NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the Application of MIKE A. MCNEIL alleging a representation dispute pursuant to Section 2, Ninth, of the Railway Labor Act, as amended involving employees of GREAT LAKES AIRLINES	35 NMB No. 59 CASE NO. R-7170 (File No. CR-6927) FINDINGS UPON INVESTIGATION-DISMISSAL July 10, 2008

On December 7, 2007, Mike A. McNeil (McNeil or Applicant), an individual, filed an application alleging a representation dispute involving employees described as Aircraft Mechanics, Aircraft Inspectors, Maintenance Control, Utility, and Aircraft Repairman of Great Lakes Airlines (Great Lakes or Carrier). The application was assigned NMB file No. CR-6927. The National Mediation Board (NMB or Board) assigned Investigators Maria-Kate Dowling and Harry Jones to investigate.

The craft or class of Mechanics and Related Employees at Great Lakes is represented by the International Association of Machinists and Aerospace Workers (IAM or Organization) pursuant to a certification in R-6120, *Great Lakes Aviation*, 19 NMB 382 (1992).

By letter dated January 4, 2008, the IAM submitted allegations that Great Lakes had interfered with the election process in the above-captioned case.

On January 10, 2008, the Applicant submitted a position statement in which he denied the IAM's allegations. Likewise, on January 16, 2008, the Carrier submitted a position statement denying the IAM's allegations. On

January 25, 2008, the IAM submitted a reply in which it reiterated its allegations of election interference.

On February 4, 2008, the Board found that the IAM's allegations and supporting evidence presented a prima facie case of election interference and that the investigation would continue. The Board also reminded the participants of their responsibilities under Sections 152, Fourth and 152, Ninth of the Railway Labor Act (RLA or Act).[1]

McNeil supplemented his filing on February 18, 2008. The Carrier supplemented its initial filing on February 11, February 20, and March 4, 2008. The IAM supplemented its filings on February 19, 2008.

On February 15, 2008, this case was reassigned to Investigator Eileen M. Hennessey. Investigator Hennessey conducted interviews of Great Lakes employees in Cheyenne, Wyoming from April 21-25, 2008. Twelve employees in the Mechanics and Related Employees craft or class, representing more than approximately 18 percent of the Cheyenne-based Mechanics and Related Employees, as well as four management officials or other Carrier personnel, gave sworn statements during this time period. Prior to conducting the interviews, the Investigator analyzed the authorization cards submitted with McNeil's application.

On April 24, 2008, at the request of the Investigator, the Applicant filed an additional submission regarding his collection of authorization cards.

For the reasons set forth below, the Board dismisses McNeil's application.

CONTENTIONS

A. IAM

The IAM contends that the Carrier has colluded with Mike McNeil to undermine the IAM as the certified representative of the Carrier's Mechanics and Related Employees. More specifically, the IAM maintains: (1) on November 7, 2007, Carrier managers distributed authorization cards to mechanics who were attending a training session in Cheyenne, Wyoming; (2) the managers advised employees that "signing the cards was the way to get rid of union representation;" (3) the managers urged employees who were not interested in retaining the IAM as the certified representative to sign the cards; and (4) the

[1] 45 U.S.C. § 151 *et seq.*

managers allowed the Applicant to meet with the employees during the training session to discuss decertification of the IAM. Therefore, the IAM states that the authorization cards submitted by the Applicant are tainted by Carrier influence and assistance and that the cards should not be recognized for purposes of authorizing an election. Relying on *Northern Air Cargo,* 29 NMB 1 (2001), the IAM argues that, because the Application is not supported by valid authorization cards, it must be dismissed.

As evidence of Carrier interference, the IAM submitted a declaration of the Applicant, dated October 23, 2007, in which he recounts his conversations with Great Lakes managers about how to "get rid of the union" and the steps that he took to obtain and file the Application. The IAM also submitted a statement signed by an employee who was present at the November 7, 2007 training session in which he states that Carrier managers distributed authorization cards.

B. McNeil

The Applicant denies the IAM's allegations. McNeil states that, sometime after May 2007, he became frustrated with the IAM's representation of the Mechanics and Related Employees at Great Lakes. McNeil maintains that in September 2007 he contacted the NMB for information about how to decertify a union and that he received "the forms and the blank signature cards" that he used to file his application to the NMB. McNeil further states that he circulated these forms at work and with the help of "my fellow employees" collected sufficient authorization cards to file an application with the Board. McNeil asserts that at no time did any management official suggest that he should try to "get rid of" the IAM or in any way assist "with the signature cards or anything else with the decertification drive."

The Applicant argues that he was coerced into making and signing the statement that the IAM relies upon as proof that the cards were tainted. McNeil further states that no Carrier funds were used to finance the application he filed. According to McNeil, the "IAM has interfered, coerced, tried to influence the employees at GLA through intimidation, stall tactics, taking the company to court repeatedly, and repeatedly tried to block the interim pay raise that the company was willing to give us." McNeil maintains that all of the authorization cards are valid and signed by employees. McNeil argues that only a small percentage of the craft or class supports the IAM as its collective bargaining representative and that the Board should allow a vote to decide this issue.

C. Great Lakes

Great Lakes contends that McNeil's application "emanated entirely from a grass roots campaign, initiated by bargaining members, to remove an organization that was perceived to be more of a hindrance than a help to bargaining unit welfare and advancement." The Carrier states that it has remained neutral throughout this process "within the bounds of normal relations and friendly discourse among fellow employees in a small closely-knit company." The Carrier argues that the IAM's challenges should be dismissed and the election promptly held. The Carrier supports its contentions with statements of Carrier officials and NMB case citation.

ISSUES

Were the laboratory conditions the Board requires to ensure employee freedom of choice tainted?

FINDINGS OF LAW

Determination of the issues in this case is governed by the Railway Labor Act, as amended, 45 U.S.C. §§ 151-188. Accordingly, the Board finds as follows:

I.

Great Lakes Airlines is a common carrier as defined in 45 U.S.C. § 181, First.

II.

McNeil and the IAM are labor organizations and/or representatives as provided by 45 U.S.C. § 152, Ninth.

III.

45 U.S.C. § 152, Third provides, in part: "Representatives … shall be designated … **without interference, influence, or coercion** …." (Emphasis added.)

IV.

45 U.S.C. § 152, Fourth gives employees subject to its provisions "the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter." This section also provides as follows:

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

V.

45 U.S.C. § 152, Ninth provides that the Board has the duty to investigate representation disputes and to designate who may participate as eligible voters in the event an election is required. In determining the choice of the majority of employees, the Board is:

> "authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees **without interference, influence, or coercion exercised by the carrier."** (Emphasis added.)

STATEMENTS OF FACT

A. Negotiations Between the IAM and Great Lakes

The Mechanics and Related Employees craft or class at Great Lakes is currently represented by the IAM and covered by a collective bargaining agreement which was executed in 2000 and became amendable in 2005. On August 1, 2007, the IAM invoked the mediation services of the Board. The Board docketed the mediation case and assigned Mediator Jack Kane to mediate the dispute. Great Lakes challenged the Board's jurisdiction to mediate, stating that negotiations had been terminated and the IAM's application for mediation was untimely. Great Lakes and the IAM each filed suit in federal district court in Minnesota and Colorado, respectively to obtain

injunctive relief. The U.S. District Court for the District of Colorado issued a temporary restraining order on October 31, 2007 and a preliminary injunction on November 7, 2007. The preliminary injunction (1) ordered Great Lakes to maintain the status quo regarding wages, rules, and working conditions as they existed on October 31, 2007 for Mechanics and Related Employees and (2) ordered the Carrier to participate in good faith in negotiations as directed by the Board. The U.S. District Court for the District of Minnesota denied the Carrier's request for a preliminary injunction stating that the Carrier had "failed to establish that it likely will succeed on the merits regarding whether contract negotiation conferences have 'terminated' within the meaning of the Railway Labor Act" and denied the Carrier's motion for injunctive relief. The Carrier has appealed both rulings and these matters are stayed pending the outcome of this case.

B. McNeil's Application

McNeil filed a decertification petition with the National Labor Relations Board (NLRB) on July 23, 2007. McNeil stated that he filed the petition because he "was frustrated with the lack of progress in contract negotiations and lack of response by the IAM." The NLRB notified the IAM of the petition and the IAM contested the NLRB's jurisdiction. The IAM contacted McNeil shortly after the petition was filed and subsequently McNeil withdrew the petition.

McNeil stated in his January 10, 2008 position statement that approximately one month after filing the petition with the NLRB, he "got phone numbers off the internet site for the NMB, called them and talked to Libby Angelopoulis *[sic]* about how to decertify a union. She mailed me the forms and the blank signature cards." McNeil stated that he "took the forms to work and with the help of my fellow employees collected enough signature cards to file with the NMB." McNeil states that management did not in any way assist with the "signature cards".

In response to inquiries such as McNeil's regarding representation elections under the RLA, the Board may provide the following information:

Dear Mr. Smith:

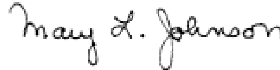
Based on your recent request, we have enclosed a copy of the Railway Labor Act, the National Mediation Board's Rules and two copies of Form NMB-1, "Application for Investigation of Representation Dispute".

Any organization or individual may apply to the Board for an investigation of a representation dispute among a craft or class of employees covered by the Railway Labor Act. However, it is important to comply fully with the Board's administrative requirements, including those contained in the NMB Rules. As a general overview, the application must be supported by a sufficient quantity of employee authorizations. Any type of authorization is sufficient if it indicates that an employee desires representation by the applicant for purposes of collective bargaining. The NMB Rules require that an authorization be signed and dated in the employee's own handwriting.

Although there is no required format for an authorization, an example is enclosed.

If additional information is required please visit our Web Site at www.nmb.gov .

Sincerely,



Mary L. Johnson
General Counsel

- Enclosures -

Sample Authorization

I, ____________________ , working in the craft of class of ____________________
(printed employee name) (craft or class)

as an employee of ____________________ do hereby authorize
(name of carrier)

______________________________ to represent me for the purposes of the
(Applicant Organization or Individual)

Railway Labor Act.

Dated ______________________________
(Handwritten date)

Signed ______________________________
(Signature)

____
(Social Security Number)

____
(Employee Number)

In a sworn statement given to the Investigator on April 22, 2008, McNeil stated:

> I started circulating NMB authorization cards in August 2007. I contacted the NMB and spoke with Libby Angelopoulos. She sent me a letter and two sample authorization cards. I have reviewed the sample letter that the NMB Investigator showed me and that looks like the letter I received. The sample authorization that the Investigator showed me is not what I received. The sample that I received from the NMB looks like the authorization cards I circulated. I did not draft the card myself. I did not consult with an attorney regarding the format of the authorization cards. I did not consult with the Great Lakes attorney, Tim Thornton, about this. … I did not consult with anyone about the cards or the format. No one there has ever gone through anything like that. I circulated the cards at work right after I got the information from the NMB in late August/early September 2007. [Several mechanics] . . . helped me circulate the copies of the authorization cards. I made copies of the cards Libby sent me at Kinkos. ….
>
> I don't really want to represent these employees. Initially when I filed the cards, the space regarding the name of the representative was blank. The [NMB] Investigator at the time, Harry Jones, told me that that space could not be blank and sent them [the authorization cards] back to me. When I received the cards back I added my name in the blank space for representative on the cards and sent them back to the NMB.

During the course of the interview, the Investigator asked McNeil if it was possible that he drafted the card himself or modified another organization's authorization card. McNeil stated that he did not, adding that he was not proficient enough with the computer to do so. At the conclusion of the April 22, 2008 investigation, the Investigator informed McNeil that, since there were allegations that the Carrier assisted his application and since part of his response was that he received assistance from the Board regarding the form and content of authorizations, any evidence he had that the NMB supplied the authorization cards he used would be considered by the Board.

On April 24, 2008, McNeil submitted the following statement:

> I submitted the signature cards to the mediation board on behalf of the mechanics and related at Great Lakes Aviation. The signature cards that I submitted I obtained from AMFA's (Aircraft Mechanics

> Fraternal Association) website. AMFA is a union and the website has the authorization card form on it for anyone to download. I downloaded the form and using my computer at home modified the card to delete AMFA from the card and leave the space blank. I then made copies of the card and handed them out at work. No one in management gave me these cards. Please find attached a copy of AMFA's card and my modified version.

The authorization language of the card McNeil downloaded from AMFA's website states:

> **AUTHORIZATION FOR REPRESENTATION UNDER THE RAILWAY LABOR ACT**
> **I authorize the Aircraft Mechanics Fraternal Association to request the National Mediation Board to conduct an investigation and a representation election and upon winning to represent me as my agent in accordance with the terms and provisions of the Railway Labor Act, as amended.**
> **MY RIGHT TO SIGN THIS CARD IS PROTECTED BY FEDERAL LAW.**

The authorization language of the cards McNeil submitted in support of his applications states:

> **AUTHORIZATION FOR REPRESENTATION UNDER THE RAILWAY LABOR ACT**
> **I authorize _____________ to request the National Mediation Board to conduct an Investigation of Representational Dispute**
>
> **MY RIGHT TO SIGN THIS CARD IS PROTECTED BY FEDERAL LAW.**

The majority of the Mechanics and Related Employees interviewed by the Investigator recognized the latter language as the language on the cards that were circulated by McNeil and stated either that the line after the word authorize was blank when they signed the card or that they did not know who they were authorizing to request an election.

C. The November 2007 Pay Increase

The Carrier's January 16, 2008 response to the IAM's initial position statement was supported in part by an affidavit made by Scott Lewis, Director

of Maintenance. This statement was sworn by Lewis on January 16, 2008, and states in part:

> [O]n October 19, 2007, Jason Entner [Cheyenne Base Manager] mentioned that the mechanics' morale seemed low. I asked Entner to invite McNeil to stop by to visit upon his return from [the] Missouri [contract negotiations]. I met him as he was going out to his truck and inquired how the trip to St. Charles had gone. He replied that he didn't really understand what was going on. I said that I really didn't either, but everything seemed to be in the lawyers' hands now.
>
> McNeil continued to ask if he could tell me something "off the record." He proceeded, "If you could do something around here, we could make this go away." I replied that I didn't know what would happen, but that Doug Voss (Great Lakes' President) would be back the following week.

On October 25, 2007, the Carrier posted a notice to "All Mechanics and Utility Personnel" advising the employees that, effective November 1, 2007, "all base pay rates for Mechanics will be increased by $1.05 per hour plus 3%" and "all base pay rates for Utility Personnel will be increased by $0.75 per hour plus 3%."

On November 9, 2007, the Carrier sent the following letter to the IAM. This letter and subsequent correspondence between the Carrier and the IAM on this issue was posted in the workplace.

Great Lakes Aviation, LTD

November 9, 2007

Mr. Stephen Gordon
President and Directing General Chairman
District 143
International Association of Machinists
2510 Lexington Avenue South
St. Paul, MN 55120

Re: Great Lakes Aviation

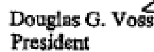
Dear PDGC Gordon:

As you know the Great Lakes' mechanic and related collective bargaining agreement specifies "minimum" wage rates. Pursuant to that provision and consistent with past practice the company announced a pay increase that would have been effective on November 1st (attached). The union went to court and successfully blocked the raise.

In open court, however, the IAM committed to immediately agreeing to the adjustment. All that would be required was a writing to reflect the agreement. As it is, the union's legal maneuvering has caused significant discord among the mechanics. Therefore, the company now requests that you make good on your promise and consent to the raise. This letter shall serve as the document that was requested

Please sign your facsimile copy of this letter where indicated below and fax it back to me in order to confirm District 143's consent to the company initiated wage rate adjustment.

Sincerely,



Douglas G. Voss
President

Agreed:

____
Stephen Gordon

1022 Airport Parkway • Cheyenne, WY 82001 • (307) 432-7000 • Fax (307) 432-7001

The IAM refused to sign the above agreement. The Carrier implemented the pay raise in the pay checks issued November 15, 2007. On November 29, 2007, the IAM filed a Motion for Order to Show Cause with the Colorado district court arguing for sanctions and a contempt of court order against Great Lakes for violating the terms of the preliminary injunction.[2] On November 30,

[2] This case is stayed pending the outcome of the case presently before the Board.

2007, Great Lakes and the IAM signed the following letter of agreement agreeing to the pay raise:

> This Letter Agreement between Great Lakes Aviation, Ltd., and the International Association of Machinists and Aerospace Workers ("IAM") is to provide an interim pay raise for all Great Lakes employees employed in the Mechanic and Related craft or class pending final resolution of negotiations on amendments to the existing collective bargaining agreement. This interim agreement is made pursuant to the Railway Labor Act.
>
> The parties hereby agree that, in addition to such employee's actual hourly rate of pay as of October 31, 2007, effective November 1, 2007, base pay rates for Mechanics shall be increased by $1.05 per hour, and base pay rates for utility personnel shall be increased by $0.75 per hour.
>
> In addition to the increases set forth above, base pay rates for all Mechanics and Related employees shall be increased an additional 3%. This increase is also effective November 1, 2007.

Eighty percent of the authorization cards submitted by McNeil in support of his application were dated between November 1, 2007 and December 5, 2007.

In a sworn statement to the Investigator given in April 2008, Lewis stated that the Great Lakes "pay scale was topped out so we had some guys who were not getting raises. There were a lot of guys and it was affecting morale. I was told [by my boss Chuck Howell] that I could not increase the pay scale because it was a union contract." Lewis stated that he began having conversations with Howell regarding the need to increase the pay scale in approximately 2006 and continued the conversations "until he told me not to mention it anymore." Lewis stated that he "told the mechanics that the union contract had expired --- I think in November 2005 and that there was a pay freeze and if they were topped out when the contract expired there is nothing I could do."

Lewis also stated that:

> Employees saw the letter from the union saying that they objected to the increase and came to me asking what was going on. But I didn't know. I knew what they knew. The increase went into the pay checks that were issued on November 15. We did it anyhow. But everyone was worried that it would not take place because

> there was a letter- the one posted on the IAM Board. In that period between November 1 and November 15 … I think that the employees thought that they would not get a raise because the IAM was threatening legal action. No one said that to me though.

During the weeks after the pay raise was announced, letters from the IAM objecting to the Carrier unilaterally granting the pay raise and the Carrier's responses were posted in the workplace. Other correspondence concerning the issue was also posted, including a letter to the court in Denver drafted by McNeil and signed by some of the Cheyenne-based employees opposing the IAM's contempt of court action. During the course of the investigation other employees expressed the view that the IAM filed the contempt of court charges not because it opposed granting a raise but because it objected to the implementing language of the "company initiated wage rate adjustment." One employee stated:

> I feel like the union was doing what it needed to do to make it [the raise] legitimate and Great Lakes was doing what it needed to do to prolong it. To me it seemed like one big game. I thought that Great Lakes was doing what it was doing to get people angry with the IAM so that they would vote to decertify the union.

D. November 7, 2007 Training Session

On November 7, 2007, the Carrier held a training session which was attended by several members of the craft or class. According to a statement provided to the Investigator by Norman Holte, Manager of Maintenance Training, while training was going on, he was in his office next to the classroom. Holte stated that a mechanic not assigned to the training:

> [A]sked if he could distribute a form like the one you showed me [McNeil's authorization card]. He said it was a form to request a vote on whether or not to keep the union (IAM). He said that since there were two mechanics from Denver in there it would be a good time to give them the form. I told him that they had just come back from break and I did not want to disturb them during class. I told him he could leave the forms with me and I would hand them out or he could come back on the next break and hand them out which would be in an hour, or he could wait. He gave me the forms and told me to hand them out because he did not want to sit around here. He did not give me any instructions. I think he said he would stop by later and get them.

> I stuck my head in and asked [the Instructor] if I could speak to the class and would he hold the class at the next break. He said that he would and he did. I passed out the cards and told the class they were cards to call for a vote either to keep the union or not keep the union.
>
> I got questions that I did not know the answers to and I said I don't know the answers. I asked [the Instructor] if he had enough time for Mike to come over and answer some questions and he said yes and that is when I went and found McNeil.
>
> I did answer one question which was "If we sign this, does that mean we get rid of the union?" and I said "I don't think so, I think it just calls for a vote." While they were on break I went and got Mike and he came over and answered questions. I was not in the room when Mike was answering questions. … Mike answered questions less than 15 minutes. … The class ended on schedule – it was not delayed by these conversations. … Nothing like that ever happened again. I have never had any IAM representative request to speak to one of my classes.

DISCUSSION

A. Applicable Legal Standard

Under 45 U.S.C. § 152, Ninth, the Board is charged with the responsibility of assuring that employees in any craft or class are provided the opportunity to make a choice concerning representation free of carrier interference, influence, or coercion. This duty requires that, when there are employee allegations of carrier interference, the Board must investigate such claims. *Northern Air Cargo, Inc.*, 29 NMB 1 (2001); *Metroflight, Inc.*, 13 NMB 284 (1986); *Key Airlines,* 13 NMB 153 (1986) *(Key Airlines I)*. The duty extends to the Board's investigation of allegations of carrier interference before the authorization of an election. *Southwest Airlines*, 21 NMB 332 (1994); *Sea Airmotive, Inc. d/b/a SEAIR Alaska Airlines*, 11 NMB 87 (1983); *Transkentucky Transp. R.R., Inc.,* 8 NMB 495 (1981).

The carrier is under an obligation imposed by the RLA to act in a manner which does not influence, interfere, or coerce the employees' selection of a collective bargaining representative. The carrier is obligated to preserve laboratory conditions ensuring employee freedom of choice. The Board has long held that, from the time the carrier was aware of the organizing drive until its conclusion of the election, laboratory conditions must be maintained. *Key Airlines*, 16 NMB 296 (1989); *See Metroflight, above*; *Key Airlines I*.

Carrier interference, influence, or coercion which fosters, assists or dominates an organization may disqualify the organization as an employee representative. *Northern Air Cargo, above,* at *24*. Under these circumstances, the Board has found that the organization "is not qualified to act as an employee representative nor accordingly, to invoke a representation dispute on the employees' behalf." *Mackey Int'l Airlines,* 5 NMB 220 (1975). In addition, when the facts tend to show that an organization's authorization cards were the product of carrier influence, the Board will not take cognizance of the cards by directing an election under 45 U.S.C. § 152, Ninth. *Southwest Airlines, above,* at 350.

In contrast, the Board found that the applicant was not fostered, dominated or assisted by the carrier where the applicant obtained a list of employee addresses without carrier permission and used portions of carrier letters to employees without obtaining carrier assistance or advice. *Wisconsin Central/Fox Valley & Western,* 24 NMB 64 (1996). In *Orion Lift Serv., Inc. d/b/a Orion Air*, 15 NMB 358 (1988), the Board found an organization independent of the carrier where it had asked for voluntary recognition and the carrier refused and had campaigned for one of the two bona fide labor organizations on the ballot. The Board determined that these acts were not characteristic of a carrier dominated union. *Id.* In *Virgin Atlantic Airways,* 24 NMB 575 (1997), the Board found that the carrier interfered in a manner which benefitted the applicant. However, the Board also determined that there was insufficient evidence that an applicant union was carrier dominated where the applicant and the carrier did not act in concert to promote the applicant's candidacy. *Id.*

In cases involving the issue of whether employees' freedom of choice of a collective bargaining representative has been impaired, including allegations raised in this case, the Board examines the totality of the circumstances. The Board evaluates the facts developed from the investigation, including the organizations' and the carrier's submissions, and Board experience. *Evergreen Int'l Airlines,* 20 NMB 675 (1993).

B. The Authorization Cards

The Board does not have a required format for authorization cards. The formats accepted by the Board, which include the AMFA card submitted by McNeil in his April 24, 2008 submission, vary. NMB Representation Manual (Manual) Section 3.1 states that each authorization must be signed and dated in the employee's own handwriting. *See also* NMB Rule §1206.3, 29 C.F.R. §1206.3 (2007). The Manual further states that "[t]he language on authorization cards must be unambiguous and the NMB must be able to determine the employee's intent."

In this case, McNeil stated that the cards he circulated, and which employees signed, were blank with regard to who would file the application. Without a designation of who the employees were authorizing to take action on their behalf and what action they were authorizing to be taken, the cards would not have been accepted by the Board. McNeil states that he was told the blank cards were unacceptable by a Board representative and that he unilaterally modified the authorizing language, designating himself as the authorized representative of the group of employees, and resubmitted the cards. Modification of the authorization language on the cards by a third party after the card has been signed and submitted is unacceptable - just as it would be if a union organizer added in a date to an undated but signed authorization card, or signed a card for an employee who neglected to sign the authorization card. Mr. McNeil's alteration of the language of the cards after the employees signed the cards voids the cards, thus the Board will not consider them as an unambiguous expression of employee intent.

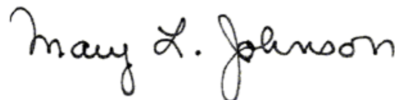
In his initial position statement to the Board, as well as his sworn statement to the Investigator, McNeil stated that his application was not fostered in any way by the Carrier. McNeil stated that his application was the result of his own research and contacts with Board representatives. McNeil emphatically stated that the Board was the source of the authorization cards he circulated. It was only after the Investigator requested that McNeil document this claim and pointed out that it was essential evidence to defend against the IAM's charges of Carrier assistance that McNeil's story changed. McNeil now claims that he had forgotten that he had downloaded the card off the AMFA web site and modified it to fit his purposes, despite the fact that he explicitly denied doing this during his interview with the Investigator two days prior. In fact, he told the Investigator that he did not have sufficient computer skills to modify an existing card or draft his own card.

McNeil's complete change in his statement regarding the source of the authorization cards undermines the credibility of his testimony regarding the source of the cards. It is clear from the evidence that the source of the cards used was not the Board, or McNeil's fellow organizers. However, it is unnecessary for the Board to determine the source of the cards in this case because McNeil's alteration of the cards renders them invalid.[3]

CONCLUSION

McNeil's alteration of the signed cards makes it impossible for the Board to determine the intent of the employees who signed the cards. Under these circumstances, the cards submitted by McNeil are tainted and the Board will not take cognizance of them. Therefore McNeil failed to support his application with the required number of authorizations from the employees in the craft or class as set forth in Part 1206.2(a) of the Board's Rules. Because the application is not supported by a showing of interest, the Board will not address the allegations of carrier assistance. The Board finds no basis upon which to proceed in this matter. The application submitted by McNeil is converted to R-7170 and is hereby dismissed subject to the one-year bar in 29 C.F.R. § 1206.4(b)(2).

By direction of the NATIONAL MEDIATION BOARD.



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[3] Because the Board finds that the cards were invalid and thus the application was tainted, the majority of the Board finds that it need not address the allegations of carrier assistance.

Harry Hoglander, concurring,

I agree with the result reached by my colleagues in this case. However, I would also find that the application is tainted, as discussed below, because of carrier assistance.

1. The November Pay Raise

The Board has found election interference where the Carrier grants or withholds benefits in order to influence the outcome of a representation dispute. *Stillwater Central R.R., Inc.,* 33 NMB 100 (2006); *Petroleum Helicopters, Inc.,* 25 NMB 197 (1998); *Wisconsin Central, Ltd./Fox Valley & Western, Ltd.,* 24 NMB 64 (1996); *Evergreen Int'l Airlines*, 20 NMB 675(1993); *Key Airlines*, 16 NMB 296 (1989). In *Mercy Air Serv., Inc.*, 29 NMB 55 (2001), the Board found carrier interference when the carrier increased wages during an organizing drive even though the carrier had asked the applicant organization to "waive" any objection to the increase. In the present case, the letter of agreement regarding the wage increases was not signed until November 30, 2007, almost a month after the Carrier unilaterally announced that it would increase wages. The chronology of events leading up to the execution of the letter of agreement linked the choice of representative with the change in benefits and tainted the authorization cards collected during this time period.

By its own admission, the Carrier had been telling Mechanics and Related Employees for years that it was unable to increase rates of pay because wages were the subject of negotiation between the Carrier and the IAM. When the IAM filed for mediation with the Board, the Carrier stated that the application was untimely and both sides filed for relief from the courts. While the court cases were pending and on the day after what both sides have termed as unsuccessful negotiations, Lewis went out of his way to speak with McNeil, and McNeil told him, "[i]f you could do something around here, we could make this go away." Lewis replied that he didn't know what would happen, but that Doug Voss (Great Lakes' President) would be back the following week. Less than one week later, on October 25, 2007, the Carrier announced that it would unilaterally implement a pay increase effective November 1, 2007. That pay increase went into effect with the paychecks issued on November 15, 2007. Even though the Colorado district court issued a temporary restraining order on October 31, 2007 and a preliminary injunction on November 7, 2007,

ordering Great Lakes to maintain the status quo regarding wages, pay, and working conditions as they existed on October 31, 2007 and to bargain in good faith with the IAM, Lewis stated, "[w]e did it [implemented the raise] anyhow."

Between Lewis' October 19, 2007 conversation with McNeil and the November 30, 2008 signing of the letter of agreement regarding the pay raise, there were protracted hostile exchanges between the Carrier and the IAM, not over the financial terms of the agreement, but over its language. Documentation of these exchanges was circulating in the work place on bulletin boards and between employees. As Lewis stated, "[i]n that period between November 1 and November 15 … I think that the employees thought that they would not get a raise because the IAM was threatening legal action." It was during this period that eighty percent of the authorization cards submitted by McNeil were signed by employees.

Far from remaining neutral, the Carrier was told by McNeil that "we could make this go away" if it could "do something." So the Carrier did something— it unilaterally announced a pay increase on October 25, 2007 and implemented it on November 1, 2007. When the IAM took the Carrier to court to enforce the district court's order to bargain in good faith, it was confronted with negative publicity in the workplace casting it as the villain trying to prevent a long overdue raise right before the holiday season. In my view, the Carrier's actions fostered McNeil's application and influenced employees in their choice of representative in violation of Section 152, Ninth of the Act and this influence further tainted the authorization cards signed during this time period. *Southwest Airlines*, 21 NMB 332 (1994).

2. Distribution of Authorization Cards During Training

It is also undisputed that a Management Official, Holte, distributed authorization cards for McNeil during a training session. Furthermore, Holte went out of his way to provide McNeil with an opportunity to speak to employees regarding McNeil's application to represent them. McNeil did not ask to speak to the class; Holte went and got McNeil and brought him to speak to the class. Holte even stated that he answered a question about the purpose of the card. Holte's actions are direct evidence of active carrier assistance of McNeil's application.

The Carrier argues that this was one incident, involving a single four-person training class, and "does not, in the totality of the circumstances, constitute carrier interference with laboratory conditions." I disagree. The fact that management assisted McNeil by distributing authorization cards on his behalf, when taken in the totality of the circumstances outlined above, taints

the cards and is further basis for the Board's dismissal in this case. *See Northern Air Cargo, Inc.*, 29 NMB 1 (2001).