



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the

NORWEGIAN CABIN CREW
ASSOCIATION

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

NORWEGIAN AIR SHUTTLE ASA

43 NMB No. 29

NMB Case No. R-7461
(File No. CR-7139)

FINDINGS UPON
INVESTIGATION-
AUTHORIZATION OF
ELECTION

June 21, 2016

This determination addresses the representation issues raised by the application of the Norwegian Cabin Crew Association (NCCA) alleging a dispute pursuant to the Railway Labor Act¹ (RLA or Act), 45 U.S.C. § 152 Ninth, (Section 2, Ninth), among the Flight Attendants jointly employed by Norwegian Air Shuttle ASA (NAS), its wholly owned subsidiary Norwegian Air Holding Resources Ltd (NAR) (referred to collectively as Norwegian) and OSM Aviation (OSM) (referred to collectively as the Carrier). At the time this application was received, these employees were not represented by any organization or individual.

For the reasons set forth below, the National Mediation Board (NMB or Board) finds that a representation dispute exists among the flight attendants employed by the Carrier.

¹ 45 U.S.C. § 151, *et seq.*

PROCEDURAL BACKGROUND

On May 28, 2015, the NCCA filed an application alleging a representation dispute among the “Cabin Crew” craft or class at NAS.² The Board assigned Maria-Kate Dowling as the Investigator. On April 19, 2016, the Board found that NAS, NAR, and OSM were subject to RLA jurisdiction and that Norwegian and OSM are joint employers of the Flight Attendants craft or class at issue. *Norwegian Air Shuttle ASA*, 41 NMB 97 (2016) (Norwegian Decision). On May 12, 2016, OSM responded to the Board’s request for the list of potential eligible voters (List), signature samples, and the date of the last payroll period prior to filing of the application (cut-off date) initially made in its May 28, 2015 docket letter and reiterated in the Norwegian Decision. OSM also filed a position statement. NCCA filed a response and OSM filed a reply.

ISSUE

Whether the cut-off date should be modified and whether a representation dispute exists among the Flight Attendants of the Carrier?

CONTENTIONS

OSM contends that there are extraordinary circumstances warranting a modification of the cut-off date from the date of the last payroll period prior to the filing of the application to the date of the last payroll period prior to the Norwegian Decision. NCCA states that there are no extraordinary circumstances and the Board should deny the request.

FINDINGS OF LAW

Determination of the issues in this case is governed by the RLA, as amended, 45 U.S.C. §§ 151-188. Accordingly, the Board finds as follows:

I.

NAS is a common carrier as defined in 45 U.S.C. § 181. NAR and OSM are entities owned or controlled by a carrier within the meaning of the Act.

II.

² Cabin Crew are more commonly referred to as Flight Attendants in the United States and the terms will be used interchangeably.

NCCA is a labor organization as provided by 45 U.S.C. § 152, Ninth.

III.

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.”

IV.

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.”

STATEMENT OF FACTS

NCCA filed its application on May 28, 2015. The Board received the required List and signature samples on May 12, 2016. According to OSM, as of the May 15, 2015 cut-off date, there were 229 Flight Attendants in the craft or class. Between May 15, 2015 and April 15, 2016, the date of the last payroll period prior to the issuance of the Board’s Norwegian Decision, OSM states that 46 Flight Attendants left the craft or class and 122 Flight Attendants were hired. As of April 15, 2016, there were 275 Flight Attendants in the craft or class. Of that complement of 275 Flight Attendants, 153 were employed on the original cut-off date and were still employed in the craft or class as of April 15, 2016.

DISCUSSION

The Carrier argues that the cut-off date for determining the showing of interest and eligibility to vote in the election should be changed from May 15, 2015 to April 15, 2016 because of extraordinary circumstances; namely, the passage of time and the turnover in the craft or class. Approximately 11 months elapsed between the filing of the application and the Board’s Norwegian Decision. Although requested in its May 28, 2015 docketing letter, OSM did not file the List and signature samples until 12 months after the application was filed. Between May 15, 2015 and April 15, 2016, approximately

46 employees left the craft or class and 122 new employees were hired. 153 employees were working as of the original cut-off date and remain in the craft or class.

It is well settled that the Board does not change the cut-off date absent unusual circumstances, *America West Airlines, Inc.*, 21 NMB 293 (1994). The Board has stated that fixing the cut-off date at the commencement of its investigation insulates the representation process from manipulation by either side in order to gain an advantage with respect to the showing of interest or election results. *Continental Airlines, Inc.*, 24 NMB 196 (1997); *USAir, Inc.*, 24 NMB 38 (1996). Noting that the Act requires that a majority of the craft or class select a representative, the Board has declined to change the cut-off date where a majority of the craft or class remains eligible to vote.

Given its longstanding policy, the Board has changed the cut-off date only in very narrow and unusual circumstances. These circumstances have included a delay of five years between the original cut-off date and the election, and a turnover of clearly more than half of the craft or class. *Piedmont Airlines*, 9 NMB 41 (1981). See also *USAir*, 10 NMB 495 (1983). In contrast, in *Continental Airlines*, 14 NMB 131 (1987), the Board found no unusual circumstances where four years elapsed between the cut-off date and the election. In *America West*, 21 NMB 293 (1994), the Board refused to change the cut-off date where 48.6 percent of the individuals on the original eligibility list had left the craft or class. The courts have upheld the Board's refusal to change the cut-off date absent unusual circumstances. *Air Canada v. NMB*, 478 F.Supp. 615 (S.D.N.Y. 1979)(finding use of cut-off date 13 months prior to the election was appropriate), *aff'd*, 659 F.2d 1057 (2d Cir. 1981), *cert. denied*, 454 U.S. 965 (1981); *British Airways v. NMB*, 533 F.Supp. 150 (E.D.N.Y. 1982), *aff'd* 685 F.2d 52 (2d Cir. 1982) (upholding use of a cut-off date 2 and 1/2 years prior to election).

The Board has also rarely found that expanding operations and hiring new employees constitutes unusual circumstances. *American International Airways*, 10 NMB 456 (1983). The exception occurred in *Compass Airlines*, 35 NMB 14 (2007), where the craft or class had more than tripled between the filing of the application and the authorization of the election. In those circumstances, the Board changed the cut-off date for eligibility to vote in the election, but not for establishing the showing of interest.

In the instant case, there is neither a turnover of more than a majority of the eligible electorate nor an extraordinary delay in the Board's investigation. As of the original cut-off date, there were 229 Flight Attendants. Although 46 of those employees no longer work for the Carrier, 153 employees remain working in the craft or class. Between the original cut-off date and the

Norwegian Decision, 122 employees were hired raising the number of Flight Attendants to 275. While the number of Flight Attendants has increased, the 153 employees remaining are more than a majority of the 275 Flight Attendants in the craft or class. With regard to the passage of time, the Board first requested the List in its docket letter dated May 28, 2015. The List was not received until May 12, 2016. The Carrier chose not to file a List while it contested jurisdiction. While a year passed between the filing of the application and the receipt of the List, that time is well below the five years the Board has found justifies a change in the cut-off date. Finally, the size of Flight Attendant craft or class has not increased to the extent it did in *Compass* during the Board's investigation. Accordingly, the Board finds that unusual circumstances are not present in this case and the cut-off date remains May 15, 2015.

CONCLUSION AND AUTHORIZATION OF ELECTION

Based on the investigation, NCCA has established the requisite showing of interest and CR-7139 has been converted to NMB Case No. R-7461. The Board finds a dispute to exist among Flight Attendants jointly employed by Norwegian and OSM, sought to be represented by NCCA, and presently not represented. An Internet and TEV election is hereby authorized using a cut-off date of May 15, 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 of Potential Eligible Voters. 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.



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