REPRESENTATION CASES

START PENDING

FY15	3
FY14	1
FY11 – FY15 AVG	4.6

NEW

FY15	31
FY14	39
FY11 – FY15 AVG	37

SUM

FY15	34
FY14	40
FY11 – FY15 AVG	41.6

CLOSED

FY15	29
FY14	37
FY11 – FY15 AVG	37.6

END-PENDING

FY15	5
FY14	3
FY11 – FY15 AVG	4

REPRESENTATION OVERVIEW

Under the Railway Labor Act (RLA), employees in the airline and railroad industries have the right to select a labor organization or individual to represent them for collective bargaining. Employees may also decline representation. An RLA representational unit is a "craft or class," which consists of the overall grouping of employees performing particular types of related duties and functions.

The selection of a collective bargaining representative is accomplished on a system-wide basis, which includes all employees in the craft or class anywhere the carrier operates in the United States. Due to this requirement and the employment patterns in the airline and railroad industries, the Agency's representation cases frequently involve numerous operating stations across the nation. [An application for a representation investigation may be obtained from the Agency's website at www.nmb.gov.] If a showing-of-interest requirement is met, the NMB continues the investigation, usually with a secret telephone/internet election. Only employees found to be eligible to vote by the NMB are permitted to participate in elections. The NMB is responsible for determining RLA jurisdiction, carrier status in mergers, and for ensuring that the requirements for a fair election process have been maintained without "interference, influence or coercion." If the employees vote to be represented, the NMB issues a certification of that result which commences the carrier's statutory duty to bargain with the certified representative. In many instances, labor and management raise substantial issues relating to the composition of the electorate, jurisdictional challenges, allegations of election interference, and other complex matters which require careful investigations and ruling by the NMB.

REPRESENTATION HIGHLIGHTS

The NMB Office of Legal Affairs (OLA) continues to operate at a high level of quality and efficiency. As a review of customer service and performance standards will attest, the Agency's Representation program consistently achieves its performance goals, delivering outstanding services to the parties and the public.

The OLA staff closed 29 cases and also docketed 31 cases during the year. With the Agency resources requested for 2016, it is estimated that 40 representation cases will be investigated and resolved in the next fiscal year.

Case Summaries

Representation disputes involving large numbers of employees generally are more publicly visible than cases involving a small number of employees. However, all cases require and receive neutral and professional investigations by the Agency. The NMB ensures that the employees' choices regarding representation are made without interference, influence or coercion. The case summaries that follow are examples of the varied representation matters which were investigated and resolved by the NMB during FY 2015.

American Airlines/US Airways

On January 10, 2014, pursuant to the NMB's Merger Procedures and NMB Representation Manual Section 19.3, American Airlines notified the NMB that "on December 9, 2013, American Airlines Group, Inc., (formerly known as AMR Corporation) and US Airways Group, Inc., implemented a merger agreement dated February 13, 2013, resulting in the former's acquisition of the latter, including its wholly owned subsidiary US Airways, Inc." Subsequently, in FY 2015, the NMB investigated American Airlines (American) and US Airways (collectively the New American) to determine whether they were operating as a single transportation system for representation purposes under the RLA regarding the crafts or classes of Mechanics and Related Employees, Fleet Service Employees, Stock & Stores Employees, Simulator Technicians, Instructors and Dispatchers.

Simulator Technicians, Instructors, and Flight Dispatchers

On July 24, 2014, the National Association of Airlines Professionals (NAAP) filed applications seeking to represent employees in the crafts or classes of Simulator Technicians, Instructors, and Flight Dispatchers. Employees in the three crafts or classes covered by the application were represented by the Transport Workers Union of America, AFL-CIO at both American and US Airways. Subsequently, on January 12, 2015, TWU also filed applications alleging a representation dispute involving the crafts or classes of Simulator Technicians, Instructors and Dispatchers at the New American. The Board consolidated TWU's applications with NAAP's.

Based on the applications of its single carrier criteria to the facts disclosed by the investigation, the Board determined that there was substantial integration of operations, financial control, and labor and personnel functions and that American and US Airways are a single transportation system. *American Airlines, Inc./US Airways, Inc., 42 NMB 80, 99 (April 15, 2015)*. Having determined that a single transportation system existed, the Board proceeded to examine the potential representation consequences.

With regard to craft or class issues, the Simulator Engineers at US Airways were a separate craft or class at pre-merger US Airways and represented by TWU pursuant to a certification in NMB Case No. R5916. *USAir, Inc., 17 NMB 57 (1989)*. In contrast, the Simulator Technicians at pre-merger American were represented by TWU as part of the Mechanics and Related craft or class pursuant to NMB Case No. R-6872. *American Airlines, Inc./ Trans World Airlines, LLC, 29 NMB 240 (2002)*. For the reasons discussed more fully below, the Board found that Simulator Technicians at the New American are appropriately part of the Mechanics and Related craft or class and dismissed the applications for a separate craft or class of Simulator Technicians at the New American.

The NMB also conducted an on-site investigation to determine whether NAAP's authorization cards were tainted by the contemporaneous distribution of $500 gift cards and cashier's checks. The Board majority found that the close timing between the distribution of the $500 gift cards/cashier's checks and the collection of the authorization cards tainted the laboratory conditions. Noting that TWU was the certified representative of Instructors and Flight Dispatchers at both pre-merger American and US Airways and the extraordinary circumstances in this case, the Board extended TWU's certifications to cover those employee groups at the New American.

Member Geale dissented from the finding. In his view, the majority's decision inappropriately limits the freedom of association rights of the employees by subjecting them to union representation when it was clear they were unhappy with the current representative. He further disagreed with the majority determining for the first time that a union could interfere with an election through providing a benefit in the context of an organizing campaign without first providing notice of the applicable rules.

Mechanics and Related, Fleet Service and Stock & Stores Employees

On August 6, 2014, TWU and the International Association of Machinists and Aerospace Workers (IAM) jointly filed applications covering approximately 33,000 employees in the Mechanics and Related, Fleet Service and Stock & Stores Employee crafts or classes. Prior to filing these applications, TWU and IAM formed the TWU/IAM Mechanics Association, the TWU/IAM Fleet Association, and the TWU/IAM Stores Association for the purposes of representing these crafts or classes on the merged system. TWU represents the three craft or classes at American and IAM is the representative of the three crafts or classes at US Airways. Based on the applications of its single carrier criteria to the facts disclosed by the investigation, the Board determined that there was substantial integration of operations, financial control, and labor and personnel functions and that American and US Airways are a single transportation system for representation purposes. American Airlines, Inc./US Airways, Inc., 42 NMB 35 (April 15, 2014). Having determined that a single transportation system exists, the Board proceeded to examine the potential representation consequences. The Board determined that Simulator Technicians should be a part of the Mechanics and Related Employees craft or class based on the current circumstances at the New American and the historical representation pattern at pre-merger American. To do otherwise, in the view of the Board's majority would unnecessarily fragment a craft or class with a long and stable collective bargaining history and lead to the instability the Act seeks to prevent.

Member Geale dissented from Board's finding with regard to Simulator Technicians, stating that this determination was a departure from recent Board precedent and overrides the free association rights of the employees.

In American Airlines, Inc./US Airways, Inc., 42 NMB 127 (May 19, 2015), the Board extended the certifications of TWU and IAM as the representatives of the crafts or classes of Mechanics and Related, Fleet Service and Stock and Stores Employees at pre-merger American and US Airways to cover the merged crafts or classes at the New American with the respective TWU/IAM Associations as the certified representative. The Board found that the TWU/IAM Associations were formed by the certified representatives of Mechanics and Related Employees, Fleet Service Employees, and Stock and Stores Employees crafts or classes at the pre-merger carriers and the purpose of the TWU/Associations is to represent the employees in the respective crafts or classes to collectively bargain under the RLA at the New American. Thus the Associations clearly fall within the definition of representative under the Act and represent 100% of the three crafts or classes.

REPRESENTATION HIGHLIGHTS

Jurisdictional Opinions

The NMB also received 4 jurisdictional referrals from the National Labor Relations Board (NLRB). In view of the National Labor Relations Act (NLRA) specific exemption of employers covered by the RLA, the NLRB follows a longstanding practice of referring cases to the NMB in instances where the jurisdictional issue is raised. In these cases, the NMB reviews the record provided by the NLRB and provides an opinion letter regarding whether the employer in question is, in the NMB's opinion, covered by the RLA.

In Menzies Aviation, Inc., 42 NMB 1(October 16, 2014), the NLRB requested the NMB's opinion regarding whether Menzies' operations and employees at Seattle-Tacoma International Airport (SeaTac) are subject to the RLA. The NMB applied its two-part jurisdictional test recently reaffirmed in Airway Cleaners, 41 NMB 262 (2014). Under that test, the NMB determines whether the nature of the work is that traditionally performed by employees of rail or air carriers. Second, the NMB determines whether the employer is directly or indirectly owned or controlled by, or under common control with, a carrier or carriers. Both parts of the test must be satisfied for the NMB to assert jurisdiction.

The employees at issue performed baggage, ramp, and aircraft servicing functions under Menzies' contract with Alaska Airlines (Alaska). The contract between Menzies and Alaska specified standards such as a 20-minute time limit for unloading baggage and allowed Alaska auditors to inspect Menzies employees' work and identify deficiencies for Menzies to correct. Although the NMB found that the ground services work performed by Menzies under its contracts at SeaTac is work traditionally performed by employees of air carriers, the Board found that the extent to which Alaska controlled the manner in which Menzies conducts its business is no greater than that found in a typical subcontractor relationship. Alaska may report performance problems but Menzies determines the appropriate discipline following its own discipline process. In addition, Menzies is not required to terminate employees who are unacceptable to Alaska. The Board found that Menzies retains and exercises the option to utilize such employees elsewhere at SeaTac. The Board also noted that while it has in the past found jurisdiction over Menzies' operation at other locations, its jurisdictional decision are rendered on a case-by-case basis and, based on the record in this case, the required meaningful control over personnel decisions by an air carrier was not present.

For institutional reasons, Chairman Hoglander agreed that the two-part test was correctly applied and that there was no RLA jurisdiction. Member Geale dissented. In his view, RLA jurisdiction is established by the contract language and the evidence that Alaska provides training for Menzies employees, audits their performance and removes unacceptable employees from its contracts. He also noted that the decision to decline jurisdiction threatens to substantially undermine the purpose of the RLA in limiting disruptions to interstate travel and commerce.

The Board also addressed RLA jurisdiction in a case that was not a referral from the NLRB. In Gateway Frontline Services, 42 NMB 146 (June 4, 2015), the Board found RLA jurisdiction based on the two-part test but dismissed that application because the applicant organization did not meet the showing of interest requirement for the system-wide craft or class of Passenger Service Employees. Gateway Employee Alliance (Alliance) alleged a representation dispute among the "Passenger Assistant and Dispatcher" employees of Gateway Frontline Services (Gateway) at McCarran International Airport (McCarran) in Las Vegas.

Gateway provides security and frontline services to airlines such as flight dispatching, baggage handling, wheelchair services and skycap services at 11 US airports, including McCarran. At McCarran, Gateway provides these services to Southwest and Delta. The Board found that the work performed by Gateway under its contracts with Southwest and Delta at McCarran is work traditionally performed by employees of air carriers. In contrast to Menzies, discussed above, the Board further found that Southwest and Delta exercise a sufficient amount of control to support RLA jurisdiction. The Board noted that Gateway has not only terminated employees but also hired and promoted specific individuals upon request of the carriers. Gateway also did not independently determine the appropriate discipline for its employees, acquiescing instead to the carriers' discipline requests. The Board found this acquiescence occurred even when Gateway managers recommended less severe discipline. The Board also noted that Gateway is required to forward all passenger complaints to the carriers for handling through the carriers' complaint resolution departments. Chairman Hoglander again concurred in the jurisdictional finding for institutional reasons.

Having found RLA jurisdiction, the Board reiterated its long-standing policy that the RLA's required system-wide representation is only achieved when a craft or class includes all eligible employees, regardless of their work locations. Accordingly the Board found that Gateway's McCarran operations do not constitute a separate system for representation purposes in view of its centralized labor relations and administrative functions. In addition, Gateway uses one employee handbook for all employees outside of California and it has uniform standards for hiring and recruiting nationwide.