



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the  
Application of the

INTERNATIONAL ASSOCIATION  
OF MACHINISTS AND  
AEROSPACE WORKERS, AFL-CIO

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

involving employees of

DELTA AIR LINES, INC.

37 NMB No. 55

CASE NO. R-7230

REQUEST FOR DELAY  
OF ELECTION –  
DENIED

August 18, 2010

This determination addresses the request of the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM or Organization) to change the dates of the Simulator Technician (Sim Tech) re-run election at Delta Air Lines, Inc. (Delta or Carrier). For the reasons discussed below, the IAM's request is denied and the re-run election will proceed as scheduled.

**PROCEDURAL BACKGROUND**

On August 13, 2009, the IAM filed an application with the Board pursuant to the Railway Labor Act<sup>1</sup> (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 craft or class of 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.

<sup>1</sup> 45 U.S.C. § 151, *et seq.*

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*<sup>2</sup> ballot. After an investigation, the Board found that Delta had tainted laboratory conditions and authorized a re-run election using a standard ballot<sup>3</sup> and Notice to participants.

The re-run election was authorized on August 10, 2010. The Investigator's August 11, 2010 letter set the dates for the re-run election and provided that the Notice and Sample Instructions would be sent on August 18, 2010 and that the election would begin August 25, 2010, with a tally on September 16, 2010.

On August 16, 2010, the IAM filed a request to have the Board change the re-run election dates and postpone the election until after October 1, 2010. Delta filed its response on August 17, 2010, opposing any modification to the election dates.

## **CONTENTIONS**

### **IAM**

The IAM argues that in order to give proper meaning and effect to the Board's finding of election interference, the re-run election must be scheduled after the October 1, 2010 pay increase. The Organization asserts, through the declaration of Thomas J. Regan, Grand Lodge Representative for the IAM, that some pre-merger Delta Sim Techs are worried they will not receive the October 1, 2010 pay increase if they vote for the IAM. The IAM contends that pre-merger Delta Sim Techs "are convinced that if the re-run election was held after the raises were issued and there was no longer a threat of the raises being

---

<sup>2</sup> 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").

<sup>3</sup> 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.

withheld, employees would feel more free to vote their desires.” As such, the IAM asks the Board to change the re-run dates so that the election is held after the October 1, 2010 pay increases are in effect.

### **DELTA**

In its response, Delta urges the Board to deny the IAM’s request to delay the re-run election for the Sim Techs. Citing the Board’s August 10, 2010 decision, Delta notes that contrary to the IAM’s main contention, all non-contract Delta employees will receive the October 1, 2010 pay increase regardless of the outcome of the Sim Tech election. *Delta Air Lines, Inc.*, 37 NMB 281, 288 n. 5 (2010). Delta also provided a second declaration from Michael Campbell, EVP, Human Resources and Labor Relations, in which he stated the following: “As we have stated since the announcement of the pay increase, eligible non-contract employees will receive the October 1, 2010 pay increase regardless of the outcome of any representation elections.”

Delta contends that the IAM’s submission is not supported by substantive evidence, as Tom Regan’s declaration “reports double hearsay.” In Delta’s view, this evidence is completely incapable of being tested or verified for accuracy.

The Carrier also notes that the IAM failed to request that the re-run election commence after the October 1, 2010 pay increase in its original filing of election allegations on March 5, 2010. “This last minute request for delay is an inappropriate attempt to re-open the record in the interference investigation and to amend the Board’s findings.”

Delta additionally urges the Board to consider the fact that the initial application in this matter was filed in August 2009 and that delaying the re-run election “would mean that it would take more than 15 months to resolve representation for 91 employees.”

Finally, Delta contends that changing the dates, after both it and the IAM had notified Sim Techs of the new election dates, would create confusion and lack of confidence in the Board’s procedures. In addition, Delta posits that a decision to change the re-run dates “is likely to create widespread confusion as to whether and when the Board’s new voting rules will finally be effective.”

## DISCUSSION

The Board has a general practice of not changing election dates to avoid voter confusion and to protect the stability of the voting process. *Continental Airlines, Inc.*, 35 NMB 42, 48 (2008); *United Air Lines, Inc.*, 27 NMB 221, 227 (2000). In this instance, with the promulgation of the new voting rules effective on or after July 1, 2010, and imminent changes to the ballot in the works, delaying the Sim Tech election at Delta has the potential to cause confusion among employees. Further, both the IAM and Delta have already informed the Sim Techs of the dates of the upcoming election, and a change in the dates could also create voter confusion.

It is the Board's long-standing policy, consistent with Section 2, Ninth, to resolve representation disputes as expeditiously as possible. In *Continental Airlines Corp.*, 50 B.R. 342 (S.D. Tex. 1985), *aff'd, per curiam*, 790 F.2d 35 (5th Cir. 1986), the Federal District Court for the Southern District of Texas overturned a stay of a representation election issued by a Bankruptcy Court. The District Court recognized that:

[T]he RLA furthers Congress's strong policy of guaranteeing employees the right to organize and collectively bargain free from any carrier interference or influence. Yet delays in NMB precertification proceedings seriously hamper such organizational efforts . . . . Speed is accordingly an RLA "objective of the first order," and the damage caused by staying an NMB election is often substantially greater than that caused by allowing an election to go ahead . . . .

*Id.* at 358 (citation omitted).

In *Eastern Airlines, Inc.*, 17 NMB 432 (1990), the Board applied this policy in rejecting carrier arguments that the Board must refrain from investigating representation disputes during a bankruptcy filing, because of the automatic stay provision of the Bankruptcy Code. The Board stated, "bankruptcy petitions do not suspend investigations." *Id.* at 444.

In *USAir*, 17 NMB 69 (1989), the Board denied the IBT's request to delay an election for a six week period. The organization argued that the mailing during the holiday period (Christmas, New Year's) would be "extremely prejudicial" because of the increased volume of mail at the post office, the fact that the potential voters "will be thinking about Christmas preparations and

holiday parties” and that it would be hard for the IBT to reach individuals during the crucial first two weeks of the voting period. *Id.* at 69. The Board, in denying the IBT’s request, stated that it considered all these factors when making the election period six weeks rather than the standard three week period. *Id.* at 70.

It is the Board’s consistent practice to proceed with representation elections unless the Board itself finds it necessary to delay due to unusual or complex issues or is barred by court order. *Tower Air*, 16 NMB 326, 328 (1989); *Air Florida*, 10 NMB 294, 294 (1983). *See also Chautauqua Airlines, Inc.*, 21 NMB 226, 227-28 (1994); *Sapado I*, 19 NMB 279, 282 (1992); *USAir, above*.

The IAM has presented an insufficient basis for the Board to postpone the re-run election scheduled to commence August 25, 2010. Therefore, the IAM’s request of August 16, 2010 is denied. The Instructions will be mailed as scheduled on August 25, 2010, with the tally on September 16, 2010.

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson  
General Counsel

Copies to:

Michael Campbell  
John J. Gallagher  
Andrea L. Bowman  
Robert Roach, Jr.  
Jay Cronk  
Carla Siegel