



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the
Application of the

INTERNATIONAL ASSOCIATION OF
SHEET METAL, AIR, RAIL, AND
TRANSPORTATION WORKERS
(SMART)

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

involving employees of
MERIDIAN AND BIGBEE RAILROAD,
LLC

49 NMB No. 3

CASE NO. R-7563

REQUEST FOR RE-RUN
ELECTION GRANTED -
ORDER

January 19, 2022

This determination addresses the request of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART) for an extension of the voting period for 14 days or a re-run election. For the reasons discussed below, the request for a re-run election with an extended voting period is granted.

PROCEDURAL BACKGROUND

On March 1, 2021, the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART) filed an application alleging a representation dispute among Maintenance of Way Employees of Meridian and Bigbee Railroad, LLC (Carrier). This matter was assigned National Mediation Board (NMB or Board) Case No. R-7563 and Eileen M. Hennessey was assigned to investigate. These employees are currently unrepresented.

The Board found a dispute to exist and authorized a mail ballot election on November 15, 2021. Ballots were mailed November 30, 2021 and the count was scheduled for January 4, 2022. The count took place at 2:00 p.m. on the scheduled date. At the time of the tally there were 7 eligible voters and no ballots were received. The Investigator completed a Report of Election Results and circulated it to the Participants on January 4, 2022.

On January 7, 2022, SMART filed a position statement requesting that the voting period be extended for an additional fourteen days, to allow for the ballots to be returned to the NMB's offices. In the alternative, SMART requests a re-run election with adequate time to allow for postal delays. Accompanying SMART's position statement, was a signed statement from Andrew Goeckner, a SMART Organizer, stating that he had contacted 5 of the eligible voters and three stated that they did not receive ballots and two stated that they did not receive their ballots until just before December 25, 2021. On January 6, 2022, the Board received two ballots in this case. One ballot was postmarked December 27, 2021 and the other was postmarked December 30, 2021.

DISCUSSION

Section 2, Ninth of the Railway Labor Act¹, provides that the Board has the duty to investigate representation disputes and to certify the authorized representative of the employees involved in the dispute. In the instant case, at the time of the tally no ballots were received due to a confluence of circumstances beyond the voters' control.

The NMB takes administrative notice that during the balloting period of this election (November 30, 2021 to January 4, 2022) there was a surge in Coronavirus infections due the virulence of Omicron variant; unprecedented delays in U.S. mail delivery; and a snowstorm in the Washington, D.C. area two days before the tally that closed federal offices and substantially limited services.² The statement filed by SMART indicates that there were significant postal delays that may have caused delayed receipt of the ballots by the NMB. Accordingly, the Board finds that the January 4, 2022 Report of Election results does not provide a basis for determining the representation wishes of employees in the craft or class.

¹ 45 U.S.C. § 151, et seq.

² <https://www.nbcnews.com/news/world/omicron-surges-us-uk-others-shatter-covid-records-rcna10279>;
<https://www.nytimes.com/2022/01/03/us/sleet-snow-forecast.html> ;
<https://www.washingtonpost.com/business/2020/12/15/postal-service-holiday-packages-delays/>.

ORDER

In view of the extraordinary circumstances of this case, SMART's request for a re-run election is granted and the voting period in this election will be eight weeks.

Pursuant to Manual Section 12.1 of the NMB's Representation Manual (Manual), the Carrier is hereby required to furnish, within five calendar days, alphabetized peel-off labels bearing the names and current addresses of those employees on the list of eligible voters. The list of eligible voters will include those employees eligible in the first election with the exception of those employees who have left the craft or class. The Carrier will post the attached Notice to Employees. The Carrier will also be provided with copies of the Notice and Rules of Election for the Re-Run Election. Both of these documents must be posted by the Carrier where notices to employees are customarily posted at appropriate stations.

By direction of the NATIONAL MEDIATION BOARD.



Maria-Kate Dowling
Acting General Counsel



NOTICE TO EMPLOYEES

United States of America
National Mediation Board
NMB Case No. R-7563

Due to the extraordinary circumstances during the voting period including a surge in Coronavirus infections due the virulence of Omicron variant; unprecedented delays in U.S. mail delivery; and a snowstorm in the Washington, D.C. area two days before the tally that closed federal offices and substantially limited services, the election being conducted under the Railway Labor Act (RLA) for the craft or class of Maintenance of Way Employees of Meridian and Bigbee Railroad will be re-run.

BALLOTS WILL BE MAILED FEBRUARY 1, 2022. THE COUNT WILL TAKE PLACE MARCH 29, 2022. THE DEADLINE FOR DUPLICATE BALLOT REQUESTS IS MARCH 22, 2022. THE ADDRESS FOR MAILING DUPLICATE BALLOT REQUESTS IS: NATIONAL MEDIATION BOARD, 1301 K STREET, NW, SUITE 250 E, WASHINGTON, DC 20005. EMPLOYEES WITH ANY QUESTIONS SHOULD CALL (202) 692-5040

DATE OF POSTING _____

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