

**UNITED STATE OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**Firstline Transportation Security, Inc.**

**Employer,**

**-and-**

**Case 17-RC-12354  
(Oral Argument Requested)**

**International Union, Security, Police,  
and Fire Professionals of America (SPFPA)**

**Petitioner.**

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**PETITIONER SPFPA'S RESPONSE BRIEF ON REVIEW**

Petitioner, International Union, Security, Police, and Fire Professionals of America (SPFPA), gratefully acknowledges the amicus briefs, filed in support of its position in this case, by the American Federation of Labor and Congress of Industrial Organizations, the Service Employees International Union (SEIU), the American Federal of Government Employees, AFL-CIO, and the International Longshore & Warehouse Union (ILWU). These amici have eloquently argued well-established purposes and policies of the National Labor Relations Act which support the Board exercising its statutory jurisdiction, under the Act, over privately employed aviation screeners. The SEIU also provides a valuable Transportation Security Administration submission from Covenant Aviation Security, LLC, 20-RC-17896, detailing the TSA's strongly urged position that it does not exercise supervisory control over privately employed screeners, nor does it set their pay levels.

The undersigned cannot match the scholarly breadth and depth of the union amicus briefs, to which the Board's attention is earnestly invited. Rather, this response brief on Petitioner's behalf focuses more narrowly upon practical factors which

Petitioner believes are material to the Board's decision on whether to voluntarily decline to take jurisdiction in this case.

Firstline, and its amici, assert at length that the Aviation and Transportation Security Act (ATSA), 49 USC § 114, requires that privately employed aviation screener employees have no collective bargaining rights.

ATSA is the organic law for the Transportation Security Authority (TSA). The Board, in this case, expressed a desire to "hear from" other interested Federal agencies, 344 NLRB No. 124. The TSA responded by submitting a Statement of the Transportation Security Administration. That Statement reads, in relevant part:

Although aviation security screeners employed by the TSA are statutorily barred from engaging in mandatory collective bargaining, see § 111(d) of the Aviation Transportation and Security Act of 2001, P.L. 107-71, State. 597, codified at 49 U.S.C. § 44935 Note, it is TSA's position that this provision does not extend to aviation security screeners employed by qualified screening companies. Therefore § 111(d) does not prohibit privately-employed screeners from engaging in collective bargaining.

This statement by the TSA, interpreting its governing statute, deserves deference. See New York Shipping Association v. Federal Maritime Commission, 854 F2d 1338, 1377 (DC Cir. 1988) ("The deference we owe an agency's interpretation of its governing statute") Exxon Shipping Co., 312 NLRB 566, 567 (1993) (similar).

Once the TSA, sensitive as it must be to the demands of national security and the ATSA, has officially recognized the right of privately employed screeners to engage in collective bargaining, such recognition should be dispositive of the existence of such a right. Neither the ATSA, nor the National Labor Relations Act, take collective bargaining rights away from privately employed screeners. In fact, the latter Act protects such rights.

Collective bargaining covering privately employed security screeners has already happened at San Francisco International Airport (see Petitioner SPFPA's Brief on Review, pp. 6-7) and very well may happen again at San Francisco or elsewhere. No Federal agency has the lawful authority to stamp out such bargaining. It would be improvident for the Board to decline to exercise jurisdiction over private aviation screener labor relations, thereby leaving such matters to state or local regulation, or worse to "the law of the jungle." National security would be ill-served by the Board taking a laissez-faire approach to private aviation screener labor relations.

Petitioner, now called International Union, Security, Police, and Fire Professionals of America (SPFPA), prior to 2000 was known as the International Union, United Plant Guard Workers of America (UPGWA). Its existence dates back almost to the passage of the Taft-Hartley Amendments in 1947. Petitioner has been, all of these years, a labor organization which admits only guard employees to membership within the meaning of Section 9(b)(3) of the Act.

Petitioner prefers to operate in a Board-regulate environment for a very basic reason. One of the greatest successes of the Act has been to effectuate free choice for employees with respect to union representation. A very significant decision that the Board has made about employee free choice is that it is best ascertained through an election after a campaign, although the language of Section 9(a) of the Act does not specifically require elections. Thus, an employer is free to recognize a majority union without an election. Nonetheless, Petitioner historically has achieved most of its organizing successes through Board-conducted elections. The elections generally have

been conducted fairly and have overwhelmingly tended to reflect employee choice accurately.

What Petitioner fears would be the creation of a nominal “union” which is heavily influenced by a criminal organization to the point where it would fail to meet the Section 2(5) definition of labor organization, in the mold of the Federation of Special Police and Law Enforcement Officers, see Marina Associates d/b/a Harrah’s Marina Hotel and Casino, 267 NLRB 1007 (1983). Without board regulation, such a “union” conceivably could flourish, gladly operating free of the restrictions imposed by Sections 8 and 9 of the Act. Such a “union” could become adept at operating in an unregulated environment, and could develop extralegal means to extract recognition from employers without any employee elections. These are potential evils that the Board should stand ready to address and battle. The Board would be improvident to exercise its discretion by retiring from the field.

For the reasons stated by Petitioner and the union amici, as well as by Member Liebman’s dissent in Firstline, *supra*, the Board should exercise jurisdiction in this case.

Petitioner requests oral argument.

Respectfully submitted,

**Gregory, Moore, Jeakle, Heinen & Brooks, P.C.**

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**Certificate of Service**

I certify that on August 17, 2005, I served copies of this brief, by first-class mail,

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