by AMFA in this category. Although the code by his name indicates recall rights, there is no indication to what job or jobs those rights apply. In the

absence of any evidence from the Carrier or TWU to the Investigator that Butler's recall rights are to the Mechanics and Related Employees craft or class, there is insufficient evidence to overcome AMFA's showing that Butler should be removed from the List because of his resignation. Accordingly, the Board does not uphold the Investigator's ruling regarding this employee and **David Butler** will be removed from the List.

D. Fleet Service Clerks

Pursuant to Section 9.2 of the Manual, employees working in another craft or class on the eligibility cut-off date are not eligible to vote. In ruling that American and TWA-LLC are a single transportation system, the Board found that Mechanics and Related Employees and Fleet Service Employees are separate crafts or classes at American. *American Airlines, Inc./TWA Airlines, LLC.*, 29 NMB 240, 250-51 (2002). However, when determining in which craft or class an employee is working, "[t]he Board's well-settled policy is that it looks to the actual duties and responsibilities of employees, and not merely to their job titles." *USAir, Inc.*, 21 NMB 402, 406 (1994).

AMFA's challenges and objections alleged that 363 employees on the List were identified as part of the Fleet Service Employees craft or class and were, therefore, improperly included on the List. These employees included active fleet service clerks at American, furloughed fleet service clerks at American who retained recall rights to the Mechanics and Related Employees craft or class, and furloughed fleet service clerks from TWA with recall rights at American. It is clear from the documentary evidence submitted by the participants that many of these employees identified as "Fleet Service" employees worked as mechanics, fuelers, and cleaners, jobs that the Carrier and TWU contend are part of the Mechanics and Related Employees craft or class.

In its challenges and objections, AMFA produced two separate lists of allegedly ineligible fleet service clerks: one list of 315 employees and an addendum of 48 employees. In its response, the Carrier addressed only the list of 315 employees.

TWU's response addressed both lists. The Investigator's ruling explicitly discussed the 315 employees for whom American provided a response. The ruling retained on the List 95 of the 315 employees addressed by the Carrier.[8] The 48 employees on the addendum were implicitly ruled to belong on the List because the Investigator, although she did not discuss them, did not remove them from the List.

AMFA's appeal again argues that the Carrier's data is less reliable than AMFA's American-based and other documentation. American submitted documentation for those individuals, challenged by AMFA, who the Carrier claimed remained eligible as of the cut-off date. As noted above, the documentation submitted by American consisted of employee records that came from its SHARP system and was properly relied upon by the Investigator.

In its appeal, AMFA contends that, of the 95 employees explicitly ruled on by the Investigator and retained on the List, 55 employees are active fleet service clerks at American and, therefore, ineligible to vote. American's response admits that the following 44 of those 55 employees were working at jobs in the Fleet Service Employees craft or class on the eligibility cut-off date: **Kenneth W. Adams**, **Brian J. Andersen**, **Oscar Andrade**, **Samuel D. Austin**, **Mario Balanta**, **Peter P. Capadona**, **Kendy Castellanos**, **Francis G. Celona**, **Theodore Crawford**, **Robert Czarny**, **Antonio Dacosta**, **Cesar J. Fernandez**, **Pedro Fonseca, Jr.**, **Jesus Garrido**, **Charles Gerth, Jr.**, **Dale W. Golgert**, **Robert Golston**, **Andrew Gomez**, **William Goralczyk**, **Merritt E. Green**, **Gerald Hull**, **T. Irving**, **Gary A. Kloeppel**, **Rodney Lall**, **Raymond O. McCugh**, **Joseph J. McGuire**, **Joseph A. Morani**, **David Nolan**, **David**

[8] The ruling removed 221 names from the List and retained 94 names argued by American to belong on the List. American's response, however, mistakenly addressed employee Gregory P. Little instead of Faith Little. Inasmuch as American agreed to delete Gregory P. Little from the List, Faith Little was retained on the List in addition to the other 94, for a total of 95 out of 315 employees retained on the List.

Nunez, **Christopher V. Peto**, **James Pierre**, **William H. Prakop**, **Stephen P. Prehn**, **Jose L. Rodriguez**, **William G. Rody**, **John L. Ryan, Jr.**, **Imtenan Saeed**, **Franklin E. Smith**, **Blase Thomas, Jr.**, **Deyder B. Valega**, **Paul R. Vollers**, **James Witherby**, **Tyrone Wright**, and **Ismael Yero**.[9] Accordingly, these employees will be removed from the List.

Of the remaining 11 employees alleged by AMFA on appeal to be active fleet service clerks, American's documentation establishes that five employees were furloughed from TWA, four employees were furloughed by American, one employee is an active fueler at American, and one employee was terminated from his plant maintenance job at American after the eligibility cut-off date. The five furloughed American employees are as follows: Gregory A. Bates was furloughed from his mechanic job in October 2001; Lee Kubien was furloughed from his aircraft cleaner job in May 2003; Kenneth Pascual was furloughed from his mechanic job in October 2001; Michael J. Smith was furloughed from his ground service job in January 1995; and Jimmy Wong was furloughed from his mechanic plant maintenance job in March 1998. The four furloughed TWA employees are as follows: Ramon A. Flores was furloughed from his mechanic job at TWA in January 2002 and never worked at American; Kevin Kelley was furloughed from his plant maintenance job at TWA in April 2002 and never worked at American; Joseph A. Rodriguez was furloughed from his mechanic job at TWA in January 2002 and never worked at American; and Rosa Rodriguez was furloughed from her janitor job at TWA in January 2002 and never worked at American. C. Limjoco is an active fueler at American. Randy Clark was terminated from his mechanic plant maintenance job on March 31, 2004.

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[9] It appears that American may have initially contended these employees belonged on the List because they retain recall rights to the Mechanics and Related Employees craft or class based on previous jobs they had held. The Investigator's ruling made clear that active employees in another craft or class are ineligible to vote regardless of such recall rights.

The nine furloughed employees mentioned above all retained contractual recall rights, as of the eligibility cut-off date, to the work they last performed at TWA or American. The nine employees worked as mechanics, aircraft cleaners, plant maintenance employees, janitors, or ground servicemen (the formal description of fuelers). All of this work is contained in the Mechanics and Related Employees craft or class as defined in *National Airlines, Inc.*, 1 NMB 423 (1947) and as applied by the Board in the ensuing years. Because these nine employees were furloughed within the 10-year period in which they retain rights to recall, Bates, Flores, Kelley, Kubien, Pascual, Joseph A. Rodriguez, Rosa Rodriguez, Smith, and Wong were properly included on the List. Accordingly, the Board upholds the Investigator's rulings regarding these employees.

The final two of the 55 employees specifically alleged in AMFA's appeal to be active fleet service clerks are an active fueler and a discharged mechanic plant maintenance employee. Both jobs are part of the Mechanics and Related Employees craft or class as defined in *National Airlines, above*. The discharged employee was not terminated until March 31, 2004. Both of these employees, therefore, were actively working in the craft or class on the eligibility cut-off date. Accordingly, C. Limjoco and Randy Clark were properly included on the List and the Board upholds the Investigator's rulings regarding these employees.

Of the remaining 40 alleged fleet service clerks who were explicitly addressed in the Investigator's ruling and retained on the List, the evidence demonstrated that 29 are furloughed TWA employees who last worked at TWA as cleaners, janitors, or fuelers; who never worked at American; and who were furloughed less than 10 years prior to the eligibility cut-off date. Inasmuch as these employees worked in the Mechanics and Related Employees craft or class and retain their contractual rights of recall, the following employees were properly retained on the List: Linda Amato, Maurice J. Berry, Gordana Brajanovska, Doreen A. Cantalino, Eric A. Charon, Isabel C. Chrakian, Catherine E. Clarke, Antonio Correa, Elizabeth M. Crespo, Moacir R. Cunha, Alvaro A. Freitas,

Danial C. Hogan, Marco Intravaia, Luz M. Johnson, Tunde O. Johnson, Lila Josevska, Vernon B. Leggins, Lillian V. Lockhart, Milka T. Mitreski, Ralph C. Muhammad, Delacy F. Nixon, John R. Ochtera, Jr., Kamini Ramjeet, Dennis W. Rohrer, Mario R. Sandoval, Alice J. Sintef, Tony D. Waters, Dale M. Wilburg, and Sergio A. Yepes. The Board upholds the Investigator's rulings on these employees.

Of the remaining 11 alleged fleet service clerks who were explicitly addressed in the Investigator's ruling and retained on the List, eight have contractual recall rights into the Mechanics and Related Employees craft or class. These employees were furloughed at some point by either TWA or American from Mechanic and Related Employee positions. These employees, however, last performed Fleet Service Employees craft or class work and were furloughed from those positions.

Section 9.204 of the Manual provides: "Furloughed employees are eligible to vote in the craft or class *in which they last worked.*" (Emphasis added.) In *America West Airlines*, 21 NMB 458 (1994), a group of Flight Attendants was given the option of being furloughed or bidding into another craft or class. These employees accepted jobs in another craft or class and subsequently quit those jobs. The carrier contended that the employees were eligible as furloughed employees with recall rights into the Flight Attendants craft or class. In upholding the mediator's ruling that they were not eligible to vote, the Board found "these individuals ineligible based upon the fact that they were not Flight Attendants when they quit the carrier and upon the simple fact that they voluntarily terminated their employment with [the carrier]." *Id.* at 462. Inasmuch as furloughed employees remain eligible to vote only in the last craft or class in which they worked, the eight employees mentioned above were not part of the Mechanics and Related Employees craft or class on the eligibility cut-off date. Accordingly, the Investigator's rulings regarding **Bradley D. Allen**, **Genacio Eugenio**, **Harry J. Janssen**, **June M.**

Shinabarger, **Otis K. Story**, **Richard D. Towler**[10], **Leonard F. Wake, Jr.**, and **Jeffrey R. Williams** are not upheld and their names will be removed from the List.

The Carrier's documentation shows that two employees were actively employed at American as of the eligibility cut-off date. Antonio Deluca was working as a fueler. Therefore, he was working in the craft or class and his name was properly on the List. The Board upholds the Investigator's ruling concerning this employee and his name will remain on the List. William A. Liley, Jr. was actively working in the Fleet Service Employees craft or class and he was not eligible as of the cut-off date. Accordingly, the Board does not uphold the Investigator's ruling regarding **William A. Liley, Jr.** and his name will be removed from the List.

The Carrier provided no documentation on the final employee of the 95 alleged fleet service clerks who were explicitly addressed in the Investigator's ruling and retained on the List. On appeal, AMFA contends that its evidence regarding Faith Little must be controlling of the outcome on this individual. Although American provided no documentation regarding Little while the case was pending before the Investigator, AMFA's own evidence does not support a finding that Little was improperly included on the List. AMFA's evidence shows that although Little was listed as a fleet service clerk generally, her job was as a fueler. Because fuelers are part of the Mechanics and Related Employees craft or class, AMFA provided inadequate evidence to support removing her from the List. Accordingly, the Board upholds the Investigator's ruling on this employee and her name will remain on the List.

As a consequence of examining AMFA's appeal regarding Faith Little, the record shows that Gregory P. Little was

[10] Although American alleged Towler was an active American employee, its employment history document indicates he was furloughed from a fleet service clerk job at TWA and never worked at American.

removed from the List despite the fact that his eligibility was not challenged. Moreover, American's spread sheet regarding the fleet service clerks and Weel's declaration show that Gregory P. Little was furloughed from a fueler position at American in November 2002. Accordingly, the Investigator's ruling regarding **Gregory P. Little** is not upheld, and his name will be reinstated on the List.

AMFA also contends that it inadvertently failed to include employees Karen Bright and Roberto Vargas on its list of allegedly ineligible fleet service clerks, but that it included documentation within its submission indicating that these employees are ineligible. Section 10.2 of the Manual provides, in pertinent part: "Absent extraordinary circumstances, evidence submitted on appeal will not be considered by the NMB unless it was submitted to the Investigator." Although AMFA submitted some documentation to the Investigator on these two employees, it did not state that the eligibility of these employees was being challenged. Where evidence is contained in a submission to the Investigator without identifying its purpose, the question is not properly presented to the Investigator for a ruling. Accordingly, AMFA's arguments concerning Bright and Vargas were not submitted to the Investigator and will not be considered on appeal.

AMFA further contends on appeal that, in the absence of a response by the Carrier to its challenges and objections, the 48 employees on the addendum must be removed from the List. As noted above, TWU did respond to AMFA's allegations concerning the addendum. Moreover, the pertinent question is not whether a participant's allegations went unchallenged, but whether there was sufficient evidence before the Investigator to support her ruling. AMFA's own documentation shows that although the 48 employees in question were listed in the Fleet Service Employees craft or class, they actually worked as cleaners, janitors, or mechanics. Inasmuch as this work is part of the Mechanics and Related Employees craft or class, the employees on AMFA's addendum were properly included on the List, the Investigator's ruling regarding these employees is upheld, and their names will remain on the List.

TWU appeals the removal of 36 furloughed, alleged Fleet Service Employees from the List. TWU alleges that 21 of the 36 employees worked as fleet service helpers, performing almost exclusively cleaning or fueling work at the Kansas City, MO overhaul facility; and that one of the cleaners was working on the eligibility cut-off date. TWU further contends that 14 of the 36 employees worked as fuelers and one employee was a furloughed mechanic who retained his recall rights. American agrees with TWU's appeal on this matter. AMFA argues that these employees were all listed as fleet service clerks and that there was insufficient evidence during the challenge and objection stage of this proceeding to support a finding that these employees belong on the List.

Without regard to the evidence supplied by TWU or American to the Investigator prior to her ruling, AMFA's own submission does not justify the removal of these employees from the List. As discussed above, the Board looks to the work actually performed by employees rather than classification in which they are listed. In the case of these 36 employees, AMFA's own documentation listing them as Fleet Service Employees also identifies that 21 employees worked as cleaners, 14 employees worked as fuelers, and one employee worked as a mechanic. Inasmuch as all of this work is part of the Mechanics and Related Employees craft or class, AMFA provided inadequate evidence to demonstrate that these employees were part of the Fleet Service Employees craft or class. Accordingly, the Investigator's rulings concerning these employees are not upheld. The names of the following 21 cleaners will be reinstated on the List: **Michael R. Dannar**, **Edith M. Duncan**, **Jerry L. Enslow**, **Antionette M. Forman**, **Terri J. Gianessi**, **Donald Harper, Jr.**, **Andres R. Hernandez**, **Lillian A. Johnson**, **Robert Leacock**, **Rosa M. Lewis**, **Dean M. Moss**, **Lisa M. Pries**, **Wade K. Rodman**, **Donna Schmitt**, **Deborah A. Swope**, **Rose C. Thomas**, **Jacquelyn M. Timmerman**, **Jon D. Tucker**, **Betty J. Watts**, **Lill M. Weekes**, and **Aecha Yeager**. The names of the following 14 fuelers will be reinstated on the List: **Gary L. Anderson**, **Fredric Burett**, **Thomas J. Caputo**, **John C. Fogarty**, **Keith L. Fuller**, **Mark**

W. Gustetich, **Denise M. Harvey**, **Jason Kovacs**, **Daniel Lulich**, **Desiree E. Marquez**, **Chester Matthews, Jr.**, **Bernardino Rodriguez**, **Latasha Thomas**, and **Ruben Vela**. The name of the following mechanic will be reinstated on the List: **James Connolly**.

E. Furloughed Probationary Employees

Section 9.204 of the Manual provides, in part: "Furloughed employees are eligible to vote in the craft or class in which they last worked if they retain an employee-employer relationship and have a reasonable expectation of returning to work."

AMFA appeals the Investigator's ruling that 89 furloughed probationary American employees were properly included on the List. AMFA contends that the Manual requires that furloughed employees have both a continuing employee-employer relationship and a reasonable expectation of returning to work in order to be eligible. AMFA contends that the probationary employees in question lack an employee-employer relationship and, therefore, cannot be considered eligible.

In *Evergreen Int'l Airlines*, 19 NMB 182 (1992), the Board determined the eligibility of furloughed employees where the carrier had no policy manual or written furlough policy. When deciding the question of furloughed employees' eligibility, the Board held that "[t]he determinative factor is whether the individuals in question had a reasonable expectation of returning to work." *Id.* at 187. In this case, where there is no written policy or contractual right to recall for probationary employees, the Investigator was correct in examining the practice of the Carrier to determine the furloughed employees' reasonable expectation of returning to work.

In this case, Weel attested that American's policy and practice is to reemploy probationary employees whose job performance before the furlough was acceptable. The evidence further shows that American had furloughed 142 probationary

employees after September 11, 2001. American began recalling employees in 2002 and, as of May 2004, had recalled 75 of the furloughed probationary employees. On the basis of its demonstrated practice, American contended that 89 of the 91 furloughed probationary employees challenged by AMFA performed acceptably and had a reasonable expectation of recall. Based on this evidence, the remaining furloughed probationary employees have a reasonable expectation of recall. Accordingly, the Investigator's ruling concerning these employees is upheld and their names will remain on the List.

F. Management Officials

Section 9.211 of the Manual provides, in part: "Management officials are ineligible to vote." AMFA challenged 80 employees as alleged management officials. The Investigator's ruling removed 75 employees from the List, but found that the remaining five employees were not management officials. AMFA has appealed the Investigator's rulings as to four employees retained on the List.

AMFA's appeal again argues that the Carrier's data is less reliable than AMFA's American-based and other documentation. American submitted documentation for those individuals, challenged by AMFA, who the Carrier claimed remained eligible as of the cut-off date. As noted above, the documentation submitted by American consisted of employee records that came from its SHARP system and was properly relied upon by the Investigator.

American's documentation demonstrates that: Billy L. Blanck, Jr. was furloughed on January 2, 2002, from his job as a mechanic; Agustine Guerrero is an active mechanic; and Wendyl W. Griffin was promoted to a management official job on March 20, 2004, after the eligibility cut-off date. Accordingly, these three employees were eligible to vote as of the cut-off date, the Investigator's ruling is upheld, and the employees' names will remain on the List.

American's documentation also shows that John M. Olson was promoted to a management official job on December 8, 2003. Although Olson was still in a probationary period on March 5, 2004 and retained recall rights into the Mechanics and Related Employees craft or class, he was a management official by the cut-off date and is ineligible. Accordingly, the Investigator's ruling regarding **John M. Olson** is not upheld and his name will be removed from the List.

G. Former TWA Employee Without American Recall Rights

AMFA challenged 279 individuals by alleging they were former TWA employees without recall rights at American. The Investigator's ruling removed 272 individuals from the List, but retained seven employees on the List as having recall rights or working for American. AMFA appeals the Investigator's ruling concerning one of these employees.

In its response to AMFA's appeal, American concedes that Shad R. Reiter was terminated by TWA and did not contest the discharge. Reiter, therefore, has no recall rights at American. Accordingly, the Investigator's ruling regarding **Shad R. Reiter** is not upheld and his name will be removed from the List.

H. Employees Working for Other Carriers

Section 9.207 of the Manual provides: "Employees working for another carrier other than the carrier involved in the dispute are ineligible."

AMFA challenged 37 employees by alleging that they were working for other carriers. The Investigator's ruling removed 13 individuals from the List, but retained 24 employees on the List. AMFA has appealed the Investigator's ruling regarding all 24 employees retained on the List. In its appeal, AMFA argues that it provided declarations and other documents in support of its challenges and objections to these employees; and American provided only a one-page summary denying that 24 of the 37 challenged individuals worked for

another carrier. AMFA argues that American's evidence was insufficient to disprove AMFA's substantive evidence regarding this issue.

The summary sheet provided by American on this issue and attested to by Weel does provide assertions that some of these 24 employees remain on the Carrier's recall lists. The more important question, however, is whether the Investigator had enough evidence before her to justify removing these 24 employees from the List. An examination of the record shows that AMFA's evidence was lacking in this regard. AMFA submitted declarations from its employees asserting these employees worked for other carriers. Some of these declarations do not state the basis for the declarant's belief. In some instances, the declarant refers to a conversation with the employee in question. Those conversations, however, all occurred after the eligibility cut-off date and there is no assertion made as to the date on which the employee began work at another carrier. The employment rosters of other carriers submitted by AMFA do not adequately identify those carriers' employees, by social security numbers or other conclusive means, as the challenged employees at issue.

Because AMFA's own evidence does not sufficiently demonstrate that these 24 employees had accepted employment at other carriers before the eligibility cut-off date, the Investigator did not err in retaining them on the List. The Board makes this determination in view of the fact that American, although obligated to provide information in its possession regarding challenged employees, did not have access to better information than AMFA about the outside employment of these furloughed employees. Where American was aware of such outside employment, it agreed with AMFA's challenges. AMFA's evidence alone, without American's verification, was inadequate to support its challenges and objections. Accordingly, the Investigator's rulings concerning these employees are upheld and, to the extent that some of these employees' names have not already been deleted from the List for other reasons, their names will remain on the List.

I. Furloughed Employees Who Have Waived or Declined Recall

Pursuant to Section 9.204 of the Manual, furloughed employees who do not "retain an employee-employer relationship and have a reasonable expectation of returning to work" are not eligible to vote.

AMFA has appealed the Investigator's ruling that 25 employees, out of 49 furloughed employees alleged by AMFA to have waived or declined recall rights, were properly included on the List. AMFA contends that the Carrier provided no substantive evidence to disprove AMFA's evidence that the 25 employees in question waived or declined recall. American argues that the evidence it did provide to the Investigator consisted of Weel's declaration that these 25 individuals were furloughed from the Mechanics and Related Employees craft or class, are not actively working for American or another carrier in another craft or class, retain their recall rights at American, and have not declined or waived their recall rights. TWU argues that AMFA's evidence to the Investigator was insufficient to demonstrate that employees waived or declined their recall rights, allegedly through AMFA's misunderstanding of the applicable rules at American.

AMFA clearly identified the 49 employees it believed to have declined or waived recall, or to have been furloughed more than 10 years before the cut-off date. A review of the American "Auto TA" documents submitted by AMFA reveals that American agreed to delete employees furloughed before March 5, 1994. AMFA provided declarations and other evidence to the Investigator that the 25 employees in question on appeal have declined or waived their recall rights. American provided Weel's declaration attesting to the search of its records and its conclusion that these 25 employees have recall rights which have not been declined or waived. Considering the evidence submitted to the Investigator by AMFA and American, the Board finds that she was correct in ruling that the 25 employees were properly placed on the List. Accordingly, the Investigator's ruling is upheld and the 25 employees' names will be retained on the List.

J. Employee Working Outside the Craft or Class

Pursuant to Section 9.2 of the Manual, employees working outside the craft or class as of the eligibility cut-off date do not belong on the List.

AMFA challenged five employees by alleging that they were working outside the craft or class. The Investigator's ruling removed four individuals from the List, but retained one employee on the List. AMFA has appealed the Investigator's ruling regarding the employee retained on the List. American submitted documentation for the employee, challenged by AMFA, who the Carrier claimed remained eligible as of the cut-off date. As noted above, the documentation submitted by American consisted of employee records that came from its SHARP system and was properly relied upon by the Investigator.

AMFA alleged that employee Michael Martin was working as a ticket agent. American's documentation shows that Martin was furloughed from his cabin cleaner job on May 29, 2002. Accordingly, the Investigator's ruling regarding Martin is upheld and his name will remain on the List.

K. Terminated Employee

Section 9.203 of the Manual provides, in part: "Dismissed employees are ineligible to vote unless the dismissal is being appealed through an applicable grievance procedure or an action for reinstatement has been filed before a court or a government agency of competent jurisdiction."

AMFA challenged 72 employees by alleging that they had been terminated by American. The Investigator's ruling removed 69 individuals from the List, but retained three employees on the List. AMFA has appealed the Investigator's ruling regarding one employee retained on the List. American submitted documentation for the employee, challenged by AMFA, who the Carrier claimed remained eligible as of the cut-

off date. As noted above, the documentation submitted by American consisted of employee records from its SHARP system and was properly relied upon by the Investigator.

AMFA alleged that employee Keith R. Barilow was discharged. American's documentation shows that Barilow was furloughed from his job on October 12, 2001. He was on furlough on the eligibility cut-off date. Barilow, in fact, was recalled to his job on April 24, 2004, shortly after the eligibility cut-off date. Accordingly, the Investigator's ruling regarding Barilow is upheld and his name will remain on the List.

L. Fuelers

AMFA appeals the Investigator's rulings retaining on the List 229 fuelers and adding 20 additional fuelers that American sought to add as a result of its review of AMFA's challenges and objections. AMFA alleged in its challenges and objections that there was no proof that these fleet service fuelers preponderantly performed Mechanics and Related fueling work. On appeal, AMFA argues that the Investigator erred in not advising the participants of the criteria for a preponderance check and requiring American to submit substantive evidence that these Fleet Service Employees spent the preponderance of their time performing Mechanics and Related Employees work. AMFA contends that the Investigator allowed American to reassign employees, without providing substantive evidence, from the craft or class designated for them by the Board. AMFA further argues that 34 of the fuelers should be removed from the List based on evidence it provided to the Investigator indicating that fueling work at certain locations was outsourced or, in one instance, non-existent. AMFA also contends that employee Lonnie R. Lewis, Jr., one of the additional 20 fuelers added to the List based on American's May 24, 2004 response, was already on the List.

American argues that AMFA's appeal does not contest the Investigator's ruling that fleet service fuelers are part of the Mechanics and Related Employees craft or class. According to the Carrier, AMFA disputes the ruling based on its mistaken

assumption that the Carrier was responsible for providing preponderance evidence on this matter. American alleges that, despite AMFA's burden of proof on this issue, Weel oversaw a preponderance check for all of these employees for the 60 days preceding the eligibility cut-off date. Weel attested that these employees preponderantly performed Mechanics and Related fueling work during that time. American further contends that the 34 fuelers at locations where the fueling function was outsourced are furloughed employees retaining their employee-employer relationship with the Carrier and having a reasonable expectation of returning to work. American agrees that Lonnie R. Lewis, Jr. was already on the List.

TWU argues that the challenged Title III fuelers perform the same work and are covered by the same contract as the Title IV fuelers whom AMFA does not contest are properly placed in the Mechanics and Related Employees craft or class. TWU contends that American reassigned the Title III fuelers, with TWU's agreement, to different contract coverage rather than to a different craft or class. TWU also argues that the burden of providing evidence to remove these employees from the List fell on AMFA rather than American. TWU alleges that the 34 fuelers at locations where the fueling function was outsourced remain eligible because other Mechanics and Related ground service work might have remained and there is no showing that all fueling functions were outsourced. Further, TWU argues that many of these 34 fuelers were deleted from the List for other reasons. Finally, TWU agrees that Lonnie R. Lewis, Jr. was already on the List, and notes that Brandon Gulisao, J.F. Binegar, C. Castenada, and P.M. Pullen were added to the list in the Investigator's Attachment O.

Section 9.212 of the Manual provides, in part: "Participants asserting that employees not on the list of potential eligible voters are eligible, must provide evidence that the employees preponderantly performed job functions encompassed by the craft or class . . . ." Section 8.2 of the Manual provides, in part: "All challenges or objections must be supported by substantive evidence."

The burden of proof concerning the ineligibility of the 229 fuelers originally included on the List falls on AMFA, and the fact that the Investigator did not require a specific preponderance check by American is not determinative of this issue. *United Airlines, Inc.*, 28 NMB 533 (2001), cited by AMFA, is inapposite. In that case, not only did the carrier seek to add fuelers to the list of potential eligible voters, but the preponderance check required by the Investigator was as a result of the addition to the List of employees in another job classification and the carrier's query concerning the proof of their eligibility. In this case, the Carrier included the fuelers on the List initially and AMFA sought their removal.

Moreover, the inclusion of these fuelers on the List, even absent a preponderance check, is more evident than in most cases. As stated by the Investigator in her ruling:

> It is well established Board precedent that the fueling function is included in the craft or class of Mechanics and Related Employees. *See United Air Lines, Inc.,* 28 NMB 533 (2001); *United Airlines, Inc.,* 6 NMB 134, 135 (1977). The formal title for these individuals is Ground Serviceman. For many years, in stations where fueling and ground service functions were performed "in house", such work was performed by Title IV Ground Servicemen.
>
> TWU provided some background for the Title III Ground Serviceman position. In 1991, an agreement was reached between American and TWU to gradually eliminate the Title IV Ground Serviceman classification and convert the jobs into Title III Ground Serviceman positions. In 2003, all Ground Serviceman positions, both Title III and IV, were moved to the Fleet Service CBA and the Fleet Service CBA was amended to state coverage of "Ground Service". AMFA has not objected to the inclusion of Title IV Ground Servicemen, but objects to inclusion of Title III Ground Servicemen.

> All titles performing Ground Service and the entire classification description have been moved without amendment into the Fleet Service CBA. The Title III Ground Service workforce was developed by filling Title IV vacancies with Title III personnel and applying the same exact function and work as their Title IV counterparts.
>
> The fact that Title III Ground Servicemen are included in the Fleet Service CBA is not determinative of which craft or class these individuals should be in. The Board has long held that it alone has the authority under Section 2, Ninth of the RLA to determine the composition of the craft or class and it is not bound by the agreements reached by the parties. *Missouri Pacific R.R.*, 14 NMB 168 (1987). Fueling and ground service work is within the craft or class of Mechanics and Related Employees.

As demonstrated in the Investigator's ruling, and contrary to AMFA's assertions, American is not seeking to move employees from one established craft or class to another. The Title III and Title IV fuelers, although covered by a Fleet Service CBA, have always performed Mechanics and Related Employees work and were not otherwise classified by the Board. Accordingly, AMFA's reliance on cases concerning attempts to reclassify employees is unavailing.

In addition to the above reasons for retaining the fuelers on the List, American actually conducted a preponderance check. Weel's declaration attests, based on checks he ordered from the managers responsible for the fuelers in question, that these employees preponderantly performed the Mechanics and Related Employees fueling function. Considering all of the evidence presented to the Investigator, as well as the burdens of proof, AMFA has failed to show on appeal that the Investigator's ruling on this group of employees was incorrect or unsupported by the evidence. Accordingly, the Investigator's

ruling concerning this group of employees, as a whole is upheld, and their names will be retained on the List.

AMFA also contends that 34 of the 229 fuelers are ineligible because they work at locations where the fueling function has been outsourced. In its response on appeal, American contends that these 34 employees were furloughed and retain recall rights. Furloughed employees are generally eligible unless their recall rights have expired, they have refused recall, or their positions have been permanently eliminated. *Evergreen Int'l Airlines*, 19 NMB 182 (1992). The Board has found employees eligible, based on their recall rights, where the carrier has either contracted out work or permanently closed a department in which the employees worked. *See*, *e.g.*, *USAir, Inc.*, 21 NMB 281 (1994); *El Al Israel Airlines, Ltd.*, 12 NMB 282 (1985); *United Airlines, Inc.*, 10 NMB 364 (1983). Given the 10-year recall rights of these 34 employees, they were properly included on the List, and the Investigator's ruling regarding them is upheld.[11]

American discovered the 20 fuelers it sought to add to the List as a result of the preponderance check it performed for this class of employees. Pursuant to Section 9.204 of the Manual, American bears the burden of proof regarding these 20 employees. American's submission of these 20 employees for inclusion is subject to the same preponderance evidence attested to by Weel. Moreover, unlike the circumstances in *United Airlines, Inc.*, 28 NMB 533 (2001), the Carrier here is seeking to add additional employees to a job classification it already has placed on the List. Given that AMFA did not contest the placement on the List of Title IV fuelers, that the Title III fuelers perform the same work under the same contract

[11] It is noted that many of these 34 employees were removed from the List for other reasons. Employees can only be removed from the List once. Inasmuch as their names originally appeared on the List and they have been removed for other reasons, the failure to remove them in this category does not affect the calculation of the number of potential eligible voters.

as the Title IV fuelers, and that Weel attested to the preponderant performance of Mechanics and Related Employees work by these employees, there is sufficient evidence in the record to support the Investigator's ruling. Accordingly, the Investigator's rulings regarding these 20 employees are upheld and their names will be retained on the List.

It is noted that one of these 20 employees, Lonnie R. Lewis, Jr., was on the List initially, and that four of these 20 employees, James F. Binegar, C. Castaneda, Brandon J. Gulisao, and Paul M. Pullen, were added to the List by the Investigator's ruling regarding cabin cleaning and lavatory service employees. An employee can only be placed on the List once. Binegar, Castaneda, Gulisao, and Pullen are retained on the List in Part O of this decision, below. To adjust for the double counting of these five employees, the final number of potential eligible voters identified by this decision, which is based in part on the number decided on by the Investigator, will be reduced by five.

M. Cleaners and Janitors

As noted above, Section 9.2 of the Manual provides, in pertinent part: "All individuals working regularly in the craft or class on and after the cut-off date are eligible to vote in an NMB representation election." Also noted above, Section 9.204 of the Manual provides that furloughed employees are eligible if they "retain an employee-employer relationship and have a reasonable expectation of returning to work." Employees who work outside the craft or class, or who fail to retain an employee-employer relationship and have a reasonable expectation of returning to work, as of the cut-off date, will not be included on the List.

AMFA has appealed the Investigator's ruling that 366 cleaners and 149 janitors remained eligible to vote as of the March 5, 2004 cut-off date. AMFA argues the work performed by these employees has been outsourced. AMFA further argues that American has not provided any evidence to support

its conclusion that the individuals perform Mechanics and Related Employees' cleaning work at their outsourced locations.

TWU contends that, based on Board precedent, the contested furloughed employees whose work was outsourced still retained a reasonable expectation of returning to work for the Carrier. TWU further contends that only overnight cabin service was outsourced and that interior and exterior aircraft cleaners were not outsourced. Regarding janitors, TWU argues while most janitor work is outsourced, there are building cleaner vacancies throughout the system and the contested employees have the right to bid from layoff on all such vacancies in the system pursuant to their contract.

In its response to AMFA's appeal, American asserts that Board precedent and the employees' recall rights demonstrate that these individuals have not severed their employment with American and still enjoy recall rights to the Mechanics and Related Employees craft or class for a period of 10 years; they are, therefore, eligible to vote.

The Board has consistently held that cleaners and janitors are included within the craft or class of Mechanics and Related Employees. *Northwest Airlines, Inc.*, 22 NMB 29 (1994); *Federal Express Corp.*, 20 NMB 360 (1993); *United Airlines, Inc.*, 6 NMB 134 (1977). The Board has also held that outsourcing of work does not automatically sever the employment relationship between furloughed employees and the carrier. *Continental Airlines, Inc.*, 23 NMB 118 (1996); *Evergreen Int'l Airlines*, *above*; *El Al Israel Airlines, Ltd.*, *above*; *United Airlines, Inc.*, *above*.

The Investigator relied on Board precedent and the employees' demonstrated recall rights in ruling that 366 cleaners and 149 janitors were properly included on the List. Considering all of the submissions from the participants on this issue in the challenge and objection process, the Investigator's ruling was supported by the evidence.

Accordingly, the Investigator's ruling regarding these employees is upheld and their names will remain on the List.

N. Miscellaneous Employees

In its appeal, AMFA alleges that the Investigator erred in denying AMFA's April 13, 2004 request for a two-week extension of the April 22, 2004 deadline for filing challenges and objections. Both AMFA's April 22, 2004 challenges and objections and its May 24, 2004 response to TWU's objections contained a "miscellaneous" category in which it asked the Investigator to remove any other unnamed, ineligible employees she could identify from AMFA's declarations. AMFA contends on appeal that the Investigator erred in not reviewing its declarations for such exclusions. In its appeal, AMFA names 244 employees allegedly referenced in its declarations who should have been removed from the List by the Investigator based on the "miscellaneous" challenge. In their responses to AMFA's appeal, American and TWU argue that AMFA's challenges and objections to these employees are untimely.[12]

Initially, it is noted that the Investigator granted an extension of time in which to file challenges and objections. The participants had 5 1/2 weeks to formulate the challenges and objections. AMFA had another 4 1/2 weeks to present its responses to TWU's objections. Although AMFA took that opportunity to name additional employees it challenged, it did not make any attempt to identify employees covered by its "miscellaneous" category. All participants were subject to the same filing deadlines. The Investigator did not abuse her discretion in refusing to grant additional extensions of time in this matter.

Section 2.1 of the Manual provides, in part: "If the participants wish to raise any particular issue(s) in the representation matter, the issue(s) and supporting evidence or

[12] American and TWU also argue that most of the 244 employees identified by AMFA were addressed elsewhere in the Investigator's ruling.

documentation must be submitted in writing within time limit(s) established by the Investigator." Section 10.2 of the Manual provides, in pertinent part: "Absent extraordinary circumstances, evidence submitted on appeal will not be considered by the NMB unless it was submitted to the Investigator."

AMFA submitted some documentation to the Investigator that referred to these 244 employees. It did not, however, state clearly that the eligibility of these particular employees was being challenged. Where evidence is contained in a submission to the Investigator without clearly identifying a challenge or objection, the question is not properly presented to the Investigator for a ruling. Accordingly, AMFA's current arguments concerning these 244 employees were not submitted to the Investigator and will not be considered on appeal.

O. Cabin Cleaning and Lavatory Service Employees

In its objections to the List, TWU alleged that 1,080 cabin cleaners and lavatory service employees were omitted from the List. American contended in its May 24, 2004 response that, pursuant to a preponderance check it performed, 1,018 of the employees identified by TWU were eligible and that American had identified another 150 eligible employees in this job during its preponderance check. AMFA appeals the Investigator's rulings adding to the List 1,167[13] cabin cleaning and lavatory service employees.

In its appeal, AMFA concedes that the cabin cleaner and lavatory service work falls within the definition of the Mechanics and Related Employees craft or class. AMFA contends, however, that these employees may be added to the List only if there is sufficient evidence that they are performing the cabin cleaning and lavatory service duties. In this regard, AMFA argues that the Investigator did not properly inform the

[13] Employee Raynondo C. Ross was identified as having been listed twice. The Investigator reduced the number of additions to reflect that fact.

participants of the criteria for a preponderance check, as required by Section 9.212 of the Manual. AMFA also contends that the evidence, provided by American and relied upon by the Investigator, was insufficient to support her ruling. Specifically, AMFA argues that Weel's declaration, without supporting documentation, amounts to hearsay determinations. AMFA also alleges that the evidence provided by TWU was insufficient to satisfy a proper preponderance check. AMFA cites *United Airlines, Inc.*, 28 NMB 533 (2001), in support of its contention that bare assertions without underlying documentation is inadequate. AMFA also argues that cabin cleaners and lavatory service employees located at three airports (JFK, LAX, and MIA) should not be included on the List because a statistical analysis performed by AMFA suggests that there is insufficient work to support the number of alleged employees at those airports in this group of employees. AMFA also contends that American and TWU failed to demonstrate adequately that a group of part-time employees are eligible. Finally, AMFA asserts that 17 employees in addition to Raynondo C. Ross were duplicate names, that 28 other employees listed by TWU already appeared on the List, that two employees removed from TWU's list were already on the eligibility List but were not removed from the List, that 14 employees were listed who were counted as fuelers, and that five specific employees were not eligible based on AMFA evidence that they do not preponderantly perform cabin cleaning or lavatory service work. Regarding TWU's appeal concerning certain St. Louis employees, AMFA contends that TWU raised the issue in a timely manner, but that its evidence was insufficient to support inclusion of the 13 employees on the List.

American argues that aircraft cleaning, including lavatory servicing, are Mechanics and Related craft or class functions even when performed by "fleet service" employees. American contends that Weel oversaw a system-wide preponderance check involving the managers at every location where these employees were alleged to work. Weel then attested to the accuracy of that preponderance check. American argues that the part-time employees discussed in

AMFA's appeal also satisfied the preponderance check and belong on the List. American agrees that there were 18 duplicate names, as alleged by AMFA, but contends that the other employees identified in AMFA's appeal ought to be deleted only if there were valid objections to their inclusion on the List in other portions of the case.

TWU appealed the Investigator's failure to include 13 St. Louis employees named in a declaration but omitted from the list of cabin cleaning and lavatory service employees. TWU contends that these employees perform Mechanics and Related Employees work and that the preponderance check established they are eligible. Although questioning the value of a statistical analysis on this issue, TWU reanalyzes the data and argues that the evidence does not show an inordinate number of employees when considering, among other things, scheduling and the volume of work. TWU also argues that the part-time employees whose eligibility is appealed by AMFA had regular schedules.

As discussed in Part L of this decision concerning fuelers, a participant seeking to add employees to the List has the burden of demonstrating that the employees in question preponderantly performed the work of the craft or class. In this instance, TWU sought to add cabin cleaning and lavatory service employees to the List, and American agreed that their inclusion was warranted. Accordingly, AMFA is correct that a preponderance check must be supported by evidence from these participants. Although the Investigator did not specifically order a particular preponderance check in this case, American responded to TWU's objections by performing a check of the work performed by these employees for the 60-day period preceding the eligibility cut-off date. Inasmuch as this preponderance check fully comports with the Board's guidelines, there is no reason to reject the preponderance check simply because it was performed sua sponte by the Carrier.

AMFA further contends that the preponderance check was inadequate because the Carrier relied on information

supplied by TWU and because American provided no underlying, supporting documentation. The record does not support AMFA's argument that the Carrier simply relied on TWU's information. It is clear that Weel ordered managers at each of the work stations where these employees worked to perform a 60-day preponderance check and report the results to him. The information provided to Weel supported TWU's allegations in most, but not all, instances. As further evidence that American did not simply rely on TWU's information, during its preponderance check American discovered another 150 employees it alleged were eligible.

AMFA cites *United Airlines, Inc.*, *above*, in support of its position that a mere declaration without underlying documentation is inadequate to support a preponderance check allegation. In that case, however, the declarations in issue were provided by employees claiming to be eligible. In this case, the declaration in question comes from the Carrier's managing director of labor relations and is based on work he ordered American managers to perform. In these circumstances, the Investigator's reliance on the preponderance check was justified. In particular, AMFA's statistical analysis presents a hypothetical argument that is insufficient to counter the Carrier's evidence concerning the actual work performed by these employees. Given the facts that the work in question is contained in the Mechanics and Related Employees craft or class and that the Investigator had adequate evidence that the employees preponderantly performed work of the craft or class, her rulings regarding these employees are upheld as a general matter.

AMFA also appeals the rulings regarding the part-time employees in this group. Inasmuch as these regularly scheduled employees were included in the preponderance check, the Investigator had adequate evidence to support her rulings, and those rulings are upheld.

TWU appeals the failure to include 13 St. Louis employees named in a declaration, but omitted from the list of cabin cleaning and lavatory service employees. TWU named

these 13 individuals in its May 24, 2004 response to AMFA's challenges and objections. TWU's objections addressed this category of employees, and submitted the names of these additional employees to the Investigator prior to her ruling. For the reasons discussed in Part R, below, this group of employees should have been considered in the Investigator's ruling. TWU submitted a declaration and bid sheets in support of its argument that these 13 employees were eligible. American provided no documentation on these employees and AMFA had no opportunity to respond to TWU's May 24, 2004 arguments. Absent a preponderance check by the Carrier, the Board finds that the record contains insufficient evidence to support the inclusion of these employees. Accordingly, the Investigator did not err by not including these employees and their names will not be added to the List.

In addition to its general appeals regarding this group of employees, AMFA raises specific claims concerning 66[14] employees added to the List as cabin cleaning and lavatory service employees. AMFA claims that 17 employees were listed twice in Attachment O of the Investigator's ruling. A review of the record reveals that the following 17 employees were counted twice in Attachment O: Michael R. Baines, Jr., Debra F. Belmessieri, D.E. Bodemann, Zosimo R. Canta, Ricardo Collazo, Eric A. Diaz, Carlos M. Gamboa, David J. Gubera, Jesus L. Jimenez, Robert M. Kennedy, Vincent L. Lopez, Robert M. Mangibin, Rafael L. Martin, Scott A. Mesa, Vincent G. Pacheco, Cecil P. Paet, and Leonardo J. Quintal. To adjust for the double counting of these 17 employees, the final number of potential eligible voters identified by this decision, which is based in part on the number decided on by the Investigator, will be reduced by 17.

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[14] In addition to these 66 named employees, AMFA also appeals that the Investigator erred by mathematically adjusting for the double listing of Raynondo C. Ross, but failing to cross out one of the two listings of his name on Attachment O to the eligibility ruling. Inasmuch as Ross was not counted twice, any such error is harmless.

AMFA also contends that 28 employees added to the List in Attachment O were already on the List. A review of the record reveals that 28 employees were added to the List in Attachment O despite already being named on the List. The following 14 of these 28 employees are counted twice in the Investigator's ruling: Carlos D. Arcas, Peter P. Capadona, Sheldon L. Chandler, Larry L. Griese, Gerald L. Herr, Samuel J. McAuliffe, William B. Pemberton, James Pierre, Franklin E. Smith, James M. Stephenson, Luigi Valenta, George A. Weaver, Harold F. Wesley, and Dennis G. Wright. To adjust for the double counting of these 14 employees, the final number of potential eligible voters identified by this decision, which is based in part on the number decided on by the Investigator, will be reduced by 14.

The following 14 employees are counted on Attachment O, but have been deleted from their original placement on the List pursuant to other rulings of the Investigator: **Ronnie E. Copeland**, **Donald L. Davis**, **Tony L. Davis**, **Gary D. Edwards**, **Richard C. Edwards**, **Wallace L. Evans**, **Joan P. Fraser**, **Bernard H. Geerling**, **J.H. Hansel**, **John L. Mannielo**, **Joseph G. Oertel**, **Richard E. Rogers**, **Elizabeth J. Rung-McDermott**, and **Wayne A. Vanderford**. Although these employees are not counted twice, the question remains whether they should be counted even once inasmuch as the Investigator ruled them ineligible elsewhere in her decision. It is not clear that these 14 employees were deleted from the List with the intention of adding them in again as cabin cleaning and lavatory service employees. Accordingly, their names will be removed from the List.

AMFA also contends that the Investigator erred by removing employees Cyriac Joseph and Arnaldo Rivera from Attachment O, but not from the List, on which their names already appeared. The record demonstrates that Joseph was placed on the List as a fueler and he was removed from Attachment O for that reason. The record further shows, based on social security numbers, that employee Arnaldo Rivera, deleted from Attachment O, is not the same employee Arnaldo Rivera included on the List. Accordingly, the Investigator's

actions regarding these two employees were correct and no adjustment to the number of eligible employees is required in these instances.

AMFA further argues that employees James F. Binegar, C. Castaneda, Brandon J. Gulisao, Brian S. McGuire, and Paul M. Pullen, listed in Attachment O are also counted as fuelers pursuant to the Investigator's rulings. This decision, in Part L, already adjusted the number of eligible employees to account for the double counting of Binegar, Castaneda, Gulisao, and Pullen. No adjustment to the number of eligible employees is required regarding these four employees. The record does reveal, however, that McGuire was added to the List by the Investigator's rulings both as a fueler and a cabin cleaning and lavatory service employee. Accordingly, to adjust for the double counting of this one employee, the final number of potential eligible voters identified by this decision, which is based in part on the number decided on by the Investigator, will be reduced by one.

AMFA next contends that employees Kendy A. Castellanos, Sheldon L. Chandler, Larry L. Griese, Samuel J. McAuliffe, William B. Pemberton, Elizabeth J. Rung-McDermott, James M. Stephenson, Harold F. Wesley, and Dennis G. Wright were counted as fuelers as well as cabin cleaning and lavatory service employees. AMFA has already made arguments regarding Chandler, Griese, McAuliffe, Pemberton, Rung-McDermott, Stephenson, Wesley, and Wright in this section of its appeal. The Board has made adjustments above in this section of its decision to reflect the double counting of these employees. No further adjustment is warranted. The record demonstrates that Kendy A. Castellanos was challenged by AMFA both as a "fleet service clerk" and as a "fueler." Additionally, Castellanos was added to the List as a cabin cleaning and lavatory service employee. In its response to AMFA's appeal, American agrees that Castellanos works in the Fleet Service Employees craft or class. Accordingly, Castellanos was removed from the List in Part D of this decision, above. Castellanos can only be removed from the List once, although the employee was challenged both as a "fleet

service clerk" and a "fueler." Given American's concession that Castellanos works in another craft or class, however, Castellanos can not be counted as a cabin cleaning and lavatory service employee. Accordingly, Castellanos' name will be removed from Attachment O and the final number of potential eligible voters identified by this decision will be reduced by one.

AMFA also argues that employees Jonah D. Dalton, Edward P. Kempfer, Philip J. Longdo, Michael C. Scofield, and Jerry Wilmoth do not spend a majority of their time performing cabin cleaning and lavatory service work. AMFA also claims that Wilmoth is retired. AMFA relies on declarations from two American employees, and contends that American's evidence does not disprove AMFA's evidence. Considering AMFA's evidence as well as the preponderance check performed by American, the Investigator's rulings were supported by the evidence. Accordingly, the Investigator's rulings regarding these five employees are upheld and their names will remain on the List.

P. Furloughed TWA Employees

As noted above, Section 9.204 of the Manual provides: "Furloughed employees are eligible to vote in the craft or class in which they last worked if they retain an employee-employer relationship and have a reasonable expectation of returning to work. Furloughed employees regularly working in another craft or class are ineligible to vote in the craft or class from which the employees are furloughed."

AMFA has appealed the Investigator's ruling that 21 of the remaining 50 furloughed TWA employees, alleged by TWU to have recall rights at American, remained eligible to vote as of the March 5, 2004 eligibility cut-off date.[15] AMFA argues that the Carrier's data is less reliable than AMFA's documentation.

[15] TWU originally challenged the omission of 1,007 furloughed employees who worked for TWA but were not included on the list. American submitted evidence showing all

As noted above, an employee's inclusion on the List is determined by his eligibility as of the cut-off date. Furloughed employees who are working regularly in another craft or class or furloughed employees who have neither retained an employer-employee relationship nor have a reasonable expectation of returning to work prior to the cut-off date will not be included on the List.

AMFA argues the Investigator erred in failing to rely on the five declarations it submitted showing the 21 employees on appeal were ineligible based on individual circumstances. AMFA contends that the 21 employees in question are ineligible because they refused recall, they work at other carriers, they were laid off more than 10 years ago, they were laid off from a different craft or class, or they are deceased.

TWU agrees with AMFA that that some of the employees may be ineligible, assuming AMFA's factual assertions are accurate. However, TWU argues that five individuals remain eligible, in any event, because they were laid off under a contract with unlimited recall rights.

On appeal, American contends again that these 21 employees had unlimited recall rights and are subject to a pending IAM grievance, which challenges American's refusal to offer them employment because they were not hired by TWA-LLC prior to December 31, 2001. American argues that its SHARP records do not reflect that any of these employees are deceased and that AMFA provided no documentation to support its declaratory evidence that employees had declined recall or obtained work at other carriers.

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but 50 of these employees have retired, resigned, or refused recall; and therefore, they are ineligible. TWU later advised the Board that it had learned 18 furloughed TWA employees are deceased. TWU provided the names of the deceased employees so that their names could be removed from TWU's eligibility list. Those names have subsequently been removed.

The Investigator relied on Weel's declaration in ruling that 50 out of an alleged 1,007 employees retained recall rights at American. Considering the submissions of all the participants on this issue during the challenge and objection process, the Investigator's ruling was supported by the evidence. Accordingly, the Investigator's ruling regarding these 21 employees is upheld and their names will remain on the List.

Q. 46 Additional Miscellaneous Employees

AMFA appeals the Investigator's failure to rule on its objection, contained in its May 24, 2004 response to TWU's objections, to the inclusion on the List of 46 individuals for numerous reasons. American and TWU contend that AMFA's objection was untimely raised because it was filed on May 24, 2004, and the deadline for challenges and objections was April 22, 2004.

As noted above, Section 2.1 of the Manual provides, in part: "If the participants wish to raise any particular issue(s) in the representation matter, the issue(s) and supporting evidence or documentation must be submitted in writing within time limit(s) established by the Investigator." Section 10.2 of the Manual provides, in pertinent part: "Absent extraordinary circumstances, evidence submitted on appeal will not be considered by the NMB unless it was submitted to the Investigator."

AMFA first objected to these individuals on May 24, 2004 based on information contained in TWU's objections. AMFA's new objections were not stated as a continuation of a challenge or objection it had timely filed, but rather as a newly conceived catchall objection based on subsequently acquired information. In these circumstances, these objections were not submitted to the Investigator within the timeframe she established for challenges and objections. Accordingly, the Investigator did not err in substantively failing to address the removal of these 46 employees from the List. Inasmuch as this issue was not

placed properly before the Investigator, this evidence will not be considered on appeal.

R. 36 Additional Retired Employees

AMFA appeals the Investigator's failure to rule on its objection, contained in its May 24, 2004 response to TWU's objections, to the inclusion of 36 additional retirees on the List. American and TWU contend that AMFA's objection was untimely raised because it was filed on May 24, 2004, and the deadline for challenges and objections was April 22, 2004.

As noted above, Section 2.1 of the Manual provides, in part: "If the participants wish to raise any particular issue(s) in the representation matter, the issue(s) and supporting evidence or documentation must be submitted in writing within time limit(s) established by the Investigator." Section 10.2 of the Manual provides, in pertinent part: "Absent extraordinary circumstances, evidence submitted on appeal will not be considered by the NMB unless it was submitted to the Investigator."

AMFA first objected to the inclusion of a class of retired employees in its April 22, 2004 challenges and objections. The submission of 36 additional names in its Exhibit P to its May 24, 2004 response to TWU's objections is based on information it obtained subsequent to the filing of its April 22, 2004 challenges and objections.

The Board has held that where a participant's filing falls after the deadline for challenges and objections, it is still timely if it is a "continuation" of an earlier submission. *United Airlines, Inc.*, 28 NMB 533, 548 (2001). In this instance, AMFA's submission regarding additional retirees relates back to and is a continuation of its challenge and objection to the inclusion of a class of retirees on the List. Accordingly, this group of challenged employees should have been considered in the Investigator's ruling.

An examination of AMFA's evidence contained in Exhibit P, however, reveals no definitive basis for the exclusion of these 36 employees. Even assuming AMFA has correctly identified employees appearing on the List, no retirement dates are provided for any of these individuals. The failure to allege and provide a retirement date precludes a Board finding that such retirement occurred before the eligibility cut-off date. Further, AMFA's documentation suggests that these retirements occurred in March and April 2004, indicating that most if not all of the retirements took place after the March 5, 2004 cut-off date. Given the failure of AMFA's evidence to establish a reason to exclude these employees from the List, their names will be retained on the List.

S. 150 Additional TWA Employees Without Recall Rights

AMFA appeals the Investigator's failure to rule on its objection, contained in its May 24, 2004 response to TWU's objections, to the inclusion on the List of 150 additional TWA employees without contractual recall rights. American and TWU contend that AMFA's objection was untimely raised because it was filed on May 24, 2004, and the deadline for challenges and objections was April 22, 2004.

The Manual sections cited in Part R, above, apply to this issue. And like the procedural facts contained in Part R, AMFA first objected to the inclusion of a class of former TWA employees without recall rights at American in its April 22, 2004 challenges and objections. The submission of 150 additional names in its Exhibit Q to its May 24, 2004 response to TWU's objections is based on information it obtained from reviewing TWU's objections and supporting documentation.

As with the additional retirees discussed in Part R, AMFA's submission regarding additional former TWA employees without recall rights relates back to and is a continuation of its challenge and objection to the inclusion of such a class of employees on the List. Accordingly, this group of challenged employees should have been considered in the Investigator's ruling.

An examination of AMFA's evidence contained in Exhibit Q, however, reveals no definitive basis for the exclusion of these 150 employees. AMFA's objection is based on the fact that these employees were not listed on TWU's TWA-LLC seniority list. The Board has held that "[a]n employee's absence from a seniority list is not dispositive that the employee/employer relationship no longer exists." *United Airlines, above,* at 571. Accordingly, AMFA's evidence, without more, is insufficient to establish a ground for exclusion. Given the failure of AMFA's evidence to establish a reason to exclude these employees from the List, their names will be retained on the List.

T. TWU's Appeals Regarding Stores Employees

TWU appeals the Investigator's rulings on three alleged stores clerks who were removed from the List. TWU contends that Luis F. Hernandez is a furloughed ground serviceman rather than a stock clerk, that Larry D. Radner last worked as a mechanic, and that Buel Tramel was separated as an overhaul support mechanic. American agrees with TWU that Hernandez should be returned to the List, disagrees that Radner last worked as a mechanic, and states that Tramel has recall rights to plant maintenance. AMFA contends that TWU and American have misidentified the Luis Hernandez who was removed from the List, and that TWU has not met its burden of establishing the Investigator was wrong in removing Radner and Tramel.

The documentation reveals that the Luis Hernandez challenged by AMFA as a stores clerk is not the Luis F. Hernandez for whom American supplied documentation to the Investigator. AMFA presented uncontradicted evidence that Luis Hernandez was a stores clerk, and the Investigator properly removed him from the List.[16] The documentation, including Weel's declaration, also reveals that Radner

[16] Luis F. Hernandez, who is discussed by TWU and American on appeal, was never removed from the List.

voluntarily took a "self-demotion" to a stock clerk job at TWA, and the Investigator properly removed him from the List. Finally, the documentation shows that Tramel resigned from his overhaul support mechanic job, but retained recall rights to a previously held job. Although American contends on appeal that Tramel has recall rights to plant maintenance work, the evidence presented to the Investigator does not support such an allegation. The Investigator, therefore, properly removed Tramel from the List. Accordingly, the Investigator's rulings concerning these individuals are upheld.

U. Showing of Interest

AMFA's final appeal concerns a matter not presented to or decided by the Investigator's ruling. AMFA argues that even if the Board determines on appeal that AMFA presented authorization cards from less than a majority of the employees in the craft or class, the Board should find a representation dispute to exist and authorize an election. AMFA contends that the Board's rules and manual provisions requiring a majority showing, in cases where the craft or class already has representation, can be waived in appropriate circumstances. AMFA cites *Air Florida*, 10 NMB 326 (1983), in support of its proposition that the showing of interest rule is an administrative device that is not required by the Act. AMFA further contends that the large number of cards it submitted demonstrates that its claim of a representation dispute is not frivolous. AMFA, relying on an employee count of 16,501 in *American Airlines, Inc./TWA Airlines, LLC.*, 29 NMB 240 (2002), argues that the mechanics who signed cards should not be penalized by the Board's inability to accurately verify the number of authorization cards required for a majority showing.

American argues that this is an inappropriate forum in which to decide, without prior notice, a question of such importance to an entire industry. Moreover, American contends that there is no showing in this case of gross misconduct by either the Carrier or TWU which might justify an extraordinary appeal of this type. American also notes that any potential shortage of necessary authorization cards in this

case would be due to AMFA's own miscomprehension regarding the size of the craft or class.

TWU argues that AMFA's claims of fraud and misconduct are based on its misconstruction of *American Airlines*, *above*. TWU contends that there is no legal basis for suspending the normal rules for showing of interest in this proceeding.

Air Florida, *above*, cited by AMFA to support a suspension of the Board's rule, is inapposite. In that case, the carrier refused to provide an eligibility list, and subsequently refused to provide signature samples after the Board established an eligibility list. The Board suspended the showing of interest requirement because the carrier's refusal to cooperate made it impossible to verify a showing of interest. That is not the case in this proceeding. Despite AMFA's claims to the contrary, American has cooperated with all requests from the Board or its agents, and there is no showing here of misconduct relating to verifying the showing of interest.

AMFA has repeatedly argued, to the Investigator, the General Counsel, and the Board, that the 16,501 employees cited in *American Airlines*, *above*, constituted the Mechanics and Related Employees craft or class in 2002. AMFA obtained authorization cards with that figure in mind, and suggests that any significant change in that number is due to misrepresentation or fraud. As AMFA has repeatedly been advised, *American Airlines*, *above*, involved a single carrier finding. There was no representation dispute in that case, and no eligibility ruling leading to a precise number of employees in any craft or class. The fact that furloughed employees and employees in Mechanics and Related jobs were not included in the identification of 16,501 employees does not constitute a misrepresentation, let alone fraud. Neither the Board nor any other entity stated that number was the size of the Mechanics and Related Employees craft or class at American.

In the circumstance of this case, absent any evidence of fraud or misrepresentation, the Board declines to waive its showing of interest requirements.

The Investigator's ruling found 18,661 Potential Eligible Voters in this case. Based on the Board's decision in this matter, 60 employees have been removed from the List, 38 employees have been added to the List, and the final number is reduced by 38 to adjust for double counting of certain employees, establishing that there are 18,601 Potential Eligible Voters.[17]

Conclusion

The investigation established that AMFA failed to support its application with the required number of authorization cards from the employees in the craft or class as set forth in 29 C.F.R. § 1206.2(a) of the Board's Rules.

[17] These are the employees found to be eligible, based on the evidence presented to the Investigator during the challenge and objection stage of this proceeding, as of the cut-off date of March 5, 2004.

Therefore, the Board finds no basis upon which to proceed in this matter and the application is hereby dismissed subject to 29 C.F.R. § 1206.4(b) of the Board's Rules.[18]

By direction of the NATIONAL MEDIATION BOARD.

Mary L. Johnson
General Counsel

[18] 29 C.F.R. § 1206.4(b)(2) provides:

> Except in unusual or extraordinary circumstances, the National Mediation Board will not accept an application for investigation of a representation dispute among employees of a carrier:
>
> (b) For a period of one (1) year from the date on which:
>
> (2) The Board dismissed a docketed application covering the same craft or class of employees on the same carrier because no dispute existed as defined in § 1206.2 of these Rules. . . .