



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the

**AIR LINE PILOTS
ASSOCIATION, INTERNATIONAL**

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

involving employees of

**BREEZE AVIATION GROUP,
INC.**

49 NMB No. 24

CASE NO. R-7583

FINDINGS UPON
INVESTIGATION-
AUTHORIZATION OF
ELECTION

June 8, 2022

This determination addresses the application filed by the Air Line Pilots Association, International (ALPA) alleging a representation dispute pursuant to the Railway Labor Act (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth),¹ among Flight Deck Crew Members at Breeze Aviation Group, Inc. (Breeze 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 (Board or NMB) finds that a representation dispute exists among Flight Deck Crew Members, and authorizes an election using March 31, 2022 as the eligibility cut-off date.

PROCEDURAL BACKGROUND

On April 6, 2022, ALPA filed an application with the Board alleging a representation dispute involving Breeze's Flight Deck Crew Members.

On April 11, 2022, Breeze submitted a List of Potential Eligible Voters (List) identifying a total of 137 Flight Deck Crew Members, based on a March 31, 2022 eligibility cut-off date. It also provided signature samples for each individual on the List.

¹ 45 U.S.C. § 151, *et seq.*

On April 18, 2022, ALPA alleged that 71 of the Pilots on the List should be removed from the List because, as of the cut-off date, they had not completed Initial Operating Experience (IOE).² ALPA then requested that the Investigator set the schedule for challenges and objections before determining whether it has met the required showing of interest. On April 18, 2022, the Investigator granted ALPA's request.

On April 19, 2022, ALPA challenged the inclusion of those Pilots who had not completed their IOE (Trainee Pilots) on the List, and filed supporting documentation. On May 3, 2022, Breeze responded to ALPA's challenges, and objected to the cut-off date. Breeze argued that extraordinary circumstances warrant a change in the cut-off date. Breeze also filed supporting documentation.

On May 4, 2022, ALPA requested the opportunity to reply to Breeze. The Investigator granted the request, and gave Breeze the opportunity to rebut ALPA's reply. On May 12, 2022, ALPA filed a reply, and submitted supporting documentation. On May 19, 2022, Breeze filed a rebuttal.

ISSUES

Should the Trainee Pilots be included in the List? If not, do unusual or extraordinary circumstances exist that would warrant changing the eligibility cut-off date?

CONTENTIONS

ALPA

ALPA asserts that the Trainee Pilots should be removed from the List. ALPA also asserts that no unusual or extraordinary circumstances exist that would warrant changing the eligibility cut-off date.

Breeze

Breeze contends that the Trainee Pilots should be included in the List. Alternatively, Breeze contends that unusual or extraordinary circumstances exist that warrant changing the eligibility cut-off date.

² On April 18, 2022 and April 19, 2022, ALPA notified the NMB of a status change for Marcus St Cyr. However, the NMB does not address status changes before it calculates the showing of interest. See *United Airlines*, 28 NMB 533, 576 (2001); *USAir*, 24 NMB 38, 54 (1996).

FINDINGS OF LAW

Determination of the issues in this case is governed by the RLA, as amended. Accordingly, the Board finds as follows:

I.

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

II.

ALPA is a labor organization and/or representative as provided by 45 U.S.C. § 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 the purposes of this chapter.”

IV.

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.

STATEMENT OF FACTS

On May 3, 2022, Breeze submitted a signed declaration from Christopher Owens, Breeze’s Vice President, Flight Operations and Integrated Operations Control Center. According to Owens, Breeze began its first commercial flights about a year ago, on May 27, 2021. Owens stated that

Breeze currently operates 13 Embraer E190 and E195 aircraft in revenue service . . . Breeze has a firm order for 80 Airbus A220 aircraft, four of which have been delivered to Breeze as of the date of this filing. Breeze is scheduled to receive approximately one A220 aircraft each month for the next 6 years. By the end of 2022, Breeze anticipates operating nearly three times as many aircraft in revenue service than the present.

Owens stated that Breeze began hiring Pilots in 2020, and continued to do so into March 2022, around the time ALPA filed its application in this matter. In 2020, Breeze hired eight Pilots. In 2021, Breeze hired 68 Pilots. In the first three

months of 2022—from January 2022 to March 2022—Breeze hired 64 Pilots. Owens added that “[a]t [the] time ALPA filed its petition, Breeze was in the midst of a significant pilot hiring process intended to staff the A220 aircraft.”

The 71 Trainee Pilots at issue were all hired on or after December 6, 2021. Their names are listed in the table below:

	Seq. No.	Name		Seq. No.	Name
1	1	Agil, Bill	37	74	Mareen, Ivan
2	2	Aldarondo, Esteban	38	75	Marino, Joseph
3	5	Ayler, Samuel	39	76	Martin, Phillip
4	7	Bailey, Thomas	40	79	McCurdy, William
5	8	Barrera, Carlos	41	80	McGatha, Shawn
6	9	Bartholomew, Emmet	42	81	McGee, Andrew
7	10	Behinaein, Pouya	43	82	McKillip, Brian
8	11	Bender, Robert	44	83	Mejia, Ivan
9	13	Boezwinkle, Chad	45	85	Morelli, Thomas
10	14	Brady, Robert	46	86	Morris, Joseph
11	21	Cain, Joshua	47	89	Nemergut, Christopher
12	25	Castro, Juan	48	90	Olsen, Alex
13	26	Choge, Caleb	49	92	Ozbilgin, Ercan
14	29	Conforti, Marcelo	50	95	Polen, Justin
15	31	Creasy, Nicholas	51	97	Rancano, Jesus
16	32	Crownover, Jeffrey	52	101	Rivera, Cesar
17	34	DeHart, Clyde	53	107	Schlesinger, Richard
18	35	Deierlein, Eric	54	109	Sierra, Alexander
19	38	Elredy, Essam	55	110	Smith, Jordan
20	40	Fong, Audley	56	111	Solivan Cardin, Mike
21	41	Friel, Kevin	57	115	Steiert, Peter
22	42	Fuhrman, Scott	58	116	Stenlund, Kristoffer
23	44	Gouveia, Marcelo	59	119	Talick, Steven
24	45	Greenway, Russell	60	120	Taylor, Blake
25	46	Gurwell, Barrad	61	122	Thibault, William
26	47	Guthrie, Tanner	62	123	Thompson, Raphael
27	49	Hayes, Jonathan	63	124	Thompson, Thomas
28	50	Head, Benjamin	64	125	Toppi, Gregory
29	57	Johnson, Glen	65	126	Trosclair, Kyle
30	58	Jones, Cavin	66	128	Umbright, Evan
31	60	Kaul, Hemant	67	130	Volkman, Thomas
32	62	Killian, David	68	131	Wallis, David
33	67	Langreck, Timothy	69	133	Wheeler, Philip
34	68	LaRocco, Jason	70	134	Wingad, Jes
35	71	Lim, Jared	71	135	Winn, Jarod
36	72	Lower, Chad			

According to Owens, “71 of the 137 pilots on the List are currently in training. It is anticipated that all of the 71 Pilots will be flying the A220 in revenue service by September 30, 2022.”

Although the Trainee Pilots included in the List have not completed training, including their IOE, the Trainee Pilots are subject to the following terms and conditions of employment, as described by Owens in his declaration:

- “[R]ecently hired pilots are paid the same monthly minimum guarantee as pilots who are flying Breeze aircraft in revenue service.”
- “Pilots in training receive the same Company benefits and are subject to the same Company policies as pilots in revenue service.”
- “All Breeze pilots, including those in training, are subject to Breeze’s Pilot Playbook[,]” which addresses topics like “compensation, benefits, seniority, vacancies and transfers, training, hours of service, scheduling, vacation and sick time, leaves of absence, safety, investigations and disciplinary process, and professional and physical standards.”
- “Breeze provides pilots their seniority number during their first week they arrive at the Company.”

DISCUSSION

Inclusion of the Trainee Pilots in the List

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). Trainees are not eligible to vote unless they have performed line functions as of the cut-off date. *See Delta Airlines*, 35 NMB 173 (2008); *see also America West Airlines*, 18 NMB 140 (1991) (finding that flight deck crew members in training, including first officers engaged in IOE as of the cut-off date, are ineligible to vote); *Rosenbalm Aviation*, 15 NMB 313 (1988) (finding that an individual cannot serve as part of a cockpit crew in revenue service until they have successfully completed the training program).

Nevertheless, Breeze argues that the RLA’s definition of an “employee,”³ combined with the facts of this case, compel the conclusion that the Trainee Pilots belong on the List. The Board disagrees. The question here is whether the Trainee Pilots have performed line work in the Flight Deck Crew Members craft or class as of the cut-off date, and there is no dispute that they have not. The Board has consistently held that eligibility to vote requires the performance of line work in the craft or class as of the cut-off date. *See, e.g., Executive Jet Aviation*, 28 NMB 467 (2001) (Flight Attendants); *America West Airlines*, 18 NMB 140 (1991) (Flight Deck Crew Members); *United Airlines*, 18 NMB 181 (1991) (Passenger Service Employees). Breeze has presented no evidence that any of the Trainee Pilots have completed their IOE and performed line work in the Flight Deck Crew Members craft or class. In fact, in his declaration, Owens

³ *See generally* 45 U.S.C. § 151, Fifth (setting out the RLA’s definition of “employee”); 45 U.S.C. § 181 (relating the RLA’s definition of “employee” to the employees of air carriers).

acknowledges that the Trainee Pilots have been unable to complete training and fly in revenue service.

Breeze also argues that the Board should find that the Trainee Pilots should be included in the List because, for various reasons, Breeze treats them similarly to Pilots who perform line work. However, until the Trainee Pilots have completed their Federal Aviation Administration-mandated training, they are not qualified to perform line work for the Carrier, and it is that performance of line work in the craft or class as of the cut-off date that determines eligibility. *Rosenbalm Aviation, above*. Accordingly, the Board finds that the 71 Trainee Pilots are not properly on the List and will be removed from it.

Breeze's Request to Change the Cut-off Date

Breeze further argues that if the Board finds the Trainee Pilots were not properly included in the List, the cut-off date should be modified from March 31, 2022 to September 30, 2022 in order to permit the Pilot Trainees to vote. Breeze “anticipates” that by September 30, 2022, all 71 Trainee Pilots will be flying in revenue service.

NMB Representation Manual (Manual) Section 2.3 states that “the cut-off date is the last day of the latest payroll period ending before the day the NMB received the application.” Fixing the cut-off date at the beginning an 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.” *Norwegian Air Shuttle*, 43 NMB 140, 143 (2016). The Board has changed the cut-off date only in “very rare” cases, and it has only done so in “unusual or extraordinary circumstances.” *Avelo Airlines*, 49 NMB 26, 31 (2022). The Board finds no unusual or extraordinary circumstances in this case warranting a change in the cut-off date.

Notably, two of the cases in which the Board changed the cut-off date involved the substantial passage of time and employee turnover. *Piedmont Airlines*, 9 NMB 41 (1981) and *USAir*, 10 NMB 495 (1983). In a third case—*Compass Airlines*, 35 NMB 14 (2007)—the Board modified the cut-off date for two main reasons: (1) the unique circumstances of a rapidly expanding start-up carrier; and (2) a three-and-a-half month delay in the Board’s investigation resulting from its need to evaluate “complex and novel issues,” raised by the carrier. *Id.* In both *Piedmont Airlines* and *Compass Airlines*, the Board stated that its determinations were not precedential. See *Piedmont Airlines, above* at 45; *Compass Airlines, above* at 21-22.

In this case, there have been no unusual delays in the NMB’s investigation and no significant employee turnover. Breeze argues that this case is “not analogous” to previous cases in which the Board rejected requests to change cut-

off dates because it deals with the expansion of a craft or class, rather than turnover. However, in the past, the Board has rejected requests to change the cut-off date when those requests involved the expansion of a craft or class. See *American International Airways*, 10 NMB 456 (1983); *Wheeling & Lake Erie Ry.*, 17 NMB 453 (1990); *Avelo Airlines*, *above*.

Breeze also argues that this case is similar to *Compass Airlines*. In *Avelo Airlines*, *above*, the Board stated that it is not inclined to accept *Compass Airlines* as precedent, given that, by its own terms, it was not intended to be precedential; and the Board will not accept it as precedential here. Further, Breeze asks the Board to change the cut-off date to a future date, so that employees in training and not currently working in the craft or class may become eligible to vote if they successfully complete their training. To do so would be inconsistent with well-established Board precedent regarding the eligibility of trainees, and would also frustrate the purpose of the cut-off date. The cut-off date necessarily freezes a point in time based on which the Board determines the eligibility of employees to participate in a representation election. The Board has changed the date only in the very narrowest of circumstances, and such circumstances are not present here.

Finally, Breeze argues that if the Trainee Pilots are excluded from a representation election, it would conflict with 45 U.S.C. § 152, Fourth—which states that “[t]he majority of any craft or class of employees shall have the right to determine who shall be the representative.” There is no conflict. Congress not only entrusted the protection of the right established by Section 2, Fourth to the Board, it also expressly authorized the Board to establish the rules of the representation elections it conducts, and to determine which employees are eligible to participate. A majority of the valid votes cast by employees determined by the Board to be eligible to participate in the election will determine the representation question. See *Virginian Ry. v. Sys. Fed’n No. 40*, 300 U.S. 515 (1937); *Air Transp. Ass’n of Am., v. NMB*, 663 F.3d 476 (D.C. Cir. 2011).

In this case, the Board finds under longstanding precedent that employees who have not completed their training and are not flying in revenue service in the craft or class as of the cut-off date are ineligible to vote, and it declines to hold ALPA’s application in abeyance until a future date when Carrier believes those trainees may or may not be in revenue service.

Based on the particular facts and circumstances of this case, the Board does not find that unusual or extraordinary circumstances exist in this matter which would warrant changing the March 31, 2022 cut-off date for eligibility.

CONCLUSION AND AUTHORIZATION OF ELECTION

Based on the investigation, ALPA has established the requisite showing of interest and the Board finds a dispute to exist in R-7583 among Flight Deck Crew Members employed by Breeze Aviation Group, Inc., sought to be represented by ALPA, and presently unrepresented. A Mail Ballot election is hereby authorized using a cut-off date of March 31, 2022.

Pursuant to Manual Section 12.1, Breeze 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. Breeze must print the same sequence number from the List of Potential Eligible Voters beside each voter's name on the address label. Breeze 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. Breeze 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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