



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the

SPECIAL AND SUPERIOR
OFFICERS BENEVOLENT
ASSOCIATION

alleging a representation dispute
pursuant to Section 2, Ninth, of
the Railway Labor Act, as
amended

involving employees of
AIR SERV CORPORATION

38 NMB No. 37

CASE NO. R-7282
(File No. CR-6988)

FINDINGS UPON
INVESTIGATION-
DISMISSAL

April 1, 2011

This determination addresses the application filed by the Special and Superior Officers Benevolent Association (SSOBA or Organization) alleging a representation dispute pursuant to the Railway Labor Act¹ (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth). The SSOBA seeks to represent the craft or class of “Armed and Unarmed Security Officers at Delta Air Lines Terminals 2 and 3 at JFK Airport” at Air Serv Corporation (Air Serv or Employer). Air Serv seeks the Board’s determination as to the proper scope of the craft or class of its security officers for representation purposes.

For the reasons discussed below, the National Mediation Board (NMB or Board) finds that the proper scope of Air Serv’s craft or class of security officers is nationwide and that a representation dispute does not exist among that craft or class of employees. Accordingly, the Board dismisses the application.

¹ 45 U.S.C. § 151, *et seq.*

PROCEDURAL BACKGROUND

On August 4, 2010, the SSOBA filed an application alleging a representation dispute involving the “Armed and Unarmed Security Officers at Delta Airlines Terminals 2 and 3 at JFK Airport” at Air Serv. The application to represent “Armed and Unarmed Security Officers at Delta Airlines Terminals 2 and 3 at JFK Airport” was assigned NMB File No. CR-6988. Norman L. Graber was assigned as the Investigator. On August 20, 2010, the Employer filed an initial position statement and a List of Potential Eligible Voters for the requested craft or class as of July 30, 2010, the last day of the last payroll period prior to August 4, 2010. The Employer’s initial position statement contended that the proper scope of the system is nationwide. On September 9, 2010, SSOBA filed an initial position statement raising the issue of Air Serv’s status as a carrier under the RLA, and arguing that a nationwide craft or class would be inappropriate. On September 24, 2010, the Employer supplemented its initial position statement and provided a supporting affidavit and documentation. On October 7, 2010, SSOBA supplemented its initial position statement. On October 25, 2010, Investigator Graber requested certain additional information from the Employer regarding its status as an RLA carrier and its claim regarding a nationwide craft or class. Air Serv supplied the requested information on November 29, 2010.

ISSUES

1. Whether Air Serv and its employees are subject to the RLA.
2. If it is subject to the RLA, what is the appropriate scope of the craft or class for Air Serv’s security officers?

CONTENTIONS

SSOBA

SSOBA contends that the security officers it seeks to represent have traditionally been represented at JFK airport under the National Labor Relations Act (NLRA). In 2010, the National Labor Relations Board (NLRB) dismissed an unfair labor practice charge filed by SSOBA against Air Serv on the basis of Air Serv’s assertion of RLA jurisdiction. SSOBA argues that there is insufficient evidence to find that Air Serv is subject to the NMB’s jurisdiction based on Delta’s control of its operations. SSOBA further asserts that Air Serv has not established that all of its operations to provide security services for multiple airlines at various airports are governed by the RLA. The Organization contends that, even if Air Serv is found to be an RLA carrier, a nationwide craft or class is not appropriate in this case where the Employer has some history of localized bargaining. The Organization further argues that any corporate

centralized control of employees and their terms and conditions of employment by Air Serv is irrelevant because collective bargaining may result in agreements that replace existing non-union personnel policies.

Air Serv

Air Serv asserts that it is a derivative carrier under the RLA, that its 7,000 employees provide services for 39 carriers at 50 airports in the United States, and that its approximately 700 employees providing security services to eight airlines at seven airports and multiple Southwest Airlines service centers in the United States belong in a nationwide craft or class. The Employer states that it has a single nationwide headquarters from which all of its operations are run, and that all of its employees are subject to the same employee handbook and policies. Air Serv argues that because it and its predecessor company, Argenbright Security, have been found to be subject to the RLA, it should not have to litigate that issue in this case. Further, although the Employer argues that it should not be required to establish derivative status for each airline with which it contracts, it contends that the core agreement it signs with each airline, together with the actual application of the contract, establishes the level of control necessary for the NMB to determine that Air Serv is a derivative carrier of all such airlines. The Employer also asserts that once it is determined to be a derivative carrier under the RLA, there is no basis for creating fragmented crafts or classes based on air carrier accounts, particularly where Air Serv has centralized terms and conditions of employment for all of its security service employees. Air Serv concludes that the application of SSOBA should be dismissed because it is limited to a single location with one carrier, and that the proper craft or class for security officers is nationwide in scope.

FINDINGS OF LAW

Determination of the issues in this case is governed by the RLA, as amended, 45 U.S.C. § 151, *et seq.* Accordingly, the Board finds as follows:

I.

45 U.S.C. § 151, First, includes within the definition of a carrier “any company which is directly or indirectly owned or controlled by or under common control with any carrier.”

II.

SSOBA is a labor organization and/or representative as defined in 45 U.S.C. § 151, Sixth, and § 152, Ninth.

III.

45 U.S.C. § 152, Fourth, gives employees subject to its provisions, "the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for purposes of this chapter."

IV.

45 U.S.C. § 152, Ninth, provides that the Board has the duty to investigate representation disputes and to designate who may participate as eligible voters in the event an election is required.

STATEMENT OF FACTS

The Employer provided information regarding the security services provided by its employees, and their terms and conditions of employment. The Employer also submitted declarations from Megan Jones, General Counsel and Senior Vice President of Human Resources; Faisal Mustafa, General Manager at Chicago O'Hare International Airport (ORD); David Ray, General Manager at Houston International Airport (IAH); Doug Kreuzkamp, Senior Vice President of Operations, who oversees operations west of Kansas including Los Angeles International Airport (LAX) and San Francisco International Airport (SFO); Shannon Conklin, President of the IRAM division of Air Serv servicing Southwest Airlines at its corporate headquarters at Love field in Dallas, Texas, and at its call centers in Albuquerque, Houston, Oklahoma City, Chicago, Phoenix, and San Antonio; Mohammed Afaneh, Account Manager/Operation Manager for relations with Delta Airlines at Dallas-Fort Worth International Airport (DFW); and Steve Wragg, Senior Vice president of Global Security Services for the Mid-Atlantic Region, who oversees security officer operations at John F. Kennedy Airport (JFK) and Dulles International Airport (IAD). Air Serv also provided a variety of documents, including its core agreements for security services with various airlines. The declarations submitted by Air Serv demonstrate that, in addition to the core agreements signed with client airlines, its operations for and control by the airlines are essentially the same for each client at any given airport.

Air Serv

Air Serv is an airline service company headquartered in Atlanta, Georgia that provides security, among a variety of other services, to commercial air carriers. In 2009, Air Serv purchased the assets of International RAM, LC,

another company providing airline security services. Air Serv established Air Serv Securities, Inc. (d/b/a IRAM), known as Air Serv's IRAM division, which provides security services to Southwest Airlines. IRAM's corporate functions have been fully merged into Air Serv, and the information provided by the Employer applies equally to IRAM. Air Serv security officers all perform one or more of the following functions: securing aircraft, doors, staircases, escalators, elevators, parking lots, baggage, cargo, gated security checkpoints, and maintaining traffic flow at airline client terminals. Air Serv provides security services to Delta Airlines, American Airlines, and Etihad at JFK; United Airlines, Pakistan International Airlines, Air India, Etihad, and Delta Airlines at ORD; Continental Airlines at IAH; United Airlines and US Airways at LAX; United Airlines and SkyWest at SFO; Delta Airlines at DFW; and Southwest Airlines at its corporate headquarters and six of its call centers.

All of Air Serv's departments are centralized and controlled at the Employer's Atlanta headquarters, including executive, human resources, legal, finance and accounting, sales and marketing, performance management, and safety and operations. The core agreements with client airlines are typically negotiated at the corporate level, and pricing for the contracts is always approved at the corporate level. Corporate departments, such as legal, finance, sales and marketing, performance management, and safety, all provide services to support the field operations. Except for uniforms for the IRAM employees, all purchasing above a minimal level is done on a corporate-wide basis. Human Resources responsibilities are established and controlled at the corporate level. Jones is responsible for human resources throughout the Employer, with 19 human resources representatives reporting to field management and to Jones.

Air Serv's Employee Handbook applies to all employees, and employee benefits are established at the corporate level. Benefits available to employees nationwide include medical, vision, and life insurance, vacation, sick leave, holidays, income replacement, short and long term disability, and 401(k) plans. Nationwide leave of absence, jury duty, and bereavement policies also were developed at the corporate level. Similarly, rules of employee conduct are developed at the corporate level and apply to all employees.

Wage rates are established, reviewed, and modified at the corporate level. Wage rates are reviewed by potential client airlines when proposals for work are being made. Although there is some variation based on function and location, wage rates are set at the corporate level and any individual variations are subject to corporate approval.

Air Serv's Employee Handbook allows for internal promotions, transfers, and lateral moves. Although Jones is unaware of any instances of transfer among

security officers, she states that Air Serv policy would allow transferring employees to retain their seniority for all benefits purposes.

Finally, Air Serv's labor relations policy is developed and overseen at the corporate level. Jones notes that, based on unique circumstances, a limited number of employees are represented under collective bargaining agreements that were negotiated at the corporate level.

Carrier Control Over Air Serv's Operations and Employees

Staffing, Scheduling, Work Assignments, and Supervision

Air Serv's security officers' shift schedules are determined by the client airlines. The airlines specify the precise work locations, level of coverage and hours of coverage to be provided. The airlines establish Post Orders for each position, detailing a guard's responsibilities at any given post. Any Post Orders or supplemental measures contemplated by Air Serv have to be approved by the airline. Air Serv cannot change the number of officers or the amount of their hours at a post without carrier approval. Airlines have rejected Air Serv's suggested changes on these matters, and the changes were not implemented. Additionally, Air Serv managers meet daily with the clients' local security managers for a briefing on the security needs for the day and issues the airline may have with Air Serv. The airlines modify the security officers' schedules as they choose. For example, at JFK, Delta eliminated Air Serv security officer positions entirely when it deemed cameras to be a more efficient option. Moreover, all overtime must be pre-approved by the client airline.

In many instances, airline customers assume that Air Serv security officers are employees of a client airline and they lodge a complaint with the security officer about the airline. Air Serv passes the complaint along to the airline. In instances where a passenger complaint involving an Air Serv employee is made, Air Serv similarly reports the issue to the airline.

Performance Standards

The client airlines establish the performance standards that must be met by Air Serv security officers. Discussions at the daily meetings between Air Serv managers and the airlines include the issue of meeting performance standards. Some contracts provide for fines when standards are not met. For example, if Air Serv guards do not respond within three minutes to an alarm going off in the Delta terminal at JFK, Air Serv may be fined. If the Transportation Security Administration (TSA) identifies a deficiency in security procedures, it notifies the airline, which in turn notifies Air Serv about the deficiency and how to correct it. Wragg also notes that in the event TSA fines

Delta for a security violation caused by Air Serv employees, Delta deals with TSA directly to resolve the issue, pays any fine, and requires Air Serv to reimburse it.

Discipline and Evaluations

The declarations submitted by Air Serv are replete with instances where a client airline has requested Air Serv to remove security officers based on poor performance, poor behavior, or inability to speak English to the carrier's satisfaction. In every instance, Air Serv has disciplined or removed the employee in accordance with the carrier's wishes.

In addition to discipline and discharge, carriers also routinely notify Air Serv about what they deem to be meritorious service by Air Serv employees. Recommendations have been made by carriers and followed by Air Serv concerning commendations and bonuses. Further, carriers often participate in, and in some instances must approve, decisions regarding promotion of Air Serv employees to managerial positions.

Training

Air Serv security officers are trained to perform their duties to the client airline's satisfaction. In some instances, the Air Serv trainer is trained by the client airline and certified regarding their ability to train the Air Serv security officers. The client airlines require that Air Serv maintain training records that are reviewed on a regular basis by the client.

Records and Audits

Air Serv is required to maintain training and performance records for the airlines' review. The airlines regularly audit these records, as noted above, to be sure that training has been completed satisfactorily. Air Serv's records are also regularly audited for adherence to scheduling requirements and compliance with the Post Orders. Deficiencies are reported to Air Serv.

DISCUSSION

Air Serv's Status as a Derivative Carrier

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).

Air Serv does not fly aircraft and is not directly or indirectly owned by an air carrier. As acknowledged by SSOBA in its initial position statement, the Air Serv employees at issue perform work that is traditionally performed by employees in the airline industry. *See, e.g., Security '76, Inc.*, 5 NMB 234, 240 (1976). Therefore, to determine whether Air Serv is subject to the RLA, the NMB must consider the degree of direct or indirect control exercised over Air Serv's operations by carriers.

Carrier Control Over Air Serv and Its Employees

Air Serv contends that it should be found a derivative carrier because the NMB already found its operations at Memphis, Tennessee covering shuttle transportation drivers to be subject to the RLA. *Air Serv Corp.*, 35 NMB 201 (2008). Air Serv also notes that its predecessor company was found to be subject to the RLA regarding its security services in Oakland California and skycap services in Newark, New Jersey. *Argenbright Sec., Inc.*, 29 NMB 340 (2002); *Argenbright Sec., Inc.*, 29 NMB 332 (2002). Air Serv states that its core contracts are the same, and airline control under those contracts conform to the NMB's standards for derivative carrier status. Air Serv argued, therefore, that given the NMB's prior ruling on Air Serv's status as a derivative carrier and the similar core contracts and airline control, it should not be required to establish its derivative carrier status again in this proceeding. Because contracts and local practices might vary in a determinative manner for different crafts or classes in different locations, the record was fully developed in this proceeding.

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.*, 32 NMB 30 (2004); *John Menzies PLC, d/b/a Ogden Ground Servs., Inc.*, 30 NMB 405 (2003); *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 the various airlines, with which Air Serv contracts to provide services, exercise a significant degree of control over Air Serv's operations. Pursuant to the contracts with its client airlines, the staffing, scheduling, job duties, the manner in which the job duties will be carried out, and the performance standards for those duties are dictated by the client airlines. Moreover, only the airlines can approve overtime for Air Serv's security officers. The client airlines have access to Air Serv's training, job performance, and billing records; and they audit them on a regular basis.

Training of Air Serv security officers is controlled by the client airlines, who in some instances train the Air Serv trainers. In any event, training must be done to the client airlines' specifications. The airlines' management, together with Air Serv management, reviews the work on a daily or regular basis to ensure that the required work is being performed to the airlines' specifications.

As discussed above, airline managers regularly advise Air Serv that they want particular Air Serv security officers disciplined or discharged; and Air Serv has always complied with these demands. Further, airline managers discuss meritorious security officer service with Air Serv, and Air Serv routinely acts on the airline manager's request. Similarly, airline managers generally play a role in, and sometimes must give their prior approval, for promotion of an Air Serv security officer to a managerial position.

Therefore, based on the discussion above, the NMB finds that this record establishes that the airlines with which Air Serv has contracted to provide security services all exercise substantial control over Air Serv and its employees.

Scope of the Craft or Class

Section 2, Ninth, of the Act provides for representation of employees or subordinate officials on a craft or class basis. The Board has consistently held that such representation must be on a system-wide basis. The craft or class must include all of the employees working in the classification deemed eligible, regardless of work locations. *Aircraft Service International Group*, 31 NMB 508 (2004); *National R.R. Passenger Serv. Corp.*, 31 NMB 178, 189 (2004); *LSG Lufthansa Servs., Inc.*, 25 NMB 96, 108 (1997); *Int'l Total Servs.*, 20 NMB 537, 544 (1993).

The Board's practice is to conduct elections across a carrier's entire system. See *Summit Airlines Inc. v. Local 295*, 628 F.2d 787, 795 (2nd Cir. 1980). *America West Airlines, Inc.*, 16 NMB 135, 141 (1984). Early in its history,

the Board stated its practice that:

The Railway Labor Act does not authorize the National Mediation Board to certify representatives of small groups of employees arbitrarily selected. Representatives may be designated and authorized only for the whole of a craft or class employed by a carrier.

Pennsylvania R.R. Co., 1 NMB 23, 24 (1937). This practice was extended to the airline industry when the RLA was extended to cover that industry in 1936. See *Ross Aviation, Inc.*, 5 NMB 145, 148 n. 5 (1972) (noting the requirement that representation issues be resolved on a carrier-wide basis.)

Additionally, the Board takes into account the need for rational labor-management relations. *Ground Services, Inc.*, 8 NMB 112, 116 (1980). In that case, where the employer's functions varied from city to city, and the nature of the work and skills required would make cross-utilization of personnel between cities prohibitively expensive, the Board found that single city locations constituted a separate system. In this case, however, Air Serv provides security services at airports across the United States; and it even has a policy allowing for the retention of seniority for the purposes of benefits in the event of a transfer to another location.

When determining the scope of a carrier's system, the Board examines the extent of the consolidation of operations, labor relations, and payroll functions. *Ogden Union Ry. and Depot Co.*, 16 NMB 398, 404 (1989). The Board also examines how the carrier or carriers are held out to the public, including how the carrier(s) advertise services, and the identity indicated on signs, logos, or other publicly visible indicia. *Sapado I a/k/a Dobbs Int'l Serv., Inc.*, 19 NMB 198, 205 (1992).

Based upon the facts of this case, the Air Serv's security officer services for Delta at Delta Air Lines Terminals 2 and 3 at JFK is not a separate system for the purposes of Section 2, Ninth. Air Serv's management services, including human resources, legal, finance and accounting, sales and marketing, performance management, and safety and operations, are centralized in Atlanta, Georgia. Similarly, Air Serv's labor relations for all of its operations are determined and coordinated from its corporate headquarters in Atlanta. Air Serv's benefits, including health insurance and 401(k) plans, apply to all employees regardless of location; and employees who transfer within the system retain seniority for benefits purposes. Air Serv also has core agreements with numerous carriers that set forth the terms of the services it provides.

Further, the fact that Air Serv is subject to the control of different

carriers will not fragment the craft or class. See, e.g., *Aircraft Service International Group, above* (a nationwide scope was found for an employer with contracts with multiple carriers).

SSOBA contends that Jones' reference to local collective bargaining agreements in certain unique circumstances undermines Air Serv's argument for a nationwide scope. The Employer may have engaged in certain local bargaining. Absent a prior decision by the NMB finding a craft or class for Air Serv on less than a nationwide basis, however, any voluntary agreements entered into by Air Serv will not affect the NMB's conclusion on the proper scope of a craft or class subject to its jurisdiction.

CONCLUSION

Based on the record in this case and for the reasons discussed above, the NMB finds that Air Serv's security services operations are subject to the RLA. The NMB further finds, for the reasons stated above, that the craft or class of Air Serv's security service employees is nationwide in scope. Therefore, NMB File No. CR-6988 is converted to NMB Case No. R-7282 and SSOBA's application for employees at Delta Airlines Terminal 2 and 3 at JFK Airport is dismissed pursuant to Part 1206.4 (b)(2) of the Board's Rules.

By direction of the NATIONAL MEDIATION BOARD.



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