



NATIONAL MEDIATION BOARD

WASHINGTON, DC 20572

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In the Matter of the
Application of the

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

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

involving employees of

FRONTIER AIRLINES, INC.

32 NMB No. 12

CASE NO. R-7007

FINDINGS UPON
INVESTIGATION

November 10, 2004

This determination resolves election interference allegations filed by the International Brotherhood of Teamsters, Airline Division (IBT or Organization) involving employees of Frontier Airlines, Inc. (Frontier or Carrier). For the reasons below, the National Mediation Board (Board) finds that the laboratory conditions required for a fair election were not tainted.

PROCEDURAL BACKGROUND

On May 14, 2004, the IBT filed an application with the Board pursuant to the Railway Labor Act¹ (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth), alleging a representation dispute

¹ 45 U.S.C § 151, *et seq.*

involving the Stock Clerks² of Frontier. At the time the application was received, these employees were unrepresented.

The Board assigned Susanna C. Fisher to investigate. On June 1, 2004, the Board found that a dispute existed and authorized a Telephone Electronic Voting (TEV) election. Voting Instructions (Instructions) were mailed on June 30, 2004, and the tally was conducted on July 21, 2004. The results of the tally were as follows: of 20 eligible voters, 10 cast valid votes for representation. This was less than a majority required for Board Certification. On July 22, 2004, the Board dismissed the IBT's application. *Frontier Airlines, Inc.*, 31 NMB 460 (2004).

On July 30, 2004, the IBT filed a charge of election interference pursuant to the Board's Representation Manual (Manual) Section 17.0. On August 13, 2004, the Carrier responded, denying the IBT's allegations.

On August 17, 2004, the Board found that the IBT's allegations stated a prima facie case that the laboratory conditions were tainted and that the Board would conduct further investigation. The Board established a schedule for further filings. On August 17, 2004, Frontier submitted a request for an extension of time to supplement its initial filings. The Investigator granted the extension. On August 31, 2004, both the IBT and Frontier filed supplemental statements. On September 10, 2004, both the IBT and Frontier submitted responses. Both participants submitted affidavits and other documentary evidence in support of their positions. The Investigator requested that the Carrier provide additional information. The Carrier complied with this request on September 24, 2004.

² Frontier labels these employees as Materials Specialists. Therefore, these employees will be referred to as Materials Specialists in this determination.

ISSUES

Did Frontier's actions taint the laboratory conditions required by the Board for a fair election?

CONTENTIONS

IBT

The IBT asserts that the Carrier granted "substantial" pay raises to the Materials Specialists during the election period which tainted the laboratory conditions. The IBT argues that the Carrier "intentionally timed the announcement of these pay increases to coincide with the Board's June 30, 2004 mailing of employees' Telephone Electronic Voting Instructions." The Organization asserts that, "Although yearly increases had traditionally been given at the beginning of June, the carrier waited until the TEV Instructions were about to be mailed and then granted the increases so as to maximize their effect on employees." The IBT further argues that these "massive increases" were given "less than two months after Local Teamsters 961 and the Carrier had negotiated a letter of agreement to decrease the starting pay for aircraft appearance agents at the Carrier."

The IBT also argues that "on or about the last week of June 2004 or the first week of July, 2004," Janelle Saar, Frontier's Manager of Materials, called each Materials Specialist in to discuss their upcoming raises. The Organization argues that the employees assumed that no increases would be given because there was no prior announcement and because the raises were not given in the beginning of June. Finally, the Organization asserts that while the Carrier had not mentioned raises to any of its employees, Michelle Zeier, Manager of Workforce Relations, called Teamsters Local 961 President, Matthew Fazakas, to inform him that Frontier had decided to give Materials Specialists pay increases based on a "competitive wage analysis that it had allegedly conducted." The Organization states that the unexpected amount and timing of these increases influenced the election.

The IBT submitted declarations from a Materials Specialist, a Lead Materials Specialist, and the President and Principal Officer of Teamsters Local Union 961 in support of its contentions.

The Organization argues that the above conduct requires that the Board order a new election.

Frontier

The Carrier denies the IBT's allegations that it interfered in the election process. The Carrier states that it "had not adjusted the overall pay grade structure due to the hard times experienced in the airline industry after 9/11." Therefore, Frontier asserts that it began evaluating pay increases for approximately 600 eligible pay grade employees, including the 20 employees involved in the present case, in October 2003. Frontier states that by December 2003, it decided that it must raise pay grade salaries to stay competitive in the marketplace. The Carrier asserts that although its goal was to implement the pay grade salary increases as usual, on June 1, 2004, the Carrier was concerned that the IBT would raise interference allegations if the pay raises were implemented during the representation dispute. After consulting counsel, Frontier determined that it could proceed with the planned raises which were also justified by compelling business reasons. Frontier asserts that Saar met with the Materials Specialists separately on or about the third week of June 2004 to discuss pay increases. The Carrier further asserts that Saar explained to the Materials Specialists that Frontier began its compensation review process in the fall of 2003 and used "internal and external benchmarks to assure that its employees were being fairly compensated." The Carrier also stated that Saar explained that the pay increases were also based on the recommendations of an outside consultant. Accordingly, Frontier states that it implemented the pay raises in the third week of June 2004 and made them retroactive to June 1, 2004.

The Carrier also alleges that, “[t]he timing of the IBT’s organization efforts raises the question of whether the IBT, with full knowledge that Frontier’s pay raises traditionally occur in June, intentionally timed the application alleging a representation dispute to put Frontier in this exact ‘damned if you do, damned if you don’t’ situation, and manufactured a ready-made challenge to the election if the IBT was unsuccessful.” In fact, the Carrier argues, the timing of the pay raises was not timed to coincide with the TEV Instructions, but instead was briefly delayed as a result of the IBT’s application.

Frontier submitted the following documents in support of its position:

- declaration from Kevin Stocker, Director of Human Resources;
- Compensation Program Review Engagement Letter between Frontier and Mercer Human Resources Consulting Firm;
- Compensation Program Review prepared by Mercer;
- Statement of Work from HR Leadership Services;
- declaration from Margaret Deacon, Compensation Analyst;
- FYI Communications Bulletin dated April 2, 2004;
- declaration from Janelle Saar, Manager, Materials Specialist;
- a chart showing the individual dollar amounts and percentage increases awarded to all Materials Specialists from June 2000 – June 2004;
- FYI Communications Bulletin dated March 31, 2003;
- FYI Communications Bulletin dated April 1, 2002; and a
- Connections Bulletin dated March 2001.

FINDINGS OF LAW

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

I.

Frontier is a common carrier by air as defined in 45 U.S.C. § 181.

II.

The IBT is a labor organization and/or representative as provided by 45 U.S.C. § 151, Sixth.

III.

45 U.S.C. § 152, Third, provides in part: “Representatives . . . shall be designated . . . without interference, influence, or coercion”

IV.

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.” This section also provides as follows:

No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees . . . or to influence or coerce employees in an effort to induce

them to join or remain or not to join or remain members of any labor organization

STATEMENT OF FACTS

According to the declaration of Kevin Stocker, Director of Human Resources, Frontier management began discussing the need to evaluate its compensation programs for approximately 600 pay grade employees, including 20 Materials Specialists, in August 2003. As stated in the Compensation Program Review Engagement Letter between Frontier and Mercer Human Resources Consulting (Mercer), Frontier hired Mercer on October 9, 2003, to conduct a formal study of its compensation programs. Mercer conducted its review and on December 2, 2003, Mercer submitted its final report, the Compensation Program Review (Compensation Review) to the Carrier. In the Compensation Review, Mercer stated that Frontier's pay grade employees, including Materials Specialists, were being paid below the market rates. In fact, in the Compensation Review, Mercer stated that "Frontier appears to be at a serious recruiting disadvantage for many of the graded positions." Based on this finding, Mercer recommended that Frontier increase salaries for all pay grade employees of 12 percent on average.

According to Stocker's declaration and the declaration of Margaret Deacon, Compensation Analyst, the Carrier decided to follow Mercer's recommendations and in January 2004, Frontier hired a consultant from HR Leadership Services, LLC (HRLS), to implement and manage the revised pay grade salary program. The Statement of Work from HRLS submitted by the Carrier supports this statement. Frontier worked closely with HRLS to implement this new program. The Carrier states that the planned pay raises were to be implemented on June 1, 2004, which was the traditional date on which pay grade employees received their salary increases. The Stocker and Deacon declarations submitted by the Carrier support this statement. In fact, in the FYI Communications Bulletin dated April 2, 2004, Frontier stated, "[t]hose employees who are in pay grades and who are eligible will receive their annual performance merit increases, effective June 1, 2004."

According to the Deacon declaration and by the IBT's admission in its July 31, 2004 election interference allegations, historically, Frontier's pay grade employees receive their annual salary increases on June 1st of every year. The Communications Bulletins from 2001, 2002, 2003, and 2004 also indicate that Frontier's pay grade employees receive their annual salary increases on June 1st of every year. Furthermore, the "Frontier Airlines Materials Specialists Pay Raises from 2000-2004" chart showing the individual dollar amounts and percentage increases awarded to all Materials Specialists from June 2000 – June 2004, indicates that pay grade employees receive their annual salary increases on June 1st of every year.

DISCUSSION

During election campaigns, a carrier must act in a manner that does not influence, interfere with, or coerce the employees' selection of a collective bargaining representative. *Metroflight, Inc.*, 13 NMB 284 (1986). When considering whether employees' freedom of choice of a collective bargaining representative has been impaired, the Board examines the totality of the circumstances as established through its investigation. *Mercy Air Serv., Inc.*, 29 NMB 55 (2001); *US Airways*, 26 NMB 323 (1999); *Petroleum Helicopters, Inc.*, 25 NMB 197 (1998); *Evergreen Int'l Airlines*, 20 NMB 675 (1993); *America West Airlines, Inc.*, 17 NMB 79 (1990).

Pay Increase and Shift Differential

Changes in working conditions during the laboratory period may taint laboratory conditions, except if the changes were planned before the laboratory conditions attached, or there is "clear and convincing evidence of a compelling business justification." *American Trans Air, Inc.*, 28 NMB 163 (2000); *Continental Airlines, Inc./Continental Express, Inc.*, 27 NMB 463 (2000); *Air Logistics, L.L.C.*, 27 NMB 385 (2000); *American Airlines, Inc.*, 26 NMB 412 (1999).

The Board has not found interference when pay increases were granted as part of a company-wide audit completed prior to the Carrier's knowledge of the organizing campaign. *Dakota, Minnesota and Eastern R.R. Co.*, 25 NMB 302 (1998). The evidence indicates that Frontier completed the review of its pay system in late 2003.

As stated in Mercer's Compensation Review, Mercer found that Frontier's pay grade employees were being paid below the market rate. In addition, Mercer stated that pay increases were necessary for Frontier to recruit effectively. Therefore, Frontier established that the purpose of the pay increases was to remain competitive with other carriers. Furthermore, the Carrier presented evidence, including the Compensation Program Review Engagement Letter, the Compensation Review, the Statement of Work from HRLS, and declarations from Carrier officials, that all of these changes were pre-planned. The pay raises given to the Materials Specialists averaged 12 percent which followed Mercer's December 2003 recommendations. Therefore, the record establishes that the pay increases did not taint the laboratory conditions.

CONCLUSION AND ORDER

The Board finds that the laboratory conditions required for a fair election were not tainted. The Board further finds, having carefully considered the record in this case, no basis to grant the relief requested by the Organization. Therefore, as there is no further basis to proceed, the Board closes its file in this matter.

By direction of the NATIONAL MEDIATION BOARD.



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