

**NATIONAL MEDIATION BOARD**

WASHINGTON, DC 20572

(202) 692-5000

26 NMB 269

26 NMB No. 58

Case No. R-6621

In the Matter of the

Application of the

Aircraft Mechanics Fraternal Association

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

involving employees of

Northwest Airlines, Inc.

**Findings Upon Investigation-Certification**

June 1, 1999

This decision resolves the representation dispute alleged by the Aircraft Mechanics Fraternal Association (AMFA) and the allegations of election interference filed by the International Association of Machinists & Aerospace Workers, AFL-CIO (IAM), following the ballot count. For the reasons stated below, the National Mediation Board (NMB or Board) certifies AMFA as the representative of the craft or class of Mechanics and Related Employees, employees of Northwest Airlines, Inc. (Northwest). The Board concludes, however, that due to AMFA's conduct which violated the secrecy of the ballot, the bar period in this case will expire six months after the date of this decision.

**Procedural History**

On July 22, 1998, AMFA filed an application pursuant to the Railway Labor Act (RLA), as amended, 45 U.S.C. § 152, Ninth, alleging a representation dispute among Mechanics and Related Employees, employees of

Northwest. At the time this application was received, these employees were represented by the IAM.

The Board initially assigned Mediator Faye Marie Landers-Crawford and, at a later date, Mediator Lawrence E. Gibbons to conduct the investigation. As a result of the investigation, on August 13, 1998, the Board found a dispute to exist and authorized an election.

From August 29 to September 12, 1998, a pilot strike occurred on Northwest. By letter dated September 4, 1998, the Board advised Northwest, the IAM, and AMFA of its concern about the potential destabilizing and unpredictable effects of the pilot strike on the Board's ability to conduct a prompt and fair election. At the time of the Board's letter, Northwest had commenced layoffs of employees who were eligible to vote in the election. Pursuant to the collective bargaining agreement between Northwest and the IAM, it would have taken approximately ten days to recall the employees to their positions once the pilot strike settled. The Board gave the Carrier, the IAM, and AMFA until September 8, 1998, to provide comments regarding the time frame for the election.

Timely submissions were made by Northwest, IAM, and AMFA. On September 12, 1998, the pilot strike ended, eliminating the Board's concern over conducting an election during the strike. Consequently, the Board set the mailing date for the ballots, established a count date, and so advised Northwest and the Organizations on September 15, 1998.

The Board conducted the ballot count on November 20, 1998, with the following results:

Number of Eligible Voters...	9,504
Votes for IAM.....	3,905
Votes for AMFA.....	5,160
Votes for Other.....	14
Void Ballots.....	11

### **Allegations of Election Interference**

On November 24, 1998, the IAM filed timely allegations of election interference pursuant to Section 14.0 of the NMB's Representation Manual. According to this Section, the allegations of election interference must be accompanied by substantive evidence and present a prima facie case. Since the allegations presented a prima facie case, the Board, on November 30, 1998, established a schedule for the participants' submissions associated with the IAM's allegations. In accordance with the schedule, the IAM supplemented its filing on December 14, 1998. The Carrier and AMFA filed responses on December 29, 1998. The IAM submitted a rebuttal on January 6, 1999, and sur-rebuttals were filed by AMFA and Northwest on January 13, 1999.

In a letter dated January 14, 1999, the Board notified Northwest, the IAM, and AMFA that it would inform them within twenty-one days of its determination as to whether further investigation was warranted. The Board, on February 3, 1999, notified the participants that it was necessary to interview certain individuals in order to fully and fairly investigate the allegations.

Mediator Gibbons, assisted by Investigator Joyce M. Klein, conducted the field investigation on February 22-24, and March 4, 1999, in Minneapolis, MN, and Washington, DC, respectively.

## ISSUES

Did Northwest's actions taint the laboratory conditions the Board requires for a fair election?

Did AMFA's actions taint the laboratory conditions the Board requires for a fair election?

Irrespective of whether AMFA's or Northwest's actions tainted the laboratory conditions, do AMFA's actions warrant restorative action by the Board and, if so, what measures should the Board take?

## CONTENTIONS

### **International Association of Machinists and Aerospace Workers, AFL-CIO**

The IAM contends that AMFA "flagrantly and insidiously" violated the secrecy of the balloting process by collecting copies of marked ballots, together with voters' driver's licenses, so that AMFA could document how employees voted. The IAM also contends that AMFA had its supporters deluge the NMB with phone calls, e-mail messages, and faxes in an effort to obstruct the Board's processes and improperly influence the Board in order to obtain the substantive and procedural results AMFA sought.

The IAM asserts that Northwest assisted AMFA by allowing that organization access to company property and equipment and that AMFA supporters were allowed to campaign while on company time. The IAM further asserts that it was unduly restricted by Northwest "from carrying out its legitimate function as the certified representative of the craft or class."

The IAM requests that the results of the ballot count be set aside and that a re-run election be conducted after "the passage of a suitable period of time" to allow the effects of AMFA's conduct to dissipate.

The IAM also alleges that its initial post- election submissions to the Board were disseminated on the Internet by AMFA. The IAM contends that as a result of the disclosure its witnesses have been harassed and intimidated.

### **Aircraft Mechanics Fraternal Association**

AMFA contends that under the totality of the circumstances, the IAM misconduct "outweighed anything alleged against AMFA." In response to the allegation of the collection of copies of ballots, AMFA asserts that it did not advocate this conduct. The official AMFA web site, according to the Organization, carried no postings concerning ballot collection. The Organization asserts that the web site in question — "The Mechanic" — has no affiliation with AMFA and AMFA does not have any control over its content.

AMFA further states that it rejected the collection of ballot copies as a matter of policy. As evidence, AMFA claims that its representatives rejected even freely proffered ballot copies. The Organization admits that the AMFA-MSP Organizing Committee (AMFA-MSP) received thirty-six copied ballots, all of them unsolicited.

In response to the IAM's allegation regarding witness intimidation, AMFA admits to its dissemination of the IAM's submission to the Board. AMFA asserts that every Northwest employee needed to know about the IAM's filing.

AMFA argues that the IAM was the beneficiary of any "company favoritism." AMFA contends that the IAM as the incumbent organization had "significant campaign advantages" and that the IAM's allegation is without merit.

**Northwest Airlines, Inc.**

Northwest contends that throughout the election, the Carrier conducted itself in an entirely lawful manner. The Carrier argues that none of its conduct warrants setting aside the results or scheduling a new election. Therefore, the Carrier asserts that the IAM's request for a re-run election based on its allegations regarding Northwest should be denied.

The Carrier asserts that from the time AMFA filed its application, Northwest adopted a position of "strict neutrality" and did not express support for either the IAM or AMFA. Northwest contends that it made every effort to ensure that its managers and supervisors remained neutral and applied Northwest's rules of conduct in a non-discriminatory fashion.

### **FINDINGS OF LAW**

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

#### **I.**

Northwest Airlines, is a common carrier by air as defined in 45 U.S.C. §151 , First, and § 181 of the Act.

#### **II.**

The IAM and AMFA are labor organizations and/or representatives as provided by 45 U.S.C. § 152 , Ninth, of the Act.

#### **III.**

In part, 45 U.S.C. § 152 , Third, provides: "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.

#### V.

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:

[A]uthorized 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 in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election . . . the Board shall designate who may participate in the election and establish the rules to govern the election.

### STATEMENT OF FACTS

#### I. Structure and Operation of AMFA and the AMFA-MSP

AMFA's representatives at the national and regional levels consisted of National Director O.V. Delle-Femine; Secretary Charles Marsicek; Treasurer Steven Kadzulis; Safety and Standards Director Jeremiah Mahoney; Region 1 Director Steven Carey; Region 2 Director James Seitz; Region 3 Director Kevin Wildermuth; and Acting Region 2 Airline Division Coordinator Terry Harvey. These officers constituted the AMFA National Executive Council.

At the local level at Northwest, the AMFA organizing campaign was primarily directed by AMFA-MSP. The "designated" representatives of that committee were the following: President Steve MacFarlane; Vice-President Jim Young; Secretary Ron Thompson; Treasurer Pete Falanga; Assistant Treasurer Paul Klieser; Communications Chairman Michael Grout; Cleaner Representative Joe Schommer; B-Side Coordinator Pat Ross; C-Side Coordinator Bob Moss; and web site Administrator Pat Calkins. Although MacFarlane stated that AMFA-MSP had no formal relationship with the national AMFA, he admitted that Delle-Femine was spending 50% of his time with AMFA-MSP.

Delle-Femine stated that the members of the AMFA National Executive Council and the representatives of AMFA-MSP "were the only AMFA representatives authorized to implement AMFA policy during the Northwest organizing campaign." According to AMFA, no Northwest employee, other than those named above, served AMFA in a representative capacity during the Northwest organizing campaign or had any authority to originate campaign literature or policy.

During the campaign, the only two authorized sources of AMFA correspondence, campaign literature, and campaign policy were the AMFA national/regional officers and AMFA-MSP. According to Delle-Femine, all campaign literature and policy originating from AMFA-MSP was subject to the unanimous approval of the Committee's officers. AMFA-MSP coordinated the dissemination of its literature system-wide through the cooperation of volunteers at the various bases. Other AMFA organizing committees for the Northwest campaign were set up in Memphis, TN, and Atlanta, GA.

All of the AMFA national officers have organizing responsibilities. Delle-Femine stated that literature on individual carriers originates and is disseminated by the local AMFA committees.

Kevin McCormick is President of the McCormick Advisory Group, a management services company that provides administrative, managerial, and financial services to associations. He was appointed as the National Administrator for AMFA. McCormick had contact with AMFA-MSP. The McCormick Advisory Group collected the mail for AMFA on a daily basis. McCormick had contributed material or posted to the bulletin board at the AMFA-MSP web site.

The main activities of AMFA-MSP consisted of distributing literature. Meetings were held at a local restaurant and were very informal in the beginning. As the campaign advanced, office space was secured in Minneapolis, MN. Literature prepared by the Committee had a line at the bottom which stated "Produced and Distributed by the AMFA-MSP Organizing Committee." The literature also included the Committee's e-mail address and phone number.

## **II. Carrier's Role During the Election Process**

In July 1998, the NMB notified Northwest that AMFA had filed an application alleging a representation dispute in the Mechanics and Related craft or class. According to P. Douglas McKeen, Northwest Vice President-Labor Relations, the Carrier decided "that its position in the AMFA-IAM election campaign would be one of strict neutrality." McKeen then sent a memorandum to all of Northwest's managers of the employees in the Mechanics and Related craft or class setting forth the company's policy of neutrality and the rules applicable during the election. That memorandum stated that "Northwest will remain strictly neutral in the election process, and will honor the employees' chosen representative."

Northwest articulated its policy of neutrality in the following manner: most Northwest employees were permitted to wear an article of clothing bearing a union logo and a single union campaign button; campaigning and distribution of campaign materials was prohibited within any company facilities; posting of campaign stickers or literature on walls, bulletin boards, and other company property was prohibited; and IAM representatives were permitted on the property only for the purpose of engaging in representational, as opposed to campaign-related, activities.

In August 1998, Northwest held mandatory meetings among its managers and supervisors with responsibility over the mechanics and cleaners. These meetings were conducted by attorneys from the firm of Verner, Liipfert, Bernhard, McPherson and Hand, the law firm retained by Northwest to give advice and counsel to the Carrier during the AMFA-IAM election campaign. The manager and supervisor meetings were held in Minneapolis, MN, Detroit, MI, and Atlanta, GA. There were multiple meetings held at each location to permit as many of the managers and supervisors as possible to attend. Over 200 Northwest officials attended these meetings where counsel made presentations and distributed written materials concerning the NMB election process and the upcoming AMFA-IAM election. It was emphasized that even-handed application of Northwest's rules of conduct during the campaign period was critical, and that Northwest would not allow any managers and supervisors to engage in any activity which could be viewed as supporting one union or the other.

Managers and supervisors were instructed to strictly and uniformly enforce Northwest's rules, including the rules regarding the wearing of union insignia, election campaigning, and distribution and posting of campaign literature, and to treat employees alike in making assignments, imposing discipline, or other management functions, without regard to the employee's position regarding the unions. They were also told that, if asked, they should tell employees that Northwest was strictly neutral, would recognize and bargain with whichever union won the election, and was certified by the NMB, and had no preference regarding which union won the election. Managers and supervisors were told that they could not express their personal views about either of the unions because, "even though legal, such opinions could be considered to be inconsistent with Northwest's policy of neutrality."

Northwest reiterated its policy on the IAM in a memorandum, dated August 27, 1998, and forwarded to managers:



Since the IAM currently represents our mechanics, ESEs, etc., IAM officials do have a contractual right to be on NWA property and to converse with their members. IAM representatives, however, are prohibited from engaging in campaign activity or interfering with operations while they are on NWA property. Our training materials state that if an IAM representative comes on the property and begins to engage in prohibited campaign activity the manager should 'politely remind the IAM representative that his right of access to the property is limited to the purposes set forth in Section 13(E)8 of the Blue Book . . . [and] advise him that unless he confines himself to that activity, he will be escorted from the property by security. Do not engage in any physical confrontation yourself, however.' In addition, remember that it is legal for union representatives to peacefully pass out literature or talk to employees in public areas, in company parking lots, and at entrances to company buildings as authorized and directed by Internal Security or local management.

In sum, IAM representatives do have the right to be on NWA property and they should not be asked to leave unless: (1) they are engaging in prohibited campaign activity; (2) you advise them that if they continue to campaign they will be asked to leave; and (3) despite your warning, the union representatives refuse to stop campaigning.

Northwest received numerous complaints from AMFA alleging that Northwest was favoring the IAM in the election campaign. Northwest also received complaints from the IAM regarding Northwest's favorable treatment of AMFA supporters.

Northwest recognized the right of IAM officials to be on the property for contract administrative purposes, but set out a clear procedure for managers to follow if IAM officials were discovered to be campaigning. For example, Michael Cole, a Northwest employee and IAM Chief Steward, stated that he and District Lodge 143 General Chairman Robert Fetting were in a cleaning shop on October 9, 1998. Cole claimed that Paul Miller, Manager of Support Shops, approached him and Fetting and asked them to leave because they were "disrupting" several nearby AMFA supporters. According to Miller, Fetting approached him that day and asked to be allowed to talk to some cleaners. Miller gave Fetting his permission. Miller then stated that some employees told him that Fetting and Cole were campaigning for the IAM. Miller then approached Fetting and Cole and asked them to leave the area. Fetting and Cole left the area.

In another example, Carl Frazier, IAM Vice President, South District 143, alleged that AMFA supporters in Atlanta, GA, solicited the sales of AMFA shirts, hats, and pins. However, Cliff Johnson, Managing Director, Technical Operations in Atlanta immediately stopped AMFA from engaging in these actions on Carrier property. Johnson also stopped AMFA as well as the IAM from campaigning on the Carrier's property in Atlanta.

### III. AMFA-MSP Web Site

AMFA-MSP had its own web site which it started on April 17, 1998. The sole administrator for the AMFA-MSP web site was Patrick Calkins. The national AMFA organization does not have an official web site or web page.

Originally, campaign information was placed on the web site. Calkins then proceeded to place information giving AMFA-MSP's views on issues. The site also had a link to "The Mechanic" web site.

Calkins was the only individual who could add materials to the AMFA-MSP web site. Although Calkins stated that he would not post anything unless it was approved by AMFA-MSP, he acknowledged that he "occasionally" posted things that had not been pre-approved.

#### **IV. "The Mechanic" Web Site**

"The Mechanic" web site was established in 1996 by Dennis Lee Sanderson, a mechanic at United Airlines and an associate member of AMFA since 1994. Two Mechanics at Northwest, Thomas McDonald and Patrick Calkins (the AMFA-MSP web site administrator), financially contributed to the creation of the site. Sanderson met members of AMFA-MSP, including Calkins, in December 1996 at an AMFA convention in Chicago, IL. Since that time, the focus of Sanderson's communication with AMFA-MSP has been through e-mail with Calkins and Michael Grout, AMFA-MSP Communications Chairman.

While Sanderson stated that he determined what was placed on the site, in response to a question by the Investigator as to whether national AMFA asked him to post anything, he said:

[I] get stuff from them now and then. A lot of stuff I ask from them and they send it to me. I've asked for stuff from Delle-Femine and [AMFA Attorney Lee] Seham to have put up there. I'll get e-mail from people saying, 'can you post a copy of this or can you pull up this.' I'll send an e-mail or sometimes I'll actually call them and leave a message on the tape asking if I can have a copy.

Sanderson requested and received information from Delle-Femine, Lee Seham, counsel for AMFA, or Kevin McCormick. Delle-Femine and McCormick state that they had posted comments on the bulletin board at "The Mechanic" web site. Delle-Femine specifically testified that he used the web site to respond to criticism of AMFA posted there. Delle-Femine and McCormick consistently monitored the web site. Indeed, a review of the web site revealed numerous postings by national AMFA officials. Grout had even requested that Sanderson include AMFA on a disclaimer that he put on the web site. The disclaimer concerned e-mails encouraging employees to refuse to pay their IAM dues.

Seham made arrangements for Sanderson to receive a copy of the taped conversation between McFarlane and Robert Bush, an attorney for the IAM.

Sanderson also created an AMFA page at "The Mechanic" web site. The page listed the official national AMFA mailing address along with an e-mail link to Steve Carey, AMFA Regional I Director. According to Sanderson, Carey asked for the link. According to Sanderson, he wrote all of the other text on the web page without the prior approval of AMFA.

The "Mechanics Monthly," published by the AMFA-MSP Organizing Committee had a list of telephone numbers and web sites on the back of each edition which included "The Mechanic" web site address.

## V. Ballot Copy Collection

Throughout the campaign the leaders of AMFA and AMFA-MSP encouraged and condoned the message that the NMB could not be trusted to preserve the integrity of the vote. Indeed, in a two-day period on "The Mechanic" web site, and on the same days that Dell-Femine posted the ballot mailing and count dates on "The Mechanic," there were numerous messages with remarks such as "[I]t looks to us like the IAM controls the NMB. We now wonder how true the vote was at UAL;" "[The NMB] had better run this election from here on out as straight and narrow as can possibly be. ... If anymore irregularities are found out about in this election, [Mr. Crable] will wish [he] had never taken the job. . . ."

Therefore, the NMB's ballot security and counting processes were a major thrust of AMFA's campaign, inextricably linked with AMFA's campaign against the IAM, and important to their "get out the vote" effort. McFarlane posted a message on the AMFA-MSP web site after receiving the sample ballots which stated, in pertinent part: "We know there is a great deal of concern over the NMB's handling of the election. The best defense is to make every ballot count."

The topic of collecting copies of ballots first came up at a meeting of AMFA officials and Northwest employees in 1997. AMFA-MSP President MacFarlane states:

Well, the very first time that it came up was in Detroit. It was November of '97 I believe when we decided that the campaign was getting to the point where we really needed to talk in a system-wide manner rather than just the local view that we had been doing. So we had a meeting in Detroit and we had representatives from several other stations came. And at that meeting was when the discussion about copying ballots came up.

The 1997 discussion, as relayed by MacFarlane, is as follows:

[I]t was based on the fact that most people in attendance believed that the NMB is partial to the AFL-CIO and particularly to the IAM and that past election have been close enough to where

people felt that something must have happened at the Board in order for the election to go the way it did.

And this isn't just a recent thing. If you go back many many years with AMFA and elections, rightly or wrongly, there has always been this believe [sic] that the Board, given the opportunity, would influence the election to favor the IAM or the AFL-CIO.

So Alaska's election was coming up at that time and the question was what can we do to try to ensure that the NMB remains impartial or how can we verify it. And so one of the people in the meeting made the suggestion, well, why don't we ask everyone to make a copy of their ballot and their ID and hold it and in the event that the election count is off, in other words, we have 350 ballots with ID and the NMB says they only counted 300, that would be evidence that the Board did in fact manipulate the election. Well, that was the thinking. But it was also immediately, you know, pointed out that you're never going to get everybody to do that, first of all. It's impractical. And so not have everyone do it, having 50 percent would mean nothing; so you're wasting your time.

The issue arose again in relationship to the Northwest election at an AMFA-MSP meeting in July 1998. MacFarlane states that the conversation did not produce any results to take action because it would not work.

Grout states that the subject of ballot copy collection was brought up at several meetings of Northwest employees. He stated that "the one or two occasions that I recall that it was brought up, they discussed how, as a practical matter, it really wouldn't be possible to collect ballots, copies from everyone."

When asked whether AMFA-MSP voted on the matter, MacFarlane replied:

My recollection is that we did not have a formal vote on it. I do recall having us talk about it and that there was an overwhelming voice against it, that it wasn't even considered in a vote. Now, that's my recollection. There may have been the vote, but my recollection is there was not. It was just that, you know, it was broached. Everybody said: It's not going to work. Let's don't even, you know, worry about it. It's not going to happen.

On October 10, 1998, the following appeared on "The Mechanic" web site from a location in Atlanta, GA:

To protect ourselves against the IAM and the NMB to make sure the election is fair, when you get your ballot and fill it out, go make a copy of it and send it to AMFA. That way if the NMB says the [expletive] from the IAM won, which will be [expletive], AMFA will have proof that everyone except for a few idiot IAM supporters voted for AMFA. I know it's a hassle to [do] this but it's the only way we can protect ourselves from these [expletive] bags like the IAM and NMB.

Jerry Taylor, a Northwest employee, stated that he posted the above message on his own without any encouragement from anyone.

On October 18, 1998, the following posting by William Kozuck, a Northwest Mechanic, was placed in the web site from a location in San Francisco, CA:

To all NWA AMTS: There is no rush to get your BALLOTS back in the mail to the NMB. Take the time to complete the BALLOT and follow the directions exactly, so as not to have your BALLOT rejected by our friends at the NMB. Also, take the time after you complete the BALLOT to make two photo copies with your state drivers license. Keep one for yourself and send the other to: AMFA-MSP Organizing Committee, P.O. Box 11843, St. Paul, MN 55111.

Kozuck stated that he did this as a way of keeping the IAM "honest." Kozuck did not receive any responses. He stated that he did not talk to anyone at AMFA-MSP before posting the message. He stated that the copying of ballots was "fairly widespread" in San Francisco, CA.

MacFarlane states that AMFA-MSP had no knowledge of the posting and did not sanction it. However, when asked whether the Committee took any action to disavow the posting, MacFarlane said:

Not that I'm aware of on the bulletin board. The bulletin board is not and was not a forum that the MSP committee used to communicate with the Northwest membership. We had our own web page that we used. We used E-mail. We had fliers that we put out. The Mechanic bulletin board is not affiliated with us or anything that we do. It's existed for many years and it is a place where people go to, you know, debate issues and so forth. And so when I became aware that somebody had posted on there saying that they were us, I really didn't give it much thought. People knew what our position was on the issue.

According to MacFarlane, the position of AMFA was "to follow the instructions on the ballot to the letter." The position "wasn't that we're not collecting ballots . . . [but] that it wouldn't do any good to collect ballots." Indeed, in a October 20 posting from McFarlane in response to a question about copying ballots, McFarlane did not tell the voter not to do it, but stated:

[T]hanks for the note. The only way this would be helpful is if everyone did it. That isn't going to happen. Our best advice is to follow the NMB instructions to the letter, nothing more, nothing less. We believe the NMB is aware of all the attention this election is getting and aren't likely to try anything. . . . They will think long and hard before risking getting caught with our ballots.

On November 16, 1998, the following posting, from "MSP Organizing Committee" in Minneapolis, MN, appeared on "The Mechanic" bulletin board:

The MSP AMFA Organizing Committee would like to thank every one that worked for, voted in and, sent in copies, of their vote, in the representation election. We now have concrete evidence of how the election should turn out. We hope you all enjoy the outcome on Friday, you sure have earned it. Again thanks for all the hard work. We are looking forward to working with all of you to achieve the fair and strong contract that we all deserve.

Sanderson allowed the November 16, 1998, message in which AMFA-MSP thanked employees for sending in copies of their ballots to be posted. He stated that he believed that it came from AMFA-MSP.

Grout states that this posting did not come from AMFA-MSP. Phillip Kastner, an employee at Northwest and an associate member of AMFA, claimed that he was the author of the posting and asserted that he falsely claimed that the Organizing Committee knew by receipt of copied ballots how the election should turn out. At or about the time of the posting AMFA-MSP did not deny that the message came from them.

A Northwest employee gave MacFarlane a copy of his ballot. MacFarlane did not solicit the copy. When the copy was handed to him, MacFarlane asked "What would you like me to do with this?" The employee responded that he just wanted someone to know how he voted.

MacFarlane stated that after the ballot count someone brought to his attention a manila envelope which had fourteen "ballots" in it and an ID. He acknowledged that the envelope must have been in AMFA-MSP's office "for some time and it did have ballots in it." MacFarlane also stated that Pat Calkins informed him that some nineteen "ballots" had been mailed to him.

Delle-Femine states that the ballot copy collection issue was brought to his attention at a meeting with Northwest employees in Atlanta, GA, in the summer of 1998. He said that he told them not to collect ballots but he did not address ballot copy collection. Delle-Femine received several calls about the web site postings but when contacted about it by McCormick, stated "It's not AMFA."

Despite the postings on "The Mechanic" web site on October 10 and 18, 1998, no message appeared from Delle-Femine or any AMFA official on the web site or "The Mechanic" web site discouraging ballot copy collection. No message was put on the AMFA telephone hot line. Delle-Femine stated that he contacted the AMFA-MSP about the postings and "intimated" that they should do something to stop it.

The investigation revealed that although there is evidence of only a limited number of AMFA supporters delivering ballot copies to AMFA and AMFA-MSP, at least hundreds of supporters made and retained copies of their ballots with their identification on it just in case it became necessary to prove how they voted, if the NMB did not run a "fair election" or the IAM tried to "steal the vote." IAM witnesses testified that numerous employees were making copies of their ballots with their identification on copiers at the Carrier, and that various employees displayed their photocopied ballot on their person, lockers or lunch boxes.

## **VI. Alleged Misrepresentation of and Interference With Board's Processes**

On August 5, 1998, Mediator Landers-Crawford received a cover letter and an accompanying list of individuals challenged by AMFA as ineligible from Attorney Seham. The Mediator then called Seham and informed him that the list did not include any evidence to support AMFA's challenge. Seham requested an extension to gather evidence and the Mediator granted an extension on the phone. In a letter dated August 7, 1998, the Mediator confirmed the granting of the extension.

On August 14, 1998, the IAM filed a motion for extension of time to file challenges to the list of eligible employees. The IAM stated that the extension was necessary "to compile affidavits and other documentary evidence from throughout the Northwest Airlines system." That same day, the extension was granted. The letter from the NMB stated that an extension had been granted until September 8, 1998. The letter also stated "this extension is also applicable to any challenges and objections from AMFA." In a letter which was addressed to the Mediator and received on August 17, 1998, Seham objected to the extension.

On September 2, 1998, the Chief of Staff received a letter from Seham. In the letter, Seham claims that "the grant of that extension, notwithstanding specific prior representations to AMFA that further extensions would be unavailable, can only be taken as a demonstration of overt partiality to the IAM."

In a letter dated September 4, 1998, the Board expressed its concern about the potential destabilizing and unpredictable effects of the pilot strike on the Board's ability to conduct a prompt and fair election between the IAM and AMFA. The Board asked for comments on the "time frame the election should commence." Comments were received on September 8, 1998. The Board, on September 15, 1998, acknowledged the comments and informed the participants of the election dates.

During the course of the investigation, AMFA and AMFA-MSP used "The Mechanic" web site to encourage individuals to call, write and fax the NMB's offices. AMFA postings also encouraged inquiries to Congressional offices. Because of the size of the agency and its limited resources, the responses tied up the telephone and fax lines at the Board greatly affecting the ability of the agency to accomplish its work.

As a result, the Chief of Staff, on September 15, 1998, sent a letter to Delle-Femine noting that the Agency had received numerous inquiries from Northwest employees on behalf of AMFA. Several inquiries concerned a mis-characterization by AMFA of the investigation as being biased in favor of the IAM. The inquiries also erroneously had characterized the extension requested by AMFA and the one by the IAM as two IAM extensions. Other inquiries included allegations of Board Member bias and that the NMB would tamper with the integrity of the voting process by voiding ballots and "losing" ballots. In the Chief of Staff's letter, AMFA was instructed to "raise any concerns you have in this regard through your designated representatives, using the procedures provided by the Board's Representation Manual and relevant practice."

In response to the Chief of Staff's letter, Delle-Femine submitted a letter dated September 23, 1998. In the letter, AMFA defended its actions and "demand[ed] that [the agency] adhere to the rule of law."

On September 16, 1998, two entries appeared on "The Mechanic" web site thanking the supporters for their efforts. One read, in pertinent part:

We wish to thank all the AMFA supporters who called and faxed the NMB about their ballots. It did make an impact, to some degree. The NMB has requested that we now stop this request campaign, for they are tired of all the faxes and calls tying up there [sic] lines. Job well done!

## VII. Post Election Conduct

Sanderson called Attorney Seham and requested a copy of the IAM's post election submission to the NMB. Sanderson believes that Grout was the individual who eventually sent the submission to him. The earliest documentation of such a transmission is November 27, 1998. This information was placed on "The Mechanic" web site.

One employee who submitted a statement attached to the IAM's initial submission to the NMB stated that his vehicle was vandalized after the submission was placed on the web site. This individual works in a classification not part of the craft or class.

The investigation did not establish that any IAM witnesses were either harassed or intimidated as a result of the dissemination of the IAM's initial post-election submission by AMFA.

## DISCUSSION

### I.

In determining whether the laboratory conditions essential to a fair election have been tainted, the Board considers the totality of facts and circumstances as established through its investigation. The Board evaluates the facts developed from submissions provided by the organizations and the carrier, the Board Representatives' investigation, including interviews, and past Board experience. *America West Airlines, Inc.*, 26 NMB 195 (1999); *United Air Lines, Inc.*, 22 NMB 288 (1995); *Southwest Airlines*, 21 NMB 332 (1994); *Continental Airlines/Continental Express*, 21 NMB 291 (1994); *Evergreen International Airlines*, 20 NMB 675 (1993); *Federal Express Corporation*, 20 NMB 486 (1993).



## II.

### Carrier Activity

In *Northwest Airlines, 14 NMB 49* (1986), the Board affirmed its test for determining carrier interference with respect to "the pattern of carrier support" for a labor organization. Although in *Northwest*, supra at 56, the Board found evidence to support some of the allegations by the applicant that the carrier supported the incumbent organization, "taking into consideration all the evidence before it, the Board [did] not find a pattern of carrier interference in [that] case." See also *Northwest Airlines, Inc., 13 NMB 399* (1986).

In another decision, *Northwest Airlines, Inc., 19 NMB 94* (1991), also involving the IAM as the incumbent and AMFA as the applicant, the Board again applied its "pattern of support" test, and found insufficient evidence of such a pattern despite "isolated incidents" of support. In so finding, the Board stated:

[T]he Board finds that Northwest officials were undoubtedly aware that IAM representatives and AMFA representatives were engaging in campaign activity at the carrier's stations in violation of the carrier's election rules. By virtue of its incumbent status and its collective bargaining agreement with the carrier, the IAM had distinctly greater access to employees than did AMFA.

That is not to say that AMFA did not have access to the employees. In addition to the sanctioned campaign activity, AMFA representatives did campaign through literature which appeared in employee mailboxes, AMFA stickers and other campaign materials which were displayed on tool boxes and on lunchroom tables on the carrier's property, and in one-on-one discussions with employees.

Id. at 111.

The record in this case does not establish a "pattern of support" by Northwest for AMFA. The evidence shows that the Carrier went to great lengths to convey the importance of neutrality. The investigation disclosed no bias in the enforcement of carrier policy of such issues as access, solicitation of employees and distribution of literature. That the Carrier denied access during the election period to both organizations does not support a finding of bias toward AMFA. *United Air Lines, Inc., 22 NMB 288* (1995).

## III.

### Ballot Copy Collection

The Board frequently has stated that the same analysis of whether the laboratory conditions have been tainted applies to union interference and carrier interference. The carrier, however, has unique power and authority in the workplace. In this context, similar facts when applied to a carrier or a union could lead to different conclusions about whether the laboratory conditions have been tainted. *United Air Lines, Inc.*, 22 NMB 288 , 318 (1995), *Air Wisconsin*, 16 NMB 235 , 239 -40 . See also *America West Airlines*, 26 NMB 195 , 207 (1999). When applying this principle in cases involving allegations of union interference, the Board has found that certain campaign activity, including ballot collection, engaged in by an organization, rather than a carrier, is not coercive because it does "not produce the same effect on employees." *United* at 318, citing *Federal Express Corp.*, 20 NMB 659 , 665 (1993); *America West* at 209.

In the recent *America West* decision, the Board considered ballot collection in a case where the organization had collected ten sealed ballots following the solicitation of ballots through meeting notices. In *America West*, *supra*, the Board found that these activities did not affect the outcome of the election, and the conduct was not coercive. Therefore, the conduct did not provide a basis for refusing to certify the results of the election. However, the Board sent a clear message to the participants by the following response to the conduct:

Ballot collection will not and cannot be tolerated and the Board will consider each case on the facts presented. The Board concludes that the TWU's conduct herein triggers the 'unusual or extraordinary circumstances' provisions of NMB Rules Section 1206.4. Given the facts in this case, the standard two-year certification bar period will be reduced to one year from the date of the certification.

*Id.* at 210.

The reason ballot collection will not be tolerated by the Board is because of the primacy of ballot secrecy. As the Board stated in *United*, *supra* at 320,

In view of the importance of maintaining the integrity of the NMB's secret ballot process, the Board hereby reaffirms its policy that NMB elections are to be conducted in such a manner as to ensure ballot secrecy. The collection of ballots is inconsistent with such secrecy. The NMB's ballot, the instructions accompanying the ballot, and the Representation Manual all emphasize the need for confidentiality in the election process.

Here, the facts are largely undisputed. In 1997 and again in 1998, at a discussion of the election at Northwest, the topic of collecting ballots was discussed by AMFA officials. The idea was rejected, not because it was improper, but because "[i]t's impractical" and "not going to work." It was later brought up at several meetings of Northwest employees, but similarly the opinion was that the effort would not be successful because the Organization could not obtain "ballots from everyone." At the same time, AMFA and AMFA-MSP ran a

campaign which repeatedly questioned the NMB's integrity and the NMB's ability to protect and properly count the ballots.

In the context of this campaign, Northwest employees placed messages on "The Mechanic" web site, directly asking employees to make a copy of their ballot with identification attached and send it to AMFA or to AMFA-MSP. Although AMFA National Director Delle-Femine, AMFA-MSP President MacFarlane, and other AMFA officials read the postings on the web site, they took no action to disclaim or deter this conduct. Indeed, MacFarlane stated, "when I became aware that somebody had posted on there saying they were with [AMFA-MSP], I really didn't give it much thought. People knew what our position was on the issue."

During the investigation, MacFarlane further clarified AMFA's position: the position "wasn't that we're not collecting ballots . . . [but] that it wouldn't do any good to collect ballots." Indeed, while it is clear that AMFA and AMFA-MSP officials had access to "The Mechanic" web site, and that the postings were widely read and received, they did nothing to dissuade the copying of ballots, because they were aware that it helped remind Carrier employees the importance of voting and voting for AMFA.

The investigation also shows that this was tactically successful. Hundreds, and perhaps more, copied their ballots with their identification to "keep the NMB and the IAM honest." In fact, AMFA-MSP officials admit to receiving at least thirty-four ballots and being offered many more.

For the same reasons that collecting ballots, whether open or sealed, violates the secrecy of the ballot, collecting copies or promoting the wide-scale copying of ballots for potential receipt from members with identification attached violates the secrecy of the ballot. The fact that it is a copy and not the actual ballot is immaterial. As the Board stated in *Laker Airways, Ltd., 8 NMB 236, 239* (1981), "[g]iven the procedures used in Board elections . . . soliciting employees to turn in their ballots . . . is analogous to polling employees about their views."

To summarize, officers of AMFA and AMFA-MSP used and monitored "The Mechanic" web site. They knew that messages appeared on the web site instructing voters to send and retain copies of their ballots with identification photocopied onto it. Even after the messages appeared on the web site, the officers used the web site; and they failed in any meaningful way to disavow the message on the web site even though they had the opportunity to do so.

Indeed, this conduct of copying ballots once suggested was foreseeable given their campaign tactics. AMFA did nothing to discourage this activity. AMFA did not put a message on the web site or their hot line attempting to halt this conduct, even with the knowledge that it was widespread. Significantly, and notwithstanding AMFA's assertion that everyone knew its position, when the notice appeared on "The Mechanic" web site on November 16, purporting to thank employees for participating in the ballot copying initiative, AMFA-MSP made no disclaimer of the notice.

AMFA and AMFA-MSP had an affirmative obligation to deter or halt any conduct which violates the secrecy of the ballot. The Board finds that AMFA's conduct was systematic because they knew about the messages on the web site and took absolutely no action to stop it. Even when they received copies of ballots, they took no action to stop the activity. While they did not directly solicit the copies, they allowed the wide-spread solicitation to occur in AMFA-MSP's name. AMFA and AMFA-MSP were secure in the knowledge that it had a ready arsenal of copied (and identified) ballots at their disposal.

Those who avail themselves of the Board's processes, must utilize the Board's processes. If AMFA was truly concerned about ballot integrity, they could have filed a motion requesting special procedures, and taken other action with the agency they campaigned against. Instead, they chose to violate the integrity of the ballot by permitting, and indeed encouraging, the copying of ballots with identification attached.

The Board recognizes that there are some factors which must be considered in determining what measures, if any, should flow from AMFA's conduct. Although perhaps hundreds of ballots were copied, only a small number of copies were delivered to AMFA-MSP officials. There is no evidence of coercive tactics to collect copies of ballots, indeed the conduct by apparent AMFA supporters appears to be voluntary. There is, therefore, no evidence that this activity actually affected the final outcome of the election. Thus, the Board concludes that the ballot collection activity which occurred here does not provide a basis for refusing to certify the results of the election.

The Board, both in *United*, supra, and *America West*, supra, however, made it clear that under similar circumstances, it will not tolerate ballot collection. In this case, the Board issues another strong warning to participants.

The Board recognizes that the Internet is a powerful vehicle for inexpensively transmitting the views of an Organization or a Carrier in the campaign. Where a participant, as here, has the ability to send a message to abate conduct, and fails to do so, it will be held responsible for the conduct. It is because of the concerted campaign, even if tacit, conducted by AMFA and the extent of the campaign, that the Board finds the conduct in this case is more serious than the conduct in *United* and *America West*. The conduct here was widespread and unabated. Therefore, the Board concludes that AMFA's conduct triggers the "unusual or extraordinary circumstances" provisions of NMB Rules Section 1206.4. Given the facts of this case, the standard two-year certification bar period will be reduced to six months from the date of certification.

#### IV.

#### **Interference with Board Processes**

While there were numerous communications by AMFA supporters to the NMB, there is no evidence that the

AMFA leaders directed these individuals what to write, or that the specific allegations contained in the correspondence was orchestrated by AMFA. They did however, not discourage the conduct, and as set forth above, conducted a campaign against the NMB.

The volume of communications resulted in a letter from NMB Chief of Staff Crable to Dell-Femine asking him to "raise any concerns you have . . . through your designated representatives . . ." After the letter, direct pre-election contacts with the Board ceased.

To enable the Board to efficiently and effectively provide service, the Board has a Representation Manual to provide procedural guidance in the processing of representation cases. The Board limits the number of representatives for a participant to three individuals. The system is designed to insure that participants communicate with the Board through their designated representatives.

There is no question that any participant is free to express its position to the Board in an NMB investigation. The Board does not seek to limit the ability of any participant to advocate its position, but the Board will not and cannot tolerate conduct outside its procedures which may rise to the level of interference with its mission and its ability to meet the procedural requirements of the RLA. As previously stated, if AMFA chooses to avail itself of the Board's processes, it must abide by those processes.

Therefore, AMFA and every other Organization is put on notice that, in the future, the Board will take appropriate responsive action against any participant in its representation investigations who attempts to advantage itself in the election process by conduct which exceeds legal and professional standards.

## **V. Alleged Post-Election Retaliation**

While the investigation showed that the IAM's post-election submission was placed on "The Mechanic" web site along with the attached witness statements, the evidence does not establish that any IAM witnesses were harassed or intimidated as a result of this publication.

## **CONCLUSION**

Based upon the foregoing, the Board finds that the laboratory conditions in the election involving Northwest Airlines' Mechanics and Related Employees were not tainted. However, the Board finds that AMFA's failure to discourage, and efforts to tacitly encourage the ballot duplications, raises serious concerns about the confidentiality of the voting process, and, therefore, calls for responsive action. Accordingly, the Board will

shorten its normal bar period as set forth in Section 1206.4(a) of the Board's Rules. The bar period in this case will expire six months after the date of this decision.

### **CERTIFICATION**

NOW, THEREFORE, in accordance with Section 2, Ninth, of the Railway Labor Act, as amended, and based upon its investigation pursuant thereto, the National Mediation Board certifies that the Aircraft Mechanics Fraternal Association has been duly designated and authorized to represent for the purposes of the Railway Labor Act, as amended, the craft or class of Mechanics and Related Employees, employees of Northwest Airlines, Inc., its successors and assigns.

By direction of the NATIONAL MEDIATION BOARD.

Stephen E. Crable  
Chief of Staff

Copy to:

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## General Information

<b>Case Name</b>	Northwest Airlines, Inc.
<b>Date Filed</b>	Tue Jun 01 00:00:00 EDT 1999
<b>Citation</b>	DK:26 NMB 269; DK:NMB_26NMB269_06011999_V1; 26 NMB 269; R-6621; 26 NMB No. 58
<b>Parties</b>	Aircraft Mechanics Fraternal Association; Northwest Airlines, Inc.