UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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

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

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

and Case No. 13-CA-115933

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 399, AFL-CIO

TRANSPORTATION WORKERS UNION OF AMERICA-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.)

and

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 399, AFL-CIO Case No. 13-CB-115935

EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE ON BEHALF OF RESPONDENTS OXFORD ELECTRONICS, INC. d/b/a OXFORD AIRPOT TECHNICAL SERVICES AND WORLDWIDE FLIGHT SERVICES, INC.

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board ("NLRB" or "Board") Respondents Oxford Electronics, Inc. d/b/a Oxford Airport Technical Services ("Oxford") and Worldwide Flight Services, Inc. ("WFS") (Oxford and WFS collectively "Respondents" or "Oxford/WFS") except to the following parts of the record in the above-captioned case: the Decision of the Administrative Law Judge ("ALJ"), dated May 31, 2017, as identified below.

Exceptions to the Decision of the ALJ

Respondents respectfully except to:

AS TO THE JURISDICTIONAL ISSUE

1. The finding/conclusion that this dispute is covered by the National Labor Relations Act ("NLRA") rather than the Railway Labor Act ("RLA") (ALJ 18:37- 22:28).
2. The finding/conclusion that the record does not support that Oxford/WFS' "employment relationship with the unit employees is indirectly controlled or under the common control of a carrier or carriers to the extent that it is within the jurisdiction of the RLA" (ALJ 14:19-22).
3. The finding/conclusion that Respondents' "history of work at other airports, although considered, is not relevant to the determination that of whether RLA jurisdiction is appropriate in this case" (ALJ 9:fn 8)
4. The finding/conclusion that the NLRB rather than the National Mediation Board ("NMB") is the proper forum for the determination of whether this dispute is governed by the RLA (ALJ 14:18-18:35).
5. The finding/conclusion/analysis of NMB precedent to the effect that "a contractor who performs work for a common carrier at one location that has been determined to

be within the jurisdiction of the RLA is not automatically covered by the RLA in its performance of another contract at another location" (ALJ 15:47-50).

6. The finding/conclusion/analysis that NLRB assertion of jurisdiction in this case is consistent with cited NMB decisions because the facts here and in those cases are "factually similar" (ALJ 16:37-39).
7. The finding/conclusion/analysis that the applicable standard for RLA jurisdiction requires a review of the six factors cited by the NMB in *Air Serv Corp*., 33 NMB 272, 285 (2006), "with an emphasis of on the carriers' exercise of meaningful control over personnel decisions [to determine whether there exists] a lack of carrier control that is no greater than that found in a typical subcontractor relationship" (ALJ 15:5-21; 16: 38-40).
8. The finding/conclusion that "[f]ailure to of the NLRB to continue to follow its precedent of finding jurisdiction where *the NMB's precedent is clear* that it would decline to assert jurisdiction under the RLA would leave the employees and the parties in a 'no-man's land' without a forum to address labor disputes" (ALJ 16:41-44).
9. The conclusion that it is and was appropriate "for the NLRB to assert jurisdiction in this matter without first receiving an advisory opinion from the NMB" (ALJ 16:50-17:2).
10. The finding/conclusion/analysis that the certifications issued by the NMB certifying Respondent TWU ("TWU") as the representative of all WFS employees in the relevant crafts or classes under the RLA, including all such employees of WFS nationwide, at other airports throughout the United States, performing the same work

as performed at the location here in dispute (Terminal 5 at ORD, ("T5")), is not relevant to the analysis of RLA jurisdiction (ALJ 17:4-21).

11. The finding/conclusion that "[WFS's] bargaining obligation under the RLA in other employment relationships covering similar work is not determinative of the jurisdictional issue in this matter" (ALJ 17:22-23).

12. The absence of a finding that WFS and its predecessor (AMR Services) have had a nationwide bargaining relationship and nationwide collective bargaining agreements with TWU covering multiple functions, among others, including the type of work performed at T5, since 1983. (Tr. 594-596, 603; RO Ex. 24; RO Ex. 27.[1]

13. The absence of a finding that WFS and its predecessor (AMR Services) have had a nationwide bargaining relationship and nationwide collective bargaining agreements with TWU pursuant to the RLA and certifications issued by the NMB requiring nationwide representation of TWU under the RLA. (Tr. 594-596, 603; RO Ex. 24; RO Ex. 25; RO Ex. 26).

14. The absence of a finding that TWU considered the work to be performed at T5 to be within the scope of its certified nationwide bargaining relationship and nationwide collective bargaining agreement with WFS pursuant to the RLA, and that if not awarded to TWU would have been grounds for a claim of contract violation by WFS. (Tr. 610-613).

15. The finding/conclusion/analysis that the NLRB properly decided the jurisdictional question as a matter of clear jurisdiction, despite seeking, but then retracting, its

[1] ("Tr.__") refers to pages in the official transcript of the instant unfair labor practice proceeding held before ALJ Song-Graves. ("GC Ex. __") and ("RO Ex. __") refer to General Counsel's, and Oxford/WFS' Exhibits, respectively.

request for an NMB opinion on the jurisdictional issue, and in disregard of the standards adopted in *ABM Onsite Service-West, Inc. v. NLRB*, 849 F. 3d 1137 (D.C. Cir. 2017) ("*ABM Onsite*") (ALJ 17: 24-42).

16. The conclusion that *ABM Onsite* and *Allied Aviation Serv. Co. of New Jersey & Local 553, IBT*, 854 F.3d 55 (D.C. Cir. 2017) support the view that "[t]he Board has declined to defer cases presenting jurisdictional claims in factual situations similar to those where the NMB has previously declined jurisdiction" (ALJ 18:3-4).
17. The conclusion that WFS's "long history of bargaining with TWU Local 504 under the jurisdiction of the RLA as the representative of its employees who perform work under various contracts for carriers and consortiums of carriers at other airports" does not require, in the interests of labor stability, continued application of the RLA, under *United Parcel Service, Inc*., 318 NLRB 778 (1995) (ALJ 18:14-24).
18. The finding/conclusion that labor stability is better protected by "the NLRB declining to refer this jurisdictional dispute to the NMB for an opinion", as well as the totally unsupported speculation that there would be no labor instability at other locations under contract with TWU and subject to the RLA and the further speculation that if a jurisdictional dispute arose at one of those locations "the NLRB is likely … to defer to the NMB to promote labor stability" (ALJ 18:24-28).
19. The finding/conclusion that "the NLRB's holding in United parcel Service supports the NLRB deciding the jurisdictional dispute in this matter without first acquiring an NMB opinion" (ALJ 18:31-33).
20. The finding/conclusion "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", particularly where in each of the cases relied on by the ALJ, there was no NMB certification in place and no historical nationwide bargaining relationship in place, let alone a 30 plus year nationwide bargaining relationship under the RLA (ALJ 18:33-35).

21. The finding/conclusion that "a review of the six factors with an emphasis on meaningful control over personnel decisions does not warrant a finding that Respondent Employers operations in this case are within the jurisdiction of the RLA" (ALJ 19:24-26).

22. The conclusions that the ALJ is "bound by NLRB precedent to apply the six factor test with the emphasis on 'meaningful control over personnel decisions 'that evidences elements of control that are 'greater than that found in a typical subcontractor relationship'" and that "[t]herefore I give less weight to NMB decisions cited by Respondent Employers all of which predate the NMB's decision in *Air Serv Corp.* …." (ALJ 19: fn.13).

23. The finding/conclusion that Oxford/WFS employees "rarely communicated directly with Ranttila when he was the executive director and less with his replacement" (ALJ 20:1-3).

24. The finding/conclusion that Ranttila directly requested employees to perform work on "rare occasions" (ALJ 20:3-4).

25. The finding that, if Ranttila directed an employee to perform work outside their normal duties, employees "would ask Jensen if they should perform the work" (ALJ 20:4-5).

26. The finding/conclusion that "[m]ostly, the executive director monitors the operation of the baggage sorting system in order to communicate any delays directly to the carriers" (ALJ 20:5-7).
27. The absence of a finding that Ranttila and Shirley demanded Jensen assign Oxford/WFS employees to complete a particular assignment. (Tr. 515-518).
28. The absence of a finding that Ranttila and Shirley demanded Jensen assign more employees to work on a particular jet bridge. (Tr. 515-518).
29. The absence of a finding that Shirley has demanded Oxford/WFS employees perform more cleaning tasks throughout the bag room. (Tr. 517).
30. The finding that "[s]pecific language in the contract clearly evidences CICA TEC's intention to divest itself of control of Respondent Employers personnel matters" (ALJ 20:30-32).
31. The finding that Oxford submitted Jensen's resume "to CICA TEC for approval with no response" (ALJ 21:2-3).
32. The absence of a finding that CICA TEC approved Jensen's assignment to the Operations Manager role. (Tr. 460).
33. The absence of a finding that Oxford/WFS could not have assigned Jensen to the Operations Manager role without CICA TEC's approval. (Tr. 460).
34. The finding/conclusion that "[a]s for the unit employees, CICA TEC retains no control over their hiring process" (ALJ 21:6-7).
35. The absence of a finding that Oxford/WFS must perform their services according to the strict guidelines of the CICA TEC Contract, which sets forth what tasks the

employees must complete and how often and how quickly they must complete these tasks. (GC Ex. 12, p.28-29).

36. The absence of a finding that Oxford/WFS employees must comply with CICA TEC's standards, rules and regulations, and any standards, rules and regulations promulgated by the CICA TEC Executive Director. (GC Ex. 12, ¶3.03).
37. The absence of a finding that, in the event CICA TEC determines Oxford/WFS fails to comply with CICA TEC's standards, rules and regulations, Oxford/WFS must repeat or cause to be repeated the services, at its own expense. (GC Ex. 12, ¶3.03).
38. The absence of a finding that CICA TEC's Executive Director has the contractual "authority to manage, monitor and coordinate the performance of" Oxford/WFS. (GC Ex. 12, ¶3.02).
39. The absence of a finding that CICA TEC's Executive Director reviews all preventative maintenance work performed by Oxford/WFS. (GC Ex. 12, ¶3.02).
40. The absence of a finding that Oxford/WFS must "act in the best interest of CICA TEC". (GC Ex. 12, ¶3.03).
41. The absence of a finding that CICA TEC determines the hours Oxford/WFS must operate. (GC Ex. 12, p.28).
42. The absence of a finding that Oxford/WFS cannot replace "Key Personnel" without prior written approval from CICA TEC. (GC Ex. 12, ¶3.05).
43. The absence of a finding that Oxford/WFS must employ an individual "acceptable to CICA TEC" who is responsible for "conveying decisions on behalf of [Oxford/WFS] to CICA TEC." (GC Ex. 12, ¶3.06).

44. The absence of a finding that Oxford/WFS must attend "job meetings [and] keep itself aware of any revisions to flight schedules, and conform to any such revisions." (GC Ex. 12, ¶5.01).

45. The absence of a finding that Jensen is in virtually daily discussions with CICA TEC representatives and airline representatives regarding operational issues. (Tr. 518-522).

46. The absence of a finding that Oxford/WFS representatives attend monthly meetings with CICA TEC and airline representatives to discuss Oxford/WFS' performance and to review safety issues and initiatives. (Tr. 539-541).

47. The finding that "Respondent Employers control the unit employees' . . . work shifts [and] work schedules" (ALJ 22:1-2).

48. The finding that "[o]ther than the terminal rules, which focus on safety and security at the airport and are applicable to all individuals working there, CICA TEC has not provided the unit employees with any form of . . . work rules" (ALJ 22:9-14).

49. The finding that "the record evidence does not support a finding that CICA TEC exercises meaningful control over personnel decisions and has no greater control over Respondent Employers than is found in a typical subcontracting relationship" (ALJ 20:28-30).

50. The finding/conclusion that the issue of jurisdiction should be determined based on "the 3-1/2 years between when Respondent Employers took over and the date of the hearing" where the decision to apply the WFS-TWU nationwide contract under the RLA was made by no later than October 2012, long before any experience relating to

actual exercise of authority to remove any personnel by CICA TEC could have occurred (ALJ 21:11- 12).

51. The finding/conclusion that "[t]he level of control over personnel decisions retained by CICA TEC is less than that retained by the carrier in *Airway Cleaners, LLC*, 41 NLB 262 (2014)" (ALJ 21:18-20).

52. The finding/conclusion that the "CICA TEC authority to withhold approval of Respondent Employers management selection is limited by a reasonable standard and it can only require the removal of personnel for a material reason" provide support for the conclusion that there is no jurisdiction under the RLA (ALJ 21:36-38).

53. The finding/conclusion that "despite the language in the contract giving the carrier the right to intervene in staffing decisions, there was no evidence that the carrier had done so" (ALJ 21:39-40).

54. The finding/conclusion that "the Maintenance Agreement provisions granting CICA TEC some control over Respondent Employers personnel does not give CICA TEC sufficient control over staffing levels, or the hiring, firing and discipline of that personnel to establish jurisdiction under the RLA…" (ALJ 21:42-45).

55. The conclusion that "[e]ven without the emphasis on control over personnel matters, I find that an analysis of the six factors do not weigh in favor of finding jurisdiction under the RLA" and the citation to *Swissport USA, Inc.*, 35 NMB 190 (2008) as support for that conclusion (ALJ 22:15-22).

AS TO THE JOINT EMPLOYER ISSUE

56. The findings/conclusions that Oxford was a joint employer with both Total Facility Maintenance, Inc. ("Total") and Twin Staffing, Inc. ("Twin") (ALJ 23:17-24:2).

57. The finding that "[t]he only time Totwl and Twin supervisors interact with the encoders is when they deliver biweekly paychecks" (ALJ 23:30-31).
58. The finding that "Farmer sets the encoders' work schedules" (ALJ 23:34).
59. The absence of a finding that both Twin and Total employ "Lead Encoders" who are responsible for establishing the encoders' work schedule and seating assignments. (Tr. 202-203, 309).
60. The absence of a finding that encoders contact their Lead Encoders to call out sick or to request to go home early. (Tr. 310).
61. The absence of a finding that Jensen cannot ask an encoder to come in to work early or to work an additional shift. (Tr. 204-205, 313).
62. The absence of a finding that Oxford/WFS does not hire or interview encoders. (Tr. 304).
63. The absence of a finding that Oxford/WFS does not assign work to encoders. (Tr. 310).
64. The absence of a finding that Oxford/WFS does not review encoders' performance or recommend encoders for promotion, pay increases or commendation. (Tr. 311-312).
65. The absence of a finding that Oxford/WFS does not set employment policies for Total or Twin, and did not play a role in preparing Total's or Twin's employment manuals. (Tr. 311-312).

AS TO THE SUCCESSORSHIP ISSUE

66. The findings/conclusion that "the NMB's prior certification of TWU Local 504 as the bargaining representative of Respondent [WFS's] employees performing the same or similar jobs at other airports [does not] require[] the employees in the instant case to

be part of that unit without first finding, which I do not find, that RLA jurisdiction is appropriate in this case" (ALJ 25:42-26:2).

67. The conclusion that "the NLRB has long found a single-facility unit to be presumptively appropriate and the party opposing it has a heavy burden to rebut such a presumption" (ALJ 26:4-5).

68. The conclusion that the "appropriateness of a single-facility unit is different in the context of successorship than in an initial representation hearing, especially in situations, like the instant case, where employees had historically been represented in a single-location unit" and the reliance on *Allways E. Transportation, Inc.* and *IBT, Local 445*, 365 NLRB No. 71 (2017) (ALJ 26:7-9).

69. The finding that "[o]ther then evidence that the dispatchers, mechanics, and helpers are provided payroll and human resources services by [WFS], Respondent Employers and TWU Local 504 presented no evidence to support" the following "community-of-interest factors: (1) central control over daily operations and labor relations, including the extent of local autonomy, (2) similarity of skills, functions, and working conditions, (3) degree of employee interchange, [and] (4) distance between locations" (ALJ 26:11-18).

70. The finding/conclusion that "[WFS's] bargaining history under the RLA" is not relevant to the fifth "community-of-interest" factor: "bargaining history, if any" (ALJ 26:18-20).

71. The findings/conclusion that "I do give weight to the bargaining history of the unit employees with IOUE Local 399 as a single facility unit" (ALJ 26:20-21).

72. The finding/conclusion that "Respondent Employers failed to adduce sufficient evidence to rebut the presumption that the single-facility unit of employees employed by Respondent Employers at T-5 is an appropriate unit for collective bargaining under the NLRA in this case" (ALJ 26:21-24).

73. The finding/conclusion that by its October 2012 premature request to bargain followed by "IOUE Local 399 continued to assert its demand to bargain by initially filing charges in March [2013] that were found premature and then again in October [2013] in the instant cases", IOUE Local 399 "established a 'continuing demand' which remained in effect until Respondent Employers employed a substantial and representative complement of its predecessor's employees to perform substantially the same work at T-5 starting July 1 [2013]" (ALJ 26:30-42).

74. The conclusion that "[WFS], Total, and Twin, as joint employers with Oxford in regards to their respective employees, had the obligation to honor the IOUE Local 399's demands for recognition starting on July 1, 2013, because from that date forward they employed a substantial and representative complement of their workforce in an appropriate bargaining unit, and was aware of IOUE Local 399's demand for recognition" (ALJ 26:44-27:3).

75. The finding/conclusion that "Respondent Employers are thereby obligated to meet and bargain with the IOUE local 399 as the exclusive collective-bargaining representative of their employees" (ALJ 27:5-6).

AS TO THE UNILATERAL CHANGES

76. The finding/conclusion (without explanation, analysis, or citation of relevant authority) that by "refus[ing] to recognize and enter into good-faith negotiations with

the unit employees' long-term collective-bargaining representative, IOUE Local 399" and by "require[ing] the unit employees to sign, as a condition of employment, dues authorization forms allowing Respondent Employers to deduct membership dues from their pay and remit[ing] those dues to TWU Local 504 … Respondent Employers forfeited the right to set initial terms and conditions of employment by not recognizing and bargaining with IOUE Local 399" (ALJ 28:17-22).

77. The findings/conclusion "that Respondent Employers unlawfully unilaterally changed the unit employee's [sic] terms and conditions of employment by failing to continue the terms and conditions of employment set forth in the IOUE contract and by changing other terms and conditions of employment enjoyed by the employees but not specifically set forth in the IOUE contract" in the specifics listed (ALJ :24-38).

AS TO 8(a)(2) AND 8(a)(3)

78. the finding/conclusion that "Respondent Employers violated Section 8(a)(2) and (3) of the NLRA by recognizing TWU Local 504 as the collective-bargaining representative of the unit employees and by entering into, maintaining, and enforcing a collective-bargaining agreement containing union-security and dues-check off provisions with TWU Local 504 with regard to the unit employees, at a time when TWU Local 504 did not have the support of a majority of the unit employees" (ALJ 29:13-18).

AS TO CONCLUSIONS OF LAW

79. The conclusion of law that Oxford/WFS is an employer engaged in commerce within the meaning of Section 2(6) and 2(7) of the NLRA (ALJ 29, Conclusion #1).

80. The conclusion of law that IOUE Local 399 is, and that all material times has been, the exclusive bargaining representative of the employees at T5 (ALJ 29, Conclusion # 3).

81. The conclusion of law that since July 1, 2013, Oxford and Total, and Oxford and Twin have been joint employers of encoder employees at T5 (ALJ 30, Conclusion # 5).

82. The conclusions of law that Oxford/WFS and Total and Twin violated Sections 8(a)(1), 8(a)(2), 8(a)(3) and 8(a)(5) of the NLRA, which unfair labor practices affect commerce (ALJ, Conclusion ##6-12).

83. The remedies recommended by the ALJ against Respondents, including, but not limited to, the requirement that Respondent Employers withdraw recognition from TWU Local 504; the requirement that Respondent Employers recognize and bargain with IOUE Local 399; the requirement that, on request ofIOUE Local 399, Respondent Employers rescind any departure from the terms and conditions of employment previously in effect and retroactively restore pre-existing terms and conditions of employment including but not limited to wages and benefits until Respondent Employers negotiate in good faith with IOUE Local 399 to agreement or impasse; the requirement that Respondent Employers compensate the unit employees for adverse income tax consequences of receiving their backpay in one lump sum and file a report with the Social Security Administration; the requirement that Respondent Employers jointly and severally with TWU Local 504, reimburse all claims of present and former unit employees who paid initiation fees, periodic dues, assessments, or

any other monies to TWU Local 504 since July 1, 2013; and the requirement that a notice be posted (ALJ 31-32).

84. The ALJ's recommended order to the extent that it requires Respondents to take action based on the ALJ's erroneous findings and conclusions of law, as more fully set forth in the Exceptions above and the Respondents' Brief in support of these Exceptions (ALJ 32-39).

85. The ALJ's proposed notices to the extent the language of the notices is based on the ALJ's erroneous findings and conclusions of law, as more fully set forth in the Exceptions above and the Respondents' Brief in support of these Exceptions (ALJ, Appendices A-C).

Dated: July 12, 2017

Respectfully submitted,

JACKSON LEWIS P.C.

By: /s_____
ROGER H. BRITON
KATHRYN J. BARRY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

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

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

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Case 13-CA-115933

and

Case 13-CB-115935

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 399, AFL-CIO

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of July, 2017, I served a true copy of **EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE ON BEHALF OF RESPONDENTS OXFORD ELECTRONICS, INC. d/b/a OXFORD AIRPOT**

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4845-5949-9850, v. 2