



NATIONAL MEDIATION BOARD
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45 NMB No. 15

March 15, 2018

Susan Leverone
Associate Solicitor
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570-0001

Re: NMB File No. CJ-7175
Aircraft Services International, Inc.

Dear Ms. Leverone:

This responds to your request for the National Mediation Board's (NMB or Board) opinion regarding whether Aircraft Service International, Inc. (ASIG or Employer) is subject to the Railway Labor Act (RLA), 45 U.S.C. §151, *et seq.* On May 18, 2017, the National Labor Relations Board (NLRB) requested an opinion regarding whether ASIG's operations are subject to the RLA.

For the reasons discussed below, the NMB's opinion is that ASIG's operations and employees at McCarran International Airport (LAS) in Las, Vegas, Nevada are subject to the RLA.¹

I. PROCEDURAL BACKGROUND

On March 22, 2017, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, Local 631 (Local 631) filed a petition with the NLRB seeking to represent all full-time and part-time fuelers and mechanic employees employed by ASIG at LAS. On March 30, 2017, the NLRB held a hearing on the issue of whether the Employer falls under the jurisdiction of the NLRB or the NMB. On May 18, 2017, the NLRB referred the case to the NMB

¹For the reasons set forth in her dissent in *ABM Onsite Services*, 45 NMB 27, 36 (2018), Member Puchala disagrees with her colleagues' decision to return to the six factor analysis for determining carrier control in jurisdiction cases. In the instant case, however, she agrees that there is sufficient record evidence of carrier control over personnel decisions and the manner in which the ASIG employees perform their duties to establish RLA jurisdiction.

for an advisory opinion on the issue of jurisdiction. The NMB assigned Maria-Kate Dowling to investigate. ASIG and Local 631 each submitted position statements and replies. The NMB's opinion is based on the request and the record provided by the NLRB, as well as these position statements.

II. FINDINGS OF FACT

ASIG provides fueling and ground handling services to airlines at multiple facilities across the United States. At LAS, the Employer provides fueling services² to approximately 16 airlines, including Southwest Airlines (Southwest), Allegiant Air (Allegiant), and JetBlue Airways (JetBlue). More than half of ASIG's work at LAS is for Southwest.

Southwest provides an office and breakroom to ASIG at no cost. Southwest has historically owned their own fueling equipment and ASIG operates and maintains that equipment. ASIG's General Manager, Damon Baker, and Operations Manager work out of that office provided by Southwest. Mr. Baker's duties include directing ASIG's overall operations at LAS from accounting through servicing aircraft. ASIG's leads report to Mr. Baker and the Operations Manager. The fuelers are assigned to designated airlines on the ramp.

ASIG's contracts with Southwest, Allegiant, and JetBlue provide that ASIG will provide fueling services and specify the amount that ASIG will be paid for each fueling and defueling event. Under the Southwest contract, ASIG is paid per flight. The contract with Allegiant incentivizes ASIG by paying varying amounts per flight based on performance measured by factors such as the number of flights dispatched on time.

Staffing and Scheduling

The Carriers provide flight schedules to ASIG, typically a month or two in advance. Mr. Baker creates work schedules based on the airlines' flight schedules and varies the work schedule according to changes in the flight schedules. For example, during certain months of the year, Southwest operates earlier departures and ASIG schedules employees earlier to fuel those

² Approximately 90 percent of ASIG's business at LAS is fueling. ASIG also provides cabin cleaning for one airline customer at LAS. The NLRB petition in this case involves only the fuelers.

flights for on-time departure. Individual airlines have also specified the number of employees they want to service their aircraft. ASIG's leads tell the fuelers where to go for staffing each airline. Fuelers cannot leave an aircraft until they are released by the airline and cannot end their shift unless released by the airline. In situations involving a "fuel and hold," ASIG employees have fueled the aircraft but are required to remain and wait for further instructions from the airline. In this situation, fuelers remain with the aircraft and their shift does not end until released by the airline. These fuel and hold events occur two or three times a week.

During the hearing, Mr. Baker described a meeting with Allegiant regarding staffing. According to Mr. Baker, Allegiant was unhappy with ASIG's performance and in particular turnover of employees assigned to their contract. Allegiant "wanted more stability" and held a "corrective action meeting to see what we could get to improve and meet the airline's expectations." Mr. Baker stated that the airline made the decision to find "a new direction of compensation to get a more stable work group" on their contract. Mr. Baker testified that ASIG's corporate office agreed that "the airline was going to pay the fuelers two dollars more per hour" than the existing ASIG rate.

Carrier Involvement in Day-to-Day Operations

The Carriers provide direct instructions to fuelers multiple times a day. Each Carrier instructs the fuelers on the fuel load for every flight. Some airlines communicate the requested fuel load with "fuel tickets" they provide to the fuelers. Other airlines communicate the fuel load via other means and the fueler fills out an ASIG-provided fuel ticket. Fuelers receive instructions from pilots, including modification of the fuel load based on pilot preference or based on the aircraft's condition. With the exception of Hawaiian Airlines (Hawaiian), the fuelers are required to follow the pilot's fueling instructions.³ The airline also informs fuelers of gate changes and "tail swaps" or swapping of aircraft. Approximately three or four times a day, an airline instructs fuelers to fuel an aircraft in addition to fueling based on flight schedules, e.g., fueling an aircraft in support of maintenance needs. The Carriers also utilize fuelers to defuel aircraft.

³ Hawaiian, as part of an over-fueling initiative campaign, supplies stations with fueling instructions for each of its flights. If the captain on a Hawaiian flight requests additional fuel, ASIG requests a new flight release from Hawaiian operations before complying.

The contracts with Southwest and Allegiant require that the work must be performed in a good and workmanlike manner and shall be undertaken by trained and competent personnel. Each airline maintains its own standard operating procedures (SOP), specifying performance standards that ASIG employees are required to follow when performing work for that airline. Each airline provides ASIG with its own fuel manual describing that airline's fueling procedures. According to ASIG's GM Baker, failure to follow the requirements of the SOPs or the airline's fuel manual could result in the termination of the contract with that specific carrier. Southwest requires ASIG to attend at least two meetings per week during which Southwest communicates performance expectations and concerns to ASIG. Allegiant holds similar meetings with ASIG once a week.

Since ASIG uses and maintains Southwest's fueling equipment, ASIG employees must comply with Southwest's preventive maintenance schedule. Mr. Baker testified that the other airlines have the ability to inspect fueling equipment outside of the audit process. According to Mr. Baker, if an airline employee perceives a problem with ASIG fueling equipment they can require ASIG to remove it from service.

Communications between ASIG and Southwest, Hawaiian, and Allegiant demonstrate that the airlines monitor the performance of ASIG's fuelers including the comparison between the amount of fuel delivered and the amount specified in fueling plans, as well as the number of delays caused by fueling issues. When an airline informs ASIG of a performance problem, the Employer takes corrective action including ensuring that proper procedures are in place and understood. As discussed below, ASIG has issued discipline following an airline's reporting of a problem.

Carrier Access to ASIG's Operations and Records

Each airline reserves the right to and does audit the Employer, including ensuring that ASIG and its fuelers have the correct certifications. ASIG's contract with Southwest provides that Southwest reserves the right "to perform random and periodic audit and quality inspections of [ASIG's] fueling facilities and records." Its JetBlue contract provides that ASIG shall maintain complete and accurate records which will be available to JetBlue for reasonable inspection. Each airline audits ASIG annually, and some perform audits twice per year. ASIG is subject to both scheduled and unscheduled audits. Since it has contracts with 16 airlines, Mr. Baker testified that ASIG is being audited

two or three times a month each year. The airline determines the standard for the audit and the audits generally cover the operations, equipment, and documentation. The auditor will observe the fueling of an aircraft to check that the airline's SOPs and manual are being followed. The auditor will also check the condition of ASIG's fueling equipment and test the fuel. Finally, the auditor will examine documentation, including training and maintenance records kept by ASIG. If an audit identifies any "discrepancies," ASIG must remedy the problems and report the corrective action taken to the airline. According to Mr. Baker, ASIG provided documentation of an audit by JetBlue which identified discrepancies that JetBlue required ASIG to address. In addition, Mr. Baker testified that a JetBlue auditor traveling through LAS noticed a piece of equipment that was not in compliance -- a fueler had failed to secure a hose with a dust cover. The auditor immediately notified Mr. Baker and instructed ASIG that this incident needed to be addressed.

Carrier's Role in Personnel Decisions and Benefits

ASIG makes the decisions to hire, fire, transfer, and promote its employees. ASIG approves vacation and sick leave requests. The record indicates that on two occasions in the last few years, an airline did not want a particular individual to work for the airline. In response, ASIG moved that individual to work for another airline. There is no evidence that any of the airlines issued discipline directly to the ASIG fuelers. ASIG, however, has issued discipline based on problems reported by the airlines. Several fuelers were disciplined following reports from Southwest. ASIG's General Manager Baker testified that airlines demand corrective action when they find problems. It is not clear that Southwest or other airlines specifically request that employees are disciplined for problems. In the past, American Airlines did ask ASIG to remove an individual from its contract and ASIG complied. Mr. Baker testified that the airlines report problems or subpar performance to ASIG and request that the identified problem be remedied. ASIG provided examples of "Employee Coaching Documents" that identify the type of coaching, the reason for coaching, and the details of the incident. The possible types of coaching include verbal warning, written warning, final written warning in lieu of suspension, suspension, and termination. Mr. Baker testified that the Carrier involved in the incidents reported the unsatisfactory performance to an ASIG lead and requested corrective actions. The examples provided indicated that two employees received verbal warnings for fueling errors and a third received a final warning in lieu of suspension. In addition, Mr. Baker testified that there

was an incident where an ASIG fueler blocked open a “dead man,” which violated both ASIG’s and the airline’s procedures. In that instance, the airline instructed the fueler to stop what he was doing and notified ASIG. The fueler was initially suspended and ultimately discharged following the airline’s report.

Mr. Baker also testified that “a few years back” Southwest wanted to recognize employees for their success with on-time departures and provided flight passes as a recognition for the employees’ performance. According to Mr. Baker, there was an instruction from Southwest; and ASIG did not ask for this recognition. Southwest also has BBQs for ASIG employees and will include ASIG employees in parties for airline employees.

Carrier Control over Training

ASIG’s employees receive some generalized training and some airline-specific training. Each airline has training requirements based on their types of aircraft, Federal Aviation Administration requirements, and the airline’s specific fuel manual. The airlines require ASIG to maintain designated trainers who train the employees on the specific requirements of the airline. According to Scott Bilo, ASIG’s Training Manager, the designated trainer is trained and qualified by the airline to train ASIG employees to work on that airline’s aircraft. Each airline also has different training requirements. Some airlines like JetBlue require computer-based training while others mandate in-person training. For example, Hawaiian requires biannual travel to Honolulu for a two-and-a-half day training course.

Mr. Bilo testified that ASIG ensures that the fuelers are trained according to the specifications of each airline’s procedures and aircraft. Fuelers must complete the specified training regime for an airline before servicing that airline. Individual airlines create computer-based training without input from ASIG that ASIG fuelers complete via the individual airline’s website. Biannually, Volaris Airlines (Volaris) sends trainers from Mexico City to train the ASIG fuelers that fuel their aircraft. Employees who fail to attend this training are disqualified from fueling Volaris’ aircraft, even if they were previously certified to service the airline. As specified in its contract, Allegiant provides the initial training, followed by subsequent training upon the introduction of new aircraft.

Fuelers complete a minimum of ten days of on-the-job training supervised by ASIG before being “signed off” to service a particular airline. The airline sets the requirements used as the standard to determine if an employee

is sufficiently trained. ASIG trains its employees on how to do the fueling for each airline and for each aircraft. Fuelers generally start at JetBlue or Frontier since they operate similar types of aircraft. As fuelers gain experience they progress to other airlines.

The airlines communicate new fueling requirements to ASIG through training bulletins and information notices. ASIG then communicates the information to the employees who service the particular airline affected by the changes. Similarly, when an airline updates its fuel manual, ASIG provides updated information to its fuelers.

ASIG documents training completion and provides this documentation to each airline. With the exception of Allegiant, ASIG maintains training records in airline-specific binders. Allegiant maintains its own records of fuelers who have completed training and has instructed ASIG that it is not to maintain a training binder.

Holding Out to the Public

The fuelers wear ASIG uniforms. Each fueler is also required to wear a badge identifying the airline they are servicing. Fuelers servicing Southwest may use the same break rooms as Southwest employees. Southwest also requires ASIG employees to use Southwest's fueling equipment to perform their work including a Southwest tanker truck and auto gas truck.

III. DISCUSSION

Applicable Legal Standard

When an employer is not a rail or air carrier engaged in the transportation of freight or passengers, the NMB has traditionally applied a two-part test in determining whether the employer and its employees are subject to the RLA. First, 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.

ASIG does not fly aircraft and is not directly or indirectly owned by an air carrier. Local 631 stipulated that the work performed by the ASIG employees at issue is work traditionally performed by employees in the airline industry. Therefore, to determine whether ASIG is subject to the RLA, the NMB must consider the degree of direct or indirect control exercised over its operations by its Carrier customers.

In *ABM Onsite Services*, the Board found that,

the rail or air carrier must effectively exercise a significant degree of influence over the company's daily operations and its employees' performance of services in order to establish RLA jurisdiction. No one factor is elevated above all others in determining whether this significant degree of influence is established. These factors include: extent of the carriers' control over the manner in which the company conducts its business; access to the company's operations and records; role in personnel decisions; degree of supervision of the company's employees; whether the employees are held out to the public as carrier employees; and control over employee training. *Air Serv Corp.*, 33 NMB 272 (2006); *Aircraft Serv. Int'l Group, Inc.*, 33 NMB 258 (2006); *Signature Flight Support*, 32 NMB 214 (2005).

45 NMB 27, 34-35 (2018)

Carrier Control over ASIG and Its Employees

In this case, the record demonstrates that Southwest and other Carriers exercise significant influence over ASIG's operations at LAS. Mr. Baker creates work schedules for ASIG fuelers based on the airlines' flight schedules and varies the schedule according to changes in flight schedules. Airlines have specified the number of employees to service their aircraft. Fuelers cannot leave an aircraft until they are released by the airline and cannot end their shift unless they have been released by the airline. During "fuel and hold" situations, ASIG employees have finished fueling an aircraft but must remain and wait for additional instructions from the airline. The employees remain with the aircraft until released by the airline. The airlines provide direct instruction to ASIG fuelers multiple times a day through fuel tickets or direct communication from pilots. Each airline maintains its own performance standards that ASIG employees are required to follow when performing work

for that airline. Southwest and Allegiant hold weekly meetings with ASIG to communicate performance expectations and concerns.

ASIG uses and maintains Southwest's fueling equipment and ASIG employees comply with Southwest's preventive maintenance schedule. According to Mr. Baker, if an airline employee perceives a problem with ASIG's fueling equipment, the airline can require ASIG to remove that equipment from service. In addition, fuelers working on the Southwest contract have access to the same break rooms as Southwest employees.

Each airline reserves the right to and does audit the Employer's records and fueling facilities. Each airline determines the standard for the audits that generally cover the operations, equipment, and documentation. These audits are scheduled and unscheduled. A JetBlue auditor traveling through LAS notified ASIG of unacceptable job performance when he observed that a fueller had failed to secure a hose with a dust cover and instructed ASIG to address this incident. ASIG must remedy any problems identified in the audit and report the corrective action taken to the airline.

ASIG makes the decisions to hire, fire, transfer, and promote its employees. ASIG also approves vacation and sick leave requests. ASIG has issued discipline based on problems reported by a Carrier. Mr. Baker testified that the airlines request subpar performance and problems be remedied. Several fuelers were disciplined following reports from Southwest. In one incident, an ASIG fueller blocked open a "dead man," which violated both ASIG's and the airline's procedures. The airline instructed the fueller to immediately stop what he was doing and notified ASIG. The fueller was suspended and ultimately discharged following the airline's report. In the past, American Airlines requested that ASIG remove an individual from its contract and ASIG complied with the request.

The Carriers have also provided, on occasion, extra benefits to ASIG employees. Southwest recognized ASIG employees for their success with on-time departure and provided flight passes. Mr. Baker also testified that when Allegiant was unhappy with turnover in employees assigned to its contract, the airline decided to "pay fuelers two dollars more per hour" than the existing contract.

ASIG employees receive generalized training and airline-specific training. The Carriers require ASIG to maintain designated trainers who train employees on the specific requirements of the airline. The designated trainer is trained

and qualified by the airline to train ASIG employees to work on that airline's aircraft. The airlines decide when, how often and what kind of recurrent training is required.

The fuelers wear ASIG uniforms and a badge identifying the airline they are servicing. As noted above, Southwest requires that ASIG employees use Southwest's fueling equipment including a Southwest tanker truck and auto gas truck.

It should also be noted that the NMB has repeatedly found ASIG's operation to be subject to the RLA. Beginning in 2003, in cases referred from the NLRB, the Board has determined that ASIG's commercial aviation operations were subject to the NMB's jurisdiction. *Signature Flight Support of Nevada*, 30 NMB 392 (2003)(Ramp Service, Passenger Service, Fuelers); *Aircraft Serv. Int'l Group, Inc.*, 31 NMB 361 (2004)(Fuelers). In March 2004, the International Association of Machinists and Aerospace Workers (IAM) filed an application with the NMB seeking to represent fuelers and ground handlers at ASIG's Tampa International Airport. Although the application was ultimately dismissed based on an insufficient showing of interest, the Board found that ASIG was subject to RLA jurisdiction and that the appropriate system for representation under the RLA included all of ASIG's facilities nationwide. *Aircraft Serv. Int'l Group*, 31 NMB 508 (2004). In three subsequent referrals from the NLRB, the Board again determined that ASIG's commercial aviation operations were subject to the RLA. *Signature Flight Support/Aircraft Serv. Int'l*, 32 NMB 30 (2004)(Ground Handling and Ground Service Equipment Maintenance); *Aircraft Serv. Int'l Group, Inc.*, 33 NMB 200 (2006)(Fuelers); *Aircraft Serv. Int'l Group, Inc.*, 33 NMB 258 (2006) (Fuelers). In *Aircraft Serv. Int'l Group*, 40 NMB 43 (2012), in a decision addressing an application for Fleet Service Employees filed by the Service Employees, International Union, United Service Workers West, the Board found that that the appropriate system for representation included all of ASIG's operations nationwide.

The Board's opinion in the instant case is that ASIG's fuelers at LAS are subject to the RLA which is consistent with those prior determinations.

In sum, the record shows that Southwest and other carriers have sufficient control over ASIG's operations at LAS to establish RLA jurisdiction.

CONCLUSION

Based on the record in this case and the reasons discussed above, the NMB's opinion is that ASIG's operations and its employees at LAS are subject to the RLA.

BY DIRECTION OF THE NATIONAL MEDIATION BOARD

A handwritten signature in black ink that reads "Mary L. Johnson". The signature is written in a cursive style and is contained within a thin black rectangular border.

Mary L. Johnson
General Counsel

Copies to:
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