



**NATIONAL MEDIATION BOARD**  
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47 NMB No. 5  
December 11, 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-7201  
NLRB Case Nos. 31-CA-230476, 31-CB-221384, 31-CB-221389, 31-CB-  
221554, and 31-CB-221622  
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) is subject to the Railway Labor Act (RLA), 45 U.S.C. § 151, *et seq.* On March 28, 2019, the National Labor Relations Board (NLRB) requested an opinion regarding whether ABM's baggage, equipment inventory, wheelchair assistance, and amenity cart support operations at Terminal 7 of Los Angeles International Airport (LAX) are subject to the RLA.

For the reasons discussed below, the NMB's opinion is that ABM's operations and employees at Terminal 7 are subject to the RLA.

### **I. PROCEDURAL BACKGROUND**

On May 29, 2018, four ABM employees – Lenwood Crawford, Manuel Gray, Chiragh Hussain, and Randy Odums – each filed unfair labor practice charges with the NLRB against Service Employees International Union – United Service Workers West (SEIU). On November 1, 2018, Hussain also filed an unfair labor practice charge with the NLRB against ABM.<sup>1</sup> On March 28, 2019, the NLRB referred the cases to the NMB for an advisory opinion on the issue of jurisdiction and provided the record it developed in this matter.

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<sup>1</sup> Hussain named "AirServ / ABM" as the charged employer. ABM acquired AirServ sometime before January 2017. On May 29, 2018, Crawford also filed an unfair labor practice charge with the NLRB against "AirServ / ABM." However, on July 25, 2018, the NLRB dismissed that charge.

The NMB initially assigned Maria-Kate Dowling to investigate. On July 26, 2019, the NMB reassigned the case to Andres Yoder. ABM submitted a position statement to the NMB in which it argued that ABM's operations and employees at Terminal 7 are subject to the RLA. The NMB requested additional information from ABM, which ABM provided. SEIU did not submit a position statement. The NMB's opinion is based on the request and the record provided by the NLRB, as well as on ABM's submissions.

## **II. FINDINGS OF FACT**

ABM is a corporation that provides a number of services to airlines throughout the country. Since August 15, 2016, ABM has had a contract (Agreement) with United Airlines, Inc. (United) under which it performs certain services related to baggage, equipment inventory, wheelchair assistance, and amenity cart support. According to the Agreement, "[ABM's] relationship to United in the performance of [the] Agreement shall be that of an independent contractor."

The Agreement identifies eight jobs. Baggage Handlers perform general baggage handling activities. Carry On Compliance employees monitor customers' carry-on baggage "at checkpoint" and direct customers to appropriate screening channels. Counter Vendors perform general baggage handling duties, such as "scanning and/or tagging" customers' baggage and placing checked baggage on the conveyor belt. Equipment Room/Inventory Control employees maintain an inventory of equipment, check equipment in and out, and create reports about "missing" and "outstanding" equipment, among other tasks. Skycaps meet curbside customers and assist them with check-in, baggage, and "directions to next steps." Vendor Behind the Counter employees tag customers' baggage behind baggage-check kiosks, place checked baggage on the conveyor belt, and direct customers toward the security area. Wheelchair/Special Services employees provide "wheelchair and escorting assistance to persons with disabilities." And Amenity Cart Support employees ensure that amenity carts are clean and stocked and take amenity carts to designated flights or areas.<sup>2</sup>

### *Staffing and Scheduling*

The Agreement sets out the hours of operation for ABM's employees. For every job besides Amenity Cart Support employees, those hours can change if United makes a request and the request is approved by "LAX management." For Amenity Cart Support employees, the hours of operation can change if United makes a request and the request is approved by "United local management." The Agreement also identifies holidays and indicates that United must preapprove all overtime.

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<sup>2</sup> ABM has employed Amenity Cart Support employees under the Agreement since April 2018.

Further, according to the Agreement, ABM “shall make available [a] staffing plan upon request[,] . . . [and] United Airlines may compare [the staffing plan] with passenger handling demand and make recommendations to [ABM] on staffing.” United and ABM meet every quarter to adjust staffing levels to United’s expected needs. ABM also informs United of staffing changes and schedule adjustments on a daily basis.

#### *Carrier Involvement in Day-to-Day Operations*

According to the Agreement, ABM must employ a Contract Manager who will, among other things, “facilitate the implementation of the Agreement and be responsible for the management and administration of United’s account.” Additionally, ABM must remove the Contract Manager at United’s request. Isela Reyes-Marotta serves as ABM’s Contract Manager.

Moreover, the Agreement identifies standards that indicate how ABM employees should interact with United’s customers, and requires ABM employees to comply with United’s appearance and uniform standards. The Agreement also prohibits ABM employees from soliciting tips, and requires ABM to comply with “internal security processes defined by United.”

The Agreement identifies performance goals that “frontline staff members” contribute to, and incentivizes them to meet those goals. ABM’s understanding is that the term “frontline staff members” refers to all eight job categories at issue. The Agreement also specifically identifies how ABM’s performance of wheelchair services will be measured, and outlines how United will financially incentivize or penalize ABM for its performance of wheelchair services.

#### *Carrier Access to Operations and Records*

The Agreement requires the Contract Manager to, among other things, “prepare and furnish to United all requested reports and shall represent [ABM] at meetings with United with respect to the Agreement.” Further, the Agreement requires ABM to provide United, at its request, with time sheets that list each ABM employee; and to give United the right to inspect ABM records related to invoices, data security, disaster recovery, backup practices, “or any performance and services.”

In addition, according to the Agreement, ABM must store training records for each employee, and must make those records available to United. ABM must maintain legally mandated records related to customers with special needs. Those records, in turn, “must be readily available to United’s Legal and Customer Relations departments.” In addition, the Agreement requires ABM to “designate one . . . primary and one . . . alternate individual who will serve as United Airlines

central point of contact for all performance related issues.” Reyes-Marotta serves as the primary individual and Arturo Sanchez serves as the alternate individual.

#### *Carrier’s Role in Personnel Decisions and Benefits*

According to the Agreement, ABM must conduct background investigations on “each of its personnel who have access to any secure or restricted area[s].” ABM must then “reduce[]” each investigation to writing, and provide United with a “written verification of [each] investigation.” United can terminate the Agreement “upon discovery of a materially inaccurate investigation.”

#### *Carrier Control over Training*

The Agreement states that United will “provide all applicable training materials related to United Airlines policies and procedures, in order for [ABM] to accomplish initial training of its employees.” But for “wheelchair handling,” ABM “is responsible to provide a training program . . . in accordance with” relevant legal requirements. ABM, however, asserts that “both United and ABM provide wheelchair training.”

Further, according to the Agreement, ABM must post “Security and Safety bulletins provided by United Airlines.” The bulletins are meant to keep ABM employees “current on any changes related to United Airlines Safety & Security.” ABM must also “ensure all employees have been briefed on information provided within these bulletins.”

#### *Holding Out to the Public*

There is no evidence that ABM holds its employees out to the public as United employees.

### **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. *Aircraft Services Int’l, Inc.*, 45 NMB 154, 161 (2018).

ABM does not fly aircraft and is not directly or indirectly owned by an air carrier. The first part of the two-part test is met because services related to baggage, equipment inventory, wheelchair assistance, and amenity cart support is work traditionally performed by airline employees. *See, e.g., United Airlines, Inc.*, 6 NMB 180 (1977) (baggage); *Jet Am., Inc.*, 10 NMB 159 (1983) (equipment inventory); *Japan Air Lines Co., Ltd.*, 7 NMB 217 (1980) (wheelchair assistance); *Allegheny Airlines, Inc.*, 6 NMB 416 (1978) (amenity cart support). 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 United exercises a significant degree of influence over ABM's operations and employees at Terminal 7.

United must preapprove ABM employees' overtime, and can request changes in ABM's employees' hours of operation, subject to the approval of either "LAX management" or "United local management." In addition, United can request staffing changes and a staffing plan, which ABM must provide. In practice, United meets with ABM four times per year to adjust staffing levels to its expected needs. Further, on a daily basis, ABM notifies United of staffing changes and schedule adjustments.

United requires ABM to employ a Contract Manager who is responsible for ABM's work under the Agreement, and ABM must remove the Contract Manager at United's request. ABM employees must adhere to United's customer-interaction standards, and must comply with United's appearance and uniform standards. United also prohibits ABM employees from soliciting tips, and defines

security processes ABM must comply with. Further, United defines performance goals for ABM employees, and incentivizes them to meet those goals.

If United requests a report or time sheet for an ABM employee, ABM must provide it. United also has the right to inspect ABM records related to invoices, data security, disaster recovery, backup practices, “or any performance and services.” United requires ABM to store both records related to employee training and records related to customers with special needs. ABM must make both types of records available to United. In addition, United requires ABM to designate two points of contact for performance-related issues, which ABM has done.

United requires ABM to conduct background investigations on employees who have access to “secure” or “restricted area[s,]” to “reduce[]” each investigation to writing, and to give United a “written verification” of each investigation. If United discovers a “materially inaccurate investigation[,]” United can terminate the Agreement.

“[I]n order for [ABM] to accomplish initial training of its employees[,]” United provides ABM with training materials concerning United policies and procedures. Additionally, United and ABM both provide wheelchair training. United also creates security- and safety-related bulletins, and requires ABM to post them and to keep its employees updated on the information contained in those bulletins.

In sum, the record shows that United has sufficient control over ABM’s operations and employees at Terminal 7 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 operations and its employees at Terminal 7 of LAX are subject to the RLA.

BY DIRECTION OF THE NATIONAL MEDIATION BOARD.



Mary L. Johnson  
General Counsel



Copies to:  
Dan Raspatello  
Monica T. Guizar  
Lenwood Crawford  
Manuel Gray  
Chiragh Hussain  
Randy Odums

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Chairman Puchala, dissenting.

Contrary to my colleagues, I would not find that ABM's operations and employees at Terminal 7 of 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, LLC*, 41 NMB 262 (2014). In my view, the record in this case fails to establish that significant level of control. United has no direct role in hiring ABM employees. United's role is limited to collecting records of background investigations of employees who have access to secure or restricted areas. Similarly, United has no role in disciplining or firing ABM employees. *See, e.g., ABM Aviation Inc.*, 47 NMB 1, 9 (2019).