UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

AMERICAN AIRLINES, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. _____
	§	
NATIONAL MEDIATION BOARD,	§	
	§	
Defendant.	§	

COMPLAINT

Plaintiff American Airlines, Inc. ("American"), through its undersigned counsel, institutes this proceeding to obtain declaratory relief to determine an important issue arising under recent amendments to the Railway Labor Act ("RLA"), which provide that the National Mediation Board ("NMB" or the "Board") "shall not direct [a union representation] election upon receipt of an application . . . unless [it] determines that the application is supported by . . . 50% of the employees in the craft or class." 45 U.S.C. § 152, Twelfth, as added by the Federal Aviation Administration Modernization and Reform Act of 2012 ("FAA Reauthorization Act" or the "Act"), Pub.L. No. 112-95, 126 Stat. 11, Title X, Section 1003 (2012). Notwithstanding that the union's application does not satisfy that newly-enacted 50 percent standard, the NMB has ignored the statutory mandate and directed a union representation election among American's Passenger Service employees.

The Parties

1. Plaintiff American is the third largest network airline based in the United States, with headquarters at 4333 Amon Carter Boulevard, Fort Worth, Texas 76155. American provides air transportation of passengers and cargo, along with other transportation-related services, to persons and businesses with numerous routes in the United States and around the world. American is a "common carrier" within the meaning of Section 201 of the Railway Labor Act ("RLA"), 45 U.S.C. § 181, and therefore is subject to the provisions of the RLA. American is a Debtor-in-Possession under the protection of Chapter 11 of the Bankruptcy Code in Case No. 11-15.463 (SHL) (Bankr. S.D.N.Y.). American currently has approximately 65,000 U.S. employees. Approximately 10,000 of those employees are in the "class or craft" of Passenger Service employees, who are unrepresented by any labor union, having rejected union representation in a prior election conducted by the NMB in late 1998. *American Airlines, Inc.*, 26 N.M.B. 412 (1999)

2. Defendant NMB is an independent federal agency, established by amendments to the RLA in 1934. 45 U.S.C. § 154. The NMB itself is comprised of a three-member board appointed by the President and confirmed by the Senate. The Board, supported by its staff, performs a central role in facilitating harmonious labor-management relations within two of the nation's key transportation modes – the railroads and the airlines – and thus benefits the nation's entire transportation system and economy. NMB procedures are

designed to promote, among other things, the statutory goal of effectuating employee rights of self-organization in cases where a union representation issue exists. The NMB's responsibilities regarding representation issues include conducting an investigation of union applications for representation elections, to determine if a union election is warranted under the applicable rule or law. The NMB can be served with the Complaint by serving its general counsel at MNB's offices, which are located at 1301 K St. NW, Suite 250, Washington, DC 20005. A copy of this Complaint is also being served on the United States by serving the United States Attorney for the Northern District of Texas.

I. JURISDICTION AND VENUE

3. The election ordered by the NMB is in violation of the commands of the RLA, 45 U.S.C. §§ 152, Ninth and Twelfth, which require the NMB to investigate representation disputes among a carrier's employees upon a 50 percent "showing of interest" from the employees in any craft or class. This Court has jurisdiction of this actual controversy pursuant to 28 U.S.C. §§ 1331 and 2201.

4. Venue is proper in this court pursuant to 28 U.S.C. § 1391(e) because a substantial part of the events or omissions giving rise to the claims set forth herein occurred in this judicial district. American's labor relations function and activities are based in Fort Worth, Texas; and, those activities can and do involve interactions with the NMB consistent with the Board's various responsibilities under the RLA.

II. THE COMPLAINED OF ACTIONS

5. On December 7, 2011, the Communications Workers of American ("CWA" or the "union") filed an application with the NMB requesting that the NMB investigate whether CWA could be certified as the representative of American's Passenger Service employees. The CWA's application essentially asked the NMB to determine to hold, and to hold, a union representation election among the Passenger Service employees "craft or class," which the CWA claimed was comprised of 9,400 individuals. The CWA's application was supported by authorization cards from an undisclosed number of Passenger Service employees expressing interest in CWA representation. Those authorization cards collectively comprised the union's attempt to provide to the NMB the then-applicable minimum required 35 percent "showing of interest" to support the Board's authorization of an election. 29 C.R.R. § 1206.2. While the exact number of cards submitted by the CWA is known only to the CWA and the NMB, the CWA itself has publicly indicated the number is substantially less than 50% of 9,400.

6. On the same date, December 7, 2011, American, pursuant to procedures prescribed by the NMB in the event of a union application for an election, provided the NMB and the CWA with a List of Potential Eligible Voters ("List"). American's list specifically identified over 10,500 Passenger Service employees, including some 749 Reservations Representatives on furlough from

closed Reservation Offices.[1] Pursuant to NMB procedures, the CWA and American then went through a process with the NMB of challenges and objections to the List, proposing additions or deletions with respect to particular employees or categories of employees.

7. The NMB's final List, after the challenges and objections are resolved, is used by the NMB for two purposes: (1) to measure whether the union provided the NMB with the required minimum "showing of interest" to warrant an election; and (2) to determine which employees may vote in the election. As described more fully below, the NMB process for determining the final List and ruling on the union's election application was not finalized until the Board's decision on April 19, 2012.

8. On February 14, 2012 -- i.e., after submission of the CWA's authorization cards but before the NMB ruled on CWA's application and authorized an election -- the FAA Reauthorization Act, Pub.L. No. 112-95, 126 Stat. 11, Title X, Section 1003 (2012), was enacted into law. That statute added a new provision Section 2, Twelfth, to the RLA. Section 2, Twelfth provides:

> **Showing of interest for representation elections**. The Mediation Board, upon receipt of an application requesting that an organization or individual be certified as the representative of any craft or class of employees, shall not direct an election or use any other method to determine who shall be the representative of such craft or class unless the Mediation Board determines that the application is supported by a

[1] Under NMB precedent, employees on furlough are properly included on the list of eligible voters if they maintain an employer-employee relationship with the employer and have a "reasonable expectation of recall."

> showing of interest from not less than 50 percent of the employees in the craft or class.

Section 2, Twelfth legislatively superseded the prior NMB rule, 29 C.R.R. § 1206.2, which had required a 35 percent "showing of interest" prerequisite to a representation election among employees not previously represented by a labor organization:

> **Percentage of valid authorizations required to determine existence of a representation dispute. . . .** (b) Where the employees involved in a representation dispute are unrepresented, a showing of proved authorizations from at least thirty-five (35) percent of the employees in the craft or class must be made before the National Mediation Board will authorize an election or otherwise determine the representation desires of the employees under the provisions of section 2, Ninth, of the Railway Labor Act.

9. Section 3 of the FAA Reauthorization Act provides that "[e]xcept as otherwise expressly provided, this Act and the amendments made by this Act shall take effect on the date of enactment of this Act." Title X of the Act, which contains the 50 percent "showing of interest" requirement, does not provide for any other effective date; therefore, the 50 percent "showing of interest" requirement became effective as of the date the Act was enacted—February 14, 2012.

10. The NMB Investigator ruled on the parties' challenges and objections to the List of Potential Eligible Voters on February 29, 2012, in an 18-page opinion containing detailed findings, attached as Exhibit 1. Among its challenges, CWA had objected to the inclusion of the 749 furloughed Reservations

Representatives. The NMB Investigator concluded "that the Reservations Representatives have recall rights and a reasonable expectation of returning to work and that they were therefore eligible to "remain on the List." *Id.* at 8.

11. On March 9, 2012, American and CWA filed appeals of various portions of the Investigator's rulings. The appeals were submitted to the Board itself. In one of its submissions, the CWA acknowledged that, if the 749 furloughees with unexpired recall rights remained on the list of potential eligible voters, CWA could not satisfy even the 35 percent "showing of interest" requirement in the superseded NMB rule at 29 U.S.C. § 1206.2(b). Briefing was concluded on the appeals on March 23, 2012.

12. On April 19, 2012, in a 2-1 split decision, the NMB ruled on the appeals to the Investigator's decision. The NMB overturned the Investigator's ruling that the 749 Reservations Representatives were to be included in the pool of eligible voters. *In re American Airlines, Inc.* 39 N.M.B. No. 36 (2012) (attached as Exhibit 2). Exh. 2, 39 N.M.B. at 350.

13. If the February 29, 2012 ruling by the NMB Investigator had been upheld by the NMB, the CWA's application would have fallen short of even the prior, lower "showing of interest" minimum requirement of 35 percent – and, under Board rules that existed up until February 14, 2012, the application would have been dismissed by the NMB under that standard. (Moreover, the application also fell short of 50 percent standard that applied beginning when the FAA

Reauthorization Act went into effect in February 14, 2012; and therefore dismissal of the application was required under the 50 percent standard.)

14. NMB Member Daugherty dissented from the majority's decision to overrule the Investigator and to exclude the 749 Reservation representatives from voting in the event of an election. Exhibit 2, 39 NMB at 356-57. Member Daugherty found particularly compelling the fact that American had recently offered recall to Reservations Representations to work as Home-Based Reservation Representatives. *Id*. at 358.

15. After ruling that the 749 furloughees were ineligible to be on the List (or to vote in the event of an election), the NMB on April 19, 2012 found that the union had provided a sufficient "showing of interest" from among the employees who remained on the List; and on that basis, the Board ordered an election. *Id.* at 356. Upon information and belief, the NMB based its order of election upon a 35 percent "showing of interest" rule – even though that rule had been superseded by the February 14 amendments to the RLA. The NMB did not discuss the newly-enacted Section 2, Twelfth's requirement that a union must provide at least a 50 percent "showing of interest" in order for the NMB to authorize an election.

16. The NMB, pursuant to its standard procedure when it authorizes a union election, requested American to furnish the NMB with peel-off address labels for eligible voters, which the Board would use to mail voting instructions to employees deemed eligible to vote, thereby launching an election via internet and

telephonic electronic voting. *Id.* at 356. The NMB has stated that those labels are due to be provided to the NMB today (on the date this Complaint is being filed), and also stated an intent to conduct a union election beginning on May 17.

17. RLA Section 2, Twelfth, which should have applied to this case but which the Board did not apply, implicates not only American's rights but also the rights of its Passenger Service employees – including the vast majority of the members of that group who, as the CWA itself has acknowledged, did not provide the union an authorization card expressing interest in having a union representation election. If an election were conducted under these circumstances, the union's insufficient "showing of interest" would essentially be allowed to override rights guaranteed to American and its employees under the RLA, pursuant to which a union election must not be conducted unless it has been supported by at least a 50 percent "showing of interest." Given the importance of this legal issue and of protecting rights under federal law, American intends to defer compliance with the Board's request that American submit mailing labels, pending resolution of this action.

18. On April 23, 2012, American filed a letter with the NMB, attached as Exhibit 3, asking the Board to reconsider its authorization of an election and to suspend the NMB's currently-scheduled election process while the Board considers the legal issue raised by RLA Section 2, Twelfth. American explained that the Board was obligated by Section 2, Twelfth to require a 50 percent

"showing of interest," not the 35 percent "showing of interest" that the NMB did apply.

19. The CWA responded to American's motion for reconsideration on April 25, 2012. (The CWA's response is attached as Exhibit 4.) Although the CWA argued for application of the prior, 35 percent standard, it did not dispute that the union's application did not meet the 50 percent "showing of interest" requirement under Section 2, Twelfth. American filed its Reply on April 26, attached as Exhibit 5. The NMB has not specified to American when, or even if, it will make any substantive determination responsive to American's request for reconsideration -- or what such a determination might be.

III. CAUSE OF ACTION AND CLAIM FOR RELIEF FOR VIOLATION OF RLA SECTION 2, TWELFTH

20. Plaintiff repeats and re-alleges paragraphs 1 through 19 of this Complaint as though fully set forth herein.

21. The NMB's action violates the specific mandate of RLA Section 2, Twelfth:

> "Twelfth. Showing of interest for representation elections. The Mediation Board, upon receipt of an application requesting that an organization or individual be certified as the representative of any craft or class of employees, shall not direct an election or use any other method to determine who shall be the representative of such craft or class unless the Mediation Board determines that the application is supported by a showing of interest from not less than 50 percent of the employees in the craft or class."

22. NMB actions made in excess of its delegated powers and contrary to a specific mandate of the RLA are unlawful and subject to declaratory and injunctive relief. *Leedom v. Kyne*, 358 U.S. 184 (1958); *RLEA v. NMB*, 24 F.2d 655, *amended* , 38 F.3d 1224 (D.C. Cir. 1994); *Professional Cabin Crew Ass'n v. NMB* , 872 F.2d 456 (D.C. Cir. 1989); *Russell v. NMB*, 714 F.2d 1332 (5th Cir. 1983).

IV. PRAYER FOR RELIEF

WHEREFORE, American respectfully prays for the following relief:

(1) that this Court issue a declaratory judgment that

the National Mediation Board is prohibited by RLA § 2, Twelfth from directing an election or using any other method to determine who shall be the representative of the Passenger Service employees craft or class at American Airlines unless the NMB determines that the application to investigate the representation dispute is supported by a "showing of interest" from not less than 50 percent of the employees in the craft or class; and if the CWA's pending application was not supported by at least a 50 percent "showing of interest" as of April 19, 2012, the NMB must dismiss the application.

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American further prays for such other and further relief including damages, attorneys' fees, and costs as the Court may deem proper.

Dated: May 2, 2012

Respectfully submitted,

/s/ Dee J. Kelly

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