

DHL Worldwide Express, Inc. and Local 804, International Brotherhood of Teamsters, a/w AFL-CIO. Case 29-RC-9845

November 21, 2003

DECISION AND DIRECTION

BY CHAIRMAN BATTISTA AND MEMBERS
LIEBMAN
AND WALSH

Upon a petition filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Hearing Officer Scott R. Kardel. Thereafter, the Employer filed a brief. Following the hearing, and pursuant to Section 102.67 of the Board's Rules, the case was transferred to the Board for a determination of whether it has jurisdiction over the Employer.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, we find that DHL Worldwide Express, Inc., is a Delaware corporation, engaged in the business of package delivery by air and ground.

The parties stipulated that in the 12 months preceding the hearing, the Employer, in the course and conduct of its business operations, provided services in excess of \$50,000 directly outside of the State of New York.

The Employer contends that the petition should be dismissed because it is subject to the jurisdiction of the Railway Labor Act (RLA). The Petitioner submits that jurisdiction is properly with the National Labor Relations Board.

Section 2(2) of the National Labor Relations Act defines "employer" to exclude any person subject to the RLA. Accordingly, we requested the National Mediation Board (NMB) to determine the applicability of the RLA to the Employer. On June 12, 2003, the NMB issued its opinion¹ advising us that:

DHL is not controlled by or under common control with a carrier. Therefore, the control prong of the NMB's jurisdictional test is not satisfied, and the NMB finds that DHL Worldwide Express, Inc., is not subject to the RLA.²

On the basis of the record facts, and in view of the substantial deference given to the NMB's opinion, we concur with the findings of the NMB. Accordingly, we find that the Employer is engaged in commerce within the meaning of the National Labor Relations Act, and that it will effectuate the policies of the Act to assert jurisdiction.

We shall remand the case to the Regional Director to take further appropriate action.

DIRECTION

IT IS DIRECTED that the Regional Director for Region 29 shall take further appropriate action consistent with this Decision.

¹ 30 NMB 368 (2003).

² The Employer subsequently filed a motion for reconsideration with the NMB, which the NMB denied. 30 NMB 431 (2003).