



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of

OFFICE AND PROFESSIONAL
EMPLOYEES INTERNATIONAL
UNION

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

involving employees of

BRISTOW GROUP INC., D/B/A
BRISTOW U.S. LLC/ERA GROUP
INC.

48 NMB No. 8

CASE NO. R-7561
(File No. CR-7218)

FINDINGS UPON
INVESTIGATION -
SINGLE CARRIER
DETERMINATION

December 2, 2020

This determination addresses the application filed by the Office and Professional Employees International Union (Organization or OPEIU). OPEIU requests the National Mediation Board (NMB or Board) to investigate whether Bristow Group Inc., d/b/a Bristow U.S. LLC (Bristow or Legacy Bristow) and Era Group Inc. (Era or Legacy Era) (collectively, the Carriers or Combined Carrier) are operating as a single transportation system for the craft or class of Pilots.

The investigation establishes that Bristow and Era constitute a single transportation system.

PROCEDURAL BACKGROUND

On July 29, 2020, OPEIU filed an application alleging a representation dispute involving the craft or class of Pilots at the Combined Carrier.

The Board certified OPEIU as the representative of the Legacy Bristow Pilots on August 6, 1977, in NMB Case No. R-6517. *Offshore Logistics, Inc.*, 24 NMB 624 (1997).¹ The Legacy Era Pilots are unrepresented.

The Board assigned John S.F. Gross to investigate and requested that the Carriers provide information regarding their operations. On August 17, 2020, the Carriers submitted a position statement. On August 31, 2020, OPEIU filed a response to the Carriers' position statement with supporting documents, including a declaration from the President of OPEIU, Local 407, George Evans.

ISSUE

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

CONTENTIONS

The Carriers

The Carriers take no position as to whether they comprise a single transportation system for the craft or class of Pilots. However, they did provide information in their August 17, 2020, position statement considered by the Board in making that determination.

OPEIU

OPEIU contends that, although the Carriers take no position on whether their merger has created a single transportation system, information provided in their August 17, 2020, position statement, combined with other evidence, amply demonstrates that based upon the standards governing the establishment of a single transportation system as set forth in *Trans World Airlines/Ozark Airlines*, 14 NMB 218 (1987) and other Board case law a single transportation system now exists.

¹ In 1996, Offshore Logistics purchased a stake in Bristow Helicopters Ltd., and the company was rebranded as Bristow Group Inc. in 2006.

FINDINGS OF LAW

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

I.

Bristow and Era are common carriers as defined in 45 U.S.C. § 181, First.²

II.

OPEIU is a labor organization and/or representative as defined in 45 USC § 151, Sixth, and § 152, Ninth.

III.

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

² No participant contests Era’s status as a carrier under the Act. The Board has consistently found Federal Aviation Administration (FAA)-certificated providers of helicopter services of the nature provided by Era to be common carriers under the RLA. Era is an air carrier, provides helicopter flight services, and holds itself out to the public for hire. The NMB therefore finds that Era is a “carrier” within the meaning of the Act, and that it and its employees are subject to the RLA. See *Mountain Air Helicopters*, 39 NMB 512 (2012); *Evergreen Helicopters, Inc.*, 8 NMB 505 (1981); *Offshore Logistics, Inc., Aviation Servs. Division, d/b/a Air Logistics*, 10 NMB 477 (1983). In addition, Era provides essentially the same air transportation services provided by Bristow, which the NMB has previously found to be a carrier under the Act. See *Bristow U.S. LLC*, 40 NMB 126 (2013), *Bristow U.S. LLC*, 38 NMB 76 (2011).

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 FACTSBackground

As noted above, OPEIU is the certified representative of the Pilots craft or class at Legacy Bristow. Bristow and OPEIU are parties to a collective bargaining agreement (CBA) governing those employees, which became amendable on March 26, 2015, and is renewed annually without change, unless either party serves a timely RLA Section 6 notice of intent to change it. Era’s Pilots are unrepresented.

According to the Carriers, there are approximately 148 Legacy Bristow Pilots and 148 Legacy Era Pilots covered by the OPEIU’s application.

The Carriers

The Carriers operate on-demand, unscheduled air services pursuant to FAA Part 135 Certificates. Bristow – which operates a fleet of small-, medium-, and large-sized helicopters, and a small fleet of fixed wing aircraft - describes itself as the world’s leading provider of offshore oil and gas transportation, search and rescue (“SAR”) and aircraft support services to government and civil organizations worldwide. Customers include major integrated, national and independent offshore energy companies, who charter helicopters primarily to transport personnel between onshore bases and offshore production platforms, drilling rigs and other installations. Customers for SAR services include both the oil and gas industry and governmental agencies. Its global fleet supports operations in the North Sea, Nigeria and the U.S. Gulf of Mexico; as well as in most of the other major offshore oil and gas producing regions of the world, including Australia, Brazil, Canada, Guyana and Trinidad. Bristow provides SAR services to the private sector worldwide and to the public sector for all of the United Kingdom on behalf of the Maritime and Coastguard Agency.

As of June 11, 2020, Era – which operates a modern, diverse and technologically advanced fleet of heavy, medium, light twin and single engine helicopters - was one of the largest helicopter operators in the world and the longest serving helicopter transport operator in the U.S. In addition to servicing its U.S. customers, Era provides helicopters and related services to customers and third-party helicopter operators in other countries, including Brazil, Chile, Colombia, India, Mexico, Spain and Suriname. Era’s helicopters are primarily used to transport personnel to, from and between offshore oil and gas production platforms, drilling rigs and other installations. Era’s helicopters are also used to perform emergency response services, firefighting, utility, VIP transport and other services. Era also provides a variety of operating lease solutions and technical fleet support to third party operators.

Common Corporate Ownership

Bristow and Era entered into a merger agreement in January 2020, and the merger was closed on June 11, 2020. Since June 12, 2020, the merged entity's combined stock has been traded under one New York Stock Exchange (“NYSE”) stock ticker (“VTOL”). Era shares (NYSE: “ERA”) are no longer listed on the NYSE.

On June 11, 2020, the Carriers announced the completion of their merger. The announcement stated in pertinent part:

Bristow Group Inc. . . . and Era Group Inc. . . . announced today that they have completed their combination . . . , creating a financially stronger company with enhanced size and diversification. The newly combined company will use the Bristow Group name . . . and will remain a publicly traded company on the [NYSE]. The newly combined company’s common stock will begin trading under the stock ticker “VTOL” beginning on June 12, 2020 and will have a new [stock identification number].

According to Chris Bradshaw, President and CEO of the Combined Carrier (and formerly President and CEO of Era):

The closing of this strategic and financially compelling merger makes Bristow a larger, more diverse and stronger company, better positioned for the future. The combination brings long-overdue consolidation in the industry, better prepares us to navigate today’s market challenges, and ensures we remain the global

leader in helicopter services with an outstanding culture focused on safety and providing excellent service to our valued customers.

After giving effect to the merger, Legacy Bristow shareholders own 77 percent of the equity of the Combined Carrier, and Legacy Era shareholders own 23 percent.

Common Board of Directors

As of the merger close on June 11, 2020, the Combined Carrier has been governed by a single Board of Directors comprised of the following eight members, five of whom are from Legacy Bristow and two from Legacy Era: Chairman G. Mark Mickelson; Director & President & CEO Bradshaw; Director Lorin Brass; Director Charles Fabrikant (formerly Chairman of Era's Board of Directors); Director Wesley Kern; Director Robert Manzo; Director Christopher Pucillo; and Director Brian Truelove.

Common Management

Led by President and CEO Bradshaw, the Combined Carrier's senior executives and senior management have assumed post-merger responsibilities for the Combined Carrier.³ Executive VP, Chief Operating Officer (COO) David Stepanek has responsibility for global operations including flight operations, maintenance, supply chain management, training and information technology. Alan Corbett, Senior Vice President, Europe, Africa, Middle East, and Asia & SAR, is responsible for operations in those and other areas of the world, as well as all of the Carriers' SAR operations worldwide. Senior Vice President, General Counsel, Crystal Gordon, has responsibility for legal, compliance, collective bargaining agreements, government relations and contract review and management at the Combined Carrier. Senior Vice President, Global Fleet Management, Stuart Stavely, has responsibility for standardized maintenance programs, aircraft specifications and lease agreements; as well as all original equipment manufacturer relationships, quality control of global supply chain operations and aircraft acquisitions and sales. Senior Vice President, Chief Administrative Officer, Mary Wersbe, is responsible for human resources, benefits and compensation, communications and corporate social responsibility at the Combined Carrier. Jennifer Whalen, Senior Vice President, Chief Financial Officer (CFO), and formerly Era's CFO, is responsible for company accounting, financial reporting, investor relations, strategy and

³ The Carriers announced the "New Executive Leadership Team for [the] Combined Company" on May 12, 2020, a month prior to the closing of the Carriers' merger.

mergers and acquisitions (M&A), tax and other financial aspects for the Carriers. Senior Vice President, Chief Commercial Officer, Samantha Willenbacher, is responsible for all customer-facing aspects of the Combined Carrier's business, bid proposals and market research and analysis. James Stottlemeyer, Vice President, Health, Safety and Environment, is responsible for the global safety strategy and providing leadership and continuous improvement for the Carriers' Safety Management System and Health, Safety and Environmental processes.

In addition, David Martin, Sr. Director, U.S. & Caribbean Operations, is responsible for the Combined Carrier's operations in those regions.

With respect to the Carriers' Pilots and flight operations, further integration of management at the operational levels is expected to commence upon consolidation of the Bristow and Era FAA Operating Certificates and the designation of a Director of Flight Operations for the single Certificate.⁴

The Combined Carrier is headquartered in Houston, Texas, at Legacy Bristow's headquarters location.

Financial Integration

On August 6, 2020, the Combined Carrier issued its first quarter fiscal year 2021 earnings release, for the period ending June 30, 2020. The quarter included 19 days of operating results from Legacy Era, following the merger close on June 11, 2020.

The following day, August 7, 2020, the Combined Carrier a Form 10-Q with the Securities and Exchange Commission (SEC). The filing covered the period ending June 30, 2020, and reported the Carriers' financial results on a consolidated basis. It included Era's financial condition, results of operations, comprehensive income, and cash flows since June 12, 2020.

All financial aspects for the Carriers are under the direction of a single officer. As noted above, Era's former CFO, Jennifer Whalen, is now Senior Vice President, Chief Financial Officer for the Combined Carrier, with responsibility for all accounting, financial reporting, investor relations, strategy and Mergers and Acquisitions, tax and other financial matters for the Carriers.

⁴ As noted, at the officer/executive level, COO Stepanek is responsible for, among other areas, global operations, including flight operations, at the Combined Carrier.

The Combined Carrier maintains a common investor relations website, www.bristowgroup.com, where one can access various information, including the Combined Carrier's current stock price, financial releases and reports (including SEC filings), governance documents, events and presentations, news releases, and other investor resources.

Centralized Control of Labor Relations

According to the Combined Carrier, labor relations and personnel functions will be administered by the Human Resources and Legal departments, which are currently under the direction of Senior Vice President, Chief Administrative Officer Mary Wersebe and Senior Vice President, General Counsel Crystal Gordoio, respectively. As noted above, Ms. Wersebe is responsible for human resources, benefits and compensation, communications and corporate social responsibility at the Combined Carrier; and Ms. Gordon has responsibility for, among other functional areas at the Combined Carrier, legal, compliance, collective bargaining agreements, government relations and contract review and management.

With specific regard to the labor relations function, senior leaders of the Combined Carrier have been involved in labor relations matters beginning shortly after the merger closed. For example, on June 24, 2020, David Martin, Sr. Director of U.S. and Caribbean Operations for the Combined Carrier, sent a memo to the Combined Carrier's "US & Caribbean Team" updating them on key activities pertaining to the process of integrating the Carriers' operations. Martin's memo updated the team on a meeting in Dallas, Texas with senior executives and directors from the Combined Carrier (including Martin) and representatives of OPEIU (including OPEIU Local 407 President Evans), during which the participants outlined "a collaborative process for moving forward as a combined organization." According to Martin's memo, "The meeting was positive, and . . . set a strong foundation of mutual respect and common goals." During the meeting, the Combined Carrier's senior leaders shared a working transition plan for the combined organization for OPEIU's review, and OPEIU provided feedback. The Combined Company planned to continue communicating its plans and progress as it combines Bristow and Era "into One Company, One Team."

Labor Protection Provisions and Interim Agreements for other Employees

The OPEIU is the collective bargaining representative of the Legacy Bristow Pilots under a certification in NMB Case No. 6517. The CBA currently in effect between Bristow and OPEIU governing those employees includes labor protection provisions relevant to a merger transaction involving Bristow. Specifically, Article 3, Section 3 of the CBA provides as follows:

Section 3. Mergers

A. In the event of a complete merger between the Company and another helicopter company (i.e., the combination of all or substantially all the assets of the two carriers) where the surviving carrier decides to integrate the pre-merger operations, the following procedures will apply: (1) if the Company is the surviving carrier, the Company will integrate the two Represented Employee groups in accordance with Sections 3 and 13 of the Allegheny Mohawk LPPs. If Represented Employees of the Company's merger partner are not represented by OPEIU, and (2) if the Company is not the surviving carrier, the Company will make reasonable efforts to have the surviving carrier integrate the two Represented Employee groups in the same manner as provided for in this paragraph.

B. In the event the Company acquires all or substantially all of the assets or equity of another air carrier, or another air carrier acquires all or substantially all of the assets or equity of the Company, the Company will meet promptly with the Union to negotiate a possible "Fence Agreements to be in effect during the period, if any, the two carriers are operated separately without integration of the Represented Employee work force. These discussions shall not be pursuant to Section 6 of the Railway Labor Act, and reaching an agreement with the Union shall not be a prerequisite for closing, or any other aspect of the transaction or operations pursuant to the transaction.

OPEIU is also the collective bargaining representative of the Legacy Bristow Mechanics and Related Employees under a certification in NMB Case No. R-7349. *Bristow U.S. LLC*, 40 NMB 126 (2013). The current CBA covering those employees includes the same contractual language pertaining to merger transactions involving Bristow.

As noted above, shortly after the closing of the merger, senior executives of the Combined Carrier met with OPEIU representatives in Dallas, Texas and presented and discussed a transition plan for the newly combined organization.

Common Personnel Policies and Employee Communications

The human resources and communications functions at the Combined Carrier are now under the direction of Senior Vice President, Chief Administrative Officer Mary Wersebe.

Since the merger, the Combined Carrier has implemented a number of common personnel policies, processes and resources for all employees in the following areas: All Legacy Bristow and Legacy Era employees now have an @Bristowgroup.com email address as well as an employee number in the common Bristow system. All employees now use a common employee portal known as iConnect, which they use to, for example, contact the company regarding human resources matters (e.g., submitting vacation requests, providing notification of sick leave) and payroll matters. In addition, information regarding job opportunities at Bristow and Era is now made available on the Combined Carrier's website at <http://www.bristowgroup.com/about-bristow/jobs>.

Further, from the day the merger closed on June 11, 2020, the Combined Carrier has issued common employee communications. For example, on June 11, 2020, President and CEO Bradshaw sent an email to all Legacy Bristow and Legacy Era employees, with the following subject line: "A Message From Chris Bradshaw: Bristow and Era become One – One Company, One Team." Other common employee communications, in the form of videos, virtual town hall meetings, and letters to employees have followed. In addition, common communications are made available by the Combined Carrier through its various internal communication resources, including iConnect, "Bristow Brief" and "Bristow TV".

FAA Operating Certificate and Operations

The Combined Carrier is working toward obtaining a single operating certificate from the FAA. On July 8, 2020, it announced its decision to align its Gulf of Mexico operations under a single Part 135 Operating Certificate which it described as "the combined company certificate." In this announcement, Bristow stated that the process for securing a single certificate could take 12 -18 months to complete.

Also in the announcement, Senior Director, U.S. and Caribbean Operations Dave Martin stated, “Moving to a single Part 135 certificate is in strong alignment with [the Combined Carrier’s] goals of reducing costs and increasing efficiency.” The next step in the process was identified as “[analyzing] all procedures and Operational IT systems to ensure the best of each is harmonized on the combined company certificate.”

Holding out to the Public

The Combined Carrier has adopted a single common brand for its merged operations. It is held out to the public and marketed under the Bristow name and logo. See www.bristowgroup.com. Notably, visitors to the Era website, www.erahelicopters.com, receive the following message: “Era Helicopters and Bristow Group recently merged creating a financially stronger company with enhanced size and diversification. The new company is named Bristow Group and is traded on the NYSE under stock ticker ‘VTOL.’ Click here to visit the Bristow Group website.”

On the erahelicopters.com website, visitors, in addition to being directed to the bristowgroup.com site, are provided with the same investor relations information for the Combined Carrier (including stock price and SEC filings) that appears on the bristowgroup.com website, as well as the same news and events information, and other information pertaining to the Combined Carrier. Visitors to both sites are also provided with the same corporate contact information: the Combined Carrier’s Houston corporate office address and phone number.

Brand Elements and Livery

As noted above, the Combined Carrier has already adopted the Bristow corporate insignia and logo. It plans to conform markings across its combined fleet of aircraft and other equipment, however the timing of that process has yet to be determined.

Standardized Uniforms

The Combined Carrier also plans to adopt standard uniforms for employees, however, as with standardized livery and other markings, it has yet to determine the timing of the process for standardized uniforms.

DISCUSSION

I.

The Board's Authority

45 U.S.C. § 152, Ninth, authorizes the Board to investigate disputes arising among a carrier's employees over representation and to certify the duly 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 Brd.*, 320 U.S. 297 (1943). In *Air Line Pilots Ass'n, Int'l v. Texas Int'l Airlines*, 656 F.2d 16, 22 (2d Cir. 1981), the court stated, "the NMB is empowered to . . . decide representation disputes arising out of corporate restructurings."

Single Transportation System

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/AirTran Airways*, 43 NMB 120 (2016); *Delta Air Lines/Northwest Airlines*, 36 NMB 36 (2009); *Burlington N. Santa Fe Ry. Co.*, 32 NMB 163 (2005); *Huron and Eastern Ry. Co., Inc.*, 31 NMB 450 (2004).⁵ 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 (1993).

In this case, the integration of the Carriers is substantial. The corporate merger involving Bristow and Era became effective on June 11, 2020. The Carriers stated both internally and externally that the objective of the merger is the creation of a one company operating under the Bristow name, and they are pursuing that goal.

The Carriers are commonly owned and have a single Board of Directors, led by Chairman G. Mark Mickelson, and their operations are headquartered in Houston, Texas. They have a combined, common management group in place at the highest levels, and single officers are responsible for the Carriers' labor relations and human resources functions. In addition, the finances of the Carriers are under the direction of a single officer and are reported on a consolidated basis. The Carriers have announced their decision to obtain, and are pursuing, a single operating certificate from the FAA, a process that is likely to take 12-18 months. Further, since the merger, the Combined Carrier has implemented a number of common personnel policies applicable to all employees; has met with representatives of OPEIU to discuss plans for the integration of the Carriers; and has issued common employee communications and made numerous common information resources available to all employees.

⁵ The Board's criteria for substantial integration of operations do not require total integration of operations. *Southeast Airlines, Inc. and ExpressJet Airlines, Inc.*, 38 NMB 224 (2011); *US Airways/America West Airlines*, 33 NMB 49 (2006).

In addition, the Combined Carrier has adopted a single common brand – Bristow - for its merged operations. It also plans to standardize employee uniforms, aircraft livery, and other public-facing markings, although the timetables for implementation have not yet been determined. The Carriers have communicated to the public and their customers, through news releases, corporate filings, their websites, and social media (e.g., Facebook), about their merger and becoming “One Company, One Team.” In *Bristow Group Inc. / Era Group Inc.*, 48 NMB 37 (2020), the Board also found a single transportation system for the craft or class of Mechanics and Related Employees.

Based upon the application of the principles to the facts established by the investigation, the Board finds that Bristow and Era are a single transportation system for representation purposes in the Pilots craft or class.

CONCLUSION

The Board finds that Bristow and Era are operating as a single transportation system for representation purposes under the RLA. Accordingly, OPEIU’s application in File No. CR-7218 is converted to NMB Case No. R-7561. Pursuant to Manual Section 19.6, the investigation will proceed to address the representation of the Pilots craft or class. Any Intervenor has 30 days from the date of this determination to file an application supported by a showing of interest of at least 50 percent of the single transportation system in accordance with Manual Sections 19.601 and 19.603. The participants are reminded that under Manual Section 19.7, existing certifications remain in effect until the Board issues a new certification or dismissal.

By direction of the NATIONAL MEDIATION BOARD.



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