

Aircraft Services International, Inc.¹ and Teamsters, Automotive Chauffeurs, Parts, Garage, Office Clerical, Airline, Healthcare, Petroleum Industry, Produce, Bakery and Industrial Workers Within Western Pennsylvania and Joint Council No. 40, Local Union No. 926 a/w International Brotherhood of Teamsters. Case 6–RC–12497

February 20, 2008

DECISION AND ORDER

BY MEMBERS LIEBMAN AND SCHAUMBER

The issue in this case is whether the employees who are the subject of the Union’s representation petition are covered by the National Labor Relations Act or the Railway Labor Act (RLA), 45 U.S.C. § 151 et seq. For the reasons discussed below, we find that these employees and their employer are covered by the RLA.² Accordingly, we shall dismiss the petition.

Procedural Background

On June 1, 1983, the Board certified International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America/Airline Division (International Union/Airline Division) as the collective-bargaining representative of a unit consisting of “all non-supervisory personnel employed by Aircraft Services International, Inc. at the Greater Pittsburgh International Airport; excluding all guards, professional employees and supervisors as defined in the Act and office clerical employees, plant clerical employees and managerial employees which positions are not defined in the Act.” Following certification, International Union/Airline Division delegated its representational duties to its Local 273. Upon the merger of Local 273 with Teamsters Local 926, Local 926, the petitioning Union,³ became the unit’s assigned collective-bargaining representative. The Union continued to represent the unit employees until approximately May 24, 2005, when the Region dismissed an unfair labor practice charge filed by the Union against ASIG on the basis that the Board lacked jurisdiction. On

about the same date, ASIG ceased recognizing the Union as representative of the unit employees and terminated its collective-bargaining relationship with the Union.

On October 17, 2005, the Union filed a petition seeking an election in a unit coextensive with the unit it had represented until May 24, 2005. The Region held a hearing in the matter, at which time the Union amended the unit description to include “all full-time and regular part-time fuelers, GSE (ground service equipment) mechanics, tank farm operators, ground handlers and associated leads employed by the Employer at its Pittsburgh, Pennsylvania facility; excluding all office clerical employees, plant clerical employees and guards, professional employees, managerial employees and supervisors as defined in the Act, and tower coordinators and passenger service agents.” The parties stipulated that the described unit is appropriate within the meaning of the National Labor Relations Act. However, ASIG asserted that its operations and employees are subject to the RLA and within the jurisdiction of the National Mediation Board (NMB) rather than the Board.⁴ Following the hearing, the Regional Director transferred the proceeding to the Board.

On January 13, 2006, the Board requested that the National Mediation Board (NMB) study the record in this case and determine the applicability of the Railway Labor Act to ASIG. On May 11, 2006, the NMB issued its opinion that ASIG and its employees are subject to the RLA. *Aircraft Services International Group, Inc.*, 33 NMB 200.

On the entire record in this case, the Board makes the following

Findings of Fact

1. The Employer’s operations

ASIG provides aviation-related services for several commercial air carriers at the Pittsburgh International Airport. ASIG employees fuel the aircraft used by numerous carriers.⁵ They also provide ground handling or

¹ The Employer’s name appears as amended at the hearing. The Employer nevertheless is frequently referred to as “ASIG.”

² Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board’s powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Members Liebman and Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

³ The Union’s full name is Teamsters, Automotive Chauffeurs, Parts, Garage, Office Clerical, Airline, Healthcare, Petroleum Industry, Produce, Bakery and Industrial Workers, within Western Pennsylvania and Joint Council No. 40, Local Union No. 926.

⁴ In her report, the hearing officer observed that prior to the Region’s dismissal of the unfair labor practice charge in May 2005: (1) the NMB had issued two decisions in which it determined that similar ASIG operations at other locations were subject to its jurisdiction; (2) the Board had dismissed a petition for an amendment of certification on the basis that employees at ASIG’s Detroit, Michigan site are subject to the RLA (*Aircraft Service International Group*, 342 NLRB 977 (2004)); and (3) it was under these circumstances that ASIG ceased to recognize the Petitioner.

⁵ ASIG provides fueling services for about 20 commercial airlines, amounting to 94 percent of the commercial flights departing Pittsburgh International Airport each month. Its primary customer is US Airways, which constituted approximately 84 percent of its total fueling business in 2004 and 74 percent of its fueling business during the first 3 quarters of 2005. ASIG also provides fueling services for United, Delta,

“ramp” services (flagging in aircraft), pushing planes from the terminal, cleaning and preparing planes for successive flights, positioning passenger stairs and jetways to the aircraft, assisting passengers, and handling baggage—for two airlines. Maintenance employees provide preventive maintenance and repair broken equipment used in both fueling and ground services. Finally, ASIG employees operate and maintain a “tank farm” where aviation fuel is stored. Tank farm employees keep track of the amount of fuel received from suppliers and deliver fuel to the gates.

2. Involvement of carriers in the Employer’s operations

a. *General ground operations*

(1) Training

ASIG has separate contracts with several air carriers. Under those contracts, employees must be trained and certified in the policies and procedures of any given carrier, as set forth in the carrier’s manuals, before being permitted to service that carrier. This training relates mostly to the carrier’s fueling operation. Annual refresher courses are required to maintain certified status.⁶ While ASIG’s supervisors usually provide the training, carriers require them to be trained by carrier personnel and to be certified as trainers for that particular carrier before they are permitted to train other employees.⁷ In addition, carriers periodically provide ASIG with service bulletins regarding updates or changes in procedures. ASIG is required to identify employees who have read and been trained on service procedures. Some contracts between ASIG and carriers require its employees to pass background checks.

(2) Audits

Each carrier conducts at least one audit per year of ASIG’s operations. Audits are not required to be scheduled in advance and they are often unannounced. During an audit, carriers have the right to access ASIG records of various types in order to check for compliance with the carrier’s service and training manuals, such as records of employee training, fuel consumption, and equipment maintenance.⁸ The auditing process may also include observing ASIG employees to see how they per-

form their jobs. Carrier representatives may request employees to perform tasks or answer questions concerning the carrier’s requirements for those tasks. In addition, they may examine equipment and fuel samples. This process is designed to determine if ASIG is meeting the carrier’s standards.

ASIG is advised of areas of noncompliance through postaudit oral and written reports. Either as a result of an audit or in response to a particular event,⁹ a carrier may request ASIG to take corrective action to ensure compliance with its procedures. ASIG is given a specified timeframe in which to respond in writing regarding corrective measures it is taking, which may include retraining or discipline. While ASIG ultimately retains discretion as to whether to accede to such requests, its continued relationship with the carrier depends on its compliance with the carrier’s procedures.

(3) Staffing and employee scheduling

The number of employees needed by ASIG and their work schedules are affected by the needs of the carriers. Carriers provide ASIG with their flight schedules on a monthly basis. ASIG Operations Manager Don Friel develops employee schedules in response to the airlines’ needs, including modifying starting times, altering full-time and part-time status, and imposing furloughs as necessary. While Friel exercises discretion with respect to these matters, because ASIG’s operations are designed to accommodate carriers’ flight schedules and because employees are certified to service specific carriers, scheduling is indirectly controlled by the carriers.

While carriers do not set requirements regarding the number of fuelers employed or establish a ratio of full-time to part-time employees, ASIG’s station manager, Steve Schirtzinger, has met with US Airways’ station manager for the sole purpose of discussing staffing levels to address the airline’s concern about operational delays.

(4) Oversight and direction of employees

The carriers also give direction to ASIG employees. Individual carriers communicate their specific flight fuel needs to ASIG’s fuelers by various means, some of which require direct interaction between carrier and ASIG employees. For example, US Airways Express radios the pilot who informs the fueler of its fuel requirement, while US Airways sends a fuel release to a printer located in the ASIG breakroom where fuelers retrieve it. Other carriers have fuelers report to their op-

Northwest, American Airlines, Atlantic Southeast Airlines, and Continental Airline flights.

⁶ The refresher training may consist of a carrier-designed written test, completed at the employee’s convenience.

⁷ This is known as a “train the trainer” program.

⁸ In addition, its contract with US Airways provides for carrier access to its “complete and accurate books, records, and documents from which may be determined the basis for billing, inventory, management, and for compliance” with the contract.

⁹ Employees may be disciplined for violating rules and regulations of ASIG, carriers, or the airport authority. The record references three instances of employees being removed from a carrier’s account at the request of that carrier. ASIG’s contract with US Airways specifically includes that right.

erations area and have their carrier representatives inform them of their load requirement.

Ground handlers sign load receipts regarding luggage placement and provide load sheets to pilots so they can determine if the aircraft is properly loaded and rearrange the cargo if necessary. Finally, during the midnight shift when no ASIG supervisors are on duty, ASIG employees follow the directions of carrier representatives.

(5) Facilities

US Airways provides breakrooms for ASIG employees in the terminal at no charge.

b. Tank farm operations

(1) Facilities and equipment

A consortium of 11 air carriers, known as the fuel consortium, leases from a local county airport authority the tank farm premises and surrounding premises on which ASIG's offices are located. Under its contract with the consortium, ASIG is compensated on a cost-plus basis. Thus, the consortium provides and maintains the tank farm premises at no cost to ASIG, pays all the operational costs of the facility, including utilities, supplies, and employees' wages and benefits,¹⁰ and pays ASIG a management fee on top of those costs. ASIG also uses, without charge, two tanker trucks and three trucks for fueling ground service equipment owned by the consortium.¹¹

(2) Staffing and employee compensation

The consortium has direct control over labor costs and staffing levels related to the tank farm operation. The consortium actively participates in ASIG's budgeting process for that operation and has final approval power over its staffing levels. Specifically, at the end of the budget year, a representative of the consortium examines whether ASIG's actual costs for labor, benefits, and equipment were consistent with the budget allocations for such expenses. If not, the representative has authority to seek an explanation.

Analysis

Section 2(2) of the National Labor Relations Act provides that the term "employer" shall not include "any person subject to the Railway Labor Act." 29 U.S.C. § 152(2). Similarly, Section 2(3) of the NLRA provides

¹⁰ The fuel consortium pays the wages and benefits of five of ASIG's seven ground service mechanics. Accordingly, those five mechanics are responsible for maintaining and repairing consortium-owned equipment. By contrast, when ground service mechanics tend to equipment owned by a particular air carrier, their wages are paid by the carrier.

¹¹ ASIG also uses 7 of its own tanker trucks as well as 5 US Airways-owned hydrant trucks and 19 hydrant carts.

that the term "employee" does not include "any individual employed by an employer subject to the Railway Labor Act." 29 U.S.C. § 152(3). The Railway Labor Act, as amended, applies to:

Every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers subject to its or their continuing authority to supervise and direct the manner or rendition of his service. 45 U.S.C. § 151 First and 181.

The NMB uses a two-pronged "function and control" test to determine whether it has jurisdiction over an employer that is not a common carrier. Specifically, it determines (1) whether the work is traditionally performed by employees of air and rail carriers; and (2) whether a common carrier exercises direct or indirect ownership or control. Both prongs of the test must be met for the NMB to assert jurisdiction. *Aircraft Services International Group, Inc.*, supra, 33 NMB at 212.

The parties stipulated that ASIG satisfied the first prong—i.e., that its employees perform duties traditionally performed by employees of an air carrier. Accordingly, the only issue in dispute is whether ASIG's operations are directly or indirectly controlled by the carriers.¹²

In determining whether this second prong of the test has been met, the NMB considers the following factors: the extent of carrier control over the manner in which the company conducts its business; carrier access to company operations and records; carrier role in personnel decisions; degree of supervision of company employees; whether employees are held out to the public as carrier employees; and control over employee training. See *Empire Aero Center, Inc.*, 33 NMB 3 (2005).

On the basis of the record summarized above, the NMB concluded that the requirements of the second prong were met and that ASIG and its employees at Pittsburgh International Airport are subject to the Railway Labor Act. *Aircraft Services International Group, Inc.*, supra, 33 NMB at 200. Thus, carriers exercise indirect but nevertheless substantial control over both the staffing levels and hours worked by ASIG's ground services employees. Further, while ASIG hires its own employees, carriers can and do mandate specific training requirements and prescribe operating procedures. ASIG has complied with carrier requests to discipline and reassign employees for failure to comply with its require-

¹² There is no contention that ASIG is owned, even in part, by any carrier or carriers.

ments. Carriers also have access to ASIG's training and fuel records. One carrier (US Airways) provides a break-room for ASIG employees at no cost. In addition, the record establishes that the fuel consortium has direct control over labor and benefits costs, staffing, and equipment¹³ at the tank farm operation by virtue of its active participation in ASIG's budget process.¹⁴

The NMB specifically concluded that the facts in this case are distinguishable from a previous NMB decision in *Signature Flight Support*, 32 NMB 214 (2005), involving a sister company of ASIG.

¹³ The consortium owns almost all the equipment used by ASIG's tank farm employees.

¹⁴ In its posthearing brief to the Regional Director, the Union argued that the control exercised over ASIG by the fuel consortium does not satisfy the NMB's control test because the consortium, though made up of carriers, is not itself a carrier. It is not clear whether the Union raised this contention before the NMB; if it did, the NMB implicitly rejected it. We reject it also. As stated in the NMB's opinion (*supra*, 33 NMB at 204), the fuel consortium "is composed of" 11 carriers. As such, it clearly meets the definition of a "carrier" under the statutory provisions of Section 1 and 201 of the RLA, 45 U.S.C. § 151 First and § 181. In any event, the NMB based its opinion almost entirely on the control exercised by the carriers over ASIG's ground services employees, not its tank farm employees. See *Aircraft Services International Group, Inc.*, *supra*, 33 NMB at 213.

Signature provided services for private, corporate, and fractionally-owned aircraft,¹⁵ owned and maintained its own equipment, limited customer access to its records, and chose training programs for its employees.

CONCLUSION OF LAW

Having considered these facts in light of the opinion issued by the NMB, we conclude that ASIG and its employees are within the jurisdiction of the NMB pursuant to Section 201 of Title II of the Railway Labor Act.¹⁶

ORDER

It is ordered that the petition in Case 6-RC-12497 is dismissed.

¹⁵ According to the NMB, "[w]ith fractionally-owned aircraft, a fractional ownership corporation sells fractions of shares in corporate airplanes in a fashion similar to real estate time shares. Owners of fractional shares can sublease transportation on the aircraft." *Signature Flight Support*, *supra*, 32 NMB at 216 fn. a.

¹⁶ We have previously found ASIG's operations at Detroit Metropolitan Airport (*Aircraft Services International Group*, 342 NLRB 977 (2004)), and Albuquerque International Airport (*Aircraft Services International Group*, 347 NLRB 1417 (2006)), to be subject to the RLA on similar facts after referral to the NMB for jurisdictional determinations.