Air California *and* Miscellaneous Warehousemen, Drivers & Helpers, Local 986, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,[1] Petitioner and Air Line Dispatchers Association, AFL–CIO,[2] Petitioner. Cases 21–RC–10597, 21–RC–10600, 21–RC–10603, and 21–RC–10601

March 1, 1968

DECISION AND DIRECTION OF ELECTIONS

BY CHAIRMAN MCCULLOCH AND MEMBERS FANNING AND BROWN

Upon separate petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was held before Hearing Officer Barton W. Robertson of the National Labor Relations Board. Thereafter, the Employer and Teamsters filed briefs.[3]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer, Air California, is a scheduled passenger air carrier operating a shuttle service between Santa Ana; San Francisco, Oakland, and San Jose, in California.[4] It has no current plan to extend its service to any point outside the State. It has performed only one charter flight to a point outside the State of California, and anticipates that any further charter flights would not exceed one-tenth of one percent of its business. The Employer is subject to regulation by the California Public Utilities Commission and has a certificate of public convenience and necessity therefrom. It does not possess a Civil Aeronautics Board certificate, but its flight crews and mechanics are required by law to be licensed by the Federal Aviation Agency. Air California does not train pilots or other personnel for other airlines and does not transport any mail for the U.S. Government. It has no arrangement with other airlines for interchanging tickets, nor do other airlines sell Air California tickets. While the Company honors numerous credit cards, it does not honor any universal air travel cards. The Employer is listed in the "Official Airline Guide," as an "Intra-State Carrier."

The parties do not contest the Board's jurisdiction, and the Teamsters in its brief asserts that the Board should inquire of the National Mediation Board concerning its statutory jurisdiction, citing Pacific Southwest Airlines, Inc.,[5] a case before the National Mediation Board in which it declined to assert jurisdiction. On the basis of the facts set forth above, we conclude that the Employer is not subject to the Railway Labor Act and adopt the stipulation of the parties that it is an "employer" within the meaning of Section 2(2) of the National Labor Relations Act, as amended.

It is apparent from a reading of the decision in *Pacific Southwest Airlines* that the facts there were substantially similar to those in the instant case.[6] Based thereon, the National Mediation Board concluded that *Pacific Southwest Airlines* was not a carrier within the meaning of the Railway Labor Act, as amended, and dismissed the petition before it.

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[1] Petitioner in 21–RC–10597, 21–RC–10600, and 21–RC–10603 also referred to herein as Teamsters.

[2] Petitioner in 21–RC–10601 also referred to herein as Dispatchers.

[3] The Employer also filed a motion to reopen the record to adduce evidence of a change in its operations, which is ruled on hereinafter.

[4] At the time of the hearing, the flights were only between Santa Ana and San Francisco, but a request was pending to add two locations The Employer asserts that since that time, its certificate has been amended by the California Utilities Commission to include San Jose and Oakland, California, and the Employer states in its brief that scheduled service to San Jose would commence October 23, 1967, with a complement of maintenance mechanics to be assigned there as of October 20, 1967 These facts were not disputed by any party, and were in fact tacitly admitted See fn 9, *infra* Accordingly, we assume for purposes of this Decision that these changes have been accomplished

[5] In the matter of *Representation of Employees of the Friedkin Aeronautics, Inc., doing business as Pacific Southwest Airlines – Airlines Pilots*, File No C–2200–decided March 18, 1954, "Determination of Craft or Class of the National Mediation Board," Volume 3, p 13

[6] The decision in *Pacific Southwest Airlines* reveals the following The operation was that of a scheduled passenger carrier between several locations in California, and the rates were on file with and regulated by the Public Utilities Commission of that State The Civil Aeronautics Administration had issued a commercial operator's certificate to the carrier authorizing it to operate carrying passengers intrastate, the Civil Aeronautics Board had never issued a Certificate of Public Convenience and Necessity required of a carrier engaged in interstate commerce, and it was not shown that the carrier had ever applied for such a certificate There was no contention or evidence that the carrier transported mail for or under contract with the United States Government Evidence was presented to indicate that a traveller purchasing a ticket to travel from a point in California to a point outside that State, or vice versa might be carried within California on equipment of Pacific Southwest A ticket for such a trip could be purchased from a bureau or agency engaged only in selling tickets for numerous airlines, among them Pacific Southwest, and the latter's tickets were clearly marked to indicate that travel was via that airline and such services were confined to California This was limited to part of Pacific Southwest's route, and there was no evidence showing any exchange of "interstate" passengers with other airlines at the other locations of this line, there was no evidence to indicate there was any interchange agreement or understanding with any other carrier or agency, and there was no evidence as to the volume or extent of such traffic Between 1949 and 1954 the carrier had only one flight outside of California, a charter trip, which NMB stated was "an isolated occasion [which] cannot reasonably be construed as affecting the normal commercial operations as a common carrier by air engaged in intrastate business "

Accordingly, we are persuaded that the Employer herein is not, and would not be found by the National Mediation Board to be, a carrier within the meaning of the Railway Labor Act but is an employer over whom we will assert jurisdiction if its operations satisfy the standards for legal and discretionary jurisdiction.

The Employer's gross revenue during the past year was more than $500,000 and its out-of-State purchases were in excess of $50,000. It is apparent that the value of the purchases across State lines establishes our legal jurisdiction, and the volume of gross revenue exceeds that necessary for the assertion of jurisdiction over local passenger transit systems.[7] We therefore find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

2. The labor organizations involved[8] claim to represent certain employees of the Employer.

3. Questions affecting commerce exist concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4. The Employer has facilities at San Francisco, Santa Ana, Oakland, and San Jose all in California.[9] At the Orange County Airport in Santa Ana (herein called Santa Ana airport) it has a maintenance facility, terminal facility, dispatch office, and warehouse facility, and its general offices are contiguous to that airport. It has terminal and cargo facilities and ticket counters at the San Francisco International Airport, with a district sales office in downtown San Francisco. According to Employer's motion, it now has mechanics located at the San Jose facility. At the time of the hearing, the Employer had a total of about 260 employees, including 17 pilots, 17 copilots, 18 flight engineers, 16 mechanics (including 2 maintenance supervisors), 2 maintenance representatives, and 12 ramp agents. Only the latter 80 employees are involved herein.

The pilots, copilots, and flight engineers all work out of Santa Ana, and at that location there were also 12 ramp agents, 6 maintenance mechanics, and 1 maintenance mechanic foreman. The Employer's San Francisco operations were manned by eight maintenance mechanics and one maintenance mechanic foreman, and the Employer indicated at the hearing that when it began operations at San Jose two of the San Francisco maintenance mechanics would be transferred to that new location. Its two maintenance representatives are assigned to Lockheed Aircraft Service, Ontario, California, but they also spend 1 day each week at the Santa Ana airport.

Air Line Dispatchers Association, AFL–CIO, in Case 21–RC–10601, seeks a separate unit of aircraft dispatchers, excluding all other employees. Neither the Teamsters nor IAM intervened in that proceeding, and they do not seek to represent these dispatchers The Employer and Association stipulated that the unit sought is appropriate and that the chief dispatcher is a supervisor who should be excluded from the unit. Therefore we find, in accordance with the agreement of the parties, that the dispatchers constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

The Teamsters seeks three separate units[10] of:

(A) all flight crews, i.e., pilots, copilots, and flight engineers (21–RC–10597);

(B) all maintenance mechanics and maintenance representatives at Employer's Santa Ana and Ontario, California, facilities (21–RC–10600);

(C) all ramp agents (21–RC–10603).

The Employer contends that only a single unit of these three groups, but including the mechanics at its other locations, and excluding the maintenance representatives at Ontario, is appropriate. The IAM agrees with the Teamsters that three separate units are appropriate and seeks to represent two such separate units—one of flightcrews and one of the maintenance mechanics and maintenance representatives. Unlike the Teamsters, however, IAM would include mechanics at all other locations.

Flightcrews: The primary responsibility of the pilots is to fly the aircraft, and obviously their principal work is performed away from the work locations of other employees of the Employer. Copilots are in charge of monitoring the flight, handling radio transmission, writing position reports, and

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[7] The Board has decided that it will effectuate the policies of the Act to assert jurisdiction over all transit systems which do a gross volume of business of at least $250,000 per annum *Charleston Transit Co.*, 123 NLRB 1296.

[8] The International Association of Machinists and Aerospace Workers, AFL–CIO, referred to herein as IAM, intervened on the basis of a showing of interest in 21–RC–10597 and 21–RC–10600

[9] See fn 4, *supra* The Employer filed a motion to reopen the record because of these new circumstances to take evidence on the status of maintenance mechanics to be stationed at San Jose, contending they should be included in the same unit as its other mechanics The Teamsters, while opposing the motion to reopen, agreed that if San Francisco mechanics are included with the Santa Ana mechanics, that the San Jose mechanics should also be in the same unit The IAM did not state a position on the Employer's posthearing motion, but as it had agreed with the Employer that the San Francisco and Santa Ana mechanics belong in the same unit, it appears that IAM would agree that San Jose mechanics would also properly be a part of the same unit Accordingly, we find it unnecessary to reopen the record and hereby deny the Employer's motion We construe the position of the Employer and IAM, as more fully detailed below, generally to be that maintenance mechanics must be treated on an employerwide basis

[10] Both the Teamsters and IAM expressed their desire to participate in an election in any unit or units found appropriate

performing other general work during the flight. Flight engineers make preflight aircraft inspections, monitor the various systems of the aircraft, and control the power in takeoff, flight and landing, pursuant to instruction of the pilot. The entire crew must be aboard at least 20 minutes before departure time, during which period they go through a "before-start" and an "after-start" checklist (i.e., starting engines). Each crewmember must have an FAA license for his specialization. They are separately supervised[11] and wear distinctive uniforms. Pilots receive monthly salaries which are twice as much as mechanics and, three times more than ramp agents.

Although as alleged by the Employer, there is some interchange of functions, in that flightcrews may help ramp agents with some of the baggage and housekeeping tasks, and its policy is to promote from within, we do not find this significant. The record shows and we find any maintenance mechanics' transfers into the flightcrew[12] occurred only after extensive training and qualification by FAA certification. This is thus not an ordinary instance of promotion based on experience or length of service. Further, the instances in which flightcrews perform other tasks are sporadic and isolated and there is no showing of any employee performing the essential functions of a flightcrew member during the operation of the plane in flight or in preparation therefor.

In view of the foregoing and the record as a whole, it is apparent that the flight members are hired for their specialized skills and they have significantly different interests from those of other employees which justifies their representation in a separate unit. As there is no bargaining history for any of the Employer's employees and no union seeks to represent the flightcrews as part of a broader unit, we find that the flightcrews constitute a separate unit appropriate for collective bargaining.

Maintenance mechanics: As noted herein above, maintenance mechanics are stationed at Santa Ana, San Francisco, and San Jose. They check the aircraft at certain specified intervals for necessary maintenance and do various kinds of repair work. Under FAA regulations, after every 95 hours of flight each aircraft must undergo an intermediate check, which involves a thorough inspection of the plane and various repairs to equipment. During the first 9 days of September 1967, just before the hearing herein, the Employer was authorized to conduct such checks only at Santa Ana, and it transported two groups of two to three mechanics from San Francisco to Santa Ana to work with Santa Ana mechanics in making the checks. On September 9, 1967, FAA gave approval for the Employer to conduct intermediate checks at San Francisco as well, and the Employer asserts that this will necessitate increased rotation in the future with mechanics traveling in both directions, depending on the location of the aircraft when the check is required. Teamsters claims the making of intermediate checks at San Francisco will obviate the need to transport such teams. The Employer testified that when the San Jose and Oakland routes were approved there would also be interchange of mechanics to these locations from the existing facilities.

The mechanics are required to have FAA licenses; those employed by the Employer either were experienced or had completed an aircraft mechanics course before their employment, and the Employer provides them additional schooling. All maintenance mechanics are under the assistant vice president of maintenance, who has sole authority to hire, fire, or discipline mechanics. All such employees are interviewed by him at Santa Ana before being hired, and he alone authorizes their time off, assigns their vacations, and prepares coverage schedules as to the number of employees needed.

Since all maintenance mechanics, no matter where located, have the same basic qualifications, are hired by the same supervisor at the same location, require an FAA license, perform the same functions on the very same equipment under identical supervision, and are subject to interchange when and where there is a need of their skills, we find that all maintenance mechanics at all facilities of the Employer belong in the same unit.

The Employer has one maintenance foreman at Santa Ana and another at San Francisco. The Teamsters contends these foremen are supervisors and should be excluded, while the IAM and the Employer would include them. They report directly to the vice president of maintenance. Each is generally responsible for maintenance work done at his location, and each actually does some mechanic's work, but they appear to spend the bulk of their time doing paperwork. They monitor the work to insure that the high standards are maintained, and they have authority to "sign-off" an airplane as "air-worthy." However, neither has the authority to effect any personnel changes, and any

[11] The parties stipulated that the chief pilot is a supervisor and that the chief flight engineer is not a supervisor The chief pilot reports to the executive vice president through the assistant vice president of flight operations

[12] One flight engineer formerly was a maintenance mechanic, and two other maintenance mechanics have been accepted into flight engineer jobs

recommendations they may make are independently evaluated. While they prepare work schedules, the Employer asserts that they are based on a predetermined automatic rotation system. They act as liaison between the chief inspector and the maintenance mechanics and also relay instructions to them from the vice president of maintenance, but there is no indication that they exercise independent judgment in performing these functions.

We conclude that as they do not possess any of the indicia of supervisory authority but rather act as inspector-leadmen and serve as a conduit to convey Employer's responsible direction, we shall include the maintenance foremen in the unit hereinafter found appropriate.

Maintenance representatives: These two men appear to monitor or inspect the heavy maintenance performed under contract on Employer's aircraft by employees of Lockheed Aircraft Service at Ontario, California. One of the maintenance representatives must be on duty at Lockheed between the hours of 8 p.m. and 6 a.m. during a 4-day workweek, and the two decide between themselves the schedule of the days on which each will be present. In addition, each of them regularly spends about 8 hours a week at Santa Ana engaged in regular maintenance mechanic functions along with the other mechanics. The Teamsters and IAM would include them, while the Employer would exclude them as supervisors.

These maintenance representatives determine the amount of work, including overtime, to be performed on an aircraft on any given day, and they decide whether potential defects should be repaired immediately or deferred, determine the sequence in which work is to be performed, insure that work meets the Employer's standards, and "sign-off" an aircraft found "air-worthy." They do none of the work, but confine their responsibility to overseeing its performance. However, they do not direct Lockheed employees; rather, their work instructions are given to the Lockheed supervisors, who transmit them to the employees. While the representatives are unlike the mechanics and maintenance foremen in that they are authorized to purchase parts on an emergency basis up to $5,000, it appears that before the decision is made, they consult with the executive vice president, who in turn looks to the Lockheed engineering staff for the final word on the necessity of the parts.

As they exercise no supervisory authority over any of the Employer's employees, have the same skills and interests as the maintenance mechanics, and regularly perform maintenance mechanic work at Santa Ana, we find they are not supervisors and shall include them with the maintenance mechanics in the unit hereinafter found appropriate.

Ramp agents: These are the only employees who require no FAA licenses. They roll the stairs up to the plane, load and unload baggage, clean the inside of the aircraft, restore the commissary, attach the air start units to the plane, and plug the ground power unit into the aircraft. At Santa Ana the mechanics occasionally assist the ramp agents, but at San Francisco, where no ramp agents are employed, the maintenance mechanics perform all ramp agent duties.

In view of the fact that maintenance mechanics and ramp agents regularly perform the same functions, we find that these categories share a community of interest and that they belong in the same appropriate unit.

In view of the foregoing, we shall direct elections by secret ballot in the following units of employees, which we find to be appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

(A) All aircraft dispatchers employed by the Employer, excluding all other employees, guards, the chief dispatcher, and all other supervisors as defined in the Act.

(B) All flightcrews of the Employer including pilots, copilots, chief flight engineer, and flight engineers, but excluding all other employees, guards, the chief pilot, and all other supervisors as defined in the Act.

(C) All maintenance mechanics and ramp agents of the Employer at its facilities located in Santa Ana, San Francisco, San Jose, and Oakland, California, including all maintenance representatives at Ontario, California, and the maintenance mechanic foremen at its Santa Ana and San Francisco facilities, but excluding all other employees, guards, and supervisors as defined in the Act.

[Direction of Election[13] omitted from publication.]

[13] An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 21 within 7 days after the date of this Decision and Direction of Election The Regional Director shall make the list available to all parties to the election No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear Inc*, 156 NLRB 1236