



**NATIONAL MEDIATION BOARD**

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38 NMB No. 30

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Re: NMB Case No. R-7270  
AirTran Airways

Participants:

This determination addresses the submissions dated January 7, 2011 from Air Tran Airways (Carrier or AirTran) and January 18, 2011 from the International Association of Machinists and Aerospace Workers (Organization or IAM) to the National Mediation Board (NMB or Board) regarding the IAM's pending application with the NMB to represent AirTran employees in the Fleet and Passenger Service Employees craft or class. In its January 7, 2011 submission, the Carrier requests that the Board defer its processing of the IAM's application until the AirTran/Southwest Airlines merger has been completed. The IAM responded to the Carrier's submission stating that the Board should deny AirTran's request to defer processing the IAM's application and should proceed expeditiously with its investigation of this matter.

AirTran states that it has entered into an Agreement and Plan of Merger with Southwest Airlines (SWA) "under which AirTran will be merged into a

subsidiary” of SWA with common ownership and management. Based upon current information, AirTran states that the acquisition of AirTran Holdings, Inc. by SWA’s subsidiary is expected to close during the second quarter of 2011. Therefore, AirTran maintains that “within a relatively quick period, pre-acquisition Southwest and pre-acquisition AirTran will then comprise a ‘single transportation system’ within the meaning of Section 19.501 of the Board’s Representation Manual.”

AirTran states that it “recognizes that neither the Railway Labor Act\* (RLA or Act) nor the Board’s Procedures requires such a deferral. However, under the circumstances of this case, the Board should exercise its discretion to defer its investigation so as to better effectuate the principle of system-wide representation... .” Moreover, AirTran argues that any investigation at this time “will be a drain on the Board’s scarce resources, and likely have to be re-done once the merger is complete and a single carrier has been formed.” If the IAM’s application is processed at this time and there is an election resulting in the issuance of a certification for the AirTran Fleet and Passenger Service Employees, Air Tran argues that “upon completion of the AirTran/Southwest merger, the single carrier’s fleet and passenger service employees would have multiple representatives with multiple craft or class determinations: the Transport Workers Union and the IAM District 142 (pre-merger Southwest); and the IAM District 141 (pre-merger AirTran).”

The IAM argues that AirTran’s deferral request is “based upon a future transaction, [and] provides insufficient grounds to defer processing the IAM’s application in light of the Board’s mandate under the RLA to resolve representation disputes as expeditiously as possible.” The IAM states that there is no Board precedent or other legal authority to support AirTran’s request to defer the application in the present case. In contrast, the IAM argues that there is extensive Board precedent and broad statutory authority for expeditiously proceeding with representation investigations “unless the Board itself finds it necessary to delay due to unusual or complex issues, or is barred by court order from proceeding.” See *Brotherhood of Ry. & S.S.Clerks*, 380 U.S. 650 (1968); *In re Continental Airlines Corp.*, 50 B.R. 342 (S.D. Tex. 1985), *aff’d, per curiam*, 790 F.2d 35 (5th Cir. 1986); *Timber Rock R.R.*, 34 NMB 15 (2006); *United Airlines, Inc.*, 30 NMB 278 (2003); *Chautauqua Airlines, Inc.*, 21 NMB 226 (1994); *SAPADO I*, 19 NMB 279 (1992). Although AirTran states that its acquisition by SWA will take place during the second quarter of 2011, the IAM maintains that the acquisition is subject to regulatory review, including antitrust approval from the Department of Justice and there is currently no formal timeline for the government’s regulatory review process. The IAM states that in this case, as in *SAPADO I*, *Timber Rock* and *Chautauqua*,

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\* 45 U.S.C. §151, *et seq.*

the Carrier “is requesting a deferral based on a future transaction that is ‘too prospective to be assured.’”

It is the NMB's longstanding policy consistent with Section 2, Ninth to resolve representation disputes as expeditiously as possible. *See Brotherhood of Ry. & S.S. Clerks, above* at 668 (speed is an RLA “objective of the first order”); *In re Continental Airlines Corp., above* at 50 B.R. 342, 358 (“The RLA furthers Congress' strong policy of guaranteeing employees the right to organize and collectively bargain free from any carrier interference or influence ... delays in NMB precertification proceedings seriously hamper such organizational efforts...”). In this case, the Board finds that delaying the processing of the IAM’s application to represent AirTran’s Fleet and Passenger Service Employees would be at odds with this statutory mandate. It is well established that in representation disputes, the Act deals with the present status and interests of employees involved and not with potential future status and interests of employees. *Chicago & North Western Ry. Co., 4 NMB 240, 249 (1965)*. The Carrier does not cite any Board precedent to support its request and the Board, when faced with similar facts in past cases, has denied requests to delay representation investigations pending the completion of business transactions. *See, e.g., Timber Rock R.R., above; United Airlines, above; Chautauqua Airlines, above; SAPADO I, above.*

Therefore, AirTran’s request that the NMB defer processing of the IAM’s application until the AirTran/Southwest Airlines merger has been completed is denied and the Board’s investigation in this matter will proceed.

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson  
General Counsel