

Welch Aviation, Inc. and Local 486, International Brotherhood of Teamsters, AFL-CIO. Case 7-RC-20259

September 22, 1995

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND TRUESDALE

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Hearing Officer Patrick Labadie. Following the hearing, and pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, the case was transferred to the National Labor Relations Board for decision.

The National Labor Relations Board has delegated its authority in this proceeding 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 affirmed.

On the entire record in the case, the Board finds:

The Employer, a Michigan corporation, is an FAA-certificated air carrier which provides scheduled air cargo service and on-demand air taxi service in the continental United States and Canada. The Employer's headquarters and principal place of business is located at the Alpena, Michigan airport, with additional facilities at Grand Rapids, Ypsilanti, and Pontiac, Michigan, and Fort Wayne, Indiana. The Employer also provides certain courier services described more fully below, as well as maintenance and fuel services at some of the airports from which it operates. In addition, the Employer is a dealer in new and used aircraft. During its fiscal year ending in 1992, the Employer derived gross revenues in excess of \$2 million from its operations described above.

The Employer owns or leases 13 aircraft and has approximately 40 employees, including 13 pilots and 7 mechanics. Additionally, the Employer has approximately 30 couriers, 13 of whom are full-time employees, 2 are part-time employees, and the remainder are independent contractors. The Employer's scheduled cargo service includes flights directly from points in Michigan to points in Illinois and Indiana as well as intrastate cargo transportation in Michigan. Additionally, the Employer provides both intrastate and interstate on-demand passenger service to various points within and outside the State of Michigan, including destinations in Canada.¹ The Employer's air operations are conducted pursuant to certificates granted by the FAA and by its Canadian counterpart, the Canadian

¹ The Employer operates about 5 charters daily, and transports approximately 500 passengers per month on those flights.

National Transportation Agency.² The Employer is not licensed to provide air transportation of any kind to Alaska or Hawaii or to provide scheduled passenger service to any destinations.

In addition to its air operations described above, the Employer provides courier pickup and delivery service of small packages to and from its aircraft. A significant portion of this business involves the interbank transportation of canceled checks, in which one of the Employer's couriers picks up a bundle of canceled checks from a bank, drives it to the Employer's aircraft in one of the Employer's vehicles, and loads it onto the airplane. Another Employer courier unloads the airplane at its destination and transports the checks by truck to their final destination.

Since 1992, the Employer has also provided pickup and delivery courier services for Airborne Express for the entire northern portion of Michigan. According to the Employer's president, one of the Employer's couriers receives packages destined for northern Michigan from Airborne at Airborne's Saginaw, Michigan terminal. As a general practice, the courier loads the packages onto one of the Employer's aircraft, which then flies to the Employer's facility in Alpena.³ At Alpena, the packages are sorted, and local items are removed and delivered to the addressee by one of the Employer's couriers.⁴ With a few exceptions, the couriers working out of Alpena use Employer vehicles marked with Airborne's logo and wear Airborne uniforms when making these deliveries. The Employer's couriers follow a similar routine when they pick up packages for Airborne for transportation by the Employer to Saginaw, except that in Saginaw the packages are handed to Airborne personnel.

The Union seeks to represent the Employer's Airborne couriers domiciled in Alpena. There are approximately four employees in the unit sought. The Employer contends that it is a common carrier by air engaged in interstate commerce and foreign commerce within the meaning of the Railway Labor Act, that its operations and employees are covered by the provisions of that statute, and that it is, therefore, exempt from the National Labor Relations Act. The Petitioner asserts that the Employer is not covered by the Railway Labor Act because it is engaged solely in contract carriage by air on an irregular basis, and hence is not exempt from the NLRA.

² Prior to 1992, the Employer also transported U.S. mail in its aircraft, and the Employer's president testified that at the time of the hearing it was actively seeking a new contract to provide such service beginning in June 1994.

³ On Monday mornings, Airborne packages are transported by truck by the Employer from Saginaw to Alpena; trucks are also used when weather conditions prevent air travel.

⁴ Other items are flown by the Employer to Sault Ste. Marie, and delivered from the airport there to the addressee, again by one of the Employer's couriers.

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 Act provides that the term “employee” does not include “any individual employed by an employer subject to the Railway Labor Act.” The Railway Labor Act, as amended, applies to rail carriers and “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 of rendition of his service.” 45 U.S.C. §§ 151 First and 181.

On April 11, 1994, the Board requested that the National Mediation Board study the record in this case and determine the applicability of the Railway Labor

Act to the Employer. The NMB subsequently issued an opinion indicating that, in its view, the Employer is a carrier by air engaged in interstate commerce and subject to the Railway Labor Act. See *Welch Aviation*, 21 NMB 329 (1994).

Having considered the facts set forth above in light of the opinion issued by the NMB, we find that the Employer is engaged in interstate air common carriage so as to bring it within the jurisdiction of the NMB pursuant to Section 201 of Title II of the Railway Labor Act.⁵ Accordingly, we shall dismiss the instant petition.

ORDER

It is ordered that the petition in Case 7–RC–20259 is dismissed.

⁵We note that this finding is consistent with prior Board decisions. See, e.g., *Elliott Flying Service*, 260 NLRB 485 (1982); *Mark Aero*, 200 NLRB 304 (1972).