

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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OXFORD ELECTRONICS, INC., D/B/A OXFORD
AIRPORT TECHNICAL SERVICES AND
WORLDWIDE FLIGHT SERVICES, INC.,

OXFORD ELECTRONICS, INC. D/B/A OXFORD
AIRPORT TECHNICAL SERVICES AND TOTAL
FACILITY MAINTENANCE, INC.,

CASE 13-CA-115933

OXFORD ELECTRONICS INC. D/B/A OXFORD
AIRPORT TECHNICAL SERVICES AND TWIN
STAFFING, INC.,

Respondent-Employers,

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 399, AFL-CIO,

Charging Party-Union

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TRANSPORT WORKERS UNION OF AMERICA-
AIR TRANSPORT LOCAL 504 AFL-CIO
(OXFORD ELECTRONICS INC. D/B/A OXFORD
AIRPORT TECHNICAL SERVICES, WORLDWIDE
FLIGHT SERVICES, INC., TOTAL FACILITY
MAINTENANCE., INC., AND TWIN STAFFING
INC.,)

Respondent-Union.

Case 13-CB-115935

And

INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 399, AFL-CIO

Charging Party-Union

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POST HEARING EXCEPTIONS OF RESPONDENT
AIR TRANSPORT LOCAL 504

Pursuant to Section 102.46 of the Board's Rules and Regulations, Air Transport

Local 504, Transport Workers Union of America, AFL-CIO (herein "TWU"), the

Respondent Union in the above captioned matter, by its attorneys, Glanstein LLP, submits the following Post Hearing Exceptions in the above captioned matter.

In the Board's 2016 decision *Airway Cleaners*, 363 NLRB No. 166 (2016), in which the Board first rationalized its unwarranted intervention into bargaining units in the airline industry previously found to be covered under the Railway Labor Act, the now Acting Chairman of the Board acknowledged the ongoing tension arising where, as here, the General Counsel refused to defer to the NMB on the scope of the jurisdiction of Railway Labor Act. This is especially problematic where, as here, TWU has enjoyed a longstanding certification as "representative" for Worldwide's "mechanics and related employees" under the RLA, something which to date the Board has declined to interfere with in any unfair labor practice or representation case.

The now Acting Board Chairman raised concerns about this tension, which the General Counsel blatantly ignored here, and which are highly relevant in this dispute:

"For two reasons I concur[ed] in the Board's exercise of jurisdiction in the instant case....[t]he Board gives substantial deference to the NMB's jurisdictional determinations....and **the NMB's decision to decline jurisdiction** over the Employer, although not unanimous, supports a finding the Board has jurisdiction in the instant case.

* * * *

Failure to assert jurisdiction in the face of the NMB's decision would leave the Employer subject to neither statute, condemning the Employer and the employees to a jurisdictional 'no man's land.'" [emphasis added]

See *Airway Cleaners*, 363 NLRB No. 166 (Member Miscimarra, Concurring Opinion).

Here the disputed Terminal 5 employees at Chicago O'Hare Airport are not in a "no man's land" but continue to be represented by TWU under the RLA, along with thousands of other Worldwide employees performing similar work at airports throughout

the continental United States and Hawaii. Hearing Transcript R. 580-581. The logic of the Acting Chairman's concurring opinion in *Airway Cleaners* should have been followed in this matter, particularly whereas here the Board initially sought NMB advice, but then refused to wait for the NMB's decision as to its jurisdiction.

TWU still emphatically denies that the National Labor Relations Board has any jurisdiction to address any unfair labor practice charges concerning these disputed airport maintenance employees, who were covered by TWU's contract with Worldwide and its subsidiary Oxford. Due to the Board's lack of jurisdiction, which the Administrative Law Judge erroneously overlooked (in addition to overlooking the fact TWU filed a Post Hearing Brief which she admittedly did not bother to read), the Decision and Order should be reversed.

Here are TWU's specific exceptions to that Decision and Order:

Exception Number	Page	Line	Exception
1	1 2 3	14	Charging Party , General Counsel and the ALJ and official Reporter incorrectly found the name of Respondent Local 504 to be "Transportation" Workers Union of America despite the Respondent describing its correct name in its Answer to the Consolidated Complaint. The Correct name of Respondent Union is Transport Workers Union of America, AFL-CIO, Air Transport Local 504

Exception Number	Page	Line	Exception
2	2	21-32	The ALJ incorrectly found the employment relationships at issue in the case were within the jurisdiction of the NLRB. Indeed, the Regional Director sought an opinion from the National Mediation Board as to its obvious jurisdiction, and then did not bother to wait for the NMB's ruling.
3	2	33-35	The ALJ incorrectly found the Respondent Employer's recognition of Respondent Union and Respondent Union's acceptance of that Recognition and the unilateral changes that occurred as a result violate the NLRA. The ALJ ignored Respondent Local 504's longstanding certification by the National Mediation Board as representative of the Respondent Employer's class of employees. Unlike Charging Party, Respondent TWU Local 504 has actually received a formal certification as representative, not merely voluntary recognition.
4	3	34	The ALJ incorrectly described Respondent Local 504 as "IUOE Local 504" and overlooked that Respondent TWU Local 504 <u>did</u> file a post-hearing brief in this matter via Federal Express to the ALJ via the NLRB's Division of Judges, and served copies electronically to the parties, on March 16, 2017.
5	4	44, 45	The ALJ incorrectly found that Respondent Employers are engaged in commerce within the meaning of Sections 2 (2), (6), and (7) of the NLRA.
6	4	40-45	The ALJ incorrectly found that for purpose of writing a Decision and Recommended Order many of the factual findings relevant to the jurisdictional issue are also relevant to other issues that arise in this case.

Exception Number	Page	Line	Exception
7	4	42	The ALJ incorrectly found that Respondent Employers were within the jurisdiction of the NLRA.
8	5	25-30 and Footnote 7	The ALJ incorrectly found that Charging Party represented the unit employees from 1993 to 2013 pursuant to the NLRA, as there was no evidence in the record that Charging Party ever petitioned for, or was certified as, the lawful bargaining representative for <u>any</u> group of employees at Terminal 5 of Chicago O'Hare Airport.
9	9	40 (Footnote 8 in its entirety.)	The ALJ incorrectly found in footnote 8 that there are different contract provisions concerning control in other Oxford-Worldwide contracts with Respondent TWU, Local 504, applied differently under the RLA.
10	9	41-44	The ALJ found incorrectly that NLRB and NMB do not include the control exercised by other carriers at other facilities pursuant to different contract provisions, although the TWU, Local 504 President testified that the TWU contracts for different airport locations was national in application as permitted under the RLA. Hearing Transcript R. 604-612.

Exception Number	Page	Line	Exception
11	9 10	24, 25 1	The ALJ erroneously assumed that CICA TEC representatives encouraged but did not require Oxford/Worldwide to retain ABM's experienced and dependable work force, citing R.460. The testimony at R.401 indicates that at no time during the process did Oxford ever contemplate the jobs being offered to incumbent ABM employees at conditions which would be the same as the ABM employees' conditions,(R. 461), and at no time did CICA TEC have any knowledge of what the latest conditions of the ABM contract with Local 399 were (R.461) nor at any time during the process of retention of any Local 399 nonmembers did Oxford advise any applicants that they would be required to work nonunion. The ALJ also erroneously referred to TWU Local 504 as 399.
12	14	15, 16, 17, 18, 19, 20, 21, 22	The ALJ erroneously found it was appropriate for the NLRB to decide the jurisdiction dispute in this case without an opinion from the National Mediation Board, which it had solicited but failed to wait to receive.
13	17	21,22,23, 45	The ALJ erroneously found that Worldwide's bargaining obligation under the RLA in other employment relationship covering similar workers with TWU Local 504 is not determinative of the jurisdictional issue in this matter.

Exception Number	Page	Line	Exception
14	17	15, 16, 17, 18, 19, 20	The ALJ erroneously found that a finding of RLA jurisdiction with regard to an employer's performance of one contract does not automatically extend RLA jurisdiction to the performance of similar work under another contract with the same employers at another facility. This is directly contrary to the RLA authorized nationwide certification of representative which TWU Local 504 has held for Worldwide and Oxford employees in this craft for more than a decade.
15	20	1-45 and fn. 14	The ALJ incorrectly parsed the citations of the Maintenance Agreement provisions as to minimize CICA TEC's ultimate control of the hiring process of all Worldwide and Oxford Maintenance employees at Terminal 5. The hiring was done by competitive contract bidding, and the NLRB is not empowered to dictate who should prevail in a municipal authority's contract bidding process.
16	18	33,34	The ALJ erroneously found that this case is factually similar to other cases where the NMB has declined to assert jurisdiction under the RLA and is appropriate for the NLRB to make the jurisdictional determination since the NMB has not been shown to have expressly declined to assert jurisdiction, but rather held this matter in abeyance.
17	21	1-46 and fn. 15	Same Exception as Exception 14

Exception Number	Page	Line	Exception
18	22	1-28 and fn.	The ALJ's finding as to the Respondents insufficient evidence to demonstrate Oxford and Worldwide operations are indirectly under control with a carrier to invoke the jurisdiction under the RLA is erroneously as a matter of law
19	19 footnote 3- in its entirety		The ALJ erroneously found that the case <i>ABM Onsite Service-West Inc. v. NLRB</i> , 849 F.3 rd 1137, 1139 (D.C. Cir. 2017) cited in footnote 13 did not require the ALJ to be bound by the NLRB precedent of giving deference to the NMB in its departure from precedent of applying the six factor test with emphasis on "meaningful control over personnel decisions" that are greater than in typical subcontractor relationship.
20	22	31-47 and fn. 16	The ALJ's finding as to the joint Employers status under the NLRB is erroneous as a matter of law.
21	24- 27	p. 26 Lines1-26 Entire pages 24, 25 and 27	The ALJ's finding as to the appropriateness of a single facility unit under the NLRA is erroneous as a matter of law. The ALJ erred by ignoring TWU's prior certification.
22	26	4-26	The ALJ incorrectly assumed the statutory role of the NMB by finding that RLA jurisdiction in this case was not appropriate.
23	26	20	The ALJ incorrectly gave weight to the bargaining history of IUOE Local 399 as a single-facility unit under the NLRB despite a total absence of evidence as to how Local 399 IUOE achieved contractual recognition for the mechanics and helpers ultimately employed by Worldwide and Oxford.

Exception Number	Page	Line	Exception
24	27	9-30 and Footnote 19 in its entirety	The ALJ incorrectly found that Respondents and Worldwide Flight Services, Inc. were successor employers with regard to the T-5 employees with wage and fringe issues.
25	28	24-46 and footnote 21	The ALJ incorrectly found that Respondent Employers unlawfully unilaterally changed the employees terms and conditions of employment even though these terms and conditions of employment were not specifically set forth in the IUOE Local 399 contract. In footnote 21, the ALJ expressly did not find sufficient evidence of an unlawful change in uniform replacing policy or shift schedule in the contractual agreement between Oxford, Worldwide and Local 504.
26	28 29	40-46 and 1-24	The ALJ erroneously found that Respondent Employers violated Section 8(a)(2) and (3) and TWU Local 504 violated Section 8(b)(1)(A) and 2 of the NLRA on the ALJ's erroneous finding that the charges were within the jurisdiction of the NLRB, and should not have been deferred to the National Mediation Board under the applicable Railway Labor Act.

Exception Number	Page	Line	Exception
27	28- 29,	30, 31, 32, 33, 34, 35, 36, 37, 38, 39	The ALJ incorrectly found the above-cited violation of the NLRA by Oxford Airport Technical Services and Worldwide Flight Services, Inc. In the ALJ's Finding of Violations of Section 8(a)(2) and (3) and Violations of Section 8(b)(1)(A) and (2) of the NLRA and issuance of conclusions of Law Remedies and Orders resulting from the ALJ's rulings on May 31, 2017, the ALJ exceeded her authority as a matter of law because the NLRB had no subject matter jurisdiction in these proceeding and all the charges should have been dismissed for lack of such subject matter jurisdiction.
28	27		The ALJ erroneously, in the alternative, erred as a matter of law in not finding the unfair labor practices filed by IUOE Local 399 in this matter against Respondents Oxford (et al) Worldwide (et al) and Local 504 of TWU were untimely since Local 399's contracted employer, ABM, took away Local 399's right to perform the services of the employees employed at Terminal 5 when it lost its bid, and no charges were timely filed within the Section 10(b) period.

Dated: July 11, 2017
New York, New York

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STATEMENT OF SERVICE

I certify that before 5:00pm on July 11, 2017, eight (8) true copies of the foregoing **RESPONDENT LOCAL 504's POST HEARING EXCEPTIONS** were sent by overnight delivery to the NLRB – Office of Executive Secretary at the following address:

Office of the Executive Secretary
National Labor Relations Board
1015 Half Street
Washington, D.C. 20570

and were served electronically on the following parties:

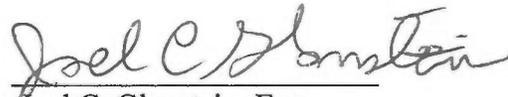
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Signed the 11th day of July, 2017


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