

Case No. 11-07
Hearing : Aug. 17, 2011
Date: Aug. 23, 2011

BEFORE THE IMPARTIAL UMPIRE
UNDER THE VOLUNTARY SPECIAL PROCEDURES
FOR PROCESSING AND REMEDYING ARTICLE XX, SECTION 5 CASES,
AFL-CIO INTERNAL DISPUTES PLAN

In the Matter of the Dispute Between :
COMMUNICATIONS WORKERS OF AMERICA :
: :
and : Re: United Air Lines/
: Continental
: :
INTERNATIONAL ASSOCIATION OF :
MACHINISTS AND AEROSPACE WORKERS :
: :

APPEARANCES

For CWA:

Veda Shook, Vice-Pres; Int'l Pres, AFA-CWA
*Sara Nelson, Int'l V-P, AFA-CWA
Ed Sabol, Sr Dir of Organizing, AFA-CWA
Deidre Hamilton, Esq, Staff attorney, AFA-CWA
Patricia M. Shea, Esq, Attorney

For IAM:

Robrt Roach, General V-P for Transportation
Sito Panteja, Chief of Staff, Transportation
Ira Levy, Grand Lodge Rep.
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*by speakerphone

I.

This dispute arises out of an election campaign between IAM and the Association of Flight Attendants-Communications Workers of America, CWA (AFA-CWA), which was initiated as a result of the merger of United Airlines, whose flight attendants have been represented by AFA-CWA, and Continental Airlines, whose flight attendant employees have been represented by IAM.¹

Following the employer's notification of the merger to the National Mediation Board (the Board or NMB) several months earlier, in January 2011 CWA filed with the Board a petition for single-carrier representation in the "craft or class" of flight attendants at the post-merger airline. The Board granted the petition, invited both unions to make a showing of interest, and on their doing so ordered an election.

NMB practice is to hold an electronic-voting election, over a specified period of time, in this case from May 17 until June 29, 2011. At the time an election was directed, AFA-CWA represented over 15,000 flight attendants in the United unit, and IAM represented over 9,000 at Continental. Of the nearly 25,000 employees eligible to vote (the largest in NMB history), valid votes were cast by 21,780. AFA-CWA prevailed, 11,942 to 9,745.

It is also NMB practice to issue a certification the day after voting has closed, subject to objections to the election being heard and adjudicated thereafter on timely notice and filing of objections. AFA-CWA therefore has been certified as the "duly designated and authorized" representative of the employees in question, although IAM has filed timely objections and a Board inquiry is pending. AFA-CWA has been interacting with the post-merger company as representative of all of the employees in the craft or class of flight attendant.

CWA has charged IAM with violating Article XX of the AFL-CIO Constitution, Section 2, based on its post-certification efforts to displace CWA's bargaining relationship. Each party has filed charges under Section 5 as well. Consideration of the latter

¹I will use "United" and "Continental" to refer to the pre-merger companies, and "the employer" or "the post-merger company" to refer to the new entity. (Continental/Micronesia, a third company, affiliated with Continental, was also a party to the merger; I will not refer to it specifically but will speak of both former Continental companies as "Continental").

charges is governed by the Executive Council's Voluntary Special Procedures For Processing and Remediating Article XX, Section 5 Cases. At the close of the hearing, the parties agreed that the Section 5 charges would be decided by the Umpire without briefs, as quickly as feasible (but with the three-day requirement of the Voluntary Procedures being waived).

In the Section 2 case, briefs will be filed prior to a determination, by mailing copies to opposing counsel and myself by September 8, 2011. In order to ensure simultaneity, the opening of an e-mailed version of a brief received from opposing counsel shall constitute a representation that the recipient's brief has been already mailed (whether by overnight or electronic mail). Accordingly, I will here consider only the charges under Section 5. The above statement of facts may need to be augmented in the subsequent determination of CWA's Section 2 charge.

II.

The text of Section 5 implicates five elements, highlighted here by bold bracketed numbers:

[1]No affiliate shall, **[2]**in connection with any organizational campaign, **[1]**circulate or cause to be circulated **[3]**any charge or report that is **[4]**designed to bring or has the effect of bringing another affiliate **[5]**into public disrepute or of otherwise adversely affecting the reputation of such affiliate or the Federation.

The only requisites of a violation that are fairly disputable here turn on the question whether each document, considered in the context of the overall campaign, triggers the notions of "public disrepute" or "reputation," and if so whether there is affiliate responsibility for the actions in question.² I will briefly identify each challenged document, and succinctly give my reasons for ruling as I do.

The CWA charges.

CWA's Section 5 charges are based on postings on the IAM website, and all but one are somewhat evocatively worded references

²Any responsibility of AFA-CWA for a violation of Section 5's strictures is plainly attributable to CWA itself, just as any injury to the reputation of AFA-CWA constitutes an injury to CWA.

to asserted improprieties committed by AFA-CWA during the campaign: words like "misrepresenting" NMB materials or "harassing and threatening" employees (with no suggestion of violent acts) (#13), or charges that its rival "has blatantly violated" NMB election rules (#19). An affiliate is entitled to keep its membership abreast of an ongoing dispute regarding the validity of an election, which necessarily involves claims of improper actions, and one would expect more colorful language in postings than in (at least many) lawyerly submissions to the Board itself.

Nor do I believe that describing CWA's Article XX charge as interfering with "a federal investigation," and manifesting a fear of what such an investigation will "uncover" (#17), constitutes a violation. It was reasonably clear to any reader that the "investigators" were the Board, and not a criminal grand jury, legislative hearing, or other forum in which criminal or financially dishonest conduct may be involved.

I find no violation of Section 5 by IAM.

The IAM charge.

The documents comprising IAM's Section 5 charge were introduced as IAM Exhibit 4, each one numbered within that grouping. I will refer to them by the number with which each was marked.

No.1 is a picture of a number of "tags" like a great many that that were affixed to suitcases worn by United flight attendants or distributed by AFA-CWA organizers in the employee lunchroom at O'Hare airport.³ Each had on it a red circle with a downward-slanting red line within it (like a "no left turn" or "do not enter" traffic sign). The text was a large "IAM" and below it the words, "A VOTE FOR IAM IS A VOTE FOR MANAGEMENT." CWA disclaims responsibility for this, on the ground that they were the work of a single AFA-CWA member who was not an organizer (or other employee) of AFA-CWA, and that a review of payments made to contractors and suppliers in the campaign disclosed no payments for such work. However, given the uncontested assertion of their distribution by AFA-CWA organizers, the obvious fact that many travelers passing-by AFA-CWA members with the ornamented suitcases

³These allegations were supported by a declaration of an IAM Grand Lodge representative, IAM Exh. 6, and not impeached or rebutted. They were assertedly seen by employees in other bargaining units in which contested elections were being, or were expected to be, held.

plainly visible in portions of the airport open to the public, and the length of the voting period and the extent of the cards' circulation, I believe that AFA-CWA's failure to take any steps to discourage or limit this practice denies it a basis to disclaim responsibility. On the merits, while the statement may be taken only to say that the employer wanted AFA-CWA to win the election, or that IAM lacked the strength to do as well for the employees in question, it is reasonable to think that observers would take it as a claim of improper collusion. I therefore find a violation here.

No. 2 involves the same "logo," but in a posting on United flight-crew bulletin boards. The posting was a long one, with many portions not challenged here, but with the offending logo visible among them. Read there alone, and addressed solely to United employees as it was, it would be reasonable to read it as simply a recapitulation of the claim that management prefers a rival as a bargaining partner. But in light of the broader context of its extensive use in the campaign, I find the inclusion of the logo in this posting to be a violation of Section 5.

No. 3 is a cartoon-type picture showing a person wearing an IAM logo passing a document called "our contract" under the table at which he is sitting across from a United representative. The caption reads, "Contract Negotiations . . . the 'IAM' way." It appeared on the AFA-CWA website, and was asserted to have been added by an AFA-CWA committeeperson based in Frankfurt. On the merits, it is of course clearly improper, but I hesitate to rule that an affiliate must monitor every posting by any local committeeperson and take steps to disavow it. Perhaps it is the contrast with the wholesale distribution and prolonged and widespread visibility of the tags, but I do not conclude that CWA is responsible for this action.

No. 4 is a page-long posting on AFA-CWA's website, plainly attributable to AFA-CWA, supporting in detail its claim that, in the words of the headline, "AFA-CWA Stands Up for Flight Attendants." The problem is that just below that, and again at the end of the page, the document in effect asserts that IAM is not above "quick and dirty" deals with management. While the phrase can suggest simple unwillingness or inability to take the effort to do better, in the context I believe that the likely reading by those to whom the statement was addressed would be a suggestion of at the least a breach of faith, and perhaps worse. I find a violation here.

No. 5 is a deceptive attribution to a senior IAM officer of being "in bed with" two senior management executives, based on printing a cropped photograph of the three of them sitting at a

table testifying at a congressional hearing. The presence at the same table of an AFA-CWA representative was cropped out. This outrageous posting was the work of a single AFA-CWA member who, CWA asserts, was not an organizer nor otherwise on the union's payroll. I nonetheless find a violation here.

No. 7 is a letter from an AFA-CWA representative to a United officer objecting to a management statement having to do with the effect of the merger on furloughed flight attendants, which characterized the employer's announcement as "a tactic coordinated with the Machinists, especially since you have previously negotiated [certain] provisions with Machinists. . . ." I find no violation here.

No. 8 is an "eCommunication" to members regarding the AFA-CWA annual Board of Directors meeting, at which International President Veda Shook is reported as asserting (from the podium) that the union was "under attack by Machinists and other unions who work with management to get an upper hand," and that management "wants to see" a "non-flight attendant union at the table." She is said to have gone on to say that "machinists don't understand the issue." But for her words, "work with," this would plainly be simply a campaign position in disputes like this between a craft-specific and an employer-wide union. I don't believe the quoted words rise to the level of an allegation of corruption or other impropriety by IAM, and find no violation.

No. 9 is essentially similar, a "Negotiations Update" to the AFA-CWA membership asserting that management "would prefer to negotiate with a Union willing to endorse their concessions," that "the Machinists have a history of accepting management proposals," and that "in fact, management's concessionary proposals are inspired and endorsed" by IAM. Again, but for the word, "inspired," this would be only a familiar claim of superior representation, and even if we are take the statement as suggesting that it took an awareness of IAM's relative weakness to give the employer the idea of seeking "concessions," there is not the imputation of corruption with which Section 5 is concerned.

No. 10 is a campaign document claiming that AFA-CWA has been a "leader" in support of equality for lesbian, gay, bisexual and transgender people. It contrasts AFA-CWA's "long history of fighting to defeat discrimination, whenever and wherever it exists" with the statement that IAM, through President Buffenbarger, "was the only Union to veto a resolution of the AFL-CIO Executive Council condemning discrimination against LGBT people." The carefully worded statement is misleading, seeming to say more than, to an equally careful reader, it actually does. Putting aside the

fact that an EC member has no veto power, the reference is apparently technically true to the extent it refers to a proposed EC resolution "condemning" the position of the Boy Scouts of America for its exclusionary policies regarding gay people, which President Buffenbarger, who is apparently an active Scouter, may have persuaded the EC not to act on. More fundamentally, however, falsely accusing a rival of having taken a position on a major public issue likely to cost it support among the electorate is not the sort of campaign tactic with which Section 5 is concerned. Whatever its effect should be on the validity of an election, it does not implicate Section 5.

No. 11 is a posting to the AFA-CWA web page, growing out of a dispute over NMB rules regarding the scope of permitted posting of hyperlinks to the voting website. It accuses IAM of "rank hypocrisy to score points" in the election. This is not a Section 5 matter.

To summarize, I find violations of Section 5 with respect to Nos. 1, 2, 4, and 5, and no violation with respect to the others.

DETERMINATION

CWA is in violation of Article XX, Section 5 of the AFL-CIO Constitution, but only to the extent indicated.



Howard Lesnick
Impatial Umpire