UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

FSM GROUP, LLC

Employer

and **Case 19-AC-343533**

GENERAL TEAMSTERS LOCAL UNION NO. 174, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Union

DECISION AND ORDER AMENDING CERTIFICATION

SEATAC Fuel Facilities, LLC (the "Consortium"), a consortium of all airlines with major operations out of Seattle-Tacoma International Airport, owns and operates a fuel tank farm near the airport. On September 14, 2015, the National Labor Relations Board ("NLRB" or "Board"), in Case 19-RC-158183, certified the General Teamsters Local Union No. 174, affiliated with International Brotherhood of Teamsters ("Union") as the collective-bargaining representative of the following employees ("unit") of Swissport Fueling Services, Inc. ("Swissport"), a company that contracted with the Consortium to operate the fuel tank farm:

> All full-time and regular part-time lead pipeline operators, pipeline operators, and lab technicians employed by [Swissport] and working at or out of its facility located at Sea-Tac Airport in SeaTac, Washington, excluding all other employees, office clerical employees, and guards and supervisors as defined in the Act.

On or around June 1, 2024, FSM Group, LLC ("Employer") entered into an agreement with the Consortium to begin operating the fuel tank farm previously operated by Swissport. Also, by June 1, 2024, the Employer had hired a majority of the unit employees previously employed by Swissport. The Union and the Employer stipulated that the Employer is a successor to Swissport, as there is substantial continuity between the operations of Swissport and those of the Employer and that its Sea-Tac tank farm employees are performing essentially the same jobs, utilizing similar processes for basically the same body of customers. The Employer does not argue, and the record does not suggest, that the Employer is a common carrier by air within the meaning of the Railway Labor Act ("RLA").

On June 3, 2024, the Union filed the instant petition seeking to amend the name on the Certification of Representative from Case 19-RC-158183 from Swissport to the Employer. A Hearing Officer of the NLRB held a videoconference hearing on June 20 and 21, 2024. On July

12, 2024, the Employer and the Petitioner both filed post-hearing briefs. Then, on January 17, 2025, the Employer and the Petitioner both filed supplemental briefs addressing the impact of the National Mediation Board's ("NMB") recent decision in *Swissport Cargo Services*, 52 NMB 25 (2024), and the Board's adoption of that decision in *Swissport Cargo Services*, 373 NLRB No. 144 (2024).

The sole issue before me is whether the NLRB has jurisdiction over the Employer. The Employer argues that it is subject to the jurisdiction of the RLA pursuant to longstanding NMB precedent and that both the NMB and the Board erred in issuing their recent decisions regarding the derivative-carrier test in *Swissport Cargo Services*, 52 NMB 25 (2024), and *Swissport Cargo Services*, 373 NLRB No. 144 (2024). The Union argues that the Board has jurisdiction over the Employer under these recent NMB and NLRB decisions.

As set forth below, based on the record, the parties' briefs, and relevant Board law, I determine that the Board has jurisdiction over the Employer and order that the name on the certification be amended.

I. PROCEDURAL HISTORY

The Union filed the instant AC petition on June 3, 2024, seeking to change the name on the certification from Swissport to the Employer. After a two-day hearing, both parties submitted briefs on the issue of whether the Employer was subject to NLRB or Board jurisdiction. At that time, the NMB utilized a two-prong test to determine whether an employer who is not itself a common carrier is nevertheless subject to its jurisdiction. *See, e.g., System One Corp*., 322 NLRB 732 (1996). Applying this two-pronged standard, the Board had, in other cases, specifically declined to assert jurisdiction over an employer whose employees operated and maintained an aviation fuel tank farm. *See, e,g., Aircraft Services Intl., Inc.*, 352 NLRB 137 (2008).

Based on the record evidence, case law, and parties' briefs, on August 27, 2024, I issued an order transferring the matter to the Board regarding the issue of whether the NMB or the NLRB had jurisdiction over the Employer.

On November 8, 2024, the NMB issued its decision in *Swissport Cargo Services*, 52 NMB 25 (2024), in which it discarded its two-prong test with respect to contractors of air carriers and found that "a company that is not a common carrier by air and that is connected to air transportation only through its contract for services with [an airline] is not a carrier within the meaning" of the RLA. *Id.* at 38.

Then on December 10, 2024, the Board issued its decision in *Swissport Cargo Services*, 373 NLRB No. 144 (2024). In *Swissport*, the Board acknowledged the NMB's ruling in *Swissport* and accorded it "the substantial deference the Board ordinarily accords such opinions." *Id.*, slip op. at 1 (internal citations omitted). The Board then found that since the employer in that matter was not a common carrier by air, consistent with the NMB's ruling in *Swissport*, the employer was engaged in commerce within the meaning of the Act. *Id.* slip op at 1-2.

On December 11, 2024, the Union filed a Notice of Supplemental Authority with the Board regarding the recent *Swissport* decisions.

On December 20, 2024, the Executive Secretary of the NLRB issued an Order Transferring Proceeding to Region 19 of the National Labor Relations Board, indicating that the Board's submission for an advisory opinion from the NMB had been withdrawn in the instant matter and returning the case to me for further appropriate action.

On January 6, 2025, Region 19 of the NLRB provided the opportunity for the Union and the Employer to submit additional legal argument regarding the applicability of the recent *Swissport* cases to the instant matter. Both parties did so. The Union argues that the NLRB's decision in *Swissport* governs my decision herein and requires me to assert jurisdiction and amend the certification. The Employer does not contend that it is a carrier under the RLA or that applying the recent *Swissport* decisions would subject it to RLA jurisdiction. Instead, the Employer raises numerous legal and policy arguments as to why the *Swissport* decisions were wrongly decided by the NMB and the NLRB.

II. ANALYSIS

A. Legal Standard

The RLA, originally endowed with jurisdiction over common carriers such as railroads, had its coverage extended under Title II of that Act to common carriers by air engaged in interstate or foreign commerce. Section 1 of the RLA defines "carrier" to include not only carriers by railroad (and, by extension, air), but also "any company which is directly or indirectly owned or controlled by or under common control with any carrier . . . and which operates any equipment or facilities or performs any service (other than trucking service) in connection with" certain enumerated activities. The Board accordingly does not have jurisdiction over rail or air "carriers." *Phoenix Systems & Technologies, Inc*., 321 NLRB 1166 (1996). The Board gives "substantial deference" to NMB decisions assessing jurisdiction. *DHL Worldwide Express, Inc*., 340 NLRB 1034 (2003).

Some cases before the Board have presented an issue as to whether the employer is a "carrier" under the "directly or indirectly owned or controlled by or under common control with any carrier" language. Until recently, when examining jurisdiction over such contractors, the NMB made its determination on whether an employer who is not itself a common carrier is nevertheless subject to its jurisdiction under the RLA utilizing a two-pronged jurisdictional analysis: (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. *See, e.g., System One Corp*., 322 NLRB 732 (1996). When, under this standard, the NMB determined an employer is subject to RLA jurisdiction, the NLRB declined to assert jurisdiction. *See, e.g., Globe Aviation Services*, 334 NLRB 278 (2001).

Then, on November 8, 2024, the NMB issued its decision in *Swissport Cargo Services*, 52 NMB 25 (2024), in which it discarded its two-prong test with respect to contractors of air carriers and found that "a company that is not a common carrier by air and that is connected to air transportation only through its contract for services with [an airline] is not a carrier within the

meaning" of the RLA. *Id.* at 38. The Board subsequently adopted the NMB's analysis and asserted jurisdiction over a contractor with an air carrier. *Swissport Cargo Services*, 373 NLRB No. 144 (2024).

B. Application

Here, I find that the Board may properly assert jurisdiction over the Employer. Applying the Board's standard in *Swissport*, the Employer is a contractor, not an air carrier, and thus is subject to the Act's jurisdiction.

Despite the Employer's arguments that the Board and the NMB erred in their decisions, I am bound by Board precedent and any arguments about those decisions are best addressed to the Board.

III. CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[1]

3. The parties stipulated, and I find, that the Union is a labor organization within the meaning of § 2(5) of the Act.

IV. ORDER

IT IS HEREBY ORDERED that the Certification of Representative issued on September 14, 2015, in Case 19-RC-158183 is amended to substitute FSM Group, LLC, as the Employer in place of Swissport Fueling Services, Inc.

V. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.71(a) of the Board's Rules and Regulations, any party may file with the Board in Washington, D.C., a request for review of this decision. The request for review must conform to the requirements of Section 102.71(c) and 102.67(i)(1) of the Board's Rules and must be received by the Board in Washington, D.C., by **February 12, 2025**. The request for review must contain a complete statement of facts and reasons on which it is based.

[1] The parties stipulated, and I find, that FSM Group, LLC is a State of Nevada limited liability corporation, with an office and place of business in Sea-Tac, Washington, and is engaged in the business of providing fueling, fuel farm maintenance and operations, and other aviation fueling services. During the past twelve months, a representative period, the Employer derived gross revenues valued in excess of $500,000. During that same time period, the Employer performed services valued in excess of $50,000 in states other than the State of Washington.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated at Seattle, Washington, this 29th day of January, 2025.

Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
915 Second Avenue, Suite 4948
Seattle, WA 98174