



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the

HERMANDAD DE EMPLEADOS
DE OFICINA, COMERCIO Y
RAMAS ANEXAS DE PUERTO
RICO

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

involving employees of

AEROSTAR AIRPORT HOLDINGS,
LLC

49 NMB No. 16

CASE NO. R-7580
(File No. CR-7229)

DETERMINATION OF
JURISDICTION -
DISMISSAL

March 17, 2022

This determination addresses the application of Hermandad de Empleados de Oficina, Comercio y Ramas Anexas de Puerto Rico (Organization) alleging a representation dispute pursuant to the Railway Labor Act (RLA or Act),¹ 45 U.S.C. § 152, Ninth, (Section 2, Ninth) among Firefighters at Aerostar Airport Holdings, LLC. (Aerostar). At the time this application was filed, these employees were not represented by any organization or individual.

For the reasons set forth below, the National Mediation Board (NMB or Board) finds that Aerostar and its employees are not subject to the RLA. Therefore, the Board dismisses the application.

PROCEDURAL BACKGROUND

On August 11, 2021, the Organization filed an application alleging a representation dispute among Aerostar's Firefighters. The application was assigned NMB File No. CR-7229 in order to conduct a pre-docketing investigation, and John S.F. Gross was assigned as the Investigator. On August

¹ 45 U.S.C. § 151, *et seq.*

25, 2021, in response to the NMB's case docket letter, Aerostar submitted a List of Potential Eligible Voters (List), and on August 26, 2021, the NMB received from Aerostar signature samples for those individuals on the List.

On August 31, 2021, the Board directed the participants to submit a position statement on the issue of whether Aerostar is subject to RLA jurisdiction. The Board also directed Aerostar to provide a copy of the lease agreement between it and the Puerto Rico Ports Authority (PRPA) pursuant to which Aerostar operates and manages the Luis Munoz Marin International Airport (LMMIA) in San Juan, Puerto Rico.

On September 14, 2021, Aerostar and the Organization filed position statements on the jurisdiction issue. Aerostar also submitted a copy its lease agreement with PRPA.

On September 21, 2021, Investigator Gross requested additional information from Aerostar pertaining to the question of RLA jurisdiction, and on October 1, 2021, Aerostar submitted its response to that request.

ISSUE

Whether Aerostar and its employees are subject to the RLA?

CONTENTIONS

Aerostar

Aerostar contends its operations at LMMIA meet the NMB's two-part test for determining whether an employer that is not a rail or air carrier transporting passengers or freight is subject to the RLA. It submits that the work performed by its firefighters at LMMIA satisfies the "function" element of the NMB's test because it is essential to the operations of all air carriers operating at LMMIA. The "control" element of the NMB's test is also met, Aerostar asserts, because the flight schedules of the carriers operating at LMMIA dictate the daily operations and schedules of its firefighters.

Aerostar further contends it is, or should be, subject to RLA jurisdiction because the services provided by its airport firefighters – mandated by the Federal Aviation Administration (FAA) - are "critical to airline operations," and any work stoppage by them would halt virtually all air carrier operations at LMMIA and cripple interstate travel and commerce for more than half a million travelers per month. That kind of disruption, Aerostar asserts, "is precisely what the RLA is meant to prevent." In its view, "[t]his is a textbook case of the type of operations that the RLA must regulate."

While acknowledging that most firefighters who provide aircraft rescue and firefighting (ARFF) services at other airports in the United States are federal or state employees whose labor disputes are governed not by the RLA but by other labor laws applicable to government employees (certain of which prohibit the employees from striking), Aerostar submits that the firefighters it employs at LMMIA “are a unique class,” in “a very uncommon” situation, and “should be” covered by the RLA because the RLA “makes it much more difficult for workers to strike when it would cripple airline operations” It further submits that, although “[it] is not per se an ‘air carrier’ under the . . . RLA,” with respect to the firefighters it employs at LMMIA it “must certainly be considered a ‘carrier affiliate,’ so ‘sufficiently connected to air carriers’ so as to be subject to the RLA’s jurisdiction”; and that “companies that provide services that are essential to an air carrier’s transportation operations are ‘necessarily’ covered by the RLA.”

The Organization

The Organization also contends that Aerostar and its firefighter employees at LMMIA are subject to the RLA. It initially filed a petition to represent Aerostar’s firefighters with the National Labor Relations Board (NLRB) on June 1, 2021. In that matter, Aerostar argued that the NLRB lacked jurisdiction, and that it and its firefighters are subject to the RLA. After considering Aerostar’s arguments to the NLRB, the Organization concurred with Aerostar’s position, requested that its representation petition be dismissed by the NLRB, and initiated the representation process with the NMB.

The Organization’s arguments in support of RLA jurisdiction mirror those made by Aerostar in its September 14, 2021 position statement to the Board, which it noted coincide with the arguments Aerostar presented to the NLRB.

FINDINGS OF LAW

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

I.

45 U.S.C. § 151, First, includes within the definition of a carrier “any company which is directly or indirectly owned or controlled by or under common control with any carrier.”

II.

The Organization is a labor organization and/or representative as provided by 45 U.S.C. §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.”

IV.

45 U.S.C. § 152, Ninth, provides that the Board has the duty to investigate representation disputes and shall designate who may participate as eligible voters in the event an election is required.

STATEMENT OF FACTS

Aerostar

On its public website, www.aerostarairports.com, Aerostar states that it “is the public-private partnership, privately held company, and limited liability company, that operates and manages the [LMMIA] . . . on behalf of the [PRPA].” It also states that:

The company is a joint venture between PSP Investments, one of Canada’s largest pension investments managers, and Grupo Aeroportuario del Sureste, a Mexican airport management firm. Aerostar has a forty-year lease to operate, manage and upgrade the airport. [LMMIA] handles over 8 million passengers per year and is served by over 15 different airlines.² [LMMIA] is the largest airport in Puerto Rico and serves as the island’s primary international gateway and connection to the rest of the region, primarily the continental United States.

The Puerto Rico Ports Authority

The PRPA is a public, government-owned corporation and government instrumentality of the Commonwealth of Puerto Rico, organized under the laws of Puerto Rico,³ and charged with developing, operating, and overseeing all seaports and airports in Puerto Rico, including the LMMIA. The LMMIA is a joint, civil-military international airport owned by the PRPA.

² In its October 1, 2021 submission to the NMB, Aerostar states that 25 air carriers currently operate at LMMIA.

³ See Act No. 125 of the Legislative Assembly of Puerto Rico (May 7, 1942).

The FAA's Airport Privatization Program

The FAA oversees an Airport Investment Partnership Program (AIPP) (formerly, the "Airport Privatization Pilot Program") which allows public airport sponsors to sell or lease an airport as a means of generating access to sources of private capital for airport improvement and development. A public airport sponsor that wants to participate in the program must receive preliminary approval from the FAA through an application process. Once the FAA accepts the preliminary application for review, the sponsor can select a private operator to manage the airport, negotiate an agreement with the private operator (commercial service airports can only be leased), and prepare a final application for submittal to the FAA. If the FAA approves the application, it monitors the transfer of the airport from public owner and sponsor to the new private operator. All commercial service airports in the AIPP must comply with Title 14 Code of Federal Regulations (CFR) Part 139 and with Transportation Security Administration (TSA) requirements for airport security.⁴

The Lease Agreement Between Aerostar and the PRPA to Operate and Manage LMMIA

On December 1, 2009, public airport sponsor PRPA filed a preliminary application for LMMIA to participate in the FAA's airport privatization pilot program, and on July 7, 2010 the FAA accepted the application for review. With that acceptance, the PRPA was authorized to select a private airport operator, negotiate an agreement with the private operator, and submit a final privatization application to the FAA.⁵

On July 24, 2012, PRPA awarded Aerostar an exclusive 40-year lease to operate and maintain LMMIA.

On February 25, 2013, the FAA approved the PRPA's final airport privatization application for the LMMIA. Two days later, on February 27, 2013, the FAA issued Aerostar an Airport Operating Certificate as operator of the LMMIA. The Certificate states as follows:

This certifies that Aerostar Airport Holdings, LLC, as operator of [LMMIA], San Juan, Puerto Rico has met the requirements of the Title 49 USC, Subtitle VII – Aviation Program, and the rules, regulations, and standards prescribed thereunder for the issuance of this certificate, and is hereby authorized to operate as a

⁴ See 49 USC Section 47134 and FAA Reauthorization Act of 2018, Pub. L. No. 115-254 (2018). See also 86 Fed. Reg. 20,586 (April 20, 2021).

⁵ 75 Fed. Reg. 39,091 (July 7, 2010).

certificated airport in accordance with and subject to said statute and the rules, regulations, and standards prescribed thereunder, including but not limited to 14 CFR Part 139, and any additional terms, conditions, and limitations contained herein or in the Approved Airport Certification Manual on file with the [FAA].

With the issuance of the FAA Airport Operating Certificate, Aerostar assumed control of LMMIA.

Airport Rescue and Firefighting Requirements

FAA Requirements Under 14 CFR Part 139

The FAA has the authority to issue requirements for the certification and operation of certain airports through 14 CFR Part 139. To obtain a certificate, an airport must agree to certain operational and safety standards and provide for such things as aircraft rescue and firefighting (ARFF) services during air carrier operations that require a Part 139 certificate.⁶

The FAA determines all airport ARFF operational requirements, including minimum staffing, the qualifications and training requirements for all ARFF personnel, and the manner in which the duties of ARFF personnel are performed. For example, 14 CFR Section 139.319 (ARFF Operational Requirements) requires that airport operator certificate holders ensure that “sufficient rescue and firefighting personnel are available during all air carrier operations to operate the vehicles, meet the response times, and meet the minimum agent discharge rates required by this part.”⁷ The minimum required number of on-duty ARFF personnel (and levels of other emergency response resources) is based on an FAA-determined index tied to air carrier operations including, for example, the numbers of flights and passengers, aircraft length, and average daily departures.⁸ Part 139 also addresses specific requirements pertaining to, for example, emergency response times, protective clothing, training, and the medical qualifications required of certain on-duty personnel.⁹

⁶ 14 CFR Part 139 requires the FAA to issue airport operating certificates to airports that serve scheduled and unscheduled air carrier aircraft with more than 30 seats; serve scheduled air carrier operations in aircraft with more than 9 seats but less than 31 seats; and the FAA Administrator requires to have a certificate. 14 CFR Section 139.1(a).

⁷ 14 CFR Section 139.319(i)(6).

⁸ 14 CFR Sections 139.315, 139.317.

⁹ 14 CFR Section 139.319(i).

With specific respect to training of ARFF personnel, Part 139 requires initial and recurrent (annual) training, and sets forth the required curriculum for the training.¹⁰ In addition, the FAA regularly provides information to airport certificate holders pertaining to all aviation fire and rescue requirements. For example, *Advisory Circular 150/5210-17C - Programs for Training of Aircraft Rescue and Firefighting Personnel*, 6/12/15 sets forth standards for ARFF training programs that are mandatory under 14 CFR Part 139 and provides guidance in meeting the ARFF training requirements. All ARFF training programs must be approved by the FAA.

To ensure airports with operating certificates are meeting the requirements of Part 139, the FAA conducts yearly certification inspections. The inspections include multiple steps, including an inspection of ARFF operations and personnel. The ARFF inspection includes the conduct of a timed-response drill; a review of aircraft rescue and firefighting personnel training records, an annual live-fire drill and documentation of basic emergency medical care training; and a check of equipment and protective clothing for operation, condition, and availability. If an airport is not meeting its Part 139 obligations, the FAA may impose various corrective actions and/or financial penalties. In extreme cases, the FAA could revoke the airport's certificate.¹¹

*ARFF Requirements Under the Lease Agreement
Between Aerostar and PRPA*

The lease agreement between Aerostar and PRPA includes numerous provisions pertaining to the provision of ARFF services at LMMIA and Aerostar's obligation to comply with 14 CFR Part 139 and all other laws and regulations applicable to the FAA's privatization program, including the following:

Section 3.2 LMM Airport Facility Operations

(a) *Use.* [T]he Lessee shall, at all times during the [lease term], (i) be responsible for all aspects of the LMM Airport Facility Operations and (ii) cause the LMM Airport Facility Operations to be performed in accordance with the provisions of this Agreement . . . and applicable Law (including maintaining compliance with 14 C.F.R. Part 139 . . .)

Section 3.3 Lessee Responsibility

¹⁰ 14 CFR Section 139.319(i)(2)(i).

¹¹ https://www.faa.gov/airports/airport_safety//part139_cert/what-is-part-139/.

(a) The Lessee shall, at all times during the [lease term], (i) remain solely responsible for compliance with the Part 139 Airport Operating Certificate and (ii) be the sole holder of the Part 139 Airport Certification Manual.

(b) The Lessee shall, at all times during the [lease term], be responsible for the LMM Airport Facility Operations in a manner consistent with . . . all applicable requirements of Law, including the Part 139 Airport Operating Certificate, [and the] Part 139 Airport Certification Manual

Section 3.4 FAA Airport Privatization Pilot Program

(a) *FAA Airport Privatization Pilot Program.* The Lessee shall, at all times during the [lease term] . . . observe and comply with . . . and cause the LMM Airport Facility Operations to comply with . . . all Laws . . . applicable to it or the LMM Airport Facility Operations with respect to the FAA's Airport Privatization Pilot Program

Section 3.17 Police, Fire and Emergency Services; Access Rights.

(a) At all times during the [lease term], the [PRPA or “Authority”] shall cause the LMM Airport Facility to be serviced by adequate police, perimeter security and firefighting

(b) Subject to Section 3.17(c), the Lessee shall reimburse the Authority for all costs and expenses reasonably incurred by the Authority . . . related to the provision of all such police, perimeter security and firefighting (including employment costs and related overhead expenses allocable thereto) . . .

(c) Not less than 60 days prior to the beginning of each [year of the lease term], the Lessee and the Authority shall agree on an annual budget for the police, perimeter security and/or firefighting to be provided with respect to the LMM Airport Facility for that upcoming [t]erm [y]ear, which will specify the level of services to be provided and the cost of such services

(e) Consistent with its responsibility to satisfy all applicable FAA . . . requirements (including maintaining compliance with 14 C.F.R. Part 139) . . . , the Lessee shall, at all times during the [lease term], on a 24-hour basis at the LMM Airport Facility maintain sufficient personnel who shall be qualified to respond to emergencies

Aerostar and its Firefighting Operations at LMMIA

As an FAA-certificated airport operator, Aerostar employs 21 ARFF firefighters at LMMIA to satisfy the FAA's requirement to provide ARFF services pursuant to 14 CFR Part 139 and to meet its related obligations under its lease with PRPA. There are no contracts between Aerostar and any air carrier operating at LMMIA that specifically pertain to the ARFF services provided at LMMIA; it is a service mandated by the United States government through the FAA.

Staffing and Scheduling

The air carriers operating at LMMIA are not directly involved in determining the staffing levels or work schedules of Aerostar's ARFF firefighters. Staffing levels are dictated by the FAA requirements set forth in 14 CFR Part 139. Section 139.319 specifically requires that "sufficient rescue and firefighting personnel are available during all air carrier operations to operate the vehicles, meet the response times, and meet the minimum agent discharge rates required by this part." The minimum required number of on-duty ARFF personnel and levels of other emergency response resources is based on an FAA-determined index tied to air carrier operations including, for example, the numbers of flights and passengers, aircraft length, and average daily departures.

In addition, Aerostar's lease with PRPA requires it to, at all times and on a 24-hour basis, maintain sufficient personnel at LMMIA qualified to respond to emergencies, consistent with its responsibility to satisfy all applicable FAA requirements, including maintaining compliance with 14 CFR Part 139.

Carrier Involvement in Day-to-Day Operations and Supervisory Authority

Although Aerostar is required under 14 CFR Part 139 to always have ARFF firefighting services available at LMMIA in order for the air carriers operating there to carry out their flight operations, none of the air carriers operating at LMMIA have any direct involvement in Aerostar's day-to-day firefighting operations. In addition, no air carrier operating at LMMIA is involved in the direction and/or supervision of Aerostar's firefighters. The firefighters are directed and supervised by Aerostar as an entity certified by the FAA as the operator of LMMIA.

Carrier Access to Aerostar's Operations and Records

No air carrier operating at LMMIA has access to Aerostar's firefighting operations or records pertaining to those operations, including records of the firefighters Aerostar employs. The FAA, however, has such access. For example,

to ensure airports with operating certificates are meeting the requirements of Part 139, the FAA conducts yearly certification inspections, which include an inspection of ARFF operations and personnel. The ARFF inspection includes the conduct of a timed-response drill, a review of aircraft rescue and firefighting personnel training records, an annual live-fire drill, documentation of basic emergency medical care training, and a check of equipment and protective clothing for operation, condition, and availability.

In addition, under its lease agreement with Aerostar, the PRPA has broad access and oversight rights with respect to Aerostar's operations, including the right to access and review information and conduct audits pertaining to the LMMIA facility operations and Aerostar's compliance with the agreement.¹² These rights include the right to audit Aerostar's ARFF operations. For example, the lease expressly provides that PRPA – in its discretion and at any time during the lease term – has the right to determine whether or not Aerostar is satisfying its obligations to maintain sufficient personnel qualified to respond to emergencies and to satisfy all applicable FAA . . . requirements (including maintaining compliance with 14 CFR Part 139).

Carrier's Role in Personnel Decisions and Wages/Benefits

No air carrier operating at LMMIA is involved in or influences personnel decisions relating to Aerostar's firefighters, including hiring, firing, transferring, and promoting, and there is no evidence any of the carriers have a role in determining the firefighters' wages and/or benefits. With respect to the cost of providing ARFF services at LMMIA, the PRPA-Aerostar lease agreement provides that the parties will annually agree on a budget for the provision of such services at LMMIA.

Carrier Control Over Training

Aerostar's firefighters do not receive any training or training materials from any of the air carriers operating at LMMIA, nor does any carrier control any aspect of their training. The FAA determines all aviation and fire rescue training standards and requirements, and must approve all ARFF training programs. In addition, the FAA conducts annual FAA certification inspections to determine a certificate holder's compliance with Part 139 requirements. The inspection includes a review of ARFF personnel training records and documentation of basic emergency medical care training.

¹² See, e.g., Aerostar-PRPA lease agreement Sections 8.2 (Information) and 8.3 (Inspection, Audit and Review Rights of the Authority).

Holding Out to the Public

Aerostar's firefighters are not held out to the public as employees of any air carrier operating at the LMMIA.

DISCUSSIONApplicable Legal Standard

When an employer is not a rail or air carrier engaged in the transportation of freight or passengers, the Board has traditionally applied a two-part test in determining whether the employer and its employees are subject to the RLA. *See, e.g., Airway Cleaners*, 41 NMB 262 (2014); *Aero Port Services, Inc.*, 40 NMB 139 (2013); *Talgo, Inc.*, 37 NMB 253 (2010). First, the Board determines whether the nature of the work is that traditionally performed by employees of rail or air carriers. Second, the Board 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 Board to assert jurisdiction. *Id.*

Is Aerostar a Non-Carrier Subject to the Jurisdiction of the RLA?

Aerostar does not fly aircraft and is not directly or indirectly owned by an air carrier. Therefore, to determine whether Aerostar and its employees are subject to the RLA, the NMB must consider whether the work at issue is work traditionally performed by air carriers and the degree of direct or indirect control exercised over its operations by any air carriers operating at LMMIA.

Is the Work Performed by Aerostar's Firefighters Work that is Traditionally Performed by Air Carriers?

Aerostar contends (as does the Organization) that the work performed by its firefighters at LMMIA satisfies the "function" element of the NMB's test because it is "essential" and "wholly indispensable" to air carrier operations at LMMIA; a work stoppage by the firefighters could impede those operations by potentially impacting Aerostar's ability to provide the minimum number of firefighters required by the FAA for flight operations to occur there; and one of the RLA's main purposes is to avoid interruptions to commerce.

Although the work performed by Aerostar's firefighters at LMMIA is necessary for air carrier operations to occur there (as it is for carrier operations at any airport regulated by the FAA under Part 139), whether that work is work traditionally performed by carrier employees is a question the Board need not answer here in order to resolve the jurisdiction issue since (as discussed below) no carrier exercises control over Aerostar's operations at LMMIA.

*Is Aerostar Directly or Indirectly Controlled by,
or Under Common Control With a Carrier or Carriers?*

Under the “control” prong of the NMB’s two-part test, the NMB considers the degree of direct or indirect control exercised over its operations by an air carrier or carriers.

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. (Citing *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).

The record in the instant case does not establish that any air carrier exercises a sufficient amount of control over Aerostar’s operations at LMMIA to support a finding of RLA jurisdiction. In fact, there is no evidence that any air carrier operating at LMMIA exercises any influence or control over any aspect of those operations.

No carrier exerts any influence or control over how Aerostar conducts its business or how the firefighters at LMMIA perform their work; no carrier specifies or dictates the required ARFF staffing levels or when the firefighters work; no carrier has any role or influence in ARFF personnel decisions, including hiring, firing, promotion, transfers or assignments, or wages or benefits; no carrier has any role in the supervision or instruction of any ARFF employees; no carrier plays any role in the training of ARFF employees; no carrier has access to Aerostar’s ARFF operations or records; and Aerostar’s firefighters are not held out to the public as employees of any air carrier operating at LMMIA.

Aerostar’s contention that it meets the “control” test because the carriers’ flight schedules dictate the daily operations and schedules of the firefighters is unpersuasive. While Aerostar claims that the air carriers operating at LMMIA have “total control” over the firefighters’ operations and schedules, it is the FAA

– not any air carrier - that dictates all ARFF operational requirements, including minimum staffing levels and when ARFF personnel must be on duty. The fact that the FAA’s ARFF manning and other requirements are based on an FAA-determined index tied to an air carrier’s flight schedules, numbers of passengers, and other operational measures, does not constitute the kind or level of control by an air carrier over Aerostar’s day-to-day operations necessary for a finding of RLA jurisdiction; it is arguably no control at all.

Based on the above discussion, Aerostar is neither directly nor indirectly controlled by a carrier. *See generally Boston MedFlight*, 38 NMB 52 (2010) (NMB’s opinion that MedFlight’s operations and employees not subject to RLA; insufficient evidence of control by a carrier over BMF’s day-to-day operations to satisfy the second part of Board’s jurisdictional test); *Dynamic Science, Inc.*, 14 NMB 206 (1987) (NMB’s opinion that DSI and its employees not subject to RLA; although certain services performed by DSI are those traditionally performed by air carriers, no evidence in record there is any degree of control, either direct or indirect, exercised by any common carrier by air).

*Aerostar’s Additional Arguments That It Is or Should Be
Subject to RLA Jurisdiction*

With respect to Aerostar’s argument that it must be considered a “carrier affiliate,” so “sufficiently connected to air carries” so as to be subject to RLA jurisdiction, the Board finds it unpersuasive. Contrary to Aerostar’s assertion, an entity is not (nor does the Board consider an entity to be) an “affiliate” of an air carrier simply because the service it provides is “sufficiently connected” to an air carrier’s operations. The term “affiliate” typically has a legal definition in the context of corporate ownership structures. It is used primarily to describe a business relationship where two companies are related to one another, with the affiliate generally subordinate to the other, and the other having a minority ownership stake (less than 50 percent) in the affiliate. No such relationship between Aerostar and any air carrier exists here.

The Board also finds unpersuasive Aerostar’s argument that it is or should be subject to RLA jurisdiction because a work stoppage by its airport firefighters has the potential to disrupt air carrier operations at LMMIA which, Aerostar asserts, is precisely the type of disruption the RLA is meant to prevent. While the services Aerostar’s firefighters provide at LMMIA are necessary for air carrier operations to occur there, and a work stoppage by them could disrupt those operations, RLA jurisdiction is based on an entity’s status as a “carrier” as defined by the Act. Consistent with that definition, an entity that is not a direct rail or air carrier, like Aerostar, may be determined to be a “carrier” under the Act if the work it performs is traditionally performed by carriers and if it is directly or indirectly controlled by a carrier. Whether a potential work stoppage

by the entity's employees could disrupt a carrier's operations is not determinative of "carrier" status. To find otherwise would be inconsistent with the Act.

CONCLUSION

Based on the record in this case and for the reasons discussed above, the Board finds that Aerostar and its employees are not subject to the RLA. Therefore, NMB File No. CR-7229 is converted to Case No. R-7580 and the Organization's application is dismissed.

By direction of the NATIONAL MEDIATION BOARD.



Maria-Kate Dowling
Acting General Counsel

Chairman Fauth, concurring.

As Aerostar correctly asserts, a primary purpose of the Railway Labor Act is to promote and maintain peaceful and orderly labor relations between air and rail carriers and their employees in order to prevent interruptions to interstate commerce which may be caused by employee strikes or other job actions. I agree with Aerostar that a strike or other work stoppage by its Firefighters could potentially disrupt or suspend air carrier operations at Luis Muñoz Marín International Airport (LMMIA), which is operated by Aerostar, and could also disrupt interstate commerce generally. However, Aerostar is an investment consortium. Aerostar is not an airline (or rail) carrier or derivative carrier subject to the Act's jurisdiction. As a result, no air or rail carrier exercises any meaningful control over LMMIA's operations and thus the NMB lacks jurisdiction here.