



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572

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In the Matter of the  
Applications of the

NATIONAL ASSOCIATION OF  
AIRLINE PROFESSIONALS AND  
TRANSPORT WORKERS UNION  
OF AMERICA, AFL-CIO

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

involving employees of

AMERICAN AIRLINES, INC. AND  
US AIRWAYS, INC.

42 NMB No. 16

CASE NOs. R-7425;  
R-7426; R-7427;  
R-7428 and R-7429

(File No. CR-7130)

FINDINGS UPON  
INVESTIGATION

April, 15, 2015

This determination addresses the applications filed by the National Association of Airlines Professionals (NAAP) for the crafts or classes of Simulator Technicians, Instructors, and Flight Dispatchers. NAAP requests the National Mediation Board (NMB or Board) to investigate whether American Airlines, Inc. (American) and US Airways, Inc. (US Airways) (collectively the Carriers or the New American) are operating as a single transportation system.

The investigation establishes that American and US Airways constitute a single transportation system. The Investigation further finds that, for the reasons discussed below, the laboratory conditions were tainted.

PROCEDURAL BACKGROUND

On January 10, 2014, American notified the Board that “on December 9, 2013, American Airlines Group, Inc., (formerly known as AMR Corporation) and US Airways Group, Inc. implemented a merger agreement dated February 13,

2013, resulting in the former's acquisition of the latter, including its wholly-owned subsidiary US Airways, Inc." On July 24, 2014, NAAP filed three applications with the Board pursuant to the Railway Labor Act<sup>1</sup> (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth), alleging a representation dispute involving the crafts or classes of Simulator Technicians, Instructors, and Flight Dispatcher at the Carriers. These applications were consolidated in File No. CR-7130.

All three crafts or classes are represented by the Transport Workers Union of America, AFL-CIO (TWU) at both Carriers. The Simulator Engineers at US Airways are represented by the TWU pursuant to certification in NMB Case No. R-5916. *USAir, Inc.*, 17 NMB 57 (1989). The Simulator Technicians at American are represented by the TWU as part of the Mechanics and Related Employees craft or class pursuant to NMB Case No. R-6872. *American Airlines, Inc./Trans World Airlines, LLC*, 29 NMB 240 (2002). The Instructors at US Airways are represented by the TWU pursuant to certification in NMB Case No. R-5852. *US Airways/America West Airlines*, 33 NMB 295 (2006). The Instructors at American are represented by the TWU pursuant to certification in NMB Case No. R-6915. *American Airlines, Inc.*, 30 NMB 30 (2002). The Flight Dispatchers at US Airways are represented by the TWU pursuant to certification in NMB Case No. R-6022. *USAir, Inc.*, 18 NMB 216 (1991). The Flight Dispatchers at American are represented by TWU pursuant to certification in NMB Case No. R-4265. *American Airlines, Inc./Trans World Airlines, LLC*, 29 NMB 240 (2002).

The Board assigned Cristina Bonaca to investigate and a briefing schedule was set. On August 7, 2014, the Carriers submitted the requested information and its initial position statement. NAAP filed a statement on August 20, 2014, and TWU filed its initial position statement on August 21, 2014. On September 2, 2014, the Carriers and NAAP submitted responses to the TWU's initial position statement. The Carriers and TWU filed additional statements on September 16, 2014, and NAAP filed an additional statement on September 22, 2014. On September 29, 2014, the Carriers filed information at the Board's request.

On October 7, 2014, the Carriers and the TWU<sup>2</sup> submitted information on the appropriateness of a single craft or class of Simulator Technicians. On

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

<sup>2</sup> The TWU filed its statement with the International Association of Machinists and Aerospace Workers (the TWU/IAM Associations).

October 15, 2014, the Board notified participants that an investigation was necessary to determine whether laboratory conditions had been tainted. On October 21, 2014, Investigator Bonaca sent a letter to participants regarding the scheduling of the on-site investigation. On November 12-14, 2014, Investigators Bonaca and Maria-Kate Dowling conducted in-person interviews with TWU representatives, NAAP representatives, and randomly-selected employees in Dallas-Fort Worth, Texas.

On January 12, 2015, TWU filed three applications alleging a representation dispute involving the crafts or classes of Simulator Technicians, Instructors, and Flight Dispatchers at the Carriers. On January 13, 2015, TWU's applications were consolidated with NAAP's applications in File No. CR-7130.

### ISSUES

Are American and US Airways operating as a single transportation system for the crafts or classes of Simulator Technicians, Instructors, and Flight Dispatchers? If so, what are the representation consequences?

Were the laboratory conditions required for a fair election tainted? If so, what is the appropriate Board response?

### CONTENTIONS

#### NAAP

NAAP contends that American and US Airways are operating as a single transportation system for the crafts or classes of Simulator Technicians, Instructors, and Flight Dispatchers. In response to the TWU's allegations that its authorization cards were tainted, NAAP responds that the authorization cards were not "procured through improper financial inducement." Rather, employees signed authorization cards requesting an election with NAAP on the ballot because of their unhappiness over the TWU's decision to terminate direct bargaining between the Locals and the Carriers. NAAP contends that the Board should find a single transportation system and proceed with a representation election for the three crafts or classes as expeditiously as possible.

#### TWU

TWU agrees that American and US Airways are operating as a single transportation system for the crafts or classes of Simulator Technicians, Instructors, and Flight Dispatchers, although the TWU believes the Simulator

Technicians share a community of interest with the Mechanics and Related Employees craft or class. The TWU contends that employees were induced to sign authorization cards on behalf of NAAP because their collection coincided with the distribution of \$500 gift cards/cashier's checks paid for by funds taken from the Local TWU's treasuries. TWU argues that as the authorization cards are tainted, NAAP lacks a sufficient showing of interest to support its applications, and therefore, the applications should be dismissed. TWU filed its own applications for Simulator Technicians, Instructors, and Flight Dispatchers on January 12, 2015.

#### American and US Airways

The Carriers state that since the corporate merger between American and US Airways became effective on December 9, 2013, they have been rapidly pursuing the goal of a single transportation system as evidenced by the airlines' common ownership by American Airlines Group, and combined management at the officer level. Further, the Carriers are being held out to the public as "the New American" through customer communications, advertising, and marketing efforts. In addition, the Carriers are moving forward with integration of their policies, routes and schedules, livery, customer service, and other indicia of a single transportation system. As such, the Carriers contend that the Board should find American and US Airways are operating as a single transportation system consistent with its prior decisions involving the crafts or classes of Flight Deck Crewmembers, Flight Attendants, and Passenger Service Employees. See *American Airlines/US Airways*, 41 NMB 174 (2014); *American Airlines/US Airways*, 41 NMB 145 (2014); *American Airlines/US Airways*, 41 NMB 90 (2014). The Carriers do not take a position on the issue of whether NAAP's authorization cards were tainted.

#### FINDINGS OF LAW

Determination of the issues in this case is governed by the Act, as amended, 45 U.S.C. § 151, et seq. Accordingly, the Board finds as follows:

##### I.

American and US Airways are common carriers as defined in 45 U.S.C. § 181, First.

##### II.

NAAP and TWU are labor organizations and/or representatives as defined in 45 USC § 151, Sixth, and § 152, Ninth.

## III.

45 U.S.C. §, Third, provides in part: “Representatives . . . shall be designated . . . without interference, influence, or coercion . . . .”

## IV.

45 U.S.C. § 152, Fourth, gives employees subject to its provisions, “the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for purposes of this chapter.”

## V.

45 U.S.C. § 152, Ninth, provides that the Board has the duty to investigate representation disputes and to designate who may participate as eligible voters in the event an election is required. In determining the choice of the majority of employees, the Board is “authorized to take a secret ballot of the employees involved or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives . . . by the employees without interference, influence, or coercion exercised by the carrier.”

**A. SINGLE TRANSPORTATION SYSTEM****STATEMENT OF FACTS****Background**

Prior to the merger, American was a wholly-owned subsidiary of AMR Corporation (AMR). American is headquartered in Dallas-Fort Worth, Texas and operates approximately 1900 flights a day. American has hubs in Dallas-Fort Worth; Miami; Chicago-O’Hare; Los Angeles; and New York-JFK. Pre-merger US Airways was a wholly-owned subsidiary of US Airways Group with its headquarters in Tempe, Arizona. US Airways operates more than 1,200 flights per day and has hubs in Charlotte; Philadelphia; Phoenix; and Washington-Reagan.

On February 13, 2013, AMR and US Airways Group entered into an Agreement and Plan of Merger (Merger Agreement) under which the former would acquire the latter, including its wholly-owned subsidiary US Airways. In March 2013, the Carriers announced the creation of the Integration Management Office (IMO) to manage the integration of the two companies. The IMO is based in Fort Worth, Texas and centrally manages all integration-related topics, including developing the master plan and timeline for the integration. Following governmental and shareholder approvals, the Merger Agreement became effective on December 9, 2013.

As of November 3, 2014, there were approximately 133 Simulator Technicians with 80 at American and 53 at US Airways. There were approximately 371 Flight Dispatchers with 196 at American and 175 at US Airways. There were approximately 291 Instructors with 183 at American and 108 at US Airways. TWU represents the Simulator Technicians, Flight Dispatchers, and Instructors at both US Airways and American.

#### Common Corporate Ownership

Pursuant to the Merger Agreement, AMR was renamed American Airlines Group, Inc. (AAG), and American and US Airways are now wholly-owned subsidiaries of AAG. US Airways remains a wholly-owned subsidiary of US Airways Group. American and US Airways are now operating under the “American Airlines” name.

All of the outstanding stock of AMR Corporation has been converted into common stock in AAG, and each outstanding share of common stock of US Airways Group has been exchanged for one newly-issued share of AAG common stock. AAG, American, US Airways Group, and US Airways made their first consolidated filing with the Securities and Exchange Commission on December 9, 2013. Since that date common shares issued by AAG have been traded on the NASDAQ Global Select Market under the ticker symbol “AAL” and convertible preferred shares have been traded on the same market under the ticker symbol “AALCP.” In addition, a common investor relations website for AAG has been created.

#### Common Board of Directors

AAG has a single Board of Directors. Doug Parker, the former Chairman and Chief Executive Officer of US Airways Group and US Airways, is now Chief

Executive Officer of AAG and Chairman of the Board of AAG.<sup>3</sup> He is also Chief Executive Officer of American and US Airways Group. The AAG Board of Directors also includes John T. Cahill (Lead Independent director), James F. Albaugh, Jeffrey D. Benjamin, Michael J. Embler, Matthew J. Hart, Alberto Ibarguen, Richard C. Kraemer, Denise M. O'Leary, Ray M. Robinson, and Richard P. Schifter. The AAG Board of Directors held meetings in January, April, and July 2014.

American and US Airways have common Boards of Directors. The three members of each company's Board of Directors are Doug Parker, Scott Kirby, and Steve Johnson. Kirby is the former President of US Airways and is now President of AAG, American, US Airways Group, and US Airways. Johnson is the former US Airways Executive Vice President, Corporate and Government Affairs and is now AAG's Executive Vice President, Corporate Affairs. A common Directors and Officers liability insurance policy covers the Officers and Directors of AAG and each of its subsidiaries.

#### Common Management

All Officers, Executive Vice Presidents, Senior Vice Presidents, and Vice Presidents for the Carriers and substantially all Managing Directors and Directors, have been named. These individuals have taken responsibility for managing the New American's combined workforce of approximately 92,000 employees. The New American has finalized the designs for its combined administrative organization. The majority of non-executive positions were filled by June 2014.

The executive offices have been combined and many former US Airways senior executives and managers have relocated or are in the process of relocating to the American offices in Fort Worth, Texas, which is the headquarters of the combined Carriers. Revenue Management, the first work group to integrate, has already completed its move to Fort Worth. The leadership for each of the New American's airport operations has been announced and is in place.

The Carriers have also implemented policy changes at the Fort Worth corporate headquarters that reflect the integration of the corporate cultures of American and US Airways. The New American has held three quarterly "State

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<sup>3</sup> Tom Horton, the former Chairman, President, and Chief Executive officer of AMR Corporation and American, held the position of non-executive Chairman of the Board of AAG until June 3, 2014.

of the Airline” webcast meetings for the combined carrier at its corporate headquarters. Over four separate sessions, the New American has brought together the Carriers’ management and over 5,000 employees to discuss the New American’s progress with the leadership team.

### Financial Integration

AAG reports its financial results on a consolidated basis, with separate reporting for American and US Airways. On January 28, 2014, AAG reported its fourth quarter and full year 2013 results including Generally Accepted Accounting Principles (GAAP) financial results that contained US Airways data for the period from the closing of the merger on December 9, 2013 through December 31, 2013. AAG reported its first quarter 2014 results on April 24, 2014, which included a complete quarter of post-merger GAAP consolidated results for AAG. In the first quarter of 2014, US Airways Group and US Airways discontinued filing separate periodic and current financial reports with the SEC.

The Carriers have completed purchase accounting and reporting requirements for the New American and have aligned financial statement accounts and accounting policies. Starting January 1, 2014, the New American elected to use one firm to audit both Carriers’ finances. The Finance groups of American and US Airways are under the direction of a single officer to ensure consistency.

The Carriers continue to integrate their procurement programs, including the negotiation with suppliers for consolidated services. In Phoenix and JFK, airport third-party suppliers, including janitorial, aircraft cabin cleaning and wheelchair services have been consolidated. The Carriers expect to consolidate these services at several other major airports by the end of the third quarter of 2014. Their respective resource approval, commitment, and disbursement processes have been aligned, including those related to capital expenditures, expense projects, contracts, leases, and dispositions. Paul Jones, former Vice President of Legal Affairs for US Airways and current Senior Vice President, General Counsel, and Chief Compliance Officer for AAG, American, US Airways Group and US Airways, states that significant progress has been made in the alignment of cargo handling contracts, with supplier selections completed by the end of the second quarter of 2014. The Carriers are also in the process of consolidating ramp handling and other suppliers including fuel and aircraft parts.



### Centralized Control of Labor Relations

There is a single management group responsible for labor relations at the Carriers. Paul Jones is responsible for labor relations at the merged carrier. Al Hemenway, former Vice President of Labor Relations for US Airways, is now the Vice President of Labor Relations for the Carriers. Jones' and Hemenway's responsibilities include collective bargaining negotiations, administration of collective bargaining agreements (CBAs), the grievance and arbitration process, and all other aspects of labor relations. Jim Weel, formerly Managing Director of Labor Relations (Ground) at American, is now Managing Director of Labor Relations (Tech Ops), with responsibility for Mechanics and Related Employees, Stock Clerks, Maintenance Training Instructors, Flight Crew Training Instructors, Flight Simulator Engineers, and Dispatchers work groups. According to Jones, all positions in the Labor Relations department have been filled.

### Labor Protection Provisions and Interim Agreements

The unions representing several crafts or classes of employees at American and/or US Airways have engaged in negotiations with one or both of the Carriers to determine or expedite the process for determining common terms and conditions of employment. See *American Airlines/US Airways*, 41 NMB 90 (2014); *American Airlines/US Airways*, 41 NMB 145 (2014); *American Airlines/US Airways*, 41 NMB 174 (2014).

### Common Personnel Policies

The Human Resources functions of the New American have been combined under Elise Eberwein, Executive Vice President of People and Communications. The leadership team reporting to Ms. Eberwein, including all Vice Presidents and Managing Directors of the various human resources functions, have been named, and they have assumed their roles. Effective January 1, 2014, the Carriers implemented a number of common personnel policies applicable to management, support staff, and other non-represented employee groups at American and US Airways. These policies include a single company seniority policy for US-based employees, a common vacation scheduling policy, and common holiday schedules. The Carriers announced that beginning in January 2015, all US-based New American management and support staff will have consistent medical benefit plan options and the same sick leave and short-term and long-term disability benefits. Also the Carriers stated that as of January 2015, a single company seniority policy, a common vacation accrual and usage policy, and a common holiday schedule was to be

effective for all management and support staff at both carriers and the 401(K) matching contribution, pay, and leave of absence policies was to be aligned.

The combined Human Resources Department is in the process of harmonizing the Carriers' other personnel policies and procedures and will be implementing additional common policies as they are developed. According to Jones, the Human Resources Department has nearly completed the first version of a common employee handbook for both Carriers. The Carriers have also selected a health and welfare benefit administrator for employees of both Carriers, and an investment advisor for the New American's 401(K) plan. The Carriers also expected to fully align their diversity strategies by the end of the third quarter of 2014. Details of all policies are made available to employees and employees can email questions to [merger.questions@aa.com](mailto:merger.questions@aa.com).

All former US Airways employees have been assigned a lifetime American employee number and, as of July 15, 2014, substantially all US Airways employees had received their American ID number. This number will provide US Airways employees with access to system applications such as dual-access travel, benefits enrollment, and Jetnet, American's intranet system.

Employees of both American and US Airways became eligible for zero-fare interline flights on the other airline. The Carriers have also aligned aspects of the non-revenue travel system so that they are uniform between the two Carriers. Aligned policies include pass privileges for family and friends, free coach travel, new employee travel, discounted positive-space travel, retiree travel eligibility, travel dress code, minimum age for first class travel, and age for dependent travel. Employees of each Carrier have also been provided with additional details regarding future common travel enhancements. Since the Fall of 2014, both Carriers have boarded employees under a uniform priority system by check-in time, and Web check-in for flights is also available. The AMR Travel Club, a membership organization, has opened its scholarship program to dues-paying US Airways employees and retirees. All active and retired US Airways and American employees are now eligible to purchase either Admiral Club or US Airways Club membership.

In early January 2014, a joint careers page became available to all employees, allowing them to view and apply for open positions at both Carriers as internal candidates. The process for internal posting of US-based management and support staff positions is uniform between the two Carriers. To the extent feasible, the content of new employee orientation programs has been aligned. New flight attendants at both Carriers are being trained at the same location. In May and June 2014, the New American conducted joint

Captain Leadership Trainings with newly promoted captains from both Carriers.

The merged Carrier has also implemented operational and financial incentive programs for employees. For example, through the “Operations Olympics” program, employees of both carriers will be awarded 50 dollars for each number one ranking against the Carriers’ biggest competitors in on-time arrivals, baggage performance, and customer satisfaction. Additionally, approximately 2,000 management employees participated in a common 2014 short-term compensation program that provided annual bonuses based on achieving certain annual pre-tax earnings goals. The Corporate Recognition Program consisting of the Above & Beyond, Chairman’s Award, and service anniversaries programs were aligned for 2014.

#### Common Employee Communications

American’s intranet system, Jetnet, will be the intranet resource for employees of the combined Carrier. During integration, identical updates and news will be posted on both legacy systems. As of December 9, 2013, all Officers of AAG and US Airways groups received access to Jetnet. On December 9, 2013, employees of the Carriers with email access were able to share calendars, schedule meetings, and send instant messages to each other. All of the Carriers are found in the New American’s global address book. Substantially all US Airways employees who had a usairways.com email address now also have an aa.com email address. For a period of time, emails sent to a usairways.com address will be forwarded to the intended recipient at their aa.com address. All outgoing email communications will be from aa.com.

Since February 2013, the Carriers have distributed “Arrivals,” a weekly newsletter for employees of both US Airways and American that provides information, updates, and insights about the merger. Since the merger, combined daily news updates have been distributed to employees of both Carriers. The Carriers also publish a joint benefits newsletter with features about benefits, wellness, and 401(k) savings.

#### FAA Operating Certificate

On January 2 and 3, 2014, the Federal Aviation Administration (FAA) approved the American and US Airways FAA Transition Plan for moving to a single operating certificate. The FAA’s approvals state that the estimated issuance date for the New American’s single operating certificate is on or about

April 6, 2015. On April 8, 2015, the FAA issued a single operating certificate to the New American.

### Routes and Schedules

On January 13, 2014, the Carriers launched the first phase of a codeshare between American and US Airways enabling customers to purchase tickets for select codeshare flights for travel beginning on January 23, 2014 on either carrier's website or other distribution channels. In early February 2014, the Carriers expanded their pre-existing codeshare agreement to include all flights within the combined network, pending government approval in certain international markets. As a benefit of the codeshare, customers are now able to make reservations for both American and US Airways flights on American's website. To ensure that customers and their luggage will make their scheduled connections between codeshare flights, the Carriers have revised minimum connection times.

US Airways has ended its codeshare relationship with United Airlines, and no flights after March 30, 2014 have been flown under that codeshare. As of March 31, 2014, New American customers were no longer able to earn miles or receive Star Alliance Gold or Silver benefits from a flight with a Star Alliance Partner. In early April 2014, US Airways joined the codeshare arrangement among Atlantic Joint Business members American, British Airways, Iberia, and FinnAir as an affiliate member, and expects to maintain that status until a single operating certificate is obtained. In June 2014, US Airways launched a codeshare with **oneworld**® member airberlin.

In June 2014, the Carriers began to harmonize their networks by increasing mainline flying between legacy US Airways and legacy American hubs. The New American expects to maintain all hubs currently served and will align service at those hubs. The New American will operate hubs in Charlotte, Chicago, Dallas-Fort Worth, Los Angeles, Miami, New York-JFK, Philadelphia, Phoenix, and Washington-Reagan. American has announced changes to its scheduling practices so that they are similar to those of US Airways. These changes include "re-banking" its hubs, varying its schedule according to demand and optimizing operational performance. In Miami, the Carriers have announced a re-banked schedule that was implemented on August 19, 2014. Subsequently, the Carriers anticipate implementing a re-banked schedule in Chicago and Dallas-Fort Worth. The Carriers' Network Planning team has made plans and taken steps to redeploy aircraft within each legacy system to optimize the strength of the new network. The first phase of aircraft redeployment began on July 2, 2014.

### Integration of Operations

According to Jones the integration of the Carriers' various technologies including their three Crew management systems is a complex undertaking and impossible to efficiently implement in advance of a single operating certificate. The Carriers have, however, taken steps to integrate passenger functions before issuance of the single operating system. In this regard, the Carriers are now co-located at total of 80 airports. This includes co-location of operations involving the Carriers' regional partners. At New York-JFK, ticket counters and gates are now side-by-side. At Phoenix, each airline's ticket and check-in counters, gates, baggage services, customer service operations, and aircraft maintenance operations are co-located. In Miami, US Airways' ticketing, check-in, and baggage services are adjacent to American's and flights are operated out of adjacent concourses, enabling easier connections. Cargo operations have been co-located in more than 92 cities including New York-JFK, Phoenix, Chicago, Charlotte and Washington-Reagan.

Several aircraft modification initiatives are underway with the goal of aligning the US Airways and American aircraft designs. For example, in August 2014, the New American began the modification of the galleys on 19 American A319 aircraft to align certain characteristics to the existing 93 US Airways A319 aircraft. The New American has also aligned the manner in which Technical Operations evaluates and communicates with Network Planning regarding aircraft access for scheduled and unscheduled maintenance.

The New American has also announced that it plans to build a new integrated operations control center in Fort Worth. This construction began in late summer of 2014 with completion anticipated in the third quarter of 2015.

Additionally, the New American has created the Technology Integration Management Office (TIMO), a joint organizational structure to manage information technology integration. TIMO works alongside the Carriers' business units to assess technology requirements and systems work necessary to implement integration milestones. TIMO has determined what technology systems will be used for the New American. For example, the New American has reached a master services agreement with Sabre, American's current Passenger Services System provider, for the New American's reservation system. Implementation of a single integrated Passenger Service System with a single website is projected by the end of the fourth quarter of 2015. It is also projected that reservations centers will be fully integrated by the end of 2016.

The New American has also determined that American's Boeing procedures and Flight Operations Manual and US Airways' Airbus procedures will be used at the merged Carrier.

### Frequent Flyer Programs and Customer Service

On January 7, 2014, the Carriers announced a more seamless customer experience, calling it "Customer Day One." The Carriers advertised new common policies and benefits to customers through both airlines' email, sales communications, home pages, arriving pages, social media (Facebook, Google+, Twitter), paid search marketing, and interactive voice recordings on reservations phone lines. All US Airways and American frequent flyers are now able to earn miles when traveling on flights of the other Carrier. Frequent flyers can also use miles from one Carrier's program to book award travel on the other Carrier. American frequent flyer miles can be redeemed for US Airways flights using American's reservations department or through American's website. Similarly, US Airways frequent flyer miles can be redeemed for American flights using US Airways' reservation department or website. Additionally all eligible miles and segments earned when flying on either airline will count toward elite status qualification in the program of the customer's choice. Retroactive mileage credit is available for frequent flyers of one Carrier traveling on the other Carrier on or after January 7, 2014. To facilitate frequent flyer reciprocity, the Carriers have exchanged some frequent flyer customer data.

The New American has issued new frequent flyer award charts at each carrier to harmonize the award benefits and levels in existing programs. For example, the US Airways Dividend Miles program has eliminated blackout dates to be consistent with the AAdvantage program. The Carriers expect to combine their two frequent flyer programs in 2015, including their frequent flyers' award mileage balances, million-mile balances, and elite-qualifying activity.

US Airways exited the Star Alliance on March 30, 2014 and joined **oneworld**<sup>®</sup>, the alliance of which American is a founding member, on March 31, 2014. US Airways Dividend Preferred members have been sent new membership cards and can enjoy the same **oneworld**<sup>®</sup> benefits as AAdvantage members, such as mileage earning and redemption opportunities, reciprocal elite relationships, and lounge access on other **oneworld**<sup>®</sup> carriers.

Elite members of each airline's frequent flyer program have many benefits on the other carrier, such as priority check-in, complimentary checked

bags, complimentary access to preferred seats, priority security, early boarding, and priority baggage delivery. American and US Airways' boarding announcements have been aligned to accommodate these passengers, and changes were made to closely align the boarding process. As of June 11, 2014, the Carriers offered reciprocal elite upgrade benefits for travel within and between the US (except Hawaii) and select other destinations. Customers with membership at US Airways Clubs are able to access the 35 American Admirals Clubs. Admirals Club members can access all 19 domestic US Airways Clubs. All US Airways Clubs were scheduled to be rebranded by the end of 2014. At Washington-Reagan, Raleigh-Durham, Los Angeles, and Philadelphia, where each Carrier has a lounge, the Carriers have consolidated their club programs.

The Carriers have also unified certain customer policies including infant acceptance, unaccompanied minor age ranges, web and airport check-in windows, bereavement fares, and international documents verification. Checked bag fees and bag fee exemptions have been aligned. In instances where a policy alignment has yet to be made, agents have been trained and systems have been programmed to make agents aware of any difference between American and US Airways. The New American has launched a transitional help desk for frontline agents of both Carriers. This help desk is staffed by employees from both American and US Airways and aids agents with their customer policy and procedure questions.

Customers of both American and US Airways now have access to a day-of-travel tool called "Find Your Way" at [www.aa.com/findyourway](http://www.aa.com/findyourway) that helps customers navigate airports and directs them to key travel information on the correct carrier's website. For example, the "Travel Tools" section links customers to notifications, information on check-in, reservations, airports, clubs and lounges, in-flight, destinations, and bags. Each category contains a link titled "American" and another link titled "US Airways."

The Carriers have also implemented tools to aid customers during the integration process including arrival announcements, updates to the Find Your Way website, and station-specific tools, including "New American is arriving" directional signage that will continue to be updated to reflect progress in the integration process. At all US Airways stations that overlap with American, signage contains both the American and US Airways logos. Each Carrier's customer reservation phone line has an interactive voice response greeting that states, "[t]he merger between US Airways and American Airlines is underway," and offers callers the opportunity to hear additional details about the merger, before calls are transferred to an agent. Each Carrier's automated system also directs customers interested in finding out more information on the New

American to [usairways.com/arriving](http://usairways.com/arriving) or [aa.com/arriving](http://aa.com/arriving), respectively. For day-of-travel information, the systems direct customers to [usairways.com/findyourway](http://usairways.com/findyourway) and [aa.com/findyourway](http://aa.com/findyourway), respectively.

Customers can access and print their boarding passes for flights on one Carrier via a link on the other Carrier's website. Each Carrier's website also recognizes record locator numbers of the other Carrier. US Airways has started migration to American's re-accommodations system which is used to rebook customers when a flight is cancelled or significantly delayed. The Carriers' goal was to re-accommodate customers on each other's fleets by late 2014.

Certain in-flight announcements have been made uniform between the carriers. The Carriers now have a single Gogo® in-flight wireless internet portal for which customers can apply their monthly and daily passes to in-flight internet on either carrier. Since April 2014, American's boarding video, arrival music, and radio stations began playing on US Airways flights. US Airways has expanded its domestic in-flight meal windows to align with those of American. Glassware and linens on both carriers have been aligned. American has committed to retrofitting its existing 777-200 and 767-300 aircraft to include fully lie-flat premium seating similar to the US Airways Envoy Suite, a lie-flat bed in international business class.

The Carriers now report combined operational performance statistics. These statistics are published to employees of both carriers. Beginning with the January 2014 results, the Department of Transportation has reported the Carriers' combined statistics in its monthly Air Travel Consumer Report. An emergency response procedure has been implemented between the Carriers. This procedure ensures that both American and US Airways are available to provide aid to each other and to each other's customers in the event of an emergency.

#### Livery, Flight Symbols, and Brand Elements

All employees of the New American had the opportunity to vote on their preferred tail livery for the combined fleet of nearly 1,000 aircraft and the resulting selection of the United States flag tail was unveiled in January 2013. American and US Airways have started repainting their aircraft and two US Airways aircraft are in the new livery including 14 aircraft operated by US Airways. The Star Alliance logo has been replaced by the **oneworld®** logo on almost all US Airways aircraft. A total of 335 aircraft at the combined Carrier are in service with the new livery. The livery, flight symbol, and other brand elements are being rolled out to all stations that have an upcoming co-location.



This includes a new back wall for ticketing counters and baggage offices of both Carriers with a peel-off US Airways name/logo that can be removed when integration is complete. These back walls have been installed at the majority of the New American hubs and in more than 40 other airports. According to Jones' declaration, a majority of ticket counters will have these new back walls by the end of the second quarter of 2014.

American and US Airways share a common external recruiting website, [www.aacareers.com](http://www.aacareers.com). All management positions are posted as jobs at American unless there is a specific business reason why the position needs to stay on the US Airways platform. Additionally US Airways recruiters assist American hiring managers with filling vacancies and interface with American's vendor, IBM. The Carriers attend recruiting events together.

#### Standardized Uniforms

All employees have been issued a commemorative luggage tag that says "New American is Arriving." This tag displays both carriers' logos and shows the year "2013." To celebrate US Airways joining **oneworld**®, employees at American and US Airways received a new company ID folder featuring the American and **oneworld**® logos. Customer service agents, flight attendants, pilots, and non-uniformed employees received a lanyard. Since fleet service employees and tech ops employees work in tight spaces and around aircraft, these employees received an arm badge holder. Additionally, all customer-facing US Airways employees received a pin.

Beginning July 1, 2014, all employees of both carriers were expected to wear only the approved company ID holders and use only company-approved badge backers. All Star Alliance affiliations and marks have been removed from US Airways employee uniforms.

The Carriers have initiated selection and "wear testing" of new uniforms. The new uniforms are expected to be in use in operation in the next 18-24 months. As part of this process, the New American has selected the designer for the pilot, flight attendant, and customer service agent uniforms.

## DISCUSSION

### I.

#### The Board's Authority

45 U.S.C. § 152, Ninth, authorizes the Board to investigate disputes arising among a carrier's employees over representation and to certify the duly authorized representative of such employees. The Board has exclusive jurisdiction over representation questions under the RLA. *General Comm. of Adjustment v. M.K.T. R.R.*, 320 U.S. 323 (1943); *Switchmen's Union of N. Am. v. Nat'l Mediation Brd.*, 320 U.S. 297 (1943). In *Air Line Pilots Ass'n, Int'l v. Texas Int'l Airlines*, 656 F.2d 16, 22 (2d Cir. 1981), the Court stated, "the NMB is empowered to . . . decide representation disputes arising out of corporate restructurings."

### II.

#### Single Transportation System

Section 19.4 of the Board's Representation Manual (Manual) provides that: "Any organization or individual may file an application, supported by evidence of representation or a showing of interest . . . seeking a determination whether a single system of transportation exists."

In *Trans World Airlines/Ozark Airlines*, the Board cited the following indicia of a single transportation system:

[W]hether a combined schedule is published; how the carrier advertises its services; whether reservation systems are combined; whether tickets are issued on one carrier's stock; if signs, logos and other publicly visible indicia have been changed to indicate only one carrier's existence; whether personnel with public contact were held out as employees of one carrier; and whether the process of repainting planes and other equipment, to eliminate indications of separate existence, has been progressed.

Other factors investigated by the Board seek to determine if the carriers have combined their operations from a managerial and labor relations perspective. Here, the Board investigates whether labor relations and personnel functions are handled by

one carrier; whether there are a common management, common corporate officers and interlocking Boards of Directors; whether there is a combined workforce; and whether separate identities are maintained for corporate and other purposes

14 NMB 218, 236 (1987).

The Board finds a single transportation system only when there is substantial integration of operations, financial control, and labor and personnel functions. *Delta Air Lines/Northwest Airlines*, 36 NMB 36 (2009); *Burlington N. Santa Fe Ry. Co.*, 32 NMB 163 (2005); *Huron and Eastern Ry. Co., Inc.*, 31 NMB 450 (2004); *Portland & Western R. R., Inc.*, 31 NMB 71 (2003). Further, the Board has noted that a substantial degree of overlapping ownership, senior management, and boards of directors is critical to finding a single transportation system. *Precision Valley Aviation, Inc., d/b/a Precision Airlines and Valley Flying Serv., Inc., d/b/a Northeast Express Reg'l Airlines*, 20 NMB 619 (1993).

The Carriers are wholly-owned subsidiaries of AAG. AAG has a single Board of Directors and a common senior management group in place. There is a single group of Officers responsible for labor relations at the Carriers, and substantial steps have been taken toward financial integration of the Carriers. The New American's single operating certificate was issued on April 8, 2105. Personnel policies and practices have been or are in the process of being integrated. There is a common external recruiting website for hiring. The Carriers are held out to the public as the "New American" through customer communications, advertising, and marketing efforts.

The Carriers have been aligning schedules in the markets where there are overlapping flights. The Carriers have established a code-sharing agreement. US Airways is no longer a Star Alliance member and has joined **oneworld**®, the alliance of which American is a founding member. The Carriers have begun the process of merging their frequent flyer programs and members of both Carriers' programs are now able to receive benefits while flying at either Carrier. The Carriers are co-located at 80 airports. The Carriers have adopted a new logo and a total of 335 aircraft at the combined Carrier are in service with the new livery. The Carriers have implemented common ID holders and badge backers, and have selected designers for new common uniforms.

Although a single FAA operating certificate has only recently been issued, there are a number of prior Board determinations finding a single transportation system in the absence of even a single FAA operating certificate. In *Delta Air Lines/Northwest Airlines, above*, the Board found a single transportation system where the FAA had accepted the carriers' plan for transition to a single operating certificate; there was a single Board of Directors; the carriers and the union had reached an agreement on seniority integration; and management and human resources positions had been integrated. See also *Atlas Air, Inc./Polar Air Cargo Worldwide, Inc.*, 35 NMB 259, 269 (2008) (Board found a single transportation system even though the carriers had separate operating certificates and separate crews, because there was substantial overlap among the members of the carrier's boards of directors, labor relations and operations were centralized, employees were cross-utilized, and there were plans in place for an integrated seniority list and CBA); *Continental Airlines/Continental Express*, 20 NMB 326 (1993) (Board found a single system through common control, common ownership, shared common officers, and centralized management and labor relations even though the carriers had separate FAA operating certificates).

Further, it is well-settled that the Board's criteria for substantial integration of operations do not require total integration of operations. *US Airways/America West Airlines*, 33 NMB 49 (2006). Here, the Carriers have made significant steps towards integration. They have combined their operations from a managerial and labor relations perspective, and have made considerable steps towards financial integration. Additional plans are underway for further integration in every area, including common policies, common routes and schedules, common uniforms, a combined livery and a unified customer service. Further, the Carriers have informed their customers of the merger through pre-flight announcements, both Carriers' websites, magazines, and social media (Facebook, Google+, Twitter). The submissions of the Carriers establish that the integration has continued to progress since the filing of NAAP's applications.

Based upon the application of the principles to the facts established by the investigation, the Board finds that American and US Airways are a single transportation system.

## III.

Craft or Class Issues

In determining the appropriate craft or class on a particular carrier, the Board examines a number of factors including functional integration, work classifications, terms and conditions of employment, and work-related community of interest. *United Parcel Serv.*, 33 NMB 307 (2006); *AirTran Airways, Inc.*, 31 NMB 45 (2003); *United Parcel Serv. Co.*, 30 NMB 84 (2002); *Frontier Airlines, Inc.*, 29 NMB 28 (2001). For the reasons discussed in *American Airlines, Inc./U.S. Airways, Inc.*, 42 NMB 35, 58-62 (2015), the Board finds that Simulator Technicians are appropriately part of the Mechanics and Related Employees, and not a separate craft or class.

**B. ALLEGATIONS OF ELECTION INTERFERENCE**STATEMENT OF FACTS

TWU is the certified bargaining representative of the Simulator Technicians (R-6872), Instructors (R-6915), and Flight Dispatchers (R-4265) at American. After the American/US Airways merger became effective, Local TWU 541, which represents the Simulator Technicians and Instructors at American, began direct negotiations with the Carriers to facilitate integration.

On April 4, 2014, TWU International decided to terminate all negotiations between American Airlines and Local 541.<sup>4</sup> According to NAAP, the decision was made “without prior consultation with, and against the wishes of” the heads of the Locals. Local 541 appealed the decision of the International on April 11, 2014. On May 1, 2014, a letter was sent to American Airlines from the TWU International which stated: “Please consider this letter as our official notification to inform you that based on the needs of the Transport Workers Union as an organization, we will be suspending all ongoing contract negotiations with the New American Airlines.” On June 10, 2014, the Local’s appeal was denied, and the International stated: “Here, the International made a judgment that suspending negotiations would serve the interest of the TWU

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<sup>4</sup> Local 544 was also directed to stop negotiations with the Carriers and Local 544 joined in Local 541’s appeal of the International’s decision. Local 544, however, did not file an application with the Board and is not a participant in this matter.

and its represented employees at American and pre-merger US Airways – including the members of the Locals.”

Following the suspension of direct negotiations, American Simulator Technicians, American Instructors and American Flight Dispatchers, as well as some of the Local Officers of 541 and 542<sup>5</sup>, began an organizing campaign in support of a new independent union called NAAP. NAAP was the idea of then President of Local 541 James Fudge, as well as other Officers of Local 541 and 542. The employees represented by Local 541 conducted an authorization card campaign from approximately June 11, 2014 through July 16, 2014. The cards were all collected from American’s Simulator Technicians and Instructors, except for a small group that was received from US Airways’ Simulator Engineers at the end of July. The employees represented by Local 542 conducted an authorization card campaign from late May through July 2014. Only cards from American Airlines’ Flight Dispatchers were collected. The Officers of Local 541 and 542 participated in the authorization card campaigns along with the employees.

Contemporaneous with the organizing campaign, the Locals authorized the distribution of cashier’s checks (Local 541) and gift cards (Local 542) from their local treasuries in the amount of \$500 to all members in good standing on their seniority lists. On June 9, 2014, Local 542 approved a motion for the purchase of gift cards in the amount of \$500 to all members to help defray the purchase of a communication device. Local 542 Officers began distributing the gift cards on June 18, 2014, and these gift cards went to all members in good standing in the Local, including Flight Dispatchers at American, Envoy (Eagle), Horizon Air, Alaska Airlines, United South, and Express Jet. Employees, including the American employees, had to sign an acknowledgment sheet for the receipt of the \$500 gift card. On July 2, 2014, Local 541 approved a motion to authorize distribution of the cashier’s checks to purchase a personal computer in the amount of \$500 to facilitate communications between members. Local 541 Officers began distributing the cashier’s checks to its members on July 7, 2014. American Employees needed to submit a valid email address and signature in order to receive the cashier’s check.

On July 23, 2014, Local 541 President James Fudge resigned his position with the TWU by telephoning the Officers of Local 541 and by sending an email to American. Local 541 Treasurer Earl Smith also resigned his position with the TWU in late July. On July 24, 2014, NAAP’s applications

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<sup>5</sup> Local 542 represents the Flight Dispatchers at American, Envoy (Eagle), Horizon Air, Alaska Airlines, United South, and Express Jet.

were received by U.S. mail, and were docketed by the NMB for the three crafts or classes, with James Fudge listed as the President of NAAP. The date on the application is July 23, 2014. Five days later, on July 28, 2014, the entire Executive Board of Local 542 resigned their positions with the TWU and pledged support for NAAP. In August 2014, the TWU imposed trusteeships over Locals 541 and 542, on charges related to alleged financial malpractice and dual unionism, and filed civil actions against its former Officers in the Northern District of Texas.

On November 12-14, 2014, Investigators Bonaca and Dowling conducted in-person interviews in Dallas-Fort Worth, Texas, with American Simulator Technicians, American Instructors, and American Flight Dispatchers, and representatives from TWU and NAAP.

During the investigation, the American employees expressed a longstanding dissatisfaction with the TWU. The interviewees said that they signed cards for NAAP because they were frustrated and disappointed with the TWU International's representation. All the randomly-selected American employees who were interviewed by the Investigators signed authorization cards. The American employees interviewed stated that the money they received was to be used for the purchase of a communications device and many said that \$500 was just enough to purchase an iPad or comparable device. According to the statements of employees interviewed, the iPad or personal computer was to assist with communication between the employees, especially during the integration between American and US Airways.

## DISCUSSION

Under Section 2, Ninth, of the Act, the Board is charged with the responsibility of assuring that employees in any craft or class are provided the opportunity to make a choice concerning representation free of interference, influence or coercion by the carrier. This duty requires that where there are allegations of interference, including before the authorization of an election, the Board has the responsibility to investigate such claims. See *Northern Air Cargo*, 29 NMB 1 (2001); *Virgin Atlantic Airways*, 24 NMB 575 (1997); *Southwest Airlines*, 21 NMB 332 (1994); *Seaboard System Railroad*, 12 NMB 25 (1984). When considering whether employees' freedom of choice of a collective bargaining representative has been impaired, the Board examines the totality of circumstances as established through its investigation. The Board makes an evaluation of the facts developed from its investigation including submissions provided by the organizations and the Carriers, and consideration of Board

precedent. *Midway Airlines, Corp.*, 26 NMB 41 (1998); *Evergreen Int'l Airlines*, 20 NMB 675 (1993).

The same analysis of whether the laboratory conditions have been tainted applies to both union interference and carrier interference. However, as the Board stated in *Air Wisconsin*, 16 NMB 235, 239-240 (1989), "while the tests for union interference and carrier interference are the same - whether the laboratory conditions have been contaminated - because of the unique power and authority which carriers possess in the workplace, application of this standard to effectively identical factual situations involving alleged union vis-a-vis carrier interference may lead to different conclusions." See also *America West Airlines, Inc.*, 30 NMB 310, 347 (2003); *Delta Air Lines, Inc.*, 30 NMB 102 (2002); *United Air Lines, Inc.*, 22 NMB 288 (1995).

The TWU contends that NAAP's authorization cards were obtained "contemporaneously" with the "improper" distribution of \$500 gift cards and cashier's checks. TWU argues in essence that gift cards and cashier's checks were an inducement or quid pro quo for signing an authorization card. The TWU submits that the authorization cards are tainted and therefore cannot be used to support the statutory showing of interest requirement. NAAP responds that there is no connection between the authorization cards and gift cards/cashier's checks. Rather, NAAP states that the authorization cards were signed because employees were angered and disheartened by the TWU's decision to terminate joint contract negotiation between the Locals and the Carriers.

The Board's investigation disclosed that interest in a new bargaining representative began when the TWU terminated direct bargaining with the Carriers in early April 2014. The American employees interviewed stated that they signed authorization cards because they were interested in new representation. Employees also stated that there had been historical discontent with the TWU. All American employees who signed NAAP cards received \$500 in a gift card or cashiers' check during the laboratory period. There were a limited number of cards signed by US Airways Simulator Engineers during the NAAP campaign. The US Airways Simulator Engineers did not receive cashiers' checks during the laboratory period as they were not part of Local 541.

The Board has found authorization cards tainted when the union at issue was found to be either favored by the carrier in some manner or a carrier-dominated union. See *Southwest Airlines*, 21 NMB 332 (1994) (Board dismissed CARE's authorization cards because it determined that Southwest



avored CARE over the other organizations and therefore, tainted the authorization cards); *Northern Air Cargo*, 29 NMB 1 (2001) (Northern Air Cargo Flight Deck Crew Association's authorization cards were found tainted because the investigation revealed that the Association was carrier-dominated); *Virgin Atlantic Airways*, 24 NMB 575, 620-623 (1997) (carrier's conduct tainted the authorization cards). In the instant case, there is no evidence that the Carriers assisted or preferred NAAP over the TWU during the laboratory period. In addition, the Carriers made an affirmative effort not to demonstrate any preference during the briefing period and the on-site investigation in Texas.

While the American employee interviews reflected that the Simulator Technicians, Instructors, and Flight Dispatchers signed authorization cards for an election with NAAP because they wanted the chance to vote for new representation, it is also true that NAAP and the Officers of Local 541 and 542 were intertwined from the moment of NAAP's inception. This situation could clearly cause confusion for the electorate, especially when their Local Officers were passing out authorization cards for a new union, and at the same time, they were distributing \$500 gift cards/cashier's checks from the Locals' treasuries.

The Locals' decision to distribute \$500 gift cards and cashier's checks essentially contemporaneously with NAAP's authorization card campaign was ill-advised. The gift cards/cashier's checks were purportedly for the purchase of a communication device to assist with the merger. However, the merger was announced in December of 2013, therefore, it is highly suspect that the Locals waited until NAAP's organizational drive in the summer of 2014 to decide to purchase communications devices to facilitate the merger. Further, a gift of \$500, an amount which had never been distributed to the Locals' members prior, and which was totally unrestricted in terms of what employees chose to do with it, is highly improper during the laboratory conditions period. The Locals managed to communicate with their memberships during the recent bankruptcy proceedings, merger talks, and contract ratifications with no recorded lapses in communications. The Locals could have decided to enhance their Locals' websites or taken other measures to upgrade electronic communications with their members, but instead chose to give an unfettered gift of \$500 during the same period that they were collecting authorization cards.

When considering the totality of circumstances, the Board finds the close timing between the distribution of the \$500 gift cards/cashier's checks to the American employees of the electorate and the collection of the authorization cards tainted the laboratory conditions. Going forward, the Board will continue

to investigate instances where an employee receives an item of substantial value during the laboratory period whether from a union or a carrier.

TWU also takes issue with its own Local Officers' involvement in the formation of NAAP and the use of local TWU money to fund the gift cards and cashier's checks. The Board's statutory mandate under Section 2, Ninth, is to determine whether the employees have been provided an election environment in which they are able to make their decision without interference, influence or coercion. *See America W. Airlines v. NMB*, 986 F.2d 1252 (9<sup>th</sup> Cir. 1993) (court enjoined the Board from mailing a notice to employees that America West had violated provisions of the RLA, finding that this action was in excess of the Board's statutory authority); *see also Pinnacle Airlines*, 30 NMB 186, 214 (2003) (issue before the Board was whether laboratory conditions had been tainted, not whether the carrier's discharge of two employees was unlawful under the RLA). Whether the Local Officers violated the TWU's internal rules or constitution is an internal union matter, and not within the Board's jurisdiction. The NMB does not consider matters related to internal union governance to be within its purview. *See Zantop Int'l Airlines*, 9 NMB 81 (1981), *aff'd*, 544 F. Supp. 504 (E.D. Mich. 1982), *aff'd* 732 F. 2d 517 (6<sup>th</sup> Cir. 1984). These are matters properly addressed by the union's own administrative bodies and the courts.

Based upon the totality of circumstances, the Board finds that NAAP's showing of interest was tainted and dismisses its applications.

### CONCLUSION

The Board finds that American and US Airways are operating as a single transportation system for representation purposes under the RLA. As discussed, NAAP's actions tainted the laboratory conditions with regard to their applications. Accordingly, NAAP's applications are converted to R-7425, R-7426, and R-7427, and dismissed.

During the pendency of NAAP's applications, TWU filed three applications covering the Simulator Technicians, Instructors, and Flight Dispatchers at the Carriers. The TWU Simulator Technicians' application is dismissed based on *American Airlines, Inc./US Airways Inc.*, 42 NMB 35, 58-62 (2015). The TWU's applications for Instructors and Flight Dispatchers in CR-7130 are converted to R-7428 and R-7429. The TWU is the certified representative of both crafts or classes at American and US Airways. In cases where an organization has certifications covering the same craft or class at both carriers prior to a merger, the Board has certified the organization as the representative of the combined

craft or class at the merged carrier. *See, e.g., US Airways/ America West*, 33 NMB 293, 294-95 (2006); *Pennsylvania Airlines/Allegheny Commuter Airlines*, 19 NMB 362, 370 (1992). Based on the extraordinary circumstances in this case, the Board is extending TWU's certifications pursuant to Part 1206.4(a) of the NMB Rules.

NOW, THEREFORE, in accordance with Section 2, Ninth, of the RLA, as amended, and based upon its investigation pursuant thereto, the Board certifies that the TWU has been duly designated and authorized to represent for the purposes of the RLA, as amended, the crafts or classes of Instructors and Flight Dispatchers, employees of American Airlines, its successors and assigns.

By direction of the NATIONAL MEDIATION BOARD.



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Member Geale, concurring in part and dissenting in part.

I write separately for several reasons, but primarily because the majority's decision inappropriately limits the freedom of association rights of these crafts or classes, and particularly without first providing notice of the applicable rules. Moreover, this limitation will occur through no fault of the employees and without any actual evidence of improper coercion, interference, or influence. I otherwise agree generally with the determination that American is a single carrier for purposes of the Instructors and Flight Dispatchers crafts or classes and that certain conduct by NAAP during the organizing campaign was questionable – at least in terms of timing.

First, I have a serious procedural concern with the Board's decision. The majority in effect announced a new interpretation of our rules and then applied that interpretation retroactively to NAAP's conduct. Ideally, such policy changes would have been announced in advance in order to provide for a level playing field in labor relations, and to potentially avoid unduly harsh consequences to an unaware stakeholder community, as is the result here. The Board has in fact, on a number of occasions, issued decisions that have only prospective effects on parties' conduct,<sup>6</sup> and as a matter of fairness I think that would have been the more appropriate way to handle this situation.

Second, the majority's decision is not just a difference in degree but also in kind such that it will be a substantial surprise to the participants and other stakeholders. I am, in fact, unaware of a situation in our 80-plus-year history where the NMB has found a violation of laboratory conditions when a labor organization provided some benefit contemporaneously with the signing of an authorization card by an employee.<sup>7</sup> Instead, the Board has historically declined to dismiss representation petitions in the face of allegations of union coercion in obtaining signatures on authorization cards because of the employee's inherent ability to make a different decision as part of a secret ballot election. *See, e.g., Singapore Airlines*, 9 NMB 304, 305 (1982). The one variation is that we have sometimes found tainted laboratory conditions with regard to a showing of interest in the context of a carrier favoring or dominating the putative labor organization.<sup>8</sup> As such, I sincerely doubt NAAP's leadership<sup>9</sup> would have distributed the gift cards and cashier's checks in question at the time they did -- or at all -- if they had known that such activity could disrupt obtaining a representation election.

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<sup>6</sup> For example, in *Union Pacific*, 41 NMB 7 (2013), the Board announced that certain language on authorization cards used by a labor organization would no longer be acceptable going forward. The organization in question had been using the particular language on the authorization cards for a long period of time and clearly had no knowledge that it could be considered problematic until the issue was raised by the carrier. The Board allowed the election to go forward in that case but stated that the language on those authorization cards would not be allowed for a showing of interest going forward and provided guidance on appropriate language for future authorization cards.

<sup>7</sup> In actuality, the TWU Locals' funds rather than NAAP funds were used for the gift cards/cashier's checks at issue, and TWU has challenged the appropriateness and legality of the decision to use these funds as outlined in the majority decision.

<sup>8</sup> *See, e.g., Northern Air Cargo*, 29 NMB 1 (2001); *Virgin Atlantic Airways*, 24 NMB 575, 620-623 (1997); *Southwest Airlines*, 21 NMB 332 (1994).

<sup>9</sup> As detailed in the majority opinion, NAAP and TWU Local leadership had significant overlap during the period that the cards were being collected.

Third, the majority's decision has immediate adverse consequences for the rights of the Instructors and Flight Dispatchers as part of the single carrier determination (and the dismissal of NAAP's applications). Based on the number of election authorization cards signed by craft or class members at American Airlines, as well as the NMB staff's investigation which showed a great deal of dissatisfaction, there appears to be a strong desire for a new representative. By applying its new interpretation retroactively, the Board's decision imposes a certification bar for two years following the issuance of the two certifications. Thus, TWU, which has placed the Locals at issue under trusteeship, will be the certified representative for these crafts or classes for at least two more years. Such a long delay to these employees' right to select their own representative -- and in the absence of a clear violation of an existing Board precedent -- is in many ways anathema to the right to freedom of association and our statutory responsibility to facilitate employee choice.

Fourth, I am further troubled by the majority's decision because it is solely based on an appearance issue rather than actual evidence of undue coercion, interference, or influence. The investigation conducted by the NMB found no evidence of a *quid pro quo* arrangement being involved in any card signing by a craft or class member. In fact, in every interview, the individuals who signed cards for NAAP told our Investigators that their reason for doing so was dissatisfaction with the TWU rather than any sort of financial motivation or other action by NAAP or its leadership. As such, it is extraordinary to retroactively apply this standard to invalidate the showing of interest.

Fifth, I find it counterintuitive to suggest that undue coercion, influence, or interference can occur when arguably the craft and class members are effectively receiving a refund of their own union dues. Leaving aside the propriety of the timing as well as any violations of the TWU constitution and bylaws,<sup>10</sup> union treasury funds at all times remain the property of the individual members -- albeit held in trust for their benefit. In finding a violation here, the majority appears to be saying that it is possible to unduly coerce or influence a union member by returning a portion of his or her own dues.<sup>11</sup>

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<sup>10</sup> The NMB does not enforce responsibilities under the TWU constitution and bylaws. That is an internal union matter and not within our jurisdiction. See *Zantop Int'l Airlines*, 9 NMB 81 (1981), *aff'd*, 544 F. Supp. 504 (E.D. Mich. 1982), *aff'd* 732 F. 2d 517 (6th Cir. 1984).

<sup>11</sup> Certainly, there are reasons a labor organization may not want to characterize a disbursement of funds to its membership for their personal use as a "refund" of dues. For example, any agency fee payers who are not union members would certainly be likely to object to not also being reimbursed an appropriate amount for their agency fees.

With all that said, I agree with my colleagues that the timing of the distribution of the \$500 gift cards and cashier's checks -- which occurred before, during and after the collection of individual authorization cards supporting NAAP -- certainly gives rise to the appearance of impropriety and the possibility of tainted laboratory conditions. In fact, I support the majority's determination that labor organizations should generally be held to the same high standard as carriers in the conduct of an organizing campaign.<sup>12</sup> This is particularly true as outlined by the majority with regards to trading anything of value for support via a showing of interest or a vote in a secret ballot election. Going forward, I hope this decision puts all stakeholders on notice that even the appearance of impropriety, including the provision of a benefit by a labor organization to putative craft or class members, can taint laboratory conditions and preclude a showing of interest or even a successful election for an organization.

Regardless, and although I concur in most aspects of the majority decision, I must respectfully dissent as to the finding of a violation of laboratory conditions by NAAP.

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<sup>12</sup> It is also appropriate to make this policy change because of the 2012 amendments to the Railway Labor Act that made the showing of interest a statutory requirement.