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Air Serv Corporation *and* Teamsters Local 984, affiliated with the International Brotherhood of Teamsters, Petitioner. Case 26–RC–8548

September 23, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

On January 22, 2008, the Petitioner, Teamsters Local 984, affiliated with the International Brotherhood of Teamsters (Teamsters), filed a petition seeking to represent the drivers of Air Serv Corporation (the Employer) who perform shuttle transportation services for Federal Express Corporation (FedEx) in Memphis, Tennessee. The Employer asserts that it is controlled by FedEx, and that, inasmuch as FedEx is undisputedly a carrier subject to the Railway Labor Act, the National Labor Relations Board lacks jurisdiction over the Employer under Section 2(2) of the National Labor Relations Act. After a hearing, the Regional Director transferred the proceeding to the Board.[1] As recommended by the Regional Director, the Board thereafter referred the case to the National Mediation Board (the NMB) for a jurisdictional opinion, discussed below.

On the entire record in this case, the Board[2] finds:

The Employer provides airport-related services in numerous cities throughout the United States, including shuttle bus transportation for FedEx employees between FedEx parking areas and designated points at FedEx's Memphis Hub Complex (the Hub). The Employer's drivers shuttle FedEx pilots to and from the aircraft and take other FedEx employees to and from the Hub where they sort packages and load and unload aircraft. The shuttle bus services were originally performed exclusively by FedEx employees before they were subcontracted. FedEx still uses its own employees for some shuttle driving. The NMB found, and we agree, that the Employer's shuttle transportation drivers perform work that is traditionally performed by employees of air carriers.

The record also indicates that FedEx exercises substantial control over the Employer's shuttle transportation operations. FedEx provides the Employer with office space in FedEx facilities, telephone equipment, internet service, electricity, security services, and cleaning services at no charge. The Employer's employees share breakrooms and parking lots with the FedEx employees. The Employer's employees are issued photo identification badges with the FedEx holographic logo, which must be presented to gain access to FedEx property. These employees are subject to searches of their cars and personal belongings, at any time, by FedEx security.

FedEx determines the number and type of buses used by the Employer, and must approve any changes in quantity or type of bus. The buses display the FedEx logo on their side and contain global positioning system (GPS) devices linked to FedEx computers that can monitor and track their locations. Fuel for the buses is supplied by FedEx and is pumped at the FedEx facility. If the Employer's contract with FedEx terminates, the buses become FedEx property.

FedEx sets performance standards for maintenance, cleanliness, insurance, safety, security, and timeliness of the Employer's operations. The Employer must submit quarterly and annual reports regarding compliance with these standards. FedEx can fine, and has fined, the Employer for noncompliance. FedEx can also fine the Employer if its drivers fail to meet FedEx appearance standards.

The Employer assigns drivers to shifts, but FedEx determines the hours of the shifts and the number of hours of daily service. FedEx can unilaterally adjust the drivers' schedules, but the Employer cannot. FedEx determines the drivers' routes and the number of drivers assigned to each route. It often requests additional drivers and extended hours of work, particularly during the busy December holiday season. If a FedEx shuttle driver is absent from work, FedEx determines how to adjust schedules to provide coverage by the Employer's drivers.

The Employer's employees are dispatched by both FedEx and employer dispatchers, who work side by side. The drivers wear the Employer's uniforms, but they must display the previously mentioned FedEx photo identification badge. FedEx also requires drivers to follow its rules regarding ramp and runway incursion, use of property, and speed.

Applicants for the shuttle driver position are initially screened by the Employer. FedEx has the final authority to approve or reject an applicant based on the results of a background security check conducted by a vendor that

[1] The Regional Director initially issued a Decision and Order dismissing the petition, but later withdrew his decision, following the Teamsters' Request for Review.

[2] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

FedEx requires the Employer to use. Further, the Employer has hired all applicants that FedEx has recommended.

The Employer has its own code of conduct and disciplinary standards and has disciplined employees without input from FedEx. However, FedEx can make recommendations regarding discipline and discharge. The Employer has never refused a request by FedEx to discipline or terminate an employee.

The Employer determines drivers' wages and benefits, pays their workmen's compensation insurance, and administers its own payroll. The Employer considers FedEx comments when evaluating the work of drivers. FedEx requires the Employer to provide the drivers with safety training and to familiarize them with FedEx rules and operating procedures. The Employer must provide documentation certifying that training is provided. In some instances, FedEx has conducted its own safety training sessions for the Employer's drivers.

FedEx has considerable access to the Employer's business records. FedEx has conducted several audits of these records and requires the submission of various documents on a regular recurring basis. In particular, the Employer's maintenance records are available to FedEx on a daily basis and, upon termination of the Employer's contract, these records will become the property of FedEx.

Section 2(2) of the 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 March 20, 2008, the Board requested that the 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 Memphis are subject to the Railway Labor Act. *Air Serv Corp.*, 35 NMB 201 (2008).[3]

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 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 26—RC–8548 is dismissed.

Dated, Washington, D.C. September 23, 2008

Peter C. Schaumber, Chairman

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] 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.

Additionally, the NMB noted that its decision was consistent with a previous decision asserting RLA jurisdiction over the Employer's operations at San Francisco International Airport, where the Employer's employees perform cabin cleaning and lavatory services for United Airlines. *Air Serv Corp.,* 33 NMB 272 (2006).