



**NATIONAL MEDIATION BOARD**

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33 NMB No. 37

May 11, 2006

Henry S. Breiteneicher  
Acting Solicitor  
National Labor Relations Board  
1099 14<sup>th</sup> Street, N.W.  
Washington, DC 20571-0001

Re: NMB File No. CJ-6891  
Aircraft Services International Group, Inc.

Dear Mr. Breiteneicher:

This letter responds to your request for the National Mediation Board's (NMB) opinion regarding whether Aircraft Services International Group, Inc., (ASIG) is subject to the Railway Labor Act (RLA), 45 U.S.C. § 151, *et seq.* On January 13, 2006, the National Labor Relations Board (NLRB) requested an opinion regarding whether ASIG's operations at Pittsburgh International Airport (PIT) are subject to the RLA.

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

I. PROCEDURAL BACKGROUND

This case arose out of an unfair labor practice charge against ASIG filed by Teamsters Local 926 (Local 926) in NLRB

Case No. 6-CA-34603.\* In response to the charge, ASIG raised the issue of whether it was subject to the RLA. Following an investigation, on May 24, 2005, the Regional Office issued a Dismissal Letter, concluding that ASIG was subject to the RLA. On that same date, ASIG withdrew recognition from the IBT as the exclusive representative of the unit. On October 17, 2005, Local 926 filed a representation petition with the NLRB seeking to represent all non-supervisory personnel employed by ASIG at PIT. ASIG again objected to the NLRB's jurisdiction on the ground that its PIT employees and operations are subject to the RLA.

A hearing was held in NLRB Region 6 on October 27, 2005. On January 13, 2006, the NLRB requested an NMB opinion regarding the NMB's jurisdiction over ASIG's PIT operations. On January 20, 2006, the NMB assigned Maria-Kate Dowling to investigate. The participants filed their respective submissions with the NMB on February 2 and February 3, 2006.

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 ASIG and Local 926.

## II. ASIG'S CONTENTIONS

ASIG contends that Local 926 has not met its burden of establishing that ASIG is subject to the NLRA, not the RLA.

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\* On June 1, 1983, in Cases 6-RC-9347 and 6-RC-9351, the NLRB certified the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Airline Division (IBT) as the exclusive collective bargaining representative of ASIG's non-supervisory employees. Subsequently, the IBT assigned Teamsters Local 273 (Local 273) to administer the collective-bargaining relationship. In 2002, Local 273 was merged into Local 926. From 2002 until May 24, 2005, the IBT assigned Local 926 to administer the collective-bargaining relationship.

ASIG notes that not only has the NMB found ASIG's operations at other locations to be within the scope of the RLA, but that NLRB Region 6 reached the same conclusion with regard to ASIG's PIT operations in its May 24, 2005 decision, which neither the IBT nor Local 926 appealed. Further, ASIG contends that Local 926 has failed to show any material change in either the facts or the law since that decision.

According to ASIG, the record demonstrates that it is subject to the RLA under the NMB's two-part function and control test for determining jurisdiction of employers that are not owned by or under common ownership with an RLA carrier. The parties stipulated that the work performed by ASIG's employees satisfies the function part of the test. ASIG further contends that it satisfies the control part of the test since its commercial air carrier customers exercise substantial control over ASIG and its employees by: dictating the procedures that ASIG employees use in fueling and ground handling; establishing staffing levels; mandating training; directing ASIG employees in the performance of their duties; conducting detailed audits; and effectively recommending discipline for ASIG employees.

### III. LOCAL 926'S CONTENTIONS

Local 926 stipulated that the fueling and ground handling work performed by ASIG's employees is work traditionally performed by employees in the airline industry. Local 926 contends, however, that ASIG's commercial air carrier customers exert only minimal control over its PIT operation and employees. Local 926 states that ASIG maintains its own facility, establishes its own personnel policies, and makes work assignments. Local 926 contends that the evidence relied on by ASIG is simply evidence that a service-oriented business must tailor its operation to the needs of its customer.

#### IV. FINDINGS OF FACT

##### ASIG

ASIG provides fueling, ground handling, and other aircraft and passenger services primarily to commercial aviation customers. In July 2001, ASIG was acquired by BBA Group PLC, (BBA) a British corporation, and, at the time of the ASIG acquisition, BBA owned Signature Flight Support (Signature). Signature primarily provided fixed-base operations (FBO) for privately-owned and charter aircraft at various locations. Signature did, however, provide some commercial aviation services. Since the ASIG acquisition, the commercial airline activities, some of which were being provided under the Signature name, have been consolidated under ASIG leaving Signature as strictly an FBO provider.

At PIT, ASIG provides fueling services for approximately 20 commercial airlines, including US Airways, United, Delta, Northwest, American Airlines (American), Atlantic Southeast Airlines (ASA), and Continental (referred to collectively as Carriers). According to Steve Schirtzinger, General Manager of ASIG's PIT operation, ASIG fuels approximately 94 percent of the commercial flights departing from PIT each month. US Airways and its related US Airways Express regional feeder carriers (collectively US Airways) is ASIG's biggest customer at PIT. In 2004, US Airways constituted approximately 84 percent of ASIG's fueling business and approximately 74 percent of ASIG's fueling business for the first nine months of 2005. Schirtzinger stated that approximately 70-75 percent of ASIG's PIT employees provide service for US Airways aircraft. ASIG also provides ground handling or "ramp" service for USA 3000 and Ryan International. This service includes baggage handling, aircraft marshalling and pushback, positioning of passenger stairs and jetways to the aircraft, and aircraft cleaning.

The petitioned-for unit also includes employees who operate and maintain the fuel facility or “tank farm” from which the Carriers receive their aviation fuel and employees who maintain the ground service equipment (GSE). The remaining ASIG employees at PIT are management, administrative, passenger service agents or tower coordinators who provide an interface between US Airways operations and the ASIG Fuelers.

#### Nature of Work for ASIG Employees

General Manager Schirtzinger stated that ASIG has basic job descriptions that apply throughout the company. At PIT, as discussed above, employees are involved in fueling, ground handling, equipment maintenance and running the tank farm.

ASIG also has a contract to operate and manage the tank farm with the fuel consortium which is composed of 11 of the Carriers. Employees operating the tank farm work 24 hours a day, seven days a week and keep track of the amount of fuel received from suppliers. Tank Farm Attendants deliver fuel to the gates and the Fuelers assigned to those gates fuel the aircraft. According to an ASIG employee, Fuelers usually fuel eight aircraft per shift. The time it takes to fuel an aircraft is determined by the size and type of aircraft as well as the aircraft’s destination. ASIG Fuelers work at three of the four concourses at PIT.

GSE maintenance also operates 24 hours a day, seven days a week. GSE employees perform both preventative maintenance and repair equipment breakdowns. Normally, equipment needing maintenance or repair is brought to them but sometimes one or two employees ride from gate to gate repairing breakdowns.

Ground handling employees perform the following duties: loading and off-loading baggage; flagging aircraft in; dumping lavatories; cleaning aircraft; and pushing aircraft out.

Carrier Control over ASIG's Operations and Employees

Audits

ASIG Operations Manager, Don Friel, testified that audits are one of the ways the Carriers monitor ASIG's performance. Each Carrier conducts at least one yearly audit while some Carriers conduct two. The Carriers are not required to announce the audit ahead of time and, according to Friel, ASIG often has unannounced audits. According to Schirtzinger, the Carriers audit ASIG for compliance with the Carriers' service and training manuals. During these audits, the Carriers examine whether ASIG equipment, employee training, employee performance, and fuel quality meets certain Carrier-set standards. During these audits, the Carriers have the right to access training records, fuel records, and equipment records. For some audits, the process includes observing ASIG employees performing their job duties or interviewing individual ASIG employees to find out how they perform their job. At the end of the audit, the Carrier conducts an exit interview with ASIG. ASIG also receives a formal audit report stating their findings and identifying any area that the Carrier believes ASIG is not complying with the Carrier's procedures. ASIG has a specified amount of time to respond to the Carrier in a writing outlining the corrective measures taken. Corrective measures can include retraining or discipline.

Some contracts between ASIG and the Carriers require that ASIG employees pass background checks. ASIG's contract with US Airways allows the Carrier access to its "complete and accurate books, records, and documents from which may be determined the basis for billing, inventory, management and for compliance" with the US Airways-ASIG contract. ASA's contract requires ASIG to maintain and allow the inspection of any ASIG records relating to employment, employee access investigations conducted by ASIG, motor vehicle record checks

performed by ASIG, and employee drug and alcohol testing records conducted by ASIG.

### Work Scheduling

Every month, the Carriers provide ASIG with their flight schedule. Based on that information, Operations Manager Friel creates an employee schedule to match the airline's needs. The schedule contains days off and starting times but no employee names. When the union contract was in effect, employees would bid for a shift based on seniority. Currently, Friel places employees where they are needed.

According to Friel, he balances the need to meet the service requirements of the Carriers against his desire not to have too many people on duty. When a Carrier changes its schedule, he has to move an employee to an earlier start. When US Airways reduced its flying into PIT, Friel decreased the number of ASIG personnel. When US Airways had a significant cut in flights in 2005, 15-20 employees switched from full-time to part-time and a few were furloughed. When USA 3000 increased their flights, he converted some of those part-time employees back to full-time. When ASIG lost the baggage handling contract for Delta, Friel absorbed some of those employees in fueling and furloughed the others.

The Carriers do not set any requirements regarding the number of Fuelers employed by ASIG or a ratio of full-time to part-time employees. However, Station Manager Schirtzinger, has met with the US Airways station manager for the sole purpose of discussing ASIG's staffing levels. Schirtzinger stated that delays are a big issue with the Carriers and US Airways wanted to review ASIG's staffing levels on its flights to address delays.

Station Manager Schirtzinger testified that the fuel consortium reviews and has final approval power over ASIG's staffing levels at the tank farm.

Supervisory Authority and Daily Interaction

Individual Fuelers receive their assignments within the airport at the beginning of their shifts. ASIG posts the location of that shift's assignment which determines which aircraft are fueled. Fuelers on the a.m. shift report at different daily starting times beginning at 4:30 a.m. Maintenance and Tank Farm employees report at 7:00 a.m. On the afternoon shift, employees begin reporting at 1:00 p.m. The midnight shift runs from 11:00 p.m. through 4:30 a.m. and consists of one Fueler, one Tank Farm employee and one GSE mechanic. ASIG supervisors are not on duty on the midnight shift.

Different Carriers use different methods to communicate their fuel needs to ASIG employees. For example, US Airways Express operations communicates the amount of fuel to be loaded on the air craft by radio and the ASIG Fueler checks with and gets a release from the pilot. On the mainline US Airways, the fuel release stating the particular aircraft and fuel load is printed on a printer in the ASIG break room. For other Carriers, including Northwest and Continental, the Fueler reports to their operations and receives a load from a Carrier representative.

GSE Mechanics, Ground Handlers and Cleaners also routinely interact with Carrier employees. During audits, mechanics are questioned by Carrier representatives about their work procedures. Ground Handlers sign load receipts for the Carrier, stating where the luggage is placed, and are notified when a passenger does not make a flight so that luggage can be removed. Ground Handlers also provide the pilot with a load sheet as part of the pilot's preflight calculations to determine whether the aircraft is properly loaded. If the aircraft is not properly balanced, the Ground Handlers reorganize the stowed luggage. When aircraft are "deep cleaned," that is the aircraft is stripped for cleaning, the



ASIG cleaners work with the Carrier's mechanics who remove the equipment like ovens and toilets.

On the midnight shift, when no ASIG supervisors are on duty, Carrier personnel contact ASIG employees directly and the ASIG employees follow the directions of the Carrier representative. According to Friel, when there are flight delays on the other shifts, Carrier personnel can and do direct ASIG employees without going through an ASIG supervisor.

#### Authority to Remove or Discipline ASIG Employees

According to ASIG Operations Manager Friel, ASIG employees receive discipline for the violation of company rules and regulations, Carrier rules and regulations or airport authority rules and regulations. Depending on the nature of the violation, the employees will receive a verbal warning, a written warning or a suspension. Friel testified that he imposes discipline and reviews the disciplinary decisions of ramp supervisors.

An ASIG employee testified that there have been instances where Carrier equipment was damaged, the Carrier complained, and an ASIG employee was disciplined. The employee witness conceded that he himself had been discharged and subsequently recalled to work as a result of an incident reported by a Carrier to ASIG. Friel stated that the issues that the Carriers observe have lead to disciplinary action against ASIG employees. For example, a US Airways foreman observed two ASIG employees using ASIG equipment to fuel their personal vehicles. The US Airways employee stopped the employees and reported the incident. As a result, the two employees were terminated.

According to Friel, there have been at least four instances where an ASIG employee has been disciplined as a result of an audit. Friel stated that when an employee is observed violating Carrier policy, the Carrier will demand that

ASIG take corrective action. The level of discipline imposed is Friel's decision but the Carrier must be notified of the corrective action taken.

Friel also testified that there have been at least three instances where an ASIG employee was removed from a Carrier account at the Carrier's request. Such a right of removal at the Carrier's request is included in ASIG's contract with US Airways. As an example, Friel cited a request from American that a particular employee be removed from their account because of problems with poor service and delays. Friel stated that to his knowledge this employee has not returned to work on the American account.

#### Equipment

ASIG has ground equipment for use at the tank farm and at the gates. At the tank farm, the only equipment ASIG owns is seven tanker trucks. The five hydrant trucks and 19 hydrant carts used by ASIG are owned by US Airways. When ASIG uses this equipment to fuel another Carrier, it pays US Airways a quarter cent of a gallon for every gallon pumped through that equipment. The fuel consortium owns two other tanker trucks and the three trucks used by ASIG to fuel ground service equipment. For use at the gate, ASIG has ground handling equipment including a belt loader, a pushback for towing or pushing out aircraft, baggage carts for loading or off-loading bags to aircraft, and baggage tugs for transporting baggage carts to and from the aircraft.

#### Facility

The operations facility used by ASIG is leased by the fuel consortium from the airport authority and it is provided to ASIG at no charge. The fuel consortium is responsible for the upkeep and maintenance of the facility. US Airways provides break rooms for ASIG employees on concourses A and B at no charge.

Under its contract with the fuel consortium, ASIG is compensated on a cost plus basis. The consortium pays for all the costs to operate the facility from utilities to wages, benefits, supplies, repair maintenance items and ASIG receives a management fee on top of those costs. The consortium conducts an annual budget review meeting. Each Carrier member of the consortium sends a representative to compare actual expenses to the budgeted expenses.

### Training

When performing work for the Carriers, ASIG employees must follow the fueling and ground handling procedures in each Carrier's manuals. ASIG maintains manuals for each of the Carriers it services. Each manual sets forth the Carrier specific training required to fuel a particular air craft.

Under a "train the trainers" program, the Carrier trains ASIG employees to do its training. The Carrier either conducts the training at PIT or the ASIG employees travel to the Carrier's station. Operations Manager Friel stated that he had received Delta training in Dallas, Cincinnati and Atlanta and a Mesa training class in Charlotte. According to Friel, other employees received United training in San Francisco and other stations. After completion of this training, the Carrier certifies the ASIG employee as a Carrier trainer. Friel stated that under each of ASIG's agreements with the Carriers, the training must be conducted by that Carrier and not by some other training service.

Upon hiring, each ASIG employee gets classroom training. The new employee then begins "hands on training" and is assigned to work with either a lead agent or a ramp agent to learn how to fuel different types of aircraft. Certain Carriers also require employees to take tests or quizzes to test their knowledge. These quizzes are administered and scored by ASIG and kept on file for audits. When an employee has

demonstrated the requisite skills, the trainer certifies that employee as having the necessary skills. According to an employee witness, the training Fuelers received is both specific to the type of aircraft and to the Carrier. Certain Carriers require recurrent training. This training is specific to that Carrier and each Carrier decides when and how often recurrent training is required. For example, Delta maintains a spread sheet of ASIG employees' recurrent training. Further, when a Carrier acquires new equipment, ASIG employees receive training from the Carrier and the aircraft's manufacturer.

Some Carriers also require ASIG to update them periodically on who is authorized to fuel their aircraft. For example, Friel noted that Delta and USA 3000 require monthly updates with a new training roster. Continental requires a new roster every time an ASIG employee is trained.

The Carriers also periodically provide ASIG with "service bulletins," which identify areas to be focused on and provide updated or changed procedures. ASIG is required to identify the employees who have read and been trained on the service procedures.

### Uniforms

At PIT, ASIG employees wear uniforms including shirts with their name and the ASIG insignia. The employees also wear hats with the ASIG emblem and foul weather gear with an ASIG patch. No employees wear clothing or uniform bearing Carrier insignia.

### ASIG Attendance at Carrier Meetings

ASIG's Operations Manager Friel attends monthly station managers meetings and airport security meetings. These meetings include stations managers from each Carrier at PIT. Friel also attends the monthly US Airways safety meeting and the quarterly US Airways Express safety meeting.

## 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. *Empire Aero Center, Inc.*, 33 NMB 3 (2005). 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. *Empire Aero Center, Inc.*, *above*. See also *Signature Flight Support*, 32 NMB 214 (2005); *Signature Flight Support/Aircraft Serv. Int'l, Inc.*, 32 NMB 30 (2004).

ASIG does not fly aircraft and is not directly or indirectly owned by an air carrier. The Local 926 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.

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; whether employees are held out to the public as carrier employees and control over employee training. *Empire Aero Center, Inc.*, 33 NMB 3 (2005); *Signature Flight Support*, *above*; *Signature Flight Support/Aircraft Serv. Int'l, Inc.*, *above*; *John Menzies PLC*,

*d/b/a Ogden Ground Servs., Inc.*, 30 NMB 405 (2003);  
*Signature Flight Support of Nevada*, 30 NMB 392 (2003).

Carrier Control over ASIG and Its Employees

The record in the instant case establishes that ASIG's Carrier customers exercise substantial control over ASIG's PIT operation. The schedules of US Airways and the other Carriers dictate the staffing levels and hours worked for ASIG's employees. The Carriers require that ASIG employees follow their operating and training procedures. The Carriers mandate that ASIG maintain records of its employees' successful completion of the Carrier-mandated initial training and recurrent training. Certain Carriers, including Delta, USA 3000, and ASA require ASIG to regularly inform them of the identity of the ASIG employees certified and authorized to perform work on their aircraft. The Carriers determine when, how often and what kind of recurrent training is required. The Carriers do not provide notice for audits. The Carriers have access to ASIG's training records and fuel records.

Although ASIG hires its own employees, the Carriers report problems with ASIG's employees. ASIG has complied with the Carriers' requests to discipline and reassign employees. ASIG employees interact with Carrier personnel frequently throughout the course of a day. ASIG management regularly attend monthly meetings with the Carriers' station managers as well as monthly and quarterly US Airways safety meetings. US Airways and the other Carrier members of the fuel consortium own almost all of the equipment used by ASIG. US Airways provides a break room for ASIG employees at no charge to ASIG. The lack of Carrier insignia on ASIG employees' uniforms does not negate the other evidence of substantial carrier control.

The NMB has repeatedly found ASIG's operations to be subject to the RLA. Beginning in 2003, in cases referred from the NLRB, the NMB determined that ASIG's commercial

aviation operations at McCarran International Airport, Las Vegas, Nevada, and at Detroit Metropolitan Airport, Detroit, Michigan, were subject to the NMB's jurisdiction. *Aircraft Serv. Int'l Group, Inc.*, 31 NMB 361 (2004); *Signature Flight Support of Nevada, above*; In March 2004, the International Association of Machinists and Aerospace Workers (IAM) filed a petition with the NMB seeking to represent Fuelers and Ground Handlers at ASIG's Tampa International Airport, Tampa, Florida. *Aircraft Serv. Group*, 31 NMB 508 (2004). While the petition in that case was ultimately dismissed because of an insufficient showing of interest, the Board found, consistent with its jurisdictional determinations in Las Vegas and Detroit, that ASIG was subject to the RLA and that the appropriate system for representation under the RLA included all of ASIG's facilities nationwide. In a subsequent referral from the NLRB, the NMB again determined that ASIG's commercial aviation operations at LaGuardia Airport, Flushing, New York was subject to the RLA. *Signature Flight Support/Aircraft Serv. Int'l. Inc.*, 32 NMB 30 (2004). The determination in the instant case that ASIG's commercial aviation operations are subject to the RLA is consistent with these prior determinations.

Local 976 argues that the NMB's decision in *Signature Flight Support*, 32 NMB 214 (2005) casts doubt in some way on our previous determinations that ASIG is subject to the RLA. This case is, however, wholly distinguishable. *Signature Flight Support* involved a sister-company of ASIG, a fixed-base operator, providing services for privately-owned, corporately-owned and fractionally-owned aircraft. Signature owned and maintained its own equipment, limited access by its sole carrier customer to its records and had the latitude to choose the training programs for its employees. In contrast, ASIG is mandated to provide Carrier specific training, is subject to audits without notice, uses Carrier-owned equipment and facilities, and has disciplined employees at the request of the Carriers.

In sum, the record shows that ASIG's Carrier customers exercise sufficient control over ASIG's operations 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 ASIG and its employees at PIT are subject to the RLA. This opinion may be cited as *Aircraft Serv. Int'l Group, Inc.*, 33 NMB 200 (2006).

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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