



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572

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In the Matter of the  
Application of

**TRANSPORT WORKERS UNION  
OF AMERICA**

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

involving employees of

**ALOHA AIR CARGO**

44 NMB No. 38

CASE NO. R-7499

FINDINGS UPON  
INVESTIGATION  
AUTHORIZATION OF  
ELECTION

August 3, 2017

This determination addresses the application filed by the Transport Workers Union of America (Organization or TWU) alleging a representation dispute pursuant to the Railway Labor Act<sup>1</sup> (RLA or Act), 45 U.S.C. § 152, Ninth (Section 2, Ninth), among Flight Dispatchers of Aloha Air Cargo (Aloha or 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 Aloha's Flight Dispatchers.

**PROCEDURAL BACKGROUND**

On June 26, 2017, TWU filed an application with the Board alleging a representation dispute among Aloha's Flight Dispatchers. The Board assigned

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<sup>1</sup> 45 U.S.C. § 151 et seq.

Norman L. Graber as the Investigator. On July 17, 2017, the Carrier submitted the list and certain other information. On July 19, 2017, the Carrier filed a position statement arguing that an election should not be held at this time because the Carrier is in the process of reorganizing its flight operations. On July 21, 2017, TWU filed its response to Aloha's initial position statement. On July 31, 2017, Aloha filed signature samples of employees on its payroll as of June 23, 2017.<sup>2</sup>

### **ISSUE**

Whether a valid representation dispute exists among Aloha's Flight Dispatchers.

### **CONTENTIONS**

#### Aloha

In its initial position statement, Aloha essentially argues that no representation dispute exists. In particular, the Carrier states that it has announced it is in the process of reorganizing its flight operations, including the dispatch function. The reorganization involves combining the Carrier's operating functions with other airlines owned by the Carrier. Aloha states that its flight operations will cease in the next 18 months, and that the effect on its dispatcher employees is unknown. The Carrier submits that no election be held at this time and the NMB should wait until the reorganization process is completed.

#### TWU

TWU contends that it has filed an application for representation and that the Board has a Section 2, Ninth duty to investigate and determine the representation status of Aloha Flight Dispatchers in accordance with RLA procedures and Board practice. TWU argues that failure to make an expeditious determination based on unsubstantiated and vague claims would violate the Board's duties under the Act. Moreover, TWU argues that representation disputes are settled based on the present status and interests of employees rather than potential future status and interests.

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<sup>2</sup> Pursuant to Section 2.3 of the Representation Manual (Manual), the cut-off date for determining eligibility to vote is the "last day of the payroll period ending before the day the NMB receives the application." In this case, the application was received June 26, 2017, and the last day of the last payroll period was June 23, 2017.

## **FINDINGS OF LAW**

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

### I.

Aloha is a common carrier as defined in 45 U.S.C. § 181, First.

### II.

TWU is a labor organization and/or representative as defined in 45 USC § 151, Sixth, and § 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 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.”

## **DISCUSSION**

The Board finds no basis for dismissing the application. It is the NMB’s longstanding policy consistent with Section 2, Ninth to resolve representation disputes as expeditiously as possible. *See In re Continental Airlines Corp.*, 50 B.R. 342, 358 (S.D. Tex. 1985), *aff’d, per curiam*, 790 F.2d 35 (5<sup>th</sup> Cir. 1986) (“delays in NMB precertification proceedings seriously hamper . . . organizational efforts”); *Brotherhood of Ry. & S.S. Clerks*, 380 U.S. 650, 668 (1968) (speed is an RLA “objective of the first order”).

In this case, Aloha does not contest the craft or class at issue, and has provided a list of Flight Dispatchers in its employ as of the eligibility cut-off date. The Carrier simply states, without support, that its operations will cease and be merged with other airlines within the next 18 months. The Board finds, however, that dismissing the application based on future speculative concerns would be at odds with our statutory mandate to resolve the representation dispute expeditiously. In representation disputes, the Act deals with the present status and interests of employees involved and not with potential future status and interests of employees. *See e.g., US Airways*, 40 NMB 224 (2013); *Airtran Airways*, 38 NMB 80 (2011); *Chicago & North Western Ry. Co.*, 4 NMB 240 (1965).

### **CONCLUSION**

The Board finds a dispute to exist in NMB Case No. R-7499, among the Flight Dispatchers of Aloha Air Cargo sought to be represented by TWU and presently unrepresented. A TEV and Internet election is hereby authorized using the cut-off date of June 23, 2017. The count will take place in Washington, D.C.

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.

By direction of the NATIONAL MEDIATION BOARD.



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