



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the  
Application of the

STEVEN STOECKER

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

involving employees of

ALLEGIANT AIR, LLC

43 NMB No. 11

CASE NO. R-7438

FINDINGS UPON  
INVESTIGATION—  
AUTHORIZATION OF  
ELECTION

January 6, 2016

This determination addresses the July 1, 2015 application filed pursuant to the Railway Labor Act (RLA)<sup>1</sup> by Steven Stoecker (Stoecker or Applicant), an Individual, alleging a representation dispute among the Flight Attendants craft or class at Allegiant Air, LLC (Allegiant or Carrier). The Flight Attendants at Allegiant are currently represented by the Transport Workers Union of America (TWU or Incumbent). On July 22, 2015, the TWU submitted its initial position statement objecting to the authorization cards submitted by Stoecker to support its showing of interest. Stoecker and the Carrier responded to these objections on August 9, 2015, and August 11, 2015, respectively. The Carrier provided additional information on October 16, 2015, and Stoecker provided additional information on October 20, 2015. The TWU requests that the Board dismiss Stoecker's application. For the reasons outlined below, the Board denies that request and authorizes an election among the Flight Attendant craft or class at Allegiant.

---

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

CONTENTIONS  
TWU

TWU argues that Stoecker's application should be dismissed "because authorization cards obtained on his behalf were solicited with unlawful, active assistance of officials and agents of the Carrier." TWU states that Stoecker and his agents were assisted by the Carrier in the following ways: access to Carrier information to contact Flight Attendants and trainees by text and mail to attend organizing meetings; access to training classes to solicit authorization cards; and sponsorship of the "pizza parties" where authorization cards were solicited and obtained for Stoecker. In addition, TWU argues that the Carrier implied that if the TWU was removed as the Flight Attendant representative, the Carrier would increase compensation for the Flight Attendants as it did for the Flight Dispatchers after they removed their representative. TWU also contends that management officials distributed authorization cards for Stoecker.

The TWU also asserts that some of the authorization cards were not submitted by Flight Attendants employed by Allegiant at the time the cards were signed. Specifically, TWU states that Stoecker and "his agents and allies" collected authorization cards from trainee Flight Attendants and that trainee Flight Attendants fall outside the RLA's definition of employee<sup>2</sup> and therefore, cards dated and executed by Flight Attendants before the individual completed training are not valid.

Stoecker

The Applicant argues that the TWU's arguments with regard to the cards submitted by trainees are unprecedented and inconsistent with the plain language of the RLA, the Representation Manual (Manual), and the NMB's Rules, and are "at odds with the Board's actual practice." Stoecker states that if the TWU's request is granted, then Flight Attendants will have "their desires doubly frustrated. First, they will not be counted toward the showing of interest needed to bring about the election that they desire. Secondly, their very existence on the eligibility list will increase the number of cards required from the pre-existing flight attendants." In order to maintain the integrity of the Board's authorization process, "the universe of eligible card signers and the universe of eligible voters must be the same."

Stoecker states that the "pizza parties" were completely voluntary and permissible and while they were attended by Flight Attendant mentors and ATS agents, these individuals are members of the craft or class and have a

---

<sup>2</sup> 45 U.S.C. § 151, Fifth.

protected right under the RLA to engage in organizational activity. In addition, Stoecker states that he did not receive any assistance from the Carrier, financial or otherwise.

### Allegiant

The Carrier states that as an initial matter, the TWU's request to investigate interference allegations before holding an election is premature and inconsistent with longstanding practice and precedent. Even if the Board were to consider TWU's allegations of carrier support or domination of Stoecker's organizing campaign, the allegations are unsupported and do not warrant dismissal of Stoecker's application. Specifically, the Carrier states that the TWU exaggerates and misstates the factual support for its allegations of Carrier domination. There is no evidence that the Carrier provided Flight Attendant contact information to Stoecker, or that the Carrier paid for organizing parties or that Flight Attendants were told during training that attendance at Stoecker's organizing parties was mandatory. Finally, the Carrier asserts that management officials did not solicit or collect authorization cards on behalf of Stoecker or imply that Flight Attendants would get a raise if they decertified their union.

Moreover, the Carrier maintains that TWU has not demonstrated any basis to its claim that cards signed by eligible Flight Attendants while they were in training should be disregarded. The Carrier argues that the Board has never required that authorization cards must be signed at a time when the employee would be eligible to vote and that the Board must verify that cards were signed only by those who were eligible to vote on the date they signed the authorization card. On the contrary, the Board does not collect any information from carriers that would allow it to determine whether employees signed cards before they became eligible to participate in the election. Simply put, Allegiant argues, there is no compelling reason for the Board to require voter eligibility status at the time a card is signed in order to carry out its statutory duty to ensure that a majority of the employees determines who, if anyone, will be the representative of the craft or class. Either the trainee will become an employee by the cut-off date and be eligible to vote in the election or not. If the trainee becomes eligible by the cut-off date, then there is no logical reason to disregard the card and if the employee is not eligible to vote in the election as of the cut-off date, they will not be on the eligibility list.

### FINDINGS OF LAW

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

I.

Allegiant Air is a common carrier as defined in 45 U.S.C. § 181.

II.

Stoecker and TWU are labor organizations and/or representatives as provided by 45 U.S.C. § 152, Ninth.

III.

45 U.S.C. § 151, Fifth, defines “employee” as every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official ....

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 the purposes of this chapter.”

V.

45 U.S.C. § 152, Ninth, provides that the Board has the duty to investigate representation disputes and shall designate who may participate as eligible voters in the event an election is required.

VI.

45 U.S.C. § 152, Twelfth, states, “[t]he Mediation Board, upon receipt of an application requesting that an organization or individual be certified as the representative of any craft or class of employees, shall not direct an election or use any other method to determine who shall be the representative of such craft or class unless the Mediation Board determines that the application is supported by a showing of interest from not less than 50 percent of the employees in the craft or class.”

VII.

The Board's Rules state:

(a) Upon receipt of an application requesting that an organization or individual be certified as the representative of any craft or class of employees, a showing of proved authorizations (checked and verified as to date, signature, and employment status) from at least fifty (50) percent of the craft or class must be made before the National Mediation Board will authorize an election or otherwise determine the representation desires of the employees under the provisions of section 2, Ninth, of the Railway Labor Act.

(b) Any intervening individual or organization must also produce proved authorizations (checked and verified as to date, signature, and employment status) from at least fifty (50) percent of the craft or class of employees involved to warrant placing the name of the intervenor on the ballot.

29 CFR § 1206.2

VIII.

The Board's Rules also state:

Authorizations must be signed and dated in the employee's own handwriting or witnessed mark. No authorizations will be accepted by the National Mediation Board in any employee representation dispute which bear a date prior to one year before the date of the application for the investigation of such dispute.

29 CFR § 1206.3

IX.

Manual Section 2.3 states:

Cut-off Date

For determining eligibility to vote, the cut-off date is the last day of the latest payroll period ending before the day the NMB received the application. This cut-off date is applicable regardless of

whether there are multiple payroll periods for the craft or class.

X.

Manual Section 3.1 states:

Form and Content of Authorizations

Each authorization must be signed and dated in the employee's own handwriting. NMB Rule §1206.3 (29 CFR §1206.3). Although not required, it is recommended that the authorization include the employee's job title and employee number. Petitions are not accepted. Authorizations submitted to the NMB must be in alphabetical order on a system-wide basis. Failure to provide authorization cards in alphabetical order on a system-wide basis may result in the return of authorizations to the submitter. Duplicate authorizations should not be submitted. The language on authorization cards must be unambiguous and the NMB must be able to determine the employee's intent to seek an election or be represented by the applicant(s) or intervenor(s). Authorizations should not contain unnecessary or superfluous language that could create ambiguity or confusion for the signer.

XI.

Manual Section 3.2 states:

Age of Authorizations

Authorizations must be dated within one year from the date the application was filed with the NMB. See NMB Rule §1206.3 (29 CFR §1206.3).

XII.

Manual Section 3.5 states:

Confidentiality of Authorizations

Authorizations will be handled only by NMB representatives. The NMB keeps all authorizations confidential. This includes the names of individuals who have signed authorizations and the number of authorizations submitted. The carrier or

opposing party or parties should not be privy to the number or percentage of authorizations furnished.

### XIII.

Manual Section 3.6 states:

#### Check of Alphabetized Authorizations

The Investigator compares the list of potential eligible voters with the names of the employees who signed authorizations to determine if a sufficient percentage of authorizations have been submitted to require checking the validity of the authorizations. The employee signature on every authorization card is checked against the signature sample provided by the carrier, and the Investigator also checks that the date is valid and in the employee's own handwriting. If there are insufficient authorizations submitted, the Investigator may, in his/her discretion, allow adjustments to the list prior to checking the validity of the authorizations.

## DISCUSSION

### Authorization Cards

Maintaining the integrity of the Board's election procedures is vital to the mission of this agency. As the initial step in the election process, it is imperative that the check of authorization cards be conducted with the same integrity as the Board's voting process. For this reason, the Board has explicitly set forth the procedures it follows in conducting an authorization card check—carefully balancing the need for transparency of the process with the need to maintain the confidentiality of the authorization cards.

The Board has long held that trainees are not eligible to vote in representation elections under the RLA until they perform line work. *See, e.g., Simmons Airlines*, 15 NMB 228 (1988). However, the Board's past determinations regarding trainees have dealt with the eligibility of trainees to vote in representation elections not trainees' eligibility to sign authorization cards. The TWU argues that its premise that trainees are not eligible to sign authorization cards until after they have completed training is a natural extension of Board precedent that trainees are not eligible to vote in representation elections.

The Board finds that the argument that trainees are not eligible to sign authorization cards prior to completing training is a case of first impression for the Board. In addressing the argument raised by the TWU, the Board looks first to the RLA, the Board's Rules, and the Manual sections cited above. To the extent that dates are mentioned in any of those sections, they deal with the age of the authorization card, the cut-off date, and that the card must be signed and dated by the employee. There is no mention of the date employees complete their training or their Initial Operating Experience (IOE) date. Next, a review of Board precedent reveals that the Board has considered IOE in relation to the cut-off date as a guideline for determining voting eligibility not authorization card eligibility.<sup>3</sup> Simply put, the authorization card check process is a precursor to a representation election and is not meant to duplicate a representation election. Rather, it is meant to determine if an election should take place at all.

As the participants are aware, the Board does not request that the Carriers provide date of hire or IOE information when it provides the List of Potential Eligible Voters (List) and therefore, the Board cannot review the employee IOE dates in relation to the date of the authorization card. The Board instead has focused on whether the cards were submitted by individuals on the List (individuals who have performed line work as of the cut-off date). For the Board to retroactively review Stoecker's authorization cards to ensure that otherwise eligible cards were signed after the individual completed their IOE would retroactively impose a standard that is not explicitly set out in the statute, the Board's rules, or Manual, and would undermine the transparency and integrity of the authorization card check process. For this reason, the Board rejects the TWU's argument that all cards signed by Flight Attendants prior to completing IOE be excluded for showing of interest purposes.

#### Carrier Interference

It is the Board's long-standing policy, in accordance with Section 2, Ninth,<sup>4</sup> to resolve representation disputes as expeditiously as possible. See *Continental Airlines Corp.*, 50 B.R. 342, 358 (S.D. Tex. 1985), *aff'd per curiam*, 790 F.2d 35 (5th Cir. 1986) (finding that damage caused by staying an NMB election is often substantially greater than that caused by allowing an election to go forward). Thus, the Board's consistent practice is to proceed with a representation election unless there are extraordinary circumstances or the

---

<sup>3</sup> For example, in *Simmons*, the Board stated "[f]or the Board to find trainees eligible, the Board must be presented with evidence that the individuals in question have performed line functions in the craft or class as of the cut-off date." *Simmons*, *above*, at 230.

<sup>4</sup> 45 U.S.C. § 152, Ninth.



Board is barred by court order. *Northwest Airlines*, 33 NMB 195, 199 (2006); *Tower Air*, 16 NMB 326, 328 (1989); *Air Florida*, 10 NMB 294, 295 (1983). See, e.g., *Notice to Fleet and Passenger Service Employees of Pinnacle Airlines, Inc.*, 30 NMB 251 (2003) (notifying voters that the Board cancelled the election in progress and ordered a re-run due to the voter confusion caused when a substantial number of incorrect VINs and PINs were sent to eligible voters); See also *Cape Air*, 36 NMB 108 (2009); *Chautauqua Airlines*, 21 NMB 226, 227-28 (1994); *Sapado I*, 19 NMB 279, 282 (1992); *US Air*, 17 NMB 69, 71-72 (1989).

Because the Board does not find extraordinary circumstances that would require Board action at this time, any allegations regarding conduct during the election period will be addressed, if appropriate, after the tally date consistent with the Board's usual practice. The Participants are reminded of the need to maintain laboratory conditions until the Board concludes its investigation.

### CONCLUSION

The Board will accept the authorization cards submitted by Stoecker as a measure of showing of interest. The Board finds a dispute to exist in NMB Case No. R-7438, among Flight Attendants at Allegiant Air sought to be represented by Steven Stoecker and presently represented by the TWU. A TEV election is hereby authorized using a cut-off date of June 30, 2015. Pursuant to Manual Section 12.1, the Carrier is hereby required to furnish within five calendar days, 1" X 2 5/8", peel-off labels bearing the alphabetized names and current addresses of those employees on the List. The Carrier must print the same sequence number from the List of Potential Eligible Voters beside each voter's name on the address label. The Carrier must also provide to the Board the name and sequence number of those potential eligible voters on military leave who are serving in foreign countries or who reside outside of the United States. The Carrier must use the most expeditious method possible, such as overnight mail, to ensure that the Board receives the labels within five calendar days. Tally in Washington, D.C.

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson  
General Counsel

Copies to:  
Douglas Hall  
Tracy Tulle

Greg Wilken  
Harry Lombardo  
David Rosen  
Richard Edelman  
Steven Stoecker  
Russ Brown  
James Edwards