

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572



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45 NMB No. 33
August 22, 2018

Susan Leverone, Associate Solicitor
National Labor Relations Board
1015 Half St., SE, Ste. 5120
Washington, DC 20750

Re: NMB File No. CJ-7179
NLRB Case 29-RC-198504
PrimeFlight Aviation Services, Inc.

Dear Ms. Leverone:

This responds to your request for the National Mediation Board's (NMB or Board) opinion regarding whether PrimeFlight Aviation Services, Inc. (PrimeFlight) is subject to the Railway Labor Act (RLA), 45 U.S.C. § 151, *et seq.* On November 14, 2017, the National Labor Relations Board (NLRB) requested an opinion regarding whether PrimeFlight's operations at LaGuardia Airport (LGA) are subject to the RLA.

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

I. PROCEDURAL BACKGROUND

On May 10, 2017, Service Employees International Union, Local 32BJ (Local 32BJ) filed a petition with the NLRB seeking to represent PrimeFlight's employees performing a variety of duties including baggage handling, cabin cleaning, facilities appearance services, customer and passenger services, line queue services, wheelchair services, skycap services, shuttle bus services, and electric cart services at LGA. On May 23, 2017, the NLRB held a hearing on the issue of whether PrimeFlight falls under the jurisdiction of the NLRB or the NMB. Following the hearing, the NLRB's Regional Director determined that the NLRB could decide the issue of jurisdiction without referral to the NMB and that the NLRB had jurisdiction over PrimeFlight. PrimeFlight appealed the Regional

Director's decision on August 15, 2017, and on November 14, 2017, the NLRB referred the case to the NMB for an advisory opinion on the issue of jurisdiction.

The NMB assigned Maria-Kate Dowling and Andres Yoder to investigate. PrimeFlight and Local 32BJ each submitted position statements. The NMB's opinion is based on the request and the record provided by the NLRB, as well as the position statements.

II. FINDINGS OF FACT

Background

PrimeFlight is a company that provides ground and terminal services to air carriers nationwide. It operates at over 40 airports, and employs approximately 4,500 individuals. PrimeFlight has contracts with six air carriers at LGA: American Airlines, Inc. (American), Southwest Airlines Co. (Southwest), Spirit Airlines, Inc. (Spirit), JetBlue Airways Corp. (JetBlue), Frontier Airlines, Inc. (Frontier), and Air Canada (Collectively referred to as the Carriers).¹ About 60 percent of its business is with American. At LGA, PrimeFlight employs about 700 individuals performing a variety of duties including skycap, wheelchair, baggage handling, priority parcel, passenger, ticket verification, cabin appearance, aircraft guard, line queue, shuttle bus, wayfinder,² and courier services under its contracts with the Carriers.

Mathew Barry, Division Vice-President at PrimeFlight, oversees operations at nine airports including LGA. Mr. Barry has direct oversight of the management teams at those airports and works with the human resource professionals at the PrimeFlight's corporate office with regard to employment decisions, customer contacts, communications, budgeting, and finance. Day-to-day operational supervision is provided by J.R. Garcia, PrimeFlight's director of Operations at LGA. Rodrigo Calapaqui is the Employer's Assistant Director of Operations at the airport.

Mr. Barry stated that PrimeFlight maintains job descriptions that function as "general guideline[s]" for categories of work that apply across Carriers. According to Mr. Barry, each carrier, airport, and contract "has its own idiosyncrasies" that can modify any particular job description. American, Southwest, and JetBlue in particular have negotiated contracts that list job duties for certain positions. The American contract includes a job description for skycaps. The Southwest contract includes job descriptions for wheelchair

¹ In previous years, PrimeFlight had a seventh contract with US Airways. However, after US Airways merged with American in 2015, American assumed the contract.

² Wayfinders are PrimeFlight employees assigned to various positions in the two American terminals at LGA. The wayfinders direct customers checking in for flights to the right location or direct them to the right buses to transfer terminals before going through security.

attendants, monitors, skycaps, baggage transporters, wheelchair dispatchers, and porters; and for a handful of cleaning services positions. The JetBlue contract includes job descriptions for skycaps³, wheelchair attendants, baggage handlers, and security line agents.

PrimeFlight's Day-to-Day Operations

PrimeFlight supervises its own employees at LGA. PrimeFlight's contracts with American, Spirit, JetBlue, and Southwest all provide that PrimeFlight will be responsible for supervising its employees. Nevertheless, on occasion the Carriers may give PrimeFlight employees direction on their work tasks. For example, American may ask a wayfinder to temporarily stand at a different location. For a permanent change of location, however, American would make a request to PrimeFlight.

Contractually, each of the Carriers reserves some rights regarding the quality of the services provided by PrimeFlight. For example, American requires PrimeFlight to make available American customer complaints about its employees' performance. American can report performance problems to PrimeFlight, and PrimeFlight is responsible for "providing appropriate instruction" to that employee. Southwest requires PrimeFlight to resolve service deficiencies within the time frames set out in the contract. The contract also provides that Southwest may also request "formal review meetings" to evaluate the PrimeFlight's service performance. Spirit can require PrimeFlight to "develop and implement an acceptable corrective action plan" when there are "significant deficiencies" in its performance under the contract. Under its contract, JetBlue can receive credits against PrimeFlight invoices for service problems such as PrimeFlight's failure to submit certifications of quarterly training for employees; PrimeFlight's failure to ensure its employees maintain the "proper" appearance; receipt by JetBlue of a "verified" customer complaint about PrimeFlight's services; and receipt by JetBlue of a report that a wheelchair was left unattended for more than 30 minutes. JetBlue's contract also describes a specific process for evaluating whether wheelchair service issues created flight delays and would result in credits against PrimeFlight charges. Frontier can offset the cost of uncured unsatisfactory work against charges, and can offset the cost of its own effort to cure unsatisfactory work. Frontier can also request records of workplace accidents, injuries, and disciplinary actions. Air Canada can provide written notice of work it regards as unsatisfactory, and can require a resolution within 30 days. If PrimeFlight does not resolve the work issue in a timely manner, Air Canada can terminate the contract.

³ The statement of work attached to the JetBlue/PrimeFlight contract contains a description of skycap services. However, Mr. Barry testified that JetBlue discontinued skycap services at LGA in March 2017.

Staffing and Scheduling

At the NLRB hearing, the parties stipulated that PrimeFlight makes its own decisions as to which shift an employee is assigned, whether individual employees work overtime, and whether individual employees are granted permission for time-off. PrimeFlight assigns its employees to particular carriers, but it sometimes moves employees to other carriers when a need arises.

PrimeFlight's Director of Operations at LGA, J.R. Garcia, testified that he has daily operations meetings with the Carriers to go over operations for the day and upcoming week. Each day, PrimeFlight communicates with each Carrier in person and over the telephone to discuss operational issues (like bad weather) and service issues (like instances of baggage being mishandled). These meetings occur Monday through Friday and cover topics like possible weather events or seasonal travel issues. Mr. Garcia also attends safety meetings. These meetings can occur in person or by telephone and often last 30 to 45 minutes. In addition, PrimeFlight routinely receives safety notices and briefs from the Carriers.

PrimeFlight's Assistant Manager, Rodrigo Calapaqui, sends a summary of operations to Spirit and Southwest twice each day. Mr. Calapaqui also routinely attends Southwest's daily station leadership briefing to report any problems that may have occurred with baggage during that morning's rush, any issues with wheelchairs, and how many wheelchairs are in service that day. PrimeFlight also attends weekly meetings with Southwest's General Manager at LGA.

Like most businesses that contract with air carriers, PrimeFlight's employees' work schedules are governed by its customers' flight schedules. According to Mr. Calapaqui, staffing has been adjusted based on Carrier needs and requests. For example, in December 2016, Mr. Calapaqui received a request from Spirit to provide additional staffing because the baggage belt system that moves baggage from the ticket counter to the ramp was not available. In response, Mr. Calapaqui provided additional PrimeFlight employees. Mr. Calapaqui testified that these kind of requests occurred every couple of weeks and often around the holidays. Mr. Calapaqui also described a communication from Southwest in March 2017 about a winter storm. Southwest informed Mr. Calapaqui that there would be "no terminators," i.e., no aircraft on the ground that night and consequently "no originators" the following morning for the same reason. In response, PrimeFlight asked the majority of employees scheduled to work on those flights to stay home. According to Mr. Calapaqui, these employees were not paid for those days. Mr. Calapaqui also stated that during the President's Day weekend in 2017, Southwest requested additional baggage handlers and wheelchair attendants. In response, Mr. Calapaqui created a new schedule and requested volunteers for overtime.

Mr. Calapaqui also described an incident involving a departure delay for a Spirit flight. According to Mr. Calapaqui, PrimeFlight ticket checkers are at the

checkpoint until 8:30 p.m. but the flight was delayed until 11:30 p.m. Following an investigation by Mr. Calapaqui at Spirit's request, Spirit and PrimeFlight agreed on a notification procedure when there are delays near the end of a shift so that PrimeFlight employees stay beyond their usual departure time.

PrimeFlight's contracts range in structure from hourly billing to aircraft event billing to per passenger billing. Some functions like sky caps are volume based and PrimeFlight is compensated based on the number of bags processed. According to Mr. Barry, when there is less volume, PrimeFlight can change the staffing levels. Other functions are static and require a person working specific shifts regardless of how many passengers there are.

Carrier Access to Records

Each Carrier retains a contractual right to inspect and audit PrimeFlight's financial, service, and training records. For example, JetBlue retains the right to inspect PrimeFlight's books, records, and manuals to assure compliance with the contract. With ten business days' prior written notice, JetBlue can conduct an audit of relevant books, records, and manuals and have PrimeFlight provide the auditors access to its facilities. JetBlue also reserves the right to conduct a "Quality Assurance Inspection" including site inspections of PrimeFlight facilities, observation of employee performance and compliance with applicable regulations and industry standards. Under the contract, JetBlue will pay for the costs of any audit unless the discrepancies are found in five percent or more of items audited. Within two weeks of the completion of the audit, PrimeFlight must identify corrective action to resolve any discrepancies. JetBlue's contract also requires PrimeFlight to maintain records of all training programs, workplace accidents and injuries, employee grievances, and employee disciplinary actions, and to provide copies to JetBlue upon its requests.

Southwest's contract requires that, during regular business hours and with reasonable notice, PrimeFlight's records and accounts "shall be open for inspection, examination, audit and copying" by Southwest during the term of the contract and for five years after. Southwest also reserves the right to conduct audits of PrimeFlight's operation upon reasonable notice. The contract provides that the audit may include PrimeFlight's general controls and security practices and procedures; change and problem management processes and procedures; invoice processing; service level compliance; and resource consumption. Southwest's contract also requires PrimeFlight to notify Southwest within 24 hours of any breach or suspected breach in the security of its network, computer system, or facilities providing access to Southwest data, and allow Southwest to conduct an audit to determine the cause of any such breach.

Frontier's contract provides that PrimeFlight's "records shall be open for inspection and examination by [Frontier] at all reasonable times." Frontier also reserves the right to audit during normal business hours with reasonable prior

notice to ensure compliance with the contract. Spirit's contract mandates that PrimeFlight will keep "complete and accurate" records relevant to the "billing [and] compliance with all applicable statues, regulations, orders, ordinances and security programs," as well as records relevant to contract compliance. Spirit's contract further provides that these records will be open for inspection and audit by the Carrier at "all reasonable times" during the term of the contract and for three years after. PrimeFlight must also "cooperate" with the entity conducting any audit. Air Canada's contract requires the maintenance of complete and accurate training and personnel records that are available for inspection and audit by the airline with advance notification.

Mr. Garcia testified that he has gotten notifications from a Carrier with regard to audits by the Transportation Safety Administration (TSA). According to Mr. Garcia, the manager on duty for American notified him that TSA would be conducting a field investigation of American's operations. In response to the notification, Garcia contacted his managers in the field to make sure PrimeFlight employees were in compliance with applicable protocols.

Hiring, Firing, Discipline, and other Personnel Matters

As previously noted, PrimeFlight makes its own hiring decisions. PrimeFlight has its own employee handbook that is not specific to any airline. The handbook sets forth PrimeFlight's policies on attendance, personal appearance, workplace etiquette, and discipline. The handbook describes the various benefits offered by PrimeFlight and its vacation and leave policies. The handbook includes a progressive discipline system but also lists a variety of conduct that may result in immediate suspension or termination including, *inter alia*, theft, falsifying records, reporting to work under the influence of drugs or alcohol, violating safety rules, fighting or threatening a co-worker or customer, sleeping on the job, and insubordination. The handbook also contains a "problem resolution" provision encouraging employees to raise workplace concerns with their supervisor, a manager, or PrimeFlight's human resources department.

PrimeFlight conducts its own independent investigations into allegations of employee misconduct, and makes its own decisions as to discipline, including terminations. Mr. Barry testified that he makes the final decision on all terminations at LGA, after consulting with the corporate human resources department. Mr. Barry also testified that he is guided by the disciplinary standards in the PrimeFlight employee handbook.

According to Mr. Barry, there is standard language in all of PrimeFlight's contracts, that the carrier reserves the right to notify PrimeFlight that they want a particular employee removed from their contract. Mr. Barry testified that such requests have happened "with some level of frequency at least on a system basis." Under its contract with Southwest, PrimeFlight, upon written request by

Southwest, will “address any concerns about particular [PrimeFlight employees] and, if necessary, remove” from the contract any individual engaging in improper conduct or found unqualified to perform the assigned work. Similar language exists in PrimeFlight’s contract with American. American’s contract requires that PrimeFlight will remove any employee “who in the opinion of American” is guilty of improper conduct or is unqualified to perform their assigned work.

Mr. Garcia testified regarding an April 2017 request by American to remove a PrimeFlight employee due to a service issue that resulted in passengers missing their connecting flights. The Carrier contacted Mr. Garcia and requested that the employee be removed from American’s contract. Mr. Garcia told the Carrier that PrimeFlight would “issue corrective action accordingly and remove [the employee] from the position.” Mr. Garcia referred the matter to PrimeFlight Corporate HR stating in an email, “[American] does not want this employee on any of their contracts at LGA. Due to the seriousness of this service failure, I would like to proceed with termination ASAP. What do you need from us to terminate?” PrimeFlight Corporate HR responded to the email indicating support for the termination because the employee was in their “90 day introductory period.” Mr. Barry also approved the termination. At the hearing, Mr. Garcia testified that he decided to terminate the employee because she was in the 90 day introductory period established by PrimeFlight’s policy. But he also stated that reason was “in addition to the serious customer service failure.”

Training

PrimeFlight employees receive both PrimeFlight-specific training and airline-specific training. According to Mr. Barry, PrimeFlight creates training manuals for every position and provides common orientation training and position-specific training to all its employees. Mr. Barry testified that PrimeFlight must provide government-mandated training such as compliance with regulations regarding wheelchair services for disabled passengers. According to Barry, the Carriers are held responsible for any instances of PrimeFlight’s non-compliance with these regulations and PrimeFlight must indemnify them for any PrimeFlight action that resulted in the violation.

Southwest and JetBlue require certain PrimeFlight employees to complete specific training in accordance with their own requirements. Both the Southwest and the JetBlue contracts contain “train-the-trainer” provisions. JetBlue requires PrimeFlight to send employees to JetBlue University to be qualified to give training to PrimeFlight employees. Southwest pays for all costs related to training a PrimeFlight employee to supervise and conduct all airline initial and recurrent Southwest-required training. PrimeFlight requests ID numbers from Southwest for its employees on the Southwest contract so they can complete required training on Southwest’s website. Carrier-specific training is sometimes conducted by PrimeFlight employees trained and certified by the airline and is sometimes conducted by airline employees. American has required some

PrimeFlight employees to complete training on its own computer system. In these cases, American issues the PrimeFlight employees a “pseudo number” to allow them to log into American’s computer system. Finally, under its contract, JetBlue can penalize PrimeFlight if it does not submit certifications of quarterly training for employees.

Equipment

PrimeFlight’s main office space, including a training office, is provided by American at no cost. The training office is used for a variety of employee training ranging from PrimeFlight employee orientation and new hire training to Carrier-specific training. According to Mr. Barry, Southwest also provides office space for PrimeFlight at no cost. In addition, the Carriers provide areas for PrimeFlight employees to clock in and clock out as well as breakroom access and locker room space.

In addition to the office space, the Carriers provide other equipment. American provides PrimeFlight with some equipment like wheelchairs; scanners; skycap podiums; computers for certain functions; vests, uniforms, and name bars for certain employees; umbrellas; and telephones. PrimeFlight also uses trucks owned by American to supply water to aircraft. PrimeFlight, in turn, leases the vehicles it uses for American’s shuttle bus services and bills American for the cost. Southwest also provides PrimeFlight with some equipment, including skycap podiums; computers and printers for certain functions; certain cabin supplies, like cleaning products and trash bags; and certain facility supplies, like paper products and hand sanitizer; and wheelchairs. PrimeFlight, in turn, supplies buffers, vacuums, and luggage carts for Southwest. Although JetBlue, Spirit, Frontier, and Air Canada do not provide PrimeFlight with equipment, PrimeFlight can move wheelchairs between those carriers, depending on need.

PrimeFlight supplies tablets to wheelchair attendants to communicate with PrimeFlight dispatchers. A software package on the tablets allows the airlines to share data regarding flight information for passengers that need wheelchair or other assistance to PrimeFlight employees. The contract with JetBlue requires PrimeFlight to provide electronic tracking of “all JetBlue wheelchairs at all times” and all “all customer wait times and complaints.” JetBlue’s contract also reserves the right to review this technology and approve it.

Uniforms

At LGA, most PrimeFlight employees wear PrimeFlight uniforms consisting of black pants, a grey shirt, a black tie, and a black vest. The PrimeFlight uniforms include the PrimeFlight logo. Some PrimeFlight employees who work on American, however, do not. According to Mr. Barry, skycaps and employees

who work in the baggage service office and the priority parcel service office wear American uniforms with American logos.⁴ In these instances, American supplies the required uniforms. American has also requested that wayfinders wear red blazers. Testimony at the hearing, however, indicated wayfinders wear yellow vests with an American logo over their PrimeFlight uniforms. All PrimeFlight employees must display badges issued by the Port Authority of New York and New Jersey (Port Authority) that identify them as PrimeFlight employees. According to Barry, in some instances, the Port Authority may issue employees a badge that identifies both PrimeFlight as well as the airline.

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.

At the NLRB hearing the parties stipulated that PrimeFlight does not fly aircraft and is not directly or indirectly owned by an air carrier. The parties also stipulated that the work performed by the PrimeFlight employees at issue is work traditionally performed by employees in the airline industry. Therefore, to determine whether PrimeFlight is subject to the RLA, the NMB must consider the degree of direct or indirect control exercised over its operations by the carriers.

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

⁴ Mr. Barry testified that prior to the merger of American and US Airways, PrimeFlight employees had worked as passenger service representatives and kiosk representatives for American and had worn American uniforms. After the merger that work was "in-sourced" back to American employees.

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 PrimeFlight and Its Employees

In this case, the record provided by the NLRB demonstrates that the Carriers exercise significant influence over PrimeFlight's operations at LGA. The Carriers' schedules dictate the staffing levels and the shift assignments of PrimeFlight employees. PrimeFlight adjusts staffing based on the Carriers' needs and requests. The Carriers may give PrimeFlight employees daily direction in the course of their job performance.

The Carriers require PrimeFlight to maintain records relating to training, service, and billing; and reserve the right to audit these records. Under its contract with JetBlue, PrimeFlight must also provide, upon request, copies of records related to workplace accidents and injuries, employee grievances, and employee disciplinary records. JetBlue can also conduct a "Quality Assurance Inspection" including site inspections of PrimeFlight facilities, observation of employee performance, and compliance with applicable regulations and industry standards. The contract with JetBlue requires PrimeFlight to provide electronic tracking of "all JetBlue wheelchairs at all times" and "all customer wait times and complaints." Southwest's contract also requires PrimeFlight to notify Southwest within 24 hours of any breach or suspected breach in the security of its network, computer system, or facilities providing access to Southwest data, and allow Southwest to conduct an audit to determine the cause of any such breach.

American provides PrimeFlight with office and training space and Southwest provides additional office space. Both Carriers provide the space at no cost to PrimeFlight. The Carriers also allow PrimeFlight employees to utilize their break rooms and locker rooms. They also provide areas for employees to clock in and out of work. American also provides PrimeFlight with wheelchairs; scanners; skycap podiums; computers for certain functions; vests, uniforms, and name bars for certain employees; umbrellas; and telephones. PrimeFlight also uses trucks owned by American to supply water to their aircraft. Southwest also provides PrimeFlight with some equipment, including skycap podiums; computers and printers for certain functions; certain cabin supplies, like cleaning products and trash bags; and certain facility supplies, like paper products and hand sanitizer; and wheelchairs. JetBlue's contract reserves the right to review and approve the technology that PrimeFlight uses to track and receive data from the Carriers regarding passengers needing wheelchairs or other assistance.

PrimeFlight hires its own employees and sets their wages and benefits. Carriers do report problems with PrimeFlight employees and PrimeFlight has complied with a Carrier's request to remove a PrimeFlight employee from its contract. Testimony established that after American requested the removal of an employee from its contract, PrimeFlight conducted an investigation and terminated the employee who was in their probationary period. The PrimeFlight Manager testified that the termination was based on the employee being probationary "in addition to the serious customer service failure."

PrimeFlight's baggage service agents and priority parcel service employees wear American uniforms. Wayfinders wear yellow vests with an American logo over their PrimeFlight uniforms.

JetBlue and Southwest directly train certain PrimeFlight employees who, in turn, train other PrimeFlight employees. Under the contract, Southwest pays the costs of training the PrimeFlight supervisor designated as its Station Training Supervisor. Some PrimeFlight employee training is conducted by the Carriers. PrimeFlight employees access the Carriers' computer systems to complete other types of training. The Carriers require PrimeFlight to maintain records of employees who have completed mandated training. JetBlue requires PrimeFlight to submit certifications of quarterly training for PrimeFlight employees.

The Board's opinion that PrimeFlight's employees at LGA are subject to RLA jurisdiction is consistent with its prior decision regarding PrimeFlight's operations at LGA. In *PrimeFlight Aviation Services, Inc.*, 34 NMB 175 (2007), the NLRB requested the NMB's jurisdictional opinion regarding PrimeFlight employees providing skycap, wheelchair, baggage, priority parcel, ticket verification, and other passenger services at LGA under contracts with American, US Airways, JetBlue, Air Canada, Frontier, Spirit, Air Canada, and several other air carriers. In that case, the NMB based its decision on record evidence that the carriers' schedules dictated the staffing levels and shift assignments of PrimeFlight's employees; that the carriers regularly made changes in daily assignments; that the carriers required the maintenance of and access to employee training records; that the carriers trained PrimeFlight employees who, in turn, train other PrimeFlight employees; that PrimeFlight's baggage service agents and priority parcel service employees wear carrier uniforms; and the carriers requested reassignment of PrimeFlight employees and PrimeFlight complied with those requests.⁵ Indeed, many of the factors relied on by the Board in 2007 are present in this record. The determination in the instant case is also consistent with the Board's decision regarding PrimeFlight's operations at Westchester County Airport. *PrimeFlight Aviation Services, Inc.*, 45 NMB 32 (August 22, 2018).

⁵ In *PrimeFlight Aviation Services Inc.*, 353 NLRB 467 (2008), the NLRB deferred to the NMB's opinion that PrimeFlight was subject to the RLA.

IV. CONCLUSION

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

BY DIRECTION OF THE NATIONAL MEDIATION BOARD



Mary L. Johnson
General Counsel

Copies to:
Frank Birchfield, Esq.
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Terence Schoone-Jongen
Katherine Lesesne

Member Puchala, dissenting.

Contrary to my colleagues, I would not find that PrimeFlight's operations and employees at LGA are subject to the RLA. For the reasons set forth in my dissent in *ABM Onsite Services*, 45 NMB 27, 36 (2018), I would require that a company asserting RLA jurisdiction establish the exercise of a meaningful degree of control over personnel decisions as described in *Airway Cleaners*, 41, NMB 262 (1014). In my view, the record in this case fails to establish that significant level of control. After American requested the removal of a PrimeFlight employee from its contract, PrimeFlight not only conducted its own investigation but PrimeFlight's Director of Operations at LGA made the recommendation to terminate the employee.