



**NATIONAL MEDIATION BOARD**  
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42 NMB No. 1

October 16, 2014

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1099 14<sup>th</sup> Street, NW  
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Re: NMB File No. CJ-7096  
Menzies Aviation, Inc.

This responds to your request for the National Mediation Board's (NMB) opinion regarding whether Menzies Aviation, Inc. (Menzies) is subject to the Railway Labor Act (RLA), 45 U.S.C. §151, *et seq.* On August 28, 2013, the National Labor Relations Board (NLRB) requested an opinion regarding whether Menzies' operations are subject to the RLA.

For the reasons discussed below, the NMB's opinion is that Menzies' operations and employees at the Seattle-Tacoma International Airport (SeaTac) are not subject to the RLA.<sup>1</sup>

**I. PROCEDURAL BACKGROUND**

On June 12, 2013, the Service Employees International Union Local 6 (Local 6) filed an unfair labor practices charge with the NLRB, alleging that Menzies' employee handbook contains rules or policies that restrict employees' rights under the National Labor Relations Act. On August 28, 2013, the NLRB referred the case to the NMB. The NMB assigned Angela I. Heverling to investigate. Menzies and Local 6 submitted position statements on September

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<sup>1</sup> Chairman Hoglander has previously expressed the view that the two-part test applied in this case should be replaced with a traditional agency test to determine whether there is RLA jurisdiction. *Airway Cleaners*, 41 NMB 262, 270-73 (2014). In the absence of a Board majority to overrule the traditional two-part test, Chairman Hoglander agrees that it is correctly applied here and that there is no RLA jurisdiction.

12, 2013. The NMB's opinion is based on the request and record provided by the NLRB, as well as these position statements.<sup>2</sup>

## **II. MENZIES' CONTENTIONS**

Menzies contends that it is subject to the RLA. It notes that its most significant contract at SeaTac is with Alaska Airlines (Alaska) and states that Alaska "exercises broad and deep control over virtually every aspect of Menzies' SeaTac operations." According to Menzies, there is a "textbook case of overwhelming control over the operations of a vendor thereby mandating coverage for the vendor under the RLA."

## **III. LOCAL 6'S CONTENTIONS**

Local 6 argues that SeaTac carriers do not exert sufficient control over Menzies' employees to establish RLA jurisdiction.

## **IV. FINDINGS OF FACT**

Menzies provides baggage, ramp, and aircraft servicing functions for air carriers at SeaTac. About 85 percent of Menzies' work at SeaTac is performed for Alaska, while the remaining 15 percent is provided to other carriers, including British Airways and Virgin America.

In January 2005, Menzies entered into an agreement with Alaska to provide baggage, ramp, and aircraft servicing functions. Prior to that time, Alaska handled these functions at SeaTac. The most recent agreement between Alaska and Menzies took effect on January 1, 2013. Through this Master Ground Services Agreement, Alaska has a role in creating performance standards for Menzies' employees. Under the contract provision entitled "Standards of Service,"

Vendor warrants that all Services will . . . be performed by qualified, uniformed, well-groomed, diligent and efficient employees who emulate and reflect Alaska's service philosophy and concepts and . . . conform to Alaska's policies and procedures related to the Services, including Alaska's Drug and Alcohol Policy.

Alaska grants Menzies permission to use Alaska-owned equipment and facilities for the purposes of performing services under the contract. Because Alaska employees performed baggage and ramp duties until 2005, Alaska owns

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<sup>2</sup> On June 13, 2014, the Service Employees International Union (SEIU) submitted an unsolicited policy brief regarding several jurisdictional determinations before the Board, including this one. The SEIU is not a participant in this case (Local 6 is the participant) and the Board did not consider that brief in reaching this decision.

the ground support equipment used by Menzies' employees under the Alaska contract. Much of this equipment has an Alaska label. Menzies does not lease any space at SeaTac in order to provide services to Alaska; rather, Alaska provides office space and employee break rooms as provided in the contract.

The contract provides the following with regard to employee relations:

Vendor shall at all times act as an independent contractor and shall be responsible for the direct supervision of its personnel. Vendor assumes full responsibility for the staffing, assignment and supervision of the personnel performing the Services.

Vendor will remove from performance of Services hereunder any of its employees who display improper conduct or who for any reason whatsoever are unsatisfactory to Alaska or are deemed not qualified. Alaska will describe the complaints in reasonable detail to assist Vendor in providing due process to Vendor's employees. Notwithstanding the foregoing, the Vendor shall not be required by Alaska to terminate or discipline any of its employees in breach of laws or of Vendor's employee disciplinary processes as set out in its employee handbook. Vendor and Alaska shall undertake appropriate consultation in order to resolve such issues to mutual satisfaction.

According to an employee declaration, Alaska auditors inspect Menzies' employees' work but do not discipline these employees. During these audits, Menzies employees receive scores and grades on whether they meet Alaska's time limits for loading and unloading planes. As described in the contract, Menzies supervisors handle all employee discipline. Although Alaska can demand that Menzies remove an employee from the Alaska contract, Menzies can determine how to discipline or whether to move the employee to another contract. Menzies provided incidents of employees being removed from the Alaska contract after misconduct, including flipping a vehicle while driving behind an airplane and ignoring stop signs while pushing an airplane away from a passenger gate. Menzies did not indicate whether these employees were terminated or transferred to another contract. As reported by a Menzies employee, if Menzies values an employee, it may retain him or her to work somewhere else at SeaTac. Menzies employees working on any contract wear uniforms with the Menzies label on them.

Menzies' employees must comply with Alaska's initial and recurrent training requirements. Many of the training programs that Menzies' employees participate in were created by Alaska. The employees are trained in the Alaska Customer Service Manual, a comprehensive manual covering all ramp operations for Alaska aircraft at SeaTac. Employees are required to have completed certain trainings before working on the Alaska contract. Through a

“train the trainer” program, certain Menzies employees receive additional training from Alaska in order to train other Menzies employees. Although this is the usual procedure, Alaska will sometimes train employees directly. On occasion, an Alaska supervisor will directly relay information about performance expectations or recent developments to Menzies employees in the break room. Alaska training programs are accessed by Menzies employees on computers provided by Alaska.

Alaska requires Menzies to meet specific performance measurements for how baggage is loaded and unloaded and provides time targets for unloading baggage. For example, bags must be unloaded within 20 minutes. The contract allows Alaska to audit Menzies’ records with reasonable notice. Under the contract, Alaska performs a monthly audit of Menzies’ “operational performance, execution, compliance, quality, training communication, budget, key performance indicators (KPIs) and administrative record keeping.”

Alaska and Menzies together determine appropriate staffing levels with “final approval by Alaska at its sole discretion.” The contract provides that Menzies shall accommodate any changes in Alaska’s flight schedule if 30 days’ notice is given of such a change.

Menzies also performs ramp, baggage, and airport handling services for other airlines on a much more limited basis. In contrast to its contract with Alaska, Menzies owns the equipment it uses on other contracts and this equipment has the Menzies logo on it.

A Menzies employee who primarily provides services to Virgin American (Virgin) reports that Virgin was not involved in his hiring. After hired, he received a week of classroom training taught by Menzies instructors. He reported having occasional interaction with Virgin managers who visit the ramp and inspect the Menzies employees’ work a few times a week. The Virgin managers will point out minor mistakes to employees while they are working but generally will email Menzies managers with complaints. Virgin managers do not discipline Menzies employees. While employees may be disciplined for violating Virgin’s rules, this discipline comes from Menzies’ management.

## **DISCUSSION**

### **Applicable Legal Standard**

Menzies does not fly aircraft and is not directly or indirectly owned by an air carrier. 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. *See, e.g., Airway Cleaners*, 41 NMB 262 (2014); *Aero Port Services, Inc.*, 40 NMB 139 (2013); *Talgo, Inc.*, 37 NMB 253 (2010). 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. *Airway Cleaners, above, Aero Port, above, Talgo, above.*

The ground services work performed by Menzies under its contracts at SeaTac is work traditionally performed by employees of air carriers. Therefore, the Board must determine whether Menzies is directly or indirectly controlled by carriers to determine whether its SeaTac employees are subject to RLA jurisdiction.

### Carrier Control over Menzies 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 decision, including hiring, firing, and discipline; degree of supervision of the company's employees; and control over employee training. *See, e.g., Airway Cleaners, 41 NMB 262 (2014); Bags Inc., 40 NMB 165 (2013); Air Serv Corp., 39 NMB 450 (2012).*

Menzies contends that its operations at SeaTac are subject to RLA jurisdiction because its employees must follow standards dictated by Alaska regarding unloading bags, such as the 20-minute limit; Alaska auditors inspect Menzies employees' work and identify deficiencies for Menzies to correct; and Alaska has required Menzies to remove employees from its operations if found unacceptable.

The evidence in this case demonstrates that carriers at SeaTac do not exercise a sufficient amount of control over Menzies to establish RLA jurisdiction. As in *Airway Cleaners, 41 NMB at 269*, the contract between Alaska (the carrier whom Menzies argues exercises the most control over its operations) and Menzies describes a typical relationship between a carrier and a contractor. The fact that Alaska dictates standards for work performed is not unusual in a contract for services and does not evidence a significant degree of control over Menzies' operations. All contracts specify certain standards that a company must follow in performing services for a carrier. For example, in *Bags, Inc., 40 NMB at 166-67*, the company had to follow the standard practices of Delta Airlines (Delta) and Delta had the right to bar an employee from the airport if he or she did not comply with Delta's appearance or safety standards. The Board stated that "Bags has a contractual relationship with Delta . . . Therefore, as discussed above, the agreements dictate certain standards that Bags' employees should follow in performing services for the Carriers." *Id.* at 169. The 20-minute time limit imposed by Alaska is no

different and does not evidence a degree of control necessary to establish RLA jurisdiction.

Likewise, the fact that Alaska auditors inspect work performance does not establish this type of control. A Menzies employee reported that Alaska managers may directly notify a Menzies employee of a small infraction but performance problems are reported to and all discipline is handled by Menzies management. The contract between Menzies and Alaska provides that Menzies “shall not be required by Alaska to terminate or discipline any of its own employees in breach of laws or (Menzie’s) employee disciplinary processes as set out in its employee handbook.” So while Alaska may report performance problems, Menzies determines the appropriate discipline following its own discipline process. The contract further states that Menzies and Alaska shall consult “to resolve such issues to mutual satisfaction.”

Menzies further argues that Alaska’s authority to require it to remove from Alaska’s operations employees who it finds unacceptable evidences the requisite control for RLA jurisdiction. The contract does provide that Menzies will remove an employee from the Alaska contract if Alaska deems the employee unacceptable; however, as stated above, the contract allows Menzies to determine the appropriate discipline. Menzies is not required to terminate employees who are unacceptable to Alaska. In fact, upon request for additional information from the NLRB, Menzies provided information about three incidents in which Menzies employees were removed from Alaska operations, but it did not provide evidence that any employees were terminated following a report from Alaska. A Menzies employee reported that such employees are often transferred to another position at SeaTac, indicating that Menzies has control over its personnel decisions. The NMB has found jurisdiction based on the authority to remove employees where an employee has been terminated following a carrier request that he or she be removed from the contract. *Aircraft Services Int’l*, 32 NMB 30, 33 (2004). That is not the case here; Menzies retains and exercises the option to utilize employees elsewhere at SeaTac.

While the Board has in the past found jurisdiction over Menzies’ operations at other locations, jurisdiction decisions are presented to the Board on a case-by-case basis at different locations, where companies contract with different carriers who exercise various degrees of control. For example, the Board asserted jurisdiction over Menzies’ Los Angeles operations in 2003 after determining that Alaska held significant authority to remove or discipline Menzies employees, where a Menzies manager stated that he terminated 10-15 employees based on Alaska’s request. *John Menzies*, 30 NMB 463, 469 (2003). That was a degree of carrier control over personnel decisions not present in this case.

The extent to which the carrier controls the manner in which Menzies conducts its business is no greater than that found in a typical subcontractor relationship. As in the Board's recent *Airway Cleaners* decision, Alaska does not exercise "meaningful control over personnel decisions." Alaska does not hire, fire, or routinely discipline Menzies employees. Contract provisions even more explicitly leave these decisions to Menzies. Menzies has its own discipline policy and, although Alaska managers can report misconduct or failure to follow procedures, Menzies has the authority to discipline as its managers see fit.

Alaska does not have sufficient control over the hiring, firing, and discipline of Menzies employees to establish RLA jurisdiction. As the Board has stated in the past, the type of control in this case is "found in almost any contract between a service provider and a customer." See, e.g., *Airway Cleaners*, 41 NMB at 269; *Bags*, 40 NMB at 170.

### CONCLUSION

Based on the record in this case and for the reasons discussed above, the NMB's opinion is that Menzies and its employees at SeaTac are not subject to the RLA.

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson  
General Counsel

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Member Geale, dissenting.

For the policy reasons set forth in my decision in *Airway Cleaners*, 41 NMB at 273-80, I disagree with how the majority applied the Board's traditional two-part test. In my view, the contract language and evidence

demonstrate the requisite level of carrier control for RLA jurisdiction. Menzies relies on Alaska for 85 percent of its business at SeaTac, and Alaska exercises control over every aspect of how Menzies runs its operations at the airport. Alaska enforces specific standards of performance, such as the 20-minute time limit discussed above. As in *Airway Cleaners*, Menzies uses Alaska's equipment, displaying the Alaska logo, and space to perform services under that contract. Menzies depends on Alaska providing this equipment to perform the vast majority of its operations at SeaTac.

Alaska provides training for Menzies employees and these employees receive the training on Alaska-owned computers. This includes training on the Alaska Customer Service Manual and Alaska-developed policies and procedures. Alaska's auditors continually monitor and effectively supervise Menzies employees. Alaska removes from its contract employees who it finds unacceptable. Therefore, the requisite level of control over personnel decisions is met in this case.

This case is only different from *Airway Cleaners* in that the level of control by the carrier seems even more apparent in this instance. For example, Alaska closely monitors the work of each Menzies employee through detailed report cards, and Menzies is required to pass on incentive payments to its workers that score well on the report cards. Indeed, I have some difficulty understanding what, if any, evidence could convince my colleagues of coverage under our traditional two-part test.

I also note that in my dissent in *Airways Cleaners*, I raised concerns about the potential for unnecessary labor strife, including strikes or lockouts, because of the absence of the RLA process and its protections for the public, covered employees, their employers and the carriers that depend on these contractors. An unrelated contractor that has also not been included in our jurisdiction is reportedly experiencing a strike at an airport in New York.<sup>3</sup> Should such disputes develop at other airports or expand in New York, there can and will be substantial harm to interstate commerce and the public.

As such, the decision to decline jurisdiction in this case again threatens to substantially undermine the very purpose of the RLA in limiting disruptions to interstate travel and commerce. As the Board stated in a 1980 decision, "With contracting of work on the increase, sound public policy in effectuating the purposes of the Act requires that the Board insure that the airlines be held accountable under the Act in personnel and industrial relations matters. **These contractor employees are no less important to the uninterrupted flow of**

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<sup>3</sup> "NYC Airport Workers strike over Ebola fears," David K. Li, NY Post (Oct. 9, 2014), available at <http://nypost.com/2014/10/09/nyc-airport-workers-strike-over-ebola-safety-concerns/>.



**commerce than employees of the airline itself.”** *Ground Services, Inc.*, 8 NMB 112, 117 (1980) (emphasis added).<sup>4</sup>

Our statute favors broad-based jurisdiction for the NMB, and the level of control exercised by carriers at SeaTac, specifically Alaska, over Menzies, is more than sufficient to establish jurisdiction under the RLA.

Accordingly, I must respectfully dissent.

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<sup>4</sup> Prior to its current two-part test, the Board occasionally employed other tests for RLA jurisdiction, including a joint employer analysis in *Ground Services, Inc.* I am, however, citing this case solely to demonstrate that the Board has long recognized the importance of ensuring that parties meet their responsibilities under the RLA regardless of changes in business models over time, including carriers contracting out work traditionally performed by airline employees.