



## NATIONAL MEDIATION BOARD

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38 NMB No. 8

October 28, 2010

### **VIA EMAIL & US MAIL**

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Re: NMB Case No. R-7254  
Delta Air Lines, Inc./AFA

Participants:

This determination addresses the appeal of Delta Air Lines, Inc. (Delta or Carrier) of the Investigators' ruling on the eligibility of an employee to vote in the representation election among the Flight Attendants craft or class. For the reasons set forth below, the Investigators' ruling is upheld.

### **BACKGROUND**

On July 1, 2010, the Association of Flight Attendants-CWA (AFA) filed an application with the Board alleging a representation dispute involving the Flight Attendants of Delta Air Lines and Northwest Airlines. On August 17, 2010, the Board issued a determination finding a single transportation system at the Carrier for the craft or class of Flight Attendants. *Northwest Airlines, Inc./Delta Air Lines, Inc.*, 37 NMB 323 (2010).

On September 22, 2010 and September 30, 2010, AFA filed challenges to the List of Potential Eligible Voters and status changes. On September 29, 2010 and October 4, 2010, the Carrier filed its responses. On October 14, 2010, the Investigators ruled on the challenges and status changes. Among the rulings, the Investigators determined that Gregory Puhek was ineligible to vote because he was on a special assignment performing duties outside of the craft or class.

On October 21, 2010, Delta appealed the ruling regarding Puhek. AFA submitted a reply on October 22, 2010.

### DISCUSSION

Evidence submitted by Delta confirmed that Puhek is on a special assignment. In his assignment, Puhek “supports Delta’s corporate efforts to raise funds for the Breast Cancer Research Foundation (BCRF) by providing logistical support.” The Carrier reported that Puhek has not flown since before the cut-off date and is not scheduled to return to flying.

According to Representation Manual Section 9.2, “All individuals working regularly in the craft or class on and after the cut-off date are eligible to vote in an NMB representation election.” The Board has found employees ineligible to vote in representation elections when they are performing duties outside of the craft or class. *See, e.g., Chicago & North Western Ry. Co.*, 4 NMB 240 (1965); *America West Airlines, Inc.*, 23 NMB 244 (1996) (holding that an employee on a temporary assignment was ineligible because he was not, at the time of the election, performing duties within the craft or class). The Board makes eligibility determinations based on the “present interest” of the employee. *Id.* at 246.

Delta argues that Puhek is eligible because his special assignment is related to his position as a flight attendant. The duties being performed by Puhek, primarily fundraising and marketing duties as described by the Carrier, are not flight attendant duties.\* He has not performed duties within the Flight Attendant craft or class since before the cut-off date and has no expected date of return. Therefore, Puhek has no present interest in the Flight Attendant craft or class.

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\* The Carrier provided additional information about Puhek’s duties in its October 21, 2010 appeal. According to Manual Section 10.2, “Absent extraordinary circumstances, evidence submitted on appeal will not be considered by the NMB unless it was submitted to the Investigator.”

CONCLUSION

The Board upholds the Investigators' ruling that Gregory Puhek is ineligible to vote in the Flight Attendants craft or class. The count will take place as scheduled at 2:00 p.m. EST on Wednesday, November 3, 2010.

By direction of the NATIONAL MEDIATION BOARD.

A handwritten signature in cursive script that reads "Mary L. Johnson".

Mary L. Johnson  
General Counsel