

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

QUANTEM AVIATION SERVICES, INC.<sup>1</sup>

Employer

and

Case 12-RC-9376

INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS, AFL-CIO

Petitioner

and

TEAMSTERS LOCAL UNION NO. 79,  
AFFILIATED WITH THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS

Intervenor

**DECISION AND DIRECTION OF ELECTION**

Quantem Aviation Services, Inc. (the Employer) provides cargo loading and unloading services to United Parcel Service, Inc. (UPS, Inc.) at the St. Petersburg/Clearwater Airport in Clearwater, Florida. International Association of Machinists and Aerospace Workers, AFL-CIO (the Petitioner)<sup>2</sup> filed a petition with the National Labor Relations Board under Section 9(c) of the Act seeking to represent a unit of full-time and regular part-time ramp agents and lead agents employed at the Employer's St. Petersburg/Clearwater Airport facility. The Employer employs approximately 64 employees in the petitioned-for unit.

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<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> The parties stipulated that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

Hearing officers of the Board held a hearing on July 13, 2009 and August 25, 2009. On August 25, 2009, Teamsters Local Union No. 769, affiliated with the International Brotherhood of Teamsters (the Intervenor) intervened in the proceeding for the first time, and the hearing officer permitted it to participate as an intervenor during the hearing.<sup>3</sup> The Employer and the Petitioner each filed two post-hearing briefs with me.<sup>4</sup> The Intervenor did not file a brief.

The only issue in this case concerns jurisdiction. The Employer contends that it falls within the jurisdiction of the Railway Labor Act (RLA), and that it is therefore not an employer within the meaning of Section 2(2) of the National Labor Relations Act (the NLRA or the Act) and its employees are not employees within the meaning of Section 2(3) of the NLRA, because 1) the nature of the work performed by its employees is that traditionally performed by employees in the airline industry; and 2) the Employer is directly or indirectly owned or controlled by, or under common control with, a carrier or carriers. The Petitioner, on the other hand, argues that the Employer's contract is with UPS, Inc., which has been found repeatedly to be an employer covered by the Act, and that the Board, not the RLA, has jurisdiction over the Employer. The Intervenor agrees with the position of the Petitioner.

At the hearing, on July 13, 2009, the parties entered into a written stipulation as follows:

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<sup>3</sup> The parties stipulated that the Intervenor is a labor organization within the meaning of Section 2(5) of the Act.

<sup>4</sup> The Employer and the Petitioner each filed briefs following the initial close of the hearing on July 13, 2009. Pursuant to an Order Reopening Hearing and Notice of Further Hearing issued on August 7, 2009, the record was reopened on August 25, 2009. Thereafter the Employer and the Petitioner each submitted second briefs.

The Employer, Quantem Aviation Services, Inc., is a New Hampshire corporation that [is] licensed to do business in the State of Florida; it maintains an office and place of business at the St. Petersburg/Clearwater Airport, located in Clearwater, Florida, where it is engaged in the business of providing cargo loading and unloading services to the United Parcel Service Co. (UPS Co.), a package delivery service provider that operates throughout the United States of America, an enterprise directly engaged in interstate commerce. During the past 12 months, a representative period, the Employer, in the course of conducting its business operations, as described above, performed services valued in excess of \$50,000 for UPS Co., an enterprise located within the State of Florida. During the same period, the Employer, in conducting the above-described business operations, purchased and received at its Clearwater, Florida facility, goods, supplies and materials valued in excess of \$50,000 directly from points located outside the State of Florida.

At the hearing on August 25, 2009, the Petitioner made a motion to withdraw from the portion of the stipulation stating that the Employer performed services for UPS Co., arguing that the Employer's contract is with UPS, Inc. rather than UPS Co. The hearing officer referred the Petitioner's motion to the undersigned for a ruling.

On October 9, 2009, the undersigned issued an Order Transferring Representation Case to the National Labor Relations Board because the case presented an issue as to whether the Employer is subject to the RLA. On October 23, 2009, the Board submitted the record in this case, including the post-hearing briefs filed by the Employer and the Petitioner, to the NMB and requested an opinion as to whether the Employer's operations fall within the jurisdiction of the RLA, rather than the NLRA.

By letter dated July 8, 2010, in NMB Case No. CJ-6966, the NMB advised the National Labor Relations Board that the Employer's operations and its

employees at the St. Petersburg/Clearwater Airport are not subject to the RLA. Quantem Aviation Services, 37 NMB 209 (2010). The NMB found that the Employer's contract is with UPS, Inc., rather than UPS Co. Quantem Aviation Services, 37 NMB at 212, fn. 2. That finding is based on the Ground Handling Agreement executed by the Employer and UPS, Inc. in November 2008, which was admitted into evidence at the hearing conducted on August 25, 2009.<sup>5</sup> Accordingly, I grant the Petitioner's motion to withdraw from the portion of the above stipulation to the extent that it names UPS Co., rather than UPS, Inc., as the entity with which the Employer has a contract.

The NMB determined that the Employer failed to satisfy the two-part test used by the NMB in order to determine if an employer is subject to the RLA, namely: 1) whether the nature of the work is that traditionally performed by employees of rail or air carriers; and 2) whether the employer is directly or indirectly owned or controlled by, or under common control with, a carrier or carriers. Quantem Aviation Services, 37 NMB at 222, citing Bradley Pacific Aviation, Inc., 34 NMB 119 (2007); Dobbs Int'l Servs. d/b/a Gate Gourmet, 34 NMB 97 (2007). In order for the NMB to assert jurisdiction, an employer must satisfy both parts of the test. Quantem Aviation Services, 37 NMB at 222, citing Bradley Pacific Aviation, supra; Dobbs Int'l Servs., supra; Aircraft Servs. Int'l Group, Inc., 33 NMB 200 (2006).

The NMB found that the Employer's employees perform work that is traditionally performed by airline employees. Quantem Aviation Services, 37 NMB at 222, citing Swissport USA, Inc., 35 NMB 190 (2008); John Menzies PLC,

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<sup>5</sup> See Board Exhibit 3.

d/b/a Ogden Ground Servs., Inc., 30 NMB 405 (2003). However, the NMB further determined that the Employer does not fly aircraft and is not directly or indirectly owned by a carrier, and that therefore it must consider the degree of direct or indirect control exercised over the Employer's operations by carriers. *Id.* More specifically, the NMB found that although UPS, Inc. exerts a significant degree of control over the Employer's operations, including the work schedule of the employees and the approval of overtime, UPS, Inc. is not a carrier subject to the RLA, and the National Labor Relations Board has specifically affirmed its jurisdiction over UPS, Inc. Quantem Aviation Services, 37 NMB at 224, citing United Parcel Service, Inc., 318 NLRB 778 (1995), *affd.* United Parcel Service, Inc. v. NLRB, 92 F.3d 1221 (D.C. Cir. 1996).

The NMB further determined that that there is only minimal contact between the Employer's employees and UPS Co. personnel, and there are no UPS Co. supervisors at the worksite. Quantem Aviation Services, 37 NMB at 224. The NMB concluded that it will not assert jurisdiction over the Employer based on the Employer's assertion that it is indirectly controlled by UPS Co., a RLA carrier, either through or commonly with UPS, Inc., because UPS, Inc., the entity exerting direct control over the Employer, is not itself a RLA carrier, and instead UPS, Inc. has traditionally been covered by the NLRA. *Id.* The NMB noted that the work performed by the Employer is covered by Article 40 of the collective-bargaining agreement between UPS, Inc. and the International Brotherhood of Teamsters, a collective-bargaining relationship subject to the NLRA. The NMB reasoned that it would be anomalous to find that the Employer

is subject to the RLA, when the work performed by the Employer would be subject to the NLRA if it was instead performed by UPS, Inc.'s own employees. Quantem Aviation Services, 37 NMB at 224. Accordingly, the NMB refused to assert jurisdiction over the Employer.

On January 25, 2011, the Board remanded the case to the undersigned for further appropriate action consistent with the NMB's ruling.

On the basis of the record, and in view of the substantial deference given to the NMB's opinion, I concur with the findings of the NMB. Accordingly, I find that the Employer is engaged in commerce within the meaning of the NLRA, and that it will effectuate the policies of the NLRA to assert jurisdiction.

### **CONCLUSIONS AND FINDINGS**

- A. The hearing officers' rulings made at the hearing are free from prejudicial error and are affirmed.
- B. 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 case.
- C. The Petitioner and the Intervenor each claim to represent certain employees of the Employer.
- D. 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.
- E. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time ramp agents and lead agents employed at the Employer's St. Petersburg/Clearwater Airport facility,

excluding all office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

### **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 they wish to be represented for purposes of collective bargaining by the Petitioner, International Association of Machinists and Aerospace Workers, AFL-CIO, or by the Intervenor, Teamsters Local Union No. 79, affiliated with the International Brotherhood of Teamsters, or by neither labor organization. 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.

### **Voting Eligibility**

Eligible to vote 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. Those in military service of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or have been discharged for cause since the designated payroll period; (2) employees engaged in a strike

who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date; and (3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

### **Employer to Submit List of Eligible Voters**

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of the 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); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 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 eligible voters. North Macon Health Care Facilities, 315 NLRB 359 (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. Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 201 East Kennedy Blvd., Suite 530, Tampa, FL 33602, on or before **September 20, 2011**. 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. Since the list will be

made available to all parties to the election, please furnish three copies of the list.<sup>6</sup>

### **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 full working days prior to the date 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 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 estops employers from filing objections based on nonposting of the Election Notice.

### **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 14<sup>th</sup> Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST **on September 27, 2011**. The request

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<sup>6</sup> The list may be submitted by facsimile transmission to (813) 228-2874, or electronically, as well as by hard copy. To file the eligibility list electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. Only one copy of the list should be submitted if it is sent electronically or by facsimile.

may be filed electronically through the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>7</sup> but may not be filed by facsimile.

DATED at Tampa, Florida this 13<sup>th</sup> day of September, 2011.

  
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Margaret J. Diaz, Acting Regional Director  
National Labor Relations Board, Region 12  
201 E. Kennedy Boulevard, Suite 530  
Tampa, Florida 33602

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<sup>7</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. For the Board's Rules and Regulations with respect to filing requirements generally, go to [www.nlr.gov](http://www.nlr.gov), select **Publications**, and then **Rules and Regulations**.