



NATIONAL MEDIATION BOARD
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36 NMB No. 2

October 27, 2008

William B. Cowen
Solicitor
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570-001

Re: NMB File No. CJ-6939
Global Aviation Services, LLC

Dear Mr. Cowen:

This responds to your request for the National Mediation Board's (NMB or Board) opinion regarding whether Global Aviation Services, LLC (Global or Employer) is subject to the Railway Labor Act¹ (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth). On July 16, 2008, the National Labor Relations Board (NLRB) requested an opinion regarding whether Global's operations at the Philadelphia International Airport (PHL) in Essington, Pennsylvania are subject to the RLA.

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

I. PROCEDURAL BACKGROUND

This case arose out of a representation petition filed by the International Union of Operating Engineers, Local 542, AFL-CIO (Local 542 or Organization) on May 28, 2008 in NLRB Case No. 4-RC-21449, seeking to represent "all maintenance and diesel fleet maintenance mechanics" employed at PHL. On June 10, 2008, Local 542 amended the petition to seek representation of "all full time and regular part-time Deicing/Ground Support Equipment Service Technicians/Specialist/Mechanic/AFs" (DI/GSE Employees). Global objected

¹ 45 U.S.C. § 151, et seq.

to the NLRB's jurisdiction, asserting that its employees at PHL are subject to the RLA.

A hearing was held in NLRB Region 4 on June 10, 2008. On July 16, 2008, the NLRB requested a Board opinion regarding NMB jurisdiction over Global's operations at PHL. The NMB assigned Maria-Kate Dowling to investigate. On August 4, 2008, Local 542 filed its position statement. On August 5, 2008, Global filed its position statement. On September 9, 2008, the NMB reassigned the case to Investigator Sarah Halpin.

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 submissions from the Participants.

II. GLOBAL'S CONTENTIONS

Global states that it is subject to RLA jurisdiction under the NMB's two-part function and control test because it is owned by a common carrier, as the parties stipulated, and its employees perform work traditionally performed by airline industry employees. Global's employees perform maintenance on ground service equipment (GSE) at airports across the country. At PHL, Global's employees maintain the deicing facility and the trucks used by Gate Gourmet. Global contends that the deicing facility and the trucks constitute GSE, and, under long-settled NMB precedent, maintaining GSE is work traditionally performed by airline industry employees.

III. LOCAL 542'S CONTENTIONS

Although the Organization stipulated that Global is owned or controlled by a common carrier, Local 542 contends that Global is not subject to NMB jurisdiction because the employees Local 542 seeks to represent at PHL do not perform work traditionally performed by airline industry employees. Local 542 specifically amended its petition to exclude the one Global employee at PHL who services trucks. According to Local 542, the sole responsibility of the remaining six Global employees at PHL is the service and maintenance of the deicing equipment used at the airport, which is owned by the City of Philadelphia. The six DI/GSE Employees neither service airplanes, nor do they service any equipment owned or operated by an air carrier. Therefore, according to Local 542, the DI/GSE Employees at PHL perform work traditionally performed by a municipality, not by airline industry employees.

IV. FINDINGS OF FACT

Carrier Control over Global's Operations and Employees

At the hearing before the NLRB, Global and Local 542 stipulated that:

Global Aviation Services, LLC is directly owned or controlled by, or under common control with, a carrier and thus the control prong of the test under the Railway Labor Act for a definition of a derivative air carrier is met.

Nature of the Work Performed

Global employs approximately 50 people and engages in the service and maintenance of airline GSE at 15 airports across the country, including PHL. Global performs maintenance on GSE such as tugs, push back tractors, ground power units, deice trucks, baggage carts, ground power units, air starts, and various other equipment. At PHL, Global has seven employees and service contracts with Air Tran Airways (Air Tran), Gate Gourmet, and Service Air.²

Deicing Facility Maintenance

At PHL, six of the seven Global employees are involved solely in service and maintenance of the deicing facility. The equipment in the deicing building is owned by the City of Philadelphia. The City of Philadelphia contracts with Service Air to provide the deicing services to the airlines at the airport. Service Air, in turn, contracts the maintenance of the deicing equipment to Global.³

Global's six DI/GSE Employees work in PHL's deicing facility year-round. During the summer, when the deicing equipment is not operational, the DI/GSE Employees perform scheduled, preventative maintenance of the equipment. During the winter the equipment is fully operational, and the DI/GSE Employees perform service and maintenance of the deicing equipment as needed. The DI/GSE Employees do not deice aircraft.

Global's job description for DI/GSE Employees at PHL contains, *inter alia*, the following requirements:

-Ability to effectively operate all ground support equipment.

² Global currently contracts with Northwest Airlines, Inc. at PHL, but this contract was not in effect at the time of the NLRB hearing.

³ None of these contracts are in evidence.

- Ability to install, test, troubleshoot, repair, and modify mechanical and hydraulic systems, electrical components as PLC's wiring, harnesses, relays, etc.
- Advises operators and mechanics of operation procedures and requirements.
- Applies knowledge of systems principals in determining equipment malfunctions, applies skills in restoring equipment to operation.

These employees are also subject to Transportation Security Administration and Federal Aviation Administration security badge procedures.

Other GSE Maintenance

The seventh Global employee at PHL performs preventative maintenance on the Gate Gourmet equipment, such as the lift trucks that the company uses to lift food onto aircraft, and to perform service and maintenance on GSE for Air Tran.⁴ This employee's title is "Ground Support Equipment Mechanic." The job description for Ground Support Equipment Mechanic is different than the job description for DI/GSE Employees, and provides: "Under limited supervision, safely performs work in the repair, maintenance and troubleshooting of vehicles and equipment."

Global's Operations At Other Airports

Global performs GSE service and maintenance at 14 airports in addition to PHL, pursuant to contracts with numerous other airlines. The record in this case includes Global's Services Agreement with Global's largest client Northwest Airlines, Inc. (Northwest), Southwest Airlines Co. (Southwest), and United Airlines, Inc. (United). At the time of the hearing, these agreements did not cover any of Global's operations at PHL, although the Northwest contract was extended to PHL in the summer of 2008.

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. *Bradley Pacific Aviation, Inc.*, 34 NMB 119 (2007); *Dobbs Int'l Servs. d/b/a Gate Gourmet*, 34 NMB 97 (2007). First, the NMB determines whether the nature of the work is that traditionally performed by employees of rail or air carriers.

⁴ Global's contracts with Gate Gourmet and Air Tran are not in evidence.

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. *Bradley Pacific Aviation, above; Dobbs Int'l Servs. above. See also Aircraft Servs. Int'l Group, Inc.*, 33 NMB 200 (2006).

The parties have stipulated that Global is owned by a common carrier. Therefore, the only question to consider in determining whether Global is subject to the RLA is whether Global's employees at PHL perform work traditionally performed by employees of rail or air carriers.

The NMB considers deicing activities to be included in GSE service and maintenance. *Miami Aircraft Support*, 21 NMB 78 (1993) (finding that ground services for air carriers, including loading and unloading passenger baggage, deicing, cabin cleaning, and aircraft pushback services is GSE service and maintenance work that is traditionally performed by carrier employees); *Ground Handling, Inc.*, 13 NMB 116, 117 (1986) (finding that where work included deicing, the functions constituted ground support services). It is well-settled that GSE service and maintenance is work traditionally performed by airline employees. In fact, "[i]n 1972 after a comprehensive industry-wide proceeding the Board concluded, among other things, that such work is traditionally performed by airline employees in the Fleet Service craft or class." *Jimsair Aviation Serv., Inc.*, 15 NMB 85, 87-88 (1998) (citing *Memorandum re: Airline Industry Hearings*, 5 NMB 2 (1972), and finding that employees who performed GSE maintenance met the function prong of the two-part jurisdictional test). Therefore, Global's employees at PHL perform work traditionally performed by airline employees.

The Board finds no merit in Local 542's assertion that the analysis under the second part of the NMB's jurisdictional test is affected by the ownership of the deicing equipment. Citing *Northwest Airlines v. Jackson*, 185 F.2d 74 (8th Cir. 1950), Local 542 asserts that employees working on publically-owned equipment are not doing work traditionally performed by airline employees. That case involved an overtime issue under the Fair Labor Standards Act and turned on the relationship between the carrier's transportation activities and the work performed. The court found employees of an air carrier who had worked modifying airplanes for the federal government during World War II were permitted to recover overtime under the Fair Labor Standards Act because the employees' work bore a "negligible and remote relationship to the [carrier's] transportation activities." *Id.* at 77. In the instant case, however, equipment used to deice airplanes has a substantial and direct relationship to air transportation. The Organization also relies on *Mercury Refueling, Inc.*, 9 NMB 451 (1982), in which the Board declined to assert jurisdiction over a company's fueling operations. The Board's decision to decline jurisdiction over the

employer in that case did not turn on the ownership of the equipment used by the employees at issue.

VI. CONCLUSION

Based on the record in this case and for the reasons discussed above, the NMB's opinion is that Global's operations and its employees at PHL are subject to the RLA. This opinion may be cited as *Global Aviation Services, LLC*, 36 NMB 2 (2008).

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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