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Aircraft Service International Group, Inc., *and* Local 324, International Union of Operating Engineers, AFL–CIO. *and* A.S.I.G. Employees Association. Case 7–AC–166

August 31, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND MEISBURG

On October 17, 2003, Petitioners Local 324 and A.S.I.G. Employees Association filed a petition seeking an amendment of a certification of representative previously issued to A.S.I.G. Employees Association, to reflect a vote by the bargaining unit to affiliate with Local 324. The unit at issue includes all full-time and regular part-time fuelers, GSE fuelers, GSE mechanics, and quality control technicians employed by the Employer at its facility at Detroit Metropolitan Airport. The Employer asserts that it is controlled by Northwest Airlines (and its affiliates), a common carrier 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 fueling services at Detroit Metropolitan Airport for Northwest Airlines and its affiliated carriers, KLM Airlines, Mesaba Airlines, Pinnacle Airlines, and Champion Airlines. Most of the employees at issue are fuelers, who transfer fuel onto the aircraft. The remaining employees are mechanics, who maintain the equipment used by the fuelers, and quality control employees, who ensure the quality of the fuel. The parties have stipulated that the work done by ASIG employees is the type of work traditionally performed by employees of air carriers.

The record indicates that Northwest and its affiliates (collectively, the carriers), with whom the Employer has a cost-plus contract, exercise substantial control over the Employer's Detroit operations. They are the Employer's only customers in Detroit. The carriers own almost all of the equipment used by the Employer, whom they reimburse for the rental costs of its Detroit facilities. The carriers' schedules dictate the staffing levels and hours for the Employer's employees. Carrier personnel direct unit employees by, for example, telling them to stop loading one aircraft and load another one instead when flights are changed. The carriers require the Employer's employees to follow the carriers' operating and training procedures, and have requested additional supervision of employees to correct service problems. The carriers specify employee training, which is recorded on forms supported by the carriers. The carriers have access to employees' training files and need not provide notice of audits. Carrier personnel report problems with the Employer's employees; these reports have resulted in discipline, including reassignment, suspension, and discharge. The Employer complied with the carriers' request not to hire certain persons during its initial hiring. The carriers have rewarded the Employer's employees for good performance, in one instance by providing an employee who prevented aircraft damage with two complimentary airline tickets.

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 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 December 10, 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 and its employees at Detroit are subject to the Railway Labor Act. *Aircraft Service International Group, Inc*., 83 NMB 361 (2004).[1]

Having considered the facts of this case 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

[1] The NMB uses a two-pronged jurisdictional analysis: (1) whether the work is traditionally performed by employees of air and rail carriers; and (2) whether a common carrier exercises direct or indirect ownership or control. Both prongs of the test must be met, and the NMB concluded that they were in this case.

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 7–AC–166 is dismissed.

Dated, Washington, D.C., August 31, 2004

Robert J. Battista, Chairman

Peter C. Schaumber, Member

Ronald Meisburg Member