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John Menzies, PLC, d/b/a Ogden Ground Services, Inc. and Transportation Workers Union of America, AFL-CIO. Case 31-RC-8191

November 28, 2003

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND WALSH

On December 10, 2002, the Transportation Workers Union of America, AFL-CIO (the Union) filed a petition seeking to represent all full-time and part-time ramp agents, cabin service agents, leads (including coordinators), and GSE mechanics (excluding GSE mechanics not working at the Bradley terminal or in the GSE mechanic shop) employed by the Employer at Los Angeles International Airport (LAX) in Los Angeles, California. The Employer asserts that it is directly controlled by common carriers subject to the jurisdiction of the Railway Labor Act, and that, therefore, the National Labor Relations Board lacks jurisdiction under Section 2(2) of the National Labor Relations Act. After a hearing, the Regional Director transferred the proceeding to the Board.

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

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

The Employer provides aviation support services for several domestic and international carriers: Alaska Airlines (Alaska) and its sister company Horizon Air, Nippon Cargo Airlines, British Airways, Cathay Pacific, Cathay Pacific Freighter, Japan Airlines (JAL), Korean Airlines, LTU, TACA International Airlines and its sister company LACSA Airlines, and Qantas Airways (Qantas). These services include baggage handling, operating and maintaining specialized commercial aircraft service equipment, and cleaning and restocking aircraft cabins.

The record indicates that the carriers exercise substantial control over the Employer's Los Angeles operations. The carriers' personnel direct and supervise the Employer's employees and maintain frequent communication with them on a daily basis. For example, Alaska and British Airways employees, JAL supervisors, and Korean Airlines supervisors sometimes direct that the cleaning performed by the Employer's employees be redone. Cathay Pacific agents give employees flight-specific instructions for unloading cargo. The carriers specify procedural requirements that the Employer must follow. The Employer is required to complete and submit paperwork to Alaska regarding various daily operations and security searches required by Alaska. Cathay Pacific,

JAL, and Korean Airlines also have certain required checklists. The Employer must maintain records according to specific Alaska guidelines. The carriers regularly perform audits for quality assurance on such issues as safety, training files or operational issues. The carriers require the Employer's employees to attend regular staff meetings.

The carriers require the Employer's compliance with service and performance standards. Although the Employer hires its own employees, the Employer is required to comply with carrier requests to reassign or remove an unsatisfactory employee. The Employer's ramp operations manager who is responsible for Alaska's and Horizon testified that he has complied with Alaska's requests by terminating 10-15 employees, and he has never refused an Alaska request to remove an employee. The Employer has also removed or reassigned employees pursuant to requests by British Airways, Cathay Pacific, JAL, Korean Airlines, Qantas, and TACA. The carriers' contracts with the Employer set forth employee-training requirements. For instance, Alaska requires the Employer to follow Alaska's operating and training procedures, and sometimes Alaska directly trains the Employer's employees. British Airways, JAL, Qantas, and TACA also conduct direct training of the Employer's employees.

The carriers provide and maintain most of the equipment used by the Employer's employees, including aircraft servicing equipment, computer equipment, and work areas. In some cases, carriers required the Employer to purchase certain equipment. The Employer also subleases office space from Alaska at below market rate. Alaska extends flight benefits to the Employer's employees, as it does to its own employees. Alaska also gives the Employer's employees T-shirts, hats, and occasional invitations to social activities for Alaska employees. Qantas requires the Employer's ramp agents to wear a Qantas uniform containing the Qantas name and logo. The Employer's ramp agents also wear green safety vests pursuant to a British Airways requirement. Although in most cases the Employer provides its own uniforms, the contracts between the carriers and the Employer require compliance with personal appearance standards.

Section 2(2) of the National Labor Relations Act provides that the term "employer" shall not include "any person subject to the Railway Labor Act." 29 U.S.C. § 152(2). Similarly, Section 2(3) of the Act provides that the term "employee" does not include "any individual employed by an employer subject to the Railway Labor Act." 29 U.S.C. § 152(3). The Railway Labor Act, as amended, applies to:

Every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner or rendition of his service.

45 U.S.C. § 151 First and 181.

On February 12, 2003, the Board requested that the National Mediation Board (NMB) study the record in this case and determine the applicability of the Railway Labor Act to the Employer. The NMB subsequently issued an opinion stating its view that the Employer is a carrier subject to the Railway Labor Act. *Ogden Ground Services*, 30 NMB 463 (2003).¹ The NMB's opinion specifically concluded that the facts in this case are distinguishable from previous NMB cases involving Ogden

¹ The NMB uses a two-pronged jurisdictional analysis: (1) whether the work is traditionally performed by employees of air or rail carriers; and (2) whether a common carrier exercises direct or indirect ownership or control. The NMB concluded that both prongs of the test had been met. The NMB issued a similar opinion involving the same employer and its operations at Portland International Airport on July 11, 2003. *Ogden Ground Services*, 30 NMB 404 (2003). The Board's Order dismissing the Union's petition in that case issued shortly thereafter on July 29, 2003. *Ogden Ground Services*, 339 NLRB No. 107 (2003).

operations where the NMB had determined that those operations were not subject to the Railway Labor Act. See, e.g., *Ogden Aviation Services*, 23 NMB 98 (1996); *Ogden Aviation Services*, 20 NMB 181 (1993). See also *Ogden Aviation Services*, 320 NLRB 1140 (1996).

Having considered these facts in light of the opinion issued by the NMB, we find that the Employer is engaged in interstate air common carriage so as to bring it within the jurisdiction of the NMB pursuant to Section 201 of Title II of the Railway Labor Act. Accordingly, we shall dismiss the petition.

ORDER

IT IS ORDERED that the petition in Case 31-RC-8191 is dismissed.

Dated, Washington, D.C., November 28, 2003

Wilma B. Liebman, Member

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD