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May 29, 2019

***Via E-file @nlrb.gov***

Ms. Roxanne L. Rothschild  
Executive Secretary  
National Labor Relations Board,  
Office of the Executive Secretary  
1015 Half Street SE  
Washington, D.C. 20570-0001

**RE: NLRB Case No. 29-UD-232699 (G2 Secure Staff, LLC)**

Dear Ms. Rothschild:

In accordance with the Regional Director's Order Transferring Representation Case to the National Labor Relations Board dated May 22, 2019, and the applicable Rules and Regulations of the NLRB, G2 Secure Staff, LLC (the "Employer") herewith submits to the Board the enclosed brief, which the Employer previously filed with the Region in this matter.

Respectfully Submitted,

*/s/ Jean Kosela*

Jean Kosela

Enclosures

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**G2 Secure Staff, LLC,**

**Employer,**

**and**

**Case No. 29-UD-232699**

**Veronica Salazar, an Individual,**

**Petitioner,**

**and**

**SEIU Local 32BJ,**

**Union.**

**POST-HEARING BRIEF OF G2 SECURE STAFF, LLC**

Respectfully submitted,

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## **I. Statement of the Case**

On December 11, 2018, Ms. Veronica Salazar (“Petitioner”) filed a petition with NLRB Region 29 seeking a deauthorization election among all employees of G2 Secure Staff, LLC (“G2” or the “Company”) at LaGuardia Airport (“LGA”) in the bargaining unit of G2 employees represented by Service Employees International Union, Local 32BJ (“Union”).

On January 28, 2019, a hearing was held before Hearing Officer Francisco Guzman to take evidence regarding whether G2 is subject to jurisdiction under the Railway Labor Act (“RLA”) or the National Labor Relations Act (“NLRA”) in the first instance.

The sole issue for determination is whether G2 is subject to the jurisdiction of the National Labor Relations Board (“NLRB”) or the National Mediation Board (“NMB”). (Tr. 9.)<sup>1</sup> As discussed below, at LGA G2 performs functions traditionally performed by airline carriers, under the direction and control of an airline carrier. Therefore, under applicable NLRB and NMB precedent G2 qualifies as a “derivative carrier” under the RLA, such that the NLRB lacks jurisdiction over G2.

## **II. Issues for Determination**

1. Whether G2 is a “derivative carrier” under the RLA and therefore is subject to the exclusive jurisdiction of the NMB.
2. Assuming Issue No. 1 is answered to find potential jurisdiction under the NLRA, whether the Regional Director should seek to refer the matter to the NMB for an opinion.<sup>2</sup>

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<sup>1</sup> Citations to the hearing transcript are referenced herein as “Tr.” Employer exhibits are referenced as “Exh. E-\_\_” and joint exhibits are referenced as “Exh. J-\_\_.”

<sup>2</sup> As a preliminary matter, G2 requests that Region 29 hold the instant matter in abeyance and, consistent with relevant NLRB authority and guidance, refer the issue of jurisdiction over G2 to the NMB as discussed in Section IV.C., below. In referring this jurisdictional issue to the NMB, Region 29 will serve the goal of preventing the unnecessary expenditure of Board resources and

### **III. G2's Operations at LaGuardia Airport**

G2 is an airline service provider that contracts with various air carriers to provide passenger services including but not limited to wheelchair, ticket counter, ground handling/ramp, and other services at airports throughout the United States. (Tr. 13.) Ms. Julie Gostic holds the position of senior vice-president of human resources and administration. (Tr. 10.) As such, Ms. Gostic oversees all aspects of HR and administration matters for G2, including but not limited to labor relations matters. (Tr. 10-11.) Mr. Mark DuPont is the Company's senior vice president of operations and customer service, responsible for G2's operations in the eastern half of the United States including at LGA. (Tr. 39.) Mr. DuPont was formerly employed by American Airlines. (Tr. 39.) Mr. Richard Haverstick is G2's director of operations at LGA. (Tr. 52.)

G2 began providing cabin service cleaning, cabin service provisioning, aircraft security checks, and lavatory and water servicing pursuant to a contract with Delta Airlines ("Delta" or the "Carrier") at LGA effective on or about April 19, 2017. (Tr. 11, 40-41.) Employees of the predecessor contractor who performed such work were represented by the Union. (Tr. 12.) Shortly before commencing operations, G2 entered into a recognition agreement with the Union relating to its cabin service cleaning employees at LGA. (Tr. 12; Exh. J-1.) Depending on the time of year, G2 employs about 170-180 employees who are covered by the collective bargaining agreement between G2 and the Union. (Tr. 52-53.)

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those of the parties associated with going through an election and potential further proceedings before the NLRB regarding the jurisdictional issue.

**IV. The NMB and NLRB Use a Decades-Old Analytical Model for Determining Whether Carrier Control Is Sufficient to Support RLA Jurisdiction.**

The NMB uses a two-part test to analyze derivative carrier status under the RLA, to which the NLRB defers for purposes of jurisdictional decisions. *See, e.g., United Parcel Serv., Inc.*, 318 NLRB 778, 781 (1995); *ABM-Onsite Services*, 45 NMB 27 (2018).

To find RLA jurisdiction over a non-carrier contractor such as G2, the NMB and NLRB require that (a) employees of the contractor perform traditional airline employee work, and (b) where the contractor is not under carrier ownership, the contractor is nevertheless sufficiently under the carrier’s direct or indirect control to justify RLA jurisdiction. *See PrimeFlight Aviation Services, Inc.*, 34 NMB 175, 181 (2007).

**A. G2 Meets the “Function” Part of the Test.**

As previously mentioned, G2 employees at LGA perform cabin service cleaning, cabin service provisioning, aircraft security checks, and lavatory and water servicing functions. The NMB has determined that these types of activities constitute work traditionally performed by employees in the airline industry. *See, e.g., Sky Valet*, 23 NMB 155, 160 (1996) (“Cleaning aircraft and airline terminals is work traditionally performed by employees in the airline industry.”); *Commercial Aviation Service of New York City, Inc.*, 22 NMB 223, 225 (1995) (Cleaning the interior of an aircraft, restocking galleys, and providing water and lavatory service comprise “work traditionally performed by employees in the airline industry.”).

**B. G2 Meets the “Control” Part of the Test.**

The second prong (control) is also met. The evidence establishes Delta exerts significant control over all aspects of G2’s labor relations and operations at LGA. Many of the elements of control may be found in the service contract between G2 and the Carrier; however, the Carrier exercises control well beyond the terms of the contract in many areas.

To determine whether there is sufficient air carrier control over a company, the NMB has looked to several factors, including: the extent of the carrier's control over the manner in which the company conducts its business; access to company operations and records; role in personnel decisions; whether employees are held out to the public as carrier employees; and control over employee training. See *PrimeFlight Aviation Services, Inc.*, 34 NMB 175 (2007) (finding RLA jurisdiction where the carrier trained PrimeFlight managers to provide mandatory training to employees working on the carrier's account, and the carrier tracked such training); *Aircraft Services Int'l Group, Inc. ("ASIG")*, 33 NMB 200 (2006) (finding RLA jurisdiction where the carriers required that ASIG employees follow their operating and training procedures; the lack of carrier insignia on ASIG employee uniforms did not negate the other evidence of substantial carrier control); *Air Serv Corp.*, 33 NMB 272 (2006) (finding RLA jurisdiction where the carrier's flight schedules affected the work schedules of Air Serv employees); *ABM-Onsite Services*, supra, 45 NMB at 34-35 (“[T]he rail or air carrier must effectively exercise a significant degree of influence over the company's daily operations and its employees' performance of services in order to establish RLA jurisdiction. No one factor is elevated above all others in determining whether this significant degree of influence is established.”).

The NMB has explicitly rejected a proposition that “the ability to dictate personnel decisions” could be “required or necessary to establish carrier control.” *ABM-Onsite Services*, supra, 45 NMB at 35 fn. 2 (“To the extent that prior Board cases can be read as treating the ability to dictate personnel decisions as required or necessary to establish carrier control, they are overruled.”). The NMB has found sufficient control to establish jurisdiction under the RLA even where the contractor has made the ultimate decision as to whether an employee would be disciplined or removed and there were no examples of carrier involvement in hiring, termination

or reassignment. *See, e.g., Swissport USA, Inc.*, 35 NMB 190, 196 (2008) (finding level of control exercised by carriers sufficiently “extensive” even though the contractor made ultimate decision as to whether an employee would be disciplined or removed and there were no examples of carrier involvement in hiring, termination or reassignment); *Argenbright Security, Inc.*, 29 NMB 240 (2002) (finding sufficient control in spite of the fact that “[a]ccording to the record, Argenbright hires, disciplines, and terminates its . . . employees”); *Aviation Safeguards*, 27 NMB 581 (2000) (finding sufficient control where the only evidence of carrier control over personnel decisions was contract language giving carriers the right to have contractor employees removed from the service of their contract); *Evergreen Aviation Ground Logistics Enterprises, Inc.*, 25 NMB 460, 463-64 (1998) (finding sufficient control even though the contractor conducts its own investigation and “ultimately decides the course of action” upon receiving a carrier complaint or recommendation regarding transfer, discipline, or firing).

Applying the NMB standard, the NLRB has also found employers subject to the RLA on facts similar to those in the case at hand. *See, e.g., Aviation Safeguards*, 338 NLRB 770 (2003) (carriers “exercise[ed] substantial control” where the employer was “required to provide its services in compliance with the requirements of its contracts with the Carriers and must adjust its service to meet any new Carrier demands;” the Carriers “retained the right to demand the removal of an employee” and the employer was required to comply with such a demand for removal; and the employer’s records were “subject to inspection by the Carriers.”); *Aircraft Services Int’l, Inc. (“ASIG”)*, 352 NLRB 137, 138 (2008) (RLA applied to ASIG where carriers controlled the training that ASIG employees were required to complete in order to provide services to the carriers; the carriers performed audits of ASIG’s operations; and ASIG’s operations manager “develop[ed] employee schedules in response to the airlines’ needs”).

## **1. The Carrier Exercises Significant Control Over Personnel Decisions.**

The evidence makes clear the Carrier exercises substantial control over personnel decisions including hiring, discipline, commendation and discharge of G2's employees at LGA.

With regard to hiring, G2 typically conducts background checks, tenure background checks and drug screening when hiring its employees. (Tr. 28-29.) However, Delta mandates that all G2 employees who perform services for Delta must comply with enhanced security requirements, including continuous background screening through a third-party vendor ("Endera<sup>3</sup>") with whom G2 must contract in accordance with Delta's requirements. (Tr. 27-28; Exh. E-1.) Delta also uses Endera with the Carrier's own employees. (Tr. 28.)

Delta exercises control over the continued employment of G2 employees at LGA. The Carrier can and does communicate its dissatisfaction with G2's employees' performance, including misconduct and poor performance. Delta has the right to request that a G2 employee be removed from providing services for the Carrier at LGA. (Tr. 17.) Because Delta is G2's sole customer at LGA, employees who are removed from service based on Delta's request are terminated from employment with G2. (Tr. 17.)

Mr. Haverstick testified that after a Delta manager witnessed a G2 employee taking liquor from the liquor cabinet on an aircraft, Delta demanded the employee be removed from the Carrier's account. (Tr. 72-73.) Based on the Carrier's demand, G2 subsequently terminated the employee. (Tr. 73.)

Delta has similarly demanded that another employee be removed for behavior that Delta management felt was unsafe. (Tr. 73-74.) Again, based on the Carrier's demand G2 terminated the employee's employment. (Tr. 74.) Mr. Haverstick testified:

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<sup>3</sup> Erroneously referenced in the hearing transcript as "Andera."

Delta said they didn't want the employee on their property. So in that case, if they can't be on Delta's property, that's the only work we have in LaGuardia.

(Tr. 75.)

Delta may also recommend that a G2 employee be recognized for good job performance, and G2 will present the employee with a \$50 gift card. (Tr. 132.)

G2 employees are well aware of the control Delta has over their terms and conditions of employment, including disciplinary matters. For example, Petitioner's witness testified that with regard to the discipline of G2 employees, she is only aware of employees who "were fired because they did something they weren't supposed to and Delta doesn't accept that." (Tr. 140-141.)

(Emphasis added.)

## **2. The Carrier Exercises Control Over Wages.**

G2 pays its employees and sets their wage rates. (Tr. 16.) However, costs for wages and benefits are "built into" the service contract between G2 and Delta. (Tr. 17.) As such, they are controlled by the terms of the Company's agreement with the Carrier.

The service contract contains provisions specifically addressing how the parties will handle any increases in the applicable minimum wage. (Exh. E-4, p. 213.) The service contract also provides for overtime under certain circumstances as approved by Delta, and establishes seven (7) specified holidays as the only days for which holiday rates shall apply under the contract. (Exh. E-4, p. 214 at ¶ 11.)

## **3. The Carrier Controls the Training of G2's Employees.**

Most of the job training for G2 employees is either conducted by or at the direction of the Carrier. The required training materials that G2 employees must successfully complete are provided by Delta. (Tr. 21.) Such training for G2 employees takes place in a space within LGA that is leased by Delta. (Tr. 21.) G2 employs a trainer that is certified to conduct some of the

required training on behalf of Delta. (Tr. 21, 96.) Delta maintains its own computer-based training records for G2 employees. (Tr. 22.) G2 employees are assigned unique ID numbers by Delta for purposes of tracking their training. (Tr. 31.) G2's Delta-certified trainer is authorized to log into Delta's system for the purposes of accessing employee training records. (Tr. 31.) G2 also maintains employee training records that must be made available to Delta, as well as to internal or FAA auditors who audit Delta. (Tr. 22-23.)

G2 employees must complete computer-based and on-the-job training required by Delta, including with regard to safety, security and cabin cleaning topics. (Tr. 20.) New hires undergo a mandatory Delta-created 4-hour training class on a Delta-owned computer. (Tr. 85, 93-94.) Employees also receive on-the-job training and must complete an annual 4-hour computer re-training in accordance with Delta's requirements. (Tr. 85-86, 90-92.) Employees who are not current on their required training are flagged in Delta's system and are not permitted to perform services for Delta, in accordance with Delta's rules. (Tr. 87-88.)

The service contract reflects the control the Carrier exercises over training and training records for G2's employees:

[...] Contractor shall designate an employee to be Contractor's Training Coordinator responsible for the training of new employees, dissemination of new procedures and revisions to standard practices, and participation in Delta "Train the Trainer" activities. All training must be documented in the Delta automatic training record-keeping system or other training record-keeping system specified or approved by Delta. Separate supporting documentation must be maintained by Contractor for the longer of three (3) years or the period of time specified by applicable laws, rules, regulations and procedures. Delta shall have the right, but not the duty, to conduct audits of such training records as it deems prudent to ensure compliance with this requirement.

(Exh. E-4, pp. 136-137 at ¶2.8.)

#### **4. The Carrier Exercises Significant Control Over G2's Scheduling, Staffing and Performance of Services.**

The work schedules of G2 employees at LGA “are driven by, or dictated by, the flight schedule of the airline,” as well as the passenger loads for the Carrier’s aircrafts. (Tr. 13, 69.) G2 tailors its employees’ schedules to meet the needs of the Carrier. (Tr. 13-14.)

Staffing is also controlled by the Carrier. The service agreement specifies, “Delta may set and adjust the team sizes for Contractor’s cleaning agents at Delta’s sole discretion.” (Exh. E-4, p. 228. [Emphasis added.]) Mr. Haverstick works with Delta on a daily basis to ensure the Company’s operation is staffed to meet the Carrier’s needs. (Tr. 57-58, 70.) He attends daily operational meetings led by Delta management, as well as monthly safety meetings. (Tr. 81, 83.)

The Carrier controls G2’s operations at LGA, in that Delta substantially controls the manner in which G2’s employees perform services for the Carrier. The service contract specifically requires that all services performed by G2 for Delta “shall be performed in full compliance with Delta’s standard practices, including but not limited to, Delta’s Ground Operations Manual and Delta’s Environmental Programs Manual.” (Exh. E-4, p. 135 at ¶ 2.3.)

Delta also provides “very detailed specifications regarding the cleaning actions” that G2 employees must perform on the Carrier’s aircraft, including the amount of time available for G2 employees to complete the required tasks before the aircraft is scheduled to depart. (Tr. 14; *see also* Exh. E-4, pp. 154-193.) Delta requires that G2 comply with its specification sheets containing numerous line items specific to each category of cleaning that G2 employees might perform for Delta, whether a quick clean between flights or an extended clean while a plane is grounded overnight. (Tr. 62.)

Delta contracts with a third party vendor who conducts daily audits of the Company’s cabin service cleaning work and “scores” G2’s performance in areas such as customer service,

cleanliness, accuracy and speed based on the audit results. (Tr. 15, 63.) Speed is a key performance metric because it is critical that G2 employees do not delay the scheduled departure of aircraft by taking too long to complete their scope of work. (Tr. 16.) Mr. Haverstick accompanies the Delta safety manager on a Delta vehicle to perform safety observations of G2 employees. (Tr. 83.)

The Carrier also holds the ultimate right of control over G2's operations at LGA, in that Delta has the contractual right to unilaterally terminate G2's service agreement entirely, "at its convenience and without cause." (Exh. E-4, p. 134 at ¶ 1.)

#### **5. The Carrier Exercises Control Over Uniforms.**

Employees wear G2 cabin service cleaning uniforms as well as required safety vests when they are on the ramp. (Tr. 18.) Although G2 provides the uniforms for employees, G2 uniforms must be approved by Delta to ensure they meet the Carrier's standards. (Tr. 18.) The service contract unequivocally provides:

All personnel utilized by Contractor shall be properly and professionally attired at Contractor's expense at all times while on duty performing the Services hereunder, with uniforms conforming to Delta's standards and requirements as contained in Delta's Ground Operations Manual [...] and approved in writing in advance by Delta. Uniforms shall include Contractor's logo in accordance with Delta's standards.

(Exh. E-4, p. 135 at ¶ 2.3. [Emphasis added.]) G2 is further required to provide for employees "all personal protective equipment required for performance of the Services in accordance with Delta's standards." (Exh. E-4, p. 136 at ¶ 2.7. [Emphasis added.])

#### **6. The Carrier Provides Space and Equipment to G2.**

G2 does not have any space at LGA that is not owned by Delta; employees work entirely in Delta-controlled spaces. (Tr. 42, 60.) G2 employees and management have access to a break room area and a warehouse area at LGA, both located in physical spaces that are owned

by Delta. (Tr. 40-41.) The warehouse holds tools and provisions for G2's cleaning agents to use, including cleaning equipment such as vacuums and mops (generally owned by G2) and cleaning products that are owned by Delta. (Tr. 41-42.) Mr. Haverstick uses Delta's system ("Clarity") to order additional cleaning products to maintain inventory levels that are dictated by the Carrier. (Tr. 66-67.) Delta delivers the cleaning products to the warehouse, where G2 employees offload the supplies using a Delta-owned forklift and store them in Delta's warehouse. (Tr. 59, 67-68.)

Delta also provides and maintains certain heavy equipment used by G2 employees in performing their jobs, such as lavatory and water trucks. (Tr. 42-43.) G2 employees drive the trucks, which bear Delta logos. (Tr. 44.) Delta also provides technology used by G2 employees, including computer terminals, SMARTrack handheld devices and breakroom monitors that keep employees informed of the Carrier's flight schedules. (Tr. 46, 77-78.) Mr. Haverstick and all of the G2 managers at LGA have Delta email addresses. (Tr. 80-81.) G2 managers, supervisors and leads (bargaining unit employees) use walkie-talkies set to Delta's frequency to communicate with Delta management. (Tr. 113-114.)

Cleaning agents perform their job duties directly on and around the Carrier's aircrafts. (Tr. 54-55.) While cleaning the cabin, G2's crew works among Delta personnel including flight attendants, pilots and gate agents. (Tr. 108-109.) They may also have contact with Delta's passengers, for example, when employees board the aircraft and begin cleaning before all passengers have deplaned. (Tr. 117-118.)

## **7. The Carrier Controls Other Terms and Conditions of Employment for G2 Employees.**

In addition to the numerous examples of carrier control described herein, the Carrier exercises control over other terms and conditions of employment for G2's employees at LGA. For example, Delta mandates that all G2 employees who perform services for Delta must comply with

enhanced security requirements, including physical inspections of employees when they enter secure areas. (Tr. 23-27; Exh. E-1.) When G2 employees arrive to work each day, Delta requires that they pass through Delta's employee security checkpoint. (Tr. 123.) Ms. Gostic testified, "[B]ecause they view our employees as an extension of theirs that provide these types of services, we have to go through the same screening that a Delta Airlines pilot or something would have to go through." (Tr. 27.)

The service contract specifically provides:

Contractor also agrees to undertake whatever other measures are necessary to comply with security, drug and alcohol testing, record-keeping and other requirements appropriate to the areas to which Contractor has access or to the Services performed by Contractor under this Agreement that are imposed from time to time by public agencies [...] or by Delta.

(Exh. E-4, p. 146 at ¶ 7.3. [Emphasis added.]

Delta has also mandated that G2 employees utilize the Carrier's "SMARTrack" cabin service cleaning technology. (Tr. 20; *see also* Exh. E-4, p. 220.) Delta-provided SMARTrack handheld devices track time spent by G2 cleaning agents on the aircraft, including when tasks are started and completed, as well as the size of the crew used. (Tr. 49.) The information collected is then automatically uploaded to Delta to ensure G2 is meeting the Carrier's requirements. (Tr. 49.) Employees were trained in the use of the SMARTrack device by a Delta trainer and Delta supervisors, in the Carrier's training room at LGA. (Tr. 144-146.)

### **C. The NLRB's Policy of Dismissal for Lack of Jurisdiction.**

In *ABM-Onsite Services, supra*, the NMB concluded the RLA applied based on its finding that the Portland Airline Consortium (PAC) exercised "significant influence" over the employer's operations, where, among other things, the employer was required to meet the airlines' requirements, "including providing services specifically described in the contract; meeting

performance measures specified in the contract; following operational procedures developed by PAC; and complying with operations-related requests from the individual airlines;” the airlines influenced the scheduling of ABM employees; and the airlines exercised control over staffing. 45 NMB at 35. The same result should obtain in the instant case, where the evidence establishes Delta exercises the requisite “significant degree of influence over the company’s daily operations and its employees’ performance of services” at LGA. *Id.* at 34.

Where the NLRB lacks jurisdiction over an employer or employees covered by a representation petition, the petition must be dismissed. Because G2 and its employees are clearly not covered by the NLRA, the petition in this case should be dismissed in its entirety. *See Federal Express Corp.*, 317 NLRB 1155, 1158 (1995) (Chairman Gould, dissenting) (when facing “a case in which no reasonable argument could be made against RLA coverage of the petitioned for employees . . . [the NLRB] could simply dismiss the petition,” without even referring the case to the NMB); *Spartan Aviation Industries*, 337 NLRB 708 (2002).

If there is any question concerning G2’s status as an RLA carrier, the appropriate agency for resolving such issues in the first instance is the NMB. *See Federal Express Corp.*, *supra* at 1158 (NLRB reconfirming that issues of RLA jurisdiction are to be decided by the NMB); *Allen Servs.*, 314 NLRB 1060 (1994).

## V. Conclusion

The witness testimony and other evidence adduced at the hearing make clear that the Carrier exercises more than sufficient control over G2’s operations at LGA to warrant a finding that G2 is subject to the jurisdiction of the RLA and not the NLRA, including substantial control over material terms and conditions of employment for G2’s employees at LGA, as well as labor relations. The facts and evidence presented by G2, together with the relevant NMB and NLRB precedent, make clear that G2 is “controlled by . . . a carrier or carriers” within the meaning of the

RLA. Because G2 is a “derivative carrier” as defined by the RLA, and thus subject to RLA coverage, it cannot be an “employer” under the NLRA. The petition in this matter should, therefore, be dismissed for lack of jurisdiction or, in the alternative, be referred back to the NMB for an advisory opinion regarding jurisdiction.

Dated this 12th April 2019.

Respectfully submitted,

*/s/ Frank Birchfield* \_\_\_\_\_

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