



**NATIONAL MEDIATION BOARD**  
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35 NMB No. 42

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Re: NMB Case No. R-7148  
Delta Air Lines, Inc.

Participants:

This determination addresses Delta Air Lines' (Delta's or Carrier's) May 1, 2008 letter to the National Mediation Board (NMB or Board) regarding Organization conduct, the May 1, 2008 response from the Association of Flight Attendants-CWA, AFL-CIO (AFA), Delta's May 2, 2008 reply to AFA's filing, and AFA's May 5, 2008 letter and declaration regarding Carrier conduct. The Carrier alleges that AFA has sent an e-mail to a number of Delta Flight Attendants (1) reproducing the Board's voting website, including the Board's official insignia, and indicating which way to vote; (2) providing a hyperlink to the Board's voting website; and (3) requesting that employees e-mail AFA to let AFA know the employee voted. AFA alleges that the Carrier has "initiated a

pervasive and comprehensive anti-AFA communications campaign,” including sending out a misleading DVD, posting anti-AFA communication in flight attendant crew lounges and purposefully placing anti-AFA Delta employees in the lounges, and encouraging employees to rip up their voting materials.

1. Allegations of AFA Interference

- a. Reproduction of the Board’s Voting Website

Barring extraordinary circumstances, the Board does not typically take action on allegations of interference until the end of the voting period. In this case, however, the Board finds it necessary to address allegations regarding reproduction of the Board’s voting website because of concerns that the appearance of the Board’s impartiality may have been compromised.

The Board does not now, nor has it ever, taken a position on how or whether employees should vote in an NMB election. The Board’s impartiality in the investigation of representation disputes is paramount to the Board’s mission.

Reproduction of the Board’s voting website, Board voting materials, or the Board’s official insignia, especially where the reproduction includes instructions to vote for a specific labor organization, has the significant potential to mislead employees into believing that the material is an official statement of the NMB and consequently that the NMB endorses a participant in the election campaign. In order to maintain the laboratory conditions necessary for a fair election, there absolutely must be no appearance of Board partiality. The Board may strongly consider any disseminated information suggesting that the Board endorses any labor organization as possible evidence of election interference. Should further investigation establish that such disseminations continue and/or that employees were misled and that the materials at issue undermined the credibility of the Board’s voting processes, the Board will take appropriate action, which could include, but would not be limited to, overturning the election results and imposing a one-year bar. *See, e.g., United Air Lines, Inc., 27 NMB 221 (2000); Midway Airlines Corp., 26 NMB 154, 163 (1999); United Air Lines, Inc., 22 NMB 288, 320-21 (1995); Fox River Valley R.R., 20 NMB 251, 260-61 (1993).*

To prevent voter confusion, the Board is sending under separate cover a notice to Delta Flight Attendants that the Board is requesting to be posted on Carrier bulletin boards.

The Board is also sending this notice to its voting contractor for posting on its election website.

b. Providing a Hyperlink to the Board's Voting Website

On February 21, 2008, the Board issued a notice "requesting its participants not to post a hyperlink to the Board's voting website." This "precautionary measure" was to "prevent any outside party from possibly tracking the IP address of persons who visit the voting website." Although the hyperlink in this instance was included in an e-mail rather than posted on AFA's website, nonetheless, the Board strongly reminds the participants, as stated in the February 21, 2008 notice, that "the Board may consider hyperlinks to the voting website as possible evidence of election interference."

c. Requesting that Employees Notify AFA after Voting

The Board reminds the participants that NMB elections are conducted by secret ballot and that the confidentiality of the voting process must be maintained.

2. Allegations of Carrier Interference

Although the Board has found that carriers have the right to communicate with their employees during election campaigns, this right is "not without limit, and even conduct which is otherwise lawful may justify remedial action when it interferes with a representation election." *See Air Logistics*, 27 NMB 385, 404 (2000) (*quoting America West Airlines*, 17 NMB 226, 233 (1990)). Both Delta and AFA are reminded of the need to maintain laboratory conditions until the Board concludes its investigation.

Because the Board does not find extraordinary circumstances that would require Board action at this time, any allegations regarding conduct during the election period will be addressed, if appropriate, at the end of the voting period consistent with the Board's usual practice.

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson  
General Counsel