



NATIONAL MEDIATION BOARD
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44 NMB No. 23

May 17, 2017

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Re: NMB Case No. R-7461
Norwegian Air Shuttle ASA/Norwegian Cabin Crew Association

This determination addresses the request from the Norwegian Cabin Crew Association (NCCA) to transfer its certification in NMB Case No. 7461 to the Association of Flight Attendants – CWA (AFA-CWA). For the reasons discussed below, the National Mediation Board (NMB or Board) grants the request and transfers the NCCA certification to AFA-CWA.

The Carrier filed a position statement and AFA-CWA filed a response. The Carrier also filed a reply to AFA-CWA.

BACKGROUND

NCCA was certified to represent the Flight Attendants jointly employed by OSM Aviation, Inc. (OSM) and Norwegian Air Shuttle ASA (Norwegian)(collectively referred to as the Carrier) in NMB Case No. 7461. *Norwegian Air Shuttle ASA*, 43 NMB 161 (2016). By letter dated March 30, 2017, NCCA stated that it had entered into a Solidarity Agreement with AFA-CWA setting forth the process for the merger of NCCA into AFA-CWA and the transfer of its certification to AFA-CWA.

The Solidarity Agreement signed by NCCA and AFA-CWA provided that NCCA will conduct a secret ballot election asking its members to decide whether to form its own Master Executive Council (MEC) with AFA-CWA. The agreement also provided that, if a majority of NCCA members vote to approve the Solidarity Agreement, NCCA will request that the NMB transfer its certification to AFA-CWA. Finally, the Solidarity Agreement provided that upon transfer of NCCA's certification to AFA-CWA by the NMB, the Flight Attendants will be represented by their own Local Council/MEC under the terms of the AFA-CWA Constitution and Bylaws.

The secret ballot election was supervised and conducted by a third-party balloting vendor, Votenet Solutions. Balloting information was mailed to 417 eligible NCCA members on March 10, 2017, and the ballots were tallied on March 30, 2017. The ballot asked Flight Attendants to vote yes or no on the following:

I agree the NCCA should transfer its certification as my exclusive collective bargaining representative to the Association of Flight Attendants CWA in order to maintain representation from my elected Officers at Norwegian and gain a negotiations budget, a professional negotiator and legal assistance without paying union dues until we collectively approve a first contract.

The tally showed that of 269 ballots cast, 158 NCCA members, or 58.7 percent, voted to transfer NCCA's NMB certification to AFA. 111 NCCA members voted no.

According to the declaration of Valentin Lorient, President of NCCA, the NCCA Executive Board determined that only individuals currently working as Flight Attendants as of March 2, 2017 were eligible to vote in the election. Those individuals still on training on that date were deemed ineligible to vote because they were not yet employees of the Carrier. Accordingly, Lorient states

that he provided Votenet with a list of 417 names and contact information. Lorien also states that during the balloting period he received approximately 10 emails from the Carrier regarding Flight Attendants who had contacted the Carrier to ask for ballots. Lorien states that while he did not respond to the Carrier, he contacted these Flight Attendants to assist them in obtaining a ballot.

During the campaign, Lorien states that he spoke with over 100 flight attendants and hosted two membership meetings. According to Lorien, the issue underlying the vote was whether NCCA should remain independent or affiliate with AFA-CWA to obtain resources to negotiate a contract with the Carrier. Loren states that he and the NCCA Executive Board felt that the only option available to them was to seek membership approval for a merger with AFA-CWA and this belief was communicated to NCCA members through email, website updates, and face-to-face communications.

In his declaration, Lorien also states that throughout the balloting period, the Carrier sent out election related emails opposing AFA-CWA, a video about the internal NCCA election and held two membership meetings at which the Carrier expressed its displeasure with AFA.

DISCUSSION

The Railway Labor Act¹ (RLA or Act) requires only that the Board investigate a transfer of certification rather than mandating any procedures for such an investigation. *Continental Airlines, Inc., v. Nat'l Mediation Bd.*, 793 F. Supp. 330 (D.D.C. 1991), *aff'd mem.*, 957 F.2d 911 (D.C. Cir. 1992). In most instances, the board grants a transfer request based upon the assertions contained in the request letters. *SMART/Kyle Railroad Company/UTU*, 40 NMB 248 (2013); *Capitol Cargo Int'l Airlines, Inc.*, 34 NMB 190 (2007); *St. Lawrence & Atlantic R.R., Inc.*, 32 NMB 49 (2004); *Consolidated Rail Corp.*, 28 NMB 30 (2000); *Big Sky Transp. Co.*, 25 NMB 376 (1998) *Northwest Airlines*, 18 NMB 446 (1991). The Board views an organization's decision to merge into another organization as an internal union matter and will grant requests for transfers of certification based on union merger unless there is evidence of fraud or gross abuse in the merger, election, or transfer process. *Re: Aloha Airlines, Inc.*, 31 NMB 204(2004); *Re: Steve Trigg*, 24 NMB 137 (1997); *Northwest Airlines*, above, at 448.

¹ 45 U.S.C. § 151, et seq.

The Carrier argues that there were “misleading, fraudulent, or abusive election practices.” In particular, the Carrier asserts that the ballot language was misleading and suggested that voting “no” would mean the loss of representation. The Carrier opines that many eligible voters may have abstained because they didn’t understand the consequences of the election and that the ballots were distributed by questionable means because it believes there were more eligible voters. The Carrier also asserts 35 cabin crew members informed OSM that they never received a ballot.

The RLA does not require an NMB conducted election as a basis for transferring a certification. *Continental Airlines, Inc., v. Nat’l Mediation Bd.*, 793 F. Supp. 330, 333-334 (D.D.C. 1991). The choice to merge or affiliate and the process by which a union does so is an internal union affair made by the union and its members. The Board’s role is to examine the process for evidence of fraud or gross abuse and, in the absence of such evidence, to grant the transfer. In the instant case, both Organizations followed their internal procedures and Carrier’s assertions fall well short of establishing fraud or gross abuse. The Solidarity Agreement required a secret ballot election. The ballot language clearly referred to the transfer of NCCA’s certification to AFA-CWA. A majority of Flight Attendants voting in the secret ballot election agreed with the transfer of the certification to AFA-CWA. NCCA took steps to notify its members of the election and the issues underlying the election. In addition, while the Carrier was not a party to the internal union election, the record indicates that the Carrier took every opportunity to make its opinion of AFA-CWA known to its employees.

In the instant case, there is no evidence of fraud or gross abuse in the election process. Based on its investigation, the Board finds that, in accordance with the Solidarity Agreement, NCCA has merged with AFA-CWA. The Board’s records are revised to reflect that the certification issued to NCCA in NMB Case No. R-7461 to AFA-CWA.

By direction of the NATIONAL MEDIATION BOARD



Mary L. Johnson
General Counsel