



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572

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In the Matter of the  
Application of

INTERNATIONAL ASSOCIATION  
OF MACHINISTS AND  
AEROSPACE WORKERS

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

involving employees of  
PHILIPPINE AIRLINES, INC.

49 NMB No. 6

CASE NO. R-7573  
(File No. CR-7207)

FINDINGS UPON  
INVESTIGATION-  
DISMISSAL

February 9, 2022

This determination addresses the application of the International Association of Machinists and Aerospace Workers (IAM or Organization) alleging a representation dispute pursuant to the Railway Labor Act<sup>1</sup> (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth), among Sales Representatives at Philippine Airlines, Inc. (Carrier). The Board certified the IAM as the representative of the Clerical, Office, Fleet and Passenger Service Employees (COFPS) craft or class at the Carrier on March 26, 1976 in NMB Case No. R-4573. IAM asserts that the Sales Representatives are part of the COFPS craft or class.

For the reasons set forth below, the National Mediation Board (Board or NMB) concludes that the employees at issue belong in the Carrier's COFPS craft or class. Because IAM is already the certified representative of that craft or class, the Board dismisses the application.

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<sup>1</sup> 45 U.S.C. § 151, *et seq.*

### PROCEDURAL BACKGROUND

On September 23, 2019, IAM filed an application alleging a representation dispute involving the “Sales Representatives” at the Carrier. The Organization is requesting that the Board accrete these employees into the COFPS craft or class and supports this request with authorization cards. The application was given NMB File No. CR-7207, and John S.F. Gross was assigned as the Investigator.

On October 4, 2019, the Carrier submitted its initial position statement (with supporting documentation), the List of Potential Eligible Voters, and signature samples for those potential voters. On October 23, 2019, IAM submitted a response to the Carrier’s initial position statement, with supporting documentation. On February 4, 2020, the Carrier requested additional time to respond to the IAM’s position statement and provide the additional information previously requested by the Board. On February 7, 2020, the Carrier submitted additional information to the Board.

### ISSUE

Are the Carrier’s Sales Representatives a part of the COFPS craft or class?

### CONTENTIONS

The Carrier argues that Sales Representatives (also referred to by the Carrier as “Account Executives”) are not part of the COFPS craft or class because they are not functionally integrated and do not share a work-related community of interest. In addition, the Carrier argues that Sales Representatives cannot be included in the COFPS craft or class because the position existed at the time the IAM was certified as the representative of the COFPS craft or class, and “[was] specifically excluded from the unit because of its difference from COFPS.” Citing a number of case decisions involving determinations by the National Labor Relations Board (NLRB), the Carrier asserts there is no legal justification for including the Sales Representatives in the COFPS craft or class.

IAM contends that the Carrier’s Sales Representatives are part of COFPS craft or class because they primarily perform passenger service-related work that involves significant customer contact. That work, it submits, is the type of work traditionally performed by employees included in the COFPS craft or

class, in particular, the Customer Service Representatives (CSRs). IAM further contends the Sales Representatives are functionally integrated and share a strong community of interest with the CSRs. IAM also submits that the NLRB authority cited by the Carrier is not relevant to the NMB's craft or class determinations under the RLA, and the fact that a particular classification of employees has not previously been included in a craft or class is irrelevant to the question of whether they belong in the craft or class.<sup>2</sup>

#### 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.

The Carrier is a carrier as defined in 45 U.S.C. § 151, First.

#### II.

IAM 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 to designate who may participate as eligible voters in the event an election is required.

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<sup>2</sup> IAM submits there is no evidence to support the Carrier's claim that the Sales Representatives were specifically excluded from the COFPS craft or class at the time it was certified. It further submits it has found no evidence in its internal records, or any publicly available Board records, that the Board was ever presented with the question of whether the Sales Representatives should be included in the COFPS craft or class.

STATEMENT OF FACTS

Background

The Carrier is a Philippine domestic corporation engaged in the business of international and domestic passenger and cargo transportation, operating from the Philippines to destinations in the United States and its territories, including Los Angeles, San Francisco, New York, Honolulu, and Guam. On March 26, 1976, in NMB Case No. R-4573, the Board certified IAM as the representative of the COFPS craft or class at the Carrier. At that time, according to the Carrier, the position of Sales Representative existed at the Carrier.

The IAM Collective Bargaining Agreement

The Carrier and IAM are parties to a collective bargaining agreement (CBA) that is effective by its terms for the period July 1, 2016 through June 30, 2019. Section II of the CBA recognizes IAM as the representative of the Carrier's "clerical, office, fleet and passenger service employees," in accordance with the Board's certification. Section III of the CBA defines the scope of the CBA as governing the hours, wages, and working conditions of all employees employed by the Carrier in the United States whose duty is to perform work in the job classifications in the following departments:

Administrative Department

Senior Accounting Agent  
Accounting Agent  
Junior Accounting Agent  
Personnel Assistant  
Secretary  
General Clerk

Customer Service Department

Customer Service Representative  
Customer Service Representative/Secretary

Schedule B of the CBA (Classification and Worker Requirements) describes the specific job duties and responsibilities of each job classification

listed above. The duties of the Customer Service Representative (CSR) include, but are not limited to, the following:

- Handling customer inquiries related to the Carrier's loyalty award program, including award balances and the issuance of award tickets.
- Interacting directly with customers regarding flight cancellations, overbooking situations, schedule or aircraft changes, and changes in connections or seat assignments.
- Handling all special requests from customers, including special meals, oxygen, wheelchair assistance and other medical requirements.
- Issuing and validating tickets, including electronic tickets, collecting and/or maintaining custody of all money received, including the processing of credit card transactions, handling prepaid tickets, processing customer refunds and exchange orders, preparing and submitting Daily Sales Reports, handling and follow up of lost tickets, assisting the District Sales office in promotional activities, furnishing travel and other related information, and sending and receiving communications in connection with all of these functions.
- Drafting and preparing the Carrier's Brief for distribution to travel agencies on updates covering products, flight schedule, and changes to policies and procedures, handling on-line customer reservations, preparing advance bookings counts, replenishing office supplies, and maintaining office files as necessary.

The qualifications and experience necessary for the CSR position include: a bachelor's degree from a "reputable" college or university; experience as a customer service representative, reservations agent, and ticketing agent; and training in a number of areas, including manual ticketing, refunds and sales reports, effective communications, projecting the ideal customer service representative, crisis management, and service personality. The CSR position reports administratively and operationally to the Area Manager.

#### The Employees Covered by the Application

The Carrier submits there are 12 employees covered by IAM's application, and that they perform significantly different functions than the employees in the COFPS craft or class. According to the Carrier, "(i)n general,

COFPS [employees] perform administrative and office related functions as opposed to a Sales Representative who performs sales and marketing task[s].” According to the Carrier, the differences between the COFPS employees and the Sales Representatives in terms of functions and responsibilities are significant. For example, COFPS employees “are required to perform their functions within office premises to ensure clerical and administrative service requirements are attended to accordingly” and “serve as a support team for [the Carrier’s] office related functions”; and they are “expected to [work] eight consecutive hours . . . within designated office premises.” Sales Representatives, on the other hand, “discharge sales and promotions activities for [the Carrier’s] products including liaising with . . . travel agents.” They work different hours and are expected to “render field work.” Unlike COFPS employees, “the [Carrier] has high expectations from Sales Representatives for revenue generation to contribute to profitability.”

The Carrier supports its argument with a document that describes the job duties, responsibilities, qualifications and direct supervision for the Sales Representative position, as well as the eight positions specified in the parties’ CBA (CSR, CSR/Secretary, Personnel Assistant, Accounting Agent, Jr. Accounting Agent, Sr. Accounting Agent, Secretary, and General Clerk).<sup>3</sup> According to the Carrier, the document details the differences between Sales Representatives and those employees in the COFPS craft or class.

According to this document, the Account Executive/Sales Representative - which, like the CSRs, reports administratively and operationally to the Area Manager - is responsible for “assisting the Country Manager or Area Manager with overall sales duties, [promoting] the company and . . . liaising with travel agents to ensure [the Carrier’s] distribution channel is updated of its products and services; thereby meeting the targeted sales growth and profit objectives.” The position description lists specific duties that include the following:

- “Provides support in executing the overall sales and marketing plan of the district by regularly visiting the travel agents, assigned accounts and customers.”
- “Adopts and updates sales strategies as necessary in order to meet the district’s targets.”

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<sup>3</sup> The job descriptions set forth in the Carrier’s document for the positions in the COFPS craft or class mirror the descriptions set forth in the parties’ CBA. The description for the Sales Representative position mirrors the description set forth in a separate job description for that position provided by the Carrier.

- “Establishes and maintains cordial and effective relationships with key personnel in the travel agencies/industry.”
- “Initiates and orchestrates regular client visits.”
- “Coordinates, assist[s] and handles the resolution of issues/concerns raised by travel agents on matters pertaining to product, pricing and services.”
- “Organizes, coordinates and conducts product update/briefing for travel agents and represent [the Carrier] in travel shows, trade fairs, community events . . . .”
- “Provides proactive and aggressive sales and promotion strategies . . . .”
- “[Prepares] monthly report on competitive developments . . . and communicates intelligence to Country/Area Manager . . . .”
- “Performs/carry out other duties as may be assigned by Country/Area Manager.”

The required qualifications and experience for the Sales Representative position include the following: a bachelor’s degree (B.A.) from a 4-year college or university, with a preference for graduate or business-related courses; a minimum of two years’ successful sales experience; at least three years’ experience in airline sales and marketing; knowledge of reservations and ticketing and airport operations; fluency in English; good writing and communications skills; the ability to establish and maintain excellent interpersonal skills to establish rapport and effective relationships with internal and external clients; and the ability to work with all levels of management at large distribution partners.

Contrary to the Carrier, IAM asserts that the Sales Representatives primarily engage in passenger/customer service-related functions that have traditionally been covered by the COFPS craft or class. In particular, the Sales Representatives spend a great majority of their work day interacting directly (oftentimes, in person) with travel agents to make group bookings. CSRs also spend a great deal of time interacting with travel agents, the only difference being those interactions are by phone, not in person. Moreover, IAM claims the Sales Representatives and CSRs engage in many of the same daily job functions and duties, except that CSRs do not go out of the office on sales calls. IAM further claims the Sales Representatives and CSRs are functionally integrated, cross-utilized, work very closely together, side-by-side in the same physical office locations, work the same hours, share the same health and

leave benefits, receive the same training, and are subject to the same supervision.

IAM supports its argument with three declarations – two from Sales Representative currently employed by the Carrier (both of whom previously worked for the Carrier as CSRs), and one from John Burgwinkel, the IAM representative who currently services the Carrier's IAM-represented COFPS employees, and who was employed by the Carrier for more than forty years (most recently as a CSR).

According to Burgwinkel, the Carrier currently has four office locations in the United States – Honolulu, Hawaii, Los Angeles, California, San Francisco, California, and New York, New York. Each location is staffed with two CSRs or CSR Secretaries, two to four Sales Representatives, and an Area Sales Manager. The Sales Representatives and CSRs work side-by-side, and report to the Area Sales Manager. The Sales Representatives and CSRs work the same hours, and receive the same days off and most of the same benefits (health, vacation, sick leave).<sup>4</sup> Together, the Sales Representatives and CSRs are responsible for all of the Carrier's bookings. In-person customer bookings are usually performed by the CSRs, while group bookings are usually done through the Sales Representatives. Both Sales Representatives and CSRs spend a significant portion of their work day answering questions from and interacting with travel agents. The CSRs do that work mostly over the phone, while the Sales Representatives perform that function mainly in person. In terms of cross-utilization, Burgwinkel described a recent example of a CSR taking a group of travel agents to Singapore and Kuala Lumpur to familiarize them with tours offered by the Carrier. That function is normally performed by Sales Representatives. Burgwinkel also described a recent situation where a Sales Representative was advised s/he could not go on vacation because a CSR would be out of the office at the same time. The Sales Representative was advised s/he needed to be available to cover the CSR and assist with ticketing duties.

According to the declaration of one of the Sales Representatives currently employed by the Carrier, it is typical for an employee of the Carrier to start out as a CSR and then move to the Sales Representative position, as s/he did. As a Sales Representative, s/he spends approximately 70-80 percent of his/her

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<sup>4</sup> A copy of a job offer letter provided by the Carrier confirms that the Sales Representatives receive many of the same benefits received by employees in the COFPS craft or class, including vacation and sick time, and medical/dental/vision insurance coverage.



work day interacting with travel agents, the largest customers of the Carrier. His/her typical work day involves “coming into the office in the morning and checking emails from [t]ravel [a]gents and returning phone calls from travel agents. Then in the afternoons on Tuesdays, Wednesdays and Thursdays, I go out to make sales calls. This involves meeting with [t]ravel [a]gents and building a relationship with them.” During those meetings, s/he updates the travel agents on the Carrier’s current promotional fares and other Carrier matters. On Mondays and Fridays, s/he “mostly stay[s] in the office and return[s] emails, answer[s] phone calls from travel agents and prepare[s] [sales-related] reports . . . .” Both the Sales Representatives and CSRs provide customer seat assignments and handle mileage award inquiries, and Sales Representatives handle walk-in customers when a CSR is not available. Sales Representatives and CSRs also work closely on fare waiver matters. At Honolulu, in flight delay or cancellation situations, both the Sales Representatives and CSRs handle passenger rebookings. The principle difference between the work of the Sales Representatives and the CSRs, according to the declarant, is that Sales Representatives deal with travel agents primarily in person while CSRs do so mainly on the phone.

The other Sales Representative declarant (who also previously worked for the Carrier as a CSR) stated that CSRs and Sales Representatives work side-by-side in the same office location where the Area Sales Manager also works; report to the same Area Sales Manager, who is responsible for coordinating work schedules, granting leave requests, and disciplining employees, if necessary; work the same hours; have the same health benefits, sick leave, and vacation allocation; get the same holidays off; share the same break room area, and take turns covering the phones during their lunch breaks; cover for each other when they are out of the office; and receive the same training. In the area of training, the declarant described a recent instance where both the Sales Representatives and CSRs were trained together on a new booking system, since both are responsible for making bookings. They also receive the same periodic training on handling requests from customers with disabilities or special needs, and handling corporate accounts. The declarant states that, “[Sales Representatives] and CSRs engage in many of the same daily duties except that CSRs don’t go out of the office on sales calls.”

### DISCUSSION

In determining the proper craft or class for a group of employees, the Board considers a number of factors, including functional integration, work classifications, terms and conditions of employment, and work-related

community of interest. *E.g.*, *Southwest Airlines*, 42 NMB 110 (2015); *Frontier Airlines, Inc.*, 41 NMB 202 (2014); *AirTran Airways, Inc.*, 31 NMB 45 (2003). The factor of work-related community of interest is particularly important. *US Airways, Inc.*, 31 NMB 324, 334 (2004). To evaluate this factor, the Board examines the actual duties and responsibilities of the employees, the environment in which the employees work, and the interaction among the employees involved. *American Airlines, Inc.*, 10 NMB 26, 39 (1982). The purpose of the community of interest test is to ensure that a particular grouping of employees “possess a sufficiently distinct community of interest and commonality of functional characteristics to ensure a mutuality of interest in the objective of collective bargaining.” *Continental Airlines, Inc. / Continental Express, Inc.*, 27 NMB 99, 109 (1999). The Board makes craft or class determinations case by case, based upon Board policy and precedent. *E.g.*, *United Parcel Serv. Co.*, 30 NMB 84 (2002); *USAir*, 15 NMB 369 (1988); *Simmons Airlines*, 15 NMB 124 (1988).

Here, the Carrier argues that the employees at issue have job functions and responsibilities that are substantially distinct from those of the existing COFPS craft or class, and therefore do not share a sufficient community of interest to justify their inclusion in that craft or class. The evidence presented by the Carrier, however, fails to support its argument. IAM, on the other hand, presented substantial evidence - including declarations from two current Sales Representatives - that the Sales Representatives perform job duties that are similar to those performed by the CSRs, and that they share a substantial community of interest with them.

The Carrier’s position here is contradicted by its own documentation. For example, its descriptions of the job functions of the Sales Representative position detail a number of customer service-related functions focused on ticket sales and interactions with the Carrier’s largest customers, travel agents (e.g., regularly visiting travel agents, assigned accounts and customers; initiating and orchestrating regular client/customer visits; expanding market share at existing customer accounts; preparing sales-related reports; coordinating, assisting with and handling the resolution of issues and concerns raised by travel agents pertaining to product, pricing and services; coordinating and conducting updates and briefings for travel agents). Similarly, the description of the CSRs’ duties shows they, like the Sales Representatives, also handle customer ticket sales and other transactions, interact with travel agents, prepare sales reports, and participate in promotional activities. The qualifications and experience for the two positions are also similar in a number

of respects, including education (bachelor's degree) and experience/training in areas including effective communications, reservations and ticketing.

In addition, the declarations submitted by the two Sales Representatives currently employed by the Carrier further underscore the many similarities in job duties and functions between the Sales Representatives and CSRs – and further undermine the Carrier's claim that the Sales Representatives perform “significantly different” functions than the employees in the COFPS craft or class and do not share of community of interest with them. Notably, the two Sales Representatives were previously employed by the Carrier as CSRs, and are, therefore, uniquely positioned to provide first-hand information about the actual job duties and working conditions of the two positions. The declaration from IAM representative Burgwinkel – who currently services the Carrier's IAM-represented COFPS employees, and was previously employed by the Carrier as a CSR – is also persuasive with respect to the actual job duties and working conditions of the Sales Representatives and CSRs.

In this case the great weight of the record evidence supports the finding that the Sales Representative employees identified by IAM perform work that is similar to the work performed by the CSRs and that they share a community of interest with them. In particular, the Sales Representatives and CSRs spend a great portion of their work days interacting with travel agents and performing other customer service-related functions. In addition, the Sales Representatives and CSRs work out of the same office locations where the Carrier maintains very small workforces that include only a small number of Sales Representatives, CSRs and other COFPS employees, as well as a supervising Area Manager.<sup>5</sup> The Sales Representatives and CSRs frequently interact with one another, are functionally integrated, are routinely cross-utilized, undergo training together, receive many of the same benefits, and are subject to the same direct supervision. Moreover, the evidence suggests there is a degree of career progression for CSRs to move into the Sales Representative

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<sup>5</sup> With respect to the significance the Carrier places on the fact that the COFPS employees (including the CSRs) perform their duties in an office setting, while the Sales Representatives are expected to perform work in the field, that distinction is not meaningful here. In *Aerotal Airlines*, 10 NMB 226 (1983), the Board stated, “work location is not a determinant of craft or class.” Rather, the Board looks to the duties of the position involved. *Virginia Ry. v. System Fed No. 40*, 300 U.S. 515 (1937). See also *Aloha Islandair, Inc.*, 21 NMB 314, 317 (1994). Moreover, the record evidence establishes the Sales Representatives work in the same office locations as the CSRs and other COFPS employees when they are not in the field on sales visits.

position, as a number of CSRs have done so. Accordingly, the Board finds the Sales Representatives share a work-related community of interest with, and belong in, the COFPS craft or class.<sup>6</sup>

#### Accretion

The Board finds the case decisions cited by the Carrier involving representation determinations by the NLRB are not germane here. As the Board stated in *Pend Oreille Valley R.R., Inc.*, 10 NMB 402 (1983), “[t]he differences and distinctions in the National Labor Relations Act and the [RLA] have given rise to different methods and procedures for reaching representation questions. . . . The NLRB utilizes a different statute . . . and no rule . . . requires the NMB to . . . investigate by accepting NLRB policy as dispositive of disputes under the [RLA].” *Id.* at 407-408. *See also US Airways, Inc.*, 28 NMB 91 (2000); *Comair, Inc.*, 9 NMB 2 (1981); *Air Florida, Inc.*, 7 NMB 162 (1979).

With respect to the Carrier’s argument that accretion is inappropriate because Sales Representatives were “specifically excluded” from the COFPS craft or class at the time it was certified, the Carrier failed to present any evidence to support its claim. Notably, during the investigation, the Board requested from the Carrier (among other information), “[a]ny documents supporting the Carrier’s contention that ‘[t]he Sales Representatives were specifically excluded’ from the [COFPS] craft or class at the time the scope of the craft or class was determined ‘because of [their] difference[s] from COFPS.’” The Carrier did not provide any information to support its claim.

To the extent the Carrier suggests the IAM should be precluded from accreting the Sales Representatives into the COFPS craft or class because it failed to seek their inclusion in the craft or class at the time it was certified, that argument finds no support in prevailing Board precedent. In *Northwest Airlines, Inc.*, 27 NMB 307 (2000), for example, the Board rejected a similar argument, noting that it is the Board and not the parties that determines when

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<sup>6</sup> *See Alitalia Airlines*, 9 NMB 200 (1982) (Cargo Import Sales Representatives - responsible for (among other duties) coordinating and promoting the carrier’s cargo import sales efforts, developing, establishing and maintaining contacts with importers, following up on sales leads, maintaining current information on business potential of existing and potential accounts, representing the carrier at trade fairs and exhibitions, and establishing, maintaining, and developing relationships with key personnel in the import world - included in Passenger Service Employee craft or class with (among other classifications) Cargo Telephone Sales & Customer Service Representatives).

accretion is appropriate and “prior conduct of the [o]rganization or the [c]arrier” is not relevant to the determination. *Id.* at 314 (quoting *US Airways, Inc.*, 27 NMB 138 (1999)). *See also United Parcel Serv. Co.*, 33 NMB 307, 318 (2006).

The Board has broad discretion to determine the manner in which it conducts investigations in representation disputes. *See Brotherhood of Ry. & S.S. Clerks v. Ass'n for the Benefit of Non-Contract Employees*, 380 U.S. 650 (1965). When a labor organization submits an application to represent employees who already belong in a craft or class it is certified to represent, the Board’s established policy is to dismiss the application on the grounds that an election is unnecessary. *E.g., Ross Aviation, Inc.*, 22 NMB 89 (1994). In such cases, if the application is supported by the requisite 50 percent showing of interest, the Board accretes the employees to the craft or class in which they belong. *E.g., Southwest Airlines*, 42 NMB 110 (2015).

In this case, IAM is already certified to represent employees in the Carrier’s COFPS craft or class; the twelve Sales Representative employees IAM applied for belong in that craft or class; and IAM supported its application with more than the requisite 50 percent showing of interest. Consequently, it is appropriate to accrete the applied-for employees to the Carrier’s COFPS craft or class.

CONCLUSION

The Board finds that the employees covered by IAM's application belong in the Carrier's COFPS craft or class, a group IAM is already certified to represent. As there is no further basis for investigation, NMB File No. CR-7207 is converted to NMB Case No. R-7573 and dismissed.

By direction of the NATIONAL MEDIATION BOARD.



Maria-Kate Dowling  
Acting General Counsel

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Chairman Fauth, concurring.

I concur with the outcome of the Board's decision. However, I write separately because in cases such as this, where the Board finds a group of employees belongs in an existing, represented craft or class, a showing of interest substantially greater than 50 percent should be required for an accretion without an election. Here, the showing of interest is significantly higher than 50 percent. In the absence of such a majority showing, however, the employees sought to be accreted should have the opportunity to vote for or against representation.