



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572

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In the Matter of the  
Application of the

OFFICE AND PROFESSIONAL  
EMPLOYEES INTERNATIONAL  
UNION

alleging a representation dispute  
pursuant to Section 2, Ninth, of  
the Railway Labor Act, as  
amended

involving employees of

PETROLEUM HELICOPTERS, INC.

32 NMB No. 31

CASE NO. R-7047  
(File No. CR-6859)

FINDINGS UPON  
INVESTIGATION-  
DISMISSAL

May 10, 2005

This determination addresses the application of the Office and Professional Employees International Union (OPEIU or Organization) alleging a representation dispute pursuant to the Railway Labor Act<sup>1</sup> (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth), among “Flight Deck Crew Members who are periodically employed outside the territorial jurisdiction of the United States” by Petroleum Helicopters, Inc. (PHI or Carrier). The OPEIU is the certified representative of the Flight Deck Crew Members at PHI. (NMB Case No. R-6720). The OPEIU asserts that the Flight Deck Crew Members who are “periodically” employed outside the territorial jurisdiction of the United States are part of the Flight Deck Crew Members craft or class.

For the reasons set forth below, the National Mediation Board (Board) finds that the Carrier’s Flight Deck Crew

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<sup>1</sup> 45 U.S.C. § 151, *et seq.*

Members who are “periodically” employed outside the territorial jurisdiction of the United States are not subject to the RLA. Accordingly, the Board dismisses the application.

### PROCEDURAL BACKGROUND

On July 19, 2004, the OPEIU filed an application for an accretion of the “Flight Deck Crew Members who are periodically employed outside the territorial jurisdiction of the United States” to the craft or class of Flight Deck Crew Members at PHI. This application was assigned NMB File No. CR-6859 and Maria-Kate Dowling was assigned as the Investigator.

On August 3, 2004, PHI filed its initial position statement. Also on August 3, 2004, the OPEIU requested an extension of time in which to file its initial position statement. PHI objected to the OPEIU’s request the same day. The OPEIU responded to PHI’s objection on August 4, 2004, and reiterated its request for an extension of time in which to file its initial position statement. On August 4, 2004, Investigator Dowling granted OPEIU’s request for an extension until August 24, 2004. On August 16, 2004, the case was reassigned to Investigator Benetta M. Mansfield.

On August 24, 2004, the OPEIU filed its initial position statement. On August 26, 2004, Investigator Mansfield requested that the Carrier submit additional information. PHI responded to this request on September 9, 2004. The Carrier also filed a response to the Organization’s initial position statement on September 9, 2004. On September 16, 2004, the case was reassigned to Investigator Susanna C. Fisher. On January 21, 2005 the case was reassigned to Maria-Kate Dowling.

### ISSUES

Are the Flight Deck Crew Members who are employed outside the territorial jurisdiction of the United States subject to the RLA?

If so, are these Flight Deck Crew Members part of the Flight Deck Crew Members craft or class?

### CONTENTIONS

#### OPEIU

The OPEIU contends that PHI's Flight Deck Crew Members, who are assigned to operations on the continents of Africa and Antarctica, are part of the Flight Deck Crew Members craft or class.

The Organization states that these employees have the same duties and responsibilities as the Flight Deck Crew Members already represented by the OPEIU. Furthermore, the OPEIU states that "there is a high degree of shared employment characteristics and interrelation between the Pilots On Assignment<sup>2</sup> and PHI's domestic line pilots." For example, the OPEIU contends that PHI's foreign operations are run out of PHI's corporate headquarters in Louisiana, all pilots are hired in the United States and there is no differentiation between domestic and international positions, and the Pilots On Assignment and the domestic line pilots are subject to the same labor relations policies and employment benefits.

The Organization also asserts that: the Flight Deck Crew Members currently represented by OPEIU also fly foreign assignments for PHI; certain domestic-based pilots are designated by PHI as foreign relief pilots; Pilots On Assignment continue to receive domestic job announcements; and during off duty periods, Pilots On Assignment may bid overtime domestic assignments. Furthermore, the OPEIU states that Pilots On Assignment who fly in Africa are still eligible to fly domestically.

With regard to the Antarctic-based pilots, the OPEIU asserts that these pilots are seasonally hired and remain domiciled in the United States. OPEIU also asserts that

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<sup>2</sup> The OPEIU refers to the Flight Deck Crew Members who are "foreign-based" as Pilots On Assignment.

Antarctica bids are placed in the United States based on domestic seniority and qualifications, and that pay, benefits and other employment terms are administered in the United States. Finally, the Antarctic-based pilots do not work under foreign visas or work permits, and they continue to accrue domestic-based seniority. Based on the foregoing, the OPEIU argues that these employees share a community of interest with the domestic line pilots.

The Organization further contends that previous eligibility rulings and determinations regarding employees of PHI represented by OPEIU are not binding. The OPEIU states that the Board's Representation Manual (Manual) Section 9.1 currently states:

In craft or class determinations, the NMB considers many factors, including the composition and relative permanency of employee groupings along craft or class lines; the functions, duties, and responsibilities of the employees; the general nature of their work; and the extent of community of interest existing between job classifications. Previous decisions of the NMB are also taken into account.

Prior editions of the Manual stated that "prior decisions of the Board in regard to craft or class on the same carrier shall be binding upon the Mediator [or] Investigator." Accordingly, OPEIU contends, the changes to the Manual "represent an acknowledgement that determinations as to whether a group of employees should be included within a craft or class are to be made on the merits as opposed to reliance on previous, and potentially outdated and no longer applicable, past decisions." OPEIU also relies on *US Airways, Inc.*, 30 NMB 54 (2002), as a basis for its contention that the previous eligibility rulings made by Board Investigators are not determinative.

The Organization submitted the following documentation in support of its position:

- Declaration from Stephen D. Ragin, President of OPEIU, Local 108;
- PHI position posting; and
- A March 3, 2000 letter from PHI to the Board appealing a Board Investigator's eligibility rulings.

PHI

The Carrier opposes the accretion of its Antarctic-based and West Africa-based pilots into the Flight Deck Crew Members craft or class. PHI argues that these foreign-based employees are not subject to RLA jurisdiction and, therefore, cannot be accreted into the Flight Deck Crew Members craft or class. The Carrier also argues:

OPEIU is misusing the Board's processes in an attempt to bolster its bargaining demands – demands legitimately rejected by PHI in the parties' on-going negotiations – for PHI to recognize the Union as the representative of “all pilots assigned to [PHI's] foreign operations” and to negotiate with the OPEIU over the foreign-based pilots' wages and all other terms and conditions of employment for work done outside of the United States.

PHI states that the Board previously found PHI's Antarctic-based employees ineligible to vote pursuant to Manual Section 9.209. *Petroleum Helicopters, Inc.*, 27 NMB 283 (2000). The Carrier asserts that the “jurisdictional basis for excluding foreign-based employees from RLA coverage is also found in the statute itself (45 U.S.C. § 151, Fifth), as well as in the Board's Rules (29 C.F.R. § 1201.4).”

The Carrier further asserts that after the OPEIU was certified as the representative of the Flight Deck Crew Members at PHI (*See Petroleum Helicopters, Inc.*, 27 NMB 289 (2000)), the parties negotiated an agreement confirming “their mutual understandings that foreign-based pilots were excluded from the craft or class and from collective bargaining coverage.”

The Carrier submitted the following documents in support of its contentions:

- OPEIU's January 25, 2000 submission to a Board Investigator regarding eligibility challenges in NMB Case No. R-6720 between PHI and OPEIU;
- Statement from Stephen D. Ragin, pilot for PHI, dated January 24, 2000;
- Board Investigator's rulings on challenges and objections dated August 12, 1997 in NMB Case No. R-6519 between PHI and OPEIU;
- Board Investigator's rulings on challenges and objections dated March 1, 2000 in NMB Case No. R-6720 between PHI and OPEIU;
- Article 2, Section 1 of the collective bargaining agreement (CBA) between PHI and the Flight Deck Crew Members represented by OPEIU; and
- OPEIU's proposal for a new Article 2, Section 2.A and the omission of the current language found in Article 2, Section 1 of the CBA.

#### FINDINGS OF LAW

Determination of the issues in this case is governed by the RLA, as amended, 45 U.S.C. § 151, *et seq.* Accordingly, the Board finds as follows:

##### I.

PHI is a common carrier by air as defined in 45 U.S.C. § 181.

##### II.

The OPEIU is a labor organization and/or representative as provided by 45 U.S.C. § 151, Sixth, and § 152, Ninth.

III.

45 U.S.C. § 152, Fourth, gives employees subject to its provisions “the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for purposes of this chapter.”

IV.

45 U.S.C. § 152, Ninth, provides that the Board has the duty to investigate representation disputes and shall designate who may participate as eligible voters in the event an election is required.

STATEMENT OF FACTS

PHI operates out of three foreign bases, Antarctica, and two bases in Africa, one in Cabinda Province, Angola, West Africa (Angola) and one in the Democratic Republic of Congo (Congo). The PHI Flight Deck Crew Members who work in Angola and Congo are based at those locations. As of the July 11, 2004 payroll period cut-off date set in the present case, 22 PHI Flight Deck Crew Members were based in Angola, 4 in the Congo, and none presently in Antarctica.<sup>3</sup>

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<sup>3</sup> Because of weather, the PHI’s Antarctica operation runs for about five months, commencing in September and ending in February. In July 2005, when OPEIU filed the present application, there were no Antarctic-based pilots. It is the Board’s longstanding policy not to issue advisory opinions. See *Conrail*, 15 NMB 80 (1988); See also *Trans America Airlines/Trans Int’l. Airlines*, 12 NMB 204 (1985). Since there were no Antarctic-based pilots at the time the application was filed, the Board finds it unnecessary to address PHI’s Antarctica operations.

PHI's operations in Angola are based within a compound owned and operated by Chevron Overseas (Chevron) with the permission of the Angolan government. Chevron provides PHI's Flight Deck Crew Members with permanent on-site housing, security, laundry, commissary facilities and other basic benefits. PHI's Angolan based Flight Deck Crew Members are subject to Chevron's base rules and regulations. Furthermore, the Carrier's "Supplement to Operations Manual and Employee Briefing" lists the specific PHI rules applicable to Angolan-based Flight Deck Crew Members. These pilots are managed by an Area Manager based in Angola.

PHI's operations in the Congo are based on an offshore supertanker, referred to as the Banana Base location and currently owned by Muanda International Oil Company (Muanda International). Muanda International provides PHI's pilots with similar on-site housing and services as outlined above for the Angola base. These pilots are managed by an Area Manager based in the Congo.

The International Operations and Employment section of PHI's Corporate Policies and Procedures states that "International positions (where deemed permanent) will be made as a two-year assignment." The Carrier's policies also state that after the initial assignment, pilots are given the option to extend their foreign assignment or to request reassignment to domestic operations upon 60 days advance written notice. The work schedules submitted by PHI demonstrate that there is little turnover among these pilots. For example, two of the pilots have been based in West Africa for over 20 years, seven of the pilots have been based in West Africa for 10 or more years, and six have been foreign-based for five or more years.

The work schedules for the Angola and the Congo pilots also show that for five month period prior to the filing of the representation petition, all of the African-based Flight Deck Crew Members were continuously flying their schedules solely in West Africa.



According to PHI's policies regarding international employment, "International assignments attract varying pay supplements." The policy also states that pilots in Africa are entitled to an additional allowance ranging from \$125 to \$300 per month. Unlike domestic pilots, foreign-based pilots are exempted from the FAA-mandated random drug testing.

The Angolan and Congolese governments require foreign work visas. Therefore, foreign work visas are a necessary and required condition of employment for pilots based in these countries. The foreign work visas must be kept current for the duration of the pilots' foreign assignment.

PHI pilots on foreign assignment are given annual pay supplements of up to \$18,200 over domestic rates, accrue different vacation time, are provided with different professional and living allowances, and their travel to work in foreign assignments is Company-paid, as is some lodging and food.

#### DISCUSSION

The Board has long held with court approval that the RLA is territorial in its application and does not extend to foreign-based employees. *Pan American-Grace Airways, Inc.*, 2 NMB 44 (1949); *Air Line Stewards and Stewardesses Ass'n Int'l v. Trans World Airlines*, 273 F.2d 69 (6<sup>th</sup> Cir. 1957), *cert. denied*, 362 U.S. 988 (1960); *Air Line Stewards and Stewardesses Ass'n Int'l v. Northwest Airlines, Inc.*, 267 F.2d 170 (8<sup>th</sup> Cir. 1959), *cert. denied*, 361 U.S. 901 (1959); *Air Line Dispatchers Ass'n v. NMB*, 189 F.2d 685 (D.C. Cir. 1951), *cert. denied*, 342 U.S. 849 (1951). According to the International Operations and Employment section of PHI's Corporate Policies and Procedures, the pilots at issue in this case are assigned to their positions for a minimum of two years. Further, although these pilots may request reassignment to the United States, the documents submitted by the Carrier demonstrate that the pilots assigned to West Africa remain there for considerable and indefinite periods of time. Several of the pilots maintain permanent residences and are domiciled outside the United States. Accordingly, the Board finds that PHI's pilots based in Congo and Angola are not subject to the RLA.

CONCLUSION

Based upon the facts and circumstances of this case, the Board finds that PHI's Flight Deck Crew Members based in Congo and Angola are not subject to RLA jurisdiction. Since these Flight Deck Crew Members are not subject to the RLA, the Board finds it unnecessary to address the issue of whether the Flight Deck Crew Members based in Congo and Angola are part of the Flight Deck Crew Members craft or class.

As there is no basis for further investigation, File No. CR-6859 is converted to NMB Case No. R-7047 and dismissed.

By direction of the NATIONAL MEDIATION BOARD.

Mary L. Johnson  
General Counsel

Copies to:

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Steven D. Ragin

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Harry Hoglander, concurring,

I agree with the result reached by my colleagues in this case. Petroleum Helicopters, Inc.'s (PHI or Carrier) flights in West Africa are solely between points outside the United States and its territories. Moreover, there is nothing in the record before the Board that indicates that these flights are a

continuation of operations into or out of the United States or its territories. Accordingly, these flights appear to be outside “interstate or foreign commerce” as that term is used in the Railway Labor Act (RLA or Act), and Flight Deck Crewmembers who are assigned exclusively to those flights are not subject to RLA jurisdiction.<sup>4</sup>

It is undisputed that PHI’s West Africa-based pilots are engaged in wholly foreign flying. They do not fly between a foreign point and points within the United States or its territories. Nor do their flights constitute a continuation of operations into or out of the United States and its territories. The work schedules for the Angola and the Congo pilots show that for five month period prior to the filing of the representation petition, all of the African-based Flight Deck Crew Members were continuously flying their schedules solely in West Africa. The documents submitted by the Carrier further demonstrate that the pilots assigned to West Africa remain on those wholly foreign-based assignments for considerable and indefinite periods of time.

To be sure, the cases cited by my colleagues stand for the proposition that employees who are based in a foreign country and who perform all of their duties abroad are beyond the reach of the RLA. *Air Line Stewards & Stewardesses Ass’n, Int’l v. Trans World Airlines, Inc.*, 273 F.2d 69, 70 (2<sup>nd</sup> Cir. 1959) (finding that Act did not cover foreign-based, foreign nationals who were employed on flights wholly outside the continental United States and its possessions); *Air Line Stewards & Stewardesses Ass’n Int’l v. Northwest Airlines, Inc.*, 267 F.2d 170, 178 (8<sup>th</sup> Cir. 1959), *cert. denied*, 361 U.S. 901 (1959) (refusing to apply Act to foreign nationals employed by carrier as cabin attendants outside the continental United States); *Air Line Dispatchers Ass’n v. Natinal Mediation Board*, 189 F.2d 685, 690 (D.C. Cir. 1951), *cert. denied*, 342 U.S. 849 (1951)(concluding that RLA does not extend to an air carrier and its employees located entirely outside the continental

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<sup>4</sup> I join my colleagues in finding it unnecessary to address the PHI’s Antarctica operations since there were no Antarctic-based pilots at the time the application was filed.

United States and its territories). These cases do not, however, support the automatic application of a rule that would bar the coverage of the Act to all foreign-based employees regardless of circumstances. In my view, the reach of the RLA can extend to foreign-based United States crewmembers employed by United States carriers who perform at least part of their duties within the United States.

The determination of RLA jurisdiction must be made with due consideration of the circumstances in a particular case. In the instant case, I find that the West Africa-based pilots engage in wholly foreign flying and there is no substantial, direct, and foreseeable impact in or upon the territory of the United States. Accordingly, I agree with my colleagues that PHI's pilots based in Congo and Angola are not subject to the RLA.