UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

In re EULEN AMERICA) Case No. 12-CA-26948
)

EMPLOYER'S VERIFIED PETITION TO REVOKE SUBPOENA NO. B-608837

TO THE REGIONAL DIRECTOR:

Pursuant to Section 102.31(b) of the Rules and Regulations of the National Labor Relations Board ("NLRB" or the "Board"), Series 8, as amended, Respondent, EULEN AMERICA ("Eulen", "the Company", or "Respondent"), through its undersigned counsel, Duane Morris, LLP, hereby petitions the Regional Director for an order revoking Subpoena No. B-608837.

The subpoena should be revoked because the National Labor Relations Act (the "Act") exempts employers subject to the Railway Labor Act (RLA) from its jurisdiction. The Board has no jurisdiction over Eulen because Eulen is subject to the Railway Labor Act ("RLA") and, hence, is not subject to the Board's jurisdiction pursuant to Section 2 of the Act, 29 U.S.C. § 152 ("The term 'employer' . . . shall not include . . . any person subject to the Railway Labor Act.").

For decades, the NLRB has referred challenges to its jurisdiction based on the RLA to the National Mediation Board ("NMB"), the RLA's administering agency. The Board has procedures to adjudicate disputes over the NMB's jurisdiction. See NLRB Case Handling Manual ¶ 11711.2. ("Arguable RLA Jurisdiction – The Board's practice is to refer cases of arguable or doubtful RLA jurisdiction to the NMB for an advisory opinion on the jurisdictional issue.") (citing Federal Express Corp., 317 NLRB 1155 (1995); see also Complete Skycap Serv., Inc., 31 NMB 1 (2003) (NLRB suspended investigation of ULP filed by skycaps pending determination of RLA

jurisdiction, ultimately concluding that skycaps were subject to RLA jurisdiction). Although alerted to the jurisdictional defect, the Regional Director has failed to invoke that procedure. The Regional Director has offered no rationale for its departure from its procedure.

Eulen's operations are in all material respects similar to those of other airline service providers and other employers of skycaps. In countless decisions, the NLRB and the National Mediation Board (NMB) have concluded that airline service providers are subject to the RLA, and hence not subject to the NLRA and the Board's jurisdiction. E.g., Complete Skycap Serv., Inc., 31 NMB 1 (2003) (skycaps employed to service 18 commercial carriers at Phoenix airport subject to RLA jurisdiction); AvEx Flight Support, 30 NMB 355 (2003) (employer of skycaps and wheelchair agents subject to RLA); Huntleigh Aviation, 29 NMB 121 (2001) (pre-boarding screeners, skycaps, and baggage claim and wheel chair assistants to Southwest Airlines passengers subject to RLA jurisdiction); Quality Aircraft Services, (QAS), 24 NMB 286 (1997) (skycaps employed by Quality Aircraft Services to assist American Airlines passengers at Miami International Airport subject to RLA jurisdiction); Command Security Corporation d/b/a Aviation Safeguards, 27 NMB 581 (2000) (baggage handlers, skycap and wheelchair attendants subject to RLA jurisdiction).

As set forth in the appended declaration of Mark J. Beutler, the NMB has already asserted jurisdiction over Eulen's predecessor corporation, Business Representation International, Inc., in a representation petition originally filed with the NLRB on March 3, 2008 (12-RC-9307).[1] BRI contested the Board's jurisdiction. The petition was withdrawn after the

[1] Business Representation International, Inc. ("BRI"), was Eulen's predecessor corporation. Prior to October 15, 2008, BRI employed all persons who provided aviation support services on contracts between carriers and American Sales & Management Organization Corporation ("ASMO"). Effective October 15, 2008, ASMO and BRI were combined under the name of ASMO. With few exceptions, all BRI employees were terminated from BRI and immediately rehired by ASMO. On March 16, 2009, ASMO converted to an LLC ("ASM, LLC"). Although Eulen is named in the ULP charge, the persons

parties submitted their position statements. The union promptly re-filed the petition with the NMB (NMB File No. CR-6934; NMB Case No. R-7161). While the matter was pending before the NMB, the union and the employer disputed the bargaining unit definition which required an investigation and adjudication by the NMB. After adjudicating the bargaining unit definition, the NMB ultimately concluded that the requisite interest had not been demonstrated to authorize a union election, and the NMB dismissed the petition. Business Representation International, Inc., 35 NMB No. 56 (2008). In sum, the NMB asserted jurisdiction over BRI, and the NLRB relinquished jurisdiction, in response to the employer's assertion that the NLRB lacked jurisdiction. Although BRI has undergone a corporate reorganization, nothing has changed that would require a departure from that procedure, or that would cause a different outcome.

Disputes over whether an employer, or a particular group of employees, are subject to the RLA (as opposed to the NLRA) are ordinarily resolved initially by the NMB. These disputes typically arise when one or more employees or a labor union files a petition for a union election or an unfair labor practice charge with the NLRB. The NLRB's practice is to request written representations of the parties, conduct a hearing, develop a record, and request an advisory opinion from the NMB as to whether the employer is subject to the RLA. Federal Exp. Corp., 317 NLRB 1155, 1155-56 (1995). The NLRB will defer to and rule in accordance with the NMB's determination. The NLRB will dismiss an election petition or unfair labor practice charge after being advised by the NMB that the employer is a carrier within the meaning of the Railway Labor Act and that the NMB has jurisdiction over the employer. E.g., United Parcel

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who are now providing services under the contract formerly serviced by Quality Aircraft Services are ASM employees. All General Aeronautical Permits held by ASMO were assigned to Eulen. All carrier contracts to which ASMO was a party were assigned to Eulen. In short, the work done by BRI employees under contracts between carriers and ASMO, is now being done by employees of ASM, LLC under contracts between carriers and ASM, LLC. The corporate reorganization had no substantial effect upon the delivery of services to customers or the jurisdictional issues presented herein.

Service, Inc., 318 NLRB 778, 780 (1995) ("[U]nless the National Mediation Board definitely declines to assume jurisdiction over such disputed airline employees, this Board will not assert jurisdiction. Accordingly, [the NLRB] shall dismiss the petition.") (quoting Pan American World Airways, 115 NLRB 493 (1956)).

Deferral to the NMB to determine whether an employer is subject to the RLA, versus the NLRA, is required under basic principles of administrative law. The NLRA, although generally applicable to private-sector employers, explicitly excludes from its coverage employers subject to the RLA. See 29 U.S.C. § 152(2). Thus, a dispute over which statute governs, or which agency – the NLRB or the NMB – has jurisdiction, is essentially a dispute over the jurisdictional reach of the RLA, and, at bottom, a dispute over what is or is not a "carrier by air [or rail]" within the meaning of the RLA. Under general administrative law principles, an agency's interpretation of its own enabling statute is entitled to deference. See Chevron v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-43 (1984) (directing federal courts to accord substantial weight to an agency's interpretation of its organic or enabling statute); see also International Longshoremen's Ass'n, AFL-CIO v. National Mediation Bd., 870 F.2d 733, 737 (D.C. Cir. 1989) (in determining what constitutes a rail carrier, "NMB is entitled to deference on whichever reasonable interpretation of the statute it clearly enunciates and applies").[2]

Accordingly, Eulen respectfully requests that the subpoena be quashed, or at least held in abeyance, pending the NMB's adjudication of the threshold jurisdictional issue in accordance customary Board practice, principles of administrative law and judicial economy, and the NLRB's procedures set forth in the NLRB Case Handling Manual ¶ 11711.2.

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[2] In addition, the subpoena incorrectly identifies the employer as Eulen America. The persons who provide skycapping passenger and baggage handling services under the contract between Eulen America and its airline customers are employed by American Sales & Management Organization, LLC. Eulen never had many employees, and now has none.

CONCLUSION

For the foregoing reasons, Eulen respectfully requests that Subpoena Duces Tecum Number B-608837 be revoked.

Respectfully submitted,

s/ Michael W. Casey, III
Michael W. Casey, III
Florida Bar No. 141430
mwcasey@duanemorris.com
Mark J. Beutler
Florida bar No. 23400
mjbeutler@duanemorris.com
DUANE MORRIS LLP
Suite 3400
200 South Biscayne Boulevard
Miami, Florida 33131
Tel: (305) 960-2200
Fax: (305) 960-2201
Counsel for Respondent

VERIFICATION

NANCY DURAN, being, duly sworn, avers as follows:

I am the Human Resources Director for Eulen America, the Respondent in these proceedings and the Petitioner herein. I have reviewed the foregoing Petition and know its contents, which are true to my own knowledge gained by virtue of my position as Human Resources Director of the aforesaid Petitioner, except as to matters therein stated upon information and belief, and as to those matters I believe them to be true.

NANCY DURAN

Sworn to before me on this
6th day of May, 2011

Notary Public

ARNALDO ELGUEZABAL, JR.
MY COMMISSION EXPIRES SEP 02, 2013
#00922532
Bonded through 1st State Insurance
NOTARY PUBLIC, STATE OF FLORIDA

DM2\2840132 1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of May, 2011, I electronically filed the foregoing document with the National Labor Relations Board pursuant to the NLRB E-Filing System and have also served a copy of this document to the individuals listed below in the manner specified therein:

Marinelly Maldonado
Agent for the Regional Director
National Labor Relations Board
Suite 1320
51 S.W. First Avenue
Miami, Florida 33130

By U.S. Mail and E-mail [Marinelly.Maldonado@nlrb.gov]

s/ Mark J. Beutler
Mark J. Beutler

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

In re EULEN AMERICA) Case No. 12-CA-26948
)

DECLARATION OF MARK J. BEUTLER IN SUPPORT OF EMPLOYER'S VERIFIED PETITION TO REVOKE SUBPOENA NO. B-608837

I, Mark J. Beutler, declare as follows:

1. I am a Florida-licensed attorney appearing for the employer, Eulen America, in the above-captioned NLRB proceeding.

2. I previously represented Business Representation International, Inc. ("BRI"), a subsidiary of Eulen America, in proceedings before the National Labor Relations Board (Case No. 12-RC-9307) and the National Mediation Board (Case No. R-7161). Both proceedings were initiated by the Transportation Workers Union ("TWU") wherein the TWU sought to represent various classifications of workers in a union election.

3. On March 3, 2008, the Transportation Workers Union ("TWU") filed with the National Labor Relations Board ("NLRB") a representation petition (exhibit "A"), seeking to represent BRI's skycaps stationed at Miami International Airport ("MIA").

4. BRI opposed the NLRB petition on the ground that BRI was a "carrier by air" subject to the RLA (and hence not within the NLRB's jurisdiction). The NLRB scheduled a hearing for March 20,2008, to, among other things, address BRI's objection to the NLRB's jurisdiction. (See exhibit "B"). On the evening preceding the hearing, TWU's counsel, Kathleen Phillips, offered to withdraw the NLRB petition and refile with the National Mediation Board ("NMB"), but only on condition that BRI would not similarly dispute the jurisdiction of the NMB. On behalf of BRI, I agreed to that condition. See exhibit "C" (confirming the agreement

between counsel.) The NLRB dismissed the petition by order dated March 20, 2008 (exhibit "D").

5. On March 28, 2008, TWU re-filed the election petition with the NMB, thereby acknowledging that BRI was subject to the RLA. (exhibit "E"). The NMB thereafter exercised jurisdiction over BRI and initiated an investigation to determine whether the union demonstrated sufficient union support among the proposed bargaining unit to permit a union election under the Railway Labor Act.

6. TWU amended the application on April 10, 2008, to expand the proposed bargaining unit to include all "passenger service" employees at all airports served by BRI (exhibit "F"). The unit included the following crafts: skycaps, wheelchair agents, traffic coordinators, and inspections agents. The proposed bargaining unit comprised approximately 1450 BRI employees, or approximately two thirds of BRI's workforce.

7. The primary dispute between the union and the employer was which work stations (i.e. airports) should be included in the bargaining unit.

8. After completing its investigation, and after issuing its ruling on the bargaining unit composition, the NMB determined that the union failed to demonstrate sufficient support to warrant a union election. Business Representation International, Inc., 35 NMB no. 56 (July 8, 2008) (exhibit "G").

I declare under penalty of perjury that the forgoing is true and correct.

Signed this 6th day of May, 2011, at Miami, Florida

Mark J. Beutler

FORM NLRB-502 (9-07)

FORM EXEMPT UNDER 44 U.S.C.

UN...D STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
PETITION

DO NOT WRITE IN THIS SPACE

Case No.	Date Filed
12-RC-9307	/ / 3-3-08

INSTRUCTIONS: Submit an original and 4 copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located. If more space is required for any one item, attach additional sheets, numbering item accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. PURPOSE OF THIS PETITION (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)

- [x] RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- [ ] RM-REPRESENTATION (EMPLOYER PETITION) - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- [ ] RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- [ ] UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES) - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer [ ] a labor organization desire that such authority be rescinded.
- [ ] UC-UNIT CLARIFICATION- A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees: (Check one) [ ] In unit not previously certified. [ ] In unit previously certified in Case No. _____
- [ ] AC-AMENDMENT OF CERTIFICATION- Petitioner seeks amendment of certification issued in Case No. _____ Attach statement describing the specific amendment sought.

2. Name of Employer: Business Representation Int'l, Inc., Subsidiary
Employer Representative to contact: Joseph Lorenzo
Telephone Number: (305) 870-4436, (305) 269-2727

3. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code): 815 NW 57 Ave Suite 305 Miami FL 33126
Telecopier Number (Fax): (305-269-2759

4a. Type of Establishment (Factory, mine, wholesaler, etc.): Contractor for Airlines
4b. Identify principal product or service: SKY CAPS, providing service to American, Delta and United

5. Unit involved (In UC petition, describe present bargaining unit and attach description of proposed clarification.)

Included: All Sky Caps who check- in and help Delta, American and United Airlines passengers with luggage

Excluded: All Supervisors and non bargaining unit employees assigned to this type of work

6a. Number of Employees in Unit:
Present: 125
Proposed (By UC/AC): 100

6b. Is this petition supported by 30% or more of the employees in the unit?* [x] Yes [ ] No
*Not applicable in RM, UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a. [ ] Request for recognition as Bargaining Representative was made on (Date) / / and Employer declined recognition on or about (Date) / / (If no reply received, so state).

7b. [x] Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Name of Recognized or Certified Bargaining Agent (If none, so state.): None
Affiliation:
Address, Telephone No. and Telecopier No. (Fax) ( ) - ( ) -: N/A
Date of Recognition or Certification: / /

9. Expiration Date of Current Contract, If any (Month, Day, Year): N/A / /

10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day and Year) / /

11a. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes [ ] No [x]

11b. If so, approximately how many employees are participating?

11c. The Employer has been picketed by or on behalf of (Insert Name) NONE, a labor organization, of (Insert Address) _____ Since (Month, Day, Year) / /

12. Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. (If none, so state)

Name	Affiliation	Address	Date of Claim
NONE			/ /
			Telecopier No. (Fax) ( ) -

13. Full name of party filing petition (If labor organization, give full name, including local name and number): Transport Workers Union (TWU)

14a. Address (street and number, city, state, and ZIP code): 5705 NW 38th Street Miami Springs, Florida 33156
14b. Telephone No. (305) 871-6090 EXT
14c. Telecopier No. (Fax) (305) 871-5032

15. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization): American federation of Labor, Congress of Industrial Organization (AFL-CIO)

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print): Georges Perard Exceus
Signature:
Title (if any): International Lead Organizer
Address (Street and number, city, state, and ZIP code): 5705 NW 38 Th Street Miami springs, Florida 33156
Telephone No. 954-494-9366
Telecopier No. 305-871-5032

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

...tion on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist ...ns Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in ...d. Reg. 74942-43 (Dec. 13, 2005). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; ...the information will prevent the NLRB from deciding to investigate the case.

EXHIBIT
A

TOTAL P.02

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

BUSINESS REPRESENTATION INT'L INC.

Employer

and Case 12-RC-9307

TRANSPORT WORKERS UNION (TWU)
Petitioner

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing scheduled to be held in the above-entitled matter on March 17, 2008, at 10:00 a.m., be rescheduled to begin on March 20, 2008, at 9:00 a.m., at the National Labor Relations Board Hearing Room, 51 SW 1st Avenue, Room 1320, Miami, Florida.

DATED at Tampa, Florida, this 11th day of March 2008.

Rochelle Kentov

Rochelle Kentov, Regional Director
National Labor Relations Board, Region 12
Suite 530
201 E. Kennedy Boulevard
Tampa, Florida 33602-5824

EXHIBIT
B

Catherine Jones

From: Mark Beutler
Sent: Wednesday, March 19, 2008 7:09 PM
To: kphillips@phillipsrichard.com
Cc: Michael W. Casey III; Pia Mendoza
Subject: TWU/BRI

Dear Kathleen:

As we discussed, if the union withdraws its petition and later re-files a petition at the NMB, BRI will stipulate to the NMB's jurisdiction. Further, ASMO employs no skycaps (or anyone else except for six supervisors), and I foresee no possibility of a "joint employer" issue arising in connection with the petition. Otherwise, BRI reserves the right to attempt to expand the petitioned-for unit at any certification petition filed with the NMB.

Regards, MJB

Mark J. Beutler
(305) 579-3214 (direct) | (305) 579-3201 (fax)
mbeutler@ebglaw.com

Epstein Becker & Green, P.C.
Wachovia Financial Center
200 South Biscayne Boulevard, Suite 4300
Miami, Florida 33131
Main: (305) 579-3200 | www.ebglaw.com

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

Business Representation International, Inc.

Employer

and 12-RC-9307

Transport Workers Union (TWU)

Petitioner

ORDER WITHDRAWING NOTICE OF HEARING AND APPROVING WITHDRAWAL OF PETITION

On March 7, 2008, the undersigned Regional Director issued a Notice of Hearing in the captioned case providing for a Hearing to be held on March 17, 2008, and to continue on consecutive days thereafter. In an Order dated March 11, 2008, the undersigned rescheduled the Hearing to begin March 20, 2008 and to continue on consecutive days thereafter. Thereafter, subsequent to the issuance of the Notice of Hearing, but prior to the opening of the record, the Petitioner submitted a request to withdraw its petition.

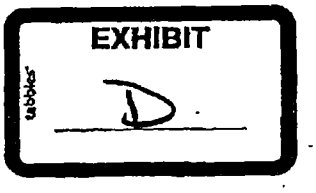
The undersigned has considered the matter, there is no evidence of inconsistent action, and the Employer has no objections to the Petitioner's request to withdraw the petition,

IT IS ORDERED that the Hearing scheduled for March 20, 2008, is cancelled and the Notice of Hearing hereby, and is withdrawn; and the Petitioner's request to withdraw its petition is granted without prejudice.

DATED at Tampa, Florida this 20th day of March, 2008.

Rochelle Kentov

Rochelle Kentov, Regional Director
National Labor Relations Board-Region 12
201 E Kennedy Boulevard, Suite 530
Tampa, Florida 33602-5824



NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

(202) 692-5000

April 1, 2008
NMB File No. CR-6934

VIA FACSIMILE & U.S. MAIL

Joseph Lorenzo
Business Representation Int'l, Inc.
815 N.W. 57 Avenue, Suite 305
Miami, FL 33126

Frank L. McCann, Int'l Director of Organizing
James C. Little, Int'l President
David Rosen, General Counsel
Transport Workers Union of America
1700 Broadway
New York, NY 10019

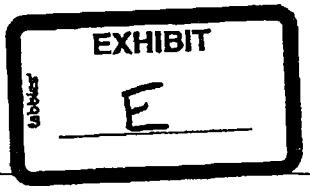
Participants:

The National Mediation Board (Board or NMB) received an application filed on behalf of the Transport Workers Union of America (Organization), for the services of the Board under the provisions of Section 2, Ninth, of the Railway Labor Act. A copy of the application and any cover letter or position statement is enclosed. The applicant alleges a representation dispute involving the following employees of Business Representation International, Inc. (Carrier):

"SKYCAPS"

This application has been assigned **NMB File No. CR-6934** in order to conduct a pre-docketing investigation and will be referred to by that number. Investigator Cristina A. Bonaca is assigned to investigate this case. All further contacts in this matter should be made only with the General Counsel or the Investigator. These individuals are the only Board employees authorized to make any official statements on behalf of the NMB in this case.

Within five (5) working days of the date of this letter, the representatives of the participants, with the exception of the applicant, must file the enclosed **Notice of Appearance** for **up to three** representatives. The representative who will be the primary contact for the Board must be included on the Notice of Appearance. This will facilitate communications with Board personnel and ensure receipt of all pertinent documents and other information.



Form NMB - 1 OMB No. 3140-0001 (Expiration Date 04/30/2009)

MAR28'08 AM10:05 NMB

Application for Investigation of Representation Dispute

Date: March 27, 2008

TO THE NATIONAL MEDIATION BOARD, Washington, D. C. 20572: A dispute has arisen among the employees of:

Name of Carrier:	Business Representation Int'l Inc.	Address:	815 N.W. 57 Ave. - Suite 305
Contact:	Joseph Lorenzo	City, State, Zip Code:	Miami FL 33126
Telephone Number:	305-870-4436 305-269-2737	Fax Number:	305-269-2759

as to who is the representative of these employees designated and authorized in accordance with the requirements of the Railway Labor Act. The undersigned, one of the parties to the dispute, hereby requests the National Mediation Board to investigate this dispute, and to certify the name or names of the individuals or organizations authorized to represent the employees involved in accordance with Section 2, Ninth, of the Act.

PARTIES TO DISPUTE

Petitioning organization or representative:	Transport Workers Union of America
Organization holding existing agreement, if any:	None Date: 3-27-08
Other organization or representatives involved in dispute:	None

CRAFT OR CLASS of Employees Involved – (If more than one craft or class, list separately)

	Craft or Class	Number of Employees
1.	Skycaps	130
2.		
3.		
4.		
5.		
6.		

EVIDENCE OF REPRESENTATION – this application is supported by (check applicable box):

	At least a majority, if the employees are represented and there is a valid collective bargaining agreement.
✓	At least 35%, if the employees are unrepresented.

Name and Signature:	Frank J. McCann Frank J. McCann		
Title:	International Director of Organizing - TWU of America		
Address:	1700 Broadway	Telephone:	212-259-4913
City, State, Zip Code:	New York, NY 10019	Fax:	212-265-4214

MAR28'08 AM10:05 NMB

Instructions: Continue to page 2.
Form NMB - 1 OMB No. 3140-0001 (Expiration Date 04/30/2009)

Application for Investigation of Representation Dispute

APPLICANT NOTICE OF APPEARANCE

The Transport Workers Union of America (Applicant Organization) hereby enters the following names, addresses, phone numbers, fax numbers, and email addresses for the individual(s) designated as the representative(s) of Transport Workers Union of America (Applicant Organization) in connection with the Application for Investigation of Representation Dispute:

Name & Title:	Frank J. McCann Int'l Dir. of Organizing	Telephone:	212-259-4900 x	13
Address:	1700 Broadway	Fax:	212-265-4214	
City, State, Zip Code	New York, NY 10019	Email:	fmccann@twu.org	
		Alternate Telephone:	917-488-8814	

Name & Title:	James C. Little Int'l President	Telephone:	212-259-4900 x	20
Address:	1700 Broadway	Fax:	212-265-4214	
City, State, Zip Code	New York, N.Y. 10019	Email:	jlittle@twu.org	
		Alternate Telephone:	212-259-4920	

Name & Title:	David Rosen General Counsel	Telephone:	212-259-4900
Address:	1700 Broadway	Fax:	212-265-4214
City, State, Zip Code	New York, NY 10019	Email:	drosen@twu.org
		Alternate Telephone:	212-259-4922

Filing Instructions: File this application in duplicate.

Additional Sheets: Use and attach additional sheets as needed.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is 3140-0001. The time required to complete this information collection is estimated to average 1.5 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collected.

NATIONAL MEDIATION BOARD

WASHINGTON, D.C. 20572

(202) 692-5000

April 11, 2008
NMB Case No. R-7161 (CR-6934)

VIA FACSIMILE & U.S. MAIL

Michael W. Casey, III
Counsel for Business Representation Int'l, Inc.
Epstein Becker & Green, P.C.
200 South Biscayne Boulevard
Miami, FL 33131-2310

Frank J. McCann, Int'l Director of Organizing
David Rosen, General Counsel
Transport Workers Union of America
1700 Broadway
New York, NY 10019

Richard S. Edelman
Counsel for TWU
O'Donnell, Schwartz & Anderson, P.C.
1300 L Street, N.W., Suite 1200
Washington, DC 20005

Participants:

The National Mediation Board (Board or NMB) received a letter dated April 10, 2008, from the Transport Workers Union of America (TWU or Organization) amending its application in CR-6934 (Skycaps). A copy of the application as well as the TWU's letter referred to above is enclosed. The applicant alleges a representation dispute involving the following employees of Business Representation International, Inc. (Carrier):

Passenger Service Employees

This application was assigned NMB File No. CR-6934 and has now been converted to **NMB Case No. R-7161** and will be referred to by that number. Investigator Cristina A. Bonaca is assigned to investigate this case. All further contacts in this matter should be made only with the General Counsel or the Investigator. These individuals are the only Board employees authorized to make any official statements on behalf of the NMB in this case. The Board and Organization shall use the Carrier's submitted Notice of Appearance in CR-6934 for this matter.

The following information should be provided by **10 a.m., ET, April 25, 2008**, or as provided below:

docketed
cc/mwc, MJB, PRM
mcf 4/14/08

1. Our records indicate that the applied-for employees are unrepresented. Any participant that has other information regarding the employees' representation status must promptly notify the Board.

2. The Carrier must deliver to the Board's Office of Legal Affairs **three copies** of an **alphabetized list of potential eligible voters** and a copy of the alphabetized list on a diskette or CD as a **Microsoft-Excel file.** The format of the list of potential eligible voters must be prepared in five columns or fields **exactly** as the enclosed sample format displays. There must not be any other information or data in the file or on the diskette or CD except as displayed in the five columns or fields on the sample format. The column or field headers must be contained on one row only. The Carrier must not include any **hidden** columns or fields in the **Excel file.** Note that employee middle initials appear with the first name. Do not make a separate column or field for the middle initial. **If you have any questions about the correct format for this list of potential eligible voters, contact the NMB Election Administrator at 202-692-5040.**

3. The Carrier **must inform the Investigator of the date of the last day of its last payroll period prior to April 10, 2008** and the number of employees covered by this application. The list of potential eligible voters must contain **all individuals with an employee-employer relationship as of the last day of the last payroll period prior to April 10, 2008.**[1] The list must be **alphabetized** on a system-wide basis. The Carrier must provide a copy of the list to the Organization.

4. The Carrier must provide **one set of signature samples for the eligible voters solely to the Investigator.** The alphabetized signature samples must be in the same order as the names on the list of eligible voters. Until an applicable list and the signature samples are received by the Investigator, the Investigator will **continue to accept additional authorization cards.**

5. Participants may provide an **initial position statement** regarding any issue in this case to the Investigator.

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[1] Section 9.2 of the NMB's Representation Manual defines the categories of individuals with an employee-employer relationship under the Railway Labor Act. That section of the Manual is available at http://www.nmb.gov/representation/representation-manual.pdf.

Upon receipt of this letter, the Carrier must **post the enclosed "Notice to Employees"** at all stations.

Copies of all submissions to the Board, with the exception of the signature samples and privileged documents, must be **served simultaneously** on all other participants. A **certificate of service** must be provided to the Board to verify the simultaneous service. The Board will not consider submissions which fail to comply with these requirements.

All correspondence sent via facsimile to the Board regarding any representation matter should be sent to (202) 692-5085.

Sincerely,

Mary L. Johnson

Mary L. Johnson
General Counsel

- Enclosures -

MLJ/oma

NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the REPRESENTATION OF EMPLOYEES of BUSINESS REPRESENTATION INTERNATIONAL, INC. Passenger Service Employees	35 NMB No. 56 CASE NO. R-7161 DISMISSAL-INSUFFICIENT SHOWING OF INTEREST July 8, 2008

The services of the National Mediation Board (Board) were invoked by the Transport Workers Union of America (TWU) on March 28, 2008, to investigate and determine who may represent for the purposes of the Railway Labor Act (RLA), as provided by Section 2, Ninth, thereof, personnel described as "Passenger Service Employees," employees of Business Representation International, Inc. (Carrier).

At the time this application was received, these employees were unrepresented.

The Board assigned Investigator Cristina A. Bonaca to investigate.

FINDINGS

The investigation established that the Organization had failed to support its application with the required number of authorizations from employees in the craft or class as set forth in Part 1206.2 (b) of the Board's Rules.

Therefore, the Board finds no basis upon which to proceed in this matter and the application is hereby dismissed pursuant to Part 1206.4 (b)(2) of the Board's Rules.

By direction of the NATIONAL MEDIATION BOARD.

Mary L. Johnson

Mary L. Johnson
General Counsel