



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

<p>In the Matter of the Application of the</p> <p>INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO</p> <p>alleging a representation dispute pursuant to Section 2, Ninth, of the Railway Labor Act, as amended</p> <p>involving employees of</p> <p>DELTA AIR LINES, INC.</p>	<p>37 NMB No. 53</p> <p>CASE NO. R-7230</p> <p>FINDINGS UPON INVESTIGATION – ORDER</p> <p>August 10, 2010</p>
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This determination resolves election interference allegations filed by the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM or Organization) involving employees of Delta Air Lines, Inc. (Delta or Carrier). For the reasons below, the National Mediation Board (NMB or Board) finds that the laboratory conditions were tainted and orders a re-run election by Telephone Electronic Voting (TEV) and Internet Voting using a standard ballot.¹

PROCEDURAL BACKGROUND

On August 13, 2009, the IAM filed an application with the Board pursuant to the Railway Labor Act² (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth), requesting the Board to investigate whether Delta and Northwest Airlines, Inc. (NWA) were operating as a single transportation system for the

¹ The Board's new election rules will not apply as the initial application was docketed August 13, 2009 and the election was conducted using the standard ballot.

² 45 U.S.C. § 151, *et seq.*

craft or class of Flight Simulator Technicians (Sim Techs). The investigation established that Delta and Northwest constitute a single transportation system for the craft or class of Sim Techs. *Northwest Airlines, Inc./Delta Air Lines, Inc.*, 37 NMB 88 (2009). On January 11, 2010, the Board authorized an election in this matter. On January 12, 2010, the Board scheduled the tally for February 25, 2010 with the voting period beginning on February 3, 2010.

The February 25, 2010 Report of Election results reflected that less than a majority of eligible voters cast valid votes for representation: of the 91 eligible voters, 40 voted for the IAM, and there were 3 valid votes for other organizations or individuals. Therefore, the Board issued a Dismissal on March 1, 2010. *Delta Air Lines, Inc.*, 37 NMB 142 (2010).

On March 5, 2010, pursuant to the Board's Representation Manual (Manual) Section 17.0, the IAM filed allegations of election interference, seeking a re-run election using a *Laker*³ ballot. Delta responded on March 22, 2010. The IAM filed an additional response on April 7, 2010, and Delta replied on April 9, 2010. Participants submitted sworn statements and other documentary evidence in support of their positions. On May 5, 2010, the Board found that the IAM's allegations stated a *prima facie* case that the laboratory conditions were tainted and notified participants that it would conduct further investigation.

On June 8-10, 2010, twenty in-person interviews with management officials, union representatives, and employees⁴ were conducted in Minneapolis, Minnesota and Atlanta, Georgia by Investigators Cristina Bonaca and Timothy Sweeney. This determination is based upon the entire record in the case.

ISSUES

Were the laboratory conditions required for a fair election tainted? If so, what is the appropriate Board response?

³ In certain instances of election interference, the Board has authorized the use of a *Laker* ballot in which employees vote yes or no, and a majority of those voting determine the result. *Laker Airways, Ltd.*, 8 NMB 236, 253 (1981) (remedy developed in response to one of "the most egregious violations of employee rights in memory").

⁴ The Sim Techs chosen for interview were selected at random by Investigator Bonaca.

CONTENTIONSIAM

The IAM made a number of allegations which it argues, in aggregate, tainted the laboratory conditions required for a fair election. The IAM believes the actions of Delta necessitate a re-run election using a *Laker* ballot.

First, the IAM contends that a pay raise announcement made February 4, 2010 to non-contract employees tainted laboratory conditions necessary for a fair election. The announcement was made on the first full day of voting in the election, with voting materials mailed on February 3, 2010, and amounted up to a 10 percent increase for premerger Delta (PMDL) Sim Techs and up to a 16 percent increase for premerger NWA (PMNW) Sim Techs. The IAM questions the timing of the announcement – made eight months before the October 1, 2010 effective date. The Organization argues that this was a deviation from Delta’s standard practice of making announcements at most four months before the effective date. The IAM also challenges a January 1, 2009 pay increase of 3 percent to non-contract employees.

The IAM argues that Delta distorted the facts and the law when it communicated to employees that it was prohibited from offering the pay increase to contract employees, in light of the fact that the IAM had expressly communicated to Delta in a February 5, 2010 letter that Delta “can apply these raises to contract employees as well.”

The IAM also contends that a Delta supervisor promised to change work schedules to grant more weekends off so as to mirror what the PMNW Sim Techs receive under their contract with the IAM. In addition, the Organization argues that Delta prematurely used seniority integration committees to offer Sim Techs more favorable seniority integration than the IAM’s standard methodology of straight seniority.

The IAM alleges instances of discriminatory treatment which include denying a union representative access to Atlanta break rooms, and allowing the distribution of a petition during work hours which stated that the Sim Techs were properly part of the Mechanics and Related Employees craft or class in an effort to prevent an election.

Further, the IAM alleged that a Delta Supervisor conducted one-on-one meetings designed to influence junior Sim Techs not to vote for the IAM. There was also an allegation that a Delta Supervisor conducted surveillance outside

of a Tech Storage Room with the intent of discouraging employees from talking about the benefits of a union contract.

Finally, the IAM contends that Delta routinely misstated Board procedures, rulings, and law which resulted in confusing employees and distorting the facts. One example is the circulation of a “Monthly Base Rate Comparison” contrasting monthly pay and benefits for Sim Techs at Delta and other airlines, which included an average number representing union dues which was higher than the amount PMNW Sim Techs pay.

DELTA

Delta responded that the pay increases were pre-planned, and since its emergence from bankruptcy, it had consistently and publicly committed to its non-contract employees that they would receive industry-wide standard pay by the end of 2010. The Carrier stated that it did not accept the IAM’s offer to increase pay rates for its contract employees as it wanted to align pay, benefits, and work rules and would not piecemeal the process. As for the timing between the announcement and the increase, Delta argued that this has varied depending on the circumstances. The pay raise would apply to the non-contract employees even if they voted for representation, but only until those employees were covered by the applicable collective bargaining agreement (CBA).

Delta denies that its supervisors offered to change work schedules, had coercive one-on-one meetings, denied access to break rooms for union representatives, distributed petitions on the proper craft or class of the Sim Techs, or conducted surveillance.

Delta states that its communications with employees were truthful and protected by the First Amendment. Further, Delta argues that it diligently trained its managers and supervisors about obligations under the RLA and allowed the IAM many forums through which to communicate with employees. With respect to the Monthly Base Rate Comparison, Delta circulated a number of these documents most of which represented the “average” dues as less than what PMNW Sim Techs pay. The comparison highlighted by the IAM was in actuality only \$2.22 in excess of what the PMNW Sim Techs were paying. Delta contends: “Such a minute difference would not be material in any event, even if it was a mistake or misrepresentation, which it was not.”

Finally, Delta viewed the McCaskill-Bond legislation, Public Law 110-161, Div. K, Title I, § 117, as legally requiring it to create seniority integration

committees before representation was resolved. Delta and the IAM are currently litigating the McCaskill-Bond requirements in federal court. *Int'l Assoc. of Machinists and Aerospace Workers, AFL-CIO v. Delta Air Lines*, No.1:08-cv-02114 (RWR) (D.D.C). As a result, Delta suggests that the Board should exercise its discretion and decline making a decision on the permissibility of the seniority committees as the lawsuit is still pending with the United States District Court for the District of Columbia.

Delta argues that none of the actions complained of by the IAM undermined the laboratory conditions necessary for a fair election. However, Delta contends, even if the Board were to find otherwise, the IAM's demand for a *Laker* ballot would be unjustified by the facts and Delta's significant effort to follow the legal obligations of the RLA.

FINDINGS OF LAW

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

I.

Delta is a common carrier as defined in 45 U.S.C. § 181.

II.

The IAM is a labor organization and/or representative as provided by 45 U.S.C. § 151, Sixth.

III.

45 U.S.C. § 152, Third, provides in part: "Representatives . . . shall be designated . . . without interference, influence, or coercion"

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

STATEMENT OF FACTS

The Laboratory Period

The Board generally holds that laboratory conditions must be maintained from the date the carrier becomes aware of the organizing drive. *Stillwater Central R.R., Inc.*, 33 NMB 100 (2006); *Mercy Air Serv., Inc.*, 29 NMB 55 (2001). However, in the absence of extraordinary circumstances, the Board will not consider evidence of occurrences prior to one year before the application was filed. *Delta Air Lines, Inc.*, 30 NMB 102 (2002). Therefore laboratory conditions had to be maintained beginning August 2008, one year prior to the filing of the IAM's application.

A. Changing Wages or Benefits

1. Pay Increases

Delta states that it had publicly and consistently committed to its employees, since its emergence from bankruptcy, that it would bring them to "industry-standard" levels by the end of 2010. Delta produced a number of supporting documents supporting this commitment.

On April 14, 2008, Delta's CEO Richard Anderson and President Ed Bastian issued an internal memorandum to its U.S. based employees that:

Upon closing of the merger, Delta frontline employees will receive pay increases that will continue our progression toward industry-standard pay for all workgroups by the end of 2010. . . .

During the integration of the two carriers, Delta's frontline employees will continue to receive pay increases in keeping with Delta's commitment to move

frontline employees to industry-standard by the end of 2010. Northwest's contract employees will continue to receive pay increases in accordance with their existing collective bargaining agreements.

Delta acquired Northwest on October 29, 2008, and shortly after it announced its first pay increase of 3 percent for non-contract employees to be effective January 1, 2009. In the memorandum titled, "Pay Increases Coming Soon," leadership stated that: "We are pleased to announce that non-contract employees will receive pay increases as we continue our progression towards industry-standard pay by the end of 2010."

Delta refers to an online chat from November 11, 2009 with Delta President Bastian and employees as further evidence of the commitment to make a pay increase. In response to a question about raises, Bastian remarks: "We're in the middle of the 2010 budget/planning cycle and decisions and timing on pay adjustments are part of that process. We expect to announce our plans by the end of the year." Executive Vice President Human Resources & Labor Relations, Michael H. Campbell, stated in his interview that another executive, Tony Charaf, publicly told employees on December 8, 2009 that he believed that the company would keep its commitment to industry standard pay in 2010. The Carrier provided a transcript from another online chat with Delta CEO Anderson from January 12, 2010, during which Anderson was asked when non-contract employees will know the pay plan for 2010. Anderson replied, "In the next few weeks."

Campbell stated that the decision about the pay increase was made at the January 11, 2010 Corporate Leadership Team meeting. Delta decided it would give the entire raise on October 1, 2010. "Once the decision was made they decided to go ahead and announce it, since employees were expecting an announcement any day."

Robert Kight, Delta's VP, Compensation, Benefits and Services, provided information on the pay increase through a declaration and interview. He stated that management had made a decision about compensation shortly after the January 12, 2010 online chat with Anderson. Kight stated: "Because I participated in the decisions, I know that Delta's decisions were finalized shortly thereafter, but Delta deferred the announcement because of two imminent events relating to the implementation of the Northwest merger on which Delta wanted all management employees to focus." The major operational events involved the cutover of two "critical" NWA computer systems into their counterpart Delta systems (reservations and airport computer

systems). Kight stated that Delta's executives agreed with the recommendations of the operations management team to defer announcement of the 2010 pay increases during the cutover period in order to avoid any distractions for leaders and front line employees during these critically important transitions. On Monday, February 1, 2010, it was clear the cutover had gone well, according to Kight, so Delta decided to proceed with the pay increase announcement. Tuesday and Wednesday were devoted to briefings of leaders prior to the announcement. Kight stated that this is Delta's "normal approach for an announcement of such magnitude." There was a lot of emphasis from Kight and Campbell on the need to have "leaders" or senior management involved and briefed before the cutovers and pay increase announcement.

Kight commented that Delta had originally set February 1, 2010 as the date for the pay increase announcement but due to concerns related to the inventory cutover, not wanting to make the announcement on a Friday, and a leadership conference the following week, the announcement was moved to February 4th. Campbell stated: "It wasn't realistic to push the announcement to the following week because we had a worldwide leadership meeting between the CEO and 2500 managers. We were going to be announcing profits and profit-sharing at this meeting, so Delta wanted to be sure to announce the pay raise prior to this."

On February 4, 2010, Delta announced a pay increase⁵ for all U.S. based non-contract employees. The announcement titled "Fulfilling Our Commitment: Industry Standard Pay" was made February 4, 2010 but would not be effective until October 1, 2010. The pay increase, the amount of which would vary by workgroup, would amount to up to 16 percent for PMNW Sim Techs and up to 10 percent for PMDL Sim Techs. Accompanying the pay announcement was a Q&A document, indicating that represented employees would not receive the increase. Question number eight asked why the

⁵ The IAM does not challenge how Delta calculated the pay increase so the amount of the pay increase is not at issue here. In addition, Delta's literature distributed with the pay announcement did specify that non-contract employees would receive the increase even if they chose representation. Their wages would be adjusted to the same level as their PMNW counterparts once a CBA was negotiated. There was a document circulated to employees after the pay announcement titled: "*October 1, 2010 General Increase - Flight Ops -- Flight Simulator Technicians.*" Q.6 provides: "What happens to our raises if IAM were to be voted in? We believe that until a combined contract was negotiated, PMNW employees would continue to be paid based on the IAM contractual pay scale and PMDL employees would be paid on the Delta non-contract pay scale, which would include the new pay rates effective October 1, 2010."

premerger NWA employees represented by the IAM and AFA are not getting the raise. The answer provided:

Just as we are honoring the commitment made to Delta people three years ago, we also have continued to honor the packages of pay, benefits and work rules provided for in the contracts still in place in workgroups where representation has not yet been resolved. When representation is resolved, we plan to begin the process of fully aligning the pay, benefits and work rules of employees in those groups. Those elements represent a total package

For these reasons, we have consistently urged the AFA and IAM to take the steps necessary to resolve representation, which only they can do under current law, so that all employees can fully participate in the benefits of the merger.

Kight stated that this pay increase is consistent with virtually all of Delta's other general pay increases and will apply to all of Delta's approximately 45,000 noncontract employees.

With respect to the announcement being on the first day of voting in the Sim Tech election, Delta stated that by the time the Board had announced the dates for the election on January 12, 2010, it had already concluded the pay evaluation process and had "repeatedly told its employees, in response to their inquiries, that a pay announcement would be forthcoming shortly."

In response to the IAM questioning the eight month delay between the announcement and the effective date, and the break from a prior practice of a July or January announcement, Kight stated that Delta considered taking two steps in 2010, one in July and another at the end of the year but after much internal discussion, Delta decided to make the increases in a single step, October 1, 2010. A document circulated with the pay increase announcement, "October 1, 2010 General Increases – General Questions -- Scale Employees" provided in question 5:

Our recent increases have been on either July 1 or January 1. Why is this increase effective October 1? Our commitment to non-contract, frontline employees was to get to industry standard pay at the top of the

scale by the end of 2010. We thought a lot about breaking that into two steps on July 1 and at the end of the year, but ultimately we decided to do it all in a single step on October 1.

When asked about the October effective date, Kight said:

It was a group decision. They didn't want employees to feel they were doing it on the last day of the year. They wanted to get the full commitment out there so there wouldn't be any doubt from employees. Also, October was the midpoint between July and January.

Campbell stated that the decision about the pay increase was made at the January 11, 2010 Corporate Leadership Team meeting. Delta decided it would give the entire raise on October 1, 2010. "Once the decision was made they decided to go ahead and announce it, since employees were expecting an announcement any day."

Interviews with McCausland and Regan

Former Union Steward and PMNW Sim Tech Roger McCausland stated that several Sim Techs told him that the timing of the announcement impacted their vote. He stated that "18 people in Atlanta who were undecided in the week prior to the announcement, all voted no after the February 4, 2010 pay increase." He viewed the wage increase announcement as "a way to separate whether to be union or not; I believed it was a carrot offered to make the employees not select the union." McCausland commented that overall he believed it was a clean election campaign but the pay announcement changed his mind.

Tom Regan, IAM Grand Lodge Representative, was first assigned to work on the Sim Tech election during the first week of January 2010. Regan had three meetings at the Northwest location, as well as several meetings in Atlanta. Regan remarked: "There was no doubt in my mind based on the feedback I got from the Atlanta Sim Techs . . . that IAM would win. But when the raise announcement came out, I grew concerned that people would change their mind." Regan also stated that PMDL employees told him that "the pay increase announcement was going to hamper the IAM's efforts to organize." Regan met with Sim Techs in both Minnesota and Atlanta and believed he had a good understanding as to who was for and who was against the union.

Employee Interviews

Many of the employees interviewed remarked that it was a strange time to make the pay increase announcement. One employee stated that “it was a convenient time to announce this, at the beginning of the election.” The same employee stated that “others felt this as well [about the timing of the pay increase announcement].” Another employee remarked that pay is the only issue that could sway an employee one way or another and that from his perspective, “a handful of people would have been swayed by the announced pay increase.”

One employee, who commented that he was actually influenced by the pay announcement, stated:

A week before the announcement, a Sim Tech told them that an announcement would be coming. . . . I believe that this announcement influenced the election . . . there were about six people who were not sure whether to vote for the IAM, particularly the new employees. I felt that the announcement on the day the election was going to start had a big impact.

Another Sim Tech stated that the “pay increases affected how I voted and how a lot of others voted.”

Several of the PMDL Sim Techs commented that they had been promised a pay increase by the end of 2010 and were expecting an announcement.

2. Promise to Change Work Schedules

The IAM alleged that some of Delta’s upper management in Atlanta promised employees that Delta would change Sim Tech’s work schedules so that they would have more weekends off. McCausland stated in his declaration to the NMB that:

The NWA shop has weekends off pursuant to the union contract, and Delta announced to the Delta employees that the managers in Atlanta will be asked to provide more weekends-off slots in their bid schedule. I have heard one person urge others not to vote for the union because with the change in work

schedules and the raise it was not worth voting for the union to see if Delta 'steps up to the plate.'

When interviewed on June 8, 2010, McCausland stated that he saw a posting about a promise to change weekend shifts in Atlanta on *Sim Tech Online*.⁶ An Atlanta Sim Tech had communicated online that Atlanta supervisors had said they could have a more flexible work schedule and get away from the flat schedule.

None of the Atlanta Sim Techs stated that any supervisor had offered to change work schedules to offer less weekend work or that there had been any changes to their schedules. What was revealed was that when Michael Wysocki, Delta's Director of Technical Operations and Support, came to Atlanta to lead the entire Sim Techs craft or class, Atlanta Sim Techs hoped he would provide a more flexible work schedule as he had done for the PMNW employees.

Wysocki provided a sworn statement to the Board on March 22, 2010. Wysocki stated that he has responsibility for the combined Sim Tech craft or class, including approval for any changes in scheduling. Wysocki stated:

In ATL, April 1st is the effective date of the new schedule, with bidding commencing sometime in February/March. . . . I recall during an informal Q&A session . . . a Simulator Technician asked me directly if Delta was willing to consider making changes to scheduling practices. I replied that I was not permitted to make any promises or commitments during the campaign. . . . At no time did I, or any member of 'upper management' make such a promise or direct leadership at any level to make such a change to the schedule.

Michael Wysocki was also interviewed in person on June 10, 2010 and stated that:

The Atlanta Technicians knew that I was the manager who created a good work/life balance in terms of some

⁶ Sim Tech Online is an international website which posts relevant information for Sim Techs including job openings, pay scales and wages at various carriers, forums to discuss issues, and an opportunity to communicate with one another. Some of the discussion forums are password protected. <http://www.simtechonline.com>.

of the shifts at PMNW. . . . The Sim Techs in Atlanta asked me if I was open to changing the work schedules in Atlanta. I said I was willing to promote an analysis and take a look once representation was resolved.

One Atlanta Sim Tech stated:

When Delta acquired Michael Wysocki, the PMDL Sim Techs wanted to get the same 10-hour shifts as their NWA counterparts. The weekend shift falls into this category because the PMNW Sim Techs had 10-hour shifts with weekends off. The supervisors did not change the Sim Techs' work schedules during the election. They were very non-committal about the issue.

A PMDL Sim Tech stated that the issue of changing work schedules was raised with Michael Wysocki. "Mike said he couldn't make any promise at the time but that he would look into it. He said that he was not allowed to say anything about it at the time." Another PMDL Sim Tech stated:

[Changing schedules] . . . is an ongoing discussion at Delta in April. They said that once the vote started they couldn't change anything until the election was over. Even after the election was over, management would not discuss this issue. They want to leave it the way it is so as to avoid interference.

3. Premature Use of Seniority Committees to Offer "Benefit" of Relative Blend Integration

The IAM asserted through a March 3, 2010 declaration from McCausland that Delta prematurely created seniority integration committees in Atlanta early on in the merger before representation had been resolved. McCausland stated that "Delta's team came up with a plan to merge the two shops by relative⁷ blend rather than straight seniority I believe this was presented to contrast with the IAM's stated method of using hire date into the classification." The proposal was posted at the Northwest shop and it "allowed

⁷ Relative blend is a methodology used by the PMDL Seniority Integration Committee where seniority is determined by a random formula blended with the number of years an employee had worked as a Simulator Technician.

over 40 people to get a better deal than how the IAM contract deals with seniority.”

When asked about the relative blend proposal suggested by the Sim Tech seniority integration committee issue during his in-person interview on June 8, 2010, McCausland stated:

The Sim Techs did not respond very well to this. They felt that the proposal was harmful to the senior people in Atlanta. The [relative blend proposal] wasn't necessarily a benefit for me. I thought it would impact me negatively. I understood that it was just a proposal.

In its March 22, 2010 response, Delta stated that the McCaskill-Bond legislation requires airlines to create seniority integration committees before representation is resolved. In Delta's view,

[The] statute requires airlines involved in mergers to follow Sections 3 and 13 of the Allegheny-Mohawk Labor Protective Provisions created by the Civil Aeronautics Board (CAB). The CAB had long held that employees who were nonunion prior to the merger had the same right to participate in seniority integration proceedings as union-represented employees.

Delta stated that in order to comply with the McCaskill-Bond legislation it invited premerger Delta employees in various noncontract work groups to designate a merger committee to act on their behalf and work with their counterparts from Northwest. In a November 11, 2008 letter, Campbell invited the IAM, as the representative of the PMNW Sim Techs, to participate in the process. The IAM responded on November 14, 2008, through its President/Directing General Chair, Stephen M. Gordon, that Delta's proposal was premature as “federal law only allows us to reach an agreement on seniority integration once the representation issues are resolved.”

Delta initiated the seniority integration process for the Sim Tech workgroup in March 2009. Delta asked a committee of PMDL Sim Techs to develop their recommendation for a fair and equitable integration of the post-merger group. The committee representing the PMDL Sim Techs consisted of two employees and an attorney retained by Delta but who held privilege with only those Sim Techs on the committee. In June 2009, the Sim Tech

committee presented its proposal to Delta. Campbell stated that, their “proposal was not and is not Delta’s proposal, and Delta has not adopted or implemented the proposal.”

A MN Sim Tech stated that “most employees believe the straight seniority blend would be more beneficial” than the relative blend seniority. The same employee stated: “I would likely be in the same position under either integration blend . . . and I do not believe the proposal was a form of benefit.”

Another MN Sim Tech stated: “It’s not a huge benefit one way or another; it’s more beneficial for about half the employees and less beneficial for the other half.” An Atlanta Sim Tech commented:

I felt that the blended seniority was the wrong way to go. There was no vote. The members of the [seniority integration committee] decided this issue on their own. The proposal was vehemently opposed by a majority of Sim Techs in Atlanta.

Another Atlanta Sim Tech stated that from his perspective it wasn’t the right proposal. Some PMDL Sim Techs were for it and some were against it. One Atlanta Sim Tech stated that he believed the PMDL Sim Techs had a right to work on integration issues prior to resolution of representation. He understood that the agreement was just a proposal, and Delta management told him they wouldn’t sign the proposal unless the PMNW people agreed to it. The same Atlanta Sim Tech explained the rationale for selecting relative blend:

Both groups (Atlanta and Minneapolis) had “bubbles” (times when they didn’t hire employees for several years); they thought this would be the fairest way to integrate. They believed that most people would be okay with the proposal. There wasn’t much dissension in Atlanta. They thought this was the best way to do the integration. They were not intending the proposal to have a negative impact on Northwest.

B. Discriminatory Treatment

1. Denial of Access to Break Room in Atlanta

According to Campbell, Delta’s general advocacy policy provides:

As part of the merger agreement, they assumed the contracts of Northwest. Northwest had its own advocacy policy. Delta's advocacy policy is that they allow employees in the stations to discuss union issues – not on working time. Delta does not allow third parties, such as IAM, to access break rooms. They have not consolidated the Simulator Technicians' break rooms in Atlanta. In ACS for example, the Delta advocacy policy applies to the consolidated break rooms.

McCausland alleged that he was denied access to a break room in Atlanta on January 4, 2010, during a visit where he was seeking to communicate with other Sim Techs about issues related to the election. In his declaration, McCausland stated that:

I flew to Atlanta and received a phone call from a concerned Delta Simulator Technician. He called to inform me what the Delta supervisors said while I was in Atlanta; I would not be allowed to be in their break rooms to answer any questions Sim Techs might have. I didn't represent anyone in Atlanta, so I wouldn't be in the building.

When interviewed in Minnesota, McCausland stated that he was not sure whether he would have been permitted in the break room as there was conflicting information. He took the Sim Tech's word that he would not be permitted on the property, so he provided information to employees off property.

Delta's Director of Technical Operations and Support Wysocki stated that he and McCausland have known each other personally for years in the course of their working relationship at NWA and have frequently communicated on a number of issues since the merger. Wysocki stated that:

McCausland could have made the request to me, or to any member of the Simulator Support leadership team, and the request would have been forwarded to me. He did not request access from me nor am I aware of Mr. McCausland making such a request to an ATL leader. Furthermore, no Simulator Technician Supervisor advised any Simulator Technician that

Roger McCausland was not allowed to be in the ATL Simulator Technician break room.

When interviewed in person, Wysocki stated that if McCausland had asked him for access, he would have approved it – in non-work areas during non-work time consistent with Delta’s advocacy policy.

2. Distribution of Mechanics and Related Petition

The IAM alleged through McCausland that in August 2009, Atlanta Simulator Technicians began to circulate a petition asserting that they belonged in the Mechanics and Related Employees craft or class in an effort to prevent an election.

In McCausland’s in-person interview, he stated that he believed the petition was circulated during work hours. “The petition was passed along from employee to employee, but the managers were present when it happened. The petition never made it up to Minneapolis.”

Wysocki responded for Delta that he became aware in the fall of 2009 that a group of Atlanta Sim Techs had taken it upon themselves to circulate a petition which they intended to send to the Board to advise it that they wished to be part of the Mechanics and Related Employees craft or class. He stated that, “No Delta Simulator Technician leader permitted this petition to be circulated during work time. Had Simulator Technician leadership witnessed such conduct, he/she would have asked the Simulator Technician(s) to cease such activity during work hours.” When interviewed in-person about this issue, Wysocki confirmed that no management employee was responsible for the circulation of the petition.

An Atlanta Sim Tech stated that he didn’t know how the petition started. “It was handed to me just as I was coming into my cube area before shift.” He said there was no big meeting about the petition, “it was more or less done one-on-one.” Another Atlanta Sim Tech stated that the petition was created and passed along by employees “because they thought they might get more attention as a group if they were included with the mechanics.”

A Sim Tech commented that he remembers discussions about the petition but it was his understanding that only Delta management could submit documents to the NMB on this issue. The same employee said that it makes it easier to work with the mechanics if they are all part of the same craft or class. Another employee remarked that he didn’t believe management had

anything to do with the circulation of the petition. From his perspective, he believes that Sim Techs are part of the Mechanics and Related Employees craft or class. He stated it would be a benefit to be part of the Mechanics group because it would give them a bigger voice.

One Sim Tech who helped circulate the petition said that it was circulated during the cross-over period between shifts. He was aware of the Sim Tech who drafted the petition and confirmed it was not created by a management official nor did management know about it.

C. One-on-One Meetings

The IAM alleged that Delta Supervisor-Simulator Support Rick Maas, at Delta's facility in Minneapolis, engaged in coercive one-on-one meetings with Simulator Technicians shortly before the election started. McCausland submitted a declaration where he stated that shortly before the election Maas approached junior Sim Techs before their shift was beginning and told the employees to wait to vote because there would be "news" so they should wait to hear what Delta had to offer before they voted. McCausland stated: "Sure enough, on the first full day of voting Delta announced the 16% pay raise. At least three of the people I spoke to confirmed they decided to follow his instructions to wait and after the pay announcement, some reported to me that they chose not to vote for the union."

McCausland was interviewed on June 8, 2010 in Minneapolis, Minnesota. McCausland stated that after a trip to Atlanta he was advised that Maas had met with some of the junior Sim Techs so McCausland went to follow up with them. "All three said yes, that [Maas] talked with them one-on-one during their shift and that he told them to wait until an announcement was made before they voted."

In response, Maas provided a declaration which stated that on January 12, 2010, he reviewed the transcript from an online chat that CEO Anderson had with employees. In response to a question from an employee about pay increases in 2010, Anderson responded that employees should expect to hear something in the next few weeks. Maas further stated in his declaration:

I recall having conversations with three Simulator Technicians during the last week of January 2010 regarding a pay and benefit comparison chart I again stated my opinion that it was important for them to review all of the information available before making

a decision regarding representation. I told them that I would respect their decision regardless of how they voted, that I believed there would be an important announcement soon and . . . that in my opinion it would be in employees' interests to wait to get accurate factual information before voting.

Maas was interviewed on June 8, 2010 in Minneapolis, Minnesota. He stated that after a weekly Sim Tech meeting, he approached three Sim Techs individually at the beginning of their shift and asked them whether they had any questions about the information Delta had mailed them about the election. "I told them it would be in their best interest if they held off and didn't vote. I said I didn't care how they voted . . . [but] that they should wait until they had all the information." When asked why he spoke to the three Sim Techs he responded that "these three were present on my shift." He also stated that one Sim Tech in particular on that shift had approached him with a question and he had provided information in response. When asked how he knew about the pay announcement, he stated that in addition to the online chat transcript, there was a weekly supervisory meeting where management told him there would be a general announcement but there was no reference to it being about pay.

Two Sim Techs interviewed in Minnesota stated that they heard rumors that a manager told employees to wait to vote because an announcement was coming. One of the PMNW Sim Techs who was interviewed discussed a one-on-one meeting with Maas:

My supervisor Rick Maas talked with me one-on-one before the election. He wanted to make sure I had all the information. I was concerned about the pay raise. The information about pay impacted the way I voted.

Rick said to wait a few weeks before deciding on the election. And persuaded me to 'try' the Delta way, it might be better than a union. And he said there would be news coming from Delta that would help my decision. I assumed he meant the pay raise.

The pay increases affected how I voted and how a lot of others voted.

This employee also stated with respect to the February 4, 2010 pay announcement, "I understood that the raise only applied if we were non-union."

D. Surveillance

The IAM alleged that Minnesota Supervisor-Simulator Support Barbara Price conducted surveillance outside of the Tech Storage Room in an effort to discourage employees from talking about the benefits of a union contract.

McCausland stated that there was a meeting in the fall of 2009 in the Tech Storage room where there was a discussion about union issues. He stated that Price came into the room to get a soda and loitered there stopping the conversation. He recalled another instance after the election had started where he was meeting with Regan, the new Grand Lodge Representative, and others in the Tech Storage Room and Price walked back and forth outside the door. McCausland closed the door but was later told that all meetings in the Tech Storage room should be open-door unless they were grievance related. McCausland stated that during one shift he was told that employees put stereo speakers over the door so that supervisors couldn't hear conversations inside the room. McCausland stated: "Barb Price did not say that she was opposed to the union. When she was the lone supervisor in the building, it seemed that she felt the need to find out what was happening. She did not have personal animus against the IAM."

Price provided a sworn statement to the Board on March 19, 2010. She stated that the Tech Storage room is a multi-purpose room with a lunch table, refrigerator, cubicles, mail boxes for the Sim Techs, and storage space. Employees and supervisors both work and take their breaks in the room. Sim Techs and Supervisors have "pass down meetings" there where they share information about issues that came up during their shift with the Supervisors and Sim Techs on the next shift. Supervisors also use the room to discuss work assignments and hold meetings. In addition, Price's office is directly across the hall from the Tech Storage room and she was on crutches for two weeks of the election period so it would be difficult for her to make a silent approach. She confirmed that she has "never loitered for any purpose."

Price stated that she didn't think she was in the Tech Storage room more or less than normal during the election period, and she enters the room for many reasons including eating dinner, delivering mail, etc. She stated that she was not aware if employees moved speakers over the door. She said:

99 percent of the time the door to the room is open. As far as I know, people are allowed to close the door. On one occasion (when Tom Regan was here unannounced), the door was closed; I informed my boss [Debosschere] that it was closed. He asked me to get Roger [McCausland] and come out and talk to him on the phone. . . .

Sim Techs do not have a set break period. They are on call anytime they are in the office. I enter the Tech Storage room to find employees in order to get them to perform work-related tasks.

During Wysocki's June 10, 2010 interview he stated that the IAM had an office/room onsite at the PMNW site and employees were able to meet with former Chief Steward McCausland to talk about confidential issues and close the door.

Manager of Simulator Support in Minnesota, Jeffrey Debosschere, was interviewed on June 8, 2010, and stated that he doesn't believe that Barb Price was conducting surveillance. Debosschere stated that they were very liberal in permitting union representatives to come on property but the general rule was that the door to the Tech Storage room should remain open. He stated:

On one occasion when I wasn't here, in early January, several union representatives came to the facility unannounced. Barb was on duty. She called me at home and told me that a bunch of union people went into the Tech Storage facility and closed the door. I told her to give them a little time. After over a half-an-hour, I asked Barb to have Roger [McCausland] come out and talk with me on the phone. Roger said that he would open the door. I told him that they should wrap it up; the meeting lasted another ten minutes or so.

On another occasion in early February, the union representatives came in on an announced visit. They were told that they should keep the door to the Tech Storage room open. They stayed down the hall, far away from the Tech Storage room during the forty-five minute meeting.

Of the PMNW Sim Techs, the majority commented that they witnessed no surveillance but that supervisors were always around and allowed in the Tech Storage room. One employee commented that union-related conversations stopped when Barbara Price entered the room and did not continue until she left. The same employee commented that Ms. Price's presence seemed to increase during the election period but remarked that the door was closed more often during this period. Another employee commented, "This is a petty issue."

E. Carrier Communications and Pay Comparison

IAM

The IAM alleged that after the merger, Delta distributed communications to employees making it seem that IAM had done something unlawful by not filing sooner for elections. The IAM also faults Delta for implying that it was "prohibited" from giving pay increases, when in fact, the IAM had given its express consent for this. Much of this correspondence from Delta and IAM was posted on the website for Delta employees, DeltaNet. <http://dlnet.delta.com/>

The IAM specifically takes issue with two letters from Michael Campbell (from November 2008 and February 2010) responding to letters from the IAM where the Organization gives its consent to grant contract employees the pay increases. Campbell states that Delta wants to "align the pay, benefits and work rules for our combined employee workgroups as soon as possible. But we are not prepared to piecemeal the process..." After discussing Delta's attempts to work with the IAM on representation issues, Campbell states: "It is the failure of IAM to support expedited resolution of post-merger representation issues and seniority integration that is preventing the alignment of the compensation packages." Campbell also refers to the fact that after the America West/US Airways merger, the IAM waited only two days after the corporate transaction closed before filing an application for a single system determination. The IAM contends that Delta misstated the law when it advised employees that it could not apply the new pay policies to contract employees until representation issues were resolved.

The IAM also challenges a July 24, 2009 letter from CEO Anderson to the Board, in which he thanks the Board for meeting with Delta, the IAM, and other involved organizations. Anderson also stresses the need to resolve representation issues so that Delta can fully integrate its workforce. At issue from the IAM's perspective, is the following passage from Anderson's letter:

The Delta merger continues to progress every day and we appreciate your willingness to listen to the points we made, particularly with regard to how important it is to resolve the remaining representation issues. Until that happens, we cannot fully integrate our workforces and get all people aligned with the same pay scales, benefits, and work rules

All but two of the pre-merger unions at both Delta and Northwest moved quickly to resolve their representation status. The IAM and AFA have not in spite of the fact that the NMB has determined that Delta and Northwest constitute a single carrier in representation cases covering several craft and classes. It is time for the IAM and AFA to act.

In addition, there was a November 2008 letter on DeltaNet, "*Richard promises pay hike announcement soon*," where Richard Anderson discussed the three percent wage increase. He stated:

We're still working out final details, but there will be a pay increase for all nonpilot work groups at Delta beginning January 1. For those of you who have just joined the Delta family, if you are already covered by a collective bargaining agreement, we are not allowed to apply our pay policies until representation issues are resolved. So in the mean time you will continue to have the pay provided for in those agreements.

The IAM alleges that the misrepresentation continued after the election when Wysocki and SVP Flight Operations Dickson distributed a memo to the Sim Techs on February 25, 2010 titled "Simulator Technicians reject IAM representation." The letter stated in relevant part: "This afternoon we were notified by the National Mediation Board (NMB) that a majority of Delta's simulator technicians have rejected IAM representation."

Finally, the IAM refers to a Monthly Base Rate Comparison circulated to the Sim Techs which shows an average dues rate of \$71 per month. The IAM challenges the "fictitious" amount for union dues because it is higher than what the PMNW Sim Techs were paying. In addition, the IAM views the document as misleading because it doesn't reflect the value of all the added benefits people receive under a union contract.

Delta

Delta responded that it has a First Amendment right to communicate with employees about labor relations generally and about the IAM specifically. In addition, Delta notes that all of the language cited by the IAM was factually correct. For instance, with respect to the July 2009 letter from Anderson, Delta responds: “Everything in this statement is true: (a) when the letter was written, the IAM had *not* filed with the Board; and; (b) the Board *had* concluded that ‘Delta and Northwest constitute a single carrier in representation cases covering several crafts of classes.’ ” Finally, many of the documents complained of were not mailed to employees but were letters sent to the IAM or the Board, even if they were made available on DeltaNet.

With respect to statements made by Delta that represented employees would not receive pay raises given to non-contract employees because the carrier “was not allowed to apply its pay policies” to contract employees until representational issues were resolved, Delta argues that this statement is completely true under the law. Campbell stated that upon closing of the merger, Delta provided written assurance to each pre-merger NWA union that “we would abide by the terms of their pre-merger contracts . . . pending resolution of representation issues arising from the merger.” *See also* April 14, 2008 memorandum from Anderson and Bastian (“Northwest’s contract frontline employees will continue to receive pay increases in accordance with their collective bargaining agreements.”). In response to a February 5, 2010 letter from the IAM giving Delta its consent to grant the raises to contract employees, Delta responded on February 18, 2010: “. . . we are not prepared to piecemeal the process, because pay, benefits, and work rules are all related as a package.” Campbell at his interview remarked: “Delta could have implemented pay increases but did not want to do it piecemeal. Subsequent documents demonstrated that the company regularly communicated this position.”

In regards to the memo from Dickson and Wysocki, Delta responded that the memo was truthful and as it was distributed after the voting period, it could not possibly have impacted the result.

With respect to the pay and benefit comparison, Delta contends the document is neither inaccurate nor misleading. The document clearly states that the numbers shown are “an average dues rate of \$71 per month.” And, the \$71 per month is only \$2.22 more a month than what the NWA Sim Techs actually paid. Further, Delta provided that it had published at least three other comparison documents with respect to the Sim Techs which understated

the actual amount of monthly dues obligations for a NWA Sim Tech. Finally, Delta argues that the document is not misleading as it never purports to “set forth the benefits” of PMNW and PMDL Sim Techs.

Employee Interviews

Communications to Employees about the Merger/Representation

Several employees commented that the documents did not influence them one way or another. One employee commented that he thought management and the unions were simply going through the process and doing what they always do. Another employee said there was “propaganda” from the union and management. “There was a lot of back and forth between the company and union in terms of documents – it seemed part of the process.” Several employees commented that they were not aware of the documents posted at DeltaNet.

Several Sim Tech stated that they thought the unions were dragging their feet exclusive of what was posted at DeltaNet, because “if the IAM really wanted to be here they could have moved a little faster.” None of the employees interviewed stated that the documents confused them or affected their decision with respect to representation.

Circulating Pay Comparisons

Not one of the employees interviewed found the pay comparisons confusing as each pointed to the language stating:

For reference only, within each bar where that carrier’s workers pay union dues, we show the approximate net pay after paying union dues. For this purpose, we show an average dues rate of \$71.00 per month. This represents an approximate amount since the actual deduction for union dues varies widely, often within the same company.

(Emphasis added). Several employees stated that the document did not impact his/her decision and many stated that it wouldn’t have made a difference if the amount of union dues had been exact.

One Sim Tech commented that he knew the amount of union dues would change by the time a contract was ratified, but the amount seemed to be in line

with what he has paid in union dues in the past. Another commented that pay comparison charts have been used in the past, and these were nothing new in form or content. One employee said that he didn't pay attention to the pay comparisons and that "employees who are more familiar with the airline industry would know to get their information elsewhere" like Sim Tech Online.

DISCUSSION

During election campaigns, a carrier must act in a manner that does not influence, interfere with, or coerce the employees' selection of a collective bargaining representative. *Cape Air (Hyannis Air Serv., Inc.)*, 37 NMB 35 (2009); *Stillwater Central R.R.*, 33 NMB 100 (2006); *AVGR Int'l Bus. Inc., d/b/a United Safeguard Agency*, 31 NMB 419 (2004); *Pinnacle Airlines Corp.*, 30 NMB 186 (2003). The Supreme Court in *Texas & New Orleans R.R. Co. v. Brotherhood of Ry. and Steamship Clerks*, 281 US 548, 568 (1930) defined the meaning of the word "influence" in Section 2, Ninth of the RLA as "pressure, the use of the authority or power of either party to induce action by the other in derogation of what the statute calls 'self-organization.'"

When considering whether employees' freedom of choice of a collective bargaining representative has been impaired, the Board examines the totality of the circumstances as established through its investigation. In such an evaluation, each conclusion may not constitute interference in and of itself, but when combined with other factors, the totality evidences improper interference. *Frontier Airlines, Inc.*, 32 NMB 57 (2004); *Piedmont Airlines, Inc.* 31 NMB 257 (2004); *Mercy Air Serv., Inc.*, 29 NMB 55 (2001).

A. Changing Wages or Benefits

Legal Standard

The Board has found that changes in wages or benefits during the laboratory period which were not planned prior to an organizing drive or *that were timed to affect* the outcome of an election have tainted laboratory conditions. In *Petroleum Helicopters, Inc.*, 25 NMB 197, 232 (1998), the Board found the timing of an announcement dealing with a general wage increase, within weeks of the union's application, coupled with a memorandum reiterating the four percent general wage increase the day before the ballots were mailed, in concert with the fact that the general wage increase was derived at differently from past increases, constituted "promises to confer benefits in an effort to persuade employees to remain unrepresented." *See also Evergreen Int'l Airlines*, 20 NMB 675, 706-707 (1993) (unscheduled increase in

per diem rates was timed to effect the election); *Laker Airways*, 8 NMB 236 (1981) (increasing pay immediately before the election period was one of the factors contributing to a finding of election interference).

Changes in pay which were planned before laboratory conditions attached, or where there is “clear and convincing evidence of a compelling business justification,” do not taint laboratory conditions. *Frontier Airlines, Inc.*, 32 NMB 57, 65 (2004) (pay increases were pre-planned and based on a compensation review showing wages to be below market rate); *Continental Airlines, Inc./Continental Express, Inc.*, 27 NMB 463, 477-478 (2000) (compensation procedure was based on a continued business practice); *Dakota, Minnesota & Eastern R.R. Co.*, 25 NMB 302, 315 (1998) (no interference when pay increases were granted as part of an audit done prior to commencement of organizing campaign).

In *America West Airlines, Inc.*, 17 NMB 79, 98-99 (1990), one of the factors contributing to a finding of election interference was the timing of a profit-sharing party during the election period. A profit-sharing plan had been in place since the carrier commenced operations however no profit sharing checks had been distributed in 1986 and 1987, and the last profit-sharing party had been in 1985. *Id.* at 88. An announcement was made in 1988 that since the company was profitable, checks would be distributed again. Checks were then distributed in January 1989 in the middle of the election period. *Id.* The Board stated:

[T]he timing of the profit-sharing party . . . during the balloting period and approximately two weeks before the ballot count, had the effect of improperly influencing the employees For the carrier to distribute these checks during the election period shows careless disregard of [the] Act’s requirements at best and a serious violation of those same provisions at worst.

Id. at 98-99.

In *Stillwater Central R.R., Inc.*, 33 NMB 100, 141 (2006), the Board found laboratory conditions tainted by a wage increase to 11 out of 20 employees in the craft or class during the laboratory period. The carrier failed to satisfy its burden and show that the large number of pay increases during the laboratory period were pre-planned or pursuant to a set schedule. Further, employee

testimony revealed that many employees perceived a link between receiving wage increases and the union organizing campaign. *Id.*

In *American Trans Air, Inc.*, 28 NMB 163 (2000), the Board found that laboratory conditions were tainted by a pay increase and shift differential granted to employees. Although the carrier had submitted evidence that the pay increases had been discussed prior to the attachment of laboratory conditions, the Board found significant the fact that employees were surprised by the amount and the timing of the increases. *Id.* at 179. With respect to the timing, the Board stated that although the carrier submitted evidence that a wage increase had been discussed in meetings since October 1999, there was no evidence to indicate that the wage increase would occur in July 2000. *Id.*

1. Pay Increases

Delta provided ample evidence that it had consistently communicated to its employees, since emerging from bankruptcy, that it would provide pay increases so as to bring employees to industry-wide standard by the end of 2010. The Board finds that the January 1, 2009 pay increase of 3 percent did not taint laboratory condition, as it was planned before laboratory conditions attached. *Frontier Airlines, Inc., above*, at 65 (2004); *Continental Airlines, Inc./Continental Express, Inc., above*, at 477-478 (2000); *Dakota, Minnesota and Eastern R.R. Co., above* (1998).

However, the timing of the February 4, 2010 pay increase announcement is troubling. The Board does not find persuasive the evidence presented with regards to why the announcement needed to be made February 4, 2010 – on the first full day of voting in the Sim Tech election. The explanation that leaders had referenced that a pay announcement was “coming” in online chats, that “employees were expecting an announcement,” and that Delta had concluded its pay evaluation process and wanted to announce prior to the worldwide leadership meeting, are not sufficient to justify the timing of the announcement. There is no reason the announcement could not have been deferred until March or April, especially since it would not be effective until October 1, 2010, even if the decision about the amount of the increase had been made in January. There was no circulated communication to employees that the pay increase would be announced February 4, 2010 – rather, employees were expecting pay increase by the end of 2010, so an announcement in March or April would have been more than appropriate. (See April 14, 2008 Memo from Anderson; January 1, 2009 Pay Increase Memo; October 1, 2010, General Increases-General Questions-Scale Employees).

In addition, the Carrier's rationale for the delay of eight months is equally vague, with Delta's stated answer to the delay in implementing the pay increase being: "We thought a lot about breaking that into two steps on July 1 and at the end of the year, but ultimately we decided to do it all in a single step on October 1." Finally, and most troubling, many of the employees questioned the timing of the increase and admitted that the wage increase announcement affected their vote in the representation election. *Stillwater Central R.R., Inc.*, 33 NMB 100, 142 (2006) (employee testimony revealed perception of link between wage increases and union organizing campaign).

Although Delta submitted adequate evidence that a general wage increase for non-contract employees by the end of 2010 had been planned since its emergence from bankruptcy, there is insufficient evidence to support the timing of the February 4, 2010 announcement, particularly with a delayed effective date until October 1, 2010. In addition, the employee interviews indicate that the announcement influenced the outcome of the election.

The Board finds that the announcement and timing of a general wage increase for non-contract employees tainted the laboratory conditions and constitutes Carrier interference. *See American Trans Air, Inc.*, above, at 179; *America West Airlines, Inc.*, 17 NMB 79, 98-99 (1990).

2. Promise to Change Work Schedules

The evidence presented does not support the contention that management promised to change the work schedules of the PMDL Sim Techs to mirror that which the PMNW Sim Techs received under their contract with the IAM. Rather, the interviews revealed that the PMDL Sim Techs knew of Wysocki's reputation as "the manager who had created the good work/life balance in terms of some of the shifts at PMNW." When Wysocki assumed responsibility for the combined craft or class, some PMDL Sim Techs asked him about the possibility of more flexible schedules during the time period when Sim Techs discuss bidding for the new schedule. None of the Atlanta Sim Techs stated that any supervisor had offered to change work schedules or that there had been any changes to their schedules. The employees stated that Wysocki was very careful to say that he could not discuss any changes to the schedule until the election was over. As such, there is insufficient evidence to support the contention that the carrier offered a benefit in the form of promising changes to work schedules. *Cf. Evergreen Int'l Airlines*, 20 NMB 675 (1993) (Board held that carrier letter to employees in response to a union organizing campaign where it promised certain benefits and made actual policy changes tainted the laboratory conditions).

3. Premature Use of Seniority Committees to Offer “Benefit” of Relative Blend Integration

The evidence reveals that whether or not the creation of seniority integration committees prior to the resolution of representation is lawful, employees did not perceive the relative blend integration to be a benefit or superior to the straight seniority method used by the IAM. Much like straight seniority integration, some employees in both the PMDL and PMNW groups benefitted under each integration method. Further, the majority of employees interviewed understood that the method advocated by the PMDL committee was a proposal and not binding. A MN Sim Tech stated: “It’s not a huge benefit one way or another; it’s more beneficial for about half the employees and less beneficial for the other half.” As such, there is insufficient evidence to support the contention that the formation of a seniority committee of PMDL Sim Techs and its proposal of relative blend integration was a benefit to encourage employees to vote against the IAM. *Continental Airlines/Continental Express*, 21 NMB 229, 250 (1994) (insufficient evidence submitted to support allegation of election interference).

B. Discriminatory Treatment

1. Denial of Access to Break Room in Atlanta

A carrier is permitted to have an access and solicitation policy reasonably restricting employees’ rights to solicit during work hours and on carrier property. *Delta Air Lines, Inc.*, 30 NMB 102, 134-35 (2002). Where there is insufficient evidence of systematic, uneven, or discriminatory enforcement of the carrier’s rules on solicitation and access, the Board will not find interference. *Delta Air Lines, above; American Airlines*, 26 NMB 412 (1999).

USAir, 17 NMB 377, 424-25 (1990), is an egregious example of a carrier denying an incumbent union access to employees during a representation campaign. The incumbent union was denied access to employees it was certified to represent in all but 4 out of more than 100 stations, and the carrier prohibited access to bulletin boards for any union materials even though it permitted virtually every other type of literature to be posted. The Board found this conduct, in addition to other factors, constituted election interference. *Id.*

The evidence shows that NWA and Delta had different advocacy policies that had not yet been consolidated, so different rules applied in the two locations. In Minnesota, the IAM had an office on site and employees were able to meet with the Chief Steward and talk about confidential issues with the door

closed. The record shows that the Grand Lodge Representative Regan was first assigned to this case in January and from that time through the conclusion of the election he had three meetings with the PMNW employees on site, in the Tech Storage Room, and in other areas.

Former Chief Steward McCausland knew Wysocki and stated that he never requested access to the Atlanta break room. McCausland relied on a message received from a PMDL Sim Tech and met with the employees off-campus, as he stated that he was not sure whether he would have been permitted in the break room as there was conflicting information. Further, as Campbell stated in his interview, the Atlanta advocacy policy did not allow third parties, such as the IAM, access to break rooms.

As such, there is insufficient evidence that the IAM was denied access to PMDL employees or that Delta misapplied its own policies in a manner to discriminate against union participation. *See Intertec Aviation, L.P.*, 18 NMB 150, 161 (1991) (employer's conduct not found to be interference when it "merely wrote two letters to the IBT requesting that the IBT follow the access provisions in the agreement . . .").

2. Distribution of Mechanics and Related Employees Petition

The evidence shows that the petition circulated among the PMDL Sim Techs, stating that they believed they were properly part of the Mechanics and Related Employees craft or class, was an employee-created document. None of the PMDL employees interviewed said that management had anything to do with the petition, and one employee stated that he knew the Sim Tech who had actually created the document. One PMDL Sim Tech commented that the petition was created and passed along by employees, "because they thought they might get more attention as a group if they were included with the mechanics." The majority of the interviews reflected that the PMDL Sim Techs believed that being part of the Mechanics and Related Employees craft or class would allow them to have more of a voice and possibly greater benefits. Several Sim Techs stated that the petition was circulated during working hours but primarily during the cross-over period between shifts. Management vehemently denied any knowledge of the petition until after-the-fact.

Even if the document was passed around during work hours, there is insufficient evidence that management created it or supported its distribution during work hours. Further, based on the employee interviews, the circulation of the petition did not affect whether or not employees ultimately voted for representation, and the Board ultimately decided that the Sim Techs were

properly in their own craft or class and authorized an election. *Northwest Airlines, Inc./Delta Air Lines, Inc.*, 37 NMB 88 (2009). The Board has held that isolated and *de minimus* incidents do not taint laboratory conditions. *United Air Lines*, 22 NMB 288, 319 (1995); *Continental Airlines/Continental Express*, 21 NMB 229, 251 (1994). As such, the circulation of the petition did not taint laboratory conditions.

C. One-on-One Meetings

The Board has consistently found that “one-on-one” meetings with members of the craft or class, where anti-union opinions are expressed by management officials during the laboratory period, are inherently coercive. *Stillwater Central R.R., Inc.*, 33 NMB 100, 138 (2006); *Aeromexico*, 28 NMB 309, 337 (2001); *Key Airlines*, 13 NMB 153, 163 (1986). In *Allegheny Airlines*, 4 NMB 7, 13 (1962), the Board stated:

When rank and file employees are interviewed . . . in small groups by carrier officials . . . discussion of antiunion opinions take on a meaning and significance which they might not otherwise possess. The coercive effect may be subtle, but it is nonetheless present. Such a technique in and of itself is conduct which interferes with a free choice by employees of a representative.

The one-on-one meetings with Maas were in essence mandatory since they occurred during working hours, specifically at the beginning of a shift. Therefore, the Sim Techs could not feel free to leave the conversation with their supervisor. Further, by asking employees to wait to vote because of the upcoming pay increase announcement, he was expressly linking their not voting for representation with the receipt of a future benefit. *Stillwater Central R.R., Inc., above*, at 141 (2006) (one factor in finding interference was that many employees perceived a link between receiving wage increases and the union organizing campaign); *Petroleum Helicopters, Inc.*, 25 NMB 197, 232 (1998) (interference where carrier made “promises to confer benefits in an effort to persuade employees to remain unrepresented”).

While the particular Sim Tech may have had a question about pay, the interviews with the PMNW Sim Techs revealed that the employees on that shift were all junior Sim Techs and they were the employees who would be most malleable in terms of whether to vote for or against representation. One junior Sim Tech stated that he met one-on-one with Rick Maas, that Maas said to

“wait a few weeks before deciding on the election . . . [and] try the Delta way, it might be better than a union.” The same Sim Tech stated that Maas told him there would be news coming from Delta that would help his decision. The Sim Tech stated: “I assumed he meant the pay raise The pay increase affected how I voted and how a lot of others voted.”

The Sim Techs are a small group of only 91 employees and several of them commented that they heard rumors that a manager told employees to wait to vote because an announcement was coming. Even one meeting can have a very coercive effect, especially in such a small craft or class of employees. The Board finds that Rick Maas’s one-on-one meetings with junior Sim Techs during working hours tainted laboratory conditions. *See Allegheny Airlines, above*; *See also Stillwater Central R.R.*, 33 NMB 100, 138 (2006) (one-on-one meetings with employees during the laboratory period where management conveyed the message that the union was unnecessary and indicated that representation could result in employees receiving lesser benefits and wages was considered a factor which tainted laboratory conditions); *Delta Air Lines, Inc.*, 27 NMB 484, 508 (2000) (even though content of communications was non-coercive and did not contain material misrepresentations, the mandatory, small, and one-on-one meetings impaired free-choice and tainted laboratory conditions).

D. Surveillance

The Board has held that surveillance is a *per se* violation. *American Trans Air, Inc.*, 28 NMB 163, 180 (2000); *Petroleum Helicopters, Inc.*, 25 NMB 197 (1998). In addition, as the Board stated in *Petroleum Helicopters, Inc., above*, the appearance or impression of surveillance is a sufficient basis for a finding of interference. However, in those cases where the Board found carrier interference based on surveillance, the Board also found other egregious carrier action such as ballot collection or discharging employees for signing authorization cards. *Laker Airways, Ltd.*, 8 NMB 236 (1981); *Sky Valet d/b/a/ Commercial Aviation Servs. of Boston, Inc.*, 23 NMB 276 (1996).

In some cases, where organizations have asserted that laboratory conditions were tainted by increased supervisory presence, the Board has found insufficient evidence of interference. *Delta Air Lines, Inc.*, 30 NMB 102, 117-18 (2002) (insufficient evidence to support that Delta increased the presence of supervisors in crew lounges in order to engage in or give the appearance of surveillance); *Aeromexico*, 28 NMB 309, 335 (2001) (Board found the evidence surrounding the organization’s allegation of “surveillance, based on a heightened presence of management officials in hallways and break

rooms, is contradictory and speculative.”); *American Trans Air, Inc.*, 28 NMB 163, 176, 180 (2000) (supervisor’s interaction with employees and a union organizer in smoking area did not support finding of interference based on surveillance).

The Tech Storage room where the surveillance allegedly occurred was a multi-purpose room for both employees and supervisors to have breaks, meetings, and lunch. Barbara Price’s office was directly across the hall from the Tech Storage room which made her regular presence in the room a normal occurrence. She stated that as Sim Techs are on call whenever they are in the office, she would often enter the Tech Storage room to find employees and ask them to perform work-related tasks.

McCausland stated that Barb Price did not have personal animus against the IAM. In addition, employees were not limited to discussions in the Tech Storage room as the IAM had an office at the PMNW site and employees were able to meet with former Chief Steward McCausland to talk about confidential issues and close the door. Most of the employees interviewed stated that they did not witness surveillance or an increased presence in supervisors. If Ms. Price’s presence seemed to be increased during this period, the evidence shows that it was likely in response to the door to the Tech Storage room being closed for long periods of time which was against company policy.

There is insufficient credible evidence to support a finding of surveillance by Delta through Supervisor-Simulator Support Barbara Price. *American Trans Air, Inc.*, above; *USAir, Inc.*, 18 NMB 290, 331 (1991) (allegations concerning management surveillance not supported by the record as supervisors were near organizing site because of the proximity to the office elevators and only one employee stated that he believed management might be watching him).

E. Carrier Communications and Pay Comparisons

A carrier is free to communicate its views regarding representation in a non-coercive manner during an election to its employees. *Federal Express Corp.*, 20 NMB 659 (1993); *USAir/Shuttle*, 20 NMB 162 (1993); *USAir*, 17 NMB 377 (1990). However, the Board also has found that a carrier's right to communicate is “not without limit, and even conduct which is otherwise lawful may justify remedial action when it interferes with a representation election.” *Air Logistics, L.L.C.*, 27 NMB 385, 404 (2000) (quoting *Laker Airways, Ltd.*, 8 NMB 236, 253 (1981)).

The Board has found no interference in situations where the carrier did not overwhelm employees with an abundance of written materials, where the carrier's comments had a factual basis, and where review of the materials was voluntary. *Delta Air Lines, Inc.*, 35 NMB 271, 286 (2008). After examining the documents at issue here, the Board finds that they do not amount to a systematic campaign to influence employee choice.

The communications made by Anderson, Campbell, and Wysocki were not coercive or threatening and did not contain "material" misrepresentations about the Board's processes or the Act. *Aeromexico*, 28 NMB 309, 340 (2001) (dues flyer found not to have tainted laboratory conditions as there was "no evidence that the flyer was coercive, contained material misrepresentations about the Board's processes or the Act, or influenced employees in their choice of representative."). Further, most of the documents at issue were not mailed to employees as they were letters responding to the IAM or correspondence to the Board. And while all documents were posted at DeltaNet, employees were under no obligation to review them, and several of the employees interviewed did not know of the documents posted there.

While carriers must refrain from making statements that are inaccurate or misleading, carriers may accurately portray the way an employee can vote no, and disseminate publications expressing their views on a representation election. *Delta Air Lines, Inc.*, 30 NMB 102, 127-132 (2002); *Express Airlines I, Inc.*, 28 NMB 431, 453-454 (2001). Employee interviews revealed that the back and forth between Delta and IAM was considered "part of the process," and "propaganda" by each side. No employee said the documents changed their mind or influenced them in their decision to vote for representation. In addition, much of the IAM's correspondence was available to the Sim Techs, so employees got to see both sides' perspective on the various issues.

The Monthly Base Rate Comparison document clearly stated that the dues amount was an "average," and did not purport to discuss the benefits of a union contract; rather it was just a pie graph comparing pay rates at seven comparable airlines, including Delta and Northwest. None of the employees interviewed commented that the Monthly Base Rate Comparison document was confusing or impacted their decision to vote for representation. Further, the amount represented in the "average dues" was only \$2.22 more than what the IAM Sim Techs paid, and at least three other wage comparisons had been circulated to employees which represented the average amount of monthly dues *as less* than what PMNW IAM Sim Techs actually paid.

As such, Delta's communications did not taint laboratory conditions. *Aeromexico, above*, at 340 (2001) (no evidence that carrier flyer which represented a fictitious amount of union dues was coercive or influenced employees in their choice of representative); *USAir, Inc.*, 18 NMB 290, 331 (1991) (carrier communications found not to taint laboratory conditions because statements did not "misinform employees . . . to the extent that the election results would be affected.").

Applicable Legal Standard -- Remedy

Under Section 2, Ninth of the Act, the Board has broad discretion to tailor its investigation to the facts and circumstances of each case. *Evergreen Int'l Airlines*, 20 NMB 675 (1993); *Florida East Coast Ry.*, 17 NMB 177 (1990); *Key Airlines*, 16 NMB 296 (1989). When the Board has found carrier interference, it has employed a variety of special ballots and notices intended to eliminate the taint of interference on the employees' freedom of choice of representative. In certain instances of egregious election interference, the Board has authorized the use of a *Laker* ballot in which employees vote yes or no, and a majority of those voting determine the result. *Laker Airways, Ltd.*, 8 NMB 236, 253 (1981) (remedy developed in response to one of "the most egregious violations of employee rights in memory").

Frequently the Board has found that the level of interference warranted a re-run election using the Board's standard ballot procedures and a notice. See *Stillwater Central R.R.*, 33 NMB 100 (2006) (carrier conducted coercive mandatory one-on-one meetings and conferred benefits during election period); *Pinnacle Airlines Corp.*, 30 NMB 186 (2003) (carrier dismissed two union activists during the election period and appeared to conduct surveillance of employees attending union meetings); *Mercy Air Serv.*, 29 NMB 55 (2001) (carrier changed wages and benefits after application was filed); *American Trans Air, Inc.*, 28 NMB 163, 181-82 (2000) (laboratory conditions tainted due to carrier's announcement of wage increase and shift differentials during the laboratory period and the timing of that announcement); *Delta Air Lines, Inc.*, 27 NMB 484 (2000) (Board released confidential showing of interest information and mailed ballots for another election to Delta employees; carrier conducted mandatory, small group, and one-on-one sessions to promote its message regarding the election).

As in the cases above, the Board finds in this case that the Carrier interference warrants a re-run election using the Board's standard ballot and a posting of the attached Notice in the workplace. The Board will also send the Notice to all eligible voters along with the Voting Instructions.

While the facts support a rerun using a standard ballot, this should not minimize the interference found or the harm to the affected employees. As such, the Board wishes to remind all of its participants of the admonition in the language of Section 2, Fourth of the RLA. The Board will continue to ensure that laboratory conditions are maintained in future elections so that employees are able to cast their votes in an atmosphere free of coercion.

CONCLUSION

Based upon the totality of circumstances, the Board finds that the laboratory conditions required for a fair election were tainted. This conclusion is based on the timing of Delta's announcement of a pay increase during the laboratory period and coercive one-on-one meetings held by a management official during the laboratory period. Therefore, the Board ORDERS a re-run election using Telephone Electronic Voting (TEV) and Internet voting, with the Board's standard voting procedures.

Pursuant to the Manual Section 12.1, the Carrier is hereby required to furnish, within five calendar days, 1" x 2 5/8", alphabetized peel-off labels bearing the names and current addresses of those employees on the list of eligible voters (List). The List will include those employees eligible in the first election with the exception of those employees who have left the craft or class. The cut-off date will be July 31, 2009.

The count will take place in Washington, D.C. Copies of the attached "NOTICE TO FLIGHT SIMULATOR TECHNICIANS OF DELTA AIR LINES, INC." must be posted within five calendar days of the date of this decision on Carrier bulletin boards where employee notices are normally posted. The Notice shall be clearly visible and remain in place for the duration of the re-run election period. Copies of the attached Notice will also be included in the Telephone Electronic Voting Instructions sent to employees.

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson
General Counsel

Chairman Dougherty, dissenting in part and concurring in part.

I dissent from the majority's finding that Delta's announcement of the general wage increase for non-contract employees constitutes Carrier interference. The majority opinion does not find fault with Delta's decision to grant a general wage increase, but does find that the announcement of the pay increase on the first day of the voting period of the Simulator Technician election violated laboratory conditions. I disagree with this conclusion because Delta provided compelling business reasons for the timing of its announcement, and because it would not have been feasible for Delta to avoid the laboratory period for the Sim Tech representation case by announcing the pay increase at a different time.

It is well settled under NMB precedent that changes in pay which were planned before laboratory conditions attached, or where there is "clear and convincing evidence of a compelling business justification," do not taint laboratory conditions. *Frontier Airlines, Inc.*, 32 NMB 57, 64 (2004); *Continental Airlines, Inc./Continental Express, Inc.*, 27 NMB 463 477-78 (2000); *Minnesota and Eastern R.R. Co.*, 25 NMB 302, 315 (1998). Indeed, "coincidental timing of a previously planned change in compensation is not, by itself, sufficient grounds for finding interference." *Petroleum Helicopters, Inc.*, 26 NMB 13, 38 (1998), citing *Egyptair*, 19 NMB 166, 175-76; *USAir, Inc.*, 18 NMB 290, 325-26 (1991). The majority does not dispute that Delta's January 11 decision to give its approximately 45,000 non-contract employees a general wage increase was not related to the Sim Tech election and was instead a pre-planned, legitimate business decision made to fulfill its long-time promise to bring employees up to industry-standard pay by the end of 2010. Delta provided evidence that once the decision had been made, it was necessary to let its employees know as soon as possible because Delta hadn't granted any pay increases towards its promise of industry-standard pay since January of 2009, and employees had been expecting to hear something about future pay increases by the end of 2009.⁸ Delta also provided evidence of the following business reasons for

⁸ Delta's determination that employee expectation necessitated announcing the pay increase as soon as possible is supported by the facts. After Delta made its April 2007 promise to reach industry standard pay by the end of 2010, it granted increases on July 1, 2007, July 1, 2008 and January 1, 2009, and had always announced the increases prior to their implementation. Campbell Declaration at 5, Kight Declaration. When Delta made its January 11, 2010 decision on a final wage increase, it had not made any specific announcements about wage increases in over a year – a longer delay than in the past. See also Delta President Bastian's November 11, 2009 online chat with employees and executives ("We're in the middle

delaying the announcement from January 11 to February 4: (1) it needed time to prepare the extensive paperwork required to communicate the pay increase to a large number of employees, and (2) it wanted to avoid announcing the pay increase during the previously scheduled, “critical” combination of two Northwest and Delta computer systems.⁹ Delta was particularly concerned that its managers and front line employees remain focused on the computer system combinations and not be distracted by a pay increase announcement because problems with these computer combinations had caused significant difficulty for merging carriers in the past.¹⁰

Most significantly, Delta provided a compelling business reason for not delaying the announcement of the pay increase to a later date – such as beyond the voting period or another future time. As stated by both Michael Campbell, Executive VP, Human Resources, and Robert Kight, VP, Compensation, Benefits and Services, they could not delay the announcement beyond the week of February 4 because the following week there was a worldwide leadership meeting scheduled between the CEO and 2,500 managers at which they would discuss Delta profits and profit-sharing.¹¹ In light of the level of expectation among its 45,000 non-contract employees and the length of time since employees had heard anything specific about a wage increase, it is not only plausible but compelling that Delta determined it had to announce the pay increase prior to the profits discussion at the worldwide leadership meeting, or else risk endangering its credibility and relationship with its employees. The Board should not ignore these legitimate business reasons for the timing of Delta’s announcement of the pay increase.

Delta’s actions are supported by the Board’s decision in *Federal Express Corp.*, 20 NMB 7 (1992). In that case, Federal Express had been negotiating a reciprocal jumpseat agreement with American Airlines for several months prior to a representation election among its pilots. It finalized the agreement early in the voting period and announced the agreement to the pilots during the voting period. ALPA did not challenge the underlying benefit, but claimed that conferral of the benefit during the voting period “was calculated to influence and change voters.” *Id.* at 12. The Board found that the announcement of the jumpseat agreement during the voting period did not constitute interference

of the 2010 budget/planning cycle We expect to announce our plans by the end of the year.”).

⁹ Interview with Michael Campbell, Delta’s Executive VP, Human Resources; Declaration and Interview of Robert Kight, Delta’s VP, Compensation, Benefits and Services.

¹⁰ Kight Declaration.

¹¹ Interview of Michael Campbell, Delta’s Executive VP, Human Resources; Interview of Robert Kight, Delta’s VP, Compensation, Benefits and Services.

because once the agreement was reached, the announcement was “made in the regular course of business.” *Id.* at 46. Similarly, in the instant case, once Delta made the decision on its long-promised wage increase, the timing of the announcement was based on business demands and not the Sim Tech election. *See also USAir*, 17 NMB 377, 426 (1990) (finding conferral of previously planned benefit changes during election period did not constitute interference).

Additionally, given the Board’s precedent regarding extension of laboratory conditions beyond the end of an initial election, it is unreasonable for the majority to expect that Delta should have waited until the conclusion of the Sim Tech representation case to make the announcement. The majority’s decision finds Delta culpable in part because it supposes “there is no reason the announcement could not have been deferred until March or April.” This assertion ignores not only Delta’s legitimate business justification, discussed above, but also NMB determinations finding that employers have a duty to maintain laboratory conditions throughout the investigation and resolution of any interference allegations and resulting re-run election.¹² Thus, even if Delta had been able to delay the announcement as a business matter, it could not simply have picked a date in March or April. To avoid the laboratory period, Delta would have had to delay its announcement – affecting approximately 45,000 employees – until any interference allegations and subsequent re-run election involving the Sim Techs had been resolved. This would have delayed Delta’s announcement for several months, possibly until right before the scheduled implementation of the pay increase – clearly an unreasonable result. Moreover, had Delta waited until the complete resolution of the Sim Tech representation case, Delta could have risked interference charges relating to other large elections that could potentially take place at Delta in the near future.¹³ Thus, it would have been impossible for Delta to avoid making the announcement at some point during the laboratory period for the Sim Tech case. In light of this predicament and Delta’s compelling business reasons for selecting the announcement date, the Board should not have concluded that Delta’s announcement of the pay increase during the Sim Tech election constitutes interference.

Notwithstanding my conclusion that the timing of the pay increase announcement did not constitute interference, I concur in the remaining

¹² *Petroleum Helicopters, Inc.*, 26 NMB 13, 35 (1998) (laboratory conditions must extend through the election and any subsequent investigation); *Aeromexico*, 28 NMB 309 (2001).

¹³ Two unions have already filed representation applications for large groups at Delta. Although the Board has not made any rulings on these applications, clearly laboratory conditions for these cases has already attached should the Board authorize elections.

portions of the majority's decision, including its determination that the one-on-one meetings with Rick Maas tainted laboratory conditions. I also concur in the majority's decision to re-run the election using standard ballot procedures and a Notice.

**NOTICE TO FLIGHT SIMULTAOR TECHNICIANS OF
DELTA AIR LINES, INC.**

After an investigation conducted by the National Mediation Board (Board), in which Delta Air Lines, Inc. (Delta) and the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM) had the opportunity to present statements and evidence, the Board found that Delta's conduct interfered with, influenced, or coerced employees' choice of representative in an election conducted pursuant to Section 2, Ninth, of the Railway Labor Act (RLA).

Accordingly, the Board authorizes a second election by Telephone Electronic Voting (TEV) and Internet Voting among Delta's Flight Simulator Technicians. The list of eligible voters will consist of those eligible to vote in the first election, with the exception of those who have left the craft or class. A copy of this Notice will also be mailed to all eligible voters with the election materials. During the election period, the Investigator will be available to immediately investigate any further allegations.

Section 2, Fourth, of the RLA allows employees the right to select representatives without carrier influence or interference.

Delta is not permitted to influence, interfere, or coerce employees in any manner in an effort to induce them to participate or refrain from participating in the upcoming election.

For questions concerning this Notice or compliance with its provisions, communicate with the National Mediation Board at legal@nmb.gov.