



NATIONAL MEDIATION BOARD

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32 NMB No. 7
October 27, 2004

Richard A. Siegel
Associate General Counsel
National Labor Relations Board
Division of Operations-Management
1099 14th Street, N.W., Suite 10200
Washington, DC 20570-0001

Re: NMB File No. CJ-6852
Signature Flight Support/Aircraft Service Int'l, Inc.

Dear Mr. Siegel:

This letter responds to your request for the National Mediation Board's (NMB) opinion regarding whether Aircraft Service International, Inc. (ASII) is subject to the Railway Labor Act (RLA), 45 U.S.C. § 151, *et seq.* On May 19, 2004, the National Labor Relations Board (NLRB) requested an opinion regarding whether ASII's operations at its facility at the LaGuardia Airport, Flushing, New York (LGA) are subject to the RLA.

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

I. PROCEDURAL BACKGROUND

This case arose out of an unfair labor practice charge filed by the International Union, United Automobile, Agricultural Implement and Aerospace Workers, Local 365, AFL-CIO (UAW or Union) on February 3, 2004 with the NLRB. The Union was certified by the NLRB on April 20, 2001, in case 29-RC-9619, as the exclusive bargaining representative of all full-time and regular part-time employees of ASII at its Marine Air terminal at LGA. On January 20, 2004, ASII laid off all

bargaining unit employees except for two ground service equipment mechanics. Subsequently, the Union filed the unfair labor practice charge alleging that ASII failed and refused to bargain in good faith over the layoff of the bargaining unit employees, dealt directly with employees, and made unilateral changes without bargaining with the Union. During the investigation of this charge, ASII took the position that its operations and its employees were subject to the RLA.

On May 19, 2004, the NLRB requested an NMB opinion regarding the NMB's jurisdiction over ASII's operations at LGA. On May 21, 2004, the NMB assigned Susanna C. Fisher to investigate. On June 1, 2004, the NMB reassigned the investigation to Maria-Kate Dowling. On June 4, 2004, UAW and ASII each filed position statements.

The NMB's opinion in this case is based upon the request which includes an analysis and investigative record provided by the NLRB and the position statements submitted by ASII and the UAW.

II. ASII'S CONTENTIONS

ASII asserts that because it is not owned by or under common ownership with an RLA carrier, the jurisdictional issue turns on whether ASII is under the "control" of air carriers. In determining whether jurisdictionally significant control exists, the NMB examines the role of the carrier in the entity's daily operations and its effect on the manner in which employees perform their jobs. ASII notes that in the instant case, as in prior NMB decisions in which the Board found that ASII's operations in Las Vegas and Detroit are subject to the RLA, there is sufficient carrier control to establish RLA jurisdiction. ASII contends that the carriers at LGA control the manner in which ASII employees conduct their operations, including their schedule and staffing, the training ASII employees receive, and the work procedures they must follow as verified by carrier audits. ASII further contends that ASII's primary customer at LGA, American Trans Air (ATA), also supervises and interacts with ASII personnel, effectively

recommending disciplinary action against ASII employees, affecting ASII employment decisions and providing rewards to ASII employees, such as discounted flight pass benefits.

III. UAW's CONTENTIONS

UAW asserts that ASII waived NMB jurisdiction when it acquiesced in the NLRB-conducted election and certification of the bargaining unit and negotiated a collective bargaining agreement (CBA). Accordingly, UAW contends that the NMB should refer this matter back to the NLRB because under the NLRB's decision in *United Parcel Serv., Inc.*, 318 NLRB 778 (1995), *aff'd*, 92 F.3d 1221 (DC Cir. 1996), the NLRB is responsible for determining whether it has jurisdiction under the circumstances in this case. Although conceding that ASII employees at LGA perform work that is traditionally performed by employees of air carriers, UAW contends that ASII is not subject to substantial control of any commercial carrier because it has lost its ATA contract. Further, even before the ATA contract was lost, UAW contends that ATA did not exercise substantial direct or indirect control over ASII or its employees. According to UAW, only ASII's supervisors supervised ASII employees, only ASII's work rules applied, ATA did not effectively recommend discipline of ASII employees, and ASII employees wore ASII uniforms. Finally, UAW asserts that its CBA with ASII governed unit employees' terms and conditions of employment and under that contract's management rights clause ASII retained all rights and authority to operate and run its business, ceding no authority to any other entity.

IV. FINDINGS OF FACT

ASII

ASII,* founded in 1947, provides aviation fueling, ground handling, and other aircraft and passenger services. In July

* Aircraft Services International Group, Inc. is ASII's parent company and is frequently referred to as "ASIG." "ASIG" is

2001, BBA Group PLC (BBA), a British company, acquired ASII from Ranger Aerospace Corporation. At the time of the acquisition, BBA also owned Signature Flight Support (“Signature”), which primarily provided fixed-base operations (FBO) for privately-owned aircraft at various locations, but also provided some commercial aviation services. When BBA’s acquisition of ASII was announced, BBA also stated its intention to consolidate all its commercial airline fueling and ground handling activities under ASII, leaving Signature as the FBO provider. Although Signature had been providing FBO and commercial fueling and ground handling at LGA since 1993, the LGA operation was split in 2003. Signature continued to perform FBO while ASII took over the commercial fueling and ground handling.

Nature of Work for ASIG Employees

The employees in the unit primarily perform ground handling and ground service equipment (GSE) maintenance. The employees provide water service (putting water on the aircraft for faucets and drinking), lavatory service (flushing and pumping bathrooms on the aircraft), cargo transport, mail transport and baggage handling. The employees also de-ice aircraft since ASII is the primary de-icer for Midwest Express and secondary de-icer for USAirways at LGA. In January 2004, ASII lost its contract with ATA and laid-off all unit employees with the exception of two GSE mechanics. Since that time, ASII has been in negotiations to obtain additional ground handling work at LGA from other commercial airlines.

Authority to Remove or Discipline ASIG Employees

According to the declaration of Cesar Rizik, General Manager for ASII’s operations at LGA, ATA station manager Rodger Recker had the ability to effectively discipline ASII ground handling employees since he could and did request that certain employees not work on ATA’s ramp. For example, Rizik

however the trademark that is owned and utilized by ASII in the operation of its business.

noted that after Recker found an ASII employee asleep on the job, he requested that the employee be removed from the ramp. ASII terminated the employee. Rizik also stated that on another occasion, Recker reported that an ASII employee was involved in a theft and ASII terminated this employee. Finally, Rizik stated that ASII disciplined another employee when ATA reported that the employee had damaged the jetway motor and caused an aircraft delay.

Hiring

Rizik stated that ASII hired an individual for a supervisor position based on ATA's recommendation. This individual was subsequently fired at ATA's request when Recker began to have issues with the individual's performance. Rizik also stated that ATA recommended other individuals for supervisor positions.

Work Scheduling

In his declaration, Rizik states that the staffing and scheduling of ASII's ground handling employees was totally dictated by ATA's operations. ATA's schedule dictated both the timing of ASII's shifts and the number of ASII employees assigned to a particular shift. Any change to ATA's schedule directly effected ASII's ground handling operation. For example, ATA's modifications to its schedule following the events of September 11, 2001, resulted in the layoff of ASII ground handling employees. These employees were recalled when ATA increased its schedule. ASII also changed the start time of its employees in response to changes in the departure time of ATA's first flight of the day. Finally, during holidays, ATA often requested additional ground handling employees in the baggage room and ASII accommodated that request by assigning overtime to employees or hiring new personnel.

Supervisory Authority

ASII's operations at LGA are overseen by ATA station manager Rodger Recker. Recker reported performance problems to ASII and requested reports on the corrective action

taken with regard to those problems. On occasion, Recker requested additional baggage personnel for ATA's operations. Recker also raised issues with ASII's billing procedure for ATA and, to satisfy his concern, ASII transferred the ATA billing for LGA to its Newark operation.

ATA also distributed bulletins or information in monthly newsletters concerning procedures that it required ASII employees to be familiar with and to follow. For example, Rizik stated that in January 2003, ATA sent a memorandum to all ground handling employees regarding aircraft ground damage. The memorandum required that all ATA policies and procedures relating to the servicing and handling of ATA aircraft be reviewed with ground handling employees within 30 days. Subsequently, ATA followed up the memorandum with another memorandum describing the creation of a "Ramp Procedure Compliance Team (Team)" to observe the work of vendor personnel including ASII employees. If Team members determined that ATA procedures were not being followed or an unsafe action occurred, then they had the authority to critique the ramp agent, issue a citation, or shut down the operation entirely.

Rizik also cited an example from February 2003 when ATA sent an e-mail regarding aircraft taken out of service because of soot throughout the cabin and electronic bays. ATA attributed this problem to heat carts used to heat the aircraft overnight and instructed all ground handling personnel to be aware of the problem, to check the heat carts and keep them clear of snow and other obstructions, and to avoid letting the heat carts run unattended.

As a final example, Rizik noted ATA's Federal Flight Deck Officer (FFDO) Procedures regarding pilots' ability to transport weapons on aircraft. ASII was provided with these FFDO Procedures and was required to provide a statement of compliance with them.

ASII Attendance at Carrier Meetings

ASII representatives attended monthly ATA safety meetings. At these meetings, ATA reported and discussed any problems it had with ASII's performance. Issues raised at these meetings included: ensuring that aircraft and vehicles were properly chocked and attended; ensuring that workers wore appropriate protective gear; and ensuring that ATA's procedures were followed to the letter. Other issues, such as the positioning of belt loaders when loading baggage on aircraft, incidents in which ASII personnel failed to load or misloaded ATA aircraft, and the ASII staffing levels required by ATA for its operations were also discussed. If ATA determined that ASII had not adequately addressed an issue raised at one of these meetings, ATA would revisit that particular issue at later meetings.

Training

According to Rizik, ATA required all unit employees to undergo ATA-specific training on its procedures as set forth in its Ground Handling Manual. All ASII employees are expected to know and comply with the procedures in the manual. ASII used a "train the trainer" program through which ATA trained one or two ASII employees who were then certified to train other ASII employees on ATA procedures.

Rizik stated that ATA also required two weeks of classroom training for new ASII employees. The classroom training covered topics including a four-part ATA-specific training program. ATA required employees to take and pass quizzes in other areas such as hazardous materials, ground handling, and de-icing. ASII employees were also required to attend recurrent training once a year. The recurrent training lasted four hours. ASII was required to send ATA a list of employees who had successfully completed its training.

Midwest Express also required ASII employees to attend its own de-icing training which was conducted through a "train

the trainer” program. Midwest and USAirways mandated recurrent de-icing training for ASII employees once a year.

Audits

ATA performed yearly audits of ASII’s performance at LGA. Safety audits could occur as many times as ATA deemed necessary in a year. ATA was not required to provide ASII with notice of these audits. ATA used a detailed checklist during the audit and would provide ASII with a copy of the checklist and a summary of the issues that needed to be addressed. According to Rizik, in the 2002 audit, ATA identified several issues including failure to consistently follow the correct procedures for lavatory servicing, leaving belt loaders unattended while they were operating, failing to follow proper procedures for disconnecting aircraft tow bars, and having an incorrect aircraft tow-in line. ASII was required to report back to ATA on measures taken to correct these problems.

Other Carrier Interaction with ASII Employees

Using codes, ATA recorded the reasons for any delays its aircraft encountered. Under the performance incentive provisions of ATA’s contract with ASII, ASII was penalized for any delays related to its ground handling errors. If it was unclear who was at fault for a particular delay, ASII would discuss the issue with ATA. The discussions regarding delays usually took place every month or two. ASII’s bonus was also affected by any accidents or baggage count issues that ATA determined to be the fault of ASII.

ASII employees were required to do a walk-around inspection of the exterior of the aircraft, looking for damage. These walk-around inspections occurred each time there was an arrival or departure. On at least one occasion, in November 2003, an ASII employee noticed damage that ATA personnel had missed and this was reported to ATA’s operations at LGA. ASII baggage room personnel also filled out “bingo” sheets that matched the actual baggage to the numbers on the ATA weight and balance form. A “bingo” sheet was generated for each

outbound flight. Once complete, ASII employees would bring the “bingo” sheet to ATA.

ATA provided discounted flight benefits to ASII’s employees. ASII employees had unlimited, space-available passes on ATA, which had a value of \$75.00. ATA also rewarded ASII employees with pizza and provided lunch to employees during the 2003 New York City blackout.

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. *Signature Flight Support of Nevada*, 30 NMB 392 (2003). 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. *Signature Flight Support*, above; see also *AVEX Flight Support*, 30 NMB 355 (2003).

ASII does not fly aircraft and is not directly or indirectly owned by an air carrier. The UAW concedes that the unit employees at issue performed work that is traditionally performed by carrier employees. Therefore, to determine whether ASII is subject to the RLA, the NMB must consider the degree of control exercised by its air carrier customers.

To determine whether there is carrier control over a company, the NMB looks to 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 of the company’s employees; and control over employee training. *Signature Flight Support*, above; *John*

Menzies PLC, d/b/a Ogden Ground Servs., Inc., 30 NMB 405 (2003); *Aeroground, Inc.*, 28 NMB 510 (2001); *Miami Aircraft Support*, 21 NMB 78 (1993); *Ogden Aviation Servs.*, 20 NMB 181 (1993).

Carrier Control over ASII's Operations and Employees

In the instant case, ATA exercised substantial control over ASII's LGA operation. ATA's schedule dictated the staffing levels and hours for ASII's employees. ATA required ASII employees to follow their operating and training procedures. Failure to follow ATA procedures could and did result in discipline. Successful completion of the carrier-mandated initial training and recurrent training was reported by ASII to ATA as well as Midwest and Frontier. ATA was not required to provide notice for audits. With regard to safety audits, ATA determined at its discretion the number of audits required each year. ATA's personnel reported problems with ASII's employees and ASII complied with ATA's requests to terminate, discipline, and reassign individuals.

On May 14, 2004, the NMB issued a jurisdictional determination finding that ASII's operation at Detroit Metropolitan Airport, Detroit, Michigan falls within the NMB's jurisdiction. *Aircraft Serv. Int'l Group*, 31 NMB 361. Further, on September 3, 2004, in a decision addressing an application alleging a representation dispute among ASII's "fueler and ground handler" employees at Tampa Airport in Tampa, Florida, the NMB determined that ASII was subject to RLA jurisdiction and that the appropriate system for representation under the RLA includes all ASII's facilities nationwide. *Aircraft Services International Group*, 31 NMB 508. The NMB's determination in this case is consistent with this precedent.

The record shows that, at the time of the alleged unfair labor practice, ATA exercised sufficient control over ASII's employees to support a finding of RLA jurisdiction.

VI. CONCLUSION

Based on the record in this case and for the reasons discussed above, the NMB's opinion is that ASII and its employees at LGA were subject to the RLA. This opinion may be cited as *Signature Flight Support/Aircraft Serv. Int'l, Inc.*, 32 NMB 30 (2004).

By direction of the NATIONAL MEDIATION BOARD.

A handwritten signature in cursive script that reads "Mary L. Johnson".

Mary L. Johnson
General Counsel

Copies to:
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