



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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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

UNITED AIR LINES AND
CONTINENTAL AIRLINES

38 NMB No. 58

CASE NO. R-7285

FINDINGS UPON
INVESTIGATION-
DETERMINATION OF
CERTIFICATION

July 1, 2011

This determination addresses the representation consequences of the application filed by the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM) for the craft or class of Stock Clerks, employees of United Air Lines (United or Carrier).

The National Mediation Board (Board or NMB) extends the IAM's certification in R-4844 to include all Stock Clerks in United's single transportation system.

PROCEDURAL BACKGROUND

On January 21, 2011, the IAM filed an application alleging a representation dispute involving the craft or class of Stock Clerks at United. The IAM asserted that United Air Lines (United) and Continental Airlines (Continental) (collectively the Carriers) constitute a single transportation system. The application was assigned NMB File No. CR-7004 and Eileen M.

Hennessey was assigned to investigate. Although the IAM's application in this matter did not specifically mention Continental Micronesia (CMI), the IAM supported the Carriers' position that CMI is a subsidiary of Continental and is also part of the single transportation system arising from the United/Continental merger.

On April 20, 2011, the Board found that United and Continental (including CMI) operate as a single transportation system under the RLA for the craft or class of Stock Clerks. *United Air Lines/Continental Airlines*, 38 NMB 161 (2011). Pursuant to the Board's Representation Manual (Manual) Section 19.6, this determination addresses the representation of the Stock Clerks craft or class.

On April 21, 2011, the Investigator requested that the Carrier provide a List of Potential Eligible Voters (List) and signature samples for the combined craft or class. The Carrier complied with this request on May 5, 2011. There are 1,035 Stock Clerks at United—786 at pre-merger United and 249 at pre-merger Continental (including CMI).

On May 3, 2011, the IAM submitted evidence of representation of the combined craft or class and requested that the Board extend its certification in R-4844 to cover all Stock Clerk employees at the combined Carrier, consistent with Board precedent.

The Carrier responded on May 10, 2011, requesting that the Board conduct a representation election "under the unique circumstances of this case." On May 12, 2011, the IAM responded, arguing that the Board should reject the Carrier's request.

The Board's April 20, 2011, determination stated that an "Intervenor has 14 days from the date of this determination to file an application supported by a showing of interest of at least 35% of the single transportation system in accordance with Manual Sections 19.601 and 19.603." *Id.* at 174. No Intervenor filed an application in this case.

STATEMENTS OF FACT

The Stock Clerks craft or class is represented by the IAM at United under the Board's certification in NMB Case No. R-4844. The CMI employees who perform stock clerk/stores functions are covered by CMI's Mechanics and Related Employees collective bargaining agreement with the International Brotherhood of Teamsters (IBT). The IAM filed an application to represent the presently unrepresented Stock and Stores Employees at Continental Airlines

on October 8, 2010. On November 3, 2010, the Board authorized an election in NMB Case No. R-7262. On December 8, 2010, the Board cancelled this election, *Notice to Stock and Stores Employees of Continental Airlines Halting of Ongoing Election*, 38 NMB 58 (2010), and on January 25, 2011, the Board administratively closed R-7262 and incorporated the IAM's application in that case into the present case.

On April 21, 2011, United provided a List of Potential Eligible Voters (List) to the Board covering all Stock Clerks on the combined United system. The total number of individuals on the List was 1,035. Out of the 1,035 Stock Clerks on the United system, approximately 786 are currently represented by the IAM; approximately 232 are unrepresented and approximately 17 are represented by the IBT on CMI.*

The IAM asserts that the pre-merger employee groups of Stock Clerks at United, Continental and CMI are "not comparable" and under well established Board precedent the Board should extend the IAM's pre-merger certification to represent the Stock Clerks to cover the craft or class on the combined system. In support of this, the IAM cites two decades of Board precedent. In each case that the IAM cited, when a union represented at least 65 percent of the combined craft or class, the Board has ruled that the numbers are "not comparable" and has extended the certification. In addition, the IAM argues the Carrier has no standing to request an election. *Railway Labor Executives' Ass'n v. NMB*, 29 F3d 655 (D.C. Cir. 1994).

United states that:

[i]n every craft or class on the post-merger United/Continental/CMI single transportation system where pre-merger representation was not the same, the Board has authorized an election and the affected employees will have an opportunity to vote on their post-merger representation. . . . It is inherently unfair, and contrary to the purposes of the Railway Labor Act, for one employee group to be singled out for 'representation via automatic extension' because of the anomaly that the population for that particular craft or class at the pre-merger carriers might be deemed not "comparable".

* These employees are covered by CMI's Mechanics and Related Employees collective bargaining agreement with the IBT. The IBT did not file evidence of representation in this matter.

Nor will it be a waste of the Board's resources to conduct an election among the post-merger Stock Clerks, United argues, because the Board had previously authorized an election among the Continental Stock Clerks which was cancelled by the Board. *Notice to Stock and Stores Employees of Continental Airlines Halting of Ongoing Election*, 38 NMB 58 (2010). According to United, conducting an election among the post-merger Stock Clerks will enable the Board to better determine whether any resulting certification has at least some support from all pre-merger segments of the post-merger work group.

DISCUSSION

The Board has consistently extended an organization's certification to cover employees in the craft or class on the entire system when the numbers of employees on each part of the system are not comparable. For example, in *Continental Airlines/Continental Express*, 20 NMB 582 (1993), the Board extended the certification of an incumbent which represented 6,994 Flight Attendants to include 423 unrepresented Flight Attendants. *See also American Airlines, Inc., TWA Airlines, LLC*, 29 NMB 278 (2002); *American Airlines, Inc., TWA Airlines, LLC*, 29 NMB 260 (2002); *Continental Airlines/Continental Express*, 20 NMB 580 (1993); *SASHA/TAN*, 19 NMB 17 (1991).

The Board's examination of the record establishes that the numbers of IAM-represented Stock Clerks on United and unrepresented Stock Clerks on Continental are not comparable. United provides no legal basis for ignoring the Board's well established comparability practice. Therefore, the IAM's certification in Case No. R-4844 is extended to cover the entire craft or class of Stock Clerks on the single transportation system.

CONCLUSION

The Board extends the IAM's certification in R-4844 to include all Stock Clerks in United's single transportation system. Accordingly, Case No. R-7285 is closed.

By direction of the NATIONAL MEDIATION BOARD.



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Board Member Dougherty, concurring.

I concur in the decision of the Board but write separately to raise questions about the Board's policy of extending a certification in a merger context where the numbers of employees performing the same work at the pre-merger carriers are not comparable to each other.

The Board's extension policy effectively deprives a group of employees of the opportunity to cast votes for or against representation. The Board does not require authorization cards or any other form of indication that the unrepresented employees desire representation. Rather, it is assumed that because the larger group is already represented, a sufficient majority of the combined group desires representation. However, under the Board's new voting rules a union can be certified based on the votes of far less than a majority of a craft or class. The Board should examine whether using the current comparability standard to extend certifications obtained under such circumstances continues to serve the Board's interest in ensuring employees are able to choose their representative. The difficulty in decertifying a union once a certification has been extended makes re-examination of the extension policy even more important.

Although the Board has never defined its "comparable" standard, its practice in applying the standard usually results in roughly a third of the combined employee group being assigned a representative without a vote. The Board should seek input from interested parties to examine whether some other policy or practice might be more fair or respectful of employee choice. For example, the Board could consider requiring a larger disparity of numbers, an election, authorization cards, or some other method to ensure that a majority of the combined group truly desires representation.

I did not dissent from the extension in this case because I agree with the majority that the carrier did not provide a legal basis for deviating from the Board's established current policy and because I would prefer to provide notice and an opportunity for input before departing from the Board's established extension precedent.