

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572



(202) 692-5000

46 NMB No. 7
December 19, 2018

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

Re: NMB File No. CJ-7192
NLRB Case No. 10-CA-217991
ABM Industries Inc. d/b/a Air Serv Corporation

Dear Ms. Tursell:

This responds to your request for the National Mediation Board's (NMB or Board) opinion regarding whether ABM Industries Inc., d/b/a Air Serv Corporation (ABM or Employer) is subject to the Railway Labor Act (RLA), 45 U.S.C. §151, *et seq.* On October 2, 2018, the National Labor Relations Board (NLRB) requested an opinion regarding whether ABM's operations at Hartsfield-Jackson International Airport (ATL) in Atlanta, Georgia are subject to the RLA.

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

I. PROCEDURAL BACKGROUND

On August 8, 2013, the Transport Workers Union, Local 269 (Local 269) filed an unfair labor practice charge with the NLRB, alleging that the Employer failed and refused to bargain in good faith, in violation of Section 8(a)(5) of the National Labor Relations Act (NLRA). On January 3, 2014, the NLRB referred the case to the NMB for an advisory opinion on the issue of jurisdiction. Subsequently, on February 21, 2014, the NLRB requested a withdrawal of its request for a jurisdictional opinion after Local 269 withdrew the underlying unfair labor practice charge. On April 6, 2018, Local 269 again filed an unfair

labor practice charge alleging a violation of Section 8(a)(5) of the NLRA. On October 2, 2018, the NLRB referred the case to the NMB for a jurisdictional opinion. The NMB assigned Maria-Kate Dowling to investigate. Neither the Local 269 nor the Employer submitted position statements to the NMB. The NMB's opinion is based on the request and the record provided by the NLRB.

II. FINDINGS OF FACT

The Employer is an airline service company, providing various services, including boarding pass verification, skycap, aircraft cabin cleaning, baggage handling, airport transportation, wheelchair service, and security services to commercial air carriers at numerous airports throughout the United States.¹ At ATL, ABM contracts with Delta Air Lines (Delta) to provide shuttle bus transportation for Delta employees between the Delta employee parking lot and the airport.

Staffing and Scheduling

Section 2.1 of the Service Agreement (Agreement) between Delta and ABM provides that ABM “shall furnish licensed and qualified operators and . . . vehicles . . . to provide employee shuttle services between various on-Airport locations and certain employee parking facilities as specified by Delta and between various Delta facilities on or near the Airport.” The bus services are provided “24 hours per day, seven days per week, every day of the year, including holidays.” The Agreement specifies the bus routes and states that the “precise schedule of operation shall be determined from time-to-time by the Delta Regional Director/Station Manager at the Airport or his/her designee.” Under Exhibit A to the Agreement, based on Delta's air carrier service, Delta may require that the bus schedule be adjusted on short notice. Exhibit A provides that ABM “shall provide up to two additional buses staffed with drivers during these times immediately upon receipt of notice from Delta.” ABM must also “adjust the schedules on less critical routes to provide additional coverage on routes deemed critical by Delta immediately upon request by Delta.”

Carrier Involvement in Day-to-Day Operations

The record indicates that the Delta Coordinator for Transportation has daily contact with ABM regarding drivers showing up late or not at all, driving too slowly, being rude, or engaging in other types of misconduct. Typically, these

¹ ABM acquired Air Serv Corp. sometime around 2012. ABM operated as Air Serv at most airport locations until recently when it began operating under the name ABM Aviation.

exchanges are by email. Changes to the bus schedule are also made by Delta through email.

The Agreement provides that Delta will pay a set rate for each “bus hour,” which represents the actual time (in hours) that any individual bus is operated in service for Delta. This rate includes ABM’s profits and all its costs related to the ground transportation services provided to Delta.² The Agreement also lists the specific requirements for the buses that Delta requires ABM to lease and maintain for its ATL operations. The bus leases must be “reasonably satisfactory” to ABM and Delta and assignable to Delta. These buses are not used by any other ABM client but are reserved only for the ground transportation services provided to Delta. The buses are “wrapped” in large vinyl-type stickers created by Delta with Delta’s colors and logos. At Delta’s request, ABM installed GPS equipment on all Delta buses. Buses used for other clients do not have GPS equipment.

Delta owns a small building at the Delta parking lot that ABM occasionally uses for dispatch and bus tracking. At that building, Delta pays for a single phone and phone line, electricity, and office cleaning services while ABM pays for internet service and owns the office furniture and computer equipment. ABM also leases and uses a small trailer at the same site and bills Delta for those leasing costs.

Delta provides space in its employee parking lot for the buses to park when not in operation and provides ABM employees with up to 120 parking spaces in the Delta employee parking facility.

Carrier Access to ABM’s Operations and Records

Section 3.5 of the Agreement requires ABM to maintain accounting and other relevant business records. Delta retains the contractual “right, but not the duty, to conduct such audits of [ABM’s] employment records as it deems prudent.” The record indicates that Delta has requested and reviewed accident records and other records but “does not normally request to review or audit some of the more sensitive documents . . . such as financial reports, bus maintenance records, and drug testing reports.”

² These costs include: all manpower; equipment; fuel (unless otherwise expressly provided for elsewhere in the Agreement) maintenance and repair costs; tires and parts; concession, license, permit or other fees paid to the Airport Operator or any governmental authority in connection with the transportation services; general administrative costs; and overhead. Sales taxes covered by Section 3.3 of the Agreement are excluded.

Carrier's Role in Personnel Decisions and Benefits

Delta has no role in hiring ABM drivers. As discussed above, the record indicates that Delta's Coordinator for Transportation forwards emails on a daily basis to ABM regarding issues with driver performance. These emails would often include suggestion that the behavior be addressed or schedules adjusted. For example, in a situation where the driver drove the route too slowly, Delta's Coordinator for Transportation suggested the driver be found another job. With respect to a driver found sleeping on the job, Delta's Coordinator for Transportation's email asks for the individual to be removed from driving buses for Delta. Despite these emails, the ABM General Manager for Operations testified that Delta cannot directly discipline, terminate, or reassign a driver. The record indicates that ABM will investigate incidents or complaints from Delta and, based on the results of that investigation, the driver will be disciplined or transferred to another client account. Between 2011 and 2012, ABM's Lot Supervisor estimated that there were ten instances where Delta identified a problem and requested that the driver be disciplined. Following investigations conducted by ABM, ABM disciplined six of the employees and the remaining four received no discipline.

Carrier Control over Training

Section 6.2 of the Agreement provides that ABM "shall ensure" that all its drivers receive "all operational and safety training necessary for the safe and competent performance" of the contractual service. Section 6.2 requires that each driver "must have had hands-on training to demonstrate to [ABM] the employee's capability of operating the [buses] safely, efficiently, and in a professional manner." The Agreement also requires ABM to designate an employee as the "Contractor's Training Coordinator" to be responsible for training new employees, disseminating new procedures and participation in Delta's "Train the Trainer" activities.

Holding Out to the Public

As discussed above, the buses are "wrapped" in Delta-designed vinyl material in Delta colors and displaying Delta logos. The drivers do not wear uniforms with Delta logos. The drivers wear a generic blue uniform with the Employer's logo. Section 5.1 of the Agreement specifically states that the drivers "be properly attired in uniforms reasonably acceptable to Delta and shall be attired to be identified as employees of the Contractor."

Each driver wears an airport security badge with the Employer's name. The drivers do not have Delta security badges.

III. DISCUSSION

Applicable Legal Standard

When an employer is not a rail or air carrier engaged in the transportation of freight or passengers, the NMB has traditionally applied a two-part test in determining whether the employer and its employees are subject to the RLA. First, the NMB determines whether the nature of the work is that traditionally performed by employees of rail or air carriers. Second, the NMB determines whether the employer is directly or indirectly owned or controlled by, or under common control with, a carrier or carriers. Both parts of the test must be satisfied for the NMB to assert jurisdiction.

ABM does not fly aircraft and is not directly or indirectly owned by an air carrier. The employees at issue provide shuttle bus service for Delta between Delta employee parking lots and the terminal and other airport buildings. The Board has previously found that shuttle bus service for carrier employees is work traditionally performed by employees in the airline industry. *Air Serv Corp.*, 35 NMB 201 (2008). *See also, Milepost Industries*, 27 NMB 362 (2000); *Security '76, Inc.*, 5 NMB 234 (1976). Therefore, to determine whether ABM is subject to the RLA, the NMB must consider the degree of direct or indirect control exercised over its operations by its Carrier customers.

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

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

45 NMB 27, 34-35 (2018).

Carrier Control over ABM and Its Employees

In this case, the record demonstrates that Delta exercises significant influence over ABM's shuttle drivers at ATL. Under the Agreement, Delta determines the "precise schedule of operation" for the shuttle bus operation. Further, based on Delta's air carrier service, the shuttle bus operations may be adjusted on short notice and ABM is required to furnish additional buses and drivers "immediately upon notice" from Delta. ABM must also adjust schedules on less critical routes to provide additional coverage on routes deemed critical by Delta immediately upon Delta's request. The agreement also specifies the number and type of buses to be provided by ABM and requires that the buses be painted in Delta's colors and covered with the Delta logo. Delta also requires the buses to contain GPS equipment. In addition, the buses are reserved for use only for Delta transportation services and not for use by any other ABM client.

The record indicates that Delta does not participate in the hiring of ABM drivers. Delta's Coordinator for Transportation is involved in day-to-day shuttle operations through daily emails regarding complaints or problems with service or adjustments to the schedules. While ABM makes the decision to discipline employees, it is clear that Delta reports problems and requests that discipline be taken. Investigations based on Delta's requests have resulted in discipline for ABM employees.

Delta retains a broad contractual right to audit ABM and has requested and reviewed accident reports and other records. Delta provides parking for ABM employees and provides office space to ABM for bus tracking and dispatch. At that building, Delta pays for the phone services, electricity, and cleaning services, but ABM owns the computers and office furniture and pays for the internet service. ABM leases other space to carry out the transportation services.

Although the buses driven by ABM employees display Delta logos and colors, the drivers wear ABM uniforms and their security badges display the ABM logo.

In the instant case, the Board finds that Delta exercises significant control over the day-to-day operation of the transportation services provided by ABM. The bus schedule is upon its air carrier service, and changes to that schedule must be made immediately upon Delta's request. Delta constantly makes adjustment to daily schedules, monitors the drivers' performance, and reports and requests action to be taken on driver misconduct. Delta requires the buses

to meet detailed specifications, to display its corporate logos, and to be used only for its transportation services. Delta also retains the right to approve the leases for the buses and the leases must be assignable to Delta. Delta retains a broad contractual right to audit ABM's records. With regard to training, the Agreement requires ABM to designate an employee as the "Contractor's Training Coordinator" to be responsible for training new employees, disseminating new procedures, and participation in Delta's "Train the Trainer" activities.

In sum, the record shows that Delta has sufficient control over ABM's transportation operations for Delta at ATL 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 transportation operations for Delta at ATL are subject to the RLA.

BY DIRECTION OF THE NATIONAL MEDIATION BOARD



Mary L. Johnson
General Counsel

Copies to:
Daniel Raspatello
Antonio Dollaragues

Member Puchala, dissenting.

Contrary to my colleagues, I would not find that ABM's operations and employees at ATL are subject to the RLA. For the reasons set forth in my dissent in *ABM Onsite Services*, 45 NMB 27, 36 (2018), I would require that a company asserting RLA jurisdiction establish the exercise of a meaningful degree of control over personnel decisions as described in *Airway Cleaners*, 41, NMB 262 (1014). In my view, the record in this case fails to establish that significant level of

control. Delta has no role in hiring ABM drivers. While Delta's Coordinator for Transportation reports driver performance problems to ABM and requests discipline, ABM's General Manager for Operations testified that Delta cannot directly discipline, terminate, or reassign a driver. ABM conducts its own investigation of complaints from Delta and the driver will be disciplined based on the results of that investigation.