



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572

(202) 692-5000

37 NMB No. 45

July 8, 2010

Susan E. Kehoe  
Assistant Solicitor  
National Labor Relations Board  
1099 14<sup>th</sup> Street, N.W.  
Washington, DC 20570-0001

Re: NMB Case No. CJ-6966  
Quantem Aviation Services

Dear Ms. Kehoe:

This letter responds to your request for the National Mediation Board's (NMB or Board) opinion regarding whether Quantem Aviation Services (Quantem or Employer) is subject to the Railway Labor Act (RLA), 45 U.S.C. § 151, *et seq.* On October 23, 2009, the National Labor Relations Board (NLRB) requested an opinion regarding whether Quantem's operations at its facility at the St. Petersburg/Clearwater Airport in Clearwater, Florida (Clearwater) are subject to the RLA.

For the reasons discussed below, it is the NMB's opinion that Quantem's operations and its employees at Clearwater are not subject to the RLA.

I. PROCEDURAL BACKGROUND

This case arose out of a representation petition filed by the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM) on June 30, 2009, with the NLRB seeking to represent all full-time and regular part-time ramp agents and lead agents at Quantem's Clearwater facility. Quantem objected to the NLRB's jurisdiction arguing that its employees and operations at Clearwater are subject to the RLA.

A hearing was held in NLRB Region 12 (Region 12) on July 13 and August 25, 2009<sup>1</sup>. Quantem and IAM filed post-hearing briefs with the NLRB. On October 23, 2009, the NLRB requested an NMB opinion regarding the NMB's jurisdiction over Quantem's Clearwater operations. On November 3, 2009, the NMB assigned Norman L. Graber to investigate. The NMB invited Quantem, IAM, and IBT to submit position statements regarding jurisdiction under the RLA. Quantem filed a position statement, attaching its October 16, 2009 brief to the NLRB. Neither IAM nor IBT filed submissions with 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 Quantem.

## II. QUANTEM'S CONTENTIONS

Applying 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, Quantem contends that it is subject to the RLA. Quantem states that it satisfies the function part of the test because its employees perform work that is of a type traditionally performed by airline employees, namely, its employees are integrally involved with the arrival and departure of aircraft at Clearwater and the employees work on the aircraft loading and unloading air cargo. Quantem further contends that it satisfies the control part of the test because its employees are controlled and directed by UPS Co., which the NMB has determined is an RLA carrier. Quantem argues that UPS Co., either directly or with its sister company, UPS, Inc., controls every aspect of its operations at Clearwater.

According to Quantem, UPS Co. exerts direct control over the Employer in that the UPS Co. Ground Operations Manual (GOM) dictates the precise manner in which Quantem ramp agents and base leads must perform tasks related to the service of UPS Co. aircraft. Quantem further asserts that UPS Co. exerts indirect control over Quantem through UPS, Inc.: the arrival and departure of UPS Co. airplanes determine the work schedules and staffing levels that UPS, Inc. requires of Quantem; UPS, Inc. employees are trained by UPS Co. in order to instruct Quantem supervisors on how to train their ramp agents and base leads; and UPS Co. holds UPS, Inc. responsible for ensuring that the GOM standards are met at Clearwater, which can result in the discipline or discharge of Quantem employees. Quantem also contends that UPS, Inc. is under common control by a carrier, and any role it plays in

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<sup>1</sup> At the August 25, 2009 hearing, Teamsters Local Union No. 79, affiliated with the International Brotherhood of Teamster (IBT), intervened in the proceeding.

controlling and directing Quantem further supports the argument that Quantem is subject to the RLA.

### III. IAM'S CONTENTIONS

IAM asserts that Quantem's contract is with UPS, Inc., which has been found repeatedly to be an employer covered by the National Labor Relations Act (NLRA). Because Quantem's contract is with UPS, Inc., whatever control UPS, Inc. exerts over the Employer cannot establish jurisdiction under the RLA.

IAM also argues that Quantem controls the hiring, daily work assignments, firing and disciplinary action of its employees. With respect to discipline and discharge, IAM contends that neither UPS, Inc. nor UPS Co. have to be notified or approve discipline or discharge; that Quantem disciplines its own employees; and that Quantem has decided not to follow UPS, Inc.'s recommendations for disciplinary actions of its employees. IAM further contends that Quantem controls the employees' uniforms, its labor relations, work rules, wages and payroll.

Regarding control of Quantem by UPS Co., IAM asserts that Quantem and UPS Co. have minimal contact. With respect to the GOM, IAM contends that the FAA requires all airlines to develop this type of manual and UPS, Inc. must follow the GOM consistent with Federal law. Moreover, IAM contends that Quantem has its own employee manual.

IAM argues that any control over Quantem is exercised by UPS, Inc. With respect to UPS Co.'s national audits, IAM contends that UPS, Inc., rather than Quantem, is held accountable for making sure that the GOM is followed. Further, IAM asserts that UPS Co. does not train any of Quantem's employees, rather Quantem provides the training after receiving training from UPS, Inc. employees; that the only communication between the UPS Co. pilots and mechanics are hand signals; that UPS, Inc., not UPS Co., provides the majority of the equipment used by Quantem; and that UPS Co. does not have any management employees working at Clearwater.

Thus, IAM asserts that because the relationship between UPS Co. and the Employer is so attenuated; control by UPS, Inc. cannot confer RLA jurisdiction; and the work performed by the ramp agents and lead agents is the same work routinely covered by the NLRA and by the Teamsters' National Master Agreement, the NMB does not have jurisdiction over this matter.

#### IV. IBT's CONTENTIONS

Although it did not file a brief with either the NLRB or the NMB, the IBT stated its position, at the August 25, 2009 hearing, that Quantem falls under the jurisdiction of the NLRB.

#### V. FINDINGS OF FACT

##### QUANTEM

Quantem operates in 17 airports in the United States performing various services, including loading and unloading aircraft, cargo warehousing, and ground support equipment maintenance. Quantem does not provide any passenger-handling services. Among the various services it provides to different companies, Quantem has contracts with UPS, Inc. to provide ground handling services at various airports in the United States.

Quantem has a "Ground Handling Agreement" (herein called GHA) with UPS, Inc.<sup>2</sup> to perform loading and unloading aircraft of air cargo at Clearwater. The current contract runs from November 21, 2008, for a three-year period. Quantem had entered into prior contracts with UPS, Inc. since in or about September 2001. Prior to that time, the contract with UPS, Inc. was held by one of the Employer's competitors. The contract states that the purpose of the agreement is for the Employer to provide the ground handling operations associated with its Aircraft Operators and UPS's air cargo business. The Employer provides its services at Clearwater exclusively for UPS, Inc. As specified in the Employer's contract with UPS, Inc., all of the services provided by the Employer must be provided in accordance with the manuals and procedures of the aircraft operator.

UPS Co. is an airline and subsidiary of United Parcel Service of America.<sup>3</sup> UPS Co.'s headquarters are located in Louisville, Kentucky. The aircraft

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<sup>2</sup> In the contract, United Parcel Service, Inc. is denoted as UPS and described as an Ohio corporation with a mailing address in Louisville, Kentucky.

At the August 25, 2009 hearing, IAM moved to amend a stipulation to reflect that that UPS, Inc., rather than UPS Co., is the entity with which Quantem contracted to provide services. The hearing officer referred ruling on the motion to the NLRB Regional Director for Region 12. Although the Regional Director for Region 12 did not rule on the motion, she indicated, in a memorandum to the NLRB's Executive Secretary, that if she were to issue a decision in the case, she "would grant [IAM's] motion to the extent necessary for the stipulation to accurately reflect the record evidence."

<sup>3</sup> United Parcel Service of America, Inc. has several subsidiaries, including United Parcel UPS Co. and UPS, Inc. Unless this decision specifically refers to UPS, Inc. or UPS Co., the term UPS will be used when it is unclear which particular subsidiary is involved in the Employer's operations. Section 1.8 of the Employer's contract with UPS, Inc. states that in the sections of

serviced by Quantem are owned by UPS Co., and the Employer provides ground handling operations only for air cargo, next day air or second day air, which includes boxes, packages, and overnight letters.

Quantem maintains an office, approximately 240 square feet, in the terminal building of Clearwater. In the office, the Employer performs hiring, payroll, meetings with UPS, Inc. or meetings with employees, and prepares reports to corporate and UPS, Inc. The base general manager, the morning shift supervisor and an administrative employee are the only employees who use the office regularly.

There is also a UPS air office located on the ramp where the ramp agents and lead agents perform their work. The ramp is located about 400 to 500 yards from the terminal building. The ramp and lead agents park in the Clearwater parking lot and go to the UPS air office. The employees must have their security badge to enter the office. Once inside the office, the employees punch in and punch out using a hand scanner located in an area behind the UPS office that leads to the ramp that is connected to a time clock linked to the Employer's payroll. The employees exit onto the ramp where the employees perform their work. The employees perform their work at three designated UPS gates.

#### Nature of Work for Quantem Employees

At Clearwater, Quantem currently employs approximately 64 ramp agents, including 5 lead agents. The ramp agents and lead agents are divided into a morning and evening shift, and each shift is three hours long. Quantem employs a supervisor for the morning shift but not the evening shift. The shifts are scheduled strictly in accordance with the arrival and departure of the aircraft, and if UPS Co. adds a flight or cancels one, the number of agents and lead agents will be adjusted accordingly.

The Employer's ramp agents, lead agents and morning shift supervisor report to the Employer's base general manager, whose work hours vary between the morning and evening shifts. The base general manager reports to the regional director, who is in charge of the Employer's operations in Florida, Oregon and North Carolina.

During the morning shift, the Employer services two "in-bound" aircraft, and a departing "out-bound" aircraft. In the evening shift, the Employer also services one "in-bound" aircraft and two "out-bound" aircraft.

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the contract delineating the parties' principal responsibilities, the term UPS means UPS, its parent United Parcel Service of America, Inc. and its affiliated companies, and the officers, directors, agents and employees of each of those companies.

The Employer does not own or lease any equipment to provide its ground handling services. All of the aircraft that arrive at Clearwater are owned by UPS Co. UPS Co. also owns the air stairs. The Employer is not responsible for fueling UPS Co. aircraft or performing any aircraft mechanical or repair work. In addition, all of the ground equipment used by the Employer is owned by UPS, Inc., and that equipment is maintained and repaired a UPS, Inc. contractor. The Employer's ramp agents prepare equipment condition reports, verified by lead agents, at the end of each shift that note any problems with the equipment. The equipment is parked on the ramp when not in use and is only used by the Employer's employees.

The Employer does all the hiring of its ramp agents, lead agents, and supervisors. Neither UPS, Inc. nor UPS Co. has any involvement in the hiring process. However, the Employer does follow FAA guidelines required of employees working at Clearwater. UPS Co. also requires drug testing and finger printing of employees, per FAA guidelines.

With respect to training, all of Quantem's employees are trained in accordance with the GOM and UPS Co. provides the Employer with training materials. The UPS, Inc. morning and evening supervisors who work at the Employer's facility have received training at the UPS Co. training facilities and have become "UPS Co. designees." UPS Co. designees are responsible for providing training to the Employer's supervisors and leads who become the Employer's designated trainers for the Employer's ramp agents and leads.

When the employees are initially hired by the Employer, they must complete "interview orientation certification" conducted by the Employer's base general manager that involves watching videos and becoming certified per FAA rules before the employees can work on the ramp. The employees are certified on issues such as marshalling the aircraft and aircraft set up. Once the employee is certified and can work on the ramp, the Employer's designated trainers give further training sessions to the employees, including training on equipment and loading and unloading procedures. New employees go to these training sessions several times per week and are separated into different groups for the training sessions. The ramp agents and lead agents are trained in the procedures of the GOM, as well as the Employer's policies and benefits.

The Employer has job descriptions for the ramp and lead agent positions. Although it does not appear that UPS, Inc. or UPS Co. has any input in preparing these job descriptions, the content is governed by the UPS Co. GOM and the Employer's own guidelines.

The ramp agent job description requires that ramp agents complete training classes. All of the ramp agents and lead agents must be certified per FAA regulations to work on the ramp. The training is based on the UPS Co. manual. The job description requires that the employees ensure that all of the Employer and customers safety standards are met and maintained. This includes wearing the reflective vests required by the TSA/FAA and provided by the Employer and following the safety standards set by UPS and the Employer. The lead agent job description includes completing training classes, ensuring safety standards are met, and assisting agents in completing their duties.

Wage rates are set and paid by the Employer for all its employees and supervisors, and UPS, Inc. pays the Employer for man hours worked by those employees. In the current contract between UPS, Inc. and the Employer, it was agreed that the Employer would apply the increase in the ramp agent fee directly to ramp agent's wages. UPS, Inc.'s gateway manager is not involved in determining the hours worked by specific employees, but controls the hours only to meet operational needs. UPS, Inc. is not involved with the Employer's payroll.

The Employer prepares and distributes an employee manual to all employees nationwide, and the manual is prepared by the Employer without input from UPS, Inc. UPS, Inc. does not have any involvement in the Employer's labor relations policies or work rules. For the most part, the manual reflects that the Employer sets the employees' terms and conditions of employment, including wages, holiday and vacation pay, sick leave and benefits.

With respect to uniforms, Quantem's employees wear a uniform as required by the Employer, and these are not approved by UPS, Inc. or UPS Co. UPS, Inc. only requires that the Quantem's employees wear clothing that complies with safety standards.

#### Loading and Unloading Aircraft

During the morning operation, the Employer has a supervisor and two leads responsible for the ground-handling operations. After the pre-operation meeting, ramp agents clear the ramp or tarmac of debris before the aircraft's arrival. The lead agents then give the ramp agents the staffing sheet created by the Employer's supervisor and lead agents placing the employees at different positions on the aircraft based upon their duties for the day.

Once the aircraft arrives, the "marshalling unit", ramp agents who are in charge of directing the aircraft from the taxiway, direct the aircraft to its position using lit wands; the ramp agents set up cones around the aircraft and

set blocks ("chocks") on the landing gear; and a tail stand may be attached to the aircraft to keep the aircraft from tipping.

The ramp agents then remove the cargo from the aircraft by unlocking the various containers from their positions, using belt loaders and deck loaders to place the containers onto an elevator that lowers them. The containers are then placed on a dolly with a tug and placed on various container sort platforms ("CSPs"), on the ramp. There are three to four ramp agents who are stationed on the sort platform who move the containers onto a series of rollers that are on the CSP. The ramp and lead agents spend about 20% of their shift working on the trailer operation and the rest of the time dealing with the aircraft.

There are different types of cargo off-loaded from the containers in the aircraft. In the morning, about 15 to 17 UPS, Inc. air drivers come to Clearwater in UPS, Inc. trucks to pick up time-sensitive packages that must arrive at their final destination at a certain time in the morning. These drivers go directly to the sort building that is on the ramp at Clearwater. Once the air drivers pick up the packages, they are on the road to deliver these packages to the customers.

Other UPS, Inc. drivers come to Clearwater to pick up air trailers or shuttles, and some of these trailers are handled at the CSPs on the ramp. There are approximately 6 to 7 trailers driven by UPS, Inc. drivers. Once the containers are placed in the correct trailer, the drivers take the trailers to a UPS, Inc. hub or UPS, Inc. center. The UPS, Inc. center then sorts the cargo that is in the containers before the packages are delivered by UPS, Inc. trucks to their destination. None of UPS, Inc.'s drivers are supervised by the UPS, Inc. gateway manager and have limited contact with the Employer's employees.

### Sort Building Operations

The sort building has a series of six bay doors on either side, and the middle contains a conveyor belt. During the morning shift, the Employer has approximately 11 to 13 ramp agents and leads working in the sort building. During the evening shift, there are about six ramp agents and leads.

With respect to the containers that are received in the morning shift, the ramp agents and lead agents remove the packages from the containers and place them on a conveyor belt. A ramp agent called a "pick-off" person splits the belt per zip code and per UPS, Inc. driver so the packages can go to the various UPS, Inc. centers. The UPS, Inc. drivers load their own trucks or trailers. During the evening shift, UPS, Inc. drivers bring the packages to Clearwater from the UPS, Inc. centers, and the UPS, Inc. drivers unload their



trucks. If the need arises, ramp agents may assist a UPS, Inc. driver to load or unload a truck or trailer. Although less often, a lead agent may also assist a UPS, Inc. driver in this process.

During the evening shift, the Employer receives the packages from the UPS, Inc. centers; the ramp agents containerize the cargo, and put the containers on the aircraft. When the trucks arrive with the packages, the ramp agents stand next to the conveyor belt with an empty container behind them. A pick-off person who knows the zip codes makes sure the packages go in the correct section of the conveyor belt and the package is scanned into the UPS system. A ramp agent then takes the package and places it into the correct container. There are two departures. The aircraft is secured and departs in the same manner as during the morning shift.

With respect to scanning packages, UPS, Inc. trailers have containerized volume. During the morning shift, UPS, Inc. drivers scan the packages, except for a ramp agent that scans early morning packages and mis-sorts because these must go directly to the customer. On the evening shift, some of the packages have been scanned and placed in containers by the UPS, Inc. centers or hubs before they arrive at Clearwater. Packages that are loaded or unloaded from UPS, Inc. trucks, however, are placed in containers by Quantem's employees after being scanned.

#### UPS, Inc.'s Operations

UPS, Inc. employs two part-time cargo supervisors and two part-time ramp supervisors. There is one part-time cargo supervisor and one part-time ramp supervisor present for the morning and evening shifts. The morning shift ramp supervisor oversees the arrival of aircraft on the container sort platform and directs the ramp agents' movement of containers. The evening shift ramp supervisor has the same responsibilities but in reverse, off-loading trailers and placing containers back on the aircraft.

The UPS, Inc. part-time cargo supervisors are responsible for cargo movement on the ramp, including, inter alia, documenting the movement of the cargo from the aircraft to the trailer and directing CSP operations. UPS, Inc.'s evening cargo supervisor has similar responsibilities but also oversees the fueling of aircraft and lavatory services provided by a contractor.

UPS, Inc.'s various administrative assistants are responsible for dealing with the information concerning the containers. There are two office administrative assistants who each handle the morning and evening shifts and who are responsible for various functions, including load planning, entering

information about the containers into the computer system, and receiving the ramp action summaries from the ramp and lead agents.

### UPS, Inc.'s Control Over Quantem's Operations and Employees

#### Staffing, Work Assignments, and Supervision

UPS, Inc., employs various employees to perform functions relating to the ground handling operations at Clearwater. UPS, Inc.'s gateway manager oversees the pilot operations, aircraft maintenance operations, and methods and procedures for air operations at Clearwater for both the UPS, Inc. and UPS Co. operations. In addition to UPS, Inc.'s gateway manager, UPS, Inc. employs two full-time supervisors, six part-time supervisors, and five administrative employees. In addition, UPS, Inc. employs drivers who come to Clearwater to pick up packages and containers.

The number of ramp agents and lead agents fluctuates based on the flight schedule, time of year, and the needs of the ground handling operations. In accordance with the parties' contract, UPS, Inc.'s gateway manager, with the assistance of a UPS, Inc. administrative employee, dictate the number of ramp agents and lead agents that the Employer is required to employ during each shift. UPS, Inc. can instruct the Employer to increase or decrease the number of ramp or lead agents. The current contract does not set forth a specific number of employees that must be provided per shift.

Only UPS, Inc. can approve overtime of ramp agents or lead agents. Although Quantem Employer can grant overtime on matters not related to UPS, Inc., UPS, Inc. constitutes 99% of the Employer's operations at Clearwater.

The Employer's base general manager meets with the UPS, Inc.'s gateway manager frequently, and the Employer will receive notice of staffing requirement changes from the gateway manager. The UPS, Inc. gateway manager also decides how many employees will be working at each location on the ramp. Quantem's supervisors and leads, however, assign specific employees to their job functions

UPS, Inc.'s morning and evening supervisors have pre-operation meetings with the Employer's supervisors and/or leads prior to the beginning of those shifts. UPS, Inc. creates a "ramp action summary" that sets forth the movement of containers on the ramp. This plan states how an aircraft will be loaded or unloaded based upon the cargo that is arriving in-bound. During the pre-operation meeting, the UPS, Inc. supervisors provide the Employer's supervisor and/or lead agents with the ramp action summary, and they review the plan. The UPS, Inc. supervisor reviews issues such as the number of

containers coming in, the number of trailers and the plan regarding how the cargo will be handled. The Employer's supervisors and leads complete a staffing sheet which lists every position on the ramp, airplane and sort building and decide which employee will perform a particular function.

After the cargo is emptied from the aircraft, the Employer's lead and the UPS, Inc. ramp supervisor or part-time cargo supervisor inspect the aircraft. If there is any damage to equipment or the aircraft, a condition report must be prepared by the Employer, and UPS, Inc.'s full-time supervisor is notified. If there is an issue with the aircraft, UPS Co.'s mechanic is also notified.

If the aircraft is departing to another UPS Co. hub, the ramp agents "upload" the empty containers onto the aircraft. The containers are numbered and are placed in a specific position in the aircraft designated by UPS, Inc. before the containers are locked in place. A ramp agent on the ground writes down the number of the container that is going into the aircraft. A UPS, Inc. supervisor, who is directing the containers is also on the ground and writes down the container number while a lead agent inside the aircraft also writes down the container number. After the containers are loaded, the ramp agent, lead agent and UPS supervisor swap their paperwork to make sure that the containers were loaded correctly.

Prior to the conclusion of the operations, UPS, Inc. supervisors, in conjunction with the Employer's supervisors, make sure that all of the wrap-up procedures and set-up for the next shift have been completed. During the morning shift, the Employer's supervisor will check with the UPS, Inc. supervisor to make sure nothing else is required before the ramp agents and lead agents can finish their shift. At the end of the evening shift, once the pilot determines that the aircraft can depart, the pilot will send the message to UPS, Inc.'s office, and UPS, Inc. supervisors will, in turn, inform the Employer's supervisor or senior lead, who will release the employees.

For the sort operations, UPS, Inc. employs two part-time sort supervisors, one for the morning shift and one for the evening shift, who direct the loading and unloading of packages from the containers to the conveyor belt or vice-versa.

### Training

UPS, Inc.'s gateway manager requires that the ramp agents and lead agents are cross-trained on different types of equipment and procedures to enable those employees to perform different job functions. UPS, Inc. maintains a record of training for the Employer's supervisors and leads that are trained

by the UPS Co. designees. These forms are faxed to UPS Co. in Louisville and kept by UPS, Inc. at Clearwater.

The GOM requires the Employer to keep a record of the employees that have been trained. The training documentation form is provided by UPS Co. The Employer maintains these training records for each function on the ramp. The records are kept in UPS, Inc.'s office. The Employer also maintains a "skills inventory" on a UPS, Inc. database which is a computerized inventory of which employees are trained on specific equipment. The computer is also in the UPS, Inc. office, and the information on the database can be accessed by UPS Co. UPS Co. also requires this record keeping as part of its national audit process.

### Discipline and Discharge

The Employer is not required to obtain approval from UPS, Inc. or UPS Co. prior to disciplining or discharging an employee. However, the base general manager generally discusses discipline of some employees with UPS, Inc.'s gateway manager. If discipline relates to methods or safety issues, the Employer's base general manager notifies UPS, Inc.'s gateway manager and shift supervisor.

The UPS, Inc. gateway manager discusses discipline of employees with the Employer's base general manager approximately once per month, and UPS, Inc.'s gateway manager has made recommendations to the Employer to discipline employees. There have been instances where the Employer has followed UPS, Inc.'s request for re-training and re-certification of its employees. However, the Employer's base general manager has disagreed with UPS, Inc.'s gateway manager on the appropriate discipline, and less severe discipline has been issued to the employee in question.

With respect to discharge, UPS, Inc.'s gateway manager has recommended that an employee be removed from the ramp, and that recommendation has been followed by the Employer. Although UPS, Inc. has never instructed the Employer to terminate an employee, if the Employer has to remove an employee from the ramp due to UPS, Inc.'s request, the Employer has terminated the employee because there is no other job available.

During the ground handling operations, other than dictating the movement of containers, the UPS, Inc. gateway manager and supervisors generally go through the Employer's leads and/or supervisors if a method or procedural issue arises with a particular employee or the operations. At that point, UPS, Inc. may suggest to the Employer that re-training is necessary for that particular employee. If there is a safety issue, however, UPS, Inc.

management will address the issue immediately with the ramp agent or lead without going through the Employer.

#### UPS Co.'s Control Over Quantem's Operations and Employees

Although UPS Co. does not employ any supervisors at Clearwater, it does employ six aircraft mechanics, pilots and crew members.

UPS Co. provides the Employer with the GOM and all of the GOM's updates which set forth procedures that must be followed per FAA guidelines. The GOM covers all of the Employer's procedures except the sort unit operations and scanning. Not all of the procedures in the GOM apply to the Employer's operations, mainly due to the type of aircraft handled at Clearwater.

Once the aircraft is ready for departure, the Employer's ramp agents must move the equipment away from the aircraft; secure the flight door; are instructed by a UPS Co. aircraft mechanic to remove the crew stairs, tow bar, tail stand, orange cones, and chocks; and if air traffic control gives the signal, use a tractor and tug to move the aircraft to the taxiway. The Employer uses a ramp agent designated as the "lead marshaller", along with two other ramp agent marshalls, to direct the aircraft using their lit wands. Once the aircraft's captain notifies the ramp agents, the ramp agents remove the tractor from the aircraft's nose gear and a UPS Co. mechanic checks the aircraft before giving the pilot clearance to depart. The pilot then flashes his lights to the lead marshaller, and the lead marshaller puts his wands up to signal the captain that it is safe to move. The lead marshaller salutes the captain and walks away.

#### UPS Co.'s Audit

UPS Co. conducts a national unannounced audit once per year. If Quantem fails the national audit, it must create an action plan to correct the deficiencies.<sup>4</sup> The plan is given to UPS, Inc., UPS Co., and to a regional coordinator from UPS, Inc., who is responsible for follow-up checks of the operations. The action plan may involve re-training of the Employer's trainers or taking an employee off a piece of equipment until the employee is retrained. In addition, approximately every 20 days, UPS, Inc. conducts audits of different aspects of the Employer's operations. The UPS, Inc. gateway manager provides copies of the written results of the audit to the base general manager. These audits are randomly conducted of arrivals, departures, and sorting. If there is

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<sup>4</sup> Several years ago, the Employer failed the national audit, and this was addressed through the procedures set forth herein.

any problem, the Employer's supervisor or lead will be informed, and the deficiencies must be corrected.

### "Article 40" Employees

UPS, Inc. has operations in approximately 70 gateways in the United States, and more than half of the ground handling operations in those gateways is performed by outside vendors. Quantem handles these functions at about 11 to 13 gateways. The ground handling operations that are not contracted to other companies are performed by UPS, Inc. employees; and those employees are covered by Article 40 of the Master Agreement between the Teamsters and UPS. Article 40 of the Agreement titled "Air Operation" covers air drivers, air walkers,<sup>5</sup> and employees working in air hub and gateway operations. If UPS, Inc. had not contracted the Clearwater work in question to Quantem, the work would be covered by the IBT contract, subject to NLRA jurisdiction.

## VI. 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. 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).

Quantem does not fly aircraft and is not directly or indirectly owned by an air carrier. The Quantem employees at issue perform work that is traditionally performed by employees in the airline industry. See, e.g., *Swissport USA, Inc.*, 35 NMB 190 (2008); *John Menzies PLC, d/b/a Ogden Ground Servs., Inc.*, 30 NMB 405 (2003). Therefore, to determine whether Quantem is subject to the RLA, the NMB must consider the degree of direct or indirect control exercised over Quantem's operations by carriers.

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<sup>5</sup> Air walkers are defined in Article 40 as drivers that "may deliver and/or pickup air packages, and shall not drive any vehicle which requires a drivers license in the performance of their duties."

Carrier Control Over Quantem and Its Employees

To determine whether there is carrier control over a company, the NMB looks to several factors, including: the extent of the carrier's 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. *Signature Flight Support/Aircraft Serv. Int'l, Inc., above*; *John Menzies PLC, d/b/a Ogden Ground Servs., Inc., above*; *Signature Flight Support of Nevada*, 30 NMB 392 (2003); *Aeroground, Inc.*, 28 NMB 510 (2001); *Miami Aircraft Support*, 21 NMB 78 (1993).

The record in the instant case establishes that UPS, Inc. exercises a significant degree of control over Quantem's operations. Pursuant to the contract with UPS, Inc., the scheduling of UPS Co.'s flights dictates the work schedules of Quantem employees. UPS, Inc.'s gateway manager, through the contract, also determines the number of ramp or lead agents and how many hours will be worked on a given day. Moreover, only UPS, Inc. can approve overtime on UPS, Inc. contract work for ramp agents and lead agents. Because the UPS, Inc. work constitutes 99% of Quantem's work at Clearwater, UPS, Inc. effectively controls overtime for Quantem employees. The ground handling equipment is owned by UPS, Inc. and maintained by another UPS, Inc. contractor. The aircraft and air stairs are owned by UPS Co. and are not maintained by Quantem. UPS, Inc., as well as UPS Co., has access to Quantem's training records.

Quantem hires, trains, pays, evaluates, and disciplines its workforce. Training of Quantem employees, however, is controlled by UPS, Inc. UPS Co. trains the UPS, Inc. trainers who, in turn, train the Quantem trainers. Training must be done to UPS, Inc. specifications, in order to satisfy UPS, Inc.'s obligations to UPS Co.

UPS, Inc. management creates a plan of action for Quantem employees regarding how the work will be performed on a daily basis. UPS, Inc. management, together with Quantem management, oversees the work during the shifts. Quantem employees are not released from their shifts until UPS, Inc. agrees to do so.

Although Quantem is not required to obtain approval in order to discipline or discharge any employee, the Quantem base general manager generally discusses these matters with the UPS, Inc. gateway manager. Quantem has not always followed the UPS, Inc. suggestion regarding discipline, and has issued less severe discipline than recommended. If UPS, Inc. decides that it will not allow a Quantem employee to work on the ramp, however, it has

effectively recommended discharge because Quantem has no other jobs available for that employee and will terminate him.

Although the record contains the above evidence of significant control over Quantem operations and its employees by another entity, the NMB need not decide whether that degree of control is sufficient to satisfy the second part of the jurisdictional test. In this matter, the jurisdictional question remains whether that control is exercised by a carrier subject to the RLA. It is well established that UPS, Inc. is not an RLA carrier. *United Parcel Service, Inc.*, 318 NLRB 778 (1995), *aff'd United Parcel Service, Inc. v. NLRB*, 92 F.3d 1221 (D.C. Cir 1996).

UPS Co. is a carrier subject to the RLA and NMB jurisdiction. The record, however, demonstrates only minimal contact between Quantem employees and UPS Co. personnel. There are no UPS Co. supervisors on site at Clearwater. Moreover, any control that UPS Co. arguably exercises over Quantem's operations and employees is done indirectly through UPS, Inc. Although the jurisdictional test does provide for coverage under the RLA where there is indirect control, or common control, by a carrier, this case presents an anomalous circumstance.

Quantem argues that it is subject to the NMB's jurisdiction because an RLA carrier, UPS Co., indirectly controls its operations through, or commonly controls its operations with, an NLRA employer, UPS, Inc. Assuming sufficient control, Quantem's argument would be availing if the employer through which it was being controlled was likewise covered by the RLA based on control by a carrier. In this case, however, UPS, Inc. was traditionally covered by the NLRA; and the NLRB specifically affirmed its jurisdiction in response to an assertion that the employer became subject to the RLA. *United Parcel Service, Inc., above*. In these circumstances, the NMB will not assert jurisdiction where the entity, UPS, Inc., exerting direct control over an employer in question is not itself deemed an RLA carrier based on putative control of that entity by an RLA carrier, UPS Co.

The reason for this outcome is best demonstrated by consideration of the Article 40 work. The type of work in question in this case is governed by a contract with the IBT when UPS, Inc.'s own employees perform the work. UPS, Inc.'s relationship with the IBT is subject to the NLRA. Therefore, it would be anomalous to find that work not covered by the RLA when performed by UPS, Inc.'s own employees becomes subject to the RLA, based on UPS, Inc.'s putative control over the work, when performed by employees of a UPS, Inc. contractor.



Accordingly, the NMB finds that indirect control by a carrier through a non-carrier does not satisfy the second part of the Board's jurisdictional test where the non-carrier and its work is specifically subject to the NLRA.

CONCLUSION

Based on the record in this case and for the reasons discussed above, the NMB's opinion is that Quantem and its employees at Clearwater are not subject to the RLA. This opinion may be cited as *Quantem Aviation Services*, 37 NMB 209 (2010).

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:  
Jonathan A. Keselenko, Esq.  
Lisa Burnett, Esq.  
Robert Roach, Jr.  
Carla Siegel, Esq.  
Jay Cronk  
David Bourne