



NATIONAL MEDIATION BOARD

WASHINGTON, DC 20572

(202) 692-5000

31 NMB No. 92

June 18, 2004

Richard A. Seigel
Associate General Counsel
Division of Operations-Management
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20571-0001

Re: NMB File No. CJ-6845
Kanonn Service Enterprises Corporation, Kanonn Service Corporation, and Crum Service (Ameristaff, Inc., Ameristaff II, Inc., Ameristaff III, Inc., Ameristaff of Florida, Inc., Ameristaff Industrial, Inc., Great American Employee Services, Inc.)

Dear Mr. Seigel:

This letter responds to your request for the National Mediation Board's (NMB) opinion regarding whether Kanonn Service Enterprises Corporation, Kanonn Service Corporation and Crum Service (Ameristaff, Inc., Ameristaff II, Inc., Ameristaff III, Inc., Ameristaff of Florida, Inc, Ameristaff Industrial, Inc., Great American Employee Services, Inc.) (Kanonn or Employer) is subject to the Railway Labor Act (RLA), 45 U.S.C. § 151, *et seq.* On March 3, 2004, the National Labor Relations Board (NLRB) requested an opinion regarding whether Kanonn's operations at the Fort Lauderdale Airport (FLL) are subject to the RLA.

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

PROCEDURAL BACKGROUND

This case arose out of unfair labor practice charges filed with Region 12, NLRB, by the International Association of Machinists & Aerospace Workers, District Lodge 142 (IAM), on December 5, 2003, and amended on January 29, 2004. The charges allege that Kanonn violated Sections 8(a)(1), (3) and (5) of the National Labor Relations Act by: 1) refusing to hire the predecessor's union stewards, Roy Moses and Willie Jackson, and 2) failing and refusing to recognize and bargain with the IAM, the bargaining representative certified to represent the employees at Kanonn.

On March 3, 2004, the NLRB requested an NMB opinion regarding the NMB's jurisdiction over Kanonn's operations at the FLL. On March 5, 2004, the NMB assigned Maria-Kate Dowling to investigate. On March 26, 2004, the IAM and Kanonn filed position statements.

The NMB's opinion in this case is based upon the request which includes an NLRB analysis and record provided by the NLRB, and the position statements of Kanonn and the IAM.

KANONN'S CONTENTIONS

Kanonn states that it meets the function part of the two-part test used by the NMB to determine its jurisdiction because the nature of the work is traditional airline work. The approximately 70 employees of Kanonn at FLL work under a contract with Delta Air Lines, Inc. (Delta) to provide skycap and wheelchair support services to Delta passengers. This work includes curbside check-in of passenger luggage, assistance with carrying baggage, work in baggage claim areas, and transport of disabled individuals for Delta passengers. The work is that traditionally performed by airlines. *See Complete Skycap Servs., Inc.*, 31 NMB 1 (2003).

Kanonn contends that it also meets the control part of the test because virtually every aspect of its work is dictated

and controlled by Delta. For example, Kanonn states: Delta sets shift schedules for the skycaps and wheelchair support personnel and sets the number of employees required for each shift; Delta supervisors brief the local Kanonn manager daily and the skycaps and wheelchair personnel weekly on performance issues; Kanonn works out of office space provided by Delta and uses equipment supplied by Delta; Delta has a right to review Kanonn records and invoices; Delta has the right to recommend discipline and transfer of Kanonn personnel; Delta conducts training of Kanonn personnel by Delta trainers; and reviews and approves Kanonn training materials.

IAM'S CONTENTIONS

The IAM contends it has represented this group of employees with successive employers under the NLRA for over 30 years. IAM notes that it has had successive collective bargaining agreements with Airport Services International Group (ASIG), Kanonn's predecessor, and covered skycaps at FLL working for numerous carriers including Eastern Airlines, Northwest Airlines, and Delta.

The IAM states that when the NLRB charges were filed, neither IAM nor Kanonn contested NLRA jurisdiction. The IAM does not contest that skycaps and wheelchair attendants do work traditionally performed by employees in the airline industry. The IAM states, however, that Delta does not exercise "substantial" control over the Kanonn employees. The IAM contends that Delta has no control over the skycaps' daily operations; does not directly supervise the skycaps; has no role in hiring or disciplining skycaps; has no role in other conditions of employment, and; states that the skycaps are not held out to the public as Delta employees. In particular, the IAM asserts that Delta does not have the authority to recommend the removal of Kanonn employees, and cannot even recommend such actions. Further, the IAM states that the mere fact that Delta provides training to Kanonn employees and has access to Kanonn records is insufficient for RLA jurisdiction.

The IAM argues that facts here are analogous to those where the NMB has found that employers are not controlled by carriers, citing *Huntleigh USA Corp.*, 29 NMB 121 (2001); *Miami Aircraft Support*, 21 NMB 78 (1993); *Prospect Airport Servs., Inc.*, 15 NMB 70 (1988). Therefore, the IAM contends that the NMB should recommend that it does not have jurisdiction under the RLA.

FINDINGS OF FACT

Kanonn

Kanonn Service Corporation is a Florida corporation which contracts with air carriers to provide janitorial and aircraft cleaning services, and skycap and passenger support services. Kanonn Service Enterprises Corporation is a Florida corporation which administers contracts with the air carriers, supplies the personnel under the contract and runs the daily operations. Kanonn has contracts with carriers at the following airports: Fort Lauderdale, FL; Concord, NH; Washington, DC; Portland, OR, and; Houston, TX.

On October 1, 2003, Kanonn entered into a contract with Delta to provide skycap and wheelchair services to Delta passengers at FLL. Kanonn employs approximately 70 skycaps who provide the following services for Delta at the airport: curbside check-in of passenger luggage; transport of disabled passengers in wheelchairs, and; assistance with carrying luggage, including work in baggage claims area. The predecessor company which had a contract with Delta for similar services was Airport Services International Group.

Delta Control over Kanonn Operations

Kannon performs work for Delta pursuant to a Bid Document and an Airport Services Master Agreement. (These documents will be referred to as the "contract.") Kanonn has no other customers at FLL. The contract was effective on September 4, 2003, and continues until September 30, 2006,

unless canceled by Delta or Kanonn, giving 30 or 60 days notice, respectively.

Under the contract, Delta's Station Manager must authorize the use of overtime hours before overtime can be utilized by Kanonn. The agreements also specify that Kanonn will charge Delta based on the hours actually worked by the employees. The contract also sets forth the following terms:

- Uniform requirements and employee appearance and conduct standards
- Kanonn employees must perform their duties in accordance with Delta manuals and standards set by Delta
- Delta must give prior written consent to all subcontracting by Kanonn
- Delta can audit Kanonn's training and safety programs; and may audit books of accounts, records, and receipts
- Safety training programs are promulgated by Delta
- Delta provides the office space and the equipment

There is no language in the contract giving Delta the right to recommend discipline or removal of Kanonn employees who are performing poorly, or for other reasons.

Kanonn Employee Working Conditions

Kanonn hires its own employees and disciplines or reprimands its own employees. Kanonn controls the other conditions of employment such as sick leave, days off, promotion, shift trading, etc. Keith Bartholomew, the Kanonn Station Manager at FLL, stated that Delta is not involved in hiring, firing, disciplining, evaluating, or promoting employees. Bartholomew stated that if Delta has a problem with a Kanonn skycap, they report that to Bartholomew and he addresses it with the employee, whether by written reprimand in the employee file or a determination to discharge an employee.

Bartholomew stated that Delta has the right to recommend termination of a Kanonn employee; however, Delta has never exercised that right.

The contract states that each Kanonn employee works only 173.33 hours per month; and Delta tells Bartholomew the shifts to be worked and the number of employees on each shift. Kanonn determines which employees will work during each shift.

Bartholomew states that he meets daily with Delta managers to discuss any problems or complaints about the service provided by the Kanonn employees. He further states that Delta has rules and regulations that the Kanonn employees are required to follow which are set forth in the contract. For example, under the contract Kanonn employees providing wheelchair assistance are subject to the following rules:

Passenger Assistance Service personnel shall be fully trained, equipped and competent to perform duties in a safe, friendly, courteous and professional manner. Personnel shall conform to and observe the following rules:

- (i) Maintain high grooming standards.
- (ii) Greet all customers in a clear and pleasant manner.
- (iii) Be able to communicate with customers in English.
- (iv) Provide special assistance to customers as requested.
- (v) Provide general information, such as directions and flight information, to customers as requested.
- (vi) Operate equipment in a safe manner. Never take wheelchairs on a stairway or escalator. Always back wheelchairs down inclines. Avoid sudden stops or

- pushing wheelchairs too fast, or in a haphazard manner.
- (vii) Ensure equipment used is in good, safe, operating condition

Bartholomew also states that Delta has briefings with Kanonn employees twice a week to talk about any new rules or regulations and any problems or complaints. In an affidavit provided by the IAM, Kanonn employee, Anthony Freeman, states: "I have no interaction with Delta supervisors and am not supervised by Delta employees. I have never attended any briefings or meetings with Delta supervisors." Freeman was aware, however, that the chief skycap attends meetings with Delta managers.

Bartholomew also states that Delta supervisors are in the airport and check to see if Kanonn employees are properly greeting and assisting passengers.

Kanonn employees do not wear Delta uniforms, although Delta dictates the uniform requirements in the contract.

Training

Training is in accordance with Delta's standards. For example, employees working in wheelchair assistance "are required to complete training regarding the requirements of Part 382 and Delta's disability procedures" Bartholomew states that Delta conducts training for newly hired Kanonn employees and thereafter has training for all Kanonn employees once a year. Delta approves all Kanonn training material, and requires Kanonn to maintain complete training records for the skycap and wheelchair assistance personnel. Delta reserves the right to audit Kanonn training records.

Equipment

Delta provides Kanonn with office space and provides the equipment for the skycaps and employees providing wheelchair assistance.

DISCUSSION

Applicable Legal Standard

When an employer is not a rail or air carrier engaged in the transportation of freight or passengers, the NMB applies a two-part test in determining whether the employer and its employees are subject to the RLA. *Signature Flight Support of Nev.*, 30 NMB 392 (2003); *Aircraft Serv. Int'l Group, Inc.*, 31 NMB 361 (2004). 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. *Id.*

Kanonn does not fly aircraft and is not directly or indirectly owned by an air carrier. The parties agree that the Kanonn employees perform traditional airline functions. See *Complete Skycap Servs.*, 31 NMB 1 (2003). Therefore, to determine whether Kanonn is subject to the RLA, the NMB must consider the degree of control exercised by Delta over Kanonn's operations.

Delta Control over Kanonn and its Employees

To determine whether there is carrier control over a company, the NMB looks to several factors, including: the extent of the carriers' control over the manner in which the company conducts its business; access to company operations and records; role in personnel decisions; degree of supervision of the company's employees, and; control over employee training. *Signature Flight Support, above*; *John Menzies PLC, d/b/a Ogden Ground Servs., Inc.*, 30 NMB 405 (2003); *Aeroground, Inc.*, 28 NMB 510 (2001); *Miami Aircraft Support*, 21 NMB 78 (1993).

The NMB finds that Delta exercises substantial control over Kanonn's operations at FLL. While Kanonn determines which employees work the shifts, Delta determines how many employees work each shift and at what locations. Delta also must authorize the use of overtime and dictate the maximum hours Kanonn employees can work each month. While Delta does not directly supervise Kanonn employees, Delta managers meet with Bartholomew on a daily basis to review Kanonn employee performance. The record is unclear as to whether Delta managers meet with Kanonn employees twice a week; but the record does indicate that Delta at least meets with Kanonn lead employees twice a week. Kanonn employees are trained by Delta with Delta training programs upon hire; and have annual recurrent training with Delta. Bartholomew stated that Delta managers can report personnel problems to Bartholomew and he addresses the problems. It is unclear whether Delta has the right to request employee discipline or removal, and there is no evidence that Delta has never requested Kanonn to discipline or remove an employee.

While Kanonn employees do not wear Delta uniforms, Delta dictates the uniform requirements and grooming and standards of conduct. Delta provides Kanonn with office space and provides the equipment used by Kanonn employees.

The facts in this case are very similar to those in *Complete Skycap Servs., Inc.*, 31 NMB 1 (2003). In *Complete Skycap Servs., Inc.* (CSSI), the NMB found that the carriers exercised substantial control over the skycap operations based upon the following factors: the carriers could request removal of employees and require that the skycap shifts had adequate supervision; although the carriers did not provide uniforms, the contracts stipulated personal appearance standards for the skycaps; the carriers consulted with CSSI on the number of employees hired, the hours worked, overtime, and holiday schedules; the carriers provided the equipment; and the carriers required CSSI to maintain complete training and personnel records. Similar facts are present in this case. Moreover, unlike CSSI, in this case Delta provides training for Kanonn employees, meets with employees and managers, and

provides the office space for Kanonn. Therefore, the NMB finds that the record in this case shows that Delta exercises sufficient control over Kanonn employees at FLL, to support a finding of RLA jurisdiction.

CONCLUSION

Based on the record in this case and for the reasons discussed above, the NMB's opinion is that Kanonn and its employees at Fort Lauderdale Airport are subject to the RLA. This opinion may be cited as *Kanonn Service Enterprises Corp.*, 31 NMB 409 (2004).

By direction of the NATIONAL MEDIATION BOARD.

A handwritten signature in cursive script that reads "Mary L. Johnson".

Mary L. Johnson
General Counsel

Copies to:
David Kornreich, Esq.
David A. Young, Esq.
Richard A. Giardino, Esq.
Robert Roach, Jr.
Carla M. Siegel, Esq.
Tommy C. Daves