



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the
Application of the

NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES

alleging a representation dispute
pursuant to Section 2, Ninth, of
the Railway Labor Act, as
amended
involving employees of

MERCY AIR SERVICE, INC.

43 NMB No. 20

CASE NO. R-7456
(FILE NO. CR-7133)

FINDINGS UPON
INVESTIGATION-
DISMISSAL

March 21, 2016

This determination addresses the application filed by the National Association of Government Employees (NAGE) alleging a representation dispute pursuant to the Railway Labor Act¹ (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth), among “Emergency Medical Services Providers (Flight Paramedics & Nurses)” (EMSPs) at Mercy Air Service, Inc. (Mercy).

This application raises the question of the appropriate system for the employees covered by NAGE’s application; specifically, whether the system is made up of both Air Methods, Corp. (Air Methods or Carrier) and its wholly-owned subsidiary Mercy, or whether the system is limited to Mercy alone. For the reasons below, the National Mediation Board (NMB or Board) finds that the appropriate system is made up of both Air Methods and Mercy.

PROCEDURAL BACKGROUND

On October 2, 2014 NAGE filed an application with the Board alleging a representation dispute among EMSPs at Mercy. At the time the application was received, the EMSPs at both Air Methods and Mercy were unrepresented. The Board assigned Eileen Hennessey to investigate.

¹ 45 U.S.C. § 151, *et seq.*

On October 31, 2014 Air Methods submitted a position statement and a List of Potential Eligible Voters that included EMSPs at both Air Methods and Mercy. On November 18, 2014, NAGE responded to Air Methods' October 31, 2014 statement. On January 6, 2015, Air Methods replied to NAGE's November 18, 2014 statement. On January 16, 2015, NAGE responded to Air Methods' January 6, 2015 reply.

On June 16, 2015, the Board reassigned the case to Andres Yoder. Air Methods submitted additional requested information on July 7, 2015 and a clarification of that information on July 20, 2015. NAGE responded to those submissions on August 3, 2015. Then, on August 17, 2015, Air Methods replied to NAGE's August 3, 2015 response.

ISSUES

What is the appropriate system for the employees covered by the application? What are the representation consequences?

CONTENTIONS

Air Methods

Air Methods argues that Board-recognized system-integration factors show that the appropriate system for the employees covered by the application is made up of both Air Methods and Mercy.

NAGE

NAGE asserts that Board-recognized system-integration factors show that the appropriate system for the employees covered by the application is Mercy alone.

FINDINGS OF LAW

Determination of the issues in this case is governed by the RLA, as amended, 45 U.S.C. § 151, *et seq.* Accordingly, the Board finds as follows:

I.

Air Methods is a carrier or common carrier as defined in 45 U.S.C. § 151, First, and § 181 of the Act.

II.

NAGE is a representative or organization as provided by 45 U.S.C. § 151, Sixth, and 152, Ninth, of the Act.

III.

45 U.S.C. § 152, Fourth, gives employees subject to its provisions “the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for purposes of this chapter.”

IV.

45 U.S.C. § 152, Ninth, provides that the Board has the duty to investigate representation disputes and shall designate who may participate as eligible voters in the event that an election is required.

STATEMENT OF FACTS

Background

Air Methods is an air medical transport company with operations in 48 states. Mercy is an air medical transport system with operations in California and Nevada. Since 1997, Mercy has been a wholly-owned subsidiary of Air Methods. As of October 3, 2014, Air Methods and Mercy together employed 1249 EMSPs.

Operations

Air Methods’ corporate officers have authority over Mercy. Air Methods purchases aircraft and supplies for Mercy, and they have shared operating and maintenance procedures. Air Methods’ General Operations Manual sets out common procedures for fueling aircraft, handling aircraft on the ground, dealing with accidents, and so on. In addition, Air Methods and Mercy use the same medical-operations manual, patient-care guidelines, and maintenance manual. Finally, Air Methods and Mercy are covered by the same Federal Aviation Administration Air Carrier Certificate, which shows an ability to comply with safety regulations and manage hazard-related risks.

Labor Relations and Management

Allison Farish, Senior Vice President of Human Resources at Air Methods, is responsible for labor relations and personnel functions at Air Methods and Mercy. In addition, following the Board's determination in *Air Methods Corporation*, 35 NMB 93 (2008), Air Methods agreed to a series of collective bargaining agreements with the craft or class of Flight Deck Crew Members at both Air Methods and Mercy, the last of which is currently in effect.

Air Methods and Mercy share an employee handbook, which covers terms of employment, career development, benefit programs, time off, and employee conduct. Air Methods and Mercy also share a business code of conduct, which addresses company records and ethical guidelines for senior financial officers, among other topics. Air Methods controls a third-party application that schedules Mercy flights, and Air Methods and Mercy flights are centrally scheduled and dispatched. Finally, on January 1, 2010, the Carrier moved all Mercy employees into Air Methods.

Public Relations

In the past, Mercy EMSPs wore flight suits that only identified Mercy as the carrier. However, on or around February 2013, Mercy EMSPs began transitioning to flight suits that are standardized with Air Methods' flight suits, and that display Air Methods patches. Additionally, Air Methods' Medical Operations Manual sets out the same personal-presentation guidelines for Air Methods and Mercy employees. Air Methods' Employee Handbook also contains the same customer-service guidelines for Air Methods and Mercy employees, as well as the same guidelines concerning news media contacts, and charitable and political contributions.

Workforce Mobility

Air Methods and Mercy EMSPs' routes are limited to jurisdictions in which they are licensed. Between January 1, 2015 and July 7, 2015, no Air Methods EMSPs temporarily worked at Mercy locations. Twenty-eight Air Methods EMSPs permanently transferred to another state – five of whom transferred to Mercy locations – and 77 Air Methods EMSPs transferred work locations within the same state. During that same period, 13 Mercy EMSPs were licensed to work in more than one state. Of those 13, none temporarily worked at Air Methods locations; and none transferred work locations from one state to another. Although no Mercy EMSPs transferred out of state, 20 Mercy EMSPs transferred work locations within the same state.

DISCUSSION

Scope of the System

The RLA requires employees to be represented across a carrier's entire system, "and it is the Board's longstanding policy that system-wide representation is only achieved when a craft or class includes all eligible employees, regardless of their work locations." *Gateway Frontline Services*, 42 NMB 146, 152 (2015). The Board announced its system-wide requirement in an early railway-industry case:

The Railway Labor Act does not authorize the National Mediation Board to certify representatives of small groups of employees arbitrarily selected. Representatives may be designated and authorized only for the whole of a craft or class employed by a carrier.

Pennsylvania R.R. Co., 1 NMB 23, 24 (1937). The system-wide requirement applies to the airline industry as well. *E.g.*, *Ross Aviation, Inc.*, 5 NMB 145, 148 n.5 (1972).

When determining the scope of a carrier's system, the Board considers the extent to which operations are consolidated, the degree to which labor relations and payroll functions are centralized, and how the carrier is held out to the public, including how the carrier advertises services and identifies itself in signs, logos, or other indicia. *See Gateway Frontline Services*, 42 NMB 146, 153 (2015); *Aircraft Service International Group*, 40 NMB 43, 49 (2012); *Air Serv Corp.*, 38 NMB 113, 123 (2011); *Aircraft Service International Group*, 31 NMB 508, 515-16 (2004).

Air Methods' and Mercy's operations are consolidated. In addition to being part of the same company, Air Methods purchases aircraft and supplies for Mercy, and their operating and maintenance procedures are standardized. Air Methods and Mercy also fulfill federal safety requirements as a single entity.

Air Methods' and Mercy's labor relations and management functions are centralized. The same person is in charge of labor relations and personnel functions at both Air Methods and Mercy. Air Methods and Mercy also have the same employment procedures and management guidelines, and their flights are centrally scheduled and dispatched.

Air Methods and Mercy hold themselves out to the public as being part of the same company. Mercy's and Air Methods' flight suits are standardized; Mercy aircraft identify Air Methods; and Mercy flight suits issued since February 2013 identify Air Methods. Air Methods and Mercy also have the same guidelines for employees' personal presentation and public presence.

NAGE argues that Mercy is the appropriate system because Mercy EMSPs have jurisdictionally-bound licensing requirements which limit their mobility. However, when it comes to determining what an appropriate system is, limited mobility is not the overriding factor. *See Fla. N. R.R.*, 34 NMB 142, 152 (2007). The Board has a longstanding policy of recognizing system-wide representation, and limited mobility does not outweigh the factors supporting a single system, such as common labor relations, how the system is held out to the public, and integration of operations.

Finally, as support for its contention that the appropriate system is limited to Mercy, NAGE relies on a series of determinations from 2001 in which the Board conducted two elections among EMSPs at Mercy. *See Mercy Air Serv., Inc.*, 28 NMB 463 (2001); *Mercy Air Serv., Inc.*, 29 NMB 55 (2001); *Mercy Air Serv., Inc.*, 29 NMB 136 (2001). However, that reliance is misplaced. In 2010, the Carrier transferred Mercy employees into Air Methods. The Board makes its decisions on the present facts and circumstances in each case.

In light of the requirement for system-wide representation, the relevant scope-of-the-system factors, and the facts of this case, the Board concludes that the appropriate system for the EMSPs covered by the application is made up of both Air Methods and Mercy.

Showing of Interest

The Board has found that the EMSPs at Mercy are properly part of the system-wide craft or class at both Air Methods and Mercy. Therefore, NAGE needed to provide a 50 percent showing of interest for Air Methods' and Mercy's 1249 EMSPs. 29 C.F.R. § 1206.2. However, NAGE has failed to provide such a showing of interest.

CONCLUSION

NAGE has failed to provide a sufficient showing of interest to authorize an election. Therefore, NMB Case No. CR-7133 is converted to R-7456 and dismissed.

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 with a large initial "M".

Mary L. Johnson
General Counsel

Copies to:
Terry L. Potter, Esq.
Sonni Nolan, Esq.
Christopher J. Brady, Esq.
Dary Sardad
Shelly Hudelson
Karen Betournay, Esq.