

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

ABM ONSITE SERVICES – WEST, INC.

Employer

and

Case 19-RC-144377

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS DISTRICT LODGE
W24, AFL-CIO

Petitioner

**PETITIONER'S STATEMENT IN OPPOSITION TO THE
EMPLOYER'S REQUEST FOR REVIEW OF THE DECISION
AND DIRECTION OF ELECTION ISSUED BY THE
REGIONAL DIRECTOR OF REGION 19**

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Dated: March 27, 2015

INTRODUCTION

Pursuant to Section 102.67(b) of the National Labor Relations Board's Rules and Regulations, Petitioner International Association of Machinists and Aerospace Workers District Lodge W24, AFL-CIO ("IAM") submits this Statement in Opposition to the Request for Review ("Request") of the Regional Director's Decision and Direction of Election ("DDE") filed by ABM Onsite Services – West, Inc. ("ABM Onsite" or the "Employer") on March 20, 2015. This Statement also serves as the IAM's Opposition to ABM's alternative request that the Board refer this matter to the National Mediation Board ("NMB") for an advisory opinion regarding the Employer's status under the Railway Labor Act ("RLA").¹ As set forth below, because the Employer has not put forward compelling reasons to grant review or to refer to the NMB, ABM Onsite's Request should be denied.

I. The Regional Director's Decision Is Supported By The Record and Is Not Clearly Erroneous On Any Substantial Factual Issue.

ABM Onsite does not fly aircraft and is not directly or indirectly owned by an air carrier. When an employer is not a rail or air carrier engaged in the transportation of freight or passengers, the National Mediation Board ("NMB") applies a two-part test to determine whether the employer and its employees are subject to the Railway Labor Act ("RLA"). *See, e.g., Aero Port Services, Inc.*, 40 NMB 139, 142 (2013):

First, the NMB determines whether the nature of the work is that traditionally performed by employees of rail or air carriers. Second, the NMB determines whether the employer is directly or indirectly owned or controlled by, or under

¹ In the conclusion to its Request, the Employer asks the Board to "postpone the election currently scheduled for April 2, 2015." Request 30. The Employer neither addresses nor provides support for postponing the election in the body of its Request. The request for a postponement, such as it is, is contrary to Section 102.67(b) of the Board's Rules ("filing of such a request shall not . . . operate as a stay of the election"), and should be denied.

common control with, a carrier or carriers. Both parts of the test must be satisfied for the NMB to assert jurisdiction. *Air Serv Corp.*, 39 NMB 450, 454 (2012), *reconsideration denied*, 39 NMB 477 (2012); *Talgo, Inc.*, 37 NMB 253 (2010); *Bradley Pacific Aviation, Inc.*, 34 NMB 119 (2007); *Gate Gourmet*, 34 NMB 97 (2007).

Because ABM Onsite provides baggage handling services, the Regional Director found in his Decision and Direction of Election that the Employer's dispatchers and jammer technicians perform work of a nature traditionally performed by employees of air carriers, thus satisfying the first prong of the NMB's two-part test. DDE 23. ABM Onsite does not seek review of that aspect of the Regional Director's decision. Request 3.

The Regional Director then thoroughly reviewed the hearing record on the relevant factors considered by the NMB to determine whether an employer is controlled by, or under common control with, an air carrier or carriers, and thus subject to the RLA. DDE 23-29. Based on this review of the record, the Regional Director concluded that the degree of control that the consortium of airlines ("Portland Airlines Consortium" or "PAC") at Portland International Airport ("PDX") has over ABM Onsite "is contractually no greater than the type of control exercised in a typical subcontractor relationship and does not constitute meaningful control such as to render the Employer subject to the RLA." DDE 29.

ABM Onsite claims that in reaching this conclusion on the second prong of the NMB's two-part test that the Regional Director "ignored or misinterpreted critical facts" demonstrating carrier control. Request 3. To the contrary and as set forth herein, the Employer has mischaracterized record evidence in its Request, and the Regional Director properly found that many of the "facts" to which the Employer refers in its Request were taken from the often vague and conclusory testimony of one Employer witness and "largely unsupported by any other documentary evidence or by concrete examples setting forth sufficient details." DDE 29.

A. Personnel Decisions.

The NMB has made it exceedingly clear that carrier control for jurisdictional purposes is decidedly not the same as a specification of performance standards by a client contracting for services. As the NMB held in *Aero Port Services, Inc.*, 40 NMB 139, 143 (2013), “it is expected that the carriers will specify the parameters of what services are necessary.” Rather, what is required to establish RLA jurisdiction is “significant control over labor relations,” including “significant control over the hiring, firing, and discipline” of the employer’s employees. *Id.* Based on the record evidence as a whole, the Regional Director concluded that PAC’s limited involvement in ABM Onsite’s personnel matters, including hiring, firing, discipline and promotion, “is insufficient to establish meaningful control over the Employer.” DDE 27-28.

ABM Onsite complains in its Request that the Regional Director discounted the Employer’s testimonial evidence about PAC’s role in ABM Onsite’s personnel decisions because it was unsupported by documentation. Request 17. In fact, the Regional Director took into account the testimonial evidence of PAC involvement but also noted, for example, that despite the relatively high turnover of employees in the Employer’s airport operations, the Employer produced no documentation to show any air carrier involvement. Moreover, as set forth below, the Employer mischaracterizes the testimonial evidence in its Request. In addition, in the few instances where ABM introduced documents concerning personnel and other matters, the documents often told a different story than the Employer’s testimonial evidence. To that extent, the Regional Director’s reliance on documentary record evidence is fully justified and not clearly erroneous.

The Employer's principal witness at the hearing, current PDX Facility Manager Bonnie Wagoner,² testified about only one specific incident in 2011 where an employee had been discharged at the request of an air carrier.³ As the Regional Director noted, this discharge likely occurred before ABM Onsite purchased the original contractor Linc, and assumed the PAC contract. At the time of the incident, Wagoner had been working for Linc for only two weeks. Wagoner's recollection of the incident is vague, contradictory, and unsupported by the documents that ABM Onsite eventually produced.

According to ABM Onsite, PAC General Manager John Imlay directed Wagoner to meet with United Airlines' manager and collect witness statements about the incident. Request 17. Wagoner, however, testified that she was informed of the incident by her fellow Linc supervisors Dean Caton and Shawn Williams and that "John Imlay had been notified by the general manager of United," though she does not say how she knew that. Tr. 166-67. Wagoner further testified that an investigation of the incident was conducted by "ABM, John Imlay" and that the "decision was made by John Imlay to terminate that person." Tr. 168.

Wagoner also testified that she investigated the incident at the request of Linc facility manager Shawn Williams and reported back to him. Tr. 167, 172-74. Linc suspended the employee "Pending further investigation for Violating our Company's Standards of Conduct number 10, Physically fighting with anyone on company/customer property." Ex B-2, ABM 390-91. Following the Linc investigation, the employee was terminated by the Linc facility manager Shawn Williams using a Linc HR form and a Discharge Letter to the employee on Linc letterhead. Ex. B-2, ABM 389-90.

² Until November 2014 when Wagoner assumed the position of Facility Manager, she was a supervisor for ABM Onsite at PDX.

³ ABM Onsite initially did not produce any documents about this discharge incident in response to the IAM's *subpoena duces tecum*. Documents were produced after the hearing and included in the record as Board Exhibit 2 (Ex. B-2).

Wagoner's testimony about Imlay's role in this incident is not supported by the documents supplied by ABM after the hearing. Ex. B-2. Imlay's name is not mentioned in any of the documents, nor is he copied on the email about the incident sent by the United airport operations supervisor to the United general manager at PDX with copies to Linc manager Williams, and Linc supervisors Wagoner and Caton. Ex. B-2, ABM 391.

The Employer also misconstrues the record evidence with respect to PAC's role in the discipline of ABM Onsite employees. The Employer claims that "PAC also exerts control over the discipline of ABM Onsite employees," citing concerns raised by Imlay about an employee's attendance. Request 19. But Wagoner testified that by the time Imlay asked her about this employee, "we were actually at a -- a final disciplinary action level," demonstrating that PAC played absolutely no role in the discipline of this employee; rather, PAC's only role in this matter was to inquire. Tr. 115.

The documentary evidence confirms that ABM Onsite managers initiated the disciplinary process for this employee, followed ABM's attendance policies in implementing discipline, and sought advice from ABM HR to make sure that the Employer's policies were implemented correctly. Ex. E-7. At most, Imlay inquired of Wagoner about the status of the employee and was provided with a report in the form of a forwarded email thread. Ex. E-7. This is hardly an example of carrier control over the discipline of ABM Onsite employees that the Employer asserts it is.

A carrier's contractual right to remove contractor employees from its account is insufficient to find RLA jurisdiction where the decision to discharge or discipline an employee is made by the employer. *Huntleigh USA Corp.*, 40 NMB at 136-37; *accord*, *Aero Port Services, Inc.*, 40 NMB at 143 (airline reporting of contractor employees for discipline "is not the type of

meaningful control over labor relations that is necessary for RLA jurisdiction.”); *see also, Bags, Inc.*, 40 NMB at 166-68. There is also no RLA jurisdiction where an airline reports employee performance problems to the employer, but the employer “determines the appropriate discipline following its own discipline process.” *Menzies Aviation, Inc.*, 42 NMB at 6. In the Linc discharge incident, the employer undertook the investigation and made the decision to terminate the employee. In the attendance disciplinary matter, even if Imlay had reported the employee’s attendance problems to ABM Onsite (which he clearly did not), the Employer determined the appropriate discipline following its own disciplinary process.

With respect to hiring, Wagoner testified in general that Imlay discussed with her in advance the need to hire for a particular position, the interview schedule, and the resumes of the candidates. Tr. 116. But when asked specifically about the two most recent jammer technicians hired by ABM Onsite, Wagoner testified that that she did not discuss the candidates with Imlay beforehand, Imlay did not participate in their interviews, and that Imlay first met the candidates (perhaps by chance) when they were filling out the “ABM hiring paperwork and going over the hygiene training.” Tr. 187-88.

Finally, with respect to promotions, what ABM Onsite characterizes as PAC “oversight” and “control,” the Regional Director correctly viewed as recommendations by the PAC General Manager that the Employer was free to accept or reject. In some instances, the Employer ultimately promoted the employee recommended by PAC’s General Manager, but in other instances it effectively rejected PAC’s suggestions. Moreover, there is no clear right of PAC to approve employee promotions in the Employer’s contract with PAC. Ex. E-1. Nor is Imlay’s role in Wagoner’s promotion from ABM Onsite supervisor to Facility Manager evidence of PAC’s control. *See Airway Cleaners, LLC*, 41 NMB 262, 268 (2014) (hiring a general manager

following a recommendation from an airline and based on previous employment with the airline was neither surprising nor evidence of jurisdictionally significant control over labor relations).

In sum, the Regional Director's findings concerning the level of PAC's involvement in the Employer's personnel decisions are not clearly erroneous. On the contrary, the record evidence fails to establish that PAC exercises the type of meaningful control over AMB Onsite's labor relations such as to place the Employer under RLA jurisdiction.

B. Supervision of Employees.

ABM Onsite contends that the Regional Director erroneously concluded that PAC exercises a limited degree of supervision over the worked performed by ABM Onsite employees and again accuses the Regional Director of "summarily disregard[ing] significant testimony concerning PAC's oversight and interaction with ABM Onsite employees." Request 20. The Employer's contentions about PAC supervision in its Request are not supported by the record evidence.

ABM Onsite claims that "PAC set the station positions for all bag jammer technicians," citing Employer Exhibit 2 ("Ex. E-2") – "ABM/PAC Position Description." But ABM Onsite ignores the *voir dire* testimony concerning Ex. E-2 where Wagoner testified that the document was prepared, not by PAC, but rather by two ABM Onsite supervisors with "feedback from the crew." Tr. 53-54. Only after ABM Onsite employees prepared this document was it presented to Imlay. Tr. 54.

The ABM Onsite Facility Manager and supervisors, not PAC, provide written instructions and information for the Employer's dispatchers and jammer technicians on the daily BHS operations sheets prepared by the Employer. Ex. E-10, E-12. Neither the airlines nor PAC have any role in the preparation of the daily operations sheets or in the supervision of dispatchers

and jammer technicians. When airline or PAC officials contact ABM employees directly, it is generally to impart or obtain information, not to direct the employee's work. For example, the airline may want to locate a missing bag or change the location where the bag should be sent.

The Regional Director specifically found that when Alaska airlines directed ABM Onsite jammer technicians to place tubs in a new location behind the Alaska ticket counter, "the jammer technicians, rather than complying with the direction, reported the issue to an Employer supervisor." DDE 28. In other words, the employee declined the airline's direction in accordance with the Employer's procedures. There is no dispute that this tub placement issue was resolved at the managerial level rather than via direct supervision by the airline. *Id.* Contrary to the Employer's contention, this is not an example of carrier direction of the work performed by ABM Onsite employees.

Similarly, ABM Onsite misstates the record evidence concerning the cascading of baggage to the Southwest Airline ticket counter in late December 2013, when there was a very high volume of bags during the holiday travel season and one of the explosive detection screening machines at PDX was not working. Tr. 133-36; Ex. E-13. ABM Onsite claims that a "Southwest supervisor came directly to the control room to **instruct** ABM Onsite employees to correct the issue." Request 21, citing Tr. 134:5-17 (emphasis added). The record evidence shows that the Southwest supervisor did no such thing. Wagoner's testimony cited by the Employer in its Request, but not quoted, says the following: "Sandy [the Southwest supervisor], came down to the control room and wanted to know what we [ABM Onsite] could do to fix this problem and kind of wanted to see what was going on." Tr. 134:9-12 (emphasis added); see also Tr. 135:4-8 ("the next morning, . . . Sandy . . . asked me what could we do to – to get this remedied."); Ex. E-13.

Contrary to ABM Onsite's contention, these incidents involving Alaska and Southwest demonstrate that the Employer operates independently and is clearly not under "a high degree of supervision by PAC and the member airlines." Request 22. As Wagoner concluded in an email to Imlay in describing the Southwest incident from the point of view of an independent contractor, "We always want to be part of a solution, our goal is always to get the airlines their bags in the safest fastest route possible." Ex. E-13.

Accordingly, the Regional Director did not err in concluding that PAC's limited supervision of ABM Onsite employees is insufficient to establish meaningful carrier control over the Employer.

C. Other Factors.

ABM Onsite also challenges as erroneous the Regional Director's findings and conclusions concerning the extent of carrier control over the manner in which the Employer conducts its business, access to the Employer's operations and records, training of employees, and the extent to which the Employer's employees are held out to the public as carrier employees. As with the Employer's challenges to the Regional Director's findings and conclusions with respect to PAC's role in ABM Onsite's personnel decisions and supervision of ABM Onsite employees, these challenges are similarly unfounded. Moreover, these other factors are less critical than the carrier role in personnel decisions in determining whether carriers exercise significant actual control over an employer. *See Menzies Aviation, Inc.*, 42 NMB at 6-7; *Airway Cleaners, LLC*, 41 NMB at 268.

With respect to the extent that PAC controls the manner in which the Employer conducts its business, ABM Onsite again mischaracterizes the record evidence. Request 10-11. Contrary to the Employer's claim that "ABM was **instructed** to restructure the job assignments of its

employees” to respond to bag jams and cascading, Wagoner testified that “there was a discussion” with PAC in 2011 after both sides (north and south) of the new BHS system at PDX became operational. Tr. 18; Request 10 (emphasis added). Following those discussions, ABM Onsite, not PAC, created a plan that involved cross-training of employees. Tr. 84. Imlay’s role involved inquiring how the Employer’s plan would work and how much it would cost. *Id.* Imlay took the Employer’s plan to the PAC governing committee where it was approved. Tr. 85.

ABM Onsite further contends that Imlay’s routine review of monthly invoices from the Employer for errors somehow constitutes carrier control over the compensation of ABM Onsite employees. Request 13-14. That Imlay “questioned the computation of the ABM Onsite employees’ health and welfare benefit expenses” which were clearly erroneous (the Employer billed for H&W contributions for employees after their employment was terminated) is hardly an example of meaningful carrier control, but rather an example of a contracting party’s routine due diligence.

In summary, in assessing the RLA jurisdictional control factors, the Regional Director thoroughly reviewed and analyzed the record evidence and correctly concluded that the degree of control exercised by PAC over the Employer “is contractually no greater than the type of control exercised in a typical subcontractor relationship and does not constitute meaningful control such as to render the Employer subject to the RLA.” DDE 29. The Employer has not pointed to any substantial factual issue on which the Regional Director’s decision is clearly erroneous on the record. Accordingly, ABM Onsite’s Request for Review should be denied.

II. Board Referral of This Case to the NMB For Jurisdictional Determination is Not Warranted.

The Regional Director properly concluded that the instant case need not be referred to the National Mediation Board (“NMB”) for a jurisdictional determination and that the Employer is subject to NLRA jurisdiction since the NMB has recently found that it lacked RLA jurisdiction in similar cases, on similar facts. DDE 30. The Employer submits that should the Board decline to grant its Request for Review, it should refer this case to the NMB for an advisory opinion. Request 29. Given the similarities of this case with recent NMB cases declining RLA jurisdiction, referral to the NMB is not warranted and would serve no purpose other than delay and infringement on the employees’ rights under the NLRA.

The NMB is endowed by the Railway Labor Act (“RLA”) with jurisdiction over common carriers by rail and air engaged in interstate or foreign commerce. Section 2(2) of the National Labor Relations Act (“NLRA” or the “Act”) defines “employer” to exclude from the Act’s coverage “any person subject to the Railway Labor Act.” With respect to determinations whether to assert jurisdiction over an employer potentially covered by the RLA, “[t]here is no statutory requirement that the Board first submit a case to the NMB for opinion prior to determining whether to assert jurisdiction.” *Spartan Aviation Industries*, 337 NLRB 708, 708 (2002) (citing *United Parcel Service*, 318 NLRB 778, 780 (1995)).

The Board has the statutory authority to resolve jurisdictional matters without referral to the NMB. *Dobbs House*, 443 F. 2d 1066, 1072 (6th Cir. 1971); *United Parcel Service*, 318 NLRB 778 (1995), *enfd.*, 92 F.3d 1221, 1225 (D.C. Cir. 1996) (“*UPS*”). The NMB does not have “primary jurisdiction” over resolving NLRA/RLA jurisdictional issues, nor is there a

hierarchy placing the NMB in front of the NLRB in resolving those jurisdictional issues. *UPS*, 92 F. 3d at 1225.

It has been the Board's practice to refer the issue of jurisdiction to the NMB in cases where the issue is doubtful. *Federal Express Corp.*, 317 NLRB 1115 (1995). The Board gives "substantial deference" to NMB decisions in making jurisdictional determinations. *DHL Worldwide Express*, 340 NLRB 1034 (2003). However, the Board "will not refer a case that presents a jurisdictional claim in a factual situation similar to one in which the NMB has previously declined jurisdiction." *Spartan Aviation Systems*, 337 NLRB at 708. Here, the issue is not doubtful, as the NMB has recently declined to assert jurisdiction over a series of cases referred by the Board that are factually similar to the instant case.

Moreover, two NLRB Regional Directors recently issued decisions on employers' jurisdictional claims, rather than referring those matters to the NMB. In *Baggage Airline Guest Services, Inc.*, 19-RC-124242 (June 19, 2014), the Regional Director denied the employer's request that the Board resubmit its jurisdictional claim to the NMB or dismiss the petition where the NMB had previously issued an opinion in an unfair labor practice case that the employer's operations and employees were not subject to the RLA. Instead, the Regional Director concluded that the employer "failed to meet its burden of showing that it falls under the jurisdiction of the RLA." *Id.*

In *Swissport Cargo Services, L.P.*, 12-RC-137010 (October 31, 2014), *Request for Review denied* (December 2, 2014), the Regional Director found that the employer was subject to NLRA jurisdiction and that the matter need not be referred to the NMB. *Id.* (DDE at 10). The Regional Director concluded that air carriers did not exercise significant control over the employer, and he rejected the employer's argument that the case should be referred to the NMB

because the NMB had ruled six years earlier that the employer's sister company was subject to the RLA. *Id.*

In a series of decisions beginning in 2012, the NMB applied its control factors in cases involving airport contractors and consistently declined RLA jurisdiction. In *Air Serv Corp.*, 39 NMB 450, *reconsideration denied*, 39 NMB 477 (2012), the NMB found no RLA jurisdiction over an employer that had a service agreement with a consortium of all airlines operating out of New York's LaGuardia Airport to provide shuttle bus transportation services between employee parking areas and terminal buildings. Although the service agreement gave the consortium the right to set and alter bus routes, set pick up and arrival sites, fine the employer if a driver missed a stop or was caught sleeping on the job, require inspections, insurance, licenses and permits, audit Air Serv's records and fine it for violations, and approved the hiring of Air Serv's account manager, this "evidence of some degree of control" was insufficient for RLA jurisdiction because Air Serv promulgated its own employment policies and informed employees of them through its own employee handbook, conducted its own training, and interviewed applicants for open job positions. 39 NMB at 453-54.

In *Huntleigh USA Corp.*, 40 NMB 130 (2013), the contractor provided baggage handling, wheelchair assistance, aircraft cleaning, security, skycap and other services to a consortium of air carriers at George Bush Intercontinental Airport ("IAH") in Houston, Texas. The principal airline in the consortium provided an office in the terminal building as a courtesy for Huntleigh's use. *Id.* at 131. The service agreements with the airlines required Huntleigh to perform its services in accordance with their flight schedules. *Id.* at 132. The consortium had the right to remove Huntleigh employees from their accounts, specified detailed standards for performance of services, reviewed training records, set standards for training, and provided "the computers,

podiums, and bag tag printers used by Huntleigh employees.” *Id.* at 132 -33. However, because Huntleigh “hires its own employees and has its own supervisors,” trains its own employees, and makes “the decision to discipline or discharge an employee,” the NMB found no jurisdictionally significant control by carriers and, accordingly, no RLA jurisdiction. *Id.* at 136-37.

In *Aero Port Services, Inc.*, 40 NMB 139 (2013) (“*APS*”), the employer provided cargo security services for airlines at Los Angeles International Airport. *APS*’ cargo security agents and screeners monitored entry to secured areas, conducted inspections, and ensured that freight was screened according to TSA regulations. *Id.* at 140. The airlines specified cargo storage and handling techniques, dictated staffing levels, could request that employees be posted to or removed from their cargo site, and could become involved in direct “supervision of *APS* employees if a carrier representative observes an employee not performing his or her duties.” *Id.* at 141. Security training of employees was mandated by TSA, and one airline provided “initial equipment operations training.” *Id.*

The NMB found that *APS*’ contracts with air carriers at the airport “dictate certain standards that *APS* should follow in performing services for each carrier.” *Id.* at 143. Since *APS* contracts with these carriers to provide services, “it is expected that the carriers will specify the parameters of what services are necessary.” *Id.* Training requirements set by TSA, and airline representatives reporting *APS* employees for discipline “is the type of control expected in nearly any contract for service.” *Id.* The NMB, therefore, concluded that this “is not the type of meaningful control over labor relations that is necessary for RLA jurisdiction.” *Id.*

In *Bags, Inc.*, 40 NMB 165 (2013), the employer provided skycap, wheelchair and unaccompanied minor services to Delta and Alaska Airlines at Seattle-Tacoma International Airport (SeaTac). *Id.* at 166. The airlines provided equipment and premises to the contractor,

provided all training manuals and some of the training, dictated the contractor's performance of baggage handling services through detailed carrier operations manuals, had access to the contractor's records, approved uniforms, and could bar employees from the airport. The airlines set staffing levels, continuously monitored the contractor's performance, and reviewed the contractor's records. *Id.* at 166-68.

The NMB found that the contractual requirements that the airlines placed on Bags and the provision of space and equipment were insufficient to establish RLA jurisdictional control. *Id.* at 170. The NMB further found, as it did in *APS*, that carrier representatives' input on disciplinary matters is the type of control "found in almost any contract between a service provider and a customer." *Id.* The NMB concluded that "it is not the type of meaningful control over personnel decisions to warrant RLA jurisdiction." *Id.*

In *Airway Cleaners, LLC*, 41 NMB 262 (2014), the employer provided terminal cleaning and maintenance service and aircraft cabin cleaning for airlines operating out of New York's JFK International Airport. *Id.* at 264. The airlines provided most of the cleaning supplies brought onboard by Airway employees. *Id.* One airline requested that Airway retrain an employee after an aircraft door was damaged. *Id.* at 266. The airline and the employer both conducted investigations but reached different conclusions as to the employee's responsibility for the damaged door. Even though Airway "saw it differently," it had to comply with the airline's directive to retrain the employee. *Id.*

The NMB found that a single example of the employer acquiescing to an airline's request to retrain an employee was not sufficient to establish jurisdictionally significant control over the contractor's labor relations. Nor did the NMB find it sufficient that new Airway employees received training from a video provided by the airline, and that the airline kept training records

and tracked the contractor's employee training "in the same system used to track its own employees' training." *Id.* at 265. Finally, the NMB did not find jurisdictionally significant control where the airline required prior notice and written consent to staffing changes, held weekly meetings with the employer on staffing issues, had the right to audit the employer's business records, had the right to interview and approve management and other employees, closely monitored the employer's work, and could fine the employer for flight delays, non-compliant uniforms, and failure to meet its training requirements. *Id.* at 265-67.

In *Menzies Aviation, Inc.*, 42 NMB 1 (2014), the employer provided baggage, ramp and aircraft servicing functions for airlines at SeaTac. Alaska Airlines gave Menzies permission to use its equipment and facilities to perform services under the contract. Alaska provided Menzies with office space, employee break rooms, and motorized equipment. *Id.* at 2-3. Alaska Airlines "performs a monthly audit of Menzies' 'operational performance, execution, compliance, quality, training communication, budget, key performance indicators (KPIs) and administrative record keeping.'" *Id.* at 4. Alaska provides training for Menzies employees on Alaska-owned computers, including training on customer service and Alaska policies and procedures. *Id.* at 3-4.

The Alaska contract required Menzies' to conform to Alaska's policies and procedures and to remove from service any employees who displayed improper conduct or were deemed unsatisfactory or unqualified to Alaska. *Id.* But while Alaska may report employee performance problems to Menzies, the employer "determines the appropriate discipline following its own discipline process." *Id.* at 6.

The NMB found that the contract between Alaska and Menzies "describes a typical relationship between a carrier and a contractor. The fact that Alaska dictates standards for work

performed is not unusual in a contract for services and does not evidence a significant degree of control.” *Id.* at 6. The NMB concluded that the “extent to which the carrier controls the manner in which Menzies conducts its business is no greater than that found in a typical subcontractor relationship.” *Id.* at 7. Moreover, the NMB found that Alaska does not exercise meaningful control over Menzies’ personnel decisions because Alaska does not hire, fire, or routinely discipline Menzies’ employees. *Id.*

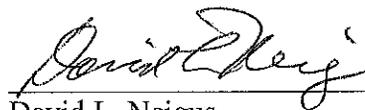
The instant case involving ABM Onsite’s dispatchers and jammer technicians at PDX has similar facts to the cases cited above where the NMB found that it lacks jurisdiction. Therefore, the Regional Director correctly determined not to refer this case to the NMB. The Board should similarly deny the Employer’s request that it seek an advisory opinion from the NMB on the jurisdictional issue.

CONCLUSION

The Board should deny the Employer’s request for review and its alternative request to refer this case to the NMB.

Dated: March 27, 2015

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of March 2015, a copy of the foregoing Petitioner's Statement in Opposition to the Employer's Request for Review of the Regional Director's Decision and Direction of Election in NLRB Case No. 19-RC-144377 was filed using the NLRB e-filing program and served via email and/or facsimile on the following:

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