

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572



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45 NMB No. 36
September 20, 2018

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

Re: NMB File No. CJ-7187
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., d/b/a Menzies Aviation (ASIG or Employer) is subject to the Railway Labor Act (RLA), 45 U.S.C. §151, *et seq.* On March 29, 2018, the National Labor Relations Board (NLRB) requested an opinion regarding whether ASIG's operations at Tulsa International Airport (TUL) are subject to the RLA.

For the reasons discussed below, the NMB's opinion is that ASIG's operations and employees at TUL are subject to the RLA.¹

I. PROCEDURAL BACKGROUND

On January 26, 2018, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, Local 523 (Local 523) filed a petition with the NLRB seeking to represent all full-time and part-time "fuelers and operators" employed by ASIG at TUL. On February 21, 2018, the NLRB held a hearing on the issue

¹ For 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.

of whether the Employer falls under the jurisdiction of the NLRB or the NMB. On March 29, 2018, the NLRB referred the case to the NMB for an advisory opinion on the issue of jurisdiction. The NMB assigned Norman L. Graber and Maria-Kate Dowling to investigate. ASIG and Local 523 each submitted position statements. 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.² At TUL, ASIG provides fueling services to approximately 15 airlines including Southwest Airlines (Southwest), American Airlines (American), Delta Air Lines (Delta), Allegiant Airlines, and United Airlines. These fueling services are divided into two areas: maintenance and operation of fuel farm facilities; and the actual fueling of aircraft at the airport terminals. ASIG employs approximately 20 operators and fuelers. The operators' day-to-day duties are to fill fuel tank trucks with jet fuel from tanks at the fuel farm. The fuelers' day-to-day duties are the fueling of aircraft from tanker trucks. ASIG also has a contract with American to operate and manage American's Maintenance & Engineering Base as well as provide fueling services and to receive, store, and manage the jet fuel used by American. ASIG also performs some ground service equipment fueling at American's Maintenance & Engineering Base. This activity involves gas or diesel fueling for American's ground equipment.

ASIG operates the fuel farm facility under a contract with Southwest. The fuel farm is owned by Southwest and is located on-property, off-site from the airport that is leased by Southwest. Jet fuel is received, stored, and managed at the fuel farm for use by Southwest and other air carriers. According to Max Thornton, ASIG's General Manager at TUL, Southwest pays all the costs of operating the fuel farm and shares the cost by charging other airlines a per-gallon fee for purchasing the fuel from the fuel farm. The fuel farm's budget is set by the Fuel Committee comprised of representatives from each of the airlines that purchases fuel. The Fuel Committee creates the budget for ASIG's management of the fuel farm. This budget includes all labor costs.

ASIG's office is located at the fuel farm and is provided at no cost to ASIG by Southwest. Southwest also pays for all ASIG's office supplies. The equipment

² In July 2014, ASIG purchased Skytanking USA and assumed its contracts at TUL.

at the fuel farm and the tanker trucks are owned by the airlines. At American's direction, ASIG replaced older American tanker trucks with new equipment leased by ASIG and paid for by American.

Staffing and Scheduling

The fuel farm budget not only specifies that ASIG employ four operators and a manager but also sets their wage and benefit rates and the budget for supplies and materials used at the fuel farm. In operating the fuel farm, ASIG expends no funds other than provided in the budget. Any change to the number of employees at the fuel farm or to their wage and benefit rates must be approved by the Fuel Committee.

ASIG's contract with American dictates the number of ASIG employees assigned to American and requires ASIG to add the position of Duty Base Manager to oversee the operation of the Maintenance & Engineering Base. At the hearing Mr. Thornton testified that American wanted ASIG to increase the supervision at the Maintenance Base. According to Mr. Thornton, American required ASIG to create this additional management position at the Maintenance Base.

With regard to staffing, Mr. Thornton stated that the Maintenance Base is staffed "around the clock, 24/7." At the terminal, ASIG schedules to accommodate the Carriers' flight schedules. Mr. Thornton testified that the number of fuelers "is what we [ASIG] need to be able to accommodate the customers and make sure that we meet their demands." With regard to the fuelers at the terminal, Mr. Thornton stated that, if any of the Carriers increase their flights or change their schedules, ASIG has to adapt and shift employee schedules. For example, American originally started flights after 6 am and ASIG employees started work at 4:30 am. When American added a flight at 5 am, ASIG employees were required to report at 4 am.

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 regularly.

Carrier Involvement in Day-to-Day Operations

According to Mr. Thornton, the Carriers constantly provide direct instructions to fuelers every day. Each Carrier instructs the fuelers on which aircraft to fuel, in what order to fuel those aircraft, and the fuel load for every flight. The Carriers also instruct the fuelers on the distribution of fuel between the aircraft's fuel tanks. The Carriers' instructions may change in the middle of the fueling process. The pilots will also give fueling instructions directly to the fuelers.

According to Mr. Thornton, the fueling at the airport is guided by the Carriers. When fuelers arrive at work, their lead will designate which airline they are assigned to for that day. Each airline's Ops Agent gives the fuelers the flight schedule and the fuelers will fuel the aircraft based on the fuel slips provided by the Ops Agent. Typically, the fuelers will start with the "originators," which are aircrafts already on the ground that need to be fueled for departure. The remainder of the shift, the assignments and instruction will come directly from the airline. The fuel slips for each aircraft prepared by the Ops Agent specify the fuel load and the tank assignments to distribute the fuel load for proper weight and balance of the aircraft.

Each airline maintains its own fueling 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 Mr. Thornton, ASIG employees must follow each specific airline's fueling procedures and training.

The Carriers also communicate their requirements and service expectations to ASIG on a regular and ongoing basis. These communications come from both the corporate and the local levels. With regard to corporate communications, Mr. Thornton testified that he receives "Delay Reports" in a daily email from the Carriers reporting flight delays caused by the vendor. Delta sends ASIG a "Scorecard" rating ASIG's performance on a variety of metrics including on-time performance, overfueling aircraft, damage to aircraft, audit results, customer service, and safety performance. Mr. Thornton stated that Delta expects ASIG to address and correct problems identified in the Scorecard. The Carriers also send out directives when they change procedures in their fuel manuals and Mr. Thornton shares these directives with ASIG employees. On the local level, Mr. Thornton said that he interacts with the airline station managers and Ops Agents daily with regard to matters they want changed or corrected. Mr. Thornton also attends meetings with airline personnel regarding safety

issues and on-time performance issues. Other ASIG managers also regularly attend meetings with the Carriers. Steve Kerns, ASIG's Maintenance & Engineering Base Duty Manager, attends a daily meeting with American at each of the six hangars at the Base.

Communications between ASIG and the Carriers demonstrate that the airlines monitor the performance of ASIG's fuelers and report performance problems or failure to follow fueling procedures. Examples include incomplete fuel slips or a fueler wearing wireless headphones while fueling. In each case, the Carrier requested that ASIG take corrective action including ensuring that proper procedures are in place and understood. Mr. Thornton testified that corrective action was taken. As discussed below, ASIG has issued discipline following an airline's reporting of a problem.

Carrier Access to ASIG's Operations and Records

According to Mr. Thornton, each airline audits ASIG's TUL operations, and ASIG operates under the assumption that they might be audited at any time during normal business hours. Some airlines conduct an annual audit, some conduct a biannual audit, and some audit several times a year. Some audits are scheduled, but some are unannounced. Mr. Thornton testified that a fueler "might call you up while he is fueling a plane and say, 'Hey, I'm being audited?'" In those circumstances, Mr. Thornton stated that while he trusts that the fueler is doing the job properly, he would head over to that location so he would be available for the auditor should there be any questions or concerns.

Mr. Thornton stated that a typical audit lasts between two to five hours. The auditors, who are airline employees, check that ASIG is in compliance with the airline's fuel manual and the applicable industry-accepted guidelines for fuel safety and fuel quality. During the audit, the auditor interacts directly with the fueler or the operator. For both fuelers and operators at the fuel farm, the auditor will observe the employee performing his job duties and make sure the job is being performed according to the procedures in the fuel manual. The auditor may also ask questions about the procedures. If the auditor sees any mistakes or non-compliance with procedures, he will direct the employee to correct the deficiency. For example, in a Delta audit report, the auditor noted

that the ASIG fueler was instructed to change the bonding point³ to comply with the Delta's fueling manual, and that fueling resumed without further incident.

Auditors also inspect the fuel facility and the various systems to ensure that the jet fuel quality meets standards and that all the equipment is working correctly and maintained correctly and that the required records are kept. The auditors also inspect the aircraft fueling equipment to make sure it is safe to operate and working correctly. Mr. Thornton testified that if the auditors identify a problem with any equipment, they will give instructions to address the issue immediately. Mr. Thornton stated that ASIG must take corrective action required by the airline or lose the airline's business. In addition, that corrective action must be approved by the airline.

Mr. Thornton testified that the Carriers have been granted access to ASIG's computer systems, proprietary training records, and personnel records. The Carriers, as discussed above, also have access to the equipment in use at the airport.

Carrier's Role in Personnel Decisions and Benefits

ASIG makes the decisions to hire, fire, transfer, and promote its employees. Mr. Thornton stated that he has received positive feedback on the performance of individual ASIG personnel. He testified that positive feedback from the airlines is considered in promotion decisions.

The airlines report problems or subpar performance to ASIG and request that the identified problem be remedied. With regard to the fueler wearing wireless headphones identified during an audit, the Carrier stated that the headphones impede communication "with mechanics/fire watch in an emergency system," and requested that ASIG supply corrective action documentation. Mr. Thornton stated that he provided written documentation of the employee coaching session for the employee in question.

Mr. Thornton also testified that comments from airlines have led to employees receiving discipline up to and including termination. Mr. Thornton testified to two examples of termination based on information provided by a Carrier. In the first example, an airline employee noticed a fueler was not wearing his reflective vest and asked where the vest was. According to Mr. Thornton, the fueler was insubordinate, replying that the vest was in his locker

³ The bonding point is the point of electrostatic connection between the fuel tender and the aircraft to equalize any static differences and minimize explosion hazards. Each airline sets the bonding point that fuelers are required to use.

and was going to stay there. The airline reported the incident and ASIG terminated the employee. In a second incident, the airline reported a safety violation when a fueller “did not bond to the aircraft before fueling it.” Mr. Thornton testified that he would normally provide verbal warnings but “if a customer sees it, action is virtually required . . . by the airlines.” Mr. Thornton also stated that he has had an airline station manager tell him, “I don’t ever want to see that fueller fueling my planes again.” According to Mr. Thornton, in that circumstance, the employee is typically terminated. Mr. Thornton stated that he makes the decision to terminate, but he still seeks approval from ASIG’s Human Resources Department to make sure company policy is followed.

Mr. Thornton stated that Southwest used to reward ASIG employees with flight passes as a performance incentive. The Carriers also include ASIG employees in BBQs and Christmas and Thanksgiving 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. According to Mr. Thornton, 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. ASIG fuelers complete this airline specific training via the individual airline’s website.

ASIG also has its own company training on general safety matters and its own company policies. Fuelers complete on-the-job training supervised by ASIG. Each airline sets the requirements used as the standard to determine if an employee is sufficiently trained. ASIG trains its employees on how to perform the fueling for each airline and for each aircraft.

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. Mr. Thornton testified that, in some cases, the airline requires the fuelers to log into their system and do an electronic read and sign acknowledgment of the new or changed procedures. 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. ASIG maintains airline-specific training records for each of its fuelers.

Operators at the fuel farm also receive on-the-job training and training under the requirements of ATA-103, the recognized industry standard for jet fuel quality control. This training is mandated by the Carriers and audited by the Carriers under the ATA-103 auditing standards.

Holding Out to the Public

The fuelers wear uniforms with the “Menziess Aviation” logo. Employees who work at American’s Maintenance & Engineering Base wear American badges in order to enter and leave that facility.

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 523 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, American, and other Carriers exercise significant influence over ASIG's operations at TUL. The number of fuel farm operators and the wages of the fuel farm operators and their manager are set by the contract with the Carriers and cannot be altered without the Carriers' consent.

American required ASIG to create an additional management position at its Maintenance & Engineering Base because American wanted additional supervision. The work schedules for ASIG fuelers are based on the airlines' flight schedules and that schedule varies according to changes in flight schedules. 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. The Carriers hold regular meetings with ASIG to communicate performance expectations and concerns.

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. Auditors have notified ASIG of unacceptable job performance. For example, an auditor observed a fueller wearing headphones 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 has issued discipline up to and including termination based on problems reported by a Carrier. Mr. Thornton testified about two instances of discharges following reports from Carriers. In one incident, a fueler was fired for insubordination after the airline reported the incident. ASIG terminated a second employee for a safety violation reported by an airline. Mr. Thornton testified that a Carrier's request to remove an individual from its contract has also resulted in termination.

The Carriers have also provided, on occasion, extra benefits to ASIG employees. Southwest has in the past provided flight passes. Mr. Thornton also testified that the Carriers allow ASIG employees to attend their holiday events.

ASIG employees receive generalized training and airline-specific training. The Carriers require ASIG employees to access their computer systems for training. 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. ASIG's office space and supplies are provided by the Carriers.

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. Recently, the Board once again determined that ASIG's operations were subject to RLA jurisdiction. *Aircraft Serv. Int'l., Inc.*, 45 NMB 50 (2018).

The Board's opinion in the instant case is that ASIG's fuelers at TUL 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 TUL 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 TUL are subject to the RLA.

BY DIRECTION OF THE NATIONAL MEDIATION BOARD



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General Counsel

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