



NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

(202) 692-5000

46 NMB No. 6
December 18, 2018

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

Re: NMB File No. CJ-7190
NLRB Case No. 12-CA-217914
Menzies Aviation, Inc.

Dear Ms. Tursell:

This responds to your request for the National Mediation Board's (NMB or Board) opinion regarding whether Menzies Aviation, Inc. (Menzies or Employer) is subject to the Railway Labor Act (RLA), 45 U.S.C. §151, *et seq.* On August 22, 2018, the National Labor Relations Board (NLRB) requested an opinion regarding whether Menzies' operations are subject to the RLA.

For the reasons discussed below, the NMB's opinion is that Menzies' operations and employees at Fort Lauderdale-Hollywood International Airport, Fort Lauderdale, Florida (FLL) are subject to the RLA.

I. PROCEDURAL BACKGROUND

On April 5, 2018, Joy Beverly Smith (Smith or Charging Party) filed an Unfair Labor Practice Charge with the NLRB. The Charging Party alleges that in or about January 2018, Menzies violated Sections 8(a)(1), (2) and (3) of the National Labor Relations Act (NLRA) by unlawfully recognizing the United Service Workers Union, IUJAT (Local 74) as the collective bargaining representative of Menzies employees at FLL and by distributing membership cards and dues check off authorization cards to employees. On May 21, 2018, Menzies submitted an initial position statement to the NLRB asserting that it

falls under the jurisdiction of the RLA. On March 21, 2011, Local 74 filed its initial position statement with the NLRB stating that the NLRB did not have jurisdiction in this matter because Menzies is covered by the RLA.

On August 22, 2018, the NLRB referred the case to the NMB for an advisory opinion on the issue of jurisdiction. The NMB assigned Eileen M. Hennessey to investigate. Smith, Menzies and Local 74 each submitted position statements. The NMB's opinion is based on the request and the record provided by the NLRB, as well as these position statements.

II. FINDINGS OF FACT

Menzies provides fueling and ground handling services to airline carriers (Carriers) at multiple facilities across the United States. At FLL, Menzies employs approximately 200 people and has contracts to provide ground handling services to multiple air carriers including Air Canada, Norwegian Air, Caribbean Air, Alaska, Virgin America, IBC and Silver Air. On February 1, 2017, Menzies acquired Aircraft Service International, Inc. (ASIG), which continues to operate as a separate legal entity doing business under the brand name "Menzies Aviation" or ASIG by Menzies Aviation". ASIG provides fueling services, including fuel storage and facility maintenance/management services to airlines at FLL. All of the ASIG and Menzies business at FLL occurs pursuant to contracts directly with the airlines. Neither Menzies nor ASIG performs any operations at FLL or provides services to the airport directly or to any other non-airline entity.¹

The General Manager (GM) oversees all aspects of the combined Menzies and ASIG operations at FLL. The GM position at Menzies FLL can be either an ASIG or Menzies Aviation position. The current GM is a Menzies Aviation employee; the previous GM was an ASIG employee. Aside from the shared general management, the fueling and ground handling operation run separately under discrete contracts with the Carriers. There is no merger agreement between ASIG and Menzies at FLL.

Menzies' offices are located at FLL and it provides a break room for employees at the airport. Some of the break room and office space is leased by

¹ Menzies provided excerpts from three of its FLL contracts. Due to the sensitive commercial information contained in the contracts with Menzies' customers, Menzies requests that the information in the contracts be treated with "appropriate confidentiality and sensitivity".

Menzies directly from the airport. However, some of the Carriers, specifically, Norwegian Air, provide break room and office space to Menzies without charge.

Local 74 is the recognized collective bargaining representative of the ground handling, cabin cleaning and fueling employees of Menzies at FLL. Menzies and Local 74 are parties to a collective bargaining agreement (CBA) set to run from June 16, 2017 to June 15, 2022. Included in the CBA are the following job titles: fuelers, lead fuelers, ramp agents, ramp agent leads, cabin agents and cabin agent leads. The CBA expressly states that Menzies “voluntarily recognizes the Union, in accordance with the Railway Labor Act, as the sole and exclusive collective bargaining representative for those Employees of Menzies Aviation, Inc., employed at ... [FLL].” According to Menzies, “any ‘interchange’ between Menzies and ASIG employees” or transfers between the two groups must occur consistent with the terms of the CBA.

Staffing and Scheduling

Menzies employees’ schedules are dictated by airline operations and are modified according to changes in the Carriers’ flight volume and operational schedules. Menzies’ employees are required to adjust their schedules when there are flight delays and may not leave until service has been completed for the Carriers.

One of the contracts provided by Menzies lists per flight minimum staffing levels and sets forth penalties for Menzies failure to meet the staffing levels that result in service or quality issues. Another contract provided by Menzies sets forth a specification of services and a Service Level Agreement with incentives and penalties for meeting targeted levels of service. Menzies’ management meets with airline management on a weekly basis to discuss performance and address opportunities for improvement.

Carrier Involvement in Day-to-Day Operations

According to Menzies, its ground handling contracts with its airline customers at FLL contain slight variations for each Carrier but there are common “themes and requirements.” Each Carrier requires Menzies’ employees to follow the individual Carriers’ operating procedures for how specific work must be performed. These Carrier specific procedures include: what types of cabin cleaning services to perform for which flights (“Quick Turn Clean” versus “Remain Overnight” clean) with the airlines providing checklists for what services must be provided for each type of cleaning; where and how

ground service crews must load baggage to into aircraft to distribute weights at loads specified by the Carriers; how Menzies personnel must interact with the Carriers' customers while performing passenger service functions (such as passenger greetings at check-in, checked baggage process, frequent flyer programs and the differing perks available to passengers).

Menzies' ground handling personnel frequently interact with Carrier employees. Carrier supervisors oversee Menzies' performance of baggage handling on the respective airlines and give directions regarding the loading of the baggage into the holds of passenger aircraft. Airline Supervisors will direct Menzies employees to reload the aircraft if it has not been done to the Carrier's specifications. Carrier employees also can instruct Menzies to reassign crews or individuals to certain aircraft to prioritize ground handling according to changes in schedules and Carrier priorities.

Carriers provide Menzies with regular "report cards" or "score cards" based on performance measures set forth in the contracts. These performance measures include whether Menzies personnel caused flight delays, or transported baggage from plane to baggage carousel within specified time frames. Within the contracts, there are financial penalties and incentives for achieving targeted performance measures. In addition, Carriers routinely communicate with Menzies staff about performance issues both verbally and through email. Menzies provided exemplary communications between the Carriers and Menzies discussing performance issues and documenting Menzies responsiveness to the issues.

Alaska Airlines requires Menzies cabin cleaning crews to use a smartphone application, SpringShot, when performing cleaning services on its aircraft. Through SpringShot, the Carrier directs Menzies employees what cleaning services to perform on a flight-by-flight basis, by giving instructions such as what sequence to clean aircraft, what type of cleaning to perform (such as a wipe-down only or a full scale "Remain Overnight" clean) and what parts of the cabin the cleaners must give extra attention to. Through SpringShot the Carrier can audit Menzies' work on a real-time basis.

Menzies' contract with Air Canada sets forth a detailed checklist of cabin cleaning specifications as well as an aircraft cabin search checklist. The Air Canada contract also has a Service Level Agreement for passenger and ramp service which defines the service level, how it will be measured, the targeted

performance rate and incentive/penalties for attaining or failing to attain the target.

Carrier Access to Menzies' Operations and Records

The contracts provide that the Carriers have the right to audit Menzies' operations and upon prior written notice, Menzies shall provide free access to its "premises, places of work, procedure manuals, records and training program records." In some cases, Carriers maintain their own records regarding Menzies' employees and their training status based upon their participation in Carrier computer-based training programs.

Carrier's Role in Personnel Decisions and Benefits

Carriers have the right to have Menzies employees removed from their operations. Carrier complaints can and do result in disciplinary action. Menzies provided multiple emails between Carrier managers and Menzies managers documenting Carrier complaints regarding Menzies performance issues, Carrier directions regarding corrective action and Menzies responses implementing the corrective action.

Menzies' contracts with multiple Carriers at FLL provide that in the event of a change in the federal, state, or local minimum wage law resulting in a wage increase, Menzies may pass the costs of such wage increases through to the airlines. In 2016, the Broward County Living Wage Ordinance as applicable to airline service providers at FLL went into effect. This ordinance required Menzies to increase wage rates of certain positions and pursuant to its contracts with the airlines, Menzies passed the increased costs of wages onto the Carriers. Carriers may offer flight passes to Menzies personnel or hold employee appreciation events where Menzies employees may participate.

Carrier Control over Training

Many of the contracts require that Menzies identify a certain number of its employees who will act as training instructors (Instructors) for Menzies employees. One exemplary contract stated that Instructors receive training from the Carriers and are then certified to teach Menzies employees for initial and recurrent training. The Instructors attend regulatory and Carrier-required training events that certify them as Instructors acting on behalf of the Carrier. Menzies' Instructors' training expenses are borne by the Carrier. The Carrier coordinates with Menzies for all training requirements deemed essential

for the performance of the contract. Training expenses for Menzies' ground handling personnel are borne by Menzies.

Carrier Provided Equipment and Holding Out to the Public

Menzies employees perform passenger service work (such as checking in passengers at ticket counters or gates, issuing boarding passes and other face-to-face interactions with passengers) for some Carriers at FLL. These Menzies employees must wear uniforms, lanyards, badges and other articles with the Carriers' branding and logos to create the perception that passengers are dealing directly with Carrier personnel, not a subcontractor's staff. Menzies' cabin cleaning employees wear a uniform with the Menzies logo on the shirt and a pair of steel toe boots which are supplied by Menzies. Supervisors wear uniforms with the Menzies logo on the shirt and an orange reflection vest. Menzies is responsible for ensuring that its employees have the necessary identification badge to work at FLL. Menzies is contractually bound to adhere to all applicable government security regulations and comply with Carrier security procedures, policies and standards.

Alaska Airlines requires Menzies cabin cleaning crews to use an application called SpringShot on Alaska-supplied smartphones. Menzies is contractually obligated to furnish all ground support equipment such as push back tractors, baggage tractors and belt loaders. One of the exemplary contracts between Menzies and a Carrier specifies the minimum amount of equipment to be furnished per flight.

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.

Menzies 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 the baggage

handling, ramp services, aircraft marshaling, cabin cleaning and passenger service is work traditionally performed by airline employees. *See e.g., John Menzies PLC, d/b/a Ogden Ground Servs., Inc.*, 30 NMB 463 (2003).

Therefore, to determine whether Menzies 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 Menzies and Its Employees

In this case, the record demonstrates that the Carriers exercise significant influence over Menzies' operations at FLL. Menzies' operations at FLL are governed by contracts with individual Carriers. While these contracts contain variations for each Carrier there are certain common themes and requirements central to all of the contracts. Each contract requires Menzies personnel to be trained on and follow the Carriers' operating procedures. The contracts require the Carriers to train selected Menzies personnel to serve as the Carriers' Instructors to provide initial and recurrent training to Menzies employees. Menzies employees working in passenger service positions wear uniforms, lanyards and badges with the Carrier's insignia.

The Carriers set forth staffing and performance levels via contract. The contracts contain performance standards and financial incentives and

penalties for peak or poor performance. Carrier management and Menzies management meet on a weekly basis to discuss performance issues. In addition, Menzies provided numerous examples of performance issues that were raised by Carriers along with their directions for corrective action. Carriers have the right to have Menzies employees removed from their operations. Such complaints can and do result in disciplinary action. Similarly, Carriers have identified Menzies employees who they regard as strong performers and these employees are often the first considered for promotion opportunities. Alaska Airlines requires Menzies' cabin cleaning crews to use an application called SpringShot on Alaska-supplied smartphones. SpringShot allows the Carrier to audit Menzies' work on a real-time basis.

There is a direct link between wage rates set by Menzies and the terms of the contract. In 2016, a Broward County wage ordinance required Menzies to increase wage rates for its employees at FLL and, pursuant to provisions in its airline contracts, Menzies passed the increased costs to its airline customers. The contracts provide that the Carriers have access to Menzies' premises, training records and operational records.

It should also be noted that the NMB has repeatedly found both Menzies' and ASIG's operation to be subject to the RLA. Beginning in 2003, in cases referred from the NLRB, the Board has determined that Menzies' and ASIG's commercial aviation operations were subject to the NMB's jurisdiction. *Signature Flight Support of Nevada*, 30 NMB 392 (2003)(Ramp Service, Passenger Service, Fuelers); *John Menzies PLC, d/b/a/ Ogden Servs., Inc.*, 30 NMB 404 (2003)(Fleet Service in Portland, Oregon); *John Menzies PLC, d/b/a/ Ogden Servs., Inc.*, 31 NMB 490 (2004)(Ground handling, baggage handling, cargo handling and cabin cleaning at SFO); *Aircraft Serv. Int'l Group, Inc.*, 31 NMB 361 (2004)(Fuelers).

In March 2004, the International Association of Machinists and Aerospace Workers (IAM) filed an application with the NMB seeking to represent ASIG's fuelers and ground handlers at Tampa International Airport. Although the application was ultimately dismissed based on an insufficient showing of interest, the Board found that ASIG was subject to RLA jurisdiction and that the appropriate system for representation under the RLA included all of ASIG's facilities nationwide. *Aircraft Serv. Int'l Group*, 31 NMB 508 (2004). In three subsequent referrals from the NLRB, the Board again determined that ASIG's commercial aviation operations were subject to the RLA. *Signature*

Flight Support/Aircraft Serv. Int'l, 32 NMB 30 (2004)(Ground Handling and Ground Service Equipment Maintenance); *Aircraft Serv. Int'l Group, Inc.*, 33 NMB 200 (2006)(Fuelers); *Aircraft Serv. Int'l Group, Inc.*, 33 NMB 258 (2006) (Fuelers). In *Aircraft Serv. Int'l Group*, 40 NMB 43 (2012), a decision addressing an application for Fleet Service Employees filed by the Service Employees International Union, United Service Workers West, the Board found that that the appropriate system for representation included all of ASIG's operations nationwide. Most recently, in *Aircraft Serv. Int'l, Inc.*, 45 NMB 50 (2018), the Board's found that ASIG's fuelers at LAS are subject to the RLA, consistent with those prior determinations.² The Board's opinion in this case is that Menzies' operations at FLL are subject to the RLA and this is consistent with these prior determinations.³

CONCLUSION

Based on the record in this case and the reasons discussed above, the NMB's opinion is that Menzies' operations and its employees at FLL are subject to the RLA.

BY DIRECTION OF THE NATIONAL MEDIATION BOARD



Mary L. Johnson
General Counsel

Copies to:
Christopher Ward, Esq.
Joy B. Smith
Samuel Ennis
Jasset James

² *But see, Menzies Aviation, Inc.*, 42 NMB 1 (2014) (Ground service work at Seattle Tacoma Airport.)

³ For the reasons set forth in her dissent in *ABM Onsite Services*, 45 NMB 27, 36 (2018), Member Puchala disagrees with her colleagues' decision to return to the six factor analysis for determining carrier control in jurisdiction cases. In the instant case, however, she agrees that there is sufficient record evidence of shared Carrier & Menzies/ASIG supervisory control of the daily operation and the manner in which employees perform their duties to establish RLA jurisdiction.