



**UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
1015 Half St., S.E.
Washington, D.C. 20570-0001**

February 23, 2018

Ms. Mary L. Johnson
General Counsel
National Mediation Board
1301 K Street, NW -- Suite 250 East
Washington, DC 20005-7011

Re: Oxford Electronics d/b/a Oxford Airport
Technical Services,
Case 13-CA-115933

Dear Ms. Johnson:

The above-captioned unfair labor practice proceeding is currently pending before the National Labor Relations Board. A question has been presented whether the operations of the Respondents arguably fall within the jurisdiction of the Railway Labor Act rather than the National Labor Relations Act.

The Board respectfully requests that you review the record and provide the NLRB with your opinion as to whether the National Mediation Board has jurisdiction over the Employer Respondents.¹ The issues are set forth in the attached

¹ Member Pearce would not refer this case to the National Mediation Board. "The Board and the NMB each has independent authority to decide whether the RLA bars the NLRB's exercise of jurisdiction." *Allied Aviation Service Company of New Jersey v. NLRB*, 854 F.3d 55, 62 (D.C. Cir. 2017). He notes that "under 'long standing practice,' the NLRB will not refer jurisdictional questions to the NMB in situations where NMB precedent provides a clear answer." *ABM Onsite Services-West, Inc. v. NLRB*, 849 F.3d 1137, 1140 (D.C. Cir. 2017), (citing *United Parcel Service v. NLRB*, 92 F.3d 1221, 1228 (D.C. Cir. 1996)). Here, the administrative law judge developed a complete record and issued a well-reasoned decision finding that the NMB would not assert jurisdiction over the Employer Respondents. In affirming the administrative law judge's conclusion on the jurisdictional issue, Member Pearce would find that the Employer Respondents' evidence falls short of establishing that they were directly or indirectly controlled by air carriers under both the NMB's traditional six-factor test and recent NMB precedent. Specifically, he observes that CICA TEC's lack of involvement in personnel decisions, including the hiring, firing, supervision, evaluation, or training of the Respondents' employees, as well as the fact that those employees wear the Respondents' uniforms and are not held out to the public as CICA TEC's employees, strongly suggest insufficient

Administrative Law Judge's Decision and Recommended Order and the attached transcripts and exhibits from the hearing held in the NLRB unfair labor practice proceeding in this case. Should you require further information about the record in the unfair labor practice proceeding, please contact Ms. Roxanne Rothschild, Deputy Executive Secretary, at (202) 273-2917

The Board also requests that, in rendering your opinion, you take note of the court's opinion in *ABM Onsite Services – West v. NLRB*, 849 F.3d 1137 (D.C. Cir. 2017). (Following the court's remand, the Board is also seeking your opinion on jurisdiction in that case.)²

carrier control to confer NMB jurisdiction. Cf. *Air Serv Corp.*, 39 NMB 477, 480-481 (2012) (request for reconsideration) (carrier's reportorial role in company disciplinary decisions not sufficient control for NMB jurisdiction). CICA TEC's involvement in the Respondents' decisions about how to conduct their businesses and its access to their operations and records are no greater than those found in a typical subcontractor relationship or in cases where the NMB concluded that it did not have jurisdiction. See, e.g., *Air Serv Corp.*, 39 NMB 450, 456 (2012) (carrier reserved rights to unilaterally set and alter company schedules, to impose monetary penalties for deviations or employee infractions, and to audit company records); *Air BP, A Division of BP Oil*, 19 NMB 90, 91 (1991) (carrier required "around the clock" service in accordance with carrier standards and time limits and reserved right to inspect company operations to ensure compliance with carrier standards, training and recordkeeping requirements). Member Pearce observes that the carrier control over manner of business, access to operations and records, and role in personnel decisions as found by NMB Member Geale in his dissenting opinions in *Airway Cleaners, LLC*, 41 NMB 262, 273-280 (2014) (applying six-factor test), and *Menzies Aviation, Inc.*, 42 NMB 1, 7-9 (2014) (same), was greater than CICA TEC's control here, and notes that in those cases Member Geale *also* found that the carriers supervised and trained company employees, at least some of whom wore carrier uniforms. Therefore, Member Pearce would find that CICA TEC's control here falls "substantially short" of the facts upon which Member Geale would have relied to find NMB jurisdiction in those cases and falls short under the traditional six-factor test. See *Allied Aviation Service Company of New Jersey v. NLRB*, 854 F.3d at 63 (approving Board decision that "acknowledged the relevance of all of the factors and concluded that [company's] evidence fell short even under the traditional six-factor test), enfg. 362 NLRB No. 173 (2015), cert. denied 138 S.Ct. 458 (2017).

² Contrary to their dissenting colleague, Chairman Kaplan and Member McFerran do not believe it is clear what standard the NMB will apply in response to the court's opinion in *ABM Onsite Services-West, Inc.* or what the NMB's opinion will consequently be with respect to which agency has jurisdiction, based on the facts presented here, under the standard it endorses.

The Board would appreciate your opinion in a form appropriate for citation or quotation in any decision the NLRB may subsequently issue. It is respectfully requested that the enclosed formal documents be returned with your opinion.

Sincerely,

A handwritten signature in black ink that reads "Cathleen D. Perry". The signature is written in a cursive style with a large, stylized initial "C".

Cathleen D. Perry
Assistant Solicitor

Enclosures

cc: Ms. Roxanne Rothschild

