NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

(202) 692-5000

In the Matter of the Application of the	41 NMB No. 3
AMERICAN TRAIN DISPATCHERS ASSOCIATION	CASE NO. R-7370
alleging a representation dispute pursuant to Section 2, Ninth, of the Railway Labor Act, as amended	FINDINGS UPON INVESTIGATION-AUTHORIZATION OF ELECTION
involving employees of	December 5, 2013
UNION PACIFIC RAILROAD	

On August 19, 2013, the American Train Dispatchers Association (ATDA) filed an application alleging a representation dispute among the Train Dispatchers craft or class at Union Pacific Railroad (Union Pacific or Carrier). On August 29, 2013, Union Pacific submitted its initial position statement objecting to the authorization cards submitted by ATDA to support its showing of interest. ATDA responded to these objections on September 11, 2013 and the participants provided additional submissions on September 13, 2013 and September 18, 2013. Union Pacific requests that the Board dismiss ATDA's application. For the reasons outlined below, the Board rejects that request and will authorize an election among the Train Dispatcher craft or class at Union Pacific Railroad.

CONTENTIONS

Union Pacific made two objections to the format of the authorization cards submitted by ATDA. The following language is used in the cards submitted by ATDA:

> The undersigned hereby authorizes the American Train Dispatchers Association as my representative in all matters pertaining to the

> making of agreements covering hours of service, wages and working conditions, and the handling of grievances or disputes arising out of the interpretation or application of any such agreement or agreements under the provisions of the Railway Labor Act, as amended.
>
> **This Certificate of Authorization takes effect as of _____, to remain in effect until the undersigned shall give said Organization a ninety-day notice of cancellation.** (emphasis added)

First, Union Pacific alleges that the "take effect" language causes the cards to lack an unambiguous signature date. According to Union Pacific, this language can be used by an organization to evade the requirement in Representation Manual (Manual) Section 3.2 that authorization cards are to be dated within one year from the date of the representation application. Further, Union Pacific argues that the cards violate Manual Section 3.1 because their language is not unambiguous. As stated in a later submission, "[t]he problem here is that an 'effective date,' by definition, can be different than an actual signature date."

Union Pacific's second objection centers on the language requiring signers to give the ATDA a ninety-day notice to revoke their authorization. According to Union Pacific, this "purported restriction is an improper attempt to restrict employees who might wish to change their minds, and violates employee rights under (Manual) Section 3.4." Manual Section 3.4 requires that individuals who wish to revoke their authorization do so through the organization rather than contacting the Board directly. Union Pacific argues that the revocation language on the card can have a chilling effect on employees' right to revoke their authorization and that "employees who have signed authorization cards may now wish, in light of the ATDA's conduct, to withdraw or cancel the card, but may believe, based on the ATDA's false and misleading ninety day provision, that they no longer have an opportunity to do so." Union Pacific provided a declaration by a management official who stated that two employees had asked her whether employees could revoke authorization cards.

ATDA responded to Union Pacific's objections by arguing that the Board's Rules do not require a specific standard or format for acceptable authorization cards as long as the Board is able to determine the signing employee's intent. ATDA also submitted declarations from union organizers who disseminated the authorization cards. These organizers testified that they asked employees to sign and date the cards and that they understood this to mean that the cards should

be dated with the date the employee signed the card. ATDA also provided declarations from several employees who signed cards testifying that the date they put on the card was the date they actually signed the card. In addition, ATDA noted that the language that Union Pacific objects to has been used on authorization cards submitted to the Board in other representation disputes, including those with Union Pacific. The Board has never before found that the language failed to comply with its Rules or Representation Manual.

In response to Union Pacific's objection to the ninety-day notice language, ATDA noted that Union Pacific actually educated employees, through its own website, about their right to revoke an authorization card. Union Pacific posted information on bulletin boards explaining that employees could revoke an authorization at any time.

DISCUSSION

I.

The Board has never required a specific format for authorization cards, as long as the cards comply with Board Rules. The language accepted by the Board has varied and the Board in its long history has never provided a template or sample language for participants. Board Rule 1206.3 provides the following:

> Authorizations must be signed and dated in the employee's own handwriting or witnessed mark. No authorizations will be accepted by the National Mediation Board in any employee representation dispute which bear a date prior to one year before the date of the application for the investigation of such dispute.

29 C.F.R. 1206.3.

The Representation Manual provides further guidance to participants about the formatting of authorization cards. Manual Section 3.1 states that "[e]ach authorization must be signed and dated in the employee's own handwriting. . . The language on authorization cards must be unambiguous and the NMB must be able to determine the employee's intent. . . ." Manual Section 3.2 states that "[a]uthorizations must be dated within one year from the date of the application for the NMB's services." Section 3.4 states the following about the revocation of authorization cards: "The Investigator will neither accept nor honor proposed cancellations or revocations of authorizations. Individuals seeking to revoke their

authorizations must go through the party to whom the original authorizations were furnished."

The authorization cards at issue comply with the requirements of NMB Rules. The cards are signed and dated in the employees' own handwriting as required by Rule 1206.3. They were dated within one year of the date of the application. The cards are unambiguous as to the intent of the employees to be represented under the Railway Labor Act by the ATDA. There is no evidence that ATDA falsified the dates on the cards or encouraged employees to falsify the dates on the cards themselves. As part of the investigation, the cards were inspected and there is no objective evidence that the cards were dated by someone other than the employees signing the cards. Had the investigation disclosed that the cards were dated by someone other than the signing employee or had there been evidence that the dates were added later, the Board would not accept those cards. *See, Great Lakes Airlines*, 35 NMB 213, 228 (2008) (finding that any alteration of authorization cards after signing voids the cards). The ATDA provided evidence that employees were told and understood that they were to date the cards with the date they were actually signed. The mere possibility that falsification could occur without any evidence is not sufficient to void these cards.

Regarding the "ninety-day notice of cancellation" language, the Board notes that, while it has historically not accepted revocations directly from employees, employees have the right to revoke their authorization and are instructed to do so by contacting the organization collecting the authorizations. Union Pacific was correct when it told employees that they have the right to revoke their authorization cards at any time. This is the Board's position and the "ninety-day notice" language is not accurate. Most authorization cards do not provide any information about an employee's right to cancel or revoke authorizations and the superfluous language on these cards is unnecessary and could potentially cause confusion. Here, however, there is no evidence that this language prevented specific employees from seeking to revoke or cancel their authorizations.

The authorization cards submitted by ATDA clearly state the signing employees' request to be represented by the ATDA. Without objective evidence that the Board's requirements as to the signature and date have been evaded, an election is the appropriate way to measure employee intent and determine whether a majority of employees actually wish to be represented by the ATDA. Board Rule 1206.6 states that the rules concerning representation elections "shall be liberally construed to effectuate the purposes and provisions of the act." In the past, the Board has acknowledged that this provision was intended to "prevent technical objections from frustrating the clearly indicated desire of a majority of employees concerned to have an opportunity to express their choice of representative for the

purposes of the Act." *Braniff Int'l Technical Instructors*, 5 NMB 210, 214 (1973). The Board acknowledges that the "takes effect as of" language has the potential to create ambiguity, but in the absence of objective evidence that the cards contain false dates, the Board will not dismiss the instant application and deny employees an opportunity to express their representation preferences.

The Board is also cognizant of the fact that the language on these authorization cards has been used by the ATDA in other representation disputes, including prior disputes with Union Pacific. These cards have been accepted by the Board in prior representation disputes. This appears to be the format that the ATDA has relied on for many years. In the absence of evidence that the language was crafted to mislead the Board, misrepresent its processes, or prevent employees from exercising their rights, the Board will not dismiss the instant application. ATDA has submitted the statutorily mandated number of authorization cards and a representation election is the appropriate means for determining whether a majority of employees wish to be represented by the ATDA.

II.

Authorization cards are a measure of employee interest in a representation election. The number of authorization cards necessary to trigger an election is now statutorily mandated. It is the Board's view that the superfluous language on these cards creates unnecessary ambiguity. The "effective date" language used on these cards is unnecessary. The language on authorization cards should provide clear and convincing evidence that the card was signed on the date noted on the card. The authorization cards also purport to limit an employee's right to revoke or cancel an authorization. Employees have a right to revoke their authorizations at any time whether the authorization card provides a process for doing this. Accordingly, the Board will not accept such language on authorization cards to support future representation applications.

The Board will consider providing further guidance on appropriate language in its Representation Manual or in some other format. This determination serves as notice to ATDA and any other organization that the Board will dismiss future representation applications supported by authorization cards that are dated from this date forward and include the language at issue here.

CONCLUSION AND AUTHORIZATION OF ELECTION

The Board will accept the authorization cards submitted by ATDA as a measure of showing of interest. The Board finds a dispute to exist in NMB Case No. R-7370, among Train Dispatchers at Union Pacific sought to be represented

by ATDA and presently not represented. A TEV election is hereby authorized using a cut-off date of July 31, 2013.

Pursuant to Section 12.1 of the NMB Representation Manual, the Carrier is hereby required to furnish, within 5 calendar days, 1" X 2-5/8" peel-off labels bearing the alphabetized names and current addresses of those employees on the list of potential eligible voters. The Carrier must print the same sequence number from the list of potential eligible voters beside each voter's name on the address label. The Carrier must also provide to the Board the name and sequence number of those potential eligible voters who reside outside of the United States. The Carrier must ensure that the Board receives the labels within 5 calendar days. Tally in Washington, DC.

By direction of the NATIONAL MEDIATION BOARD.

Mary L. Johnson
General Counsel

Copies to:
Patricia O. Kisocan, Esq.
Donald J. Munro, Esq.
Andrea Gansen
F. Leo McCann
David W. Volz
Michael S. Wolly, Esq.