



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572

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38 NMB No. 13

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**VIA EMAIL & US MAIL**

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Re: NMB Case No. R-7258  
Delta Air Lines, Inc./IAM

Participants:

This determination addresses the appeal of the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM), of the Investigator's ruling on the eligibility of an employee to vote in the representation election among the Stock and Stores Employees craft or class. For the reasons set forth below, the Investigator's ruling is upheld.

**BACKGROUND**

On July 30, 2010, the IAM filed an application with the Board alleging a dispute involving the Stock and Stores Employees of Delta Air Lines, Inc. and Northwest Airlines (Delta or Carrier). The National Mediation Board (NMB or Board) issued a decision on September 9, 2010, finding the carriers to be a single system known as Delta for the craft or class of Stock and Stores

Employees. *Northwest Airlines, Inc. /Delta Air Lines, Inc.*, 37 NMB 397 (2010). Shortly after, the Board found a dispute to exist and authorized an election. The tally is scheduled to take place at the Board's offices on November 22, 2010.

On October 12 and 27, 2010, the IAM filed challenges to the List of Potential Eligible Voters (List) and status changes. On November 1, 2010, the Carrier filed its response. On November 2, 2010, the Investigator ruled on the challenges and status changes. Among the rulings, the Investigator determined that Kathryn O'Toole was ineligible to vote because she was a permanent employee in the Office Clerical craft or class on the cut-off date.

On November 5, 2010, the IAM appealed the ruling regarding Kathryn O'Toole. Delta submitted a reply on November 10, 2010.

### DISCUSSION

The IAM provided a statement from Kathryn O'Toole stating that she has worked for Delta for thirty (30) years and began a temporary assignment in the Stock and Stores Employees craft or class on February 28, 2010. She became a permanent employee in August 2010. The fact that she became a permanent employee, in the IAM's estimation, was evidence that she had a reasonable expectation of continued employment and should be eligible to vote. However, the only evidence presented by the IAM was a statement with Kathryn O'Toole's signature and dates of temporary and permanent employment within the craft or class. There was no statement from Ms. O'Toole stating that she believed she would be permanently hired in the Stock and Stores Employees craft or class.

Relying on a declaration from its Manager-Human Resources for Delta's Technical Operations department, Delta confirmed that Kathryn O'Toole was permanently assigned to an Analyst position in the Office Clerical craft or class as of the July 23, 2010 cut-off date. Delta confirmed that Kathryn O'Toole was also working as a Temporary Employee in the Stock and Stores Employees craft or class and became a permanent employee on August 21, 2010. However, Delta argues that she had no expectation of continued employment as of the cut-off date.

The Investigator ruled that Kathryn O'Toole was not eligible because she was not a permanent employee in the Stock and Stores craft or class as of the cut-off date, and there was insufficient evidence that she had a reasonable expectation of continued employment as a temporary employee. See Manual Section 9.205 (employees working in another craft or class are ineligible); Manual Section 9.2 (all individual working regularly in the craft or class on and after the cut-off date are eligible).

The Board's Representation Manual (Manual) Section 9.202 discusses the eligibility of Temporary Employees and provides that: "Only employees with a present interest in the craft or class in dispute are eligible to vote. Temporary employees are eligible if they have a reasonable expectation of continued employment or re-employment in the craft or class." *Westours McKinley Explorer*, 30 NMB 229, 235-36 (2003) (Board held that washmen and service employees were temporary employees and ineligible to vote because they had no reasonable expectation of re-employment); *Express I Airlines d/b/a/ Northwest Airlink*, 25 NMB 328, 330 (1998) (temporary employee found ineligible because employee was noted as such on the seniority list and listed below more recent hires).

On appeal, the IAM reiterates its argument that Kathryn O'Toole should be found eligible because she had "every expectation of holding that position [in Stock and Stores] permanently." While no evidence was presented other than the dates that she worked as a temporary and permanent employee, IAM asserts that the fact she became a permanent employee in August 2010 is more than sufficient evidence, writing: "Receiving the permanent employment is the epitome of a 'reasonable expectation' of continued employment." Based on the fact that Kathryn O'Toole was a temporary employee as of the cut-off date, who ultimately was made a permanent member of the Stock and Stores Employees craft or class, IAM argues that the Board should find her eligible to participate in the election.

Delta responded that the fact Kathryn O'Toole received a permanent position after her temporary assignment is the exception rather than the rule. Delta concludes that the IAM's circular reasoning alone does not establish that Kathryn O'Toole had a reasonable expectation of continued employment as of the cut-off date.

In *Delta Air Lines, Inc.*, the Board considered an appeal of an Investigator's ruling regarding the eligibility of temporary/part-time employees. 27 NMB 237, 238 (2000). The Board upheld the Investigator's ruling that the employees were eligible based on the evidence provided, including the number of hours worked each week, the receipt of employee badges, deductions for benefits from paychecks, family travel pass privileges, etc., all of which established a reasonable expectation of continued employment in the craft or class. *Id.* at 240-41. However, those employees who were not working in the craft or class as of the cut-off date were found ineligible. *Id.* at 242.

In the present case, Kathryn O'Toole is ineligible for two reasons. First, the IAM has provided insufficient evidence that Kathryn O'Toole had an expectation of continued employment; and second, she was not working in the Stock and Stores Employees craft or class as of the cut-off date. Manual Sections 9.2 and 9.202.

CONCLUSION

The Board upholds the Investigator's ruling that Kathryn O'Toole is ineligible to vote in Stock and Stores Employees craft or class. The count will take place as scheduled at 2:00 p.m. EST on Monday, November 22, 2010.

By direction of the NATIONAL MEDIATION BOARD.

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

Mary L. Johnson  
General Counsel