



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the

AIR LINE PILOTS ASSOCIATION
PROFESSIONAL AIRLINE FLIGHT
CONTROL ASSOCIATION and
NORTHWEST AIRLINES
METEOROLOGIST ASSOCIATION

alleging representation disputes
pursuant to Section 2, Ninth, of
the Railway Labor Act, as
amended

involving employees of

DELTA AIR LINES, INC. and
NORTHWEST AIRLINES, INC.

36 NMB No. 17

CASE NOS. R-7191,
R-7192, and R-7193
(File No. CR-6950)

FINDINGS UPON
INVESTIGATION

January 7, 2009

This determination addresses the applications filed by the Air Line Pilots Association (ALPA), the Professional Airline Flight Control Association - DAL (PAFCA), and the Northwest Airlines Meteorologist Association (NAMA). ALPA, PAFCA and NAMA each request the National Mediation Board (NMB or Board) to investigate whether Delta Airlines (Delta) and Northwest Airlines (Northwest) (collectively the Carriers) are operating as a single transportation system.

The investigation establishes that Delta and Northwest constitute a single transportation system.

PROCEDURAL BACKGROUND

On October 31, 2008, pursuant to Section 19.3 of the Board's Representation Manual (Manual), Delta filed a notice informing the Board that on October 29, 2008, Delta had "concluded the previously announced

transaction for the purchase of all of the equity interests of Northwest Airlines Corporation of which . . . [Northwest] is a wholly owned subsidiary.” Subsequently, on November 4, 2008, ALPA filed an application alleging a representation dispute involving employees in the Flight Deck Crewmembers craft or class. ALPA asserts that Delta and Northwest constitute a single transportation system for representation purposes under the Railway Labor Act (RLA or Act). The Board assigned ALPA’s application NMB-File No. CR-6950. The Board also assigned Maria-Kate Dowling to investigate and requested that the Carriers provide information regarding their operations.

Delta filed its position statement regarding the single transportation system resulting from its acquisition of Northwest on November 4, 2008. In its position statement, Delta stated that once the Board finds that a single transportation system exists, “Section 2 Fourth also calls for the Board to review the status of all existing certifications to unions representing employees at the pre-merger Northwest Airlines, because failure to do so would result in the continuation of certificates for minority unions, which the Board has long held to be impermissible under the Railway Labor Act.” On November 6, 2008, the Board requested position statements in response to Delta’s submission from ALPA and the following Organizations representing employees at Delta and Northwest: the Aircraft Mechanics Fraternal Association (AMFA), the Association of Flight Attendants-CWA, AFL-CIO (AFA), the International Association of Machinists & Aerospace Workers, AFL-CIO (IAM), PAFCA, the Transport Workers Union of America (TWU), the Aircraft Technical Support Association (ATSA), and NAMA. Each Organization submitted a position statement. PAFCA and NAMA also each filed an application seeking to represent employees in the Flight Superintendent/Flight Dispatchers craft or class (Dispatchers) and employees in the Meteorologist craft or class, respectively. These applications were made part of NMB File No. CR-6950. On November 24, 2008, Delta filed a reply to the position statements from AFA, IAM, and AMFA. On that same date, ALPA filed a reply to the submissions from AFA, IAM, and AMFA. On December 3, 2008, Delta filed a reply to ALPA’s request for certification as the representative of the Flight Deck Crewmembers craft or class. On December 11, and December 19, 2008, Delta provided additional information regarding steps taken toward an operational merger.

ISSUE

Are Delta and Northwest operating as a single transportation system? If so, what are the representation consequences?

CONTENTIONSDELTA

Delta asserts that, despite the continued existence of two operating certificates for a transitional period, the Board should find that Delta and Northwest are a single transportation system because: Delta now owns and controls Northwest; a common management team is in place and exercising control over corporate policy of the Carriers including routes, schedules, and labor relations; Delta has begun extensive promotion holding the Carriers as “the premier global airline;” and Delta has reached a joint collective bargaining agreement (JCBA) with ALPA, the representative of the pilot groups at both Delta and Northwest. Delta further asserts that once the Board has found that Delta and Northwest have become a single transportation system, “the language of Section 2, Fourth [45 U.S.C. § 152, Fourth] also calls for the Board to review the status of all existing certifications to unions representing employees at the pre-merger Northwest Airlines, because failure to do so would result in the continuation of certificates for minority unions, which the Board has long held to be impermissible under the Railway Labor Act.” Delta also contends that the decision in *Railway Labor Executives’ Ass’n v. NMB*, 29 F.3d 655 (D.C. Cir. 1994), decided only the narrow issue of who can initiate a representation dispute under 45 U.S.C. § 152, Ninth (Section 2, Ninth), but in no way limits the scope of the Board’s discretion to make a company-wide single carrier determination once a representation matter is properly before the NMB. Delta states that ALPA’s application is a legitimate request for a legally enforceable certification; that PAFCA and NAMA have also invoked the Board’s services seeking a single carrier determination; and that TWU and ATSA agree that Delta and Northwest are a single transportation system. Delta also asserts that Manual Section 19.7, which provides that existing certifications remain in effect until the Board issues a new certification or a dismissal, does not trump the rights of the majority of employees to select a representative under Section 2, Fourth. Delta contends that allowing the pre-merger certifications to continue would enable a minority union to obstruct and delay the implementation of a merger. Finally, Delta also states that it does not object to the certification of ALPA as the representative of the Flight Deck Crewmembers craft or class at the post-merger Delta upon the Board’s finding that Delta and Northwest constitute a single transportation system.

ALPA

ALPA which is the representative of the pilots employed at Delta and at Northwest, contends that a single transportation system involving Delta and Northwest exists for representation purposes under the Act. According to

ALPA, applying the standards in Manual Section 19.501 and the Board's decision in *Trans World Airlines/Ozark Airlines*, 14 NMB 218 (1987), Delta and Northwest constitute a single transportation system based on the completed corporate merger of the Carriers, the JCBA covering both pilot groups, common labor relations control, and integration of management teams. ALPA also notes that on June 17, 2008, the Master Executive Councils (MECs) at Delta and Northwest reached a Seniority List Integration Process Agreement (SLI Agreement) and that the Combined Delta-Northwest Pilots' Seniority List (Seniority List) will be completed in early to mid-December 2008. In response to Delta's submission, ALPA requests that the Board certify ALPA as the bargaining representative of the craft or class of Flight Deck Crewmembers at the post-merger Delta based on the fact that ALPA represents 100 percent of the craft or class pursuant to voluntary recognition at Delta and at Northwest, the JCBA, and the soon-to-be finalized Seniority List. ALPA also states that Delta supports its request for certification. In response to the assertions of AFA, IAM, and AMFA that ALPA's application is a "sham" masking an attempt by Delta to initiate single carrier proceedings, ALPA states that its single carrier application is appropriate and serves the interests of its members. ALPA notes that the other organizations have long been aware that the JCBA required ALPA "at the earliest practicable time" after the closing of the merger transaction to file an application for a finding of a single transportation system. ALPA states that it has made similar arms-length collective bargaining agreements in the past with other carriers to file what are in essence "stipulated" single carrier applications. ALPA further states that such agreements are consistent with its longstanding policies on corporate mergers and transactions of this type and, along with contract improvements and resolution of seniority issues, this provision furthers a comprehensive, single representational structure where two pilots groups work together to promote their mutual interests and economic gain. Finally, ALPA notes that its filing is appropriate in this case since ALPA had been voluntarily recognized at Delta and Northwest and is now seeking Board certification in the combined craft or class.

PAFCA AND TWU

PAFCA, which represents the Dispatchers at Delta, states its belief that a single transportation system has resulted from the acquisition of Northwest by Delta and from the steps taken by Delta toward completion of an operational merger. PAFCA requests that the Board investigate and resolve the single transportation issue and then conduct an election among employees in the Dispatchers craft or class. TWU, which represents the Dispatchers at Northwest, states its disagreement with Delta's position that a single carrier determination with respect to one craft or class necessarily requires the Board

to review the status of all exiting certifications at the pre-merger Delta and Northwest. Noting PAFCA's application, however, TWU agrees that the Carriers are a single transportation system for purposes of representation of the Dispatchers under the RLA.

NAMA

NAMA filed an application alleging a representation dispute among employees in the Meteorologist craft or class. NAMA also states its belief that a single transportation system has resulted from the acquisition and from Delta's steps toward completion of the operational merger.

ATSA

ATSA, the Board certified representative of Training Representatives, Production Planners, Line Maintenance Planners, Technical Writers, Reliability Analysts, and Technical Analysts at Northwest, does not dispute that a single transportation system for representations purposes exists. ATSA further states that its "recognition of a single transportation system is without waiver of or prejudice to ATSA's incumbent representative status in the subsequent merged airline."

AFA

AFA states that it is not a party to ALPA's single carrier application and therefore it would be inappropriate to comment on Delta's submission regarding the indicia of single carrier status. With regard to Delta's assertion that the Board is obligated to review the "status of all existing certifications" at the pre-merger Northwest, AFA states that such action by the Board would constitute a "blatant violation" of the RLA. AFA further asserts that ALPA's single carrier application is a "sham proceeding" since ALPA represents the pilots at Delta and at Northwest and therefore there is no dispute as to the "certified representative of the combined pilot workforce." AFA contends that ALPA's application "constitutes an attempt on the part of Delta, through ALPA, to initiate a single carrier proceeding despite Section 2, Ninth's prohibition on carrier-initiated representation proceedings."

IAM

IAM contends that Delta's request that the Board use ALPA's application as a vehicle to review and extinguish the certifications of organizations that currently represent other crafts or classes of Northwest employees must be rejected as contrary to well established law and NMB practice. IAM states that

the Board lacks the statutory authority to review any certification absent an employee request and therefore there is no authority for the Board to insert itself into representation issues involving IAM-represented crafts or classes that are not the subject of applications presently before the Board. IAM further contends that ALPA's application is impermissibly tainted by carrier domination and interference. IAM asserts that since Delta is unable to file directly it has sought and obtained ALPA's promise to file for single carrier status "at the earliest practicable time" in exchange for "pay raises for all pilots." IAM takes no position on the issue of whether Delta and Northwest constitute a single carrier for representation purposes since it is not a party to the alleged dispute regarding Flight Deck Crewmembers.

AMFA

AMFA asserts that Delta has "unlawfully called for the Board to review the status of all existing union certifications at Delta." AMFA states that both the case law and the Board's Manual are clear that single transportation system determinations must be made on a craft-specific basis and can only be initiated by employees or their representatives.

FINDINGS OF LAW

Determination of the issues in this case is governed by the Act, as amended, 45 U.S.C. § 151, *et seq.* Accordingly, the Board finds as follows:

I.

Delta and Northwest are common carriers as defined in 45 U.S.C. § 181.

II.

ALPA, PAFCA, TWU, and NAMA are labor organizations and/or representatives as defined in 45 USC § 151, Sixth, and § 152, Ninth.

III.

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."

IV.

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 . . . by the employees without interference, influence, or coercion exercised by the carrier.”

STATEMENT OF FACTSCommon Corporate Ownership and Management

On April 14, 2008, Delta announced that it had reached agreement, subject to governmental and shareholder approval, to acquire 100 percent of the ownership interests in Northwest Airlines Corporation, the holding company which owns 100 percent of Northwest. The shareholders of Delta and Northwest separately approved the transaction on September 25, 2008. The United States Department of Justice granted final United States government approval of the transaction on October 29, 2008. On that same date, Delta acquired all of the ownership interests in Northwest.

According to the declaration of Wayne Aaron, Delta’s Vice President for Corporate Strategy and Business Development, there is common ownership and common corporate management of the Carriers. With the closing of the acquisition, Delta owns 100 percent of the equity of Northwest and all former Northwest shareholders are now Delta shareholders. There is a single shareholder-elected Board of Directors. Delta’s pre-merger Chairman of the Board, Daniel Carp, remains Chairman and Northwest’s pre-merger Chairman, Roy Bostock, is now Vice Chairman. The remainder of the Board is composed of seven pre-transaction Delta Directors and four pre-transaction Northwest Directors.

By press release dated July 15, 2008, as part of its planning process for the integration of Delta and Northwest, Delta announced the nine senior officers who would be part of the Carriers’ Corporate Leadership Team. Five of the officers came from Delta and four of them came from Northwest.* Subsequently, in an internal memorandum dated October 31, 2008, Delta announced its entire post-merger team of corporate officers. According to

* One of those former Northwest officers has since changed plans and will not be coming to post-merger Delta.

Aaron, except as required for compliance with the applicable Federal Aviation Administration (FAA) regulations, the Corporate Leadership team is exercising control over corporate management functions, including Finance, Treasury, Supply Chain, Revenue and Network, Marketing, Airport Customer Service, Technical Operations, Flight Operations, In-Flight Service, Legal, and Human Resources. While some Northwest operations and management will remain located in the Minneapolis area, many of the Northwest staff remaining with Delta will relocate to Atlanta.

Following conclusion of the merger, Delta's new General Counsel, Ben Hirst, assumed direction of all legal affairs at Delta and Northwest. Hirst had previously been Senior Vice President – Corporate Affairs and General Counsel at Northwest. As discussed below, Delta's Executive Vice President for Human Resources and Labor Relations, Mike Campbell, is the Chief Human Resources and Labor Relations officer of the Carriers following the acquisition.

Aaron states that Delta and Northwest became members of the same affiliated group for Federal Income Tax purposes. Accordingly, the Carriers will file consolidated tax returns.

While Delta anticipates that the complete integration of all financial systems will take some months, Aaron further states that Delta has made the necessary adjustments so that shortly after the completion of the merger, Northwest's financial data will be fed into Delta's accounting system. Aaron states that this combined financial data will enhance the decision-making and reporting capabilities of the combined company.

Human Resources and Labor Relations

According to Aaron, there is a single executive in charge of human resources and labor relations. Delta's Executive Vice President for Human Resources and Labor Relations, Mike Campbell, became the Chief Human Resources and Labor Relations Officer at the Carriers.

Delta and the pre-merger Delta and Northwest MECs negotiated the JCBA that brought the Northwest pilots under the pre-merger Delta-ALPA agreement effective the day following the closing of the merger. Under the terms of the JCBA, the Northwest-ALPA contract terminated when the JCBA became effective. Delta and the MECs negotiated the SLI Agreement and on December 8, 2008, an ALPA-designated panel of three arbitrators issued their decision on the integrated pilot seniority list. On December 10, 2008, PAFCA and TWU announced agreement with Delta on the terms of a new combined collective bargaining agreement for the Dispatchers, including the integration

of their respective seniority lists. This agreement is subject to ratification by the employees in the Dispatcher craft or class. The agreement further provides that if it fails to ratify, the parties will proceed to arbitration. Delta has also reached agreements on seniority integration for Meteorologists and Mechanics and Related Employees. These agreements were reached through negotiation with NAMA and AMFA, the certified representatives of those employees at pre-merger Northwest.

Employee Benefits

Common terms and conditions of employment have been applied to management and non-contract employees at the Carriers. Aaron states that Northwest management personnel down to the level of general manager – Officers, Managing Directors, Directors, and General Managers – who have accepted positions at the Carriers have received Delta job titles in accordance with Delta’s pay grade structure. Effective January 1, 2009, these employees will convert to Delta’s Incentive Compensation Plan for management employees. According to Aaron, Northwest non-contract employees who continue at Delta will become participants in Delta’s Profit Sharing Plan and Delta’s monthly “Shared Rewards” program on January 1, 2009. Northwest management and non-contract employees who continue at Delta will also immediately become subject to all Delta policies and procedures with the exception of core employee benefit plans such as medical insurance, life insurance, and retirement income plans. The Northwest core benefit plans will remain in place for approximately one year to allow planning for an orderly transition to Delta’s employee benefit plans during open enrollment in the fall of 2009.

According to Aaron, Delta has also assumed control of recruiting and hiring at the Carriers. After October 29, 2008, Delta assumed complete responsibility for all recruiting and hiring of any personnel needed to staff the former Northwest operations.

In April 2008, Delta announced a reciprocal travel policy for Delta and Northwest employees engaged in business or personal travel. Aaron states that Delta is currently implementing plans for a fully combined policy on non-revenue passenger travel and anticipates complete implementation of a common policy on or about May 1, 2009.

Internal Communications

To facilitate immediate access to Delta technology and internal communications, Delta has assigned permanent Delta employee numbers to all Northwest employees in active service as of the closing date of the transaction. Aaron states that effective October 23, 2008, all active Delta employees were given access to the e-mail address directory of all active Northwest employees and vice versa.

Effective October 30, 2008, pre-merger Northwest employees who logged on to a desktop computer on the Northwest computer system were greeted by the Delta logo and instructions on how to navigate "DeltaNet," Delta's internal intranet system. Pending complete technology integration, Delta has provided employees on the Northwest system with a transitional version of DeltaNet called "DeltaNet 1.0." Delta has also created a set of employee communications and a website to provide merger-related information to employees of the Carriers.

FAA Operating Certificate

Aaron states that FAA regulations require that Delta devise a plan for the integration over time of the Carriers' separate safety, flight operations, aircraft maintenance, flight crew training, and system-wide control or dispatch functions. Delta submitted its plan to achieve a single operating certificate over a planned 15-month period to the FAA by letter dated August 29, 2008. By letter dated September 22, 2008, the FAA accepted the plan. Delta began implementation of this plan upon the closing of the transaction.

Common Marketing

According to Aaron, almost the entire flight inventory of both Delta and Northwest is now being marketed on a combined basis. In his second declaration, Aaron states that, as of mid-December, there is cross-selling of Delta and Northwest flights in computer reservation systems. Flights that are completely Delta-operated show up in response to searches on the Northwest website. On the Delta website, individuals can log on using either a Delta Sky Miles membership number or a Northwest WorldPerks membership number. Certain Northwest flights on Northwest's 747 aircraft, which Delta did not own or operate pre-merger, show up on the Delta website with Delta flight numbers. Aaron also states that all Northwest advertising includes either the Delta logo and/or the tag line "Northwest is now part of Delta Air Lines."

In his second declaration, Aaron states that the January 2009 edition of Delta's in-flight magazine will have revised features reflecting the merger. The terminal maps will include new icons showing the locations of the Northwest WorldClubs in addition to the Delta Crown Room Clubs. The fleet pages will now include the former Northwest aircraft in Delta colors.

Airport Operations

Delta now exercises control of all former Northwest airport ground operations, technology, scheduling, pricing, marketing, fleet planning, and route planning.

Delta began integration of Airport operations at Tokyo, where Northwest took over ground-handling of Delta flights from JAL. According to Aaron, the next step in integration will be implemented at common stations where Northwest is currently served by a subcontractor. At such common stations where Delta has an above-wing workforce, i.e., Passenger Service, or a below-wing workforce, i.e., Fleet Service, and Northwest does not, Delta will perform the previously sub-contracted Northwest work. At the 28 common stations where Delta has previously subcontracted either above-wing or below-wing work and Northwest has such a workforce, Aaron states that Delta will bring this work in-house following resolution of union representation and seniority integration issues. In his second declaration, Aaron states that, as of December 11, 2008, Delta employees now perform all customer service handling for Northwest flights at three domestic stations: Colorado Springs, Hartford, and San Juan. Aaron also states that Delta also currently manages all operations at two international stations, Nassau and Paris-CDG, and that Northwest oversees all operations at three international stations, Montego Bay, Tokyo-NRT, and Shanghai.

According to Aaron, Delta has also negotiated combined contracts with a number of third party vendors. These vendors included providers of fuel, deicing fluid, scheduled crew layover transportation and electronic customer notifications.

Frequent Flyer Program

On October 29, 2008, Delta sent participants in the frequent flyer program of both Delta and Northwest a message stating that "Northwest Airlines is now a part of Delta." Members of Delta's Sky Miles program and members of Northwest's World Perks program currently earn full mileage credit for flights flown on either airline. Elite status for upgrades is also now interchangeable. The actual combination of Northwest's World Perks member

accounts into the Delta Sky Miles program is scheduled to occur in 2009, to allow for computer transition and quality control.

Customer Service Policies and Fees

Delta's Airport Customer Service Department has implemented combined policies for the following Passenger Service and Baggage operations:

Passenger Service policies:

- Ammunition and firearms
- Medical syringes/devices
- Pets in cabin
- Deportee and Inadmissible passengers
- Unaccompanied minors
- Infant in arms
- Infant car seats
- Check-in time allowance
- Same Day Standby
- Crown Room Day Pass fee
- Crown Room member fee
- Direct Ticketing fees
- Ticket Reissue fees
- Same Day Confirmed Fee
- Purchased Standby Upgrade fee

Baggage Policies:

- Specialty item baggage allowance (surfboards, etc.)
- Baggage embargoes
- Positive Bag Match – International
- Second checked bag fees
- Excess bag fees
- Oversized bag fees
- Specialty item baggage fees (golf clubs, bikes, skis, etc.)

These policies are in effect at former Northwest operations. Delta is continuing to implement changes to harmonize the remaining Passenger Service and Baggage fees, according to Aaron.

Signs and Logos

Northwest's website and graphical displays now carry the Delta logo in addition to the Northwest logo. Immediately following the acquisition, Northwest's website displayed the legend "Northwest Joins Delta" and a link to click for further information about the merger. Delta has also cross-linked the Delta and Northwest websites in order to facilitate the on-line check-in of passengers on either carrier. As discussed above, both websites contain schedule and fare information of the combined Carriers.

Delta has begun the process of changing all electronic media and station signage to the Delta name. Transition signage announcing the merger and directing passengers has already been placed at Northwest ticket counters. The 69 Northwest stations not served by Delta prior to the acquisition will all be completely converted to Delta signage by March 31, 2009. Aaron states that the next 30 largest Northwest stations, including all Northwest hubs, will also be completely converted to Delta signage by March 31, 2009. In his second declaration, Aaron states that, as of December 11, 2008, the walls of the first eight of 69 Northwest stations have been painted "Delta blue." Finally, Aaron states that Delta has combined the previously separate Delta and Northwest Government Affairs offices in Washington, DC in the former Northwest location, and has completed the transition signage at that location.

Reservations and Check In

Immediately upon closing the merger transaction, Delta and Northwest reservation centers were linked to enable transfer of customers between call centers. Telephone calls to Northwest's reservations center are answered by a voice-recording that begins "It's official! Delta and Northwest Airlines have joined together to create the premier global airline" By mid-January 2009, the Interactive Voice Response technology at the phone reservation centers will be synchronized.

Delta has also added the "DL" airline designator code in electronic media and computer reservation systems for almost all flights scheduled by Northwest.

At 17 airports where the Delta and Northwest ticket counters are not located in close proximity to one another, Delta is enhancing the technology to allow passengers to check in at either counter for a flight on either Delta or Northwest. By December 1, 2008, Aaron states that the automated kiosks at those 17 stations will allow passengers who had booked travel on Northwest or Delta to utilize the kiosk of the other carrier for check in or other customer

service. This enhancement will be extended to kiosks system-wide as soon as practicable with completion no later than the first quarter of 2009.

Common Uniforms and Insignia

Plans are in process for former Northwest pilots, flight attendants, and passenger agents to wear Delta uniforms on or about March 31, 2009. An internal memorandum to Delta and Northwest Flight Operations employees dated September 12, 2008 states that, “Newly designed hat brass and wings will be issued to all pilots—Northwest and Delta alike—depicting the Delta two-tone red ‘widget’ logo. All pilots will leave behind our former wings in exchange for a common design that will represent us going forward together.” In his second declaration, Aaron states that as of December 11, 2008, more than 94 percent of Northwest customer service agents and flight attendants have placed orders for Delta uniforms.

DISCUSSION

I.

The Board’s Authority

45 U.S.C. § 152, Ninth, authorizes the Board to investigate disputes arising among a carrier’s employees over representation and to certify the duly authorized representative of such employees. The Board has exclusive jurisdiction over representation questions under the RLA. *General Comm. of Adjustment v. Missouri-Kan.-Tex. R.R.*, 320 U.S. 323 (1943); *Switchmen’s Union of N. Am. v. Nat’l Mediation Bd.*, 320 U.S. 297 (1943). In *Air Line Pilots Ass’n, Int’l v. Texas Int’l Airlines*, 656 F.2d 16, 22 (2d Cir. 1981), the court stated, “the NMB is empowered to . . . decide representation disputes arising out of corporate restructurings.”

II.

Existence of Representation Dispute

AFA, IAM, and AMFA assert that ALPA’s application is a “sham” and that there is no representation dispute for the Board to investigate because ALPA is the representative of the Flight Deck Crewmembers craft or class on Delta and Northwest. The Board finds no evidence to support the contention that ALPA’s action in invoking the Board’s process is either inappropriate or improper. Further, setting aside for the moment that PAFCA and NAMA have also filed applications in this case, the Board finds that a representation dispute exists

within the meaning of Section 2, Ninth of the Act with regard to ALPA's application. The term "dispute" as used in Section 2, Ninth, means a representation dispute raising a question concerning representation. *Republic Airlines, Inc.*, 8 NMB 13 (1980). There is no requirement that two or more organizations seek to represent the same craft or class before a dispute can be found to exist. *Northwest Airlines, Inc.*, 2 NMB 19 (1948) (rejecting the carrier's contention that a representation dispute is limited to a dispute among rival organizations or persons over the right to act as representative and finding a representation dispute where the IAM filed an application seeking to represent currently unrepresented employees). Further, the Board has long held that a representation dispute exists when a voluntarily recognized incumbent seeks NMB certification. *Air Florida, Inc.*, 9 NMB 524 (1982). ALPA has had voluntary recognition at Delta and at Northwest. Voluntary recognition, however, is not a Board certification, and it can be lawfully withdrawn. ALPA has now come to the Board alleging that Delta and Northwest now constitute a single transportation system for representation purposes and ALPA seeks Board certification in the newly created Flight Deck Crewmembers craft or class at the Carriers. Accordingly, the Board finds that these facts present a question concerning representation and there is a representation dispute to investigate with regard to ALPA's application.

Single Transportation System

Manual Section 19.4 provides that: "Any organization or individual may file an application, supported by evidence of representation or a showing of interest . . . seeking a NMB determination that a single transportation system exists."

In *Trans World Airlines/Ozark Airlines*, the Board cited the following indicia of a single transportation system:

[W]hether a combined schedule is published; how the carrier advertises its services; whether reservation systems are combined; whether tickets are issued on one carrier's stock; if signs, logos and other publicly visible indicia have been changed to indicate only one carrier's existence; whether personnel with public contact were held out as employees of one carrier; and whether the process of repainting planes and other equipment, to eliminate indications of separate existence, has been progressed.

Other factors investigated by the Board seek to determine if the carriers have combined their operations from a managerial and labor relations perspective. Here the Board investigates whether

labor relations and personnel functions are handled by one carrier; whether there are a common management, common corporate officers and interlocking Boards of Directors; whether there is a combined workforce; and whether separate identities are maintained for corporate and other purposes.

14 NMB 218, 236 (1987).

The Board finds a single transportation system only when there is substantial integration of operations, financial control, and labor and personnel functions. *Burlington Northern Santa Fe Ry. Co.*, 32 NMB 163 (2005); *Huron & Eastern Ry. Co., Inc.*, 31 NMB 450 (2004); *Portland & Western R. R., Inc.*, 31 NMB 71 (2003); *American Airlines & Reno Air*, 26 NMB 467 (1999). Further, the Board has noted that a substantial degree of overlapping ownership, senior management, and Boards of Directors is critical to finding a single transportation system. *Precision Valley Aviation, Inc. & Valley Flying Serv., Inc.*, 20 NMB 619 (1993).

In the instant case, the merger has been approved by the stockholders of both Delta and Northwest and by the United States Government, and Delta has acquired 100 percent of the ownership interest in Northwest. There is a single Board of Directors and the Carriers have already established a single senior management structure and have begun to implement common benefit plans for management and non-contract employees. Authority for human resources and labor relations functions for the Carriers has been placed under the control of a single executive, and a contract has been negotiated for pilots on the Carriers. Delta and ALPA negotiated an agreement regarding seniority integration for pilots and on December 8, 2008, an ALPA-designated panel of three arbitrators issued their decision on the integrated pilot seniority list. On December 10, 2008, PAFCA and TWU announced agreement with Delta on the terms of a new combined collective bargaining agreement for the Dispatchers, including the integration of their respective seniority lists. This agreement is subject to ratification by the employees in the Dispatcher craft or class. The agreement further provides that if it fails to ratify, the parties will proceed to arbitration. Delta has also reached agreements on seniority integration for Meteorologists and Mechanics and Related Employees. Delta has assumed authority for hiring and recruitment at the Carriers. Delta has assigned permanent Delta employee numbers to all Northwest employees in active service as of the closing date of the merger transaction. Effective October 23, 2008, all active Delta employees were given access to the e-mail address directory of all active Northwest employees and vice versa.

The FAA has accepted Delta's 15-month plan for transitioning to a single operating certificate and Delta has begun implementing this plan. Delta has implemented combined policies for customer service and baggage fees. Steps have also been taken toward combining frequent flyer programs, reservation, and check-in. Transitional signage informing the public regarding the merger has been placed at all Northwest ticket counters. Delta and Northwest flights are being marketed on a combined basis and are cross-sold in the computer reservation systems. Flights that are completely Delta-operated show up in response to searches on the Northwest website. On the Delta website, individuals can log on using either a Delta Sky Miles membership number or a Northwest WorldPerks membership number. Certain Northwest flights on Northwest's 747 aircraft, which Delta did not own or operate pre-merger, show up on the Delta website with Delta flight numbers. All Northwest advertising includes either the Delta logo and/or the tag line "Northwest is now part of Delta Air Lines." The Northwest website carries the Delta logo and information about the merger. Delta has added the "DL" airline designator code in electronic media and the computer reservation systems for almost all flights scheduled by Northwest. Plans have also been implemented to transition Northwest pilots, flight attendants, and customer service agents to Delta uniforms by March 2009. Approximately 94 percent of Northwest's flight attendants and customer service agents have ordered Delta uniforms.

The Board's criteria for substantial integration of operations do not require total integration of operations. *US Airways/America West*, 33 NMB 49 (2006). In the instant case, the merger has been approved and consummated, the Carriers are operating under a single board of directors and a single management structure, and substantial steps have been taken toward integrating operations. Those cases where the Board has failed to find a single transportation system are clearly distinguishable. In *Airtran Airways*, 25 NMB 24 (1997), the Board found no single transportation system where the merger had not been consummated and there was insufficient evidence that crews would be integrated even after the merger was effected. In *Frontier Airlines*, 24 NMB 635 (1997), the Board found that there was no single carrier for representation purposes where the carriers operated under separate management and the merger had not been approved by the FAA, stockholders, or the United States Securities and Exchange Commission. In *GoJet Airlines*, 33 NMB 24 (2005), the Board found there was no single transportation system where the two carriers continued to operate under separate management, separate labor relations and terms and conditions of employment, and separate hiring and recruitment. The Board also noted that each carrier retained its own website with no links or information about the other.

Based upon the application of the principles to the facts established by the investigation, the Board finds that Delta and Northwest operate as a single transportation system for representation purposes.

Effect of Single Transportation System Finding on Certifications at Pre-merger Northwest

With regard to the unions that have filed applications with the Board, the Board makes the following determinations: the applications of ALPA, PAFCA, and NAMA are docketed as R cases, and the Board will proceed to investigate and address the representation of these crafts or classes.

Delta contends that once the Board determines that a single transportation system exists, Section 2, Fourth, of the RLA requires the Board to review the status of all existing Board certifications to organizations representing employees at the pre-merger Northwest, not just those organizations that have filed applications with the Board. The *RLEA* court clearly stated that “the Board may investigate a representation dispute *only* upon request of the employees involved in the dispute.” 29 F.3d 655, at 664, (D.C. Cir. 1994). (Emphasis in original.) Thus, at the current time, the Board can examine only those certifications related to the unions who have filed applications: ALPA, NAMA, PAFCA, as well as that of TWU. In the context of investigating these applications, the Board finds no occasion to address Delta’s argument that Manual Section 19.7 is inconsistent with Section 2, Fourth, if used to preserve the certification of a minority union indefinitely, and the Board, therefore, does not take a position at this current time.

CONCLUSION

As stated above, the Board finds that Delta and Northwest are operating as a single transportation system for representation purposes under the RLA. Accordingly, ALPA’s application in File No. CR-6950 is converted to NMB Case No. R-7191 (Flight Deck Crew Members); PAFCA’s application is converted to NMB Case No. R-7192 (Flight Superintendants/Flight Dispatchers); and NAMA’s application is converted to NMB Case No. R-7193 (Meteorologists). Pursuant to Manual Section 19.6, the investigation will proceed to address the representation of these crafts or classes. The Incumbents and Intervenors are reminded that the showing of interest on the single transportation system is governed by Manual Sections 19.601, 19.602, and 19.603.

By direction of the NATIONAL MEDIATION BOARD.



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Member Hoglander, dissenting in part and concurring in part.

I agree with my colleagues' decision to address only the representation disputes alleged by those organizations that have filed applications: ALPA, NAMA, and PAFCA, as well as TWU. I differ with my colleagues in their approach to the Board's authority in merger cases. I unequivocally reject any dilution of the Board's consistent and well-settled law with respect to the representation consequences of mergers. Further, I also disagree with my colleagues' refusal to reaffirm, in the face of Delta's challenge, the Board's policy set forth in Representation Manual (Manual) Section 19.7 that existing

certifications remain in effect until the NMB issues a new certification or dismissal. For these reasons, I write separately.

Delta contends that once the Board determines that a single transportation system exists, Section 2, Fourth, of the RLA requires the Board to review the status of all existing Board certifications to organizations representing employees at the pre-merger Northwest. Delta further contends that the United States Court of Appeals for the District of Columbia Circuit's decision in *Railway Labor Executives' Ass'n v. NMB*, 29 F.3d 655 (1994) (*RLEA*) does not constrain the Board's authority or the scope of the Board's investigation once its services under Section 2, Ninth, have been properly invoked.

The Board has plenary authority to resolve issues with respect to the impact of corporate mergers, acquisitions, and consolidations on NMB certifications. *Flagship Airlines, Inc.*, 22 NMB 331, 421 (1995). In *TWA/Ozark Airlines*, 14 NMB 218 (1987) (*TWA/Ozark*), in which the NMB articulated the single-carrier test that it has since consistently applied in both the airline and railroad industry, the Board stated that "pursuant to Section 2, Ninth the Board upon investigation has *exclusive* authority to grant, withhold and revoke representation certifications." *Id.* at 235. (Emphasis in original.) In *Association of Flight Attendants v. Delta Airlines, Inc.*, 879 F.2d 906, 912 (D.C. Circuit 1989) *cert. den.* 494 U.S. 1065 (1990), the court noted that

[a]ll the courts of appeals to have considered the issue . . . have held that the question of whether a union's certification survives an airline merger is a matter within the exclusive jurisdiction of the NMB. See *International Ass'n of Machinists v. Northeast Airlines, Inc.*, 536 F.2d 975, 977 (1st Cir. 1976); *Air Line Pilots Ass'n v. Texas Int'l Airlines, Inc.*, 656 F.2d 16, 23-24 (2nd Cir. 1981); *International Bhd of Teamsters v. Texas Int'l Airlines, Inc.*, 717 F.2d 157, 159 (5th Cir. 1983); *Brotherhood of Ry. Clerks v. United Air Lines, Inc.*, 325 F.2d 576, 579-580 (6th Cir. 1963); *Air Line Employees Ass'n v. Republic Airlines, Inc.*, 798 F.2d 967, 968-969 (7th Cir. 1986).

This authority, however, is not without limit. As the same court noted in *RLEA*, *above*, the Board's authority is "exclusive only with respect to the precise matters delimited by Section 2, Ninth. If employees have not sought an 'investigation' under Section 2, Ninth, none can be initiated because the statute limits action to cases initiated by 'employees.'" 29 F.3d 655, 662. Further, the court stated that the Board's clear and mandatory obligation under Section 2, Ninth, is "to investigate representation disputes *only* at the behest of the affected employees." *Id.* (Emphasis in original.) Thus, the court concluded

that, “Congress left no ambiguity in the language of Section 2, Ninth: the Board may investigate a representation dispute only upon the request of the employees involved in the dispute.” *Id.* at 664. Therefore, it is clear that the Board cannot take any action with respect to certifications in crafts or classes where no application has been filed by the affected employees.

I also believe that the plain language of Section 2, Fourth, provides no support for Delta’s contentions. Delta cites the language in Section 2, Fourth, that states that “[t]he majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class. . . .” 45 U.S.C. § 152, Fourth. This Section of the Act gives employees the right to select their representative without carrier influence or interference but it provides no role for the Board. The Board’s duties and obligations regarding representation matters are set forth in Section 2, Ninth, and, as discussed above, the scope of the Board’s inquiry is limited to the particular craft or class of employees whose representation has been placed at issue. Further, the Board’s role in representation matters is investigative not adjudicatory. *America West Airlines, Inc. v. NMB*, 986 F.2d 1252, 1258 (1993)(stepping out of an investigative role into an adjudicative role is in excess of the Board’s statutory authority). To adjudicate a violation of Section 2, Fourth, as Delta requests would exceed the Board’s statutory authority.

Because the Board’s duties and obligations arise under Section 2, Ninth, and the Board cannot take any action with respect to certifications in crafts or classes where no application has been filed by the affected employees, I reject Delta’s contention that Section 19.7 of the Manual is in conflict with Section 2, Fourth. Such a contention flies in the face of consistent Board precedent in single carrier cases.

I also note that, in September of last year, during an oversight hearing before the Transportation Committee of the United States House of Representatives. The written testimony submitted by my colleagues and myself states:

Existing certifications remain in effect until an organization or individual files a single carrier application and the NMB rules on the representation consequences of its finding of a single transportation system. Thus, the certifications of the minority unions may remain in effect until the date of the NMB’s determination that the minority union does not have a sufficient showing of interest to trigger an election. The Board’s statutory authority to investigate representation issues in mergers arises when requested by an organization or individual.

My view of the Board's merger procedures is the same today as it was when I testified before Congress. The instant case is no different from any other merger case. Thus, as the Board has consistently stated in its merger procedures and its single carrier decisions, I find that the certifications of all the incumbent organizations remain in effect until the NMB issues a new certification or dismissal, as has been true for the last 20 years. See Manual Section 19.7. See also *Merger Procedures*, 14 NMB 388 (1987) (finding that creation, change and termination of representation rights are within the exclusive province of the NMB); *Changes to the NMB Representation Manual*, 28 NMB 412 (2001) (clarifying Manual on mergers following *RLEA* that existing certifications remain in effect until the Board issues a new certification or dismissal); *US Airways/America West Airlines*, 33 NMB 339, 358 (2006); *US Airways/America West Airlines*, 33 NMB 221, 240 (2006); *US Airways/America West Airlines*, 33 NMB 151, 170 (2006); *US Airways/America West Airlines*, 33 NMB 49, 73 (2006); *Allegheny Airlines/Piedmont Airlines*, 32 NMB 21, 29 (2004); *Allegheny Airlines/Piedmont Airlines*, 31 NMB 528, 538 (2004); *American Airlines/TWA Airlines*, 29 NMB 201, 213 (2002); *American Airlines/TWA Airlines*, 29 NMB 223, 236 (2002); *Missouri Pacific/Union Pacific*, 15 NMB 95, 108 (1988) (noting that in *TWA/Ozark*, the Board clarified its airline merger policy and stated that since the Board has exclusive authority to grant, withhold and revoke certifications, an organization's certification remains in effect until such time as the Board takes action). In contrast, my colleagues refuse to reaffirm that long-standing NMB policy.

In the instant case, the parties to the representation disputes that have sought the services of the Board are those organizations that have filed applications: ALPA, NAMA, and PAFCA, as well as TWU. Accordingly, I agree with my colleagues that the Board can only address the applications filed by ALPA, NAMA, and PAFCA. I would also remind the participants that under Manual 19.7 existing certifications remain in effect until the NMB issues a new certification or dismissal.