

Global Aviation Services, LLC and International Union of Operating Engineers, Local 542, AFL–CIO, Petitioner. Case 4–RC–21449

November 28, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

On May 28, 2008, the Petitioner, International Union of Operating Engineers, Local 542, AFL–CIO (Engineers) filed a petition seeking to represent “all maintenance and diesel fleet maintenance mechanics” employed by Global Aviation Services, LLC (the Employer) at Philadelphia International Airport (PHL) in Essington, Pennsylvania. On June 10, 2008, Engineers amended the petition to seek representation of only “all full time and regular part-time Deicing/Ground Support Equipment Service Technicians/Specialist/Mechanic/AFs” (DI/GSE employees and mechanic).

The Employer contends that it is subject to the Railway Labor Act and therefore the National Labor Relations Board lacks jurisdiction over the Employer under Section 2(2) of the National Labor Relations Act. The Employer further asserts that the National Mediation Board’s (NMB) two-part function and control test is applicable here. The Employer submits that it is owned or controlled by a common carrier, as stipulated by the parties, and that its employees perform work traditionally performed by airline industry employees.

After a hearing, the Regional Director transferred the proceeding to the Board. As recommended by the Regional Director, the Board thereafter referred the case to the NMB for a jurisdictional opinion, discussed below.

On the entire record in this case, the National Labor Relations Board¹ finds:

At the Board hearing, the Employer and the Engineers stipulated that the Employer is directly owned or controlled by, or under common control with, an air carrier, and thus the control prong of the test under the Railway Labor Act for the definition of a derivative air carrier is undisputedly met.²

¹ 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. Pursuant to this delegation, Chairman Schaumber and Member Liebman 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.

² The NMB uses a two-pronged jurisdictional analysis: (1) whether the work is traditionally performed by employees of air or rail carriers; and (2) whether a common carrier exercises direct or indirect ownership or control. Both prongs of the test must be met.

The jurisdictional question therefore turns on the nature of the work performed by employees in the petitioned-for unit. The Employer employs approximately 50 people and engages in the service and maintenance of airline ground service equipment (GSE) at 15 airports across the country, including PHL. The Employer contracts with air carriers such as Northwest Airlines and Southwest Airlines. The Employer performs maintenance on GSE such as tugs, push back tractors, ground power units, deice trucks, baggage carts, air starts, lavatory trucks, ice trucks, high lift trucks, scissor trucks, and various other equipment.

At the time of the hearing, the Employer had seven employees working at PHL (six DI/GSE employees and one mechanic). The six DI/GSE employees are involved solely in the service and maintenance of the deicing facility. The equipment in the deicing building is owned by the city of Philadelphia, which contracts with Service Air to provide deicing service to the airlines at PHL. Service Air, in turn, contracts with the Employer. The six DI/GSE employees work in the deicing facility year round. They primarily work with 12 hydraulic/electronic cranes used for deicing aircraft. During the summer, when the deicing equipment is not operational, these employees perform scheduled preventative maintenance. During the winter, when the equipment is fully operational, these employees perform service and maintenance as needed. The Employer requires that these employees be able to operate effectively all ground support equipment; install, test, troubleshoot, repair, and modify mechanical and hydraulic systems, electrical components and PLC’s wiring, harnesses, relays, etc; advise operators and mechanics of operational procedures and requirements; and apply knowledge of systems principles in determining equipment malfunctions and skill in restoring equipment to operation.

The seventh employee is a “ground support equipment mechanic.” This employee performs preventative maintenance on the Gate Gourmet equipment, such as the lift trucks used to load food and beverages onto aircraft. This employee also performs service and maintenance on GSE for Air Tran Airways. The Employer requires that this employee be able to work in the repair, maintenance, and troubleshooting of vehicles and equipment, under limited supervision. All seven employees are subject to Transportation Security Administration and Federal Aviation Administration security badge procedures, including finger print and background checks.

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.” 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.

On July 16, 2008, the Board requested that the NMB study the record in this case and determine the applicability of the Railway Labor Act to the Employer. The NMB subsequently issued an opinion stating its view that the Employer and its employees at PHL are subject to the Railway Labor Act. *Global Aviation Services, LLC*, 36

NMB 2 (2008).³ In specific reference to the work performed by these employees, the NMB found that the GSE work performed by the GSE employees and mechanic is work traditionally performed by employees of air carriers.

Having considered the facts of this case 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. Accordingly, we shall dismiss the petition.

ORDER

IT IS ORDERED that the petition in Case 4–RC–21449 is dismissed.

³ Additionally, the NMB noted that its decision was consistent with previous decisions asserting RLA jurisdiction over employees performing GSE services, including deicing. See *Jimsair Aviation Serv., Inc.*, 15 NMB 85, 87–88 (1998); *Miami Aircraft Support*, 21 NMB 78 (1993); *Ground Handling, Inc.*, 13 NMB 116, 117 (1986). Further, the NMB found no merit to the Engineers’ assertion that the city of Philadelphia’s ownership of the deicing equipment negatively affected the function prong of the NMB’s two-part test. We agree.