



NATIONAL MEDIATION BOARD

WASHINGTON, DC 20572

(202) 692-5000

33 NMB No. 36

May 11, 2006

Julie Hagen Showers
Vice President,
Labor Relations
Gregory P. Wilken
Labor Counsel
Northwest Airlines, Inc.
2700 Lone Oak Parkway
Eagan, MN 55121-1534

George Diamantopoulos
Lee Seham
Counsels for PFAA
Seham, Seham, Meltz &
Petersen, LLP
445 Hamilton Avenue
Suite 1204
White Plains, NY 10601

John Gallagher
Attorney for Northwest
Airlines
Paul, Hastings, Janofsky &
Walker, LLP
875 15th Street, NW.
Washington, DC 20005

Edward J. Gilmartin
Associate General Counsel
Ellie Larson, Assistant to
Int'l President
Association of Flight
Attendants-CWA, AFL-CIO
501 Third Street, NW.
Ninth Floor
Washington, DC 20001-
2797

Guy D. Meek, President
Professional Flight
Attendants Association
(PFAA)
8101 34th Avenue South
Suite 250
Minneapolis, MN 55425

Re: NMB Case No. R-7086
Northwest Airlines, Inc.

Ladies and Gentlemen:

This determination addresses the "Motion to Stay Representation Proceedings" filed by the Professional Flight Attendants Association (PFAA or Incumbent) on April 24, 2006. For the reasons discussed below, PFAA's Motion to Stay is

denied and the investigation, including an election, will proceed.

PROCEDURAL BACKGROUND

On April 7, 2006, the Association of Flight Attendants-CWA, AFL-CIO (AFA-CWA or Applicant) filed an application with the National Mediation Board (Board), alleging a representation dispute pursuant to the Railway Labor Act* (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth), among Northwest Airlines, Inc.'s (Northwest or Carrier) Flight Attendants. At the time this application was received, these employees were represented by PFAA.

On April 10, 2006, the Board docketed the case and assigned Cristina A. Bonaca and Kendrah Davis to investigate. On April 20, 2006, the Carrier submitted the List of Potential Eligible Voters (List) and signature samples. On April 24, 2006, the Board received PFAA's Motion for a Stay of Representation Proceedings. On May 2, 2006, both AFA-CWA and Northwest filed their responses.

On May 9, 2006, the Board found a dispute to exist in NMB Case No. R-7086, among the craft or class of Flight Attendants at Northwest and authorized a Telephone Electronic Voting (TEV) election using March 31, 2006 as the cut-off date. The election wire stated that, "the election dates will be set after the Board rules on PFAA's Motion to Stay."

CONTENTIONS

PFAA

PFAA requests the Board "to briefly stay this proceeding until after the completion of the scheduled ratification vote on June 6, 2006, of the negotiated Tentative Agreement between PFAA on behalf of the Flight Attendants at Northwest Airlines

* 45 U.S.C. § 151, *et seq.*

. . . .” Northwest is currently a Debtor-in-Possession in Chapter 11 bankruptcy proceedings, and PFAA contends that by seeking a representational election, AFA-CWA “has elected to ignominiously and inappropriately interject itself in the bankruptcy case ratification vote of the flight attendants at Northwest”

As support for the Board granting the requested stay, PFAA relies on *United Airlines, Inc.*, 30 NMB 278 (2003), where the carrier was in Chapter 11 bankruptcy and had requested a stay of representation proceedings from the Board. While the Board in *United Airlines, Inc.*, *above*, denied the requested stay, PFAA finds relevant the fact that, “the Board did not issue its determination on [the] Motion to Stay Representation Proceedings . . . until the day after ratification of a tentative agreement”

PFAA concludes by asking the Board to grant the requested stay so that “AFA is not allowed to use the representation dispute . . . to interfere with the flight attendants ratification vote in the Northwest bankruptcy.”

AFA-CWA

AFA-CWA contends that PFAA’s request should be denied. First, in the Applicant’s view, a stay would violate the Board’s statutory duty under Section 2, Ninth “to resolve all representational disputes in an expeditious and timely manner.” AFA-CWA cites several decisions in support of its position. *See Brotherhood of Ry. & S.S. Clerks v. Ass’n. for the Benefit of Non-Contract Employees*, 380 U.S. 650, 668 (1965); *United Airlines, Inc.*, *above*, at 281; *see also Continental Airlines Corp.*, 50 B.R. 342, 358-59 (S.D. Tex. 1985), *aff’d, per curiam*, 790 F.2d 35 (5th Cir. 1986). The Applicant additionally comments that PFAA does not provide any legal authority in support of its position, since the *United Airlines, Inc.*, *above*, decision in fact supports the Board denying the Motion to Stay.

Further, AFA-CWA argues that “the Board has consistently refused to delay a representational investigation due to a carrier’s ongoing bankruptcy proceeding,” and cites to a number of Board decisions including *United Airlines, Inc., above*, and *Continental Airlines*, 11 NMB 46, 47 (1983).

In sum, AFA-CWA urges the Board to deny PFAA’s request and to proceed “expeditiously” with the representation election for the craft or class of Flight Attendants at Northwest.

Northwest

Northwest submitted a brief reply “respectfully” taking no position on PFAA’s requested stay.

DISCUSSION

It is the Board’s long-standing policy, consistent with Section 2, Ninth, to resolve representation disputes as expeditiously as possible. In *Continental Airlines Corp.*, 50 B.R. 342 (S.D. Tex. 1985), *aff’d, per curium*, 790 F.2d 35 (5th Cir. 1986), the Federal District Court for the Southern District of Texas overturned a stay of a representation election issued by a Bankruptcy Court. The District Court recognized that:

[T]he RLA furthers Congress’s strong policy of guaranteeing employees the right to organize and collectively bargain free from any carrier interference or influence. Yet delays in NMB precertification proceedings seriously hamper such organizational efforts

Speed is accordingly an RLA “objective of the first order,” *Railway Clerks*, 380 U.S. at 668; and the damage caused by staying an NMB election is often substantially greater than that caused by allowing an election to go ahead

Id. at 358.

In *Eastern Airlines, Inc.*, 17 NMB 432 (1990), the Board applied this policy in rejecting carrier arguments that the Board must refrain from investigating representation disputes during a bankruptcy filing, because of the automatic stay provision of the Bankruptcy Code. The Board stated, “bankruptcy petitions do not suspend investigations.” *Id.* at 444.

It is the Board’s consistent practice to proceed with representation elections unless the Board itself finds it necessary to delay due to unusual or complex issues, or is barred by court order. *Tower Air*, 16 NMB 326, 328 (1989); *Air Florida*, 10 NMB 294, 295 (1983). See also *Chautauqua Airlines, Inc.*, 21 NMB 226, 227-28 (1994); *Sapado I*, 19 NMB 279, 282 (1992); *USAir*, 17 NMB 69, 71-72 (1989). Therefore, PFAA’s Motion to Stay is denied.

CONCLUSION AND SETTING OF ELECTION DATES

The Board authorized a TEV election in this matter on May 9, 2006. While it is the Board’s policy not to delay representation elections, due to the administrative processes associated with conducting a large election, the election dates will be as follows: the Notice and Sample Instructions will be sent out on **June 1, 2006**; the TEV Instructions will be mailed to the employees on **June 8, 2006**; the voting period will be from **12:01 a.m., ET, June 8, 2006** through **July 6, 2006**; and the tally will take place at the Board’s offices on **July 6, 2006** at **2 p.m., ET**.

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson
General Counsel