

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 31**

Aircraft Service International, Inc.

Employer

and

United Service Workers West,
Service Employees International Union

Case 31-RC-100047

Petitioner

And

Local 74, United Service Workers Union, International
Union of Journeymen and Allied Trades

Intervenor

**ORDER DISMISSING PETITION
AND WITHDRAWING NOTICE OF REPRESENTATION HEARING**

Pursuant to a petition filed on March 8, 2013, a Notice of Representation Hearing issued on March 11, 2013. An Order Rescheduling Hearing issued on March 14, 2013.

Section 11711.1 of the *National Labor Relations Board Casehandling Manual Part Two Representation Proceedings* (Casehandling Manual) states that if it is clear that the employer falls under the jurisdiction of the Railway Labor Act (RLA), the parties should be referred to the National Mediation Board (NMB) and the charge or petition should be dismissed, absent withdrawal.

On March 8, 2013, United Service Workers West, Service Employees International Union (Petitioner) filed the instant RC petition to represent all full-time and regular part-time passenger service agents, encoding operators, cabin service agents, ramp service agents, cargo dispatchers, and cargo employees; excluding all other employees including guards and supervisors as defined by the Act, as amended.

On March 12, 2013, both Aircraft Service International, Inc. (Employer or ASII) and Local 74, United Service Workers Union, International Union of Journeymen and Allied Trades (Incumbent Union or Intervenor) submitted letters to the Region asserting that the petition must be dismissed as it has clearly been established that the

NLRB lacks jurisdiction, that the petitioned-for employees are subject to the RLA, and that the same Petitioner had previously filed a representation petition with the NMB seeking to represent the same employees. In response to the petition, the NMB issued an Order on November 20, 2012 in *Aircraft Service Int'l Group*, 40 NMB 43 (2012). A copy of the NMB's Order is attached as **Exhibit #1**.

In the NMB's petition, Case No. R-7346 (File No. CR-7063), the same Petitioner in the instant matter sought to represent the Fleet Service Employees of Aircraft Service Int'l Group (ASIG) at Los Angeles International Airport (LAX). The Petitioner has admitted that the same employees employed by the same Employer in the NMB's petition are involved in the instant petition before the NLRB.^{1/}

On March 12, 2013, the Petitioner also submitted a letter to the Region asserting that the jurisdiction issue should be decided by the Region and that although it understood that at times it was the practice of the Region to defer the jurisdiction issue to the NMB, that practice is not required by law. *United Parcel Service, Inc. v. NLRB*, 92 F.3d 1221 (D.C. Circuit 1996). In *United Parcel Service*, the employer complained that the NLRB decided the jurisdiction issue as opposed to deferring it to the NMB. The D.C. Circuit noted that the Employer has "not identified any sound basis on which [the court] might order ... the NLRB to defer challenges to its jurisdiction to the NMB." Therefore, in the instant matter, the Petitioner requests that the Region conduct a hearing concerning the jurisdiction issue and render a decision concerning the issue.

On March 14, 2013, the Region issued an Order to Show Cause as to why the petition should or should not be dismissed pursuant to the contention that the petition is subject to the RLA under the jurisdiction of the NMB. A copy of the Order To Show Cause is attached as **Exhibit #2**.

On March 19, 2013, the Petitioner submitted a response to the Order to Show Cause. Neither the Employer nor the Intervenor submitted a response, having previously submitted position statements on the matter. It was the position of both the Employer and the Intervenor that the petition should be dismissed because the Employer, ASIG, is subject to the RLA under the jurisdiction of the NMB relying upon the recent NMB's Order involving ASIG in 40 NMB 43 (2012), as well as other NMB cited cases where jurisdiction was asserted by the NMB.

The Petitioner asserts that the petition should not be dismissed because the determination of whether a particular representation dispute among airport employees is covered by the RLA or the National Labor Relations Act (NLRA) is made on an airport-by-airport basis under the recent NMB's decisions. Therefore, the Region must conduct a fact-finding investigation to determine whether the Employer's employees at LAX are specifically covered by the RLA, as the Employer and the Intervenor allege. In 40 NMB 43 (2012), the NMB assumed that the case fell within its jurisdiction because none of the participants had contested the NMB's jurisdiction over the Employer, and because the NMB had previously found the Employer's operations

^{1/} ASIG provides services to airlines at airports throughout the country under the trade name ASIG.

and employees at Detroit Metropolitan Airport and McCarran International Airport in Las Vegas, Nevada to be subject to the RLA (citing *Aircraft Service Int'l Group, Inc.*, 31 NMB 361, 370 (2004) and *Signature Flight Support of Nevada*, 30 NMB 392, 401 (2003)). Signature Aviation is a subsidiary of BBA Aviation, which acquired ASIG in 2001. After the acquisition, BBA consolidated and reorganized its commercial airline services and employees under ASIG. The NMB's Order in 40 NMB 43 (2012) also observed that the NMB exercised jurisdiction over ASIG in a few additional cases from 2004 to 2006. Three of those decisions found that ASIG's operations and employees at specific airports other than LAX were subject to the RLA. None of these cases analyzed carrier control over ASIG's operations at LAX either in the mid-2000s or now. The remaining cases cited in the Order in 40 NMB 43 (2012) all dismissed representation petitions as unsupported by a sufficient showing of interest.

The Petitioner also asserts that the only issue that was contested and decided by the NMB in 40 NMB 43 (2012) was the appropriate "system" for representation. The appropriate system is analogous to the NLRB's determination concerning the unit appropriate for the purposes of collective bargaining under Section 9(c) of the Act. While the Petitioner asserted that the proper scope of the bargaining unit was ASIG's LAX operation only, ASIG claimed that the LAX employees should be found to be part of the nationwide system for the purposes of representation under the RLA. Ultimately, the only issue the NMB addressed and decided was that ASIG's LAX facility did not constitute a proper system by itself. The jurisdictional issue was never raised or discussed, much less decided. The NMB has never addressed the jurisdictional issue concerning ASIG's employees at LAX.

However, contrary to the Petitioner's assertion, I find it appropriate to dismiss the instant representation petition without a hearing based on the information from the NMB's Order in 40 NMB 43 (2012) and our administrative investigation. The NMB in its Order in 40 NMB 43 (2012) found and/or held, as indicated in the Order to Show Cause, *inter alia* that:

- (1) The Railway Act, 45 U.S.C. § 151, First, includes within the definition of a carrier "any company which is directly or indirectly owned or controlled by or under common control with any carrier." ASIG has been found to be a common carrier as defined in 45 U.S.C. § 151, First and § 181 of the Act. *Aircraft Serv. Int'l Group, Inc.*, 31 NMB 361, 370 (2004); *Signature Flight Support of Nevada*, 30 NMB 392, 401 (2003).
- (2) ASIG's day-to-day operations were controlled by the airlines with whom ASIG has contracted, and that ASIG has entered into numerous airport-specific contracts with various unions.
- (3) ASIG provides various services to commercial air carriers at numerous airports across the country, and at almost all of those locations, ASIG performs fueling and/or ground handling services.

- (4) ASIG has “core agreements” with several air carriers that set forth the terms of the services that ASIG will provide for that carrier with riders setting forth any differences at specific airports.
- (5) Determination of the issues raised in the Petitioner’s application before the NMB were governed by the Railway Labor Act, as amended 45 U.S.C. § 151, *et seq.*
- (6) The NMB has the duty to investigate representation disputes and shall designate who may participate as eligible voters in the event that an election is required.
- (7) The appropriate system for employees covered by the application is all ASIG’s operations and is not limited to its Los Angeles facility. The Petitioner’s application is deficient inasmuch as it seeks to represent only ASIG’s Fleet Service Employees at LAX although NMB already found these employees to be part of a nationwide system for the purposes of representation under the RLA. *Aircraft Service Int’l Group*, 31 NMB 508 (2004). ASIG’s operations are run in a nearly identical manner to that in 2004, when NMB found that ASIG’s crafts or classes are nationwide in scope. At almost all of these locations, ASIG performs fueling and/or ground handling.
- (8) Petitioner has cited numerous NMB jurisdictional decisions in which the NMB found that ASIG’s contracts with carriers subjected ASIG to sufficient carrier control to be determined a derivative carrier subject to the Railway Labor Act and NMB’s jurisdiction.

Additionally, the Petitioner argues that the NMB’s Order in 40 NMB 43 (2012) does not directly address the jurisdictional issue concerning ASIG’s employees at its LAX facility. However, by its Order in 40 NMB 43 (2012), the NMB did not dismiss the Petitioner’s application for representation based on a lack of jurisdiction; rather, the NMB found the petitioned-for employees at ASIG’s LAX facility to be part of a nationwide system of bargaining unit employees subject to RLA under the NMB’s jurisdiction, as opposed to a single entity, and dismissed the application for representation accordingly. As indicated above, these same petitioned-for employees involve the same bargaining unit being sought in the instant representation petition at issue herein. The same Employer and same petitioned-for employees have already found to be subject to RLA under the jurisdiction of the NMB.

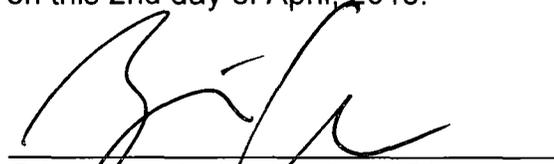
As it is clear that the Employer and the employees are subject to the Railway Labor Act and fall under the jurisdiction the National Mediation Board,

IT IS HEREBY ORDERED that the petition be, and it hereby is, dismissed.^{2/}

^{2/} Pursuant to Section 102.71 of the National Labor Relations Board’s Rules and Regulations, any party may obtain a review of this action by filing a request therefor with the National Labor Relations Board, Washington, D.C. 20570. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned. This request for review must contain a complete statement setting forth the facts and reasons on which it is based. The request for review must be received by the Executive Secretary of the Board by

IT IS FURTHER ORDERED that the Notice of Representation Hearing and the Order Rescheduling Hearing previously issued in this matter be, and hereby is, withdrawn.

Dated at Los Angeles, California, on this 2nd day of April, 2013.



Brian Gee, Acting Regional Director
National Labor Relations Board
Region 31

close of business on April 16, 2013. Upon good cause shown, however, the Board may grant special permission for a longer period within which to file. A request for extension of time should be submitted to the Executive Secretary in Washington, D.C., and a copy of any such request for extension of time should be submitted to this Office and to each of the other parties to this proceeding.

The request for review and any request for extension of time must include a statement that a copy has been served on this Office and on each of the other parties to this proceeding in the same or faster manner as that utilized in filing the request with the Board. Filing a request for review electronically may be accomplished by using E-filing system on the Agency's website at www.nlr.gov.

EXHIBIT # 1



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the
Application of the

**SERVICE EMPLOYEES
INTERNATIONAL UNION, UNITED
SERVICE WORKERS WEST**

alleging a representation dispute
pursuant to Section 2, Ninth, of
the Railway Labor Act, as
amended

involving employees of

**AIRCRAFT SERVICE
INTERNATIONAL GROUP**

40 NMB No. 13

CASE NO. R-7346
(File No. CR-7063)

FINDINGS UPON
INVESTIGATION-
DISMISSAL

November 20, 2012

This decision addresses the application of the Service Employees International Union, United Service Workers West (USWW or Organization) alleging a representation dispute pursuant to the Railway Labor Act¹ (RLA or Act), 45 U.S.C. § 152 Ninth (Section 2, Ninth), among "Fleet Service Employees" employed by Aircraft Service International Group (ASIG or Carrier) at Los Angeles International Airport (LAX) in Los Angeles, California. At the time this application was received these employees were represented by United Service Workers Union, IUJAT Local 74 (Local 74) pursuant to voluntary recognition by ASIG.

For the reasons set forth below, the National Mediation Board (NMB or Board) concludes that the appropriate system for employees covered by the application is all of ASIG's operations and is not limited to its Los Angeles facility.

¹ 45 U.S.C. § 151, *et seq.*

PROCEDURAL HISTORY

On June 27, 2012, USWW filed an application alleging a representation dispute involving the Fleet Service Employees at the Carrier's LAX facility. This application was assigned NMB File No. CR-7063 and Norman L. Graber was assigned as the Investigator.

On July 9, 2012, the Carrier filed its initial position statement, with supporting declarations and documents; on July 10, 2012, Local 74 filed its position statement; and on July 12, 2012, USWW filed its initial position statement, with supporting declarations and documents.

ISSUE

What is the appropriate system for employees covered by the application?

CONTENTIONS

ASIG

ASIG asserts that the application should be dismissed because USWW's application is deficient inasmuch as it seeks to represent only ASIG's Fleet Service Employees at LAX although the Board already found those employees to be part of a nationwide system for the purposes of representation under the RLA. *Aircraft Service Int'l Group*, 31 NMB 508 (2004) (*ASIG*). ASIG argues that the bases on which the Board previously found its Fleet Service Employees craft or class to be nationwide in scope remain the same, or stronger, today: its labor and employment relations functions, as well as other management functions such as payroll, accounting, and sales are centrally controlled from its corporate headquarters. The Carrier maintains nationwide benefits such as health insurance and a 401k plan. ASIG also has a corporate-wide employee handbook, vacancies throughout the country are posted at each location, and employees who transfer take their company seniority for vacation and 401k purposes, and its employees wear identical uniforms. Finally, ASIG contends that there have been no changed circumstances justifying the Board to alter its determination in *ASIG, above*.

USWW

USWW asserts that the proper scope of the system is ASIG's LAX operations. USWW argues that the Board has the authority to define the appropriate system for representation purposes, and that the Board relies on

“the need for rational labor-management relations.” USWW contends that this analytical framework supports the LAX-only system because ASIG’s personnel and functions are local and vary from airport to airport. Additionally, day-to-day operations are controlled by the airlines with whom ASIG contracts, and ASIG has entered into numerous airport-specific contracts with various unions. Further, USWW notes that wages and benefits vary by localities, that there is no evidence of cross-utilization of rank-and-file employees between cities, and that there is little evidence of employee transfers into LAX from other locations.

Local 74

Local 74 asserts that USWW’s application is deficient because it seeks to represent only the craft or class of Fleet Service Employees working for ASIG at LAX. Local 74 states that its representation of employees at LAX is based on a voluntary recognition agreement that cannot be the basis for an NMB craft or class determination. Local 74 contends the NMB requires that crafts or classes of employees must be represented on a system-wide basis; and that USWW’s application should be dismissed because the NMB previously found that proper system for ASIG’s Fleet Service Employees includes all of ASIG’s facilities nationwide. *ASIG, above*.

FINDINGS OF LAW

Determination of the issues in this case is governed by the RLA, as amended, 45 U.S.C. § 151, *et seq.* Accordingly, the Board finds as follows:

I.

45 U.S.C. § 151, First, includes within the definition of a carrier “any company which is directly or indirectly owned or controlled by or under common control with any carrier.” ASIG has been found to be a common carrier as defined in 45 U.S.C. § 151, First, and § 181 of the Act. *Aircraft Serv. Int’l Group, Inc.*, 31 NMB 361, 370 (2004); *Signature Flight Support of Nevada*, 30 NMB 392, 401 (2003).²

II.

USWW and Local 74 are labor organizations or representatives as provided by 45 U.S.C. § 151, Sixth, and 152, Ninth, of the Act.

² None of the participants have contested the Board’s jurisdiction over ASIG.

III.

45 U.S.C. § 152, Fourth, gives employees subject to its provisions “the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for purposes of this chapter.”

IV.

45 U.S.C. § 152, Ninth, provides that the Board has the duty to investigate representation disputes and shall designate who may participate as eligible voters in the event that an election is required.

STATEMENT OF FACTS

ASIG’s submissions in this case show that its operations are run in a near identical manner to that in 2004, when the Board found that the Carrier’s crafts or classes are nationwide in scope. ASIG’s corporate headquarters are located in Orlando, Florida. ASIG provides various services to commercial air carriers at approximately 55 airports across the country. At almost all of these locations, ASIG performs fueling and/or ground handling.

Nationwide Operation

ASIG’s labor and employment relations functions are centrally controlled from Orlando. Ron Zunk is ASIG’s Vice President of Human Resources. According to Zunk, ASIG has a Senior Director of Human Resources, five Regional Human Resources Managers and approximately 17 Station and/or Area Human Resources Managers. All collective bargaining is conducted under the direction of Zunk. ASIG is represented at the negotiating table by the appropriate Regional Human Resources Manager and its outside legal counsel who is used throughout the country. The negotiators consult with more senior management during the process, and all collective-bargaining agreements are approved at the corporate level. Either Zunk or one of the Regional Human Resources Managers, with Zunk’s approval, signs all collective-bargaining agreements on behalf of ASIG. This includes collective-bargaining agreements with unions representing ASIG employees at LAX.

ASIG also has a single employee handbook and a drug and alcohol testing program that apply corporate-wide to all employees regardless of location. A large percentage of ASIG’s recruiting is done on a nationwide basis

through a recruiting staff located in Orlando. That recruiting staff hires approximately 85 percent of ASIG's fuelers, ground service employees, and cleaners, including those who work at LAX. Personnel matters are coordinated by the Regional Human Resource Managers and there is a list of specific matters on which Regional Human Resource Managers must be consulted by General Managers. Wage and benefit increases for non-union and management employees alike are decided by corporate headquarters.

ASIG offers multiple health insurance plans on a nationwide basis and a company-wide 401k plan in which employees throughout the country can participate. Vacancies throughout the ASIG system are posted at each location, and employees who transfer from one location to another within the system retain their company seniority for vacation and 401k purposes. ASIG has a contract with a single vendor to provide identical uniforms to its employees nationwide. Although much of its training is dictated by the air carriers to which it provides service, ASIG has its own employee training which is developed at its corporate office in Orlando. Even carrier-specific training is identical throughout the ASIG system.

Management functions such as payroll, accounting and sales are also controlled out of Orlando. All ASIG employees are paid through Orlando regardless of work location. ASIG's contracts with air carriers are almost always negotiated at the corporate level and all pricing in those contracts must be approved at the corporate level. ASIG also has a corporate tax department, a corporate legal department, and a corporate benefits department that provides services as needed to all of its locations. ASIG has "core agreements" with several air carriers that set forth the terms of the services that ASIG will provide for that carrier with riders setting forth any differences at specific airports. All marketing and advertising is done at the corporate level.

USWW submitted evidence that ASIG provides different services at different airports around the country for differing carriers. USWW cites numerous Board jurisdictional decisions in which the Board found that ASIG's contracts with carriers subjected ASIG to sufficient carrier control to be determined a derivative carrier subject to the RLA and NMB jurisdiction. USWW also submitted numerous collective-bargaining agreements between ASIG and a number of different unions covering a variety of employees at single airport locations. As stated by USWW, these agreements were the result of voluntary recognition of the union in question, rather than a Board certification of a single location craft or class.

USWW notes that the collective-bargaining agreements between unions and ASIG are often signed by Regional Human Resources Managers or sometimes by local General Managers. Likewise, some of these agreements provide that these local or regional managers make final grievance decisions for ASIG prior to arbitration.

USWW also submitted a copy of the Carrier's Employee Information Guide (Guide), which states that employees applying for other job openings may be interviewed by the Supervisor, Department Manager, Human Resources Representative, or General Manager. USWW points out that these interviewers are local rather than national managers. The employee Guide section on Job Postings/Career Opportunities cited by USWW also states that these internal job opportunities within ASIG are "on the ASIG Internal Job Board (Intranet On-Line Job Posting)." Accordingly, it appears that these job postings are available to ASIG employees on a nationwide basis. As stated in the Guide, transfers must be approved by both the existing and the new work location. Additionally, rehires must be approved by Regional Human Resources Managers and Regional Vice Presidents; and terminations must be approved by General Managers and the Human Resources department.

USWW acknowledges that transferred employees maintain their seniority for vacation and sick time purposes, but note that other uses of seniority, such as shift bidding, may be affected. USWW provided evidence that employees' security clearance badges are valid only for the airport in which they currently work. USWW also submitted declarations from one ASIG employee at San Francisco International Airport and four ASIG employees at LAX, all stating that they are unaware of any ASIG employees transferring into or out of their airport to work for ASIG. Finally, USWW established through the collective-bargaining agreements it submitted that many terms and conditions of employment, such as the number of weekly hours of work, holidays, the rate of vacation accrual, limits on the use of seniority, vary as a result of the individual agreements.

DISCUSSION

Section 2, Ninth, of the Act provides for representation of employees or subordinate officials on a craft or class basis. The Board has consistently held that such representation must be on a system-wide basis. The craft or class must include all of the employees working in the classification deemed eligible, regardless of work locations. *National R.R. Passenger Serv. Corp.*, 31 NMB 178, 189 (2004); *LSG Lufthansa Servs., Inc.*, 25 NMB 96, 108 (1997); *Int'l Total Servs.*, 20 NMB 537, 544 (1993).

The Board's practice is to conduct elections across a carrier's entire system. See *Summit Airlines Inc. v. Local 295*, 628 F.2d 787, 795 (2d Cir. 1980). *America West Airlines, Inc.*, 16 NMB 135, 141 (1984). Early in its history, the Board stated its practice that:

The Railway Labor Act does not authorize the National Mediation Board to certify representatives of small groups of employees arbitrarily selected. Representatives may be designated and authorized only for the whole of a craft or class employed by a carrier.

Pennsylvania R.R. Co., 1 NMB 23, 24 (1937).

This practice was extended to the airline industry when the RLA was extended to cover that industry in 1936. See *Ross Aviation, Inc.*, 5 NMB 145, 148 n. 5 (1972) (noting the requirement that representation issues be resolved on a carrier-wide basis.)

As stated in *ASIG*, 31 NMB 508 (2004), when determining the scope of a carrier's system, the Board examines the extent of the consolidation of operations, labor relations, and payroll functions. See also *Ogden Union Ry. and Depot Co.*, 16 NMB 398, 404 (1989). The Board also examines how the carrier or carriers are held out to the public, including how the carrier(s) advertise services, and the identity indicated on signs, logos, or other publicly visible indicia. *Sapado I a/k/a Dobbs Int'l Serv., Inc.*, 19 NMB 198, 205 (1992).

Based upon the facts of this case, the ASIG's LAX facility is not a separate system for the purposes of Section 2, Ninth. ASIG's management services, including payroll, accounting, and sales are centralized in Orlando, Florida. Similarly, ASIG's labor relations and human resources for all facilities are determined and coordinated from its corporate headquarters in Orlando. All collective bargaining is conducted under the direction of and approved at the corporate level. ASIG has a single employee handbook and a drug and alcohol testing program. ASIG's health insurance and 401k plans apply to all employees regardless of location. A large percentage of ASIG's recruiting is done on a nationwide basis through a centrally-located staff. Vacancies throughout the ASIG system are posted at every location and employees who transfer within the system retain seniority for vacation and 401k purposes. Wage and benefit increases for non-union and management employees are decided at corporate headquarters. ASIG employees nationwide wear identical uniforms. Employee training is also centrally developed. ASIG maintains corporate tax, legal, and benefits departments that provide the necessary

services to all locations. ASIG also has “core agreements” with several carriers that set forth the terms of the services it provides. Marketing and advertising is done at the corporate level.

USWW’s evidence in this case does not materially alter the Board’s findings of relevant facts in *ASIG, above*, requiring the conclusion that the proper system for representation includes all of ASIG’s facilities nationwide. Although USWW cites numerous Board decisions finding that ASIG is subject to jurisdiction under the RLA based on its individual contracts with carriers in individual cities, those decisions are strictly jurisdictional in nature. Those decisions do not decide questions of representation for ASIG employees; and they do not determine the scope of a craft or class for any group of ASIG employees.

As discussed above, all of ASIG’s collective-bargaining agreements with organizations are based on voluntary recognition rather than Board certification; and, therefore, they do not constitute evidence of the proper scope of a craft or class as determined by the Board. See, *Air Serv Corp.*, 38 NMB 113, 123 (2011). Further, although the agreements may provide for signing at the local level of management and a degree of local grievance handling, this does not contradict ASIG’s evidence that human resources, collective bargaining negotiations, and labor relations are coordinated centrally from ASIG’s corporate headquarters.

USWW also provided evidence regarding the local handling of some aspects of internal ASIG job postings. The employee Guide, however, indicates that these internal postings are available to employees nationwide. Moreover, this Guide section does not contradict ASIG’s evidence that approximately 85 percent of ASIG’s fuelers, ground service employees, and cleaners are hired on a nationwide basis through a recruiting staff located in Orlando. Likewise, USWW’s evidence that ASIG seniority is not good for all purposes at all locations does not undercut the evidence regarding the carryover of ASIG seniority for vacation and 401k purposes, as found in *ASIG, above*.

The fact that ASIG employees receive security badges that are valid only at the airport where they work at any given time is neither surprising nor indicative of the appropriateness of a local facility craft or class. Presumably transferred employees would receive security badges for the new location at the time it became necessary. And the fact that some employees are unaware of any transfers into or out of their location does not negate the existence of a Carrier policy providing for nationwide posting of jobs and the ability of employees to transfer to another location. Similarly, USWW’s evidence of

varying terms and conditions of employment at different airports is a natural consequence of locally-based collective-bargaining agreements. Some terms and conditions of employment are national, however, and all agreements are bargained in coordination at the corporate level.

USWW relies on *Ground Services, Inc.*, 8 NMB 112 (1980), (*GSI*) to support a finding of a facility-only craft or class in this case. In *GSI*, the company was found to be a derivative carrier providing services at 15 locations that were subject to Board jurisdiction. The Board found that each city in which the company operated constituted a separate system for the purposes of representation. The finding was based on the fact that *GSI*'s day-to-day operations were tailored to local conditions and were not highly centralized. Further, the pattern of representation was based on local conditions, and there was no evidence of cross-utilization of employees. *GSI, above*, at 116-117. In this case, although there are some similarities to the facts in *GSI, above*, there is substantial evidence of centralization of human resources, labor relations, and some benefits and policies. Further, despite a lack of evidence of cross-utilization here, as USWW contends, the policy regarding centralized hiring, job postings, and transferability, combined with the factors mentioned above, distinguish this case from *GSI, above*, and require a different conclusion regarding the scope of the system.

The facts of this case regarding centralized control are just as strong, if not stronger, than when the Board decided *ASIG, above*. This case is also similar to *Air Serv Corp., above*, where the Board found a derivative carrier's security services were nationwide in scope because its management services, including human resources, labor relations, legal, finance and accounting, and sales and marketing, were centralized. Further, all Air Serv employees received the same health insurance and 401k benefits; and employees were able to retain seniority for benefits purposes when transferring within the system. Accordingly, the scope of the system for ASIG's Fleet Service Employees is nationwide.³

³ USWW's argument that the Board should conduct an election because there is evidence that a majority of the LAX employees in question want to be represented by USWW rather than Local 74 is unavailing under the Act. Employees with a voluntarily-recognized union may now wish to change representatives. The Board's duty, however, is to determine representation issues where they arise within the proper scope of a craft or class. Absent an application with a showing of interest in the proper system, the Board does not authorize elections.

CONCLUSION

For the reasons stated above, the Board finds that the proper system for representation under the RLA includes all ASIG's facilities nationwide. ASIG's LAX facility does not constitute a proper system by itself. On July 9, 2012, ASIG provided the Board with a List of Potential Eligible Voters for a system based on a nationwide basis. The Investigator has determined that the USWW's showing of interest is insufficient, the case is hereby converted to NMB Case No. R-7346, and the application is dismissed subject to Part 1206.4(b) of the NMB's Rules.

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson
General Counsel

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EXHIBIT # 2

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 31

Aircraft Service International, Inc.

Employer

and

Case No: 31-RC-100047

United Service Workers West,
Service Employees International Union

Petitioner

and

Local 74, United Service Workers Union

Intervenor/Incumbent Union

ORDER TO SHOW CAUSE

The Petitioner filed the above-referenced petition on March 8, 2013, seeking an election to determine whether the employees in the bargaining unit set forth in the Petition^{1/} wish to be represented for the purposes of collective bargaining by the Petitioner.

In response to the petition, the Employer and the Intervenor/Incumbent Union (hereafter Local 74), asserted that the Employer is subject to the Railway Labor Act, under the jurisdiction of the National Mediation Board (NMB) and as such, the petition should be dismissed.

An administrative investigation has disclosed the following:

In 2012, the same Petitioner herein filed a petition, Case No. R-7346 (File No. CR-7063) for representation with the NMB seeking to represent Fleet Service employees employed by Aircraft Service International Group^{2/} (hereafter ASIG), the same Employer in the instant petition. The employees in question were employed by ASIG at Los Angeles International Airport (LAX). It is noted that the instant petition also seeks to represent employees employed

^{1/} Included: All fulltime and regular part time passenger service agents, encoding operators, cabin service agents, ramp service agents, cargo dispatchers, and cargo employees

Excluded: All other employees, including guards and supervisors as defined by the Act.

^{2/} The Employer herein, Aircraft Service International, Inc. provides services to airlines at airports throughout the country under the trade name Aircraft Service International Group.

by ASIG at LAX. The NMB issued its decision on the Petitioner's petition on November 20, 2012 based on the facts disclosed by the investigation. A copy of the NMB's findings is attached as Attachment A. The NMB's investigation revealed *inter alia*:

- (1) ASIG's day-to-day operations were controlled by the airlines with whom ASIG contracts, and that ASIG has entered into numerous airport-specific contracts with various unions.
- (2) The Railway Act, 45 U.S.C. §151, First, includes within the definition of a carrier "any company which is directly or indirectly owned or controlled by or under common control with any carrier." ASIG has been found to be a common carrier as defined in 45 U.S.C. §151, First and §181 of the Act. *Aircraft Serv. Int'l Group, Inc.*, 31 NMB 361, 370 (2004); *Signature Flight Support of Nevada*, 30 NMB 392, 401 (2003)^{3/}
- (3) Determination of the issues raised in the Petitioner's application before the NMB were governed by the Railway Labor Act, as amended 45 U.S.C. §151, *et seq.*
- (4) The NMB has the duty to investigate representation disputes and designates who may participate as eligible voters in the event that an election is required.
- (5) ASIG provides various services to commercial air carriers at numerous airports across the country, and at almost all of those locations, ASIG performs fueling and/or ground handling services.
- (6) ASIG has "core agreements" with several air carriers that set forth the terms of the services that ASIG will provide for that carrier with riders setting forth any differences at specific airports.
- (7) In the attached NMB decision it was noted that the same Petitioner herein cited numerous NMB jurisdictional decisions in which the NMB found that ASIG's contracts with carriers subjected ASIG to sufficient carrier control to be determined a derivative carrier subject to the Railway Labor Act and NMB jurisdiction.

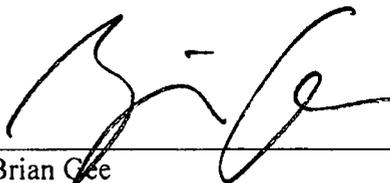
The administrative investigation further revealed that the National Labor Relations Board refused to assert jurisdiction over ASIG on the basis that the Employer was subject to the Railway Labor Act and NMB jurisdiction in Cases 18-CA-017881; 18-CB-004508; 12-CA-027091; 12-CA-027177; 4-RD-002185; 13-CB-019346; and 22-CA-027657. Copies of the letters issued by the respective Regions refusing to assert jurisdiction and dismissing the unfair labor practice charges or petition are collectively attached as Attachment B.

Furthermore, the NMB asserted jurisdiction over ASIG in the following cases: *Signature Flight Support of Nevada*, 30 NMB 392 (2003); *Aircraft Service International Group, Inc.*, 31 NMB 361 (2004); *Signature Flight Support/Aircraft Service Int'l, Inc.*, 32 NMB 30 (2004); *Aircraft Service Int'l Group, Inc.*, 33 NMB 200 (2006); *Aircraft Service Int'l Group, Inc.*, 33 NMB 258 (2006); *Aircraft Service Int'l Group*, 31 NMB 508 (2004), 32 NMB 1 (2004); 32 NMB 5 (2004); *Aircraft Service Int'l Group CR-6878* (2005); and *Aircraft Service Int'l Group*, 40 NMB 43 (2012).

^{3/} None of the parties have contested the NMB's jurisdiction over ASIG.

ACCORDINGLY, IT IS HEREBY ORDERED that any party hereto show written cause with supporting documentation why the instant petition should or should not be dismissed pursuant to the contention that the petition is subject to the Railway Labor Act under the jurisdiction of the National Mediation Board. Such written cause must be submitted to the undersigned **by close of business on Tuesday, March 19, 2013.**

DATED AT Los Angeles, California, March 14, 2013.



Brian Gee
Acting Regional Director
National Labor Relations Board
Region 31