

Northwest Airlines Flight Attendant Union Local 2000 of the Teamsters Airline Division, International Brotherhood of Teamsters, AFL-CIO and National Association of Base Representatives, Petitioner. Case 7-RC-20519

August 27, 1996

DECISION ON REVIEW AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

On June 14, 1995, the Acting Regional Director for Region 7 issued a Decision and Direction of Election in which he found appropriate the following unit:

All full-time and regular part-time Base Representatives employed by the Employer at its bases throughout the United States but excluding all Executive Committee members, clerical employees, guards and supervisors as defined in the Act.

The Employer filed a request for review on June 22, 1995. On August 14, 1995, the Board granted the Employer's request for review of the Acting Regional Director's Decision. A mail ballot election was conducted and the ballots were impounded pending the Board's Decision on Review.

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

We have reviewed the entire record in this case, including Local 2000's brief in support of its request for review. For the reasons set forth herein, we agree with the Acting Regional Director that the petitioned-for unit of base representatives is an appropriate unit. We also agree that Local 2000 is an employer subject to the NLRA, that the base representatives are employees of Local 2000, and that the Petitioner can represent them vis-a-vis Local 2000. Accordingly, we shall affirm the direction of an election and order that the ballots be opened and counted and the appropriate certification issued.

Base representatives are the elected full-time, local representatives of the Northwest Airlines (NWA) flight attendants who constitute the membership of the Employer (Local 2000). Pursuant to the collective-bargaining agreement between Local 2000 and NWA, they maintain their status as NWA employees while on union leave serving in elective union office and are subject to certain duties and privileges which attend that status.¹ Base representatives represent Local 2000

¹For example, base representatives continue to accrue seniority and longevity for pay purposes. They retain their airline pass privileges and can be disciplined for misuse. They possess NWA identification cards that permit access to airport high-security areas and personal identification numbers that permit access to NWA's computerized records. When exercising their pass privileges, base rep-

members vis-a-vis Local 2000, and they represent those members vis-a-vis NWA. Their duties include, inter alia, representing Local 2000's members before the Local 2000's executive board, supervising Local 2000's base activities, processing grievances vis-a-vis NWA, serving as the focal point for communications between Local 2000 and its membership, and promoting good relationships with locals of the International Brotherhood of Teamsters. To be eligible to serve as base representative, individuals must be members of Local 2000. Only NWA flight attendants may be members of Local 2000.²

Local 2000 pays the base representatives a salary equivalent to the flight pay provision of the collective-bargaining agreement between Local 2000 and NWA, plus differentials and an additional amount set unilaterally by Local 2000 based on seniority and experience.³ They also receive from Local 2000 a travel allowance, the amount of which is set by Local 2000's executive board. Local 2000 determines the office locations where base representatives work, sets their work hours, and establishes their leave and vacation benefits.

I. EXCEPTIONS REGARDING JURISDICTION

In its request for review, Local 2000 raises several issues regarding the Board's jurisdiction over this matter. It contends that Local 2000 is a union in the airline industry and thus is within the jurisdiction of the Railway Labor Act.⁴ Local 2000 argues as follows: (1) It is not a statutory employer pursuant to Section 2(2) of the National Labor Relations Act (NLRA);⁵ (2) the

representatives must observe NWA dress codes. They must maintain federally required training for flight attendants. As explained infra, they participate in collectively bargained benefits including pension and health plans.

²The only exception is Seattle Base Representative Bill Rainey. Before 1992, the NWA flight attendants had been represented by six local unions of the IBT. In 1992 the locals merged and formed Local 2000 as the nationwide representative of the flight attendants. Rainey, who has never been a flight attendant, had been employed as the IBT business representative for the Seattle-based flight attendants. Incident to the merger, a one-time exception was made so that Rainey could continue to represent the Seattle flight attendants for as long as they continued to reelect him. Privileges and duties incident to flight attendant status do not apply directly to Base Representative Rainey. However, his pay and benefits are comparable to those of the other base representatives, and he is subject to the same terms and conditions of employment. The Employer concedes that Rainey is a statutory employee.

³Although Local 2000 is the funding source for all salary paid to the base representatives, by agreement between Local 2000 and NWA, the base representative salaries are issued through the NWA payroll system. This procedure allows the base representatives to maintain their eligibility for certain benefits, including pension and health plans. NWA is reimbursed by Local 2000 for the flight-pay portion of the salaries, including payroll taxes.

⁴45 U.S.C. § 151 et seq., as amended.

⁵Sec. 2(2) of the Act defines an "employer" as

"[A]ny person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly

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base representatives are employees of NWA (an employer subject to the Railway Labor Act), and they are subject to terms and conditions of employment that are controlled by NWA; (3) hence the base representatives are not statutory “employees” pursuant to Section 2(3) of the NLRA,⁶ which excludes from coverage the employees of an employer subject to the Railway Labor Act.⁷ It asserts, as well, that the status of base representatives as elected officials of Local 2000 is incompatible with a finding that they are its statutory employees. Further, Local 2000 cites Section 2(5) of the NLRA, which in pertinent part defines a “labor organization” as “any organization of any kind, or any agency or employee representation committee or plan, in which *employees* participate” (Emphasis added.) In the view of Local 2000, therefore, the Petitioner cannot qualify as a statutory labor organization because it has no statutory employee-members.

We find no merit in these jurisdictional arguments. Local 2000 controls the wages, at least in part, and other substantial terms and conditions of the base representatives’ employment, including their travel allowance, office location, work hours, and leave and vacation benefits. We recognize, as pointed out by Local 2000 in its brief, that some of the base representatives’ terms and conditions of employment may be controlled by the contract between NWA and Local 2000, and that NWA is an entity exempted from NLRA coverage. However, this does not negate the finding, which we make, that Local 2000 sets other substantial terms and conditions of employment of the base representatives. Because no party contends that NWA and Local 2000 are joint employers, we conclude, on this record, that Local 2000 is the Employer of the base representatives.

We also recognize that the base representatives are ultimately responsible to the electorate, i.e., the membership of Local 2000, rather than to the Local 2000’s executive board.⁸ However, this is simply a reflection

owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

⁶Sec. 2(3) of the Act, in pertinent part, defines “employee” as [A]ny employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise . . . but shall not include any individual employed by an employer subject to the Railway Labor Act . . . or by any other person who is not an employer as herein defined.

⁷No party contends that NWA and Local 2000 are joint employers of the base representatives.

⁸For example, Local 2000’s executive board cannot select base representatives for employment and lacks the authority to lay them off or discipline or remove them from office except through procedures established by its constitution and bylaws. There is no contention that the base representatives are managerial employees or independent contractors.

of the fact that Local 2000 is composed of its membership. Thus, responsibility to the membership is, in effect, responsibility to the Employer, Local 2000.

In sum, we find that Local 2000 is a statutory employer, and the business representatives are statutory employees of Local 2000.

In addition, the Board’s jurisdiction over labor organizations acting as employers is well settled, even if those labor organizations represent employees of carriers subject to the Railway Labor Act. See, e.g., *Brotherhood of Locomotive Firemen & Enginemen*, 145 NLRB 1521 (1964); *Air Line Pilots Assn.*, 97 NLRB 929 (1951). At issue in this case is Local 2000’s function as the employer of the base representatives, not its performance as the representative of individuals employed by a carrier regulated by the Railway Labor Act. The NLRA statutory definition of employer is broad, covering “any person acting as an agent of an employer, directly or indirectly.” We agree with the Acting Regional Director that the NLRA statutory definition of employer encompasses Local 2000.

As noted above, some of the terms and conditions of employment of the base representatives are determined by the contract between NWA and Local 2000. That contract is outside the realm of the NLRA. In *Management Training Corp.*, 317 NLRB 1355 (1995), the Board was presented with a case where some terms and conditions were set outside the realm of the NLRA, i.e., in that case by a governmental entity. The Board nonetheless asserted jurisdiction over the contractor doing business with the governmental entity. The Board said that it would assert jurisdiction over the contractor as long as the contractor was an employer within the meaning of the NLRA, i.e., as long as the contractor controlled at least a term or condition of employment. It does not matter whether the contractor-controlled terms are essential. In the instant case, Local 2000 controls some terms and conditions of employment of base representatives. Thus, we assert jurisdiction over Local 2000.⁹

II. EXCEPTIONS ALLEGING CONFLICT-OF-INTEREST

Local 2000 also contends that the base representatives are fiduciaries of Local 2000 and thus barred by conflict of interest from bargaining with Local 2000. The contention is based largely on the purported conflict that would be presented if the Petitioner seeks higher wages for the base representatives, at the expense of Local 2000’s treasury. The base representatives currently are paid from Local 2000’s treasury

⁹Member Cohen, in *Management Training*, supra, said that he would assert jurisdiction over the contractor only if the contractor controlled essential terms and conditions. He finds that Local 2000 meets that test. In this regard, he notes that Local 2000 has control over, inter alia, a part of the salary of these employees, as well as their travel allowances, leave, and vacation benefits.

funds. We see no disabling conflict of interest. In many bargaining relationships, the union's success at the bargaining table will be at the expense of the employer's "treasury." The only difference here is that the base representatives are members of the Employer. To the extent that the Employer's "treasury" is adversely affected, the member is protanto adversely affected. However, the employee interest in improving employment terms is far greater than the protanto member interest in the treasury, so that any conflict of interest is de minimus.

In that respect, this case is distinguishable from *Pony Express Courier Corp.*, 297 NLRB 171 (1989), and *Harlem River Consumers Cooperative*, 191 NLRB 314 (1971), relied on by Local 2000. In those cases a key official of the labor organization that sought to represent unit employees had a conflicting personal business relationship with the employer of the unit employees. Thus, there existed an inherent danger, not present here, that the union official would make bargaining demands or grant concessions that would subordinate the unit employees' interests to those of his own personal business interests. *Medical Foundation of Bellaire*, 193 NLRB 62 (1971), is similarly distinguishable. There, the labor organization that attempted to represent the unit employees had a direct and immediate allegiance with the employees' employer by vir-

tue of the labor organization's representation on the employer's governing board of trustees. There is no evidence here that the base representatives, alone or in concert, have comparable control over Local 2000's executive board.

Local 2000 also contends that the Petitioner's purpose is not to engage in collective bargaining, but rather, to set itself up as a rival labor organization to Local 2000. This contention is speculative, at best. We have found that Local 2000 controls at least some matters relating to its employment relationship with the base representatives and that collective bargaining is feasible if the Petitioner is elected as the base representatives' exclusive representative. It would be inappropriate to base our decision on speculation that the Petitioner was formed with any other purpose than to engage in legitimate collective bargaining and employee representation.

ORDER

The Acting Regional Director's Decision and Direction of Election is affirmed to the extent consistent with this Decision on Review. This proceeding is remanded to the Regional Director for further appropriate action, including the opening and counting of the ballots cast in the election and the issuance of the appropriate certification.