

BEFORE THE NATIONAL TRANSPORTATION SAFETY BOARD

_____)
Petition of)
)
 BENJAMIN J. TURNER)
)
 for review of the denial by)
 the Administrator of the Federal)
 Aviation Administration of an application)
 for the issuance of a repairman certificate.)
_____)

Docket No: CD-30003
Judge: ALJ Woody
Date of Hearing: [not set]
Location of Hearing: [not set]

_____)
Petition of)
)
 DEREK P. MESSNER-HENNING)
)
 for review of the denial by)
 the Administrator of the Federal)
 Aviation Administration of an application)
 for the issuance of a repairman certificate.)
_____)

Docket No: CD-30004
Judge: ALJ Woody
Date of Hearing: [not set]
Location of Hearing: [not set]

TO: The Honorable Stephen R. Woody

**RESPONSE IN OPPOSITION TO ARSA’S MOTION FOR LEAVE
TO INTERVENE AND BECOME A PARTY IN CD-3003 AND CD-3004**

Pursuant to Rule 821.14(c) of the National Transportation Safety Board’s (Board’s) Rules of Practice in Air Safety Proceedings (49 C.F.R. § 821.14(c)), the Administrator of the Federal Aviation Administration (“Administrator”) files this response in opposition to the Aeronautical Repair Station Association’s (“ARSA”) motion for leave to intervene and become a party in the above-referred matters. ARSA argues it meets the Board’s Rule 821.9(a) (14 C.F.R. § 821.9(a)) requirements to become a party to this matter as an intervenor because it has a legitimate interest that will not be adequately represented by the Petitioners.

The Board's Rule 821.9(a) states:

Intervention. Any person may move for leave to intervene in a proceeding, and may become a party thereto, if it is found that such person has a property, financial or other legitimate interest that will not be adequately represented by the existing parties, and that such intervention will not unduly broaden the issues or delay the proceeding. Except for good cause shown, no motion for leave to intervene will be entertained if filed less than 15 days prior to the hearing. The extent to which an intervenor may participate in the proceeding is wholly within the law judge's discretion.

Argument

ARSA does not have a property, financial or other legitimate interest in this matter.

ARSA is a corporation that disseminates information to the certificated repair station community and develops positions and objections with regard to legislative and regulatory matters.

(<http://arsa.org/wp-content/uploads/2014/02/Articles-of-Incorporation.pdf>) ARSA is not a 14 C.F.R. certificate holder under part 145 (Repair Station) or part 119 (Air Carrier or Commercial Operator). ARSA does not employ repairmen and does not provide support or advice to applicants for repairman certificates. ARSA is not employed as legal counsel for Petitioners' certificated repair station employer.

In connection with an application for a repairman certificate, an applicant must submit a recommendation for certification from his repair station employer. (See 14 C.F.R. §§ 65.101(a)(4) and 145.159.) ARSA contends that due to its interest in regulatory matters and due to its association with repair stations, the subject regulatory eligibility requirement provides it with the legitimate basis to assert an interest in these matters before the Board.

Assuming, arguendo, ARSA's interest in the regulations presents a direct, legitimate interest in the above-referred matters, ARSA fails to explain how Petitioners will not adequately represent ARSA's interests. ARSA baldly asserts that because Petitioners are pro se, they do not have the knowledge of the regulations at issue to represent adequately ARSA's interest in the regulations.

Unlike ARSA, Petitioners have a direct, legitimate interest in representing the regulations at issue. Petitioners petitioned the Board for review of the Administrator's denial of their applications for a repairman certificate, which applications were in furtherance of future employment as repairmen at their repair station employer. If Petitioners subsequently during this proceeding become interested in obtaining legal representation, they could obtain legal representation. Petitioners could ask ARSA to represent them or could ask their repair station employer to represent them.

ARSA has not established entitlement to intervene pursuant to 49 C.F.R. 821.9(a).

If ARSA is permitted to unconditionally intervene in these proceedings as a litigant, it is likely they would overshadow Petitioners' cases with their own litigation strategy, discovery and motions, thereby expanding or impeding the proceedings. ARSA states its goal for participation in these proceedings is to ensure that its expert knowledge of the regulations can be entered for consideration. ARSA would have that opportunity through an *amicus curiae* brief. (See 49 C.F.R. § 821.9(b).)

WHEREFORE, the Administrator respectfully requests that the Board deny ARSA's motion for leave to intervene and become a party to the above-referred matters. Alternatively, if your Honor grants ARSA's participation in this matter, the Administrator respectfully requests that ARSA's participation be limited to conditionally filing an *amicus curiae* brief with a motion for leave to the Board's General Counsel.

Respectfully submitted,

Naomi Tsuda
Assistant Chief Counsel
for Enforcement

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Dated: September 11, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this date I have sent a copy of the foregoing RESPONSE IN OPPOSITION TO ARSA’s MOTION FOR LEAVE TO INTERVENE AND BECOME A PARTY, in the matters of Petition for Review in Benjamin J. Turner, Docket No. CD-30003, and Petition for Review in Derek P. Messner-Henning, Docket No. CD-30004 by email, addressed to:

Honorable Stephen R. Woody
Office of Administrative Law Judges
National Transportation Safety Board
490 L’Enfant Plaza East, S.W.
Washington, D.C. 20594.
aljappeals@ntsb.gov

In addition, I hereby certify that I have served the same by email, addressed to:

Benjamin J. Turner
b.turner@bridgeraerospace.com

Derek P. Messner-Henning
d.messner-henning@bridgeraerospace.com

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Lisa M. Toscano

Lisa M. Toscano, Attorney

Dated: September 11, 2020