



NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

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40 NMB No. 37

February 20, 2013

Anne Purcell
Associate General Counsel
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570-0001

Re: NMB File No. CJ-7086
Aero Port Services, Inc.

Dear Ms. Purcell:

This responds to your December 20, 2012 request for the National Mediation Board's (NMB) opinion regarding whether Aero Port Services, Inc. (APS or Employer) is subject to the Railway Labor Act (RLA), 45 U.S.C. § 151, *et seq.* For the reasons discussed below, the NMB's opinion is that APS's operations and its employees are not subject to the RLA.

I. PROCEDURAL BACKGROUND

This case arose out of three charges filed against the Service Employees International Union (SEIU or Union). In February of 2011, Bharat Kumar Patel, Mohammed Ameenuddin, and Ajaykumar Parmar filed charges against SEIU claiming that the Union failed to file grievances when they were allegedly laid off out of seniority. In addition, on March 7, 2011, Mr. Ameenuddin filed a charge against APS alleging APS laid him off without regard to his seniority in retaliation for protected concerted activity.

On December 20, 2012, the NLRB requested an NMB opinion regarding the NMB's jurisdiction over APS's operations. The National Labor Relations Board (NLRB) provided its record in the case. The NMB assigned Angela I. Heverling to investigate. The NMB gave the Employer, the charging parties, and SEIU an opportunity to submit position statements regarding jurisdiction. The Employer and Mr. Ameenuddin submitted additional information on January 4, 2013.

The NMB's opinion in this case is based upon the request and record provided by the NLRB and the Employer's January 4, 2013 submission to the NMB.

II. APS' CONTENTION

The Employer contends that the NMB has jurisdiction over APS. It argues that the services it provides are functions traditionally performed by employees in the airline industry. APS also argues that it is subject to RLA jurisdiction because its "carrier clients exercise substantial control over APS and its employees." According to the Employer, the carriers expect APS to provide employees who will perform services to the "exact specifications" of the carriers.

III. SEIU'S CONTENTION

SEIU does not have an opinion on whether the NMB had jurisdiction over APS.

IV. CHARGING PARTIES

The charging parties did not submit a position statement on this issue.

V. FINDINGS OF FACT

APS is headquartered in Inglewood, California and has approximately 650 employees, many of whom are members of the SEIU, Local 1877. The charging parties in this case were all employed in APS' cargo security department as cargo security agents or cargo screeners at Los Angeles International Airport (LAX). The responsibilities of employees in the cargo security department include reporting all safety and security violations, accidents, and injuries that occur. These employees ensure that unauthorized individuals do not enter or leave the restricted Airport Operation Area (AOA) at LAX and screen cargo. Cargo security agents monitor the entry and exit of visitors and staff, oversee and log the movement of freight, and conduct inspections of the appropriate safety zone prior to flight arrivals. Cargo screeners ensure that freight is screened according to Transportation Security Administration (TSA) regulations.

APS provides these services in accordance with instructions from the carriers with whom it contracts. For example, a contract with Air Canada states that APS employees will "communicate with CLIENT Ground Handler for baggage delivery instructions. . ." An excerpt from a contract with China

Airlines states that APS will “[a]pply correct storage and handling techniques... in accordance with the Carrier’s requirements.”

Contracts between APS and the carriers dictate the staffing levels and determine how many employees APS needs to provide each day. The contract with Air Canada states that staffing levels will be “adjusted per CLIENT’S request.” APS retains authority as to which employees it assigns to any particular carrier. The carriers can, however, request that a certain employee be posted or removed from their cargo site and APS retains discretion in determining whether it will terminate or transfer the employee to another location. Carrier representatives can become involved in the supervision of APS employees if a representative observes an employee not performing his or her duties. Following a complaint from a carrier, APS performs its own investigation. Carriers may provide additional information but are not otherwise involved in the investigation or remedial action.

Training is mandated by the Transportation Safety Administration (TSA). Generally, carriers are not involved in the training of APS employees but they provide APS with TSA safety requirements and a list of procedures for how those requirements should be met. Airlines notify Aero Port when security programs are updated so that Aero Port can ensure that staff members are trained according to TSA’s requirements. Air Canada’s contract with APS states that “[a]ll initial or recurrent training required, including any costs incurred with such training, shall be the responsibility of APS.” China Airlines provides initial equipment operations training while APS provides recurrent training and governmental training for ground handling for newly hired employees.

Generally, APS leases equipment to the carriers and trains its own employees on the equipment. In some cases, the carriers provide the equipment. APS’ contract with Air Canada states that “APS shall provide and maintain at its own expense all uniforms and equipment, if any, necessary to provide the services under this agreement.” APS’ contract with China Airlines specifies that APS will provide uniforms and communications equipment and will be responsible for maintaining any of the carrier’s equipment. APS provides uniforms which must be approved by the carriers.

VI. 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.

See e.g., *Air Serve Corporation*, 39 NMB 450 (2012); *Talgo, Inc.*, 37 NMB 253 (2010); *Bradley Pacific Aviation, Inc.*, 34 NMB 119 (2007). First, the NMB determines whether the nature of the work is that traditionally performed by employees of 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. *Talgo, above*; *Bradley Pacific Aviation, above*. See also *Aircraft Servs. Int'l Group, Inc.*, 33 NMB 200 (2006).

APS does not fly aircraft and is not directly or indirectly owned by an air carrier. The services provided by APS in this case, cargo handling and security, are services traditionally performed by employees in the airline industry. *Int'l Cargo Marketing Consultants D/B/A Alliance Air*, 31 NMB 396, 406 (2004); *North Am. Aviation Serv.*, 28 NMB 155, 159 (2000) (“It is well established that cargo handling is work traditionally performed by air carrier employees.”); *Aeroground, Inc.*, 28 NMB 510, 514 (2001). Since APS’ LAX cargo security employees perform duties that have been traditionally performed by carrier employees, the first part of the NMB’s jurisdictional test has been satisfied. Therefore, to determine whether APS is subject to the RLA, the NMB must consider the degree of control exercised by RLA carriers over APS’ LAX operations.

Carrier Control over APS and its Employees

To determine whether there is jurisdictionally significant carrier control over a company, the NMB looks to several factors, including the extent of the carrier’s control over the manner in which the company conducts its business, role in personnel decisions, degree of supervision of the company’s employees, whether employees are held out to the public as carrier employees, and control over employee training. *Signature Flight Support/Aircraft Serv. Int'l, Inc.*, 32 NMB 30 (2004); *John Menzies PLC, d/b/a Ogden Ground Servs., Inc.*, 30 NMB 405 (2003); *Signature Flight Support of Nevada*, 30 NMB 392 (2003); *Aeroground, Inc.*, 28 NMB 510 (2001); *Miami Aircraft Support*, 21 NMB 78 (1993). For the reasons discussed below, the record in the instant case does not establish that any carrier exercises sufficient control over APS’ operations at LAX to support a finding of RLA jurisdiction.

In prior cases, the Board has required that a carrier exercise a greater degree of control over the hiring, firing, and discipline of a company’s employees for RLA jurisdiction than is present in this case. For example, in *Aircraft Service Int'l, Inc.*, 32 NMB 30, 33-34 (2004), the company provided evidence that it terminated a ground service employee after a carrier requested that he be removed from the ramp. The company in that case also provided evidence that it both hired and fired an individual based on the carrier’s

request. *Id.* In *Air Serv Corp*, 33 NMB 272 (2006), the NMB found such substantial control where a carrier had access to the company's personnel and training records, provided all training materials, and carrier representatives trained Air Serv's trainers. In addition, the carrier's flight attendants had the authority to instruct the company's employees. *Id.* at 278. Air Serv also provided the NMB with evidence of several occasions where it complied with carrier requests regarding employee discipline or assignments. *Id.* at 279.

APS has a contractual relationship with a number of air carriers at LAX. Thus, as discussed above, the contracts dictate certain standards that APS employees should follow in performing services for each carrier. For example, Air Canada provides baggage delivery instructions to APS employees. The carriers specify the number of employees needed for a given job, the shifts when they are needed, and the extent to which APS' employees will be supervised. Because APS contracts with these carriers to provide services, it is expected that the carriers will specify the parameters of what services are necessary. APS provided no evidence, however, of carriers having the significant control over labor relations that would be required for RLA jurisdiction.

In this case, the carriers do not have jurisdictionally significant control over the hiring, firing, and discipline of APS' employees. Many training requirements are set by the TSA and would be the same for any carrier. Carrier representatives can report APS employees for discipline but APS then conducts its own investigation. This is the type of control expected in nearly any contract for services. It is not the type of meaningful control over labor relations that is necessary for RLA jurisdiction.

VI. CONCLUSION

Based on the record in this case and for the reasons discussed above, the NMB's opinion is that APS and its cargo security employees are not subject to the RLA. This opinion may be cited as *Aero Port Services, Inc.*, 40 NMB 139 (2013).

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson
General Counsel

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