

Teamster Fraud at American Airlines

TWU Election Challenges and Objections to National Mediation Board (NMB) Against Teamsters petition for representational election at American Airlines.

July 23 2013

II. THE IBT FORGERIES

In its initial position statement TWU stated that, in accordance with the schedule set by the NMB, TWU would submit evidence that IBT organizers had forged authorization cards.

With these challenges and objections, TWU submits two declarations on this matter identifying the source of our information and the possible scope of the forgeries.³ *TWU Exhibits 5-6.*

These reports do not come from unidentified "spies" placed by the TWU into the IBT's operations (as was facetiously suggested by IBT), but rather from professional organizers from the IBT Organizing Department.

One of these organizers was directly involved in the IBT's raid on the TWU, and the other was in regular contact with IBT organizers and professional staff involved with the campaign, as well as the management of the Department.

While the declarants did not directly witness the commission of the forgeries, they were alerted to this misconduct by fellow organizers and other staff who either witnessed the misconduct or were made aware of it.

TWU points out the obvious --- the forging of authorization cards and their use to support a representation application is both a violation of NMB rules and a criminal offense.

18 USC§1001 (a) 1. Use of forgery as an organizing technique is inimical to a free and fair election process.

In this respect, this is not an instance where an overzealous supporter unilaterally decided to forge cards to further the IBT raid. Rather, this was the work of a professional staff organizer who was a paid agent of the IBT. Moreover, other organizers were aware of the misconduct and, in some instances, reported it to their superiors, but there is no evidence of any remedial actions undertaken by the IBT aside from taking the organizer primarily in question off of the American raid; certainly IBT has not supplied evidence of any remedy action it took in response to the forgeries.

It would be one thing if, in response to the concerns raised in the TWU's initial submission, the IBT had come clean and provided the agency with a full account of the activity of this organizer and the actions it took to weed out the false authorizations he produced, inform and apologize to those employees whose names were falsely used, and otherwise ameliorate the situation.

³ Pursuant 29 CFR 1208.4 (b) the TWU has redacted identifying information from the electronically filed versions of these Declarations sent to the IBT and in order to protect both the Declarants and the IBT officials who supplied them with information. TWU has supplied unredacted versions to the Investigators under separate cover.

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While this would not necessarily have removed the taint to the Board's representation process caused by this misconduct, such an account would have at least been a mark of good faith and would have left the Board in position to evaluate the damage done to its processes. But, that is not what the IBT did.

Instead, in its opening pleading it stated the charge was utterly baseless and has, at all relevant times, "stonewalled" the matter, even declining to respond to President Little's inquiry made well before the IBT application. *TWU Exhibit 7*. To be sure, while there is information that the organizer responsible for the forgeries was quite productive, there is more limited data on the precise number of such authorizations submitted and how they were processed. It bears emphasis, however, that TWU has provided substantial and credible information showing gross misconduct even without access to normal discovery processes such as depositions, interrogatories, and document production. And, while TWU has no doubt that NMB investigators will diligently perform their standard check of authorization cards, TWU questions whether this exercise is sufficient to ferret out forgery.

Accordingly, the Board must interview the declarants and the various witnesses in order to obtain full evidence regarding the forgery of cards and accurately assess the impact on the IBT's election application.

As indicated above, the forgery of authorization cards is gross misconduct which gravely taints the Board's representation processes and undermines the most basic principles of the Railway Labor Act. The NMB has indicated it would not tolerate far less onerous misconduct, such as handling or mailing the ballots of eligible employees, even where there is no evidence that ballot secrecy was compromised or that there was fraud or coercion to induce employees to hand over ballots. *America West Airlines* 26 NMB 195 (1999) Forgery is obviously a far more significant threat to the integrity of NMB representation procedures.

Significantly, when dealing with comparable allegations in elections within the jurisdiction of the NLRB, reviewing courts have made clear that "in light of the extremely serious nature of the allegations" of fraudulent authorizations, the Board is expected to "give them careful attention" so as to assure it does not abdicate its duty to investigate under 9(c) of the NLRA. *Perdue Farms, Inc. v NLRB*. 108 F 3rd 519, 521 (4th Cir. 1997) ("While we think the question of whether the cursory review of the signatures on authorization cards comports with the mandate of 29 U.S.C. S 159 (c) 1 is a serious one, at this point in the Board's proceedings we find that judicial review of either Perdue's section 9(c) claim or the question of Leedom jurisdiction would be premature ... Given the Board's commitment to consider Perdue's fraud allegations, it would hardly be consistent with *Leedom* and *Boire* for us to address Perdue's claim before the Board has conducted its review.")

Consistent with the above approach the NLRB Case handling Manual details the required procedures when there is evidence of forged authorization cards: Investigation
If it appears that signatures are in the same handwriting, or if a party furnishes evidence of forgery, an administrative investigation should be conducted and suitable action should be taken by the Regional Director, in his or her discretion, including possible referral to other law enforcement agencies....

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The investigation may include, but need not be limited to, attempts to obtain affidavits from the person or persons responsible for securing and submitting the showing, signature comparisons, preferably against the employer's records, and the questioning of persons purporting to have been signatories.

NLRB Case handling Manual, § 11029.1.

If the NLRB finds that forgery has occurred in a situation where there is a sufficient showing of interest even after exclusion of the forged cards, the NLRB will investigate further to determine "if an officer or responsible agent of the petitioner was responsible or had knowledge of and condoned submission of the forged showing,"

If it makes such a determination, the NLRB will not necessarily direct an election, but will decide whether it should direct an election even though there is a sufficient showing of interest based on valid cards. *Id.*, § 11029.3.

In contrast to the NLRA, however, the showing of interest threshold is now a statutory requirement under the RLA. Prior to the 2012 RLA Amendments, the NMB had discretion to determine whether a sufficient showing of interest was made under the Board's rules, whereas now the required percentage of valid authorizations is set by statute. 45 USC§ 152, Twelfth.

Therefore, the NMB's duty to investigate in this circumstance to assure the statutorily required showing has been met is arguably even greater than the NLRB's obligation in such matters. *See Int'ltn-Flight Catering v. NMB*, 555 F.2d 712 (9th 1977) (whether NMB fulfilled statutory duty to investigate is reviewable).

The IBT has raided the TWU at American with a staff of professional organizers on permanent assignment at American Airline's Maintenance and Engineering facility in Tulsa and other staff conducting house visits to virtually every eligible employee around the country -- all working to seize on the inevitable discontent generated by a carrier in bankruptcy. However, having chosen this approach, the IBT is fully responsible when the activities of its agents spill into fraud and forgery. TWU has submitted credible evidence that this is exactly what happened.

Under these circumstances TWU does not believe the Board can process the IBT application without a full investigation of the forgeries identified by the Declarants.

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Respectfully submitted,

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