

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 22

INTERNATIONAL
BROTHERHOOD OF
TEAMSTERS LOCAL 553,
Petitioner

Case No. 22-RC-077044

v.

ALLIED AVIATION SERVICES
OF NEW JERSEY,
Employer.

**EMPLOYER'S MOTION TO STRIKE LOCAL 553, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS' ANSWERING BRIEF IN OPPOSITION TO THE
EMPLOYER'S EXCEPTIONS**

INTRODUCTION

On February 12, 2013, the Employer, Allied Aviation filed an Exception Brief in the Recommended Decision of ALJ Mindy Landow issued on January 15, 2013. On February 19, 2013, the Petitioner filed an Answering Brief in Opposition to the Employer's Exceptions. In filing this Answering Brief, the Petitioner has repeatedly sought to argue their position by misstating, distorting and misrepresenting the Employer's position as well as the testimony and documentary evidence set forth in the record. The Petitioner also attempts to inject confusion and disorder into the process by objecting to a particular Exception under the title of another. Unlike the Petitioner that has changed their position with regards to the Fuel Training Supervisors to suit their needs, it is and has been the Employer's consistent position throughout all of these proceedings that while it disagrees with the Regional Director's determination in May 2012 that the petitioned-for individuals are not supervisors under Section 2(11) of the Act, the Board's ruling in the Representation Hearing and this Challenged Ballot Hearing must be uniform. It must be uniform as all the Supervisors within the petitioned-for unit hold similar responsibilities, duties and authorities and thus must be classified the same. For these reasons, Petitioner's objections contained in the Answering Brief should be stricken.

PETITIONER'S OBJECTION TO EXCEPTION 1

The Petitioner incorrectly files objection stating the Employer's Exception is that the ALJ focused more on testimony from the April 2012 Representation Hearing. To be clear, in Exception 1, the Employer's position is "The ALJ Erred in Ruling on the **Reason** for the Challenged Ballot Hearing."

However, even in misstating the Employer's Exception, the Petitioner wrongly argues the Employer's position. On page 15, lines 3 and 4 of the ALJ Recommended Decision she writes "he (Mr. Albanese) 'is going by my (his) supervisor's judgment that they are qualified to fuel.'" This came directly from the April Representation Hearing. However, the ALJ Recommended Decision provides no significance to Mr. Albanese's testimony from the October Challenged Ballot Hearing that he meets with trainees at the conclusion of their training, before he determines whether to "sign off," thus (i) releasing the trainee to fuel, (ii) returning the trainee for additional training, (iii) consult with the Operation Manager to transfer the employee to

another department within the organization, if a vacancy exist at that time for which the employee is qualified or (iv) terminate the employee. This testimony was not only unrefuted, but supported fully by records and the sworn testimony of two (2) Fuel Training Supervisors in the October Challenged Ballot Hearing.¹ Specifically, Fuel Training Supervisor, Mr. Skvasik stated that it is Mr. Albanese who determines whether the person (trainee) needs more time training, (CBPT 67) and Fuel Training Supervisor, Mr. Harris testified, “Mr. Albanese makes the decision whether or not to continue training him (trainee) a little longer or he’ll (trainee) go back to Terminal C and continue what he was doing before he came to the ramp.” (CBPT. 89)

The Employer’s position clearly is that the ALJ fails to acknowledge that Mr. Albanese’s actions as he testified to and which have been corroborated by testimony of members of the petitioned-for group, Fuel, Fuel Training, Tank Farm and Maintenance Supervisors are no different than the actions of then Duty Manager, Quintero in his meetings with affected employees, after he (Duty Manager) receives an Irregularity Report from the Petitioned for Supervisors (P. 671.) From these discussions held by the Duty Manager, the Regional Director and this Board have previously ruled the petitioned-for Supervisors possessed insufficient indicia for 2(11) supervisory status. It is the Employer’s consistent position that while it disagrees with the Regional Director’s determination regarding all Supervisors of the petitioned for unit, all the Supervisors within the petitioned-for unit hold similar responsibilities, duties and authorities and must be classified consistently.

PETITIONER’S OBJECTION TO EXCEPTION 2

The Petitioner falsely states the Employer’s position is that the Fuel Training Supervisors are not supervisors. This is not only false but manipulative because the Employer’s position has always been clear, unlike the Petitioner’s position which has changed. The Employer’s position has clearly and repeatedly been stated and presented through testimony as well as documentary evidence that while it disagrees with the Regional Director’s determination that all members of the petitioned-for unit are not supervisors within Section 2(11) of the Act, all the Supervisors within the petitioned-for unit hold similar responsibilities, duties and authorities and *must be classified consistently*.

¹ Mr. Fallon, the remaining Fuel Training Supervisor was present at the Challenged Ballot Hearing but did not testify because it was determined by both parties that his testimony would be repetitive of his fellow Supervisors.

The Employer's position has been clearly stated and established in the March/April Representation Hearing; in its correspondence submitted to the Regional Director (Region 22) on June 15, 2012; its position on the record in the Challenged Ballot Hearing held in October 2012 (CBPT. 7) and then again in its subsequent post hearing brief filed with the ALJ on October 30, 2012.

PETITIONER'S OBJECTION TO EXCEPTION 3

The Petitioner wrongly argues that the Employer's position that the ALJ erred by not providing context to testimony of Training Manager, Frank Albanese is incorrect and irrelevant. In her Recommended Decision, the ALJ clearly established her reliance on a single line of testimony of Mr. Albanese during his cross-examination by Petitioner's counsel. However, only moments earlier Mr. Albanese had established clearly that the Fuel Training Supervisors report, "They just can't do it. They can't do the paperwork. They can't do the math." (P. 638, 639) The ALJ makes no acknowledgment in her Recommended Decision as to the information being reported by the Fuel Training Supervisors to Mr. Albanese as he (Mr. Albanese) enters into his private discussions with trainees.

By taking Mr. Albanese's testimony out of context, the ALJ relied upon insufficient facts. "They can't do the paperwork" and "They can't do the math" are direct observations which are similar to those made by the other petitioned-for Supervisors when they prepare and submit Irregularity reports. The ALJ erred by not relying upon the testimony **in its full context**, especially as it was corroborated in the testimony of the two (2) petitioned-for Fuel Training Supervisors.

The Employer's position is clear that these actions of the Fuel Training Supervisors in informing Mr. Albanese are no different than the actions of the other petitioned-for supervisors when they file irregularity reports with the Duty Manager. The Regional Director and this Board deemed these actions to be *reportorial* and thus, insufficient indicia for 2(11) supervisory status. While the Employer maintains disagreement with the Regional Director's Decision, it argues that as roles, responsibilities, processes and authorities are the same, all petitioned-for Supervisor should be classified the same. The Employer finds the NLRB's inconsistent rulings difficult and

confusing to understand. How can the NLRB take the *same set of facts and procedure, weigh them the same and rule differently* with regards to supervisory status.

PETITIONER'S OBJECTION TO EXCEPTION 4

The Petitioner wrongly argues that the Fuel Trainers are 2(11) Supervisors because Mr. Albanese stated that he is never out in the field, but that his supervisors are and they (the Fuel Trainers) tell him (Mr. Albanese) what they observe. **This is precisely the exact testimony that Duty Manager, Jorge Quintero provided in the April 2012 Representation Hearing with regard to the Fueling Supervisor** completing irregularity reports after observing Fuelers performing below standards. In May 2012, the Regional Director and subsequently in June 2012, *this* Board determined that such actions were determinative in ruling that the petitioned for unit *did not* hold the necessary indicia of supervisory status for these supervisors to qualify as supervisors under the Act. The Employer finds the NLRB's inconsistent rulings difficult and confusing to understand. How can the NLRB take the *same set of facts and procedure, weigh them the same and rule differently* with regards to supervisory status.

PETITIONER'S OBJECTION TO EXCEPTION 5

The Petitioner argues that Mr. Albanese, the Training Manager makes the "ultimate decision." **The Employer also holds this position.** However, the Petitioner attempts to mislead the Board. The records and testimony of the October Challenged Ballot Hearing are *unrefuted and clear* that Mr. Albanese makes decisions only **after** he [Mr. Albanese] meets personally with the trainee to ensure completion of training. This was testified to by not only Mr. Albanese but by Fuel Training Supervisors Skvasik and Harris. This process is identical to the process performed by the Duty Manager as Mr. Quintero, Duty Manager, as well as Mr. Goddair, Mr. Mottershead and Mr. Fenton, all Petitioned for Supervisors, testified to in the April Representation Hearing (P.108, 236, 461, 747). As Duty Manager, Mr. Quintero testified that he receives a report from and communicates with the Fuel, Tank Farm, and Maintenance Supervisor; he (Mr. Quintero) meets with an affected employee, reviews the relevant documentation and then moves forward with retraining or disciplinary action which can include coaching & counseling, write-ups, suspension or termination. (P. 675, 722)

In May 2012, the Regional Director and later in June 2012, this Board determined that such actions were determinative in ruling that the petitioned for unit *did not* hold the necessary indicia of supervisory status to qualify as supervisors under the Act. While the Employer maintains disagreement with the Regional Director's Decision, it argues that as roles, responsibilities, processes and authorities are the same, all petitioned-for Supervisor should be classified consistently.

PETITIONER'S OBJECTION TO EXCEPTION 6

The Petitioner incorrectly argues that the *ALJ never stated* that Fuel Training Supervisors sign training records. However, on page 13, lines 22 and 23, the ALJ writes that the Fuel Training Supervisors are the only designated trainers empowered to not only "complete forms denoting tasks successfully completed, but to make effective recommendations that directly affect the job status of probationary employees."

The Employer's position, as well as records and testimony of Mr. Albanese and two (2) members of the petitioned-for unit, clearly is that **Mr. Albanese's meets with trainees at the conclusion of their training, before he (Mr. Albanese) determines** whether to "sign off," thus (i) releasing the trainee to fuel, (ii) returning the trainee for additional training, (iii) consult with the Operation Manager to transfer the employee to another department, if a vacancy exist within another department at that time for which the employee is qualified or (iv) terminate the employee.

The Employer's position clearly is that the ALJ fails to acknowledge that Mr. Albanese's actions are no different than the actions of the Duty Manager in his meetings with employees. As Duty Manager, Mr. Quintero and Petitioned for "supervisors" testified, Mr. Quintero receives an Irregularity Report from and has discussions with Fuel, Tank Farm, and Maintenance Supervisor; he (Mr. Quintero) meets with an affected employee, reviews relevant documentation, and then moves forward with retraining or discipline, which can includes coaching & counseling, write-ups, suspension or termination. (P. 675, 722)

In May 2012, the Regional Director and subsequently in June 2012, this Board determined that such actions *did not* meet the necessary indicia of supervisory status to qualify

the petitioned-for unit as supervisors under the Act. While the Employer maintains disagreement with the Regional Director's Decision, it argues that as roles, responsibilities, processes and authorities are the same, all petitioned-for Supervisor should be classified the same. The Employer finds the NLRB's inconsistent rulings difficult and confusing to understand. How can the NLRB take the *same set of facts and procedure, weigh them the same and rule differently* with regards to supervisory status.

PETITIONER'S OBJECTION TO EXCEPTION 7

The Petitioner falsely states the Employer's position. The Employer's position is that the ALJ erred failing to acknowledge the directives of Fuel Training Manager, Frank Albanese to the Fuel Training Supervisors to return a trainee for additional training.

The Petitioner does raise a critical observation which further supports the Employer's position. The Petitioner set forth as an example the following testimony, "*Albanese told this employee that he would 'give him one more week of training...'*" As the Employer stressed in its Exception Brief, this specifically is an example which illustrates the consistency of Mr. Albanese's actions with those of Duty Manager, Mr. Quintero. The Petitioner's cited example involved Mr. Cummings (Fueling Trainee) who Mr. Albanese met with privately to discuss Mr. Cummings' attendance and training. Based upon this meeting, Mr. Albanese, without input from anyone else, decided to retain Mr. Cummings and return him to train longer.

This meeting is precisely the method and process undertaken by Duty Manager, Quintero, as he testified in the Representation Hearing in March/April 2012. In May 2012, the Regional Director and afterwards in June 2012, this Board determined that such actions *did not* meet the necessary indicia of supervisory status to qualify the petitioned-for unit as supervisors under the Act. While the Employer maintains disagreement with the Regional Director's Decision, it argues that as roles, responsibilities, processes and authorities are the same, all petitioned-for Supervisor should be classified without fail, the same.

PETITIONER'S OBJECTION TO EXCEPTION 9

The Petitioner is wrong in claiming the Employer's Exception that the ALJ failed to acknowledge that there is no record or testimony that a Fuel Training Supervisor was involved in

retention, reassignment or termination discussions between the Fuel Training Manager and Operations Manager. There was indeed no acknowledgement by the ALJ on any of the thirty-three (33) pages of her Recommended Decision.

Furthermore, this point is extremely relevant as it was determined by the Region 22 Regional Director in his Decision and Direction of Elections issued in May 2012 and affirmed by this Board in June 2012, that

“Once they file their reports, the Supervisors end their involvement in the matter; they never learn the consequences of their reports and may only act as fact witnesses for the Hearing Officer (Duty Manager). Nor does discipline ever result from the irregularity or delay reports without an independent review by the Hearing Officer (Duty Manager). After investigating the employee's version of the events in question, based on his own determination, the Hearing Officer can refrain from issuing discipline, counsel, verbally warn, issue a written warning or a suspension depending on the employee's disciplinary record and the Hearing Officer's determination of the level of severity of the offense.”

In the ALJ's Recommended Decision, in Footnote #10 she states, “Skvasik testified that it was **his belief** [*emphasis added*] that Sherman was offered a utility position, but declined it.” No different than the Regional Director stated above in his Decision and Direction of Election, Mr. Skvasik **did not know** the outcome of Mr. Sherman's employment because he was **not** involved in the discussion between Mr. Albanese and the Operations Manager, or the discussion between Mr. Albanese and Mr. Sherman. This is **identical to the circumstances** detailed in testimony in the Representation Hearing involving the Fueling Supervisors. In that Hearing the Fueling Supervisors testified that they would turn irregularity reports and daily evaluation documents into the Duty Manager and then they would not know the outcome of any actions taken with an employee until later. (P. 337, 338, 357) In the Regional Director's Decision and Direction of Elections in April 2012, later affirmed by this Board, it was deemed that this indicia for supervisory status under the Act was insufficient. While the Employer disagrees with the Regional Director's previous determination, the ruling in these Hearings must be without fail, consistent.

PETITIONER'S OBJECTION TO EXCEPTION 8 AND 10

The Petitioner misrepresents the Employer's position by wrongly arguing twice in their Answer, that the Employer's position sought to compare the Fuel Training Supervisors with the Leads. ***This is incorrect, a misrepresentation and manipulative in nature.*** In the Employer's Exception, there is not a single mention of the Lead employees. The Petitioner attempts to inject arguments on behalf of the Employer, arguments which the Employer did not make. Such attempts are manipulative and scheming.

In the Employer's Exception, evidence was presented which showed the consistency of actions, processes, and responsibilities amongst the Fuel Training Supervisors and the other petitioned for Supervisors in Fueling, Maintenance and Tank Farm. The Regional Director for Region 22 already determined in May of 2012 in his Decision and Direction of Election that none of the Petitioned for individuals, including the Fuel Training Supervisors are Section 2(11) supervisors. Additionally, this Board in its previous review agreed with the Regional Director in determining that the three (3) latter groups did ***not possess*** the necessary indicia of supervisory status to qualify them as supervisors under the Act but required another hearing to attain additional evidence in order to make a determination on the status of the Fuel Training Supervisors. While the Employer disagrees with the Regional Director's previous determination, based on the testimony gathered in this Challenge Ballot Hearing, the ruling in these matter must be the same. The NLRB having taken the ***same set of facts and procedure, weighing them the same and rule differently*** with regards to supervisory status would be an injustice and contrary to its role of impartiality and neutrality.

CONCLUSION

As the foregoing demonstrates, the Petitioner misstated, distorted and misrepresented the Employer's position, as well as the testimony and documentary evidence set forth in the record. The Petitioner also injected confusion and disorder into the process by objecting to a particular Exception under the title of another. Unlike the Petitioner that has changed their position with regards to the Fuel Training Supervisors to suit their needs, it is and has been the Employer's consistent position throughout all of these proceedings that while it disagrees with the Regional Director's determination in May 2012 that the petitioned-for individuals are not supervisors

under Section 2(11) of the Act, the Board's ruling in the Representation Hearing and this Challenged Ballot Hearing must be uniform. It must be uniform as all the Supervisors within the petitioned-for unit hold similar responsibilities, duties and authorities and thus must be classified the same. For these reasons, Petitioner's objections contained in the Answering Brief should be stricken.

DATED this 28 day of February 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify on the penalties of perjury that on February 28, 2013, I filed the Employer's Motion to Strike Petitioner's Answering Brief on the NLRB's electronic filing system on its website: <http://www.nlr.gov>. It was efiled with Region 22 and The Office of Executive Secretary and by electronic mail to Jae W. Chun, Esq., Friedman & Wolf, 500 Broadway, #2300, New York, NY 10036 at jchun@friedmanwolf.com.

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