

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION FIVE**

LOCKHEED MARTIN SERVICES, INC.¹

Employer

and

Case 5-RC-16189

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO²

Petitioner

ACTING REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Lockheed Martin Services, Inc., is engaged in providing flight services to the United States Government. The Employer's facilities are located throughout the United States where the Employer employs a total of approximately 1,038 employees. The Petitioner, International Association of Machinists and Aerospace Workers, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit, as amended at the hearing, of all full-time and regular part-time Flight Service Specialists I, II and III employed by the Employer; excluding casual employees and trainees, all office clerical employees, guards, and supervisors as defined in the Act.

At the hearing and in their briefs, the parties disagree on whether the employees who are in training at the Employer's Prescott, Arizona, facility are eligible to vote. Although the parties are otherwise in accord with respect to the scope and composition of the unit, the Petitioner, contrary to the Employer, contends that despite the fact that the trainees are admittedly employed by the Employer in the classification of Flight Service Specialist I, they are

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

not eligible to vote in any election directed in this matter because they are not yet performing bargaining-unit work.

Before October 2005, the flight services now provided by the Employer were provided by the Federal Aviation Administration. At that time, all of the employees in the petitioned-for unit as well as those employees who were in training were represented for collective-bargaining purposes by the National Association of Air Traffic Specialists. The Petitioner has indicated that it is willing to proceed to an election in any unit found appropriate herein.

I have considered the evidence and the arguments presented by the parties as to the eligibility of the trainees. As discussed below, I have concluded that the Petitioner has not met its burden of establishing that the trainees are ineligible to vote in the election directed herein, as required by Board law. Accordingly, I have directed an election in a unit that consists of approximately 1,038 employees, including 119 employees who are currently in training at the Prescott, Arizona, facility.

To provide a context for my discussion of the issue, I will first provide an overview of the Employer's operations. I will then present in detail the facts and reasoning that supports each of my conclusions on the issue.

I. OVERVIEW OF OPERATIONS

The Employer currently operates 18 facilities at which aviation services are provided to pilots of private aircraft and some business jets.³ As noted above, the flight services provided by the Employer were historically provided by the FAA. In about 2003, the Federal Government began considering privatization of the FAA's flight services operation. At that time, the FAA operated 58 facilities and employed approximately 2,441 flight service specialists. By 2004, the number of flight service specialists had decreased to 1,950. The contract to provide aviation services was awarded to the Employer in February 2005, and the Employer took over operations on October 3, 2005. Within one week, one of the 58 facilities was closed. Since

³ The Employer does not provide aviation services to commercial airlines.

then, 39 additional facilities have closed and the number of flight service specialists currently employed by the Employer has decreased to about 919.⁴ As of the time of the hearing, the Employer was in the process of training 119 new flight service specialists.

All newly employed flight service specialists are required to complete a ten-week foundation training course.⁵ The Employer created a training facility in Prescott, Arizona, herein called the Prescott facility, which, in accordance with the mandate of the FAA, was equivalent to the FAA's Oklahoma City training academy. The Prescott facility also serves as one of the Employer's super hubs,⁶ meaning it is one of the primary areas for communication with legacy sites, or sites in outlying areas.

The Employer began training newly employed flight service specialists in February 2006 and has continued having training classes since then. A training class of 59 employees and a training class of 60 employees are being conducted at the present time at the Prescott facility. The training class of 59 employees is scheduled to graduate on February 15, 2008 and the training class of 60 employees is scheduled to graduate on March 26, 2008.⁷

The record establishes that individuals who receive a written offer of employment are advised of their hourly rate and the location of their assignment. They are also told of the date and time they are to report to the Prescott facility for a ten-week training period.⁸ Employees who accept the Employer's offer of employment are required to complete most of the

⁴ The record indicates that many flight service specialists have retired.

⁵ When the FAA handled aviation services, new employees were trained at the FAA's Academy in Oklahoma City, Oklahoma.

⁶ The other two super hubs are located in Fort Worth, Texas, and Ashburn, Virginia. The Prescott facility is the hub for the western flight services area and, as such, covers the flight plan areas for San Diego, Oakland, Seattle and Denver.

⁷ The Employer's next training class is scheduled to begin on April 1 and those employees will graduate in July 2008.

⁸ The record reflects that all 28 trainees in the training class which the Petitioner's witness attended completed their training and went on to their assigned locations. Similarly, only one trainee in the class scheduled to graduate on February 15, left during the first week of training, due to medical reasons, and no one from the class scheduled to graduate in March has left the program.

preliminary paperwork before reporting to the Prescott facility. Employees who attend the training are classified as Flight Service Specialist I. They receive the same compensation and benefits and are subject to the same policies as the flight service specialists who have completed the ten week training and are working at an assigned location.

Once at the Prescott facility, employees spend their first day in an orientation session. In addition, on that day any final employment processing is completed. After the first day of the training period, employees attend in depth training, at least half of which is dedicated to meteorological studies.

As noted, in addition to serving as one of the Employer's super hubs at which flight service specialists are employed, the Prescott facility also serves as the Employer's training academy. The Operations Manager at the Prescott facility oversees the entire facility, including the flight services operations as well as the training. The flight service specialists assigned to the Prescott facility work on the operations floor, an octagonal area which is divided into quadrants. The facility also has classrooms where a portion of the training of new employees takes place.

The employees assigned to Prescott and the trainees share a common cafeteria, restrooms, parking lot, laboratory and lockers. They also use the same computer terminals for timekeeping purposes. Both employees and trainees at the Prescott facility are issued the same type of identification badges. Both employees and trainees work 8 ½ hours, although employees assigned to Prescott have staggered starting times beginning at 6 a.m., whereas trainees begin their day at 7:15 a.m.

The record establishes that there are three main positions for which a flight service specialist can qualify. The first is considered a developmental position which involves providing necessary flight data concerning weather, hazardous phenomena and other aeronautical information so that a pilot is able to safely complete an intended flight. In this position a flight

service specialist does not communicate directly with pilots.⁹ The Petitioner's only witness, Flight Service Specialist I Theresa Kelley, confirmed the developmental aspect of the Flight Service Specialist I position. In this regard, Kelley testified that training continues from the Prescott facility to the assigned location and that she herself is continuing to undergo training at her assigned location in Ashburn, Virginia. In addition, the job description contained in the record is in accord with this testimony and reflects the developmental nature of the Flight Service Specialist I position and that most of the job duties of this classification involve training and learning to perform flight service functions. The second and third positions filled by flight service specialists involve pre-flight and in-flight services. Both pre-flight and in-flight duties involve communicating with pilots. For instance, flight service specialists performing pre-flight duties will tell pilots of all information and assistance, including weather changes and restricted areas along the flight route, as needed to safely plan and execute a flight. The in-flight duties involve communication with pilots who call in on their radios to get updated weather and other necessary information.

The record indicates that the Employer has implemented a flight service system known as the FS 21 system which is a system designed by the Employer to replace all of the equipment formerly used by the FAA in providing flight services. The implementation of the FS 21 system has caused the flight service specialist position to become significantly more computer intensive. Consequently, an unexpected number of former FAA employees left their employment with the Employer between March and June 2007. This caused the FAA to express concern as to the Employer's staffing. The Employer then developed a staffing plan with increased training in order to replace the flight service specialists who retired or left. All trainees at the Prescott facility are now trained on the FS 21 system.

⁹ The record reveals that five per cent of current flight service specialists who have completed their training and are working at assigned locations do not talk with pilots.

The implementation of the FS 21 system effected changes in the training of flight service specialists in that now they spend a significant portion of their training on the operations floor. The flight service specialists employed at the Prescott facility work in three of the four quadrants on the operations floor. The fourth quadrant, identified in the record as the southwest quadrant, has been dedicated since October 2007 to trainees for the on-the-job familiarization aspect of their training. When they are in the southwest quadrant, trainees plug in the headsets issued to them¹⁰ in order to listen in on actual conversations between the flight service specialists and the pilots. The record establishes that trainees are not permitted to give guidance during the conversations. However, they can consult with the flight service specialists on the operations floor. Trainees spend up to 25 percent of their time in the southwest quadrant while they are in training.¹¹

One type of aeronautical information discussed in the record is the notices to airmen (“NOTAMs”), which are received and transmitted by flight service specialists.¹² Flight service specialists retrieve NOTAMs from the fax machine, log them in to the system and input the information into the Employer’s computer system as a regular part of their duties. The record contains some evidence that when trainees are listening to operations in the southwest quadrant, they have retrieved NOTAMs that are faxed to the facility and have logged them in on the FS 21 system and have transmitted NOTAMs to the appropriate air traffic facilities. In this regard, Director of Human Resources for Aviation Services James T. Strum, the Employer’s only witness, testified that he has been present at the Prescott facility about one week per month and has observed trainees handling NOTAMs on a limited number of occasions. Trainees are, however, not regularly assigned to process NOTAMs.

¹⁰ Trainees use the same equipment as is used by flight service specialists.

¹¹ It appears that groups of trainees are rotated in and out of the southwest quadrant every day.

¹² The NOTAMs deal with important safety issues and flight information which must be publicized to pilots.

Once the academy training is completed and the graduates report to their assigned locations, they must then complete on-the-job training with an OJT instructor in order to become certified. Certification is required by FAA regulation before the flight service specialists can communicate with pilots. The flight service specialists must complete a minimum of 30 hours of NOTAMs and flight data and are required to pass a test and be certified by the OJT instructor. The record indicates that this process takes between two and one-half weeks to four months to complete. Certification to perform pre-flight and then the in-flight aspects of the position takes between three months to one year to complete.

II. ELIGIBILITY OF TRAINEES

To be eligible to vote, an individual must be “employed and working” in the bargaining unit on the eligibility date, unless absent for certain specified reasons. Sweetener Supply Corp., 349 NLRB No. 104 (2007), citing Dyncorp/Dynair Services, 320 NLRB 120 (1995). The Board defines “working” as the actual performance of bargaining-unit work. *Id.* “Working” does not include training that consists solely of “mere orientation and preliminaries.” *Id.*, citing Pep Boys-Manny, Moe & Jack, 339 NLRB 421 (2003). “Working” does include, however, the performance of bargaining-unit work during on-the-job training. *Id.*

The burden of proof rests on the party seeking to exclude a challenged individual from voting. Sweetener Supply Corp., *supra*, slip op. at 1. See also, Golden Fan Inn, 281 NLRB 226, 230 fn. 24 (1986). In this case, that burden falls on the Petitioner. In Sweetener Supply Corp., *supra*, the employer’s general manager of operations testified that three individuals started their employment on the eligibility cut-off date and that those employees were required to undergo training on that date. The ballots of the three employees were challenged. After a hearing, the hearing officer found that all three employees were in training but did not perform any bargaining-unit work and, therefore, were ineligible to vote. The Board disagreed, noting that the burden was on the petitioner to show that they did not perform bargaining-unit work, not on the employer to show that they did. Although the employer’s testimony established that the employees were in training on the eligibility cut-off date, neither this testimony nor any other

evidence established that the employees did not perform any bargaining-unit work on the eligibility cut-off date, either as part of the training or in addition to the training.

Here, the Petitioner did not offer any evidence that the current trainees, all of whom are in the job classification of Flight Service Specialist I, have not performed any bargaining-unit work as part of their training, and thus failed to meet its burden of establishing that the flight service specialists in training are not eligible to vote in the election directed herein.¹³ Moreover, it is undisputed that the trainees in the classification of Flight Service Specialist I are employed and have completed the vast majority of their preliminaries before they report to training at the Prescott facility, and spend only the first day of their ten-week training period completing any unfinished preliminaries. In addition, the record establishes that the training is not designed to “weed out” new employees inasmuch as there is evidence of only one trainee who did not complete the training, due to a medical reason. Finally, the Employer provided evidence that employees currently in training spend up to 25 percent of their time on the operations floor where they observe and interact with flight service specialists who are assigned to the Prescott facility. In addition, there is some evidence that employees in training have received and processed NOTAMs and the Board has found that the performance of even limited amounts of unit work during training renders an employee eligible to vote. Pep Boys-Manny, Moe & Jack, supra. Accordingly, based on the above, and noting the Petitioner’s failure to meet its burden of showing that the trainees did not perform any unit work, I find that the trainees are eligible to vote in the election directed herein.¹⁴

¹³ The Petitioner’s sole witness completed her training at the Prescott facility on September 26, 2007. Admittedly, this witness had no knowledge of the subsequent training classes. Specifically, she had no knowledge of all of the functions performed by employees in later training classes. As noted above, the implementation of the FS 21 system substantially changed the training of newly hired flight service specialists in that the Employer has dedicated a quadrant of the operations floor to trainees so that they are involved with actual flight communications. Accordingly, Kelley’s testimony does not address the training experienced by the trainees in dispute in this matter.

¹⁴ Goodbody and Co., 182 NLRB 81 (1970), is distinguishable because it predated Golden Fan Inn, supra, which confirmed the burden of proof in cases where the parties differ as to the eligibility of voters and Sweetener Supply Corp., supra, where the Board further explicated the burden in these matters. In addition, Goodbody involved individuals who were involved in a substantially longer training program (six

III. FINDINGS AND CONCLUSIONS

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are 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 in this matter.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:¹⁵

All full-time and regular part-time Flight Service Specialists I, II and III employed by the Employer; excluding casual employees, office clerical employees and guards and supervisors as defined in the Act.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Association of Machinists and Aerospace Workers, AFL-CIO. The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

months), spent a substantial portion of their training off site where no unit work was performed and, unlike the instant matter, were required to pass an examination before actually performing any unit work.

¹⁵ As noted above, trainees in the job classification of Flight Service Specialist I are eligible to vote in the election directed herein.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized

(overall or by department, etc.). Upon receipt of the list, the Regional Director will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 103 South Gay Street, 8th Floor, Baltimore, MD 21202, on or before February 15, 2008. No extension of time to file this list will be granted, except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (410) 962-2198. Since the list will be made available to all parties to the election, please furnish a total of **two (2)** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so precludes employers from filing objections based on non-posting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001.¹⁶ This request must be received by the Board in Washington by 5 p.m., EST (EDT), on February 22, 2008. The request may **not** be filed by facsimile.

Dated: February 8, 2008

/s/ Gerald Kobell

Gerald Kobell, Acting Regional Director

NATIONAL LABOR RELATIONS BOARD
Region Five
103 South Gay Street, 8th Floor
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¹⁶ A request for review may be filed electronically with the Board in Washington, D.C. The requirements and guidelines concerning such electronic filings may be found in the related attachment supplied with the Regional Office's initial correspondence and at the National Labor Relations Board's website, www.nlrb.gov, under "E-Gov." On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-Filing instructions explaining how to file the documents electronically will be displayed.