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Participants:

This determination addresses the March 12, 2008 appeals filed by the International Brotherhood of Teamsters (IBT) and the Aircraft Mechanics

Fraternal Association (AMFA) of Investigator Susanna F. Parker's eligibility rulings. For the reasons discussed below, the appeals are granted in part and denied in part.

I.

Procedural Background

On December 4, 2007, the IBT filed an application pursuant to the Railway Labor Act (RLA or Act), 45 U.S.C. § 152, Ninth (Section 2, Ninth) alleging a representation dispute involving the Mechanics and Related Employees of United Airlines, Inc. (United or Carrier). The employees are currently represented by AMFA. The Carrier provided a Potential List of Eligible Voters (List) on December 17, 2007. On January 24, 2008, an election was authorized by the Board, and a schedule for filing challenges and objections to the List was set on January 31, 2008. The IBT submitted its challenges to the List on February 13, 2008, and supplemented its filing on February 14, 2008. AMFA submitted its challenges on February 14, 2008. On February 15, 2008, the Investigator requested additional information from the Carrier. The Carrier requested and received an extension of time in which to file its responses to the IBT's and AMFA's challenges as well as to the Investigator's request for additional information from the Carrier. AMFA submitted its responses to the IBT's challenges on February 21, 2008. The Carrier also submitted its responses on February 22, 2008. On February 26, 2008, the IBT and AMFA submitted additional responses. Also on February 26, 2008, the Investigator requested additional information from the Carrier. On February 27, 2008, AMFA filed corrections to its February 26, 2008 submission. The Carrier submitted the requested information on February 29, 2008, and the IBT filed a response on March 3, 2008. On March 3, 2008 the Investigator requested additional information from the Carrier, which it complied with on March 5, 2008.

The Investigator issued her rulings on March 7, 2008. AMFA filed additional challenges on March 7, 2008. AMFA filed a submission on March 11, 2008. On March 11, 2008, the Investigator requested the Carrier to respond to AMFA's submission. Both the IBT and AMFA appealed the Investigator's ruling on March 12, 2008. On March 14, 2008, the Carrier complied with the Investigator's request for information. AMFA filed a submission on March 14, 2008. AMFA filed additional documentation on March 17, 2008. On March 18, 2008, United responded to the IBT's and AMFA's appeals. The Investigator requested additional information from the Carrier, and the Carrier responded on March 21, 2008.

II.

Challenges and Objections

A. IBT

The IBT's challenges and objections alleged the following:

1. One hundred and ten furloughed employees are working for another carrier;
2. Three employees transferred to positions outside the Mechanics and Related Employees craft or class;
3. Twenty-four individuals have retired;
4. Eight employees have resigned¹;
5. Nine employees accepted a severance package instead of going on or remaining on furlough;
6. Twenty-six employees refused recall from furlough;
7. Ninety-five furloughed employees have severed their employee-employer relationship and have no intention of returning to work;
8. The job titles of Airframe Maintenance Cleaners, Cabin Servicemen, Computer Technician, Computer Terminal Tech, Seamer, and Utilityman have been permanently eliminated through outsourcing. Therefore, the 785 employees in these positions are not eligible.
9. Fifteen employees are deceased;
10. Thirty-three employees are on special unpaid leave to retirement; therefore they have no employee-employer relationship and no expectation of returning to work; and
11. Sixty-six employees are ineligible based on status changes.

¹ The IBT only listed seven employees but submitted evidence regarding eight employees.

B. AMFA

AMFA's challenges alleged that:

1. Four employees regularly working in the Mechanics and Related Employees craft or class were wrongfully excluded from the List;
2. Four furloughed employees were wrongfully excluded from the List;
3. Twenty-three employees with dismissals being appealed through grievance procedures were wrongfully excluded from the List;
4. One employee is on a leave of absence; and
5. Four employees in the Coordinator–Fleet/Engine Maintenance position are not management officials but in fact working in the Mechanics and Related Employees craft or class.

C. Responses

i. AMFA's Responses to the IBT's Challenges and Objections

1. Of the 24 employees the IBT alleged have retired, only four are retired.
2. Of the eight employees the IBT alleged have resigned, only four have resigned.
3. Of the nine employees the IBT alleged have accepted a severance package from United instead of going on or remaining on furlough, all but one employee is on furlough. That one employee is on a leave of absence.
4. Of the 22 employees the IBT challenged as having refused recall from furlough, only four employees have refused recall.
5. Of the 95 employees the IBT challenged as having severed their employee–employer relationship, one employee is active and two employees are on a leave of absence. The remaining 92 employees are on furlough.
6. The 785 employees challenged by the IBT whose jobs allegedly have been eliminated through outsourcing are not specifically named nor listed. Therefore, AMFA reserved the right to respond to these challenges at a later date.

ii. United's Responses to the IBT's and AMFA's Challenges and Objections

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

a. In response to the IBT's challenges, the Carrier stated:

1. Of the 110 employees the IBT alleges to be working for another carrier, one is an active employee, one rejected recall, and one resigned from employment with United. United stated that it had no way to determine whether the 61 employees for whom the IBT submitted declarations are working for another carrier, and that there is no evidence to support the IBT's challenges to the remaining 46 employees.

2. The three employees alleged by the IBT as having transferred to positions outside the Mechanics and Related Employees craft or class have transferred and are no longer working in the Mechanics and Related Employees craft of class.

3. Three of the 24 challenged employees have retired, three employees are on special unpaid leave to retirement, one employee returned to active service, three employees remain on active service, and 14 employees are on furlough status.

4. Four of the eight challenged employees resigned from employment with the Carrier, one employee is on active service, two employees are on furlough status, and one employee is on a personal leave of absence.

5. Of the nine employees the IBT alleges have accepted a severance package and special unpaid leave of absence, one employee is on special unpaid leave to retirement and the remaining eight are furloughed employees with recall rights.

6. Of the 26 employees the IBT alleges to have refused recall from furlough, eight have refused recall. The remaining 18 employees are on furlough with recall rights.

7. None of the 95 furloughed employees identified by the IBT have severed their employee-employer relationship. The IBT's declarations stating that these employees remain on furlough but have no intention of returning to work are insufficient to prove these employees have severed their relationship with United. One of these individuals accepted recall and is an active employee and

two others are on illness leave. The remaining 92 employees are on furlough with recall rights.

8. None of the 785 furloughed employees' job titles have been permanently eliminated. These employees are on furlough with recall rights.

9. Of the 15 employees the IBT alleges are deceased, four are in fact deceased. The remaining 11 employees are on furlough status. One additional employee, not included on the IBT's list, is recently deceased and should be removed from the List.

10. The 33 employees alleged to be on special unpaid leave to retirement, are on such leave.

11. Of the 66 employees the IBT alleges are ineligible due to status changes, 26 have either separated from United, retired, or been promoted out of the Mechanics and Related Employees craft or class. One of the remaining 66 employees was not included on the List; and therefore no change is necessary. The remaining 39 employees are eligible.

b. In response to AMFA's challenges, the Carrier stated:

1. Of the four employees AMFA alleged are working in the Mechanics and Related Employees craft or class, one is an active employee and is already included on the list. The remaining three employees are working outside the Mechanics and Related Employees craft or class.

2. Of the four employees AMFA alleged are furloughed, two employees were reinstated after the cut-off date, one is on furlough with recall rights, and one does not have seniority-based recall rights and was properly excluded from the List.

3. Of the alleged 23 employees with dismissals being appealed through grievance procedures, one employee resigned his employment on January 8, 2008, retroactively effective to November 13, 2006, in return for settlement of his grievance; therefore he was properly excluded from the List. The remaining 22 employees have pending appeals and should be added to the List.

4. The Carrier confirms the employee allegedly on an authorized leave of absence is on a leave of absence and is eligible. His name has already been included on the List.

5. The four employees challenged by AMFA working in the Coordinator – Fleet/Maintenance position are management employees and are not eligible to vote.

iii. AMFA's Response to United's Response to the Investigator's Requests and Response to the Challenges and Objections of AMFA and the IBT

1. Twenty-six employees United states are on furlough status are not eligible because they are either deceased, terminated, or working in another craft or class. One additional employee is currently on furlough and should be added to the List.

2. Three employees United contends are on illness leave are retired.

3. AMFA agrees that the 33 employees who elected a special unpaid leave to retirement are ineligible. Six of these employees have retired and should be found ineligible.

4. AMFA agrees with United regarding employees working for another carrier with the exception of Thomas E. Jones. AMFA contends that Jones is on the List and should remain eligible.

5. AMFA agrees with the Carrier regarding the three employees who allegedly transferred out of the Mechanics and Related employees craft or class.

6. AMFA agrees with the Carrier regarding the 24 employees who allegedly retired with the exception of James Rider.

7. AMFA agrees with United regarding the eight employees who allegedly resigned from employment with United.

8. AMFA agrees with United regarding the 26 employees who allegedly refused recall from furlough with the exception of Gaetano A. Martorella and Ellen M. Mellyn. AMFA contends that these two employees are separated from the Carrier.

9. AMFA agrees with United regarding the 95 furloughed employees the IBT alleges have severed their employee-employer relationship with United.

10. AMFA agrees with United that the 785 individuals challenged by the IBT are on furlough and eligible.

11. AMFA agrees with the Carrier's position regarding the eligibility of the 15 employees the IBT alleged are deceased.

12. AMFA agrees with United's position regarding the 66 status changes.

D. Investigator's Ruling

Investigator Parker issued her rulings on March 7, 2008. Her rulings in response to the IBT's challenges and objections were as follows:

1. Of the 110 employees alleged to be working for another carrier, the IBT submitted declarations from 64 of these employees attesting to their employment with another carrier. Two employees rejected recall from furlough and are not eligible, while one employee accepted recall and is eligible. The remaining 61 individuals are not eligible. The evidence submitted for the additional 46 employees was insufficient to remove the employees from the List.

2. Of the three employees alleged to have transferred to positions outside the Mechanics and Related Employees craft or class, all did transfer, therefore those individuals are not eligible.

3. Of the 24 individuals alleged to have retired, four have retired and are not eligible. One individual was on furlough on the cut-off date and later returned to active service and is eligible, two employees retired and are eligible, and one is an active employee and is eligible. The remaining 16 employees are furloughed and are eligible.

4. Of the eight employees alleged to have resigned, four have resigned and are not eligible. One is an active employee, one is on a leave of absence, and two are furloughed; therefore these employees are eligible.

5. Of the nine employees alleged to have accepted a severance package and special unpaid leave of absence, eight of these employees were not qualified to receive special unpaid leave of absence benefits and are on furlough. The remaining individual is on special unpaid leave of absence and is not eligible. The Carrier identified 24 additional individuals on special unpaid leave of absence. These individuals are not eligible.

6. Of the 26 employees alleged to have refused recall from furlough, eight refused recall and are not eligible. Two refused

recall after the cut-off date and are not eligible. The remaining 16 employees are on furlough and are eligible.

7. Of the 95 furloughed employees alleged to have severed their employee-employer relationship and to have no intention of returning to work, one of these employees accepted recall before the cut-off date and two are on illness leave. Therefore, these three employees are eligible. The evidence submitted for the additional 92 employees was insufficient to remove the employees from the List.

8. The Carrier submitted evidence that all of the 785 furloughed employees whose jobs have allegedly been outsourced are in fact furloughed and their jobs have not been eliminated. These employees retain an employee-employer relationship and have a reasonable expectation of returning to work. Therefore, these employees will remain on the List.

9. Of the 15 employees the IBT alleges are deceased, four are deceased and should be removed from the List. The remaining 11 employees are on furlough status and not deceased. The Carrier identified an additional deceased employee whose name will be removed from the List.

10. United confirms that the 33 employees alleged by the IBT to be on special unpaid leave to retirement are on special leave and are not eligible. Additionally, six of these employees have retired after the cut-off date.

11. Twenty-six of the 66 employees are ineligible based on alleged status changes. One employee challenged by the IBT does not work in the Mechanics and Related Employees craft or class, but was not included on the List, therefore no change is necessary. The remaining 39 employees remain eligible.

The Investigator's rulings in response to AMFA's challenges and objections were as follows:

1. Of the four employees alleged to be working in the Mechanics and Related Employees craft or class, one of the employees is an active employee and is already included on the list. The Staff Analyst – Maintenance Planning and Specialist – Maintenance Line positions are classifications not properly part of the Mechanics and Related Employees craft or class. *United Air Lines, Inc.*, 32 NMB 75, 109 (2004). Therefore, the two employees in those positions are not eligible. The Coordinator - System Maintenance Workload

position is properly part of the Mechanics and Related Employees craft or class. *Id.* Therefore, the employee in that position is eligible.

2. One of the 23 employees alleged to have dismissals being appealed through grievance procedures resigned his employment and is therefore not eligible. The remaining 22 employees are eligible to vote and should be added to the List.

3. The Carrier confirmed that the employee alleged to be on a leave of absence is in fact on a leave of absence. Since his name already appears on the List, no change to the List is needed.

4. The Coordinator - Fleet Engine Maintenance position was created in 2006, after the Board's decision in *United Air Lines, Inc., above*, in 2004. The evidence provides that these individuals supervise employees on a daily basis, possess the authority to hire and fire employees, establish assignments, and evaluate their direct reports for pay increases and discipline. Based on the evidence provided, the four Coordinator - Fleet Engine Maintenance employees are management officials and will not be added to the List.

5. Of the 26 individuals on the List AMFA alleged are either deceased, terminated, or working in another craft or class, the Carrier submitted evidence that 17 individuals' status has changed since the cut-off date and they are ineligible. Five of these employees have separated from United and were previously addressed. The remaining four employees are not on the List. An additional employee is a furloughed utility employee and will be added to the List.

6. Of the three employees AMFA asserts have retired, all three individuals have retired. One employee has already been removed from the List. The remaining two employees are ineligible.

7. The evidence shows that Gaetano A. Martorella and Ellen M. Mellyn rejected recall and are ineligible.

8. The IBT asserts that Thomas E. Jones was working for another carrier. AMFA contends that this individual is an eligible voter and should remain on the List. The Carrier presented evidence that Thomas E. Jones, Jr. is on furlough. Based on the evidence, Thomas E. Jones, Jr. is eligible and will remain on the List.

III.

Appeals

A. IBT

The IBT appeals the Investigator's ruling regarding the following employees:

1. Working for Another Carrier

The IBT identified 46 employees that it asserts are working at various carriers in crafts or classes represented by the IBT. Using the IBT's dues record keeping system, TITAN, Jeffrey A. Shiflett, member of the IBT's Organizing Department, stated that each of these 46 employees was represented by the IBT at another carrier. Shiflett also included the last four digits of each employee's social security numbers from TITAN. The IBT states:

the TITAN ledger printouts for each and every one of the 44 challenged employees showing their current address, where they are employed, the dates of their employment, and the last four digits of the employees' social security number, was not even considered by the Investigator, as there is no mention in her ruling of the TITAN records that were provided to the Board.²

(Emphasis in original).

The IBT cites *US Airways/America West Airlines*, 33 NMB 321 (2006) in support of its appeal.

2. Retired Employees

The IBT originally challenged 24 employees as having retired. The Carrier submitted evidence that six of these employees either retired or are on special unpaid leave to retirement. The IBT withdrew three challenges. The IBT appeals the Investigator's ruling of the remaining 15 employees stating that the Investigator erred in her ruling because "each of the 15 challenged employees signed declarations under penalty of perjury stating unequivocally and unambiguously that they are retired. There is simply no better evidence than a declaration given under the penalty of perjury from the employee himself/herself."

² United stated that two of the challenged employees' social security numbers were incorrect; therefore the IBT is only appealing 44 of the 46 employees originally challenged.

3. Employees Who Have Resigned

The IBT appeals the Investigator's ruling of Jennifer Wichman stating that Ms. Wichman's declaration is sufficient evidence to remove her from the List. The IBT continues, "[a]lthough UAL claims that Ms. Wichman has not resigned, like its equally wrong assertions about employees who signed declaration [sic] stating they are retired, UAL is basing that assertion entirely upon what is shown in its computerized personnel records."

4. Employees Who Have Refused Recall

The IBT appeals the Investigator's ruling regarding 16 of the 26 employees the IBT alleges have refused recall.³ The IBT contends that the submitted declarations are better evidence than the Carrier's personnel records.

5. Employees Who Are Furloughed, But Who Have Severed Their Employer-Employee Relationship And Have No Intention of Returning to Work

The IBT appeals the Investigator's ruling of 94 employees in this category.⁴ The IBT contends that the declarations submitted in its original submission are sufficient evidence to remove these employees from the List. Citing *Continental Airlines*, 24 NMB 433 (1997), the IBT states the Board's policy that furloughed employees are eligible unless their recall rights have expired, they have refused recall, or their positions have been permanently eliminated. The IBT states:

Pursuant to the collective bargaining agreement between UAL and AMFA, however, furloughed employees retain lifetime recall rights that never expire. Where, however, the employees themselves declare that they have no intention of returning to UAL even if recalled, the retention of lifetime recall rights as basis for determining whether an employee maintains an employee-employer relationship or has a reasonable expectation of returning to work becomes illusory. In such situations, the retention of lifetime recall rights should not be considered in determining voter eligibility.

³ The Investigator ruled eight ineligible based on Carrier evidence that these employees have refused recall. The Investigator also ruled two employees ineligible as they refused recall after the cut-off date.

⁴ The IBT originally challenged 95 employees, but one employee subsequently accepted recall.

6. Employees Who Are On Furlough With Lifetime Recall Rights, But Whose Jobs Have Been Permanently Eliminated Through Outsourcing

The IBT contends that the job titles of Airframe Maintenance Cleaners, Cabin Servicemen, Computer Technician, Computer Terminal Tech, Seamer, and Utilityman have been permanently eliminated through outsourcing, and that employees in these positions are not eligible. The IBT states:

In denying the IBT's challenges, the Investigator claimed that whether or not the work of the challenged classifications has been outsourced is irrelevant. The problem with this analysis is that it ignores the fact that employees who only retain lifetime recall rights to jobs that have been outsourced have no **reasonable expectation** of becoming reemployed with the Carrier.

(Emphasis in original).

The IBT submitted declarations from Paul A. Molenberg, a 19-year United mechanic and Robert C. Fisher, a 21-year mechanic in support of this contention.

7. Employees Who Are Deceased

The IBT appeals the "Investigator's failure to remove the remaining 11 deceased employees."

The IBT asserts generally that the evidence it produced during the challenge and objection process was more specific and more reliable than United's evidence.

B. AMFA

AMFA appeals the Investigator's ruling that Thomas E. Jones⁵ is eligible. On appeal AMFA challenged 12 additional employees "similarly situated" to Jones. These employees were not addressed in the Investigator's ruling as the Investigator did not have AMFA's submissions at the time the rulings were issued.

AMFA states that an additional nine employees should be removed for similar reasons. These employees were not addressed in the Investigator's ruling as the Investigator did not have AMFA's submissions at the time the rulings were issued.

C. United's Response

i. IBT's Appeals

In response to the IBT's appeals, the Carrier stated the following:

1. Working for Another Carrier

The Carrier asserts that the IBT's appeal is without merit and that its records state that the 44 employees are furloughed. United states that the IBT did not provide sufficient evidence to show that these employees are working for another carrier and the evidence provided was "demonstrably unreliable – as even the IBT now recognizes by paring the list down to 44." Although United confirms that the last four social security number digits listed by the IBT match those in United's records, the Carrier contends that this fact alone does not warrant a finding that these employees are ineligible.

2. Retired Employees

The Carrier states that the Investigator's rulings should be upheld. The Carrier further asserts:

With all due respect to the IBT and the employees in question, the declarations submitted by the IBT are not the 'better evidence' of

⁵ Thomas E. Jones was originally challenged by the IBT. The IBT asserted that Jones is working for another carrier. United responded that Jones was not on the List. AMFA asserted that Jones is on furlough, is an eligible voter, and should remain on the List. As there was confusion over Jones' file number, the Investigator requested additional information regarding this individual. The Investigator found that the evidence submitted by the Carrier showed that Jones is on the List, but the evidence was insufficient to find that Jones was working for another carrier; therefore, Jones was eligible. The IBT did not appeal Jones' eligibility.

whether these employees have, in fact, retired. It is the status of the employee as reflected in United's records that governs whether and to what degree the individual continues to receive the benefits and privileges . . . to which any furloughed, but not a retired, employee is entitled. For any number of reasons – including lack of education, language barriers, the circumstances under which the 'declaration' was proffered for signature, or simple confusion over what the individual was being asked to sign – an employee could very well make the mistake . . . of 'declaring' he or she has retired when in fact that is not the case.

United points out seven instances in which the IBT's declarations are wholly incorrect. For example, in one declaration the employee states that she retired "on or about 06/2002." Yet United's records (again, confirmed by AMFA's review of the GUSS system) makes clear that she was an active employee through June 24, 2003, when she was furloughed." Several other employees state a date of retirement that correlates with the date of furlough in United's records.

3. Employees Who Have Resigned

The Carrier asserts that the Investigator's ruling regarding Jennifer Wichman should be upheld as she is on furlough status. The Carrier also states that Wichman:

cannot have it both ways – that is, she cannot claim that she has severed her employment relationship (without having so informed United) while at the same time continuing to accept or remain eligible for the benefits that accompany the continuation of that relationship, such as continued participation in United's 401 (k) plan, retained Seniority/Recall Rights (which of course are forfeited upon resignation), continued access to United's Intranet, and continued receipt of Career Resources, including access to job listings and the ability to make transfer requests.

4. Employees Who Have Refused Recall

United contends that the Investigator's ruling regarding these 16 employees should be upheld. The Carrier states that two of the declarations the IBT submitted do not state a date on which the employees were offered or refused recall. On several of the other declarations the date is not specific and/or not indicated. United asserts that its records state that these employees remain furloughed and have not refused recall.

5. Employees Who Are Furloughed, But Who Have Severed Their Employee-Employer Relationship And Have No Intention of Returning to Work

United states that the Investigator's ruling should be upheld. The Carrier reiterates that "[n]one of the 94 employees identified by the IBT has repudiated his/her ongoing employee-employer relationship with United in any reliable or reasonably cognizable manner." The Carrier points to one employee who stated in a declaration: "I have no intention of accepting [recall] or returning to work at United." Yet, on October 21, 2007, this employee accepted recall into a mechanic position where he remains an active employee. Additionally, two employees who signed these declarations have been on illness leave since 2005 and "continue to receive benefits and privileges as United employees pursuant to that status."

6. Employees Who Are On Furlough With Lifetime Recall Rights, But Whose Jobs Have Been Permanently Eliminated Through Outsourcing

The Carrier states that none of the following job titles have: Airframe Maintenance Cleaners, Cabin Servicemen, Computer Technician, Computer Terminal Tech, Seamer, and Utilityman been permanently eliminated through outsourcing. The Carrier states that it has "employees in the Utility and Computer Technician classifications who are either actively employed or who are on illness leave." United maintains that "the history at United demonstrates numerous examples of work that has, in fact, been brought back in-house after having been outsourced to vendors." United also asserts that "employees are offered and accept recall even after years of being on furlough." Finally, the Carrier restates its position that the employees at issue "were given an option between two choices: (1) forfeiting all recall rights under the Agreement, in return for which they would receive a lucrative severance package consisting of extended insurance benefits, double the normal severance allowance, and extended travel benefits; or (2) retaining their recall rights and accepting normal, unenhanced severance benefits under the Agreement."

The Carrier contends that each employee who rejected the enhanced severance package did so specifically to retain recall rights. United also asserts that the parties to the collective bargaining agreement (CBA) have not eliminated any of the job titles in question from the CBA. Therefore, if United brings any of the outsourced work back in-house, the employees furloughed from these positions have a legal right to resume their jobs. The Carrier also requests that pursuant to Section 10.2 of the Board's Representation Manual (Manual), information submitted by the IBT for the first time on appeal should not be considered.

7. Employees Who Are Deceased

United states that its records show the 11 employees, contested as deceased, to be furloughed and the IBT's evidence to the contrary is "demonstrably unreliable and an insufficient basis upon which to disenfranchise employees."

ii. AMFA's Appeals

In response to AMFA's appeals, the Carrier states that AMFA does not provide any evidence regarding the current status of these employees. The Carrier asserts that its records show that each of these employees is on furlough and remains eligible.

IV.

DISCUSSION

The burden of persuasion in an appeal from an Investigator's eligibility ruling rests with the participant appealing the determination. *American Airlines*, 31 NMB 539, 553 (2004); *Northwest Airlines, Inc.*, 26 NMB 77, 80 (1998).

The IBT repeatedly asserts that United's computerized personnel records are out of date or based upon incorrect data and that the IBT's declarations are the best evidence of the employee's status. Additionally, the IBT repeatedly states that the Investigator failed to give any credit to declarations submitted by the employees. The Carrier relies on its personnel records to determine, among other things, which employees remain eligible for benefits such as participation in United's 401(k) plan, seniority/recall rights, access to United's Intranet, and use of Carrier resources. Investigator rulings are based on the entire record compiled in each case including employee declarations. The Investigator's rulings will be upheld where they are found to be based on Board precedent and accurate and reliable data.

A. Working for Another Carrier

Manual Section 9.207 provides that "[e]mployees working for another carrier other than the carrier involved in the dispute are ineligible."

In its challenges and objections, the IBT alleged that 110 employees on the List were working for other carriers. The evidence provided by the IBT in support of its challenges and objections consisted of declarations from 64 employees as well as a list of 46 employees allegedly working for another carrier. This List was compiled using the IBT's dues record keeping system, TITAN. The list included the last four digits of each employee's social security

numbers from TITAN. The Investigator ruled that of the 64 employees, one employee rejected recall and was ineligible, one employee resigned employment with United and is ineligible, and one employee accepted recall and is eligible. The Investigator ruled the remaining 61 individuals are not eligible because they are working for another carrier. The IBT did not appeal this ruling. The Investigator ruled that the evidence submitted for the additional 46 employees was insufficient to remove the employees from the List. The IBT has appealed 44 of these 46 employees and contends that the TITAN ledger printouts it provided are no different than the seniority lists provided in *US Airways/America West Airlines*, 33 NMB 321 (2006) where the NMB found employees working for another carrier ineligible. The Carrier stated that it had no information regarding such other employment for its furloughed employees.

The IBT submitted TITAN ledger printouts and a statement from an Organizer. The IBT's evidence included the last four digits of employee social security numbers, and the Carrier confirmed these social security numbers. Upon review, the evidence does not support the Investigator's ruling. Accordingly, the Investigator's ruling is not upheld and **Dennis O. Adad, Insoo K. Ahn, Karl Francis Blaha, Douglas J. Bolsover, Shawn V. Brodie, Corey J. Cameron, Troy A. Carter, Herbert Alvin Consolvo, Robert Cubra, Philip Craig Evans, Michael H. Fry, Rose L. Galey, Tammie H. Gillom, Ben S. Gorsuch, John Walter Green, Eduard Wesly Guimaraes, Michael Paul Harlow, Maria Hayes, Norman Leroy Hill, David E. Jacuk, Nelson David Keimig, Nadine Marie Knodel, James Michael Lesniak, Richard J. Lopez, Patrick Michael Mahoney, Raymond M. Marinelli, William R. Meek, Jacob Moncayo, Ehud Naccache, Charles L. Pankey, Philip J. Rouster, Nicholas J. Rubbo, Mark Steven Rubbo, Ziad Mahmoud Shouman, Jeffrey L. Skora, Donald Leroy Slight, Michael P. Storey, Joseph E. Susa, David Tabor, Stephen K. Turek, Patrick Joseph Turner, William Gary Waller, David Todd Zulauf, and Gregg A. Zullo** will be removed from the List.

B. Retired Employees

Manual Section 9.210 states: "Retired employees are ineligible."

The IBT has appealed the Investigator's ruling that 15 employees, out of 24 individuals alleged by the IBT to have retired, are eligible. Based on evidence submitted by the Carrier, the Investigator ruled four employees ineligible as they have retired and two employees ineligible as they retired after the cut-off date. The IBT withdrew three challenges as the file numbers provided by the IBT through employee declarations did not match the employee at issue. The Investigator stated that Carrier records indicate that the remaining 15 employees are on furlough status, and therefore eligible.

The IBT submitted declarations from these 15 individuals as evidence of their retirement. However, in seven instances the declarations are materially

flawed. For example, the IBT alleges that Mark Breitman retired “on or about 1906 years.” United’s records state that Breitman returned to work from furlough (not retirement) on December 3, 2007. Several employees state a date of retirement which the Carrier’s records indicate was in fact the date of furlough. Another employee states he retired without giving a date while Carrier records show that the employee was furloughed on August 19, 2003. One employee states her date of retirement as August 16, 2003 while Carrier records indicate that she was furloughed on August 19, 2003. The Carrier provided documentation that the 15 employees at issue are on furlough.

For the reasons discussed above, the Investigator’s ruling regarding these 15 individuals are upheld.

C. Employees Who Have Resigned

Section 9.2 of the Manual provides, in pertinent part, “All individuals working regularly in the craft or class on and or after the cut-off date are eligible to vote in an NMB representation election.” 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.

The Investigator ruled that of the eight employees challenged by the IBT, four employees have resigned and are not eligible, one is an active employee and is eligible, one is on a leave of absence and is eligible, and two are furloughed and are eligible. The IBT has appealed the Investigator’s ruling that Jennifer Wichman is on furlough and therefore eligible. The IBT argues that the Carrier’s data is less reliable than the declaration from Wichman. In her declaration, Wichman states that she resigned her employment with United “on or about October 2006.” The Carrier submitted documentation for Wichman stating that she was furloughed in April 2003. Furthermore, the Carrier states that Wichman has not informed United of a resignation. Additionally, the Carrier states that as a furloughed employee, Wichman remains eligible for Carrier benefits.

For the reasons discussed above, the Investigator properly relied upon the information provided by the Carrier and the Investigator’s ruling regarding Wichman is upheld.

D. Employees Who Have Refused Recall From Furlough

Manual Section 9.204 states that “[f]urloughed 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.”

The IBT has appealed the Investigator's ruling that 16 employees, out of 26 employees alleged by the IBT to have refused recall from furlough, are eligible. The Investigator ruled 10 employees ineligible based on Carrier records. Each of these employees refused recall after the cut-off date. Carrier records state that the remaining 16 employees are on furlough status and have not refused recall from furlough.

The IBT submitted declarations from each of these individuals. However, there are problems with these declarations. One employee did not include an employee number and therefore cannot be properly identified. Another individual's employee number has been altered and the declarant states "on or about 5/2000 I was offered recall from furlough, but I chose to refuse recall." United's records show this employee received a raise on August 26, 2001 and was furloughed on October 20, 2001; both instances occurring after the employee allegedly refused recall. Several of the declarations either do not include dates these employees were offered and/or refused recall or the dates are vague. In another declaration, the date the employee allegedly refused recall was altered. In the remaining nine instances, Carrier records show these individuals are on furlough and remain eligible for Carrier benefits including continued participation in United's 401(k) plan, retained seniority/recall rights, continued access to United's Intranet, and continued receipt of career resources.

The Investigator properly relied upon the personnel records provided by the Carrier to find these employees eligible. The Investigator's ruling regarding these employees is upheld.

E. Furloughed Employees Who Have Severed Their Employee-Employer Relationship and Have No Intention of Returning to Work

The IBT has appealed the Investigator's ruling that 94 of the 95 furloughed employees IBT challenged as having severed their employee-employer relationship are eligible. The IBT originally challenged 95 employees, but one employee subsequently accepted recall. In his declaration, this employee stated "Even if I were recalled from furlough or were eligible for recall, I have no intention of accepting or returning to work at United." That employee accepted recall on October 21, 2007 and remains an active employee at United. In her ruling, the Investigator ruled two employees eligible as they are on illness leave and one employee eligible since the individual accepted recall and is an active employee. The Investigator found the evidence submitted for the remaining 92 employees was insufficient to remove them from the List.

The IBT appealed the Investigator's ruling regarding 94 of these employees. The IBT submitted declarations from each of these individuals and states that although these employees are furloughed, they have no intention of

returning to work. The Carrier stated that none of these employees have repudiated his/her relationship with United.

As stated above, the Investigator ruled two of these individuals eligible based on the fact that they are on illness leave and accordingly, continue to accrue benefits. The Investigator properly relied upon the personnel records provided by the Carrier to find these employees eligible. The Investigator's ruling regarding these employees is upheld.

Although the IBT provided evidence regarding the challenged employees, it was insufficient to remove the remaining 92 employees from the List. The Investigator properly relied upon the personnel records provided by the Carrier to find these employees eligible. The Investigator's ruling regarding these employees is upheld.

F. Employees Who Are On Furlough With Lifetime Recall Rights, But Whose Jobs Have Been Permanently Eliminated Through Outsourcing

The IBT has appealed the Investigator's ruling that employees in the job titles of Airframe Maintenance Cleaners, Cabin Servicemen, Computer Technician, Computer Terminal Tech, Seamer, and Utilityman are eligible. The IBT argues that these employees have no reasonable expectation of becoming reemployed with the Carrier.

The Carrier submitted evidence that all of the 785 furloughed employees whose jobs have allegedly been outsourced are in fact furloughed and their jobs have not been eliminated. The Carrier stated that it currently has employees in the Utility and Computer Technician classifications who are either actively employed or who are on illness leave. Furthermore, the Carrier states that the employees at issue were given two choices: (1) forfeiting all recall rights under the Agreement in exchange for an enhanced severance package; or (2) retaining their recall rights and accepting unenhanced severance benefits under the Agreement. The Carrier argues that by actively choosing to retain their recall rights, these employees have a reasonable expectation of employment with United.

The Board has held that outsourcing of work does not automatically sever the employment relationship between furloughed employees and the carrier. See *Continental Airlines, Inc.*, 23 NMB 118 (1996); *Evergreen Int'l Airlines*, 19 NMB 182 (1992); *El Al Israel Airlines, Ltd.*, 12 NMB 282 (1985); *United Airlines, Inc.*, 10 NMB 364 (1983).

Manual Section 10.2 states, in pertinent part, "Absent extraordinary circumstances, evidence submitted on appeal will not be considered by the NMB unless it was submitted to the Investigator." Therefore, the information submitted by the IBT for the first time on appeal will not be considered.

The Investigator relied on Board precedent in ruling that these employees retain an employee-employer relationship and have a reasonable expectation of returning to work. 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. Therefore, pursuant to Manual Section 9.204, the Investigator's ruling is upheld and these employees remain eligible.

G. Deceased Employees

The IBT has appealed the Investigator's ruling that 11 of the 15 employees alleged to be deceased are on furlough. The IBT submitted evidence in the form of printouts from a public records database including dates of birth. United states that its records show the contested 11 employees to be furloughed.

Upon review, with the exception of William H. Schell, Jr., the evidence does not support the Investigator's ruling. The date of birth for Schell on the Carrier's personnel records does not correspond to the date of birth in the IBT's submission for Schell. Therefore, based upon the evidence submitted, William H. Schell, Jr. will remain on the List. Cross-referencing the dates of birth on the personnel records with the dates of birth in the IBT's submission confirms the identity of the remaining individuals, and shows that the individuals in question are deceased. Accordingly, the Investigator's ruling is not upheld and **Frederick L. Bahrs, Leland S. Coughlin, Adrian G. Crabtree, Daniel T. Giannellini, Jeffrey D. Hughes, Lance E. Kidwell, Scott A. Morris, Gary J. Pastorek, Craig J. Uchino, and Dirk Weiland** will be removed from the List.

H. AMFA's Appeals

Manual Section 9.204 states, in pertinent part, "[f]urloughed 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 Thomas E. Jones, Jr. is on furlough status and therefore eligible. AMFA includes 21 additional employees "similarly situated" to Jones in this appeal. AMFA did not previously challenge these employees. The Carrier asserts that each of these individuals is on furlough, retains recall rights, is eligible to vote, and should remain on the List.

Absent extraordinary circumstances, the Board will not consider evidence on appeal unless it has been initially filed with the Investigator by the above deadline. See Manual Section 10.2. On January 31, 2008 the Investigator set a deadline for all challenges and objections of February 14, 2008. With the exception of Thomas E. Jones, AMFA did not challenge these

individuals until March 7, 2008. Therefore, the Board will only consider the appeal of the Investigator's ruling regarding Thomas E. Jones.

Although furloughed employees are eligible as long as they have a reasonable expectation of returning to work, Jones has been on furlough for 36 years, since 1972. The Board finds that Jones does not have a reasonable expectation of returning to work. Therefore, **Thomas E. Jones, Jr.** is not eligible and will be removed from the List.

By direction of the NATIONAL MEDIATION BOARD.

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

Mary L. Johnson
General Counsel