

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572



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47 NMB No. 1
October 2, 2019

Beth Tursell
Associate to the General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570-0001

Re: NMB File No. CJ-7196
ABM Aviation Inc.

Dear Ms. Tursell:

This responds to your request for the National Mediation Board's (NMB or Board) opinion regarding whether ABM Aviation Inc. (ABM or Employer) is subject to the Railway Labor Act (RLA), 45 U.S.C. §151, *et seq.* On December 18, 2018, the National Labor Relations Board (NLRB) requested an opinion regarding whether ABM's shuttle bus operations at Los Angeles International Airport (LAX) in Los Angeles, California are subject to the RLA.

For the reasons discussed below, the NMB's opinion is that ABM's shuttle bus operations and employees at LAX are subject to the RLA.

I. PROCEDURAL BACKGROUND

On September 4, 2018, the California Teamsters Public, Professional & Medical Employees Union, Local 911 (Local 911) filed an unfair labor practice charge with the NLRB, alleging that the Employer failed and refused to bargain in good faith, in violation of Section 8(a)(5) of the National Labor Relations Act (NLRA). On December 18, 2018, the NLRB referred the case to the NMB for an advisory opinion on the issue of jurisdiction. The NMB assigned Maria-Kate Dowling to investigate. Local 911 and ABM submitted position statements to the NMB. The NMB's opinion is based on the request and the record provided by the NLRB as well as the parties' position statements.

II. FINDINGS OF FACT

The Employer is an airline service company, providing various services, to commercial airlines, including ground handling, ramp services, aircraft cabin cleaning, lavatory and water services, passenger services, crew and passenger transportation services, cargo services, and catering. At LAX, ABM contracts with American Airlines and the airlines that fly under the American Eagle banner (collectively American) to provide shuttle bus transportation between various terminals inside security.¹ ABM also has a contract at LAX with Delta to provide shuttle services to Delta's customers and employees between various terminals and to certain flights that are loaded and unloaded on the tarmac instead of a gate at the terminal.

Staffing and Scheduling

Under its contract with American, ABM must "consistently maintain the number of personnel providing the services for American," and American must approve any deviation from that number. According to ABM's Regional Director for Southern California, Steve Clay, American dictates how many buses ABM must have in operation as well as the routes and schedules for those buses.

Delta's contract with ABM specifies how many buses ABM operates and the routes the buses run. Delta's flight schedules determine the bus schedules for each route. Delta reserves the right to change the routes or schedules at any time. For example, Delta has required additional buses during certain peak hours.

Carrier Involvement in Day-to-Day Operations

The record indicates that American requires all ABM personnel to record the start and end time of their shifts. ABM has daily meetings and/or calls with American regarding the shuttle services. During these meetings and calls, American frequently requires that changes be made to shuttle operations, including how fast ABM employees are driving, whether the ABM driver has stopped for too long or too short at each designated pick-up location, and whether buses need to be cleaned. In addition, American conducts a "Weekly Process Improvement Call" with ABM to address issues and concerns American may have with ABM's operations. The record indicates that the subject of these

¹ Prior to 2012, Air Serv Corp. provided shuttle bus services to several airlines at LAX including American and Delta. In 2012, ABM Aviation acquired Air Serv Corp. and assumed Air Serv Corp.'s contracts. Since 2016, ABM has operated the shuttle services at LAX under the name ABM Aviation.

calls have included concerns about afternoon route performance versus morning route performance, cleanliness of the buses, complaints about safety around employee routes, time goals for loading buses, information to be imparted to bus passengers, and bus mileage between refueling. With regard to bus cleanliness, the record also indicates that American demanded that ABM formulate a cleaning plan after complaints were received from an American employee. In response to American's demand, ABM Manager Rene Perez provided American with a cleaning and fumigation schedule. The contract also requires that ABM provide American with a monthly report itemizing and reporting service levels. American also retains the contractual right to fine ABM for inadequate performance under the contract. According to ABM's Regional Director Clay, American has also threatened to terminate the contract due to performance issues and required ABM to develop and implement an improvement plan.

ABM's contract with American requires ABM to obtain American's approval of the type of bus to be used. More than half of the buses used by ABM are owned by American. American also requires ABM to prepare and submit a plan for bus maintenance for American's approval. American also provides a break room at LAX that ABM uses for drivers to clock in and out of their shifts, for drivers to take breaks during the day, and as a location to hold team meetings. ABM does not pay rent or utilities for this space.

Delta employees also monitor the ABM buses in real time and communicate directly with dispatchers at ABM to direct drivers to certain locations throughout the day. To facilitate communication with drivers, Delta provides drivers with radios tuned to channels dictated by Delta. Delta also retains the contractual right to require ABM to install GPS trackers on buses to give Delta an additional means to monitor driver performance. Delta's contract with ABM also requires ABM to have a supervisor available at all times to be contacted by Delta regarding emergencies, driver absences, driver accidents, or substandard performance. Delta may impose financial penalties for unsatisfactory performance by ABM under the contract.

Delta specifies how many buses ABM must operate and the type of buses that may be used. Delta requires that each bus must be "new or in like new condition" as well as be handicap accessible, fit at least 33 passengers, have air conditioning and heating, have storage for specific types of luggage, and have a system to scan airport employee badges. Delta's contract with ABM also sets minimum maintenance requirements and requires that ABM provide a "Fleet Management Plan" to provide a replacement schedule for buses and an assessment of how that schedule would affect service reliability. Delta also sets

minimum cleaning standards detailing what cleaning services must occur every shift or every day. Delta also requires that no food or magazines be allowed in the driver's area.

Carrier Access to ABM's Operations and Records

ABM's contract with American requires ABM to implement a quality assurance process including periodic audits of performance. ABM must review the results of such audits with American. The contract also requires ABM to provide access to any facility where services are being performed in order to monitor the performance of ABM employees. American also reserves the right to audit training records at any time and American requires ABM to enter training records into a system maintained by American so American can track and review the training records.

Delta's contract with ABM requires that ABM maintain a list of drivers used to perform the services and the credentials issued to those employees by Delta or the airport authority. Delta also requires ABM to perform employment and access investigations to ensure that drivers can acquire the necessary credentials to work inside of security at LAX. Delta requires that ABM perform motor vehicle background checks and drug and alcohol testing for drivers. ABM must keep records regarding background checks, motor vehicle history, drug and alcohol screenings, and training; and Delta retains the right to inspect and audit these records at its discretion.

Carrier's Role in Personnel Decisions and Benefits

Drivers are hired, disciplined, and discharged by ABM. ABM has its own human resources department and has an on-site manager to supervise drivers. The record indicates that American reports and requires investigation of instances of misconduct and poor performance. In one case, American demanded that ABM investigate a customer's complaint that a driver had been eating while driving. In response, ABM reviewed safety guidelines with drivers. In another case, an American employee complained that the driver refused to lower the ramp on the bus when requested and was rude. American demanded an investigation and also requested that ABM change its policy regarding when drivers should lower the ramp. ABM complied and instructed drivers to lower the ramp whenever it was requested. American also followed up regarding the driver's behavior and ABM responded that it had investigated, reviewed the driver's conduct, and informed her to be kind and follow policy at all times. According to ABM Regional Director Clay, American has also demanded the

removal of certain employees from its contract because of performance or misconduct. Clay stated that ABM has complied with these requests.

Delta has no role in hiring ABM drivers. ABM Regional Director Clay stated that when Delta believes one of ABM's drivers has engaged in misconduct or decides that a particular ABM driver should be removed from its contract, Delta has the right to demand that the employee be removed. According to Clay, when Delta requests such a removal, ABM always complies with Delta's request.

Carrier Control over Training

Under the contract with American, ABM provides "all necessary and appropriate training" to drivers. ABM must also comply with any additional training requirements provided by American. American retains the right to access any facility where service is being provided to monitor and test the training levels of ABM employees. As previously discussed, American requires ABM to enter training records into an American system.

According to ABM's Regional Director Clay, ABM drivers must "comply with any specialized training that Delta requires." Clay stated that Delta also requires that the drivers receive "hands on training" and "demonstrate proficiency with the equipment."

Holding Out to the Public

Each of the buses that ABM operates for American have American's logo on them in a form dictated by the airline. ABM is not permitted to use the buses for any other purpose than providing shuttle service for the airline at LAX. The buses also have signs stating they are operated by Air Serv. ABM drivers wear uniforms with the ABM/Air Serv logo and identification badges supplied by American or the airport.

The buses ABM operates for Delta must be painted with Delta's logo in a manner specified by Delta. ABM cannot use the buses for any other purpose than providing shuttle services for Delta. Delta also requires that drivers "be appropriately and professionally dressed and maintain an appropriate personal appearance."

III. DISCUSSION

Applicable Legal Standard

When an employer is not a rail or air carrier engaged in the transportation of freight or passengers, the NMB has traditionally applied a two-part test in determining whether the employer and its employees are subject to the RLA. 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.

ABM does not fly aircraft and is not directly or indirectly owned by an air carrier. The employees at issue provide shuttle bus service for customers and employees of American and Delta between terminals. The Board has previously found that shuttle bus service is work traditionally performed by employees in the airline industry. *ABM Indus. Inc. d/b/a Air Serv Corp.*, 46 NMB 17 (2018); *see also Milepost Indus.*, 27 NMB 362 (2000); *Security '76, Inc.*, 5 NMB 234 (1976). Therefore, to determine whether ABM is subject to the RLA, the NMB must consider the degree of direct or indirect control exercised over its operations by its Carrier customers.

In *ABM Onsite Services*, the Board found that,

the rail or air carrier must effectively exercise a significant degree of influence over the company's daily operations and its employees' performance of services in order to establish RLA jurisdiction. No one factor is elevated above all others in determining whether this significant degree of influence is established. These factors include: extent of the carriers' 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 the employees are held out to the public as carrier employees; and control over employee training. *Air Serv Corp.*, 33 NMB 272 (2006); *Aircraft Serv. Int'l Group, Inc.*, 33 NMB 258 (2006); *Signature Flight Support*, 32 NMB 214 (2005).

45 NMB 27, 34-35 (2018).

Carrier Control over ABM and Its Employees

In this case, the record demonstrates that American and Delta each exercise significant influence over ABM's shuttle operations at LAX. With regard to scheduling and staffing of ABM drivers, American and Delta establish the routes the drivers take and their flight schedules determine the bus schedules and the number of buses driven. American requires ABM to maintain a constant number of drivers and ABM must seek approval from American to deviate from that number. Delta reserves the right to change the bus schedules and routes at any time and has required additional buses during certain peak flight times.

With regard to the day-to-day operations, American requires ABM drivers to record the start and end times of their shifts. American has daily interaction with ABM over shuttle operations, including how fast ABM employees are driving and the duration of their stops at pick-up locations. Delta employees monitor the buses in real time and communicate with ABM dispatchers to direct drivers to certain locations. Delta also communicates with drivers through radios provided by Delta and tuned to channels dictated by Delta. Delta requires ABM to have a supervisor available for contact regarding emergencies, driver absences, driver accidents, or substandard performance. American provides space at no cost to ABM for drivers to clock in and out of their shifts, take breaks, and hold team meetings.

Both American and Delta specify the number and type of buses that ABM operates. More than half of the buses used by ABM on the American contract are owned by American. The buses used by ABM for the American contract have American's logo on them and can only be used for providing shuttle services for American. Likewise, the buses used by ABM for the Delta contract are painted in Delta colors with Delta's logo and can only be used for Delta transportation services. Delta also reserves the right to require the installation of GPS trackers on its buses as an additional means of monitoring driver performance. Both airlines have specific maintenance requirements and cleanliness standards for the buses. American has required ABM to formulate cleaning schedules for the buses following complaints from American employees. American requires a monthly report from ABM itemizing and reporting service levels. Delta requires ABM to produce a "Fleet Management Plan" to ensure continuity of service.

The contracts with American and Delta require ABM to provide necessary training and to comply with any specific training mandated by the airline. ABM's

contracts with both American and Delta provide the right to audit driver training records at any time. American also requires ABM to enter training records into a system maintained by American. Delta requires ABM to maintain driver records regarding background checks, motor vehicle history, and drug and alcohol screenings; and Delta retains the right to inspect and audit these records at its discretion

American and Delta do not participate in the hiring of ABM drivers. ABM has its own human resources department and has an on-site manager to supervise drivers. The record indicates that both American and Delta report misconduct and problems with performance and that ABM responds with corrective action, including removing employees from the contract when requested by the airline. In one instance, American reported and requested an investigation by ABM after receiving a complaint about a driver eating while on duty. In another instance, an American employee complained about an ABM driver being rude and refusing a request. In these instances, ABM investigated, required corrective action by the employee, and reviewed or changed its policies. Both American and Delta have requested that drivers be removed from their respective contracts and ABM has complied with each of these requests.

In sum, the record shows that American and Delta have sufficient control over ABM's shuttle bus operations and employees at LAX to establish RLA jurisdiction.

CONCLUSION

Based on the record in this case and the reasons discussed above, the NMB's opinion is that ABM's shuttle bus operations for American and Delta at LAX are subject to the RLA.

BY DIRECTION OF THE NATIONAL MEDIATION BOARD



Mary L. Johnson
General Counsel

Copies to:
Kerry Turner
Cristian Levia

Chairman Puchala, dissenting.

Contrary to my colleagues, I would not find that ABM's operations and employees at LAX are subject to the RLA. For the reasons set forth in my dissent in ABM Onsite Services, 45 NMB 27, 36 (2018), I would require that a company asserting RLA jurisdiction establish the exercise of a meaningful degree of control over personnel decisions as described in Airway Cleaners, 41 NMB 262 (1014). In my view, the record in this case fails to establish that significant level of control. American and Delta have no role in hiring ABM drivers. The role of the airlines in discipline is limited to reporting instances of poor performance or misconduct. See ABM Indus. Inc. d/b/a Air Serv, 46 NMB 17 (2018).