



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

30 NMB No. 77
September 5, 2003

Jeffrey D. Wedekind, Solicitor
National Labor Relations Board
1099 14th Street, NW.
Washington, DC 10570-0001

Re: NMB File No. CJ-6780
NLRB Case No. 31 RC-8191
John Menzies PLC, d/b/a Ogden Ground Servs., Inc.

Dear Mr. Wedekind:

This letter responds to your request for the National Mediation Board's (NMB) opinion regarding whether John Menzies d/b/a Ogden Ground Services, Inc.¹ (Ogden) is subject to the Railway Labor Act (RLA), 45 U.S.C. § 151, *et seq.* On February 19, 2003, the National Labor Relations Board (NLRB) requested an opinion regarding whether Ogden's operations at Los Angeles International Airport (LAX), are subject to the RLA.

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

I. PROCEDURAL BACKGROUND

This case arose out of a representation petition filed by the Transport Workers Union of America (TWU), on December 10, 2002, with the NLRB. The TWU seeks to represent commercial aviation employees including "all full-time and part-time ramp agents, cabin service agents, leads (including Coordinators) and GSE Mechanics employed by Ogden at [LAX], excluding all GSE Mechanics not working at the Bradley

¹ Ogden was acquired by Menzies in November 2000.

terminal or work in the GSE Mechanic Shop. . . .” A hearing was held in NLRB Region 31 on December 17-19, 2002 and January 6-7, 2003. On February 19, 2003, the NLRB requested an NMB opinion regarding the NMB’s jurisdiction over Ogden’s LAX operations. On February 2, 2003, the NMB assigned Eileen M. Hennessey to investigate. The participants filed submissions with the NMB on March 14, 2003.

The NMB’s opinion in this case is based upon the request and record provided by the NLRB including the hearing transcript provided by the NLRB and the position statements submitted by Ogden and TWU.

II. OGDEN’S CONTENTIONS

Ogden contends that it meets both the function and control tests established by the NMB for determining jurisdiction.

According to Ogden, the dispute in this case centers on the second prong of the NMB’s jurisdiction test, the “control test.” Ogden argues that the carriers it contracts with at LAX exercise direct and indirect control over Ogden’s employees. Ogden asserts that the carriers’ power to control Ogden’s operations is grounded in the service contracts between the carriers and Ogden. According to Ogden, these contracts authorize the carriers to hold Ogden to the carriers’ service and safety standards and establish standards for appearance and qualifications of employees. Ogden argues that the contracts place many of Ogden’s traditional rights as an employer under the carriers’ control. The carriers can request termination of any employee found to be unsatisfactory for any reason. According to Ogden, this power essentially allows the carriers to choose which employees are hired, because the airline can immediately refuse to permit the employee to work around the carriers’ aircraft for almost any reason. Ogden states that the carriers have daily direct control over Ogden employees

through directives from the carriers as well as meetings at which Ogden's attendance is mandatory.

Ogden states that the carriers set and enforce performance expectations for Ogden in the areas of safety, timeliness, cleaning, and baggage handling. Ogden also contends that the contract between Ogden and the carriers requires Ogden to maintain all records in connection with the services Ogden provides and maintain the records for the carriers' discretionary inspection.

Ogden states that the close relationship between the carriers and Ogden is further demonstrated through the sharing of equipment, supplies and logos. Ogden argues that the carriers dictate the form and content of training that Ogden's LAX employees receive.

Ogden states that public policy supports RLA jurisdiction in this case. Ogden argues that both circumstances and NMB standards for evaluating carrier control have changed since the NMB's 1996 decision involving Ogden. *Ogden Aviation Servs.*, 23 NMB 98 (1996). First, Ogden argues that Ogden is no longer in the corporate form which existed in 1996. Second, Ogden argues that the NMB has found recently that many of Ogden's competitors are subject to the RLA's jurisdiction.

III. TWU'S CONTENTIONS

TWU argues that the air carriers which contract with Ogden are "customers" who contract for certain results to be achieved, but the carriers leave the manner and means of producing the result to Ogden. TWU states that it is Ogden, not the carriers, who hires its employees, sets their wages and benefits, decides where to assign them, supervises their performance and disciplines them. TWU argues that Ogden is "the classic independent contractor, who maintains control over the manner and means of performance, while its

customers retain the right to determine the results to be obtained.”

IV. FINDINGS OF FACT

Menzies

Menzies is a global aviation support company based in the United Kingdom. Menzies provides ground handling, cargo handling, aircraft maintenance, and aviation-related services in locations around the world. In November 2000, Menzies acquired the ground handling and aviation support services business (other than fueling) of Ogden Ground Services, Inc. Following the acquisition of Ogden, Menzies replaced Ogden as the contracting party and employer at all locations except Los Angeles International Airport (Los Angeles). Menzies continues to do business at Los Angeles as Ogden Ground Services due to license and permit issues which are unique to Los Angeles and which precluded re-branding the operation at that location to Menzies.

Menzies currently operates at 10 airports throughout the United States performing a range of traditional aviation support services for domestic and international air carriers, including: ground handling, baggage interlining, cargo handling, cabin cleaning, passenger service, mail distribution, aircraft maintenance, and crew transportation.

Ogden

In its LAX operation, Ogden provides ground handling services for several domestic and international carriers. These carriers include Alaska Airlines, Horizon Air, Nippon Cargo Airlines, British Airways, Cathay Pacific, Japan Airlines, Korean Airlines, LTU, TACA International Airlines and Qantas Airways. Ogden employees work in crews at either Terminal 3 for Alaska Airlines and Horizon Air or the Bradley International Terminal for the international carriers.

Ogden maintains 150 employees under its contracts with Alaska and Horizon Airlines. These employees are divided into ten ramp crews and one baggage room crew who work in two shifts. They service 40 Alaska flights and six Horizon flights daily.

There are 280 Ogden employees working in 11 crews at the Bradley International Terminal. The employee categories working at the Bradley Terminal include managers, supervisors, loadmasters, leads, ramp agents, cabin cleaners, coordinators and GSE mechanics. Each carrier contracts for services with Ogden. While Ogden hires its own employees and sets their wages and benefits, each carrier determines which types of employees are needed on a specific assignment.

Nature of Work for Ogden Employees

Ogden employees perform a variety of duties for the carriers at LAX. Ogden employs ramp agents, cabin cleaners, GSE mechanics, coordinators, and supervisors to run the operation at LAX. Ogden provides ramp agents for all of the carriers that it services. In general, ramp agents' duties include: towing the plane to the gate; communicating with the pilot and other ramp personnel via headsets; loading and unloading the baggage and cargo; using traditional baggage moving machinery and equipment; and dumping the lavatory.²

The cabin cleaners remove trash from the aircraft, clean the seats and trays, fold and prepare the blankets and pillows, clean the lavatory, prepare equipment for flight attendants, perform security checks of the aircraft, and restock supplies such as tissue and toilet paper.

² The duties performed by ramp agents for the international carriers are specified in each international carrier's service agreement with Ogden.

Leads direct the work of either ramp agents or cabin cleaning employees. Supervisors oversee leads and are supervised by duty managers.

GSE mechanics maintain the ground service equipment, conduct preventative maintenance in accordance with airline and regulatory requirements, and change the oil of the aircraft. The coordinator's job is to ensure baggage is being placed in the proper container and to direct the work of the baggage handlers in the bag room.

Carrier Control over Ogden Operations and Employees

Ogden has contracts with all of the carriers it does business with at LAX. Each contract sets forth the services to be provided by Ogden, the standards which will govern those services, the training expectations and requirements of the carriers, the right to audit Ogden's records and services, the contract termination rights and additional rules imposed by each carrier.

With the exception of the Alaska Contract, which is self-contained, all other contracts use the simplified format dictated by the International Air Transport Association (IATA). The contracts signed by Ogden and the carriers are called Annex B and reference the Main IATA Agreement. The Main Agreement sets forth in general terms and has two Annexes, A and B. Annex A is a menu of possible contract terms and Annex B references specific sections of Annex A which apply. In addition, the carriers place supplemental terms in the Annex B contract they create and sign and may also attach a Service Level Agreement which outlines additional contract terms. For example, Ogden's contract with Cathay Pacific outlines a "Service Level Agreement" that details specific rules on documentation, personnel, standards on speed of service, required equipment, and references to Cathay Pacific ramp and cleaning manuals.

Authority to Remove or Discipline Ogden Employees

All of the contracts with Ogden contain provisions mandating that Ogden follow up on carrier complaints and comply with requests to reassign or remove an Ogden employee. For instance, a section of the Alaska Airlines contract states that Ogden must remove from service any of its employees “who display improper conduct or who for any reason whatsoever are unsatisfactory to Buyer or are deemed not qualified.” In its agreement with Alaska, Ogden is required to discipline its cabin cleaning employees if a cabin cleaning audit reveals that they failed to perform their jobs properly. The Ogden manager at LAX claims that he has had to terminate 10-15 Ogden employees based on Alaska’s requests.

Similar clauses exist in Ogden’s contracts with other carriers that allow the airline to request removal of any Ogden employee that does not meet specific requirements in the workplace. Both British Airways and Cathay Pacific have requested Ogden employees be removed from duty. Ogden’s LAX manager stated that he attempts to transfer an outgoing employee to a different account if he feels the employment relationship can be continued, but if there is no equivalent position available, the employee is terminated.

Work Scheduling

The carriers’ flight schedules determine Ogden’s employee schedules. Ogden takes the schedules from the airlines and creates a crew schedule whenever a carrier changes its own flight schedule. For example, Alaska Airlines dictates daily work assignments and directs when Ogden employees must work overtime. Ogden also uses a “dance card” printed from Alaska’s computer terminal which tells Ogden’s ramp agents when a bag is coming in on one flight and going out in another.

Daily Operations

The carriers dictate daily operations by establishing specific work scheduling procedures. Alaska provides Ogden with a load sheet that outlines the policies for loading an aircraft. Alaska also requires Ogden employees to follow the Fleet Service Control Sheet, which details the level of cleaning required for a specific job in the carrier's flight service. In addition, Ogden's baggage handling unit is tracked by Alaska using a "BYA" report, a document downloaded daily that requires Ogden employees to exhibit how they met certain performance standards. Ogden employees also use Alaska's System Arrival Reliability report, which details all delays on its aircraft. If an Ogden employee is responsible for the delay of an Alaska flight, Ogden is required to investigate the cause of the delay and report it to Alaska. Ogden is required to meet a 99 percent on-time standard for Alaska for each month.

For both cargo and passenger services with Cathay Pacific, Ogden employees must complete and sign a Cargo Door Seals Check Off List, a checklist that ensures the cargo door seals were not damaged by an Ogden employee while loading or unloading cargo. Ogden is required to provide Korean Airlines a manpower sheet identifying which Ogden employees will be working on its aircraft.

Supervisory Authority

All of the carriers who contract with Ogden are allowed direct supervision over Ogden employees in areas of safety and work procedures. Ogden employees are required to communicate and interact with managers and supervisors from the other carriers in order to satisfy various work rules. At the Cathay Pacific ramp, for example, Cathay Pacific agents give flight-specific instructions to Ogden employees for unloading items from cargo. In another example, in the event that bags for Japan Airlines (JAL) are delayed for any reason, JAL's supervisors require Ogden employees to respond to a

“Discrepancy Report,” which identifies the cause of the delay as well as outlining an action plan to prevent the incident from occurring in the future. The other carriers contracting with Ogden maintain similar supervisory control over Ogden employees during daily operations.

Ogden Attendance at Carrier Meetings

All carriers require Ogden employees to attend regular staff meetings to discuss company procedures and other pertinent business issues. JAL requires Ogden managers to attend a meeting in JAL’s Operations Room to discuss, among other things, arrival and departure of aircraft, wheelchair and handicapped issues, medical issues, and weather patterns. Also, Korean Airlines holds daily meetings that Ogden employees are required to attend.

Training

The carriers’ contracts with Ogden set forth training requirements for Ogden employees. For instance, Alaska Airlines requires all Ogden employees to attend their own in-house training seminars on its airline safety procedures. Alaska maintains an extensive safety training manual and requires Ogden employees to keep abreast of regular changes. Moreover, Alaska requires Ogden employees to adhere to Alaska’s company-specific training curriculum and requires training records be kept “in the format required by [Alaska]” i.e. in the “blue training folder” that is maintained for each employee at Ogden’s LAX operation. British Airways and Alaska require Ogden to have their employees trained as Loadmasters.

Audits

The carriers serviced by Ogden have the authority to perform routine audits for quality assurance on such issues as training files or operational issues. Alaska Airlines audits

Ogden's training records multiple times per year at random. Alaska also audits Ogden's fleet service and performs various other quality assurance measures. British Airways performs on-site audits that include monitoring Ogden's ramp agents and covers employee performance in all areas of ground handling. Cathay Pacific regularly audits preventative aircraft maintenance records. JAL and Korean Airlines also audit and perform various quality assurance measures approximately once every six months.

Equipment

In addition, Ogden claims that their employees consistently share equipment, uniforms and logos of the carriers they service. Qantas requires the Ogden ramp agents that perform towing service to wear a Qantas uniform which consists of a white shirt, grey pants, a Qantas safety vest and a Qantas jacket. The uniform contains the Qantas name and logo. Alaska requires that Ogden's equipment bear the Alaska Airlines' logo, and the carrier provides a stencil template and the actual sticker to be used to ensure their likeness. Alaska also requires all employees to use radios or cellular phones that are tuned into the carrier's frequency. British Airways mandates how Ogden employees working on the ramp will be dressed, and requires Ogden employees to wear green safety vests, similar to British Airways ramp agents at other airports. Because of this British Airways requirement, Ogden now requires all of its ramp personnel to wear green safety vests.

V. DISCUSSION

APPLICABLE LEGAL STANDARD

When an employer is not a rail or air carrier engaged in the transportation of freight or passengers, the NMB applies a two-part test in determining whether the employer and its employees are subject to the RLA. *Avex Flight Support*, 30 NMB 355 (2003). First, the NMB determines whether the nature of

the work is that traditionally performed by employees of rail or air carriers – the function test. Second, the NMB determines whether the employer is directly or indirectly owned or controlled by, or under common control with a carrier or carriers – the control test. Both parts of the test must be satisfied for the NMB to assert jurisdiction. *Avex Flight Support, above*. See also *Argenbright Sec., Inc.*, 29 NMB 340 (2002).

Ogden does not fly aircraft and is not directly or indirectly owned by an air carrier. Therefore, to determine whether Ogden is subject to the RLA, the NMB must consider the nature of the work performed and the degree of control exercised by its air carrier customers.

Ogden's Employees Perform Work Traditionally
Performed by Employees of Air Carriers

Ogden's employees provide fleet services for the carriers at LAX. The NMB has found that these services are traditionally performed by employees in the airline industry. *Integrated Airline Servs., Inc.*, 29 NMB 196, 199-200 (2002); *Globe Aviation Servs.*, 28 NMB 41, 45 (2000); *Evergreen Aviation Ground Logistics Enters., Inc.*, 25 NMB 460, 462 (1998); *AMR Combs-Memphis, Inc.*, 18 NMB 380, 381 (1991); *Ground Handling, Inc.*, 13 NMB 116, 117 (1986). Therefore, the NMB finds that Ogden's employees perform functions which have been traditionally performed by airline employees.

Carrier Control Over Ogden and Its Employees

To determine whether there is carrier control over a company, the NMB looks at several factors including: the extent of the carriers' control over the manner in which the company conducts its business; access to company's operations and records; role in personnel decisions; degree of supervision over the company's employees; control over employee training; and whether company employees are held

out to the public as employees of the carrier. *Aeroground, Inc.*, 28 NMB 510 (2001); *Miami Aircraft Support*, 21 NMB 78 (1993); *Ogden Aviation Servs.*, 20 NMB 181 (1993); *Sapado I (Dobbs Int'l Servs., Inc.)*, 18 NMB 525 (1991).

The carriers exercise substantial control over Ogden's LAX operations. The carriers require Ogden's employees to follow the carriers' operating and training procedures. The carriers' personnel direct and supervise Ogden's ramp service agents, and cabin service agents. The carriers' personnel report problems with Ogden service or employees and in some cases recommend discipline. Ogden follows the carriers' recommendations. In addition, the carriers review Ogden's records including monitoring daily and monthly cleaning, baggage handling and on-time performance records. The carriers' schedules dictate Ogden's staffing levels and hours. With the exception of Qantas, Ogden provides uniforms to its employees. The contracts between the carriers and Ogden stipulate personal appearance standards.

Alaska provides four airline passes per year to Ogden employees. Ogden leases office space from Alaska at below market rate. The carriers provide work space and equipment for Ogden's LAX operations at no charge to Ogden. Ogden employees interact with the carriers' personnel frequently throughout the course of a day.

The NMB has long held that the RLA deals with the present status and present interests of employees. *Argenbright Sec., Inc.*, 29 NMB 332 (2002); *Raytheon Travel Air*, 29 NMB 181 (2002). The facts in this case are distinguishable from the NMB's previous *Ogden* determinations. Since September 11, 2001, there have been significant changes in airport operations due to security and safety concerns. These changes have resulted in greater control exercised by air carriers over airline service companies. The carriers have significant daily control over Ogden's LAX operations. This increase in control is due in part to several factors: Menzies' acquisition of Ogden and

increased safety requirements imposed by the carriers as a result of the events of September 11, 2001.

The NMB has addressed the issue of RLA jurisdiction of airline service companies numerous times since its 1996 *Ogden* ruling. *Argenbright Sec., Inc.*, 29 NMB 340 (2002); *Argenbright Sec., Inc.*, 29 NMB 332 (2002); *Integrated Airline Servs., Inc.*, 29 NMB 196 (2002); *Huntleigh USA Corp.*, 29 NMB 121 (2001); *Trux Transp., Inc. d/b/a Trux Airline Cargo Servs.*, 28 NMB 518 (2001); *Aeroground, Inc.*, 28 NMB 510 (2001); *North American Aviation Servs., PHL, Inc.*, 28 NMB 155 (2000); *Globe Aviation Servs.*, 28 NMB 41 (2000); *Command Sec. Corp., d/b/a Aviation Safeguards*, 27 NMB 581 (2000); *Milepost Indus.*, 27 NMB 362 (2000); *AVGR Int'l Bus., Inc. d/b/a United Safeguard Agency*, 27 NMB 232 (2000); *Worldwide Flight Servs., Inc.*, 27 NMB 93 (1999); *International Total Servs.*, 26 NMB 72 (1998); *Evergreen Aviation Ground Logistics Enters., Inc.*, 25 NMB 460 (1998); *ServiceMaster Aviation Servs.*, 24 NMB 181 (1997). On July 11, 2003, the Board issued a jurisdictional determination finding that Menzies' d/b/a Ogden's operations at Portland, Oregon International Airport fall within the NMB's jurisdiction. *John Menzies PLC, d/b/a Ogden Ground Serv., Inc.*, 30 NMB 405 (2003). In each of these cases the Board has found that the airline service companies fall within the RLA's jurisdiction because a carrier or carriers exercise significant control over the airline service companies' operation at a particular airport. The NMB's determination in this case is consistent with this precedent.

The record shows that the carriers exercise sufficient control over Ogden's employees to support a finding of RLA jurisdiction.

CONCLUSION

Based on the record in this case and for the reasons discussed above, the NMB's opinion is that Ogden and its

30 NMB No. 77

employees at LAX are subject to the RLA. This opinion may be cited as *John Menzies PLC, d/b/a Ogden Ground Servs., Inc.*, 30 NMB 463 (2003).

By direction of the NATIONAL MEDIATION BOARD.

Benetta M. Mansfield

Benetta Mansfield
Chief of Staff

Copies to:

Roger H. Briton, Esq.

Maria Anastas, Esq.

Igor Miklashewsky

Michael D. Four, Esq.