



**NATIONAL MEDIATION BOARD**

WASHINGTON, DC 20572

(202) 692-5000

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June 29, 2006

Henry S. Breiteneicher  
Acting Solicitor  
National Labor Relations Board  
1099 14<sup>th</sup> Street, N.W.  
Washington, DC 20570-0001

Re: NMB File No. CJ-6897  
Aircraft Services International Group, Inc.

Dear Mr. Breiteneicher:

This responds to your request for the National Mediation Board's (NMB) opinion regarding whether Aircraft Services International Group, Inc. (ASIG or Employer) is subject to the Railway Labor Act (RLA)\*, 45 U.S.C. § 152, (Section 2, Ninth). On March 15, 2006, the National Labor Relations Board (NLRB) requested an opinion regarding whether ASIG's operations at Albuquerque International Airport (Albuquerque) in Albuquerque, New Mexico, are subject to the RLA.

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

I. PROCEDURAL BACKGROUND

This case arose out of a representation petition filed by Chauffeurs, Teamsters, and Helpers, Local Union 492, International Brotherhood of Teamsters (Local 492 or Organization) in NLRB Case No. 28-RC-6419. Local 492 seeks to represent all Ramp Servicemen, Fuelers, GSE Mechanics, and A&P Mechanics at Albuquerque. The petitioned-for employees are currently represented by the International

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\* 45 U.S.C. § 151, et seq.

Association of Machinists and Aerospace Workers, District Lodge 142, AFL-CIO (IAM). In response to the petition, ASIG asserted its position that its operations and employees are subject to the RLA.

A Representation Hearing was held in NLRB Region 28 on December 28, 2005. On March 15, 2006, the NLRB requested an NMB opinion regarding NMB jurisdiction over ASIG operations at Albuquerque. The NMB assigned Maria-Kate Dowling to investigate. On March 29, 2006, ASIG filed its position statement with the NMB. Neither Local 492 nor the IAM submitted a position statement to the NMB.

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 statement submitted by ASIG.

## II. CONTENTIONS

ASIG contends that Local 492 has not met its burden of establishing that ASIG is subject to the National Labor Relations Act (NLRA), and not the RLA. Relying on recent NMB determinations, ASIG contends that its operations are subject to the RLA. ASIG states that Local 492 has failed to show any material change in either the facts or the law since those prior decisions.

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 contends that it satisfies the control part of the test since the carriers exercise substantial control over how ASIG conducts its operations, such as: training employees; accessing records; affecting personnel decisions; supervising employees; establishing staff levels and schedules; rewarding employees; mandating an appearance requirement for employees; and

monitoring equipment used by ASIG. ASIG asserts there is no difference between the amount of carrier control exercised over ASIG's Albuquerque operations and the amount of carrier control exercised over ASIG operations in other cases where RLA jurisdiction has been found.

In its submission to the NLRB, Local 492 stipulates that the fueling and ground service work performed by ASIG's employees is work traditionally performed by employees in the airline industry. However, Local 492 contends there is no direct or indirect carrier control of ASIG's operations at Albuquerque because the relationship between ASIG and the Carriers is purely one of a service provider and its customer. Local 492 asserts that ASIG hires and disciplines its own employees, determines pay rates through a collective bargaining agreement, and determines its own manpower and scheduling needs. Local 492 also asserts that ASIG employees wear ASIG uniforms and possess ASIG-issued employee identification cards, which identify them as ASIG employees. Additionally, the Organization states that the evidence on which ASIG relies is simply evidence that a service-oriented business must tailor its operations to the needs of its customers.

IAM made no submissions in this matter and did not stipulate to any facts.

### III. FINDINGS OF FACT

#### ASIG

ASIG provides fueling, ground handling, and other aircraft and passenger services primarily to commercial aviation customers. In July 2001, BBA Group, PLC (BBA), a British company, acquired ASIG. At the time of the acquisition, BBA also owned Signature Flight Support (Signature), primarily a provider of fixed-based operations (FBO) for privately-owned and charter aircraft at various locations. Signature also provided some commercial aviation services. Since the ASIG acquisition, BBA has consolidated all

its commercial airline activities under ASIG, leaving Signature as strictly a FBO provider.

In Albuquerque, ASIG fuels the aircraft of all carriers operating in and out of the airport, including: American, America West, Chautauqua, Continental, Frontier, Great Lakes, Mesa, Southwest, UPS and FedEx (referred to collectively as the Carriers). According to ASIG General Manager, Gordon Hess, ASIG has basic job descriptions that apply throughout the company. At Albuquerque, ASIG employs approximately 32 employees: 17 Fuelers; three Aircraft Mechanics (A&Ps); four Ground Service Equipment Mechanics (GSEs); and three Tank Farm Agents who operate and maintain the fuel facility (Tank Farm) from which the Carriers receive their aviation fuel. The remaining employees are management or administrative employees.

#### Nature of Work for ASIG Employees

The A&Ps provide on-call maintenance. The Carriers call the A&Ps when aircraft service is needed, such as preventative maintenance on aircraft, tire changes, and post-landing maintenance. The Carriers are not required to go through ASIG management before contacting the A&Ps. At American, the maintenance control department will call or page the A&Ps directly and request their services. The A&Ps work regularly scheduled shifts anywhere from 5 a.m. until 10 p.m. Following their shifts, at least one A&P is placed on-call for a certain number of hours, based on the Carriers' needs. There is an A&P on-call or on-duty 24-hours a day.

Fuelers determine how much fuel is required for a particular flight, based on an individual Carrier's fuel ticket, which indicates the amount of fuel requested. If an aircraft is misfueled with too much fuel or because of a change in the departure, a Fueller might have to defuel the plane, a different and more complex process than fueling. ASIG Fuelers fuel between six or seven different kinds of aircraft, and the type of aircraft used determines the services needed.

Tank Farm Agents work 24-hours a day, seven days a week, and monitor the amount of fuel received from suppliers. Tank Farm Agents deliver fuel to the gates, where the Fuelers assigned to those gates then fuel the aircraft. Fueling vehicles are reloaded at the Tank Farm where the Fueler drives the vehicle to the airline and hooks a hose from the vehicle into the aircraft to be loaded.

GSEs work on the ground service equipment for both ASIG and the Carriers. GSEs are also on-call 24-hours a day, seven days a week. GSEs perform both preventative maintenance and repair equipment breakdowns.

### Carrier Control over ASIG's Operations and Employees

#### Carrier Manuals and Procedures

In Albuquerque, each Carrier has its own set of manuals that set forth specific procedures to be followed by ASIG. The manuals outline fueling and maintenance requirements for the aircraft type used by the Carriers. Each contract ASIG has with the Carriers requires ASIG to operate in compliance with the manuals or risk consequences, such as FAA-imposed fines. According to General Manager Hess, each manual establishes the overall relationship between ASIG and the Carriers. Each contract authorizes the Carrier to terminate its agreement with ASIG if it believes ASIG is not in compliance with its specified procedures. At American, the Carrier may terminate its contract if, in American's opinion, the safety of its operations is jeopardized by ASIG. At Mesa, the Carrier reserves the right to cancel its agreement at any time for failure to understand, adhere to, or provide documentation of performance in all areas contained in the contents of its manual.

Each Carrier also requires ASIG to update its specific manual with the latest Carrier revisions. Delta, FedEx, Chautauqua, Frontier, and Great Lakes all require ASIG to keep current with all FAA and Carrier-issued revisions, directives, and alerts regarding updates, amendments, or modifications of the manuals. In addition to manual updates,

the Carriers also issue service bulletins from time-to-time, which identify new or changed procedures that must be followed. ASIG's employees are expected to adhere to these bulletins, and may be required to sign an acknowledgment to that effect. At Frontier, ASIG's A&Ps are required to sign and date each service bulletin to acknowledge receipt. Hess stated that there have been instances where Carriers have required him to obtain the acknowledgement from ASIG employees to show they have been informed of any manual revisions.

In addition to the manuals, Carriers may also verbally instruct ASIG employees to follow certain procedures. Hess testified that for a while, American mandated that all ASIG Fuelers working on the Carrier's aircraft wear reflective vests. Hess stated no other Carrier mandated this requirement.

Each Carrier also mandates specific procedures for the maintenance and operation of its Tank Farm. Each Carrier provides ASIG with its monthly fueling needs and specifies the steps a Tank Farm Agent must follow when accepting fuel into the Tank Farm. Each Carrier's fueling manual also provides requirements for the types of Carrier inspections conducted on a daily, monthly, semi-annual, and annual basis. Hess testified that Continental inspects fuel trucks and other machinery, checks for leaks, and actually observes Tank Farm Agents receiving the fuel. Hess stated that the Carriers may recommend changes to ASIG about the Tank Farm and the Tank Farm Agents. Hess also stated that Southwest recommended that ASIG build a new Tank Farm and hire a new Tank Farm Manager to oversee the new facility. According to Hess, ASIG complied with Southwest's request.

### Training

Under the Carriers' "train the trainer" program, ASIG employees are trained by the Carriers and then authorized to conduct training on the Carriers' behalf. Most Carriers also require periodic recurrent training. The training may take place in Albuquerque or at the Carriers' individual facilities. A Fueller testified that he has been required to take Carrier-

specific training, both upon his initial hire by ASIG and on a recurrent basis. After the training is complete, the Carriers certify the trained ASIG employee as a Carrier trainer. Hess stated that he conducted training pursuant to the “train the trainer” program and that such training was conducted on behalf of the Carriers.

Each Carrier also requires that ASIG maintain records of employees who are certified to fuel and maintain their aircraft. The Carriers require ASIG to keep them regularly informed as to the identity of the certified employees. Hess stated that he provides monthly updates to several Carriers on the identity of ASIG employees who have been trained to service their aircraft.

#### Audits

According to General Manager Hess, audits are one way the Carriers monitor ASIG’s performance. Each Carrier conducts at least one yearly audit, but sometimes they may occur monthly. The Carriers are not required to give advance notice of the audits. Hess stated that there have been instances where the Carriers have made unannounced audits to determine ASIG’s compliance with the Carriers’ maintenance, fueling, and training manuals. During these audits a Carrier examines: the condition of equipment used by ASIG; whether paperwork is completed to the Carrier’s satisfaction; the adequacy of ASIG’s record-keeping; and the manner in which ASIG employees perform their duties. During these audits, the Carriers have the right to access ASIG training records, fuel records, equipment records, and background investigations. American, Delta, and FedEx explicitly state in their contracts that they reserve the right to inspect ASIG’s records.

At the conclusion of its audit, the Carrier will generally provide a verbal summary of its findings. The verbal summary is followed by a written audit report, identifying discrepancies or shortcomings. After receiving the written audit report, ASIG is required to inform the Carrier of the corrective measures

taken in response to the issues identified in the audit. Corrective measures can include retraining or discipline.

Some contracts between ASIG and the Carriers require ASIG employees to pass background checks and make available certain records. ASIG's contracts with American, America West, Delta, and FedEx require ASIG to maintain fueling records for the Carriers' inspection, and authorize the Carriers to audit certain ASIG employment records.

#### Authority to Remove or Discipline ASIG Employees

The collective bargaining agreement between ASIG and the IAM gives the employer the right to discharge an employee, subject to the grievance procedure, when ASIG "has received order from an airline customer refusing to allow employee to work on their account." ASIG Regional Human Resource Manager Johnny Lavoie testified that the Carriers have effectively recommended the termination of ASIG employees by contacting the station General Manager or the Regional Vice President. Lavoie stated that in March 2005, General Manager Dave Lawver was terminated after Southwest demanded his removal based on what the Carrier perceived to be his inexperience in dealing with the Tank Farm. Lavoie stated further that but-for Southwest's demands, ASIG would not have created and filled the position of Tank Farm Manager in Albuquerque.

Carrier complaints about the performance of ASIG employees noted during the audit process have also resulted in disciplinary action against those employees. Hess stated that he has verbally counseled employees and issued written warnings for incidents that were observed by the Carriers and reported to ASIG during their audits. According to Lavoie, the small size of the Albuquerque operation makes it difficult for ASIG to retain an ASIG employee who had been barred from working with a particular Carrier. Lavoie stated that an ASIG employee who is no longer permitted to work on a Carrier's account would most likely be terminated because it would not



be feasible to employ a worker who could not service all of ASIG's customers.

Authority to Promote or Reward ASIG Employees

In Albuquerque, Carriers have effectively recommended promotions for ASIG employees. Hess testified that an ASIG employee was made Lead A&P based on a recommendation by American, despite not being the senior employee in the position, and being employed with ASIG for only a few months. Lavoie testified that another ASIG employee was promoted to supervisor of the aircraft maintenance department and the GSE shop based on one Carrier's positive comments to ASIG.

In March 2004, Southwest funded a party for ASIG Fuelers and Tank Farm Agents when there were no fueling-related delays during the January-June period and the July-December period. Lavoie testified that Southwest also provided three flight passes for a drawing among ASIG employees.

Supervisory Authority and Daily Interaction

In Albuquerque, A&Ps deal exclusively with Carrier personnel in performing their duties, including the assignment of work and the diagnosis and repair of maintenance problems. When a Carrier needs aircraft maintenance service it contacts the on-call A&P directly. Even if an additional A&P is called to assist the first, no prior approval is required from ASIG management. Once contacted, the A&Ps report to the aircraft, discuss the nature of the problem with the assigned aircraft pilot, and work with the Carrier's maintenance control department for proper diagnosis and repair. The repairs must be made under the Carrier's guidelines specified in its maintenance manuals. The A&Ps use the Carrier's tools to perform the repairs. When the repairs are completed, the A&Ps sign a log book that is kept in the aircraft to indicate the work performed.

GSEs also have substantial interaction with Carrier personnel. One GSE testified that he deals directly with the

Carriers' general managers, and is not required to first notify ASIG management. Fuelers also interact directly with Carrier personnel. Hess testified that Mesa verbally instructs Fuelers on the amount of fuel required for each particular flight. Fueler oversight by Carrier personnel occurs during certain fueling procedures, such as defueling or dealing with inoperative fuel gauges. Hess testified that Chautauqua personnel supervise Fuelers when defueling their aircraft, and FedEx personnel supervise Fuelers during maintenance of its inoperative gauges. In addition, Hess stated that in certain situations, Carrier personnel also have the authority to tell a Fueler to stop fueling an aircraft and to fuel another of its flights.

#### Work Scheduling

According to each Carrier's contract, ASIG employees are obligated to fuel and maintain each Carrier's operations even if there are unanticipated schedule changes or added flights. Delta's contract requires ASIG to provide on-call A&Ps 24 hours a day, seven days a week. FedEx's contract requires ASIG to provide adequate manpower and equipment for the scheduled departure of its aircraft. America West's contract contemplates the possibility that changes in its scheduling could result in an increase or decrease in ASIG's manpower, thus triggering the Carrier's right to renegotiate ASIG's fees.

The flight schedules and service requirements for each Carrier also dictate ASIG's staffing in Albuquerque. Hess testified that each Carrier's schedule affects staffing levels because they determine both the number of Fuelers and the shifts to which they are assigned. Hess stated that in December 2005, Delta rescheduled a flight to an earlier time, which caused ASIG to change the report time of one of its employees. Hess also stated that when Mesa reduced its flight schedule, ASIG likewise reduced the size of its fueling staff by not hiring to replace a departing employee.

Each Carrier also requires that ASIG maintain sufficient staffing levels to service their flights without delays. Hess

testified that when Frontier experienced flight delays caused by ASIG, he obtained authority from his supervisor to increase staffing at that station by seven percent. According to the individual contracts, each Carrier may subject ASIG to financial penalties for flight delays. At American, financial penalties depend on length of delay. At FedEx, penalties depend on whether aircraft departure is due to performance failure by ASIG, which disentitles ASIG to fees and charges for that flight. At Delta, ASIG is required to notify the Carrier of any changes in ownership or management at the facility, or significant changes in the line fueling staff.

#### Uniforms

ASIG provides its employees with a Company Policy Booklet that articulates the ASIG dress code. No ASIG employees wear clothing or uniforms bearing the Carriers' insignia. ASIG's contracts with American and Delta, however, require that ASIG employees be professionally dressed and neatly groomed in uniforms acceptable to those Carriers. The Carriers usually monitor these appearance requirements during their audits. ASIG employees who fail to meet the Carriers' requirements are subject to discipline.

#### Equipment

ASIG both owns and leases trucks and fueling equipment used at Albuquerque. According to one Fueller, ASIG employees also routinely use equipment owned by the Carriers, such as tools, tire chains, jacks, belt loaders, tugs, and baggage carts. The Carriers oversee ASIG's use of their equipment. Some Carriers require prior notification if an ASIG employee alters the use of its equipment. For example, Delta, Frontier, and FedEx require ASIG to notify them prior to placing new, additional, replacement, or modified fueling equipment into the service of its aircraft.

#### IV. 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. *Aircraft Serv. Int'l Group, Inc.*, 33 NMB 200 (2006). 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. *Aircraft Serv. Int'l Group, above*. See also *Empire Aero Center, Inc.*, 33 NMB 3 (2005); *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. Local 492 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: 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 employees are held out to the public as carrier employees; and control over employee training. *Aircraft Serv. Int'l Group, above*; *Empire Aero Center, above*; *Signature Flight Support, above*; *Signature Flight Support/Aircraft Serv. Int'l, Inc., above*.

Carrier Control over ASIG and Its Employees

The record in the instant case establishes that ASIG's Carriers exercise substantial control over ASIG's Albuquerque operation. The Carriers' schedules dictate the staffing levels and the assigned shifts for ASIG employees. The Carriers have daily interaction with certain ASIG employees and dictate the day-to-day duties of those employees. The Carriers require ASIG employees to follow their respective operating and training procedures. The Carriers determine when, how often, and what kind of recurrent training is required. The Carriers require ASIG to maintain records of employees who have successfully completed each Carrier-mandated initial training and recurrent training. The Carriers do not provide notice for audits. The Carriers have access to ASIG's employment, equipment, and fuel records. The Carriers oversee ASIG's use of equipment.

Although ASIG hires its own employees, the Carriers report problems with ASIG's employees. ASIG has complied with the Carriers' requests to discipline, reassign, and terminate ASIG employees. ASIG employees have been terminated based on Carrier complaints. ASIG has also complied with Carrier recommendations and rewards for ASIG employees. ASIG employees have been promoted based on Carrier recommendations. One Carrier funded a party and provided flight passes because ASIG employees avoided fueling delays for the Carrier. 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 Pittsburgh International Airport, Pittsburgh, Pennsylvania, LaGuardia Airport, Flushing, New York, Detroit Metropolitan Airport, Detroit, Michigan, and McCarran International Airport, Las Vegas, Nevada were subject to NMB jurisdiction. *Aircraft Serv. Int'l Group, Inc.*, 33 NMB 200 (2006); *Signature Flight Support/Aircraft Serv. Int'l*,

*Inc.*, 32 NMB 30 (2004); *Aircraft Serv. Int'l Group, Inc.*, 31 NMB 361 (2004); *Signature Flight Support of Nevada*, 30 NMB 392 (2003). The determination in the instant case that ASIG's Albuquerque, operations are subject to the RLA is consistent with these prior determinations.

In sum, the record shows that ASIG's Carrier customers exercise sufficient control over ASIG's operations to require 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 Albuquerque are subject to the RLA. This opinion may be cited as *Aircraft Serv. Int'l Group, Inc.*, 33 NMB 258 (2006).

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson  
General Counsel

Copies to:  
Douglas W. Hall, Esq.  
Ron Zunk  
Johnny Lavoie  
Gerald R. Bloomfield, Esq.  
Robert Roach, Jr.  
Jay Cronk  
Carla M. Siegel, Esq.