



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the Application of
the

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AIRLINE
DIVISION

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

involving employees of

ABX AIR, INC. /AIR TRANSPORT
INTERNATIONAL, INC.

44 NMB No. 24

CASE NO. R-7494
(FILE NO. CR-7157)

FINDINGS UPON
INVESTIGATION-
DISMISSAL

May 17, 2017

This determination addresses an application filed by the International Brotherhood of Teamsters, Airline Division (IBT). IBT requests the National Mediation Board (NMB or Board) to investigate whether ABX Air, Inc. (ABX) and Air Transport International, Inc. (ATI) (collectively the Carriers) are operating as a single transportation system for the craft or class of Flight Deck Crewmembers (Pilots and Flight Engineers).

The investigation establishes that ABX and ATI do not constitute a single transportation system for representation purposes under the Railway Labor Act¹ (RLA or Act).

PROCEDURAL BACKGROUND

On October 26, 2016, the IBT filed an application alleging a representation dispute involving the craft or class of Flight Deck Crewmembers (Pilots and Flight Engineers). IBT represents the Flight Deck Crewmembers at ABX. *Airborne Express, Inc.*, 9 NMB 63 (1981) (R-5261).

¹ 45 U.S.C. § 151, *et seq.*

The Air Line Pilots Association, International (ALPA) represents the Flight Deck Crewmembers at ATI. *Air Transport International*, 37 NMB 25 (2009) (R-7217).

IBT asserts that ABX and ATI constitute a single transportation system for representation purposes. The application was designated NMB File No. CR-7157 and the Board assigned Cristina Bonaca to investigate.

The Carriers submitted a position statement on December 23, 2016, which they supplemented with filings on March 7 and 15, 2017. The IBT filed a preliminary statement with its application on October 26, 2016, and filed supplemental statements on February 10, 2017 and March 21, 2017.² ALPA filed a position statement on February 10, 2017.

ISSUE

Are ABX and ATI operating as a single transportation system? If so, what are the representation consequences?

CONTENTIONS

IBT

The IBT characterizes this case as a novel one for the Board, in that it involves a corporate structure in which ABX and ATI are Carriers which are commonly owned and controlled by Air Transport Services Group (ATSG) and dependent on other ATSG subsidiaries “for core functions necessary to carry

² In IBT’s supplemental statement, it asks the Board to request multiple other documents relating to the relationship between Air Transport Service Group (ATSG) and its subsidiary companies. Some of the documents requested include: 1) the agreement between Airborne Global Solutions (AGS) and Amazon; 2) agreements between AGS, the Carriers, and Amazon; 3) agreements between the ATSG entities and DHL; 4) all agreements between ATSG affiliates and third parties, etc. The Carriers responded that the request for additional documents “would burden the record with materials that are unnecessary, irrelevant, and redundant” and would place a heavy burden on the Carriers as much of the material would need to be redacted as the documents contain confidential and proprietary information. Further, the Carriers state that they have already provided sworn documents from Carrier officials discussing some of the contracts at issue, including contracts with Amazon, DHL, and Air Mobility Command (AMC). ABX and ATI provided declarations from a number of management officials including Joseph Payne, Robert Boja, John Starkovich, James O’Grady, John Vestal, Joseph Hete, Courtney Zimmerman, and Jeff Walling. IBT submitted documentary evidence including collective bargaining agreements, annual reports, training forms, articles, press releases, and other pertinent documents. In the Board’s view, the requested documents are overbroad and review of such requested documents would unnecessarily delay the issue of a determination with little chance of probative value. The indicia for rendering a single system determination are clearly defined, *see Trans World Airlines/Ozark*, 14 NMB 218, 236 (1987), and there is adequate information in the record for the Board to render a decision without the additional requested documents. *See also* 9 NMB 385, 386 (1982) (Board upheld Investigator’s ruling not to request additional documents ruling that “the state of the record [was] adequate for the Board’s purposes. . .”).

out the flying assigned to them by ATSG.” IBT contends that in order to facilitate its goal of rational labor relations, the Board must find the Carriers’ Flight Deck Crewmembers craft or class part of a single transportation system based on the significant degree of control exercised by ATSG over its subsidiaries. Some of the facts cited by the IBT in support of a single transportation system finding include overlapping senior management; physical location; common telephone number; common website link to ATSG; same maintenance and repair service; cross utilization of employees; common hull and liability insurance; same commercial travel company; same uniform vendor and uniforms; same training facility and simulator, etc. The IBT reminds the Board that it “has long recognized that it must be flexible in the application of its single carrier criteria in response to contemporary concerns and not allow form to govern substance in its determinations.” *World Airways/North American Airlines*, 40 NMB 29 (2012).

ABX and ATI

The Carriers contend that IBT’s application should be dismissed because there is no evidence of substantial operational integration or overlapping management between ABX and ATI. The Carriers have separate management structures, workforces, aircraft, and flying, and there are no plans to integrate their operations or interchange their workforces. Each Carrier is responsible for directing and administering its own labor relations and human resources functions. Employees of the two Carriers have different terms and conditions of employment and there has been no “transaction” which has changed or will change the relationship between the Carriers. The Carriers posit that this is IBT’s attempt to take control of the ATI Pilots’ flying through the elimination of ALPA as their representative. The fact that ABX and ATI are owned by a single holding company and that they fly for some of the same clients is not sufficient to find them part of a single transportation system.

ALPA

ALPA agrees with the Carriers that ABX and ATI are operated separately and do not constitute a single transportation system. ALPA states the evidence clearly demonstrates that there is no integration of operations, labor relations, and financial control between ABX and ATI. The ATI and ABX Flight Deck Crewmembers have different collective bargaining agreements (CBAs), different employee benefits, different employee policies and handbooks, and distinguishable uniforms.

In addition, ABX and ATI have separate flight operations, and each Carrier has its own Federal Aviation Authority (FAA) operating certificate. ALPA asks the Board to determine that a single transportation system does not exist and dismiss the IBT's application.

FINDINGS OF LAW

Determination of the issues in this case is governed by the RLA, as amended, 45 U.S.C. §§ 151-188. Accordingly, the Board finds as follows:

I.

ABX and ATI are common carriers as defined in 45 U.S.C. § 181.

II.

IBT and ALPA are labor organizations as provided by 45 U.S.C. § 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 the 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. In determining the choice of the majority of employees, the Board is "authorized to take a secret ballot of the employees involved or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives . . . by the employees without interference, influence, or coercion exercised by the carrier."

STATEMENT OF FACTS

Background

ATSG was formed to facilitate the December 31, 2007 acquisition of Cargo Holdings, International (CHI); CHI owned ATI at the time of its acquisition by ATSG. ATSG has owned both ATI and ABX since 2007.

ATSG provides air cargo transportation and related services to domestic and foreign air carriers and companies that outsource their air cargo lift operations. ATSG owns ABX; ATI; Airborne Maintenance & Engineering Services (AMES) which performs aircraft maintenance repair and overhaul services for airlines and operators; Airborne Global Solutions (AGS) which specializes in providing operating and leasing solutions utilizing cost-efficient medium wide-body freighter aircraft; Cargo Aircraft Management (CAM) which provides aircraft leasing programs; LGSTX Services which provides ground handling services, and; Global Flight Sources (GFS) which provides flight dispatching, flight following, flight planning, flight control/dispatch training, and other flight support services.

ABX

ABX is a Part 121 FAA-certified supplemental carrier which presently operates B767-200 and B767-300 aircraft for DHL and Amazon as its primary customers. ABX also performs work for Strategic Air Services, Aloha Air Cargo, and Aeromex, and charter flying for Air Mobility Command (AMC), Chapman Freeborn, and Air Charter Services. ABX operates and only has the authority to operate the B767-200 and B767-300 aircraft. ABX crews are not certified to fly passengers.

ABX operates B767 aircraft for DHL under the terms of a CMI (crew, maintenance, insurance) contract. The aircraft ABX operates for DHL are leased from the aircraft leasing subsidiary of ATSG, CAM. DHL subleases the aircraft to ABX for operations in the DHL system. DHL has the authority to terminate the sublease to, and operation by, ABX of one or more aircraft under the CMI agreement, and to sublease those aircraft to any other carrier with FAA authority.

ABX operates six B767 aircraft for Amazon under the terms of a CMI contract. The aircraft ABX operates for Amazon are leased from CAM. Amazon subleases the aircraft to ABX for operation in the Amazon system. Amazon has the authority to terminate the sublease to, and operation by, ABX of one or

more aircraft under the CBI agreement, and to sublease those aircraft to any other carrier with FAA authority.

ATSG provides dispatch and flight following to ABX and ATI through separate contracts, as well as hull and liability insurance.

ATI

ATI is a Part 121 FAA-certified supplemental carrier with passenger authority operating under flight and duty time rules under Part 121.500 for cargo operation and Part 117 for combi (passenger) operations.

ATI's three primary customers are AMC, DHL, and Amazon. ATI has operated B757 combi aircraft for AMC since 2013. From 1994 to 2013, ATI operated DC-8 combi aircraft for AMC. Since 2008, ATI has operated four B757 aircraft for DHL, primarily out of the DHL Cincinnati hub (CVG). Before that time, ATI had been flying B727s for DHL.

ATI operates six B767-200 and two B767-300 aircraft for Amazon out of Amazon's hub at Wilmington Air Park (ILN). The aircraft are leased to CAM who in turn subleases the aircraft to ATI.

All ATI Pilots are qualified to fly B767 and B757s, including for passenger operations in the combi aircraft. Fully half of ATI's fleet are B757s that no ABX Pilot is trained or qualified to fly.

Representation

IBT represents the Flight Deck Crewmembers at ABX. *Airborne Express, Inc.*, 9 NMB 63 (1981) (R-5261). The parties have a CBA that is amenable under Section 6 of the RLA. Negotiations for an amended ABX CBA began in early 2014 with an NMB Mediator and they are still ongoing. At the time of the IBT's application, there were 212 active ABX Pilots with no Pilots on furlough. There are 268 Flight Deck Crewmembers on the ABX seniority list.

ALPA represents the Flight Deck Crewmembers at ATI. *Air Transport International*, 37 NMB 25 (2009) (R-7217). The parties have a CBA that is amenable under Section 6 of the RLA. The parties are still engaged in direct negotiations and have not sought the assistance of the NMB. At the time the application was filed, there were 162 active Pilots at ATI with 11 Flight Engineers on furlough. There are 173 Flight Deck Crewmembers on the ATI seniority list.

Management

The ATSG Board of Directors is comprised of Randy D. Rademacher, Chairman; Jefferey J. Vorholt; J. Christopher Teets; Arthur J. Lichte; Richard M. Baudouin; Joseph C. Hete. Quint O. Turner is the CFO of ATSG. W. Joseph Payne is the Chief Legal Officer of ATSG. Richard Corrado is the Chief Commercial Officer of ATSG. Sarah Williams is the Director, Tax at ATSG. Joesph C. Hete is President and CEO of ATSG.

The ABX Board of Directors is comprised of Joseph C. Hete; Quint O. Turner; W. Joseph Payne; John M. Starkovich. The executive team at ABX is comprised of Joseph C. Hete, CEO; John M. Starkovich, President; Quint O. Turner, Chief Financial Officer; W. Joseph Payne, Vice President, General Counsel & Secretary; Robert N. Boja, Vice President, Flight Operations; Phillip A. Flowers, Vice President, Aircraft Maintenance.

The ATI Board of Directors is comprised of James F. O'Grady; John E. Vestal; Sarah E. Williams. The executive team at ATI is comprised of James F. O'Grady, President; John E. Vestal, Vice President, Flight Operations; Michael Holt, Vice President, Sales; Brian F. DuFour, Vice President, Technical Operations; Matthew E. Fedders, Vice President, Treasurer; and Greg Hadley, Vice President, Secretary.

While some officers of ATSG have management positions at ABX and ATI, ATI and ABX have separate management teams and there are no plans in place to integrate them. ABX and ATI are each headed by their own President who in turn reports to the President and CEO of ATSG, Joesph C. Hete.

There is no overlapping management with the Flight Operations Department at the Carriers. Each Carrier has its own management structure within those departments that is responsible for overseeing the employees of that Carrier alone; the heads of those departments report to the President of their respective Carrier.

Labor Relations

According to the Carriers, labor relations and personnel functions are, and will continue to be, administered separately. Labor relations functions, including collective bargaining, union contract administration, and grievance handling, are and will continue to be, independently performed under the direction of each Carrier's Vice President of Flight Operations.

At ATI, Captain John Vestal leads the ATI contract negotiation team, establishes ATI's negotiating strategy and goals, provides direction and feedback to the rest of the negotiating team, and personally attends all crewmember contract negotiations. Captain Vestal also has the final say at ATI in the disposition of grievances. According to Vestal's declaration, no ABX representative has ever attended ATI contract negotiations and no ABX representative has any part in the disposition of ATI grievances. In addition, no one from ATSG dictates day-to-day decisions regarding labor relations.

At ABX, Captain Robert Boja leads the negotiation team, establishes strategy and goals, and attends all crewmember contract negotiations. Captain Boja has the final say at ABX regarding the disposition of grievances. No one from ATI is involved in ABX negotiations or grievances. In addition, no one from ATSG has a say in day-to-day decisions regarding labor relations.

Both Vestal and Boja stated in their declarations that there is no sharing between the Carriers as to what is happening during negotiations. Further, no ATSG employee has attended any negotiation session at ABX during ongoing negotiations for a successor CBA. Joe Hete, President and CEO of ATSG, gives the individual Carriers wide ranging authority in negotiations. Hete limits his guidance to issues involving total allowable spend, fiscal responsibility, and the direction of the enterprise.

According to his declaration, Hete stated that he has occasionally met with Rick Zieberth, the Executive Council Chairman of the ABX Flight Deck Crewmembers for IBT Local 1224, to discuss the direction and future of ABX and demands relating to ATI. However, neither Mr. Hete nor any other ATSG official has ever been at the negotiation table.

Personnel Functions

Personnel and human resources functions are completely separate at the Carriers, including decisions involving hiring, discipline, and termination. Each Carrier makes its own decisions relating to the hiring of management officials and ATSG is not involved in the selection process.

Candidates for employment, including Flight Deck Crewmembers, can apply online for positions with a Carrier through the Carrier's own website, but not for a position with the other Carrier. The Carriers also perform their own background checks and drug and alcohol testing on prospective Flight Deck Crewmembers. If a Pilot choose to leave ABX or ATI to go work for the other

Carrier, that person is treated as a new hire for all purposes at the hiring Carrier.

Pilot discipline is handled by each Carrier separately through its Flight Operations Department with assistance from its human resources personnel. In certain terminations, the Carrier will advise Hete, in his role as President and CEO of ATSG, of decisions that have been made or are pending.

Each Carrier has its own human resources personnel with separate reporting obligations. The Human Resources Manager at ATI reports directly to the President of ATI. The Director of Human Resources at ABX reports directly to the President of ABX. None of the human resources personnel at either Carrier perform any work for the other Carrier.

Flight Deck Crewmembers are subject to different and separately developed employment policies and employee handbooks at the two Carriers. ABX and ATI each have their own intranet site, accessible only by the employees of that Carrier.

Flight Deck Crewmembers at ABX and ATI receive different benefits. Some examples of this include the following:

- ABX and ATI Flight Deck Crewmembers have different medical, dental, and vision plans that are established and maintained pursuant to their CBAs.
- The ABX and ATI CBAs have different amounts of Flight Deck Crewmember contributions.
- ABX Flight Deck Crewmembers are subject to the ABX Air Profit Sharing Plan, the Pilot Minimum Monthly Retirement Plan, a 401(k) plan that includes the Follow On Defined Contribution Plan, the Crew Member Benefit Protection Plan, and the Retiree Health Insurance Plan. ATI Flight Deck Crewmembers have a 401(k) Savings Plan.
- ABX Flight Deck Crewmembers accrue sick leave at a rate of one day per calendar month; ATI Flight Deck Crewmembers accrue sick leave at a rate of two days per Bid Unit.

The non-bargaining unit employees at ABX and ATI are also subject to different benefit plans and employment policies. Although there have been minor revisions over the years, the non-bargaining unit employees at ATI still enjoy basically the same benefits plans (medical, dental, vision, life, 401(k)) that they had before the 2007 acquisition of ATI by ATSG. Because of their different sources of origin, the ABX and ATI plans are different administratively and substantively. In addition, the non-bargaining unit ABX employees use a "Paid Time Off" system, while the ATI employees use a vacation system for accruals and use of time off.

Both Carriers maintain separate operational bank accounts and separate payrolls. Each Carrier prepares its own Crewmember payroll, and the payroll is paid by the individual Carrier not ATSG.

All employees of ATSG and its subsidiaries sign the same Code of Conduct and Foreign Corrupt Practices Act Compliance (FCPA) Policy, in addition to each Carrier's own separate employee policies and practices.

Commercial travel is managed separately by the Carriers. ATI has four employees who arrange and book travel for all ATI Flight Deck Crewmembers, and all charges are put on ATI credit cards. Hotel charges are booked directly to ATI. Travel for ABX Flight Deck Crewmembers is arranged by ABX employee Hillary Gunn. Hotels are booked by Ms. Gunn directly, while air travel is booked by Ms. Gunn through Global Crew Logistics. All ABX travel arrangements are charged to ABX. ABX and ATI are not required to lodge Flight Deck Crewmembers in the same hotel.

Maintenance and Finance Functions

ATI and ABX have separate maintenance departments and hire and train their own mechanics. The Vice President of Technical Operations at ATI is Brian Dufour. Mr. Dufour reports to Jim O'Grady, President of ATI. Philip Flowers is the Vice President of Aircraft Maintenance, and Director of Maintenance, at ABX. Mr. Flowers reports to John Starkovich, the President of ABX.

Each Carrier has its own Director of Maintenance and Chief Inspector, and separate FAA-approved maintenance manuals. AMES does contract maintenance for both ABX and ATI, but AMES also performs significant maintenance work for other air carriers, including Delta Air Lines, Allegiant Airlines, Atlas Air, Omni Air International, and UPS.

ABX, on a contract basis, has done line maintenance for ATI at various locations where they have both operated. ATI has similar line maintenance contracts with nine other vendors including Aeko Kula, Inc. (Honolulu); Airline Maintenance Services (Nashville); Commercial Jet, Inc. (Miami).

Line maintenance at ABX is similarly diversified. In addition to line maintenance performed by its own employees, various other vendors perform line maintenance as well. There are 15 other vendors which provide line maintenance for ABX, including Aloha Tech, ATI, Saltillo, Cargo Jet, Girag, Elite.

The line maintenance done for ABX and ATI by the vendors discussed above is done pursuant to standardized agreements that charge market rates. According to Starkovich's declaration, there is nothing special about the line maintenance that ABX does for ATI or vice versa, it is merely line maintenance done by a vendor.

Both Carriers have their own accounting and financial planning departments. ABX and ATI each manage their own business development efforts; their own accounts receivable; their service provider/supplier relationships and associated accounts payable, although those are processed by ATSG; their own budget, which is approved by ATSG; and their own payroll which is processed by ATSG.

Marketing/ "Held out to the Public"

While AGS markets the services of the entire ATSG family of companies, ATI and ABX hold themselves out to the public as entirely separate airlines using their own names and corporate logos. ABX and ATI have separate marketing and sales departments. For all flying except Amazon,³ the primary point of contact for each Carrier's customers is a Carrier employee.

While both Carriers' offices are located in a building at the Wilmington Air Park, they are located in separate parts of the building and share no common work or break room space. There is a central telephone number for ATSG where callers can select a particular subsidiary, including ATI or ABX. However, in addition, each Carrier has separate telephone lines and sales/marketing departments.

³ Flying for Amazon is done by both ABX and ATI, and there is a contract between Amazon and AGS. Each Carrier also contracts with Amazon for the operation of the routes they file (through contractual work orders) and for the aircraft that Amazon subleases to them. Amazon has the right under its agreement with AGS to decide which routes will be flown by ABX or ATI.

Both ATI and ABX have separate websites – <http://abxair.com> for ABX and <https://www.airtransport.cc/> for ATI. The website for each Carrier contains information about that Carrier, the type of aircraft it operates and the services it performs. Each Carrier's website also includes information about available jobs at only that Carrier, and provides links that allow for on-line applications. ABX's website does not list open positions at ATI or allow candidates to apply for such positions, and the same is true of the ATI website. ATI and ABX do not have links connecting each other's website.

The ATSG website does contain links to the ATI and ABX websites, as well as the other five businesses owned by ATSG. However, ABX and ATI are clearly identified as separate business units with their own identifying logos.

Routes and Schedules

Currently there is no combination of routes and schedules performed by ABX and ATI, and the Flight Deck Crewmember workforce is wholly separate.

ABX flies solely B767s, primarily for DHL and Amazon, and occasionally flies charters and ad hoc operations for the military and other customers. ABX lacks the requisite authorities to carry passengers

ATI operates B757 freighters for DHL, and B757 combi aircraft for AMC. ATI has no regular B767 operations for DHL, but on occasion, ATI uses a B767 to perform flying normally done by a B757. ATI carries passengers in its B757 combi aircraft. ATI operates B767s for Amazon.

ATI and ABX each contract separately with their customers. Even when flying the same type of aircraft for the same customer, like Amazon, the Carriers' flying is often not interchangeable because of differences in ATI and ABX's CBA's. With respect to the Carriers' other customers, they perform separate flying, which is not interchangeable, both because they operate different aircraft and because their Department of Transportation and FAA operating authority prohibit them from exchanging aircraft. Further, the Flight Deck Crewmembers of one Carrier are not trained to fly the aircraft operated by the other Carrier, and are not authorized to do such flying under the Carriers' operating certificates.

The schedules of the Flight Deck Crewmembers at the two Carriers are created based on the rules of their respective CBAs. Many differences exist between the respective schedules. For instance, ATI Flight Deck Crewmember schedules are based on thirteen 28-day bid units per calendar year, while ABX Flight Deck Crewmember schedules are based on twelve 30 or 31-day bid months per calendar year. The Flight Deck Crewmembers at ABX and ATI have different wage rates, monthly guarantees, and work rules. The Carriers' Flight Deck Crewmembers are not domiciled at the same location, with all ATI Flight Deck Crewmembers being home based, and all ABX Pilots domiciled in CVG.

The Carriers have only exchanged aircraft on three occasions, 2008, 2011, and 2016, as the transfer process is regulatory burdensome and time consuming.

Training

Each Carrier has developed its own FAA-approved training program for its Flight Deck Crewmembers, with separate training materials and training officers. Each Carrier also has its own Flight Deck Crewmember manuals, procedures, and checklists. ATI and ABX do use the same software for scheduling and training.

ABX Flight Deck Crewmembers undergo simulator training in Wilmington, Ohio and ground training either at Wilmington or CVG. Some ATI training is done at the simulator training facility in Wilmington, Ohio that is also used by the ABX Flight Deck Crewmembers. ATI also does a significant amount of training in Phoenix and Dallas.

Seniority Lists

The Carriers' Flight Deck Crewmember seniority lists are not integrated and there are no plans to integrate them.

FAA Operating Certificates

The Carriers have their own Certificates of Public Convenience and Necessity from the DOT and their own individual Air Carrier Certificates from the FAA, and will continue to do so.

Each Carrier is subject to different oversight from different offices of the FAA. ATI is overseen by the FAA's Certificate Management Office in Dallas. ABX is overseen by the FAA's Flight Standards District Office in Detroit. Each Carrier also has different officers for the five "wise men" positions required by the FAA (Director of Safety, Director of Operations, Chief Pilot, Director of Maintenance, and Chief Inspector). The Carriers are held out to the government as completely separate airlines.

Uniforms, Insignia and Logos

Both Carriers' Pilots do wear blue uniforms and white shirts, however, the uniforms are not identical and will not be standardized. The ABX and ATI Pilots have always worn different uniforms, including different wings, hat devices, and ties.

Although some customers require that the aircraft operated for them be painted in their own paint scheme, all other aircraft operated by ABX and ATI have always had their own distinct paint scheme and markings and will continue to do so.

There are no changes to corporate insignia or logos planned.

DISCUSSION

I.

The Board's Authority

45 U.S.C. § 152, Ninth, authorizes the Board to investigate disputes arising among carrier's employees over representation and to certify the duty authorized representative of such employees. The Board has exclusive jurisdiction over representation questions under the RLA. *General Comm. Of Adjustment v. M.K.T. R.R.*, 320 U.S. 323 (1943); *Switchmen's Union of N. Am. V. Nat'l Mediation Bd.*, 320 U.S. 297 (1943). In *Air Line Pilots Ass'n, Int'l v. Texas Int'l Airlines, Inc.*, 656 F.2d 16, 22 (2d Cir. 1981), the court stated, "[t]he NMB is empowered to ... decide representation disputes arising out of corporate restructurings."

II.

Single Transportation System

The Board's Representation Manual (Manual) Section 19.4 provides that: "Any organization or individual may file an application, supported by evidence of representation or a showing of interest ... seeking a determination whether a single system of transportation exists."

In *Trans World Airlines/Ozark Airlines*, the Board cited the following indicia of a single transportation system:

[W]hether a combined schedule is published; how the carrier advertises its services; whether reservation systems are combined; whether tickets are issued on one carrier's stock; if signs, logos and other publicly visible indicia have been changed to indicate only one carrier's existence; whether personnel with public contact were held out as employees of one carrier; and whether the process of repainting planes and other equipment, to eliminate indications of separate existence, has been progressed.

Other factors investigated by the Board seek to determine if the carriers have combined their operations from a managerial and labor relations perspective. Here the Board investigates whether labor relations and personnel functions are handled by one carrier; whether there are a common management, common corporate officers and interlocking Boards of Directors; whether there is a combined workforce; and whether separate identities are maintained for corporate and other purposes.

14 NMB 218, 236 (1987).

The Board finds a single transportation system only when there is substantial integration of operations, financial control, and labor and personnel functions. *Southwest Airlines and AirTran Airways*, 43 NMB 120 (2016); *World Airways/ North American Airlines*, 40 NMB 29 (2012); *Delta Air Lines, Inc./Northwest Airlines, Inc.*, 36 NMB 36 (2009); *Burlington N. Santa Fe Ry. Co.*, 32 NMB 163 (2005). Further, the Board has noted that a substantial degree of overlapping ownership, senior management, and Boards of Directors is critical to finding a single transportation system. *Precision Valley Aviation, Inc., d/b/a Precision Airlines and Valley Flying Serv., Inc., d/b/a Northeast Express Reg'l Airlines*, 20 NMB 619, 655 (1993).

ABX and ATI are wholly-owned subsidiaries of ATSG. As such, there are some commonalities between the Carriers, as well as some level of oversight by the holding company. There are some officers of ATSG who also hold management positions with ABX or ATI, however ABX and ATI have entirely separate management teams. ATSG has a website with links to its subsidiaries, including ABX and ATI, but neither contain links to each other's website. ABX and ATI are located at a common address but in different parts of the building. There is a main number for ATSG from which you can select any one of its five subsidiaries, but each Carrier has its own phone numbers as well.

The Board's focus in merger cases, however, also includes the elements of labor relations and operational control to determine if a single transportation system exists. In the instant case, there is little evidence of common control over labor relations or operational integration.

ABX and ATI have separate FAA Operating Certificates. The two Carriers' flight operations, labor relations, and personnel functions are administered separately. Each Carrier has its own management structure that oversees its own employees, and the heads of those departments report to the President of their respective Carrier. Collective bargaining is handled separately by each Carrier and strategy or inside information is not shared between ABX and ATI. Joe Hete, President and CEO of ATSG, gives the individual Carriers wide ranging authority in negotiations, limiting his guidance to total allowable spend and the general direction of the Carrier.

Prospective employees of ATI or ABX must apply for employment through the individual Carrier's website. If a former ATI Pilot wanted to work for ABX, that individual would be treated as a new hire, and vice versa. Each Carrier performs its own background checks, drug testing, and disciplinary matters. Flight Deck Crewmembers are subject to different and separately-developed employment policies and handbooks. Each Carrier has its own intranet accessible only to its own employees. As the ABX Flight Deck Crewmembers are represented by IBT and the ATI Flight Deck Crewmembers are represented by ALPA, they have different bargained for benefits and schedules, and separate seniority lists.

Routes and schedules for ABX and ATI are entirely separate as their operations are fundamentally different. While they both perform work for Amazon and DHL, ATI has a significant amount of its operation devoted to

carrying passengers in combi aircraft. ABX Pilots are not trained to fly combi aircraft.

ATI and ABX have separate maintenance departments and officers. Both Carriers contract out for line maintenance work and ATI has, on occasion, used ABX for its line maintenance, in addition to nine other vendors that it uses. Each Carrier has its own individually-developed FAA-approved training program, materials and officers. Both ATI and ABX train at a simulator facility in Wilmington, but ATI Pilots also train in in Phoenix and Dallas. ABX and ATI Flight Deck Crewmembers have different domiciles.

The Board has long considered the issue of whether corporate subsidiaries constitute a single transportation system for representation purposes. *Guilford Rail Division*, 18 NMB 413, 434 (1991) (citing First Annual Report of the National Mediation Board, p. 22 (1935)). The Board has recognized that it must be flexible in the application of its single carrier criteria in response to contemporary concerns and not allow form to govern substance in its determinations. *Seaboard System Railroad-Clinchfield Line*, 11 NMB 217, 225 (1984). Here, there is no question that ABX and ATI are wholly owned subsidiaries of holding company ATSG, a corporate structure well known in the airline industry. However, there has been no traditional corporate transaction such as a consolidation, merger, purchase, lease, operating contract, acquisition, or similar transaction. The evidence presented here falls short of that necessary to establish a single transportation system.

The facts of this case are very similar to those considered by the Board in *World Airways/North American Airlines*, 40 NMB 29 (2012). In *World Airways/North American*, two carriers were owned by a holding company and there was some overlap between corporate officers and board members of the two carriers and the holding company. *Id.* at 32-33. Much like in the present case, in *World Airways*, the Carriers had separate labor relations, human resources, different employment policies, different benefits and pay, different scheduling, routes, uniforms, and FAA operating certificates. *Id.* at 33-37. In spite of the fact that the Carriers were commonly owned and shared some common directors, the Board found there was little evidence of common control over labor relations or operational integration. *Id.* at 39. Further, the Board noted that there had been no “traditional corporate transaction,” instead it noted that the holding company had owned the carriers in the same manner for a period of five years. *Id.* at 40. In the present case, there has been no traditional corporate transaction such as a consolidation, merger, purchase, lease, operating contract, acquisition, or similar transaction. ATSG has owned ATI and ABX in the same manner since ATI’s acquisition in 2007.

In *Allegheny Airlines, Inc.*, 29 NMB 160 (2002), the Board found no single transportation system existed among three subsidiaries of a holding company even though the holding company, *inter alia*, elected the board of directors of all three carriers; the same three senior executives of the holding company served on the board of directors of all three carriers; and the holding company approved each carrier's budget. The Board instead noted each carrier handled its own labor relations, hired its own corporate officers and management team, had separate flight operations departments, developed its own training programs, had their own maintenance departments, and hired their own employees. See also *GoJet Airlines, LLC and Trans States Airlines, Inc.*, 33 NMB 24 (2005) (no single transportation found where carriers were owned by same company but had separate management, labor relations, benefits, websites, seniority lists, and FAA operating certificates).

Republic Airlines, 38 NMB 138 (2011), cited by the IBT is distinguishable from the facts in this case. *Republic Airlines*, above, involved the acquisition of Midwest Airlines, Frontier Airlines, and Lynx Aviation by holding company Republic Air Holdings (RAH). *Id.* at 139. All became subsidiaries of Republic along with Chautauqua Airlines, Republic Airlines, and Shuttle America. *Id.* The Board determined that a single transportation system existed based on the significant control of RAH over the management, labor relations, and human resources functions of all its subsidiaries including pilot recruitment. *Id.* at 154-157. Such control by ATSG over its Carriers is lacking in the present case.

The Board's determination is based upon the Board's application of the *TWA/Ozark* criteria to the current and actual operating conditions. Based upon the application of the principles to the facts established by the investigation, the Board finds that ABX and ATI do not operate as a single transportation system for representation purposes. If the relationships at issue in this case change, the Board reserves the right to examine the new relationship.

CONCLUSION

The Board finds that ABX and ATI are not operating as a single transportation system for representation purposes under the RLA for the craft or class of Flight Deck Crewmembers. Accordingly, IBT's application in NMB File No. CR-7157 is converted to NMB Case No. R-7494 and is dismissed.

By direction of the NATIONAL MEDIATION BOARD.



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