

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 12**

**FLORIDA INSTITUTE OF TECHNOLOGY<sup>1</sup>**

**Employer**

**and**

**Case 12-RC-8466**

**INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS, AFL-CIO**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>2</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>3</sup>

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<sup>1</sup> The names of the parties appear as amended at the hearing.

<sup>2</sup> The briefs filed by the parties have been carefully considered.

<sup>3</sup> The parties stipulated that Florida Institute of Technology, herein called the Employer, is a Florida corporation with an office and place of business located at 150 W. University Boulevard, Melbourne, Florida, where it is engaged in the operation of a school of higher education, with a division which operates a private aviation school. During the past 12 months, a representative period, the Employer in the course and conduct of its operations derived gross revenues in excess of \$1,000,000. During the same period, the Employer purchased and received at its Melbourne, Florida, location goods and materials valued in excess of \$50,000 directly from points located outside the State of Florida.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees employed by the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Petitioner seeks to represent a unit consisting of all full-time and regular part-time flight instructors, including flight training managers, check instructors, undergraduate flight instructors, and student intern flight instructors, employed by the Employer at its Melbourne, Florida location, excluding all office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

The parties stipulated that all full-time and regular part-time flight instructors should be included in the appropriate unit herein. The parties also stipulated that the chief flight instructors and the assistant chief flight instructors should be excluded from the unit because they are Section 2(11) supervisors.

The Employer contends that the flight training managers should be excluded from the unit because they are managerial and/or supervisory employees. The Employer does not dispute that the flight training managers also act as flight instructors. The Employer asserts that the check instructors, undergraduate (college roll) flight instructors, and student intern flight instructors should be excluded from the unit because they do not share a community of interest with the petitioned-for flight instructors.

The Petitioner asserts that the flight training managers are level A flight instructors, the check instructors are senior flight instructors, the part-time flight instructors are level B flight instructors, the undergraduate (college roll) flight instructors are level C flight instructors, and the student intern flight instructors are level D flight

instructors. With the exception of the flight training managers, the Employer does not dispute the foregoing designations for each flight instructor category.

The Employer employs six flight training managers (ftm's), two check instructors, and 17 level B flight instructors. For spring semester 2000, the Employer has seven level C (college roll) flight instructors and one level D (intern) flight instructor. The petitioned-for unit consists of 31 employees. There are 17 employees in the unit deemed appropriate by the Employer.<sup>4</sup>

The Petitioner is willing to proceed to an election in an alternate unit.

The Employer is a private university with a school of aeronautics. The school of aeronautics has an academic and a flight training division. The academic division is located on the Employer's main campus, and the flight training division is located at Melbourne Airport. There are about 180 to 200 students in the school of aeronautics. The Employer operates seven days a week, from 7:00 a.m. to 10:00 p.m.

The flight training division operates as a private flight school under the auspices of the FAA, Parts 61 and 141 regulations. FAA regulations establish the requirements for all flight instructor certifications and ratings. The petitioned-for unit employees are FAA certified flight instructors. The flight school offers courses for private and commercial certifications and instrument and multi-engine ratings. The flight instructors must use a lesson-by-lesson student syllabus which is sanctioned and approved by the FAA. The FAA requires flight instructors to be qualified to do stage checks and certification checks for students and recertification checks on flight instructors.<sup>5</sup>

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<sup>4</sup> In effect, the Employer's contends that only level B instructors should be included in the appropriate unit herein.

<sup>5</sup> Stage checks are in-flight demonstrations of pilot maneuvers related to the specific flight course; and check rides are in-flight demonstrations of pilot maneuvers related to the specific certification or rating.

The director of the flight training division reports to the dean of the school of aeronautics. He also serves as the president of FIT Aviation, Inc., herein called Aviation, which is owned and operated by the Employer to provide maintenance, line service and customer service at the Melbourne Airport site. As president, he reports to the board of directors of Aviation.

There are four directors who report to the division director: administration, training, maintenance, and operations. The directors of training and operations are employees of the Employer; the directors of administration and maintenance are employees of Aviation. Aviation has employees who staff its operations.

Two chief flight instructors (cfi's) and two assistant chief flight instructors (acfi's) report to the flight training division director. As noted above, the parties stipulated that they are supervisors within the meaning of Section 2(11) of the Act. The new cfi and the two acfi's supervise two ftm's each. All level B, C and D flight instructors are assigned to an ftm and an acfi.<sup>6</sup> The two check instructors are assigned to the acfi for training.

The senior cfi also serves as the director of training. The FAA requires the cfi to be accountable for compliance with its extensive regulations. The FAA permits the cfi to delegate certain responsibilities to the acfi's. One acfi is responsible for managing the standardization program for the flight instructors, and the other is responsible for managing the quality of the training program.

James McIntyre is the current division director. Upon his assumption of this position in January 1999, he announced to flight school personnel his desire to

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<sup>6</sup> The Employer proffered an organizational chart as Employer's Exhibit 1. McIntyre testified that he had revised the organizational chart 10 to 12 times over the past year. In December 1999, he inserted the check instructors on the organizational chart for the first time.

reorganize and rebuild the flight school program. He testified that his reorganization plans have evolved over the past year and continue to do so. According to McIntyre, due to an airline pilot shortage, the program had lost its more experienced flight instructors to private industry. In order to minimize the potential risks associated with less experienced flight instructors, McIntyre wanted to create a “broader layer of management oversight” for the acfi’s. At the time, each flight instructor was assigned to an acfi for “oversight” purposes, which meant 12 to 18 flight instructors for each acfi. McIntyre wanted to create more manageable teams of flight instructors. At the time, the acfi’s performed most of the stage and check rides so they could not focus on the development of standardization and training programs.<sup>7</sup>

In early 1999, McIntyre met with the predecessor cfi and the six senior flight instructors. The group created the title “flight training manager” (ftm) and all six senior flight instructors became known as “flight training managers”. There was no application process, and there was no additional compensation, associated with the new job title. The predecessor cfi drafted an ftm position description, and a charter ftm testified that he saw a one-page position description at that time. At the hearing, the Employer proffered a two-page position description, which is undated.<sup>8</sup>

The ftm position description has not been adopted as an official job description approved through the Employer’s human resources department. According to McIntyre, he had an agreement with human resources that he would not seek such approval until his reorganization plans were completed. Despite the hearing officer’s request therefor, the Employer failed to produce other existing job descriptions contending they were outdated.

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<sup>7</sup> Stage checks and check rides are not performed by the student’s flight instructor in order to insure an objective performance evaluation.

<sup>8</sup> Employer’s Exhibit 2.

According to McIntyre, his “main intent” for the ftm position is found in the first paragraph of the position description: to oversee, manage, direct, advise and assist flight instructors. He testified that the “key gist” of the ftm position is the training and oversight of the inexperienced flight instructors. As a group, the ftm’s are the most experienced flight instructors. He also testified that the ftm is critical for “two-way communication” between the senior cfi and flight instructors.<sup>9</sup> According to McIntyre, the ftm’s “play a part” in establishing policies. There is no mention in the position description of the ftm’s role in the formulation of Employer policy.

The position description also states that the ftm’s field questions and resolve problems raised by flight instructors, and they perform stage checks and “other flights”. According to the position description, the ftm’s check progress charts, monitor student progress and sign course deviation and add time slips.<sup>10</sup> McIntyre testified that the Employer continues to “try to execute” the position description.

In the summer of 1999, the ftm’s were assigned to cover the evening and weekends shifts of the “Supervisor of Flying” (SOF) position.<sup>11</sup>

McIntyre testified that he has a breakfast meeting with the ftm’s on a monthly basis to secure the feedback and concerns of the ftm’s; the cfi’s and acfi’s are not present. The ftm’s attend a monthly meeting of Employer managers and Aviation managers, known as the “expanded staff” meetings. In response to a leading question by Employer counsel, McIntyre testified that “confidential” matters are discussed at

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<sup>9</sup> The position description describes this function as the timely dissemination of information regarding matters associated with the training of flight students “to those below and above the position.”

<sup>10</sup> These areas are covered in the flight instructors’ operations manual, discussed below.

<sup>11</sup> The SOF position is described in detail in the flight operations manual, discussed below.

“management” meetings attended by the ftm’s. On cross-examination, McIntyre testified that he could not recall a specific confidential issue raised at a meeting or if he had ever directed the ftm’s that an issue should be considered confidential. In response to another leading question by Employer counsel as to the ftm’s “input” and “involvement” in the creation or modification of policies, McIntyre testified that was his “intent” and his “impression” that such occurs at the cfi level. On cross-examination, when asked to describe the ftm’s input into policy matters, McIntyre testified that the ftm’s are given an opportunity to “voice any concerns” and are a “party to the direction” taken on issues. McIntyre could recall two issues discussed in the presence of ftm’s: student grading policies and stage check schedules.

McIntyre also testified that it is his “hope” that the ftm’s are providing day-to-day supervision of the flight instructors. He also “hopes” that the ftm’s are insuring that the flight instructors complete the FAA mandated paperwork related to flight training.

Although McIntyre testified that ftm’s are “expected” to discipline flight instructors, the senior cfi testified that he alone issues any disciplinary actions. There is no reference to a disciplinary role played by the ftm’s in the position description, and the record evidence does not show that the Employer has a formal disciplinary procedure.

At several points in his testimony, McIntyre lacked specific or detailed knowledge relevant to certain issues, and he deferred to the senior cfi thereon. Moreover, McIntyre admitted that he does not “rub shoulders” with the ftm’s on a daily basis.

Mac McGraw, the senior cfi, assumed his position in July 1999. At that time, the ftm’s functioned as flight instructors for 10 to 12 students and as check instructors. After the ftm’s were assigned to cover the evening and weekend shifts as the SOF, McGraw assigned them an average of eight students in the fall semester 1999.

For spring semester 2000, they have an average of six students. The record evidence does not show the average number of students for level B flight instructors.

In September or October 1999, McGraw issued a letter to all flight instructors inviting them to apply for the position of ftm. McGraw convened a board consisting of himself and other stipulated supervisors who conducted the applicant's interview, reviewed the applications, and made the final selections. The ftm's do not serve on the board. Although McGraw testified that an applicant must have a recommendation from a ftm, he also testified that the ftm recommendation is not always followed. Moreover, the sole charter ftm testified that he had never been informed that an applicant should seek a recommendation from an ftm and no applicant had ever sought his recommendation. McGraw testified that he gave all applicants a copy of the two-page position description and discussed the obligation to serve as the SOF on evenings and weekends.

In October 1999, McGraw issued a memo to the acfi's and ftm's regarding his decision to hold meetings with the ftm's.<sup>12</sup> The memo states that the purpose of the meeting is for him to respond to any questions from the ftm's or their flight instructors. The memo also states that he will inform the ftm's of any new information concerning general training and/or operational needs.

At these meetings, McGraw listens to any concerns of the ftm's and he and the other ftm's respond "as a group". McGraw also informs the ftm's of any information that he wants them to discuss with their flight instructors at a meeting to be held the following day. At the flight instructors' meeting, during the first half hour, McIntyre may make some brief remarks and McGraw makes his presentation. The ftm's sit at a table with their team of flight instructors. During the second half hour, the ftm's

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<sup>12</sup> Employer's Exhibit 5.

discuss the information provided by the cfi with their team and the ftm's respond to "general" questions from the flight instructors.

At an October 1999 meeting, the ftm's discussed current procedures for two unsatisfactory grades. At a November 1999 meeting, the ftm's discussed current procedures for solo cross country flights and checklists; timely submission of grades; and presented proposed selection criteria for flight instructor of the month for feedback to the cfi.

As of January 2000, McGraw meets with the ftm's on a bi-weekly basis; the acfi's do not attend. As a result of high absenteeism by the flight instructors, the Employer has begun to issue warnings to them to require their attendance. The ftm's have played no role in the issuance of such warnings.

In February 2000, McGraw issued a memo to all flight instructors directing them to bring their student flight schedules to the next flight instructors' meeting in order to "go over" it with their ftm to see if they could take on more students. However, there is no dispute that McGraw assigns all students to all flight instructors each semester.

In February 2000, McGraw issued a memo to the division director, cfi, acfi's, check instructors and ftm's requesting "review and input" on his revision of Section X of the flight operations manual concerning flight instructor's responsibilities for end of semester grades and checks. Two of the six ftm's responded to the memo: one responded that it was unfair to require flight instructors to remain until semester break as they would not be compensated therefor; and the other responded that all flight instructors should be informed of the exact start and finish dates for each semester, and the proposed revision on checks could cause scheduling problems. The charter ftm testified that the ftm's had never been requested to submit "comments" in writing before this memo. No other ftm's responded to the memo.

McGraw testified that two ftm's proposed changes to the new student grading system because they felt it was unfair to the students. McGraw testified that he will consider their recommendations and adopt them if deemed "the best solution". However, the charter ftm testified that the new grading system was announced at standardization training prior to fall semester 1999. Several flight instructors questioned its fairness. The charter cfi testified that two level B flight instructors, not ftm's, proposed the changes to the new grading system. On cross-examination, McGraw admitted that he was not sure if ftm's had offered the proposed changes because flight instructors were asked for input as well.

McGraw testified that he alone has issues warnings to flight instructors. He alone issues "letters of infraction" to flight instructors pursuant to the "Pilot Sharing Information Act" which obligates the Employer to keep a record of any substance abuse incidents, disciplinary actions, or serious failures in performance regarding a pilot for a period of ten years. McGraw also testified that he and the acfi's do all written evaluations based on individual, self-supported check rides; the ftm's have no role therein.

When asked by the hearing officer how much time the ftm's spend in "managing and supervising" flight instructors as compared to actual flying time as a flight instructor, McGraw testified that he observes conversations between flight instructors and ftm's, and he observes ftm's in the SOF position. McGraw testified that he believes a lot of ftm time is spent on managing and supervising, but he "didn't know that for a fact."

The Employer proffered a copy of the "Instructor Flight Operations Manual" for flight instructors, dated August 23, 1999.<sup>13</sup> This 85-page manual was

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<sup>13</sup> Employer's Exhibit 3.

drafted by the predecessor cfi. Its detailed procedures apply to all flight instructors. There is also a "Student Flight Operations Manual", which consists of the first nine sections of the flight instructors manual.

In his written introduction to the flight instructors' manual, McGraw states that it has been prepared to inform and assist the flight instructor regarding his duties. McGraw directs the flight instructors to take "questions for clarification" regarding the manual to their acfi. McGraw also states that the flight instructors have the support of the ftm's, acfi's and the cfi, and they will insure that they are "trained and assisted" so they can produce "error free records".

During McIntyre's testimony, he was directed to specific provisions of the manual with reference to the ftm's. Section 1.1 states that if a flight instructor cannot find a satisfactory answer or solution to a student's "problem" (undefined), he should bring it to the attention of his ftm who is his "next level of management". The flight instructor and the student should meet with the ftm. If the problem cannot be resolved in this discussion, the acfi should be consulted. The acfi will bring the problem to the senior cfi, if necessary.

Section 1.5 states that the flight training record/syllabus describes in detail each lesson, flight, ground, and flight training device for the course and states what must be accomplished during each lesson, the standards and level of ability expected, and the proficiency that must be achieved for each lesson. Under "certain justifiable circumstances" (undefined), lessons may be flown out of sequence; and the sequence deviation must be approved by a ftm.

Section 1.8 states that the flight instructor provides the student's final course grade which is reviewed by his ftm and his acfi for final approval.

Section 1.10 provides an appeal process for a student if he fails a stage check.<sup>14</sup> The appeal documentation will be forwarded to the ftm, along with the flight instructor's concurrence or non-concurrence with the appeal. The ftm confers with the stage check pilot, and the ftm can reject the appeal or can recommend to the acfi that a recheck be conducted. If the acfi concurs that a recheck is appropriate, the cfi will determine who should bear the cost of the recheck. For the student, the recheck grade will supersede the original stage check grade.

Section 1.13 states that the flight instructor, ftm, acfi and cfi will monitor student progress to insure timely completion of a course. There is no explanation thereof.<sup>15</sup>

Section 2.3 provides that whenever a student does not achieve a passing grade on a stage or certification check, or fails to complete a lesson in the allotted time and receives an incomplete or unsatisfactory grade, extra training time is required. The "add-time slip" is prepared by the flight instructor and must be signed and approved by the ftm. The additional expense of the add-time training is charged to the student.

Section 2.7 provides a very detailed policy regarding student no-shows. No-shows are monitored by the flight instructor and his acfi. After the first no-show, the flight instructor discusses it with his student and submits a memo to his acfi thereon. After the second no-show, the student is grounded. The ftm meets with the student to explain that another no-show will result in dismissal from the course. The ftm submits a memo to his acfi thereon. The student is permitted to return to flying status. After the third no-show, the student is notified of his dismissal by the acfi.

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<sup>14</sup> Stage checks are referred to as student "mid-terms".

<sup>15</sup> The Employer cited Sections 1.13, 2.7, 9.4 and 10.13 in its brief.

Section 9.4 concerns a student request to change instructors. The flight instructor should attempt to resolve the problem. If unsuccessful, the flight instructor “may consult” his ftm, acfi, cfi, and program chair to act as a “mediator”.

Section 10.13 concerns vacation and/or leave of absence time off. The flight instructor must submit a vacation/leave of absence request form with a temporary student assignment sheet attached thereto. The temporary flight instructor (replacement), ftm, acfi and cfi must approve the request.

Aviation functions as an FBO, or fixed base operation, at Melbourne Airport where it rents, refuels and charters aircraft for private customers. Section 4.2 states that the SOF is the direct representative of the Aviation president/training division director and the cfi and he is authorized to act in their behalf with respect to flight operations at the flight facility. An SOF is on duty during all hours of flight operations.

According to the flight operations manual, the SOF will assist students concerning any courses of action and the final go/no-go on solo training flights; the SOF will give final approval on all solo and dual flights with respect to weather conditions; the SOF performs as dispatch and prepares the flight activity report at the end of each flight; the SOF processes reports of potential or actual safety infractions; the SOF will initiate search procedures if an aircraft is not back on time; the SOF will notify maintenance if contacted by a flight instructor who has landed at another airport due to mechanical problem, and the maintenance director, SOF or cfi can approve repairs at the other airport. According to the manual, under normal circumstances, only acfi’s and ftm’s can serve as the SOF.<sup>16</sup>

According to McGraw’s testimony, he must be contacted by the SOF regarding any FAA Part 141 certified flight training syllabus incident as he is personally

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<sup>16</sup> The record evidence shows that a flight instructor replaced an ftm who failed to report for SOF duty in February 2000.

accountable therefor. McGraw specifically testified regarding mechanical failures, syllabus deviations, minor and major accidents when he has been contacted by the SOF for direction and decision-making. McGraw insures that he is always available by cell phone for contact by the SOF.

The Employer proffered an SOF schedule which shows that from 7:30 a.m. to 4:30 p.m., Monday through Friday, the new cfi, the two acfi's, a check instructor, and an Aviation employee serve as the SOF. In the evenings, the ftm's have a regular schedule to serve as the SOF, and they rotate weekend coverage.

As noted above, the petitioned-for unit consists of level A (ftm), B, C and D certified flight instructors and check instructors. The record evidence shows that the ftm's work full-time and function as senior flight instructors and do significant stage checks, checks on applicants for the certified flight instructor rating, multi-engine and instrument rating checks, as well as ftm duties. The level B flight instructors work part-time and they have some of the same certifications and ratings as the ftm's. They also perform stage checks, as well as some of the same certification and rating checks. The ftm's and the level B flight instructors work six days a week. The level C flight instructors work part-time and they also have some of the same certifications and ratings as the ftm's. Although they are qualified to do stage checks, the Employer does not assign stage checks to them. They participate in a university-wide program which permits full-time students to work in various departments; they are referred to as "college roll" students. The program requires that they work no more than 20 hours a week. The level D flight instructors work part-time. They participate in the flight school's intern program. Although there is only one intern this semester, there have been as many as 10 to 12 interns in a semester. The flight operations manual applies to all flight instructors. There is virtually no difference in the duties and responsibilities among the four levels of flight instructors when they do student flight training. The two check

instructors work full- time and their primary function is to do stage checks. They are not assigned flight training students. However, following stage checks, they do debriefings with the students and their flight instructors. They report directly to the acfi for training. The newly hired check instructor is still “in training”. The other check instructor is not certified to do recertification checks on flight instructors.

McIntyre testified that the Employer’s flight instructors are “home grown”, that is, an intern is carefully selected by a board with the presumption that he will progress from a level D, to a level C, to a level B flight instructor. It should be noted here that the ftm’s have no role in the selection of interns.

As noted above, the senior cfi assigns all students to flight instructors. At the start of the semester, the flight instructors provide him with a schedule as to when they are available. The senior cfi then matches a flight student based on his availability and the level of his flight training course to the appropriate flight instructor. For example, only certain flight instructors are certified to teach a multi-engine flight training course. On a weekly basis, the flight instructor submits a request for actual flight time and the senior cfi returns a block of time for use by the flight instructor. The flight instructor then schedules his students during his block of time.

The charter ftm testified that he views himself as a mentor to the inexperienced flight instructors and as a liaison between them and management. When requested by a flight instructor, he can provide insights into flight training based on his years of experience and superior knowledge. However, he testified that he does not direct their actual flight training. He testified that the flight instructors do not view him as their supervisor; rather, they look to their acfi as the supervisor who can make decisions that “influence their daily lives”. If the flight instructors need an answer on some issue, the ftm can bring the question to the acfi.

The charter ftm also testified that he knew only two of the four or five flight instructors assigned to him, because only two ever showed up at the flight instructors' meetings. He testified that he did not know how many students were assigned to his flight instructors. He has never reviewed a grade given by a flight instructor; rather, the grade is forwarded directly to the acfi.

As noted above, in the summer of 1999, the ftm's were assigned to cover the evening and night shifts of SOF duty. Prior thereto, several certified flight instructors worked as the SOF. A certified flight instructor testified that when he was a level D flight instructor (intern), he served as the SOF and was paid therefor. The charter ftm testified that he has never had to exercise independent judgment on duty as the SOF. When there was an accident during his SOF shift, he contacted the cfi.

With respect to any supervisory authority, the charter ftm testified that he has no authority to hire, fire, discipline, promote, transfer, lay off, recall, assign or reward employees, or to effectively recommend same. He testified that he has never reported any unsatisfactory or improper conduct by a flight instructor.

A level B flight instructor testified that he had started as a level D (intern) flight instructor in July 1998 and progressed to a level C (college roll) flight instructor. Upon his graduation in May 1999, he became a level B flight instructor. In addition to his duties as a level B flight instructor, he performs stage checks, certification checks, and Part 141 recertification checks on flight instructors. Pursuant to Part 141, certified flight instructors must have a check ride each year to insure continued proficiency in their ratings or certifications for flight training. This level B instructor testified that he performs all the same checks as the check instructors.

With respect to his ftm, this level B flight instructor testified that he brings questions to him and asks for his opinions regarding his students. He also views his ftm as a communicator to and from management. His ftm has never given him an order or a

direction regarding his work. On a daily basis, he does not see his ftm. At the flight instructors' meetings, he sits with his ftm and his ftm provides information to the flight instructors. His ftm asks the flight instructors "how is everybody doing" and they share their stories in an informal way. He testified that he has never been told that his ftm was his supervisor; and he views his acfi, not his ftm, as his supervisor. His acfi did his performance evaluation, and he received a merit increase based thereon.

When this level B flight instructor has worked on the weekend, he has observed ftm's serve as the SOF. He testified that the ftm sits at the dispatch counter, updates weather conditions, and signs off on student solo cross country plans in the absence of the flight instructor.

A level C flight instructor testified that he started as a level D flight instructor (intern) in January 1999. In August 1999, he progressed to a level C flight instructor (college roll). He is a full-time student and works no more than 20 hours per week. At the start of the semester, McGraw assigns his students. He then schedules his students' flight training around his class schedule. When there was a conflict between his schedule and the student's schedule in the fall 1999 semester, he "gave the student back". Regarding other scheduling conflicts, he has scheduled students on weekends. This level C flight instructor testified that he has the necessary ratings to perform stage checks and check rides, but the Employer does not assign him to do so.

With regard to his ftm, this level C flight instructor sees him as a mentor who can help him to become a better flight instructor. If he has a problem with a student, he will ask his ftm or any available level B flight instructor to give him advice. His ftm has never given him a specific order or direction. He "hardly ever" has any regular contact with his ftm. At the flight instructors' meetings, his ftm provides information and gets feedback from the flight instructors. He understands that he should first bring a question to his ftm and he does so "to cover himself". Since his ftm has

never been able to make a decision on his own, he then brings the issue directly to his acfi.

The ftm's earn \$11.00 an hour. Like all flight instructors, they are paid "Hobbs time", that is, actual flight time, plus a half hour. The extra half hour is for pre- and post-briefing with the student and the completion of paperwork. When they were assigned to work as the SOF on evenings and weekends, they began to earn an additional \$125.00 a week. Sometime thereafter, they received \$150 a week. McIntyre testified that the additional pay is to compensate them for their "management" responsibilities and SOF duty. The Employer's proffered SOF schedule shows that the charter ftm works 10 hours a week as the SOF. They are not paid for attendance at any meetings. The other flight instructors are paid for the hour they spend at the flight instructors' meetings. They have paid holidays, accrue vacation and sick leave, and are eligible to purchase health insurance benefits. McIntyre testified that the check instructors are paid a "salary", but the record does not show their actual compensation. As full-time employees, they have the same benefits as the ftm's.

None of the part-time flight instructors receive any benefits. The level B flight instructors start at \$8.65; the level B flight instructor who testified earns \$8.95 an hour due to a merit increase. The level C flight instructors (college roll) earn \$7.50 an hour. The level D flight instructors (interns) are not paid any wages for flight training. However, as interns, they earn two college credits, which are tuition-free. According to McGraw, the university charges \$500 to \$600 a credit.

With regard to work-related contact among the flight instructors, it appears that they spend most of their work time engaged in individual student flight training. Since they are paid only for actual flight time, there would be no reason to be at the facility unless scheduled to do flight training. There is a lounge for use by all flight instructors and check instructors, and there are areas for debriefing and paperwork.

As noted above, the Employer contends that the ftm's should be excluded from the unit based on their status as supervisory or managerial employees. The Petitioner asserts that the ftm's are level A flight instructors and should be included in the unit.

The Supreme Court has defined managerial employees as those who "formulate and effectuate management policies by expressing and making operative decisions of their employer."<sup>17</sup> The Supreme Court held that managerial employees "must exercise discretion within, or independently of, established employer policy and must be aligned with management."<sup>18</sup>

The Supreme Court has held that the Act requires three criteria to be met to establish supervisory status within the meaning of Section 2(11) of the Act: (1) the employee has the authority to engage in one of the 12 listed activities in Section 2(11); (2) the employee uses independent judgment in exercising the authority; and (3) the employee holds the authority in the interest of the employer.<sup>19</sup> The Board has long held that the party alleging supervisory status bears the burden of proving that such status exists.<sup>20</sup>

Section 2(11) of the Act lists the requisite authority as follows: to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action. The Board has held that the exercise of some supervisory authority in a merely routine or perfunctory manner does not confer supervisory status.<sup>21</sup>

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<sup>17</sup> NLRB v. Yeshiva University, 100 U.S. 672, 682-683 (1980).

<sup>18</sup> Id.

<sup>19</sup> NLRB v. Health Care & Retirement Corp. 511 U.S. 571 (1994).

<sup>20</sup> Tucson Gas & Electric, 241 NLRB 181 (1979); Vencor Hospital--Los Angeles, 328 NLRB No. 167 (1999).

<sup>21</sup> Alois Box Co., Inc., 326 NLRB No. 110 (1998), citing Chicago Metallic Corp., 273 NLRB 1677, 1689 (1985).

The Board has stated that “conclusory statements made by witnesses in their testimony, without supporting evidence, does not establish supervisory authority.”<sup>22</sup>

The record evidence shows that the Employer operates in a highly regulated industry. The FAA has numerous, detailed regulations which relate to virtually every aspect of the Employer’s operation of its flight school. The FAA regulations establish the requirements for all flight instructor ratings and certifications. The flight instructors must strictly follow a lesson-by-lesson student syllabus. The flight instructors must maintain records in compliance with FAA regulations. The Employer has issued lengthy, detailed flight operations manuals to all students and flight instructors which mandate specific procedures for all aspects of flight training from the grading system to deteriorating weather conditions. The highly regulated nature of the Employer’s operations must be the context for an analysis of the record evidence. It is also significant that the Employer’s operations have changed in recent years so that its flight instructors have less experience than in the past.

The record evidence establishes that the ftm’s are the Employer’s most experienced flight instructors who continue student flight training and do significant stage checks, checks on applicants for the certified flight instructor rating, multi-engine and instrument rating checks. They also serve as the SOF for the evening and weekend shifts. The charter ftm testified that he views himself as a mentor for the inexperienced flight instructors and as the liaison between them and management. He provides insights into flight training based on his superior knowledge and experience, but he does not provide direction to flight instructors in their actual flight training. Other flight instructors confirmed that they view their ftm’s as mentors or communicators to management; and they view their acfi, not their ftm, as their supervisor. Their ftm has not given them orders or directions regarding their flight training duties. It appears some

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<sup>22</sup> Sears, Roebuck & Co., 304 NLRB 193 (1991).

know to bring questions to the ftm before proceeding to their acfi; however, even the senior cfi's written introduction to the flight operations manual directs them to take questions for clarification related to the flight operations manual to their acfi. The record evidence shows that there is no daily contact between flight instructors and their ftm's; it appears that the only regular contact between flight instructors and their ftm's occurs at the bi-weekly flight instructors' meetings.

The charter ftm denied that he has the authority to hire, fire, discipline, promote, transfer, lay off, recall, assign or reward employees, or effectively recommend same. He testified that he has never reported any unsatisfactory or improper conduct by a flight instructor.

With regard to the Employer's evidence proffered to establish managerial or supervisory status, McIntyre's testimony, viewed as a whole, shows that he did not have direct knowledge or observation of the daily activities of the ftm's. Rather, his testimony shows his intent, hopes and expectations in his creation of the ftm position, but it also shows that he had deferred their effectuation to the senior cfi and acfi's. However, it is significant that McIntyre views the "key gist" of the ftm position as the training and oversight of the inexperienced flight instructors.

McIntyre's testimony fails to establish that any ftm has ever exercised any of the 12 indicia of supervisory status. His testimony that the ftm's provide feedback, voice concerns, play a role, and are a party to the direction taken on policy issues fails to establish that the ftm's formulate and effectuate management policies or exercise discretion in enforcing policies.

When McGraw decided to hold meetings with the ftm's, his purpose was to respond to their questions and to inform them of new information on general training and/or operational needs. There is no record evidence that the ftm's have engaged in the formulation of management policies at these meetings; rather, it appears that they

discuss current policies and procedures for dissemination at the flight instructors' meetings. There is no record evidence that the ftm's have ever effectively recommended new or revised management policies or that they have ever exercised discretion in the control or implementation of management policies.

With respect to the cited sections of the flight operations manual, Section 1.5 shows the detailed regulation of each aspect of the flight training record/syllabus. The other sections cover all related topics. The role of the ftm is either so circumscribed or so minimal in the hierarchy of decision-making that the ftm can only act in a mere routine or perfunctory manner.

With regard to the ftm's SOF duty, it is significant that prior to the summer of 1999, various certified flight instructors served as SOF, including a level D (intern) flight instructor who was paid therefor. As the FAA holds the cfi responsible for all aspects of Part 161 flight training, the cfi is always available to the SOF for decision-making. The record evidence fails to establish that the SOF has ever exercised independent judgment in enforcing or effectuating the Employer's policies. The SOF's primary duties are related to dispatching, recordkeeping, weather updating, and acting in the absence of student flight instructors.

The record evidence shows that, although applicants for the ftm position need a recommendation from an ftm, their recommendations are not always followed. Moreover, they do not serve on the board which interviews, reviews applications, and makes the final hiring decision. They also play no role in the selection of interns. McGraw testified that he alone issues warnings and letters of infraction to flight instructors. There is no record evidence that the ftm's have ever reported incidents involving flight instructors which resulted in discipline. The cfi's and acfi's do the performance evaluations of flight instructors.

In summary, the record evidence fails to establish that the ftm's affect the terms and conditions of employment of the flight instructors as enumerated in Section 2(11) of the Act. It also fails to establish that the ftm's possess or exercise any managerial authority.<sup>23</sup> Rather, the record evidence shows that the ftm's function more like team leaders or leadmen whose relationship with other employees is based on their superior knowledge and experience. They field questions, provide advice and insight, and disseminate information related to flight training. Because the ftm's serve as team leaders and do significant stage and certification checks, the new cfi and the acfi's are free to focus on the development of standardization and training programs as envisioned by McIntyre

Based on the foregoing, and the record evidence as a whole, I find that the ftm's are not supervisors within the meaning of Section 2(11) of the Act and they are not managerial employees.

The Employer contends that the check instructors, level C (college roll) flight instructors and level D (intern) flight instructors should be excluded from the unit because they do not share a community of interest with the petitioned-for flight instructors.<sup>24</sup> The Petitioner asserts that all flight instructors and check instructors share a community of interest and should be included in the unit.

The record evidence shows that the ftm's and check instructors work full-time and receive certain benefits. The ftm's earn \$11.00 an hour plus \$150 a week to compensate them for their ftm and SOF duties. The record evidence shows that the charter ftm works 10 hours a week as the SOF which means he receives a small

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<sup>23</sup> See Third Coast Emergency Physicians, P.A., 330 NLRB No. 117 (2000).

<sup>24</sup> As noted above, the Employer concedes only the inclusion of level B flight instructors in the appropriate unit herein.

compensation for his ftm duties. The check instructors are paid a salary, but their compensation is unknown. The primary function of the check instructors is to do stage checks. They are not assigned students for flight training. However, they debrief students and the flight instructors after stage checks. Neither of the two current check instructors are qualified to do recertification checks on flight instructors, whereas there is a level B flight instructor who does recertification checks. The ftm's and level B flight instructors do stage checks, certification and rating checks.

The level C flight instructors have some of the same certifications and ratings as the ftm's and the level B flight instructors; however, the Employer does not assign stage or check rides to them. Like the level B flight instructors, the level C and level D flight instructors work part-time; however, they are undergraduate students enrolled in university programs (college roll or intern). No part-time employees receive benefits. The level B flight instructors start at \$8.65 an hour and the level C flight instructors earn \$7.50 an hour. The level D flight instructors are not paid for flight training, but they earn two free college credits for their services valued at \$1000 to \$1200.

The flight operations manual applies to all flight instructors, and there is virtually no difference in duties and responsibilities among the four levels when they do student flight training. All flight instructors are assigned to an ftm and an acfi. The check instructors are assigned to the acfi for training. All flight instructors and check instructors have access to a lounge and briefing rooms.

Although the check instructors are not assigned students for flight training, the ftm's and level B flight instructors also do the same work as the check instructors. The record evidence does not establish any conflict of interest regarding the recertification of flight instructors as neither check instructor is qualified to do recertification checks. The differences in wages among the flight instructors reflects

their levels of training and experience. The ftm's, who are the most experienced flight instructors, earn the highest hourly wage. The level B flight instructors, who have graduated from the school of aeronautics, earn the next highest hourly wage; and the level C flight instructors, who are undergraduates, earn the lowest hourly wage (\$1.15 an hour less than level B)

In a recent case, the Board revisited the issue of students who perform services at their educational institutions which are directly related to their educational program.<sup>25</sup> It overruled precedent that found individuals who are deemed primarily students are not "employees" within the meaning of Section 2(3) of the Act.<sup>26</sup> The Board held that although the student's purpose in working may be, in part, educational, if he is employed by an employer within the meaning of the Act and he is compensated for his services, he is an employee within the meaning of Section 2(3) of the Act. With respect to the level C flight instructors, they meet the Board's test: they are paid for their services which are directly related to their educational program. However, since the level D flight instructors are not paid wages for their services, they should be excluded from the unit based thereon.<sup>27</sup>

Based on the foregoing, and the record evidence as a whole, I find that the ftm's, check instructors, level B flight instructors and level C flight instructors share a community of interest and should be included in the appropriate unit herein.

Accordingly, in view of the foregoing, and the record as a whole, I find that the following employees of the Employer constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

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<sup>25</sup> Boston Medical Center, 330 NLRB No. 30 (1999).

<sup>26</sup> In Cedars-Sinai Medical Center, 223 NLRB 251 (1976) and St. Clare's Hospital, 229 NLRB 1000 (1977), the Board held that medical interns, residents, and fellows are primarily students and not "employees" within the meaning of Section 2(3) of the Act.

<sup>27</sup> See also WBAI Pacifica Foundation, 328 NLRB No. 179 (1999).

All full-time and regular part-time flight instructors, including flight training managers, check instructors, level B flight instructors and level C (college roll) flight instructors, employed by the Employer at its Melbourne, Florida, location, excluding level D (intern) flight instructors, chief flight instructors, assistant chief flight instructors, office clerical employees, guards and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>28</sup> Those eligible shall vote whether or not they desire to be

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<sup>28</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that two (2) copies of the election eligibility list for the unit, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director for Region 12 within 7 days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received by the Regional Office, SouthTrust Plaza, Suite 530, 201 E. Kennedy Boulevard, Tampa, Florida 33602-5824 on or before March 29, 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the

represented for collective bargaining purposes by International Association of Machinists and Aerospace Workers, AFL-CIO.

Dated at Tampa, Florida, this 22nd day of March, 2000.<sup>29</sup>

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Rochelle Kentov, Regional Director  
National Labor Relations Board, Region 12  
201 E. Kennedy Boulevard, Suite 530  
Tampa, FL 33602

460 5033 7500

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460 7550 8700

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filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

<sup>29</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, Series 8, as amended, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington, DC by April 5, 2000.