

Ogden Aviation Services and International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 141, Petitioner. Case 20-RC-17097

April 12, 1996

DECISION AND DIRECTION

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon a petition filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Hearing Officer Kay M. Hendren. Thereafter, the Employer and Petitioner filed briefs. Following the hearing, and pursuant to Section 102.67 of the Board's Rules, the case was transferred to the Board for decision.

The Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the hearing officer's rulings made at the hearing and finds that they are free from prejudicial error. They are affirmed.

On the entire record in this case, the Board finds:

1. The Employer is a Delaware corporation with a place of business at the San Francisco, California International Airport and is engaged in providing various services to airlines at approximately 85 airports. The Employer annually purchases and receives at its California facility goods and/or services valued in excess of \$50,000 directly from sources located outside the State of California.

The Employer contends that the petition should be dismissed because its operations that are the subject of this petition are covered by the Railway Labor Act and therefore the Employer is not an "employer" within the meaning of Section 2(2) of the National Labor Relations Act. The Petitioner submits that jurisdiction is properly with the National Labor Relations Board.

Section 2(2) defines "employer" to exclude any person subject to the Railway Labor Act. Accordingly, we requested that the National Mediation Board determine the applicability of the Railway Labor Act to the Employer.¹ In reply, the National Mediation Board found "that Ogden Aviation Services' operations at [San Francisco International Airport] are not subject to the Railway Labor Act."² Therefore, we find that the Employer is engaged in commerce within the meaning of the National Labor Relations Act,³ and that it will effectuate the policies of the Act to assert jurisdiction.⁴

2. The parties stipulated, and we find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

3. We remand the case to the Regional Director for resolution of any unresolved issues and to take further appropriate action.⁵

DIRECTION

IT IS DIRECTED that the Regional Director shall take further appropriate action.

¹ Chairman Gould dissented.

² *Ogden Aviation Services*, 23 NMB 98 (1996).

³ In so finding, we find it unnecessary to rely on the documents the hearing officer admitted into evidence over the Employer's objection. In addition, we note that the NMB, while observing that the Union has collective-bargaining relationships with the Employer at other airports, did not rely on those relationships in concluding that it lacks jurisdiction over the Employer at the airport involved in this case. We therefore shall deny the Employer's request to reopen the record in light of the hearing officer's ruling.

⁴ For the reasons set forth in his dissenting opinion in *Federal Express Corp.*, 317 NLRB 1155 (1995), Chairman Gould would eliminate the Board's general practice of referring cases involving RLA jurisdictional claims to the NMB for an initial ruling. On the facts of this case, Chairman Gould finds there is ample basis for the Board's assertion of jurisdiction. Accordingly, Chairman Gould concurs in his colleagues' decision to assert jurisdiction over the Employer and to remand the case to the Regional Director for resolution of any unresolved issues and to take further appropriate action.

⁵ The parties disagree about whether the petitioned-for unit is appropriate.