

EXHIBIT A

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

PRIMEFLIGHT AVIATION SERVICES, INC.)	
)	
Employer)	
and)	Case No. 29-RC-198504
)	
SERVICE EMPLOYEES INTERNATIONAL)	
UNION, LOCAL 32BJ)	
)	
Petitioner)	
)	

DECISION AND DIRECTION OF ELECTION

PrimeFlight Aviation Services, Inc. (“Employer” or “PrimeFlight”) provides various services for airline carriers at airports around the country. On May 10, 2017,¹ Service Employees International Union, Local 32BJ (“the Petitioner”) filed a petition under Section 9(c) of the National Labor Relations Act, seeking to represent a unit of employees including all full-time and regular part-time employees employed by the Employer at LaGuardia Airport (LGA), but excluding all office clericals, managers, guards, and supervisors and defined by Section 2(11) of the Act.

The Employer asserts that the Board lacks jurisdiction in this case because the Employer is subject to the Railway Labor Act (RLA) and thus under the jurisdiction of the National Mediation Board (NMB). Accordingly, the Employer maintains that the instant petition should be dismissed or that this case should be referred to the NMB to resolve the jurisdictional issue. The Petitioner asserts that the National Labor Relations Board (the Board) has jurisdiction and that referral to the NMB is unnecessary.

A hearing was held before Erin Schaefer, a hearing officer of the National Labor Relations Board.

I find that the Board can decide this matter without referral to the NMB and that the Board has jurisdiction over the Employer in the present case. I will therefore direct that an election be held in an appropriate unit.

¹ All dates hereinafter are in 2017 unless otherwise indicated.

I. Background

The Employer employs approximately 5000 employees in total, including approximately 700 employees at LGA. The Employer provides various services for American Airlines, Air Canada, Southwest Airlines, JetBlue Airlines, Frontier Airlines, Spirit Airlines, and US Airways at LGA. American Airlines constitutes about sixty percent of the Employer's business at the airport. The Employer provides a variety of services for these carriers, including baggage handling, cabin appearance services, facilities appearance services, customer and passenger services, line queue, wheelchair services, skycap services, shuttle bus services, and electric cart services.

Matthew Barry, a division vice president for the Employer, oversees the Employer's operations at nine airports, including LGA. He does not provide day to day operational supervision at LGA. J.R. Garcia serves as the Employer's director of operations at LGA. Rodrigo Calapaqui serves as the Employer's assistant director of operations at the airport.

Garcia testified that the Employer meets with the carriers it serves at LGA on a daily and weekly basis to discuss the carriers' operations and operational needs. In addition, Garcia is invited to the carriers' safety and customer service meetings. The Employer will also meet with carriers to discuss special projects, such as preparations for an expected storm or expected high baggage volume. In addition, the Employer sends the carriers daily briefings by email to update the carriers on operations.

II. Relevant Legal Standards

A. Jurisdiction Under the Railway Labor Act

The National Labor Relation Act excludes from the definition of employer "any person subject to the Railway Labor Act." 29 U.S.C. § 152(2). The RLA regulates rail and air carriers.

When an employer is not a rail or air carrier, but instead provides services to such a carrier, the NMB applies a two-part test to determine whether the employer is subject to the RLA: first, it ascertains whether the nature of the work performed by the contractor is of a type traditionally performed by carriers; and second, it determines whether the employer is directly or indirectly owned or controlled by, or under common control with, a carrier. Both parts of the test must be satisfied for the NMB to assert jurisdiction. *See Menzies Aviation, Inc.*, 42 NMB 1, 4-5 (2014). Here, the Petitioner concedes that the Employer performs work traditionally performed by carriers and thus satisfies the first part of this test. The parties also stipulated that the Employer is not owned by or under common ownership with any carrier. The question presented, therefore, is whether the Employer is directly or indirectly controlled by the carriers at LGA.

With respect to the requirement that the carrier exercise control over the employer, "control does not mean simply specifications in some detail as to the nature of the services to be performed and the method used, but control of the management and business policy of the subordinate company." *Marriott In-Flite Services*, 171 NLRB 742, 752 (1968) (*citing, inter alia, Martin v.*

Federal Security Agency, 174 F.2d 364 (3d Cir. 1968)), *enf. denied on other grounds* 417 F.2d 563 (5th Cir. 1969). Control under the RLA means the carrier possesses “the definite legal right to control” the “business policies and operations” of the employer providing the services. *Martin*, 174 F.2d at 367.

Just because an employer is “engaged in a business which requires it to please some very meticulous and demanding customers” does not mean those customers control the employer under the RLA. *Dobbs House, Inc. v. NLRB*, 443 F.2d 1066, 1072 (6th Cir. 1971). Thus, an employer who sells its services to a carrier and tailors its business to meet the carrier’s needs is not, merely by virtue of that dynamic, controlled by the carrier for purposes of the RLA. *Air Serv Corp.*, 39 NMB 477, 480 (2012), denying reconsideration of 39 NMB 450 (2012).

The NMB has identified six factors relevant to assessing whether this exacting standard of control is met:

the extent of the carrier's control over the manner in which the company conducts its business, access to the company's operations and records, role in personnel decisions, degree of supervision of the company's employees, whether employees are held out to the public as carrier employees, and control over employee training.

Airway Cleaners, LLC, 41 NMB 262, 267 (2014).

More recently, the NMB, in considering whether it has jurisdiction over employers who supply services to an airline carrier or carriers, has placed particular emphasis on whether the carrier or carriers exercise “meaningful control over personnel decisions.” *Allied Aviation Service Company of New Jersey*, 362 NLRB No. 173, slip op. at 1 (2015) (citing *Airway Cleaners*, 41 NMB at 268; *Menzies*, 42 NMB at 7; and *Bags, Inc.*, 40 NMB 165, 170 (2013)). Consistent with this emphasis, the NMB has repeatedly underscored the absence of meaningful carrier control over hiring, firing, and discipline in its decisions where it concluded that a carrier lacked meaningful control over an employer. *Allied Aviation*, 362 NLRB No. 173, slip op. at 1. The NMB has made clear that the degree of control “found in a typical subcontractor relationship” does not necessarily establish its jurisdiction. *Id.*, slip op. at 2. As discussed below, the Employer here has not demonstrated that the carriers have meaningful control over its operations beyond that of a typical subcontractor relationship.

B. Referral to NMB

In circumstances where it is unclear whether an employer is subject to the RLA, the Board will defer the question to the NMB for an advisory opinion. *Federal Express Corp.*, 317 NLRB 1155, 1155 (1995). The Board does so in light of the NMB’s expertise on its own jurisdictional matters and to minimize the possibility that the NMB and the Board reach conflicting determinations. However, referral to the NMB is not required. *United Parcel Service*, 318 NLRB 778, 780 (1995), *enf.* 92 F.3d 1221 (1996) (“there is no statutory requirement that this question of jurisdiction be submitted for answer first to the NMB.” (citation omitted)). Consequently, where a case before the Board presents facts substantially similar to cases in which the NMB has previously declined jurisdiction, the Board will not refer the case to the NMB. See *Phoenix Systems &*

Technologies, Inc., 321 NLRB 1166, 1166 (1996). See also *Spartan Aviation Industries, Inc.*, 337 NLRB 708, 708 (2002) (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.”); *System One Corp.*, 322 NLRB 732, 732 (1996) (“when it is clear . . . that an employer is not subject to the RLA, there is no need to refer the case to the NMB.”).

Since 2013, the NMB has ceded jurisdiction to the Board over airline contractors in cases where the air carriers provided detailed specifications as to the employer’s performance of work traditionally performed by carriers and audited that performance. For example, in *Menzies Aviation, Inc.*, 42 NMB 1, *supra*, the NMB declined to assert jurisdiction over Menzies, a contractor that supplied baggage, ramp, and aircraft servicing functions for air carriers at Seattle-Tacoma International Airport. Approximately 85 percent of Menzies’ work at the airport was for Alaska Airlines. The issue in the case was whether the carriers exercised the requisite control over Menzies’ operations. Analyzing the six factors cited above, the NMB found “a typical relationship between a carrier and a contractor.” *Menzies*, 42 NMB at 5. The NMB relied in great part on the fact that Menzies hired, supervised, and disciplined its own employees. Menzies could move employees among the carriers it serviced at the airport. The fact that Menzies had to perform its work according to the carriers’ standards and that the carriers could audit that work did not serve as evidence of control under the RLA.

Similarly, in *Bags, Inc.*, 40 NMB 165, *supra*, the NMB did not find the requisite control by a carrier in a case involving a contractor which provided skycap, wheelchair, and unaccompanied minor services to Delta and Alaska Airlines at Seattle-Tacoma International Airport. The NMB relied on the facts that Bags hired, promoted, trained, disciplined, and discharged its own employees. Employees wore uniforms with the Bags logo on them. The fact that the carriers had input into the personal appearance of Bags’ employees did not impact the fact that the employees were identified as such to the public. While the carriers provided certain equipment for Bags’ use, Bags provided much of its own equipment to do its work, including wheelchairs. As in *Menzies*, the fact that Bags had to perform according to the carriers’ standards did not constitute effective control of operations under the RLA.

In *Huntleigh USA Corp.*, 40 NMB 130 (2013), the NMB declined to find jurisdiction over a contractor providing baggage, wheelchair, aircraft cleaning and other services to carriers at George Bush International Airport in Houston, Texas. The NMB again found that Huntleigh hired, supervised, trained, disciplined, and discharged its own employees. Huntleigh leased its own office space, and supplied certain equipment, such as wheelchairs and cleaning equipment, although the carriers also supplied certain equipment. The NMB recognized that the carriers had “some degree of control because Huntleigh is engaged in a business which requires it to provide specific services linked to the arrivals and departures of its customers’ flights at a busy international airport. This type of control, however, is insufficient by itself to bring Huntleigh’s [operations at this airport] under the RLA.” *Huntleigh*, 40 NMB at 136.

The NLRB has noted that these “cases represent a shift by the NMB from earlier opinions in which [the NMB] asserted jurisdiction on similar grounds, and that this view is currently extant NMB law.” See *PrimeFlight Aviation Services, Inc.*, 12-RC-113687, 2015 WL 3814049, *1 n.1 (NLRB June 18, 2015). This view has been endorsed by District Courts as well. See *Paulsen v.*

PrimeFlight Aviation Services Inc., 216 F. Supp.3d 259, 266 (E.D.N.Y. 2016) (“The NLRB need not continue seeking advisory guidance from the NMB over airline contractors when the NMB has expressed a clear position that it does not have jurisdiction over certain categories of contractors employed by air carriers.”); see also *Air Serv Corp. v. SEIU, Local 1*, 16 C 10882, 2016 WL 7034136 (N.D Ill. 2016).²

Because the NMB has declined jurisdiction in cases similar to the present case, as explained more fully below, I decline the Employer’s request to refer this case to the NMB for a finding regarding jurisdiction.

C. Application of Prior NMB Decision

I note at the outset that while the NMB asserted jurisdiction over the Employer’s operations at LGA in 2007, the NMB’s recent shift in decisions regarding its jurisdiction requires a *de novo* review in this case. See *PrimeFlight Aviation Services, Inc.*, 34 NMB 175 (2007).³ In fact, in *Bags, supra*, the employer argued that the facts of that case were very close to those in the NMB’s 2007 *PrimeFlight* decision, but the NMB reached a different result.⁴

In addition to this shift in the law, the facts presented by the instant case differ from the previous case -- which also concerned services provided at LaGuardia -- also requiring *de novo* review. For example, the Employer provides services to a different complement of airlines at LGA than it did in 2007. In 2007, the Employer provided services to American, US Airways, Continental Airlines, JetBlue Airways, Air Canada, Midwest Airlines, Frontier Airlines, Spirit Airlines, American Trans Air, and AirTran Airways, with American accounting for a little less than half of the Employer work at LGA. American now accounts for approximately sixty percent of the Employer’s work at LGA. With regard to those carriers for whom the Employer has provided services since 2007, the contracts between the parties have been updated and amended since that time. See, e.g., Er. Ex. 1 (American contract effective in 2006, amended in 2016); Er. Ex. 2 (JetBlue contract dated August 29, 2014, with subsequent amendments); Er. Ex. 3 (Air Canada contract effective May 13, 2009); Er. Ex. 4 (Frontier contract dated 2009); Er. Ex. 5 (Spirit contract effective November 1, 2013); and Er. Ex. 7 (US Air contract entered into in 2001 and amended in

² In *ABM Onsite Services West, Inc. v. NLRB*, 849 F. 3d 1137 (D.C. Cir. 2017), the District of Columbia Circuit Court also recognized the shift in analysis and law in the NMB’s recent decisions regarding jurisdiction. In that case, the court concluded that the Board could not rely on the NMB’s newly adopted analysis without explaining why that analysis was appropriate. The court remanded the case to the Board, where it remains pending.

³ I further note that the Board decision adopting the 2007 NMB decision was issued by a two member Board. I do not rely on the Board decision for that reason. See *PrimeFlight Aviation Services, Inc.*, 353 NLRB 467 (2008); see also *New Process Steel v. NLRB*, 560 U.S. 674 (2010).

⁴ Similarly, in *PrimeFlight Aviation Services, Inc.*, 29-CA-177992, 2017 WL 947285, slip op. at 3 n. 3 (A.L.J.D. Mar. 9, 2017), Administrative Law Judge Mindy Landow found that the Board has jurisdiction over the Employer’s operations at John F. Kennedy International Airport in a case where the Employer provides “essentially the same type of services that” the Employer provided at LGA in 2007. See also *Local 660, United Workers of America (Alstate Maintenance, Inc.)*, 29-CB-103994, 2016 WL 2732017 (A.L.J.D. May 9, 2016) (in which an Administrative Law Judge found that the Board had jurisdiction over an employer providing a number of services to carriers at John F. Kennedy International Airport).

2008, 2009, 2011, 2014, and 2015). For these reasons, I find that the 2007 NMB decision is not controlling in this case.⁵

II. Application to the Instant Case

In the instant case, there is no question that the work performed by the petitioned-for employees is work traditionally performed by employees of air carriers and that the Employer is not owned by the carriers. Thus, the only remaining inquiry is whether the Employer is materially controlled by a carrier. As discussed below, analyzing the six factors identified by the NMB, it is clear that the Employer is not controlled by any carrier, and is therefore not within the NMB's jurisdiction in this case.

A. Carrier Control Over the Manner In Which the Employer Conducts Its Business

The NMB and the Board have cited whether a contractor performs work for multiple airlines as a significant factor in determining whether it is controlled by a carrier within the meaning of the RLA. *Air Serv*, 39 NMB at 479; *Marriott*, 171 NLRB at 752. Here, the Employer is a large independent corporation with approximately 5,000 employees. At LGA, it provides services to seven different airlines. American Airlines constitutes approximately sixty percent of the Employer's work at LGA, with the remaining forty percent distributed among the remaining six airlines. The employees working on the American contract are generally tied to that contract, but might assist with work for another carrier on occasion. Employees working on other Employer contracts at LGA work for various carriers. In this context, where the Employer has a large, diverse operation and the capacity to move employees freely among its multiple customers, it is difficult to argue that the Employer is controlled by an air carrier. *See Menzies*, 42 NMB at 6 (NMB declining jurisdiction where Menzies's employees work for various carriers at the airport).

The Employer's independence is further demonstrated in that it provides equipment used to conduct its business and maintains its own offices and departments apart from the carriers. *See, e.g., Aero Port*, 40 NMB 139, 141 (2013) (finding lack of control where contractor leases its own equipment); *Huntleigh*, 40 NMB at 136 (finding lack of control where the Huntleigh leased office space and provided certain equipment but also used some equipment supplied by the carriers). American and Southwest both provide some, but not all, equipment used by PrimeFlight employees. For example, the Employer provides baggage carts for American skycap service, but American provides all other equipment for this service, including computers, scales, lecterns, paper goods, baggage claim checks, boarding passes, heavy tags, and skycap documents. However, the Employer leases the vans it uses for American bus shuttle services and bills American for the cost of the lease. Southwest provides certain materials for daily janitorial services, Skycap podiums, curbside computers and printers, and wheelchairs, but the Employer provides buffing machines and vacuums for cleaning services on the Southwest contract. *Er. Ex. 15*. The other airlines, including

⁵ In *Menzies*, the NMB noted that its jurisdiction decisions are evaluated on a case-by-case basis. *See Menzies*, 42 NMB at 6 ("While the [NMB] has in the past found jurisdiction over Menzies' operations at other locations, jurisdiction decisions are presented to the [NMB] on a case-by-case basis at different locations, where companies contract with different carriers who exercise various degrees of control.").

Frontier, Spirit, and Air Canada, do not provide any equipment for PrimeFlight use. In addition, the Employer may use the same equipment across different airlines. For example, the Employer supplies wheelchair service to Air Canada, Spirit, JetBlue, and Frontier and can move wheelchairs from one airline to another depending on need.

With regard to space, the carriers and the Employer have contracted for the Employer to use certain space provided by the carriers. The Employer maintains its principal administrative office at Hanger 3, which is tied to Terminal B. American provides this office space to the Employer pursuant to their contract. Southwest also provides office space to the Employer. The Employer maintains approximately ten separate, independent offices throughout the airport. *See Bags*, 40 NMB at 167 (NMB declining jurisdiction where Bags supplied certain equipment, used other equipment provided by carriers, and used employee break room provided by a carrier).

The instant record does not establish that that any carrier has meaningful control over the way in which the Employer conducts its business.

B. Access to Operations and Records

No carrier possesses jurisdictionally significant access to the Employer's operations and records. Where a carrier's access to a contractor's operations and records is limited to that necessary to verify compliance with the services contract between the parties, the NMB does not consider such access evidence of control for RLA purposes. *See, e.g., Menzies*, 42 NMB at 4.

The record establishes that some carriers have a contractual right to audit the Employer's financial, service, and training records relating to the Employer's services contract with the carrier in question. For example, the Employer's contract with Jet Blue provides that Jet Blue may inspect the Employer's books, records, and manuals "to assure [the Employer's] compliance with the procedures, practices, obligations, and requirements" of the parties' agreement. *Er. Ex. 2* at Art. 13. Vice President Barry testified that this right of access was standard across many of its contracts. There is no evidence that a carrier may access the Employer's records relating to its business with other carriers or to other aspects of the Employer's business not directly pertaining to that carrier's services contract. Nor is there evidence that a carrier may access the Employer's general personnel records, handbook, or other documents relating to employees' terms and conditions of employment. Such limited access to the Employer's records does not show control for purposes of the RLA. *See Menzies*, 42 NMB at 4 (NMB declining jurisdiction where carrier conducted monthly audit of *Menzies*, including *Menzies*' record keeping).

C. Role in Personnel Decisions

No carrier has meaningful control over the Employer's personnel decisions, including hiring, firing, or discipline of the employees in the petitioned-for unit. Both the NMB and Board have emphasized this factor in particular in their control analysis. *See Allied Aviation*, 362 NLRB No. 173, slip op. at 1-2. The NMB has also considered whether a contractor controls wages, benefits, work rules and policies, and other terms and conditions of employment significant in assessing whether it is subject to the RLA. *See, e.g., Air Serv Corp.*, 39 NMB 450, 457 (2012).

There is express language in the Employer's contracts which give it exclusive control of its own employees. For example, the Employer's contract with Southwest explicitly states that the Employer will exercise "complete control" over its own employees. Er. Ex. 6 at Art. 7.

The parties specifically stipulated at the hearing that the carriers play no role in hiring for the Employer. The Employer has its own hiring, human resources, and benefits departments that are independent of any airline. No carrier determines or provides compensation or benefits to any PrimeFlight employees. The Employer is responsible for its own payroll function.

The Employer maintains a comprehensive employee handbook setting forth all terms and conditions of employment for its employees as well as a number of work rules with which employees must comply. Employees are notified that failure to comply with these rules may result in termination. Pet. Ex. 1 at Sec. 701. This handbook covers such topics as the preparation and significance of job descriptions, how the Employer determines compensation, the various types of insurance and retirement benefits the Employer offers, the Employer's vacation and leave policies, the Employer's timekeeping system and policies, the Employer's expectations regarding employee appearance, the Employer's progressive discipline system, and various specific types of misconduct, to name a few. The handbook is prepared by the Employer alone and is not specific to any airline.

The NMB and the Board also consider a contractor's relative autonomy in establishing shifts, assigning employees to shifts, and allocating personnel as relevant to the control question. *See, e.g., Huntleigh*, 40 NMB at 136. In the present case, the parties stipulated that the Employer assigns employees to shifts and duties. Moreover, the record indicates that the Employer acts independently in scheduling its employees. For example, JetBlue requires the Employer to maintain adequate staffing, but does not provide specific staffing numbers to the Employer. Er. Ex. 2 at Art. 7. On one occasion in March 2017, in anticipation of a major snow storm, the Employer specifically consulted with the general manager of Southwest to find out how their flights would be impacted. Rodrigo Calapaqui, the Employer's assistant manager at LGA, stated in an email to Tony Mims, Southwest's general manager, "Do you have an update for you (sic) operations for tonight, tomorrow and Wednesday? I would like to make sure I staffed my team accordingly." Er. Ex. 19. Upon the response that Southwest flights would be grounded because of the storm, the Employer asked its employees to stay home.

On another occasion, also in March 2017, a Spirit flight was delayed from 9:59 p.m. to 11:34 p.m. The Employer's employees were scheduled to check passengers' boarding passes for this flight. The employees' shift ended at 8:30 p.m. and the employees' left at that time. Because of the delay, there was no one from PrimeFlight on duty to check boarding passes after 8:30 p.m. for the late departure. Atul Kumria, the general manager for Spirit, wrote to Calapaqui that a Spirit representative would have briefed the new crew about the delay if Spirit knew what time the new PrimeFlight employees would arrive. Er. Ex. 23. In fact, the shift leaving at 8:30 p.m. was the last shift of the day assigned to that post and so there was no new shift of employees to brief. The fact that Spirit was not aware of the PrimeFlight employees' shifts demonstrates that the Employer is solely responsible for scheduling its own employees. Thus, the Employer enjoys substantial autonomy over scheduling and staffing, further evidencing its independence from airlines. *See*

Huntleigh, 40 NMB at 136 (in which the NMB recognized that Huntleigh would schedule its staff in accordance with the carriers' needs, even having staffing discussions when carriers cancelled or rescheduled flights, but finding that such considerations did not constitute the requisite control for RLA jurisdiction); *see also* *Bags*, 40 NMB at 170 (fact that Bags' staffing levels were dictated by the carriers' schedules did not constitute carrier control to support a finding of RLA jurisdiction).

With respect to discharge and discipline, an employer is considered to control those actions if it conducts its own investigations into employee misconduct and makes the final determination as to what, if any, discipline is appropriate. A carrier's ability to request that a particular employee no longer perform work for the carrier or to report perceived employee misconduct to the employer does not constitute control over discipline or discharge where the employer conducts its own investigation and decides for itself whether to take action toward the employee. *See, e.g., Menzies*, 42 NMB at 6; *Bags*, 40 NMB at 169.

The Employer does not dispute that it conducts its own independent investigation into allegations of misconduct. In addition, all decisions as to discipline and discharge are made by the Employer. Vice President Barry testified that he must approve all terminations before they occur at LGA after consultation with the Employer's human resources department. For example, in April 2017, American alerted the Employer of misconduct by a shuttle bus driver who was employed by the Employer and working on the American contract. John Rock, a manager for American, requested that the employee no longer provide service to American. American did not request that the employee be terminated by the Employer. The Employer conducted an independent investigation of the employee's conduct, including speaking with the employee, and made a decision to terminate her employment based on the misconduct and the fact that she was still in her probationary period with PrimeFlight. Her termination was subject to approval by PrimeFlight human resources representative as well as Vice President Barry.

The fact that carriers have the contractual authority to request that a particular employee no longer perform services for the carrier, and to report alleged employee misconduct to the Employer is not dispositive. This ability to request that an employee no longer provide services for that carrier does not amount to control over discipline and discharge for purposes of the RLA. *E.g., Menzies*, 42 NMB at 6 (where the NMB declined jurisdiction where Alaska Airlines could request that Menzies remove an employee from the Alaska contract, but Menzies retained the right to determine the appropriate discipline for that same employee); *Huntleigh*, 40 NMB at 136-37 (where the NMB declined jurisdiction where the carriers reported performance problems to Huntleigh, but Huntleigh made the decision to discipline or discharge the employee).

The Employer argues that these personnel decisions, including wage rates for and schedules of its employees, are made in light of the needs of the carriers. This is undoubtedly true, as the record evidence shows that the Employer attempts to anticipate and respond to the carriers' needs. However, the evidence does not demonstrate control of these functions by the carriers, but rather demonstrates a typical subcontractor relationship. *See PrimeFlight Aviation Services*, 29-CA-177992, 2017 WL 947285, slip op. at 10 (A.L.J.D. Mar. 9, 2017) (finding NLRB jurisdiction where PrimeFlight is responsible for its own hiring, supervision, discipline, and discharge of employees, which is "found in a typical subcontractor relationship"); *Local 660, United Workers of America (Alstate Maintenance, Inc.)*, 29-CB-103994, 2016 WL 2732017, slip op. at 9 (A.L.J.D.

May 9, 2016) (finding Board jurisdiction where the employer supervised and disciplined its own employees and made its own decisions about whether to discharge an employee).

D. Supervision

The NMB has found that a “substantial supervisory and managerial complement indicat[es] that [an employer] independently supervises its employees.” *International Brotherhood of Teamsters (Flight Terminal Security Company)*, 16 NMB 387, 396 (1989). The Employer is solely responsible for the supervision of its employees. Many of the Employer’s contracts with the carriers expressly provide that the Employer shall supervise its own employees. Er. Ex. 1 (American) at Amendment 9 at Section 3.b & Amendment 11 at Section 1.b (“American will have no supervisory authority over any [PrimeFlight] employee.”); Er. Ex 2 (Jet Blue) at Sec. 9.3 (stating that the Employer shall be solely responsible for supervision of [its] employees.”); Er. Ex. 5 (Spirit) at Section 7.1 (stating that the Employer “will make all decision as to the supervision of [its] employees”); Er. Ex. 6 (Southwest) at Section 4 (providing that the Employer will provide supervision of its employees); Er Ex. 7 (US Airways) at Exhibit B-5, Section 4.1 (“US Airways will have no supervisory authority over any [PrimeFlight] Employee.”). This level of independent supervision by the Employer of its own employees supports a finding that the Board has jurisdiction in this case. *See Menzies*, 42 NMB at 3 (NMB declining jurisdiction where contract between Menzies and carrier states “Vendor shall at all times [act] as an independent contractor and shall be responsible for the direct supervision of its personnel.”); *see also Bags*, 40 NMB at 167 (declining jurisdiction where the carrier did not supervise Bags employees).

E. How Employees Are Represented to the Public

The uniforms employees wear identify them as employees of carriers or employees of a contractor. *See Huntleigh*, 40 NMB at 136. Here, the PrimeFlight employees working as American skycaps and in the baggage service office and priority parcel service wear American uniforms bearing the American logo. All other PrimeFlight employees, including the other employees working for American, wear PrimeFlight uniforms, which include black pants, a grey shirt, a black tie, and a black vest.⁶ The PrimeFlight uniforms include the PrimeFlight logo. For example, Vice President Barry testified that all PrimeFlight baggage handlers working at LGA wear black pants with a grey polo shirt regardless of the airline to which they are assigned. A PrimeFlight employee could move from work for one airline to a different airline without having to change his or her uniform. Vice President Barry testified that American could direct what the uniforms of certain PrimeFlight employees looked like and that some of the PrimeFlight employees working on the American contract wear red blazers as part of their PrimeFlight uniform. Thus, although a subset of PrimeFlight employees working on the American contract wear American uniforms, most of the Employer’s employees at LGA are easily identified as PrimeFlight employees. *See Bags*, 40 NMB at 169 (finding that the fact that Bags’ employees wear uniforms with the Bags logo did not support a finding of RLA jurisdiction, even where the carriers had to approve Bags’ uniforms).

⁶ The Employer is transitioning from a previous uniform which included navy pants, a white aviator shirt, a blue and yellow striped tie, and navy sweaters.

In addition, employees must wear a badge required by the Port Authority. The badge, which must be visible, identifies employees in the petitioned-for unit as PrimeFlight employees.⁷ The fact that the PrimeFlight employees are identified as such, and not as employees of the carriers at LGA, weighs against finding NMB jurisdiction.

F. Training

The NMB does not find support for carrier control where an employer is responsible for the core of employees' training and an airline provides supplemental training on the airline's particular system to employees performing certain tasks for the airline. *See, e.g., Bags*, 40 NMB at 169.

The Employer provides training for its employees and maintains space for training. That training is prepared by the Employer and is uniform regardless of the carrier for which the employee performs work. The Employer's training includes general airport operations, as well as training for specific positions, such as wheelchair agent, baggage handler, or cabin appearance. The Employer also maintains an on the job training component which is used at airports, including LGA, and is administered and run by the Employer.

The carriers may also require that PrimeFlight employees complete specific training modules. Most of these modules are computer based, but some may be written. The carrier specific training may be presented by employees of the carrier or by PrimeFlight personnel who have been certified as trainers by the carriers. According to Vice President Barry, that training is to ensure that all employees are properly trained under the airport transportation requirements. Much of this training is government mandated, including training on security sweeps, aircraft water systems, and ground vehicle operation. For example, in an email dated May 2, 2017, Manager Garcia noted that regional security training had to be completed before an annual Transportation Security Administration audit of American. Training required by the government does not support a finding of carrier control or, consequently, RLA jurisdiction. *See Bags*, 40 NMB at 169. The Employer's autonomy when it comes to training is further demonstrated by the fact that it can and does transfer employees among the various airlines whenever it needs to, suggesting that critical training is established by the Employer and is not airline-specific.

Conclusion

In conclusion, the record demonstrates that the Employer is an independent corporation with full autonomy over its own management and business policy. As in the cases described above, including *Menzies Aviation, Bags Inc.*, and *Huntleigh USA Corp.*, the Employer here is a typical subcontractor. Under the standards adopted by the NMB and followed by the Board since 2013, the carriers do not exercise the requisite control over PrimeFlight to assert RLA jurisdiction in this case.

It is certainly true that the carriers at LGA each make particular demands of the Employer. The Employer's responsiveness to those demands is typical for a contractor "engaged in a business

⁷ Vice President Barry testified that it was possible that an employees' Port Authority badge could include an airline as well as PrimeFlight, but did not specify if this was actually the case at LGA or how many employees might be identified as an employee of the Employer and a carrier on a badge.

which requires it to provide specific services linked to the arrivals and departures of its customers' flights at a busy international airport." *Huntleigh*, 40 NMB at 136. It is not, however, control under the RLA. *Marriott*, supra at 752; *Dobbs House*, supra at 1072. Because the evidence fails to support the Employer's contention that it is controlled by an air carrier pursuant to NMB precedent, I conclude PrimeFlight is not subject to the RLA and is instead subject to the Act.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this proceeding, the undersigned finds and concludes as follows:

1. I find that the rulings made by the Hearing Officer at the hearing are free from prejudicial error and hereby are affirmed.

2. The record indicates that PrimeFlight Aviation Services, Inc., a domestic corporation having its principal office and place of business at 7135 Charlotte Pike, Suite 100, Nashville, Tennessee, and a place of business located at LaGuardia Airport in Queens, New York, has been engaged in the business of providing airport terminal services, including baggage handling, skycap services, checkpoint services, and wheelchair services to various airline carriers at LaGuardia Airport. During the past year, Respondent has provided services valued in excess of \$50,000 for entities outside Tennessee which are directly engaged in commerce.

Based on the foregoing, I find that PrimeFlight Aviation Services, Inc. is engaged in commerce within the meaning of the Act. It will therefore effectuate the purposes of the Act to assert jurisdiction in this case.

3. I hereby find that Service Employees International Union, Local 32BJ is labor organization as defined in Section 2(5) of the Act. It claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. I find that the following employees constitute a unit appropriate for the purposes of collective bargaining:

All full time and part-time employees employed by the Employer at LaGuardia Airport, Queens, New York, but excluding all clerical employees, managers, guards, and supervisors and defined by the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Service Employees International Union, Local 32BJ**.

A. Election Details

The election will be held on a date and at a location to be determined.

B. Voting Eligibility

Eligible to vote are those in the units who were employed during the payroll period ending immediately before the issuance of this decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **July 7, 2017**.⁸ The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last

⁸ At the hearing, the Petitioner waived its right to have the voter list for at least ten days.

name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

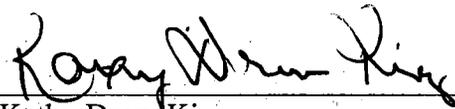
Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review

should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Brooklyn, New York, on July 5, 2017.



Kathy Drew King
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201