NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

34 NMB No. 1
October 12, 2006

Henry S. Breiteneicher
Acting Solicitor
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20571-0001

Re: NMB File No. CJ-6904
Signature Flight Support

Dear Mr. Breiteneicher:

This letter responds to your request for the National Mediation Board's (NMB or Board) opinion regarding whether Signature Flight Support (Signature or Employer) is subject to the Railway Labor Act (RLA), 45 U.S.C. § 151, *et seq.* On July 6, 2006, the National Labor Relations Board (NLRB) requested a further opinion regarding whether Signature's operations at its facility at the Westchester County Airport in White Plains, New York (White Plains) are subject to the RLA.

For the reasons discussed below, it continues to be the NMB's opinion that Signature's operations and its employees at White Plains are not subject to the RLA.

I. PROCEDURAL BACKGROUND

This case arose out of a representation petition filed by the International Brotherhood of Teamsters, Local 478 (Local 478) on July 21, 2004, with the NLRB seeking to represent all full-time and regular part-time concierges and customer service representatives at Signature's White Plains facility. Signature objected to the NLRB's jurisdiction arguing that its employees and operations at White Plains are subject to the RLA.

A hearing was held in NLRB Region 2 (Region 2) on August 6, 2004. On April 15, 2005, the NLRB requested an NMB opinion regarding the NMB's jurisdiction over Signature's White Plains operations. In an opinion dated August 31, 2005, the NMB determined that Signature's White Plains operations were not subject to the RLA. 32 NMB 214. Applying its two-part test for determining whether an employer and its employees are subject to the RLA, the Board found that although Signature's employees performed work traditionally performed by carrier employees, there was insufficient evidence of carrier control to establish RLA jurisdiction. Subsequently, on November 4, 2005, the NLRB issued a Decision and Direction asserting jurisdiction over Signature and remanding the case to Region 2 for further action.

By letter dated January 27, 2006, the NLRB's Regional Director for Region 2 recommended that the NLRB consider resubmitting the jurisdictional issue to the NMB in light of "new evidence and legal arguments, not previously considered" by the NLRB or the NMB. In particular, the Regional Director cited evidence that Signature shares common ownership with Aircraft Services International Group, Inc. (ASII), whose operations have been found by the NMB to be subject to the RLA.[1] On July 6, 2006, the NLRB requested a further NMB opinion regarding the NMB's jurisdiction over Signature's White Plains operations. On July 13, 2006, the NMB assigned Maria-Kate Dowling to investigate. The participants filed their respective submissions with the NMB on August 10, 2006.

The NMB's opinion in this case is based upon the request and record provided by the NLRB, including the hearing transcript provided by the NLRB, and the position statements submitted by Signature and Local 478.

II. SIGNATURE'S CONTENTIONS

Signature does not dispute the Board's previous conclusion that Signature satisfies the first part of the NMB's jurisdictional test since its employees perform work

[1] *Signature Flight Support of Nevada*, 30 NMB 392 (2003); *Aircraft Serv. Int'l Group, Inc.*, 31 NMB 361 (2004); *Aircraft Serv. Int'l Group, Inc.*, 33 NMB 200 (2006); *Aircraft Serv. Int'l Group, Inc.*, 33 NMB 258 (2006).

traditionally performed by airline employees. Signature also agrees with the Board's conclusion that jurisdiction in this case turns on the second part of the test, namely whether the employer is directly or indirectly owned or controlled by, or under common control with, a carrier or carriers. Notwithstanding the Board's prior conclusion that there is insufficient record evidence of either direct or indirect control by a carrier, Signature contends that the second part of the NMB's jurisdictional test is satisfied if the employer in question is a subsidiary of a company which owns another subsidiary that is an RLA carrier, either directly or derivatively. In the instant case, Signature and ASII are commonly owned by BBA Aviation Shared Services (BBA Aviation). ASII's status as an RLA carrier has been recognized in numerous NMB and NLRB decisions. BBA Aviation, which is ultimately owned by BBA Group PLC (BBA Group), a British Corporation, provides legal, insurance, technology, accounts payable, employee benefits, payroll and tax services to Signature and ASII. Accordingly, Signature asserts that it satisfies both parts of the NMB's jurisdictional test because it is under common ownership with an RLA carrier.

III. LOCAL 478'S CONTENTIONS

Local 478 argues that common ownership is not enough to confer RLA jurisdiction. Local 478 asserts that the ASII and Signature are distant corporate cousins and that RLA jurisdiction cannot be predicated on such an indirect, non-ownership relationship. Since Signature is not owned directly or indirectly by a common carrier, Local 478 states that the only other basis for finding RLA jurisdiction is through direct or indirect control by a common carrier. Local 478 notes, however, that Signature is not challenging the Board's conclusion in its previous opinion that such control was lacking. Accordingly, Local 478 contends that Signature failed to demonstrate any basis for reversing the Board's prior opinion on jurisdiction.

IV. FINDINGS OF FACT

BBA Aviation, formerly known as Page Avjet Holding Corp., is the parent company of both Signature and ASII. ASII is wholly-owned by Aircraft Service International, Inc. (ASIG). ASIG, in turn is wholly-owned by ASIG Holdings Corp. Both ASIG Holdings Corp. and Signature are wholly-owned subsidiaries of BBA Aviation. BBA Aviation is a subsidiary of BBA Group. BBA Aviation provides legal, insurance, information technology, accounts payable, employee benefits, payroll, and tax services to both Signature and ASII.

V. DISCUSSION

As noted above and in the Board's previous decision, when an employer is not a rail or air carrier engaged in the transportation of freight or passengers, the Board applies a two-part test in determining whether the employer and its employees are subject to the RLA. First, the Board determines whether the nature of the work is that traditionally performed by employees of rail or air carriers. Second, the Board determines whether the employer is directly or indirectly owned or controlled by, or under common ownership with a carrier or carriers. Both parts of the test must be satisfied for the Board to assert jurisdiction. *Trux Transp., Inc. d/b/a Trux Airline Cargo Serv.*, 28 NMB 518 (2001). The Board found and the parties do not dispute that the record establishes that Signature's employees perform a variety of duties that have been traditionally performed by airline employees. *Signature Flight Support*, 32 NMB 214, 224 (2005). Accordingly, RLA jurisdiction in this case depends on satisfying the second part of the test.

In its previous opinion in this case, the Board concluded that the record did not establish sufficient carrier control over Signature's operations to support a finding of RLA jurisdiction. *Signature Flight Support*, *above*, at 224. Signature does not challenge this conclusion. Instead, Signature argues that the second part of the jurisdictional test is met because there is common ownership with another carrier, ASII. ASII, however, does not own Signature either directly or indirectly. Signature and ASII are both wholly-owned subsidiaries of BBA Aviation.

There is no contention that BBA Aviation is a common carrier. The Board has held that common ownership of a carrier and a non-carrier by a non-carrier holding company is insufficient to satisfy the ownership requirement of the second part of the Board's test. *Bombardier Transit Sys. Corp.*, 32 NMB 131, 146 (2005). *See also TNT Skypak, Inc.*, 20 NMB 153, 159 (1993); *Eastern Aviation Serv., Inc.*, 5 NMB 53, 55 (1970).

For example, in *TNT Skypak, Inc.*, *above*, the employer at issue, Skypak, was indirectly owned by TNT Ltd., which also had a partial ownership interest in two commercial airlines, Ansett Airlines and America West. The Board, however, declined to find that Skypak was directly or indirectly owned by a carrier since TNT Ltd. was not a carrier. *Id.* at 159. The Board further found that while Skypak and the airlines were indirectly linked to the same parent corporation, there was no evidence "of common control between Skypak and America West or any other carrier." *Id.* at 160. As the Board recognized in *Eastern Aviation Serv.*, *above*, "[i]n this age of corporate conglomeration, the bare fact of ownership, standing alone is not determinative of the jurisdictional question." *Id.* at 55.

Signature cites several Board decisions for its assertion that the second part of the jurisdictional test is satisfied, without more, if the employer in question is a subsidiary of a company which owns another subsidiary that is an RLA carrier. As discussed below, however, in each case, the Board did not rely solely on common ownership by a non-carrier to support RLA jurisdiction.

In *Chelsea Catering Corp.*, 19 NMB 301 (1992), Chelsea was a wholly-owned subsidiary of Continental Airlines Holding, Inc., which also wholly-owned three carriers, Continental Airlines, Continental Express and Eastern Airlines. The Board found that the second part of the jurisdictional test was satisfied because of common ownership and the extent of Continental Airlines' control over Chelsea's operations. The Board determined that "[v]irtually all of Chelsea's operations are controlled by Continental." *Id.* at 305. The Board also noted that as part of a bankruptcy reorganization, Chelsea would become a division of Continental Airlines and no longer exist as a separate entity in the corporate family. *Id.* at 302. Finally, the Board observed that Chelsea's highest ranking

officer reported directly to a senior official of Continental Airlines and that the complete integration of Chelsea's clerical staff into Continental Airlines' clerical staff was "underway currently." *Id.* In the instant case, however, there is no contention that ASII exerts any meaningful control over Signature's day-to-day operations. It is BBA Aviation, a non-carrier, that provides common services to both ASII and Signature.

In *AMR Serv. Corp.*, 18 NMB 348 (1991), AMR Services was wholly-owned by AMR Corporation, a holding company, which also wholly-owned American Airlines and American Eagle. The Board concluded that AMR Services was subject to the RLA on the basis of common control and decisions by the United States District Court for the Eastern District of New York finding that AMR Services was an RLA carrier. *Id.* at 351-52. (citing *AMR Serv. Corp. v. International. Bhd. of Teamsters*, 658 F. Supp. 259 (E.D.N.Y), *aff'd.*, 821 F.2d 162 (2d Cir. 1987) (rejecting AMR Services' application for state law, injunction on basis that AMR Services was an RLA carrier and its picketing was subject to RLA not state law), and *Blyer v. International. Bhd. of Teamsters*, 656 F. Supp. 1158 (E.D.N.Y 1987) (rejecting NLRB's application for an injunction on basis that alleged secondary activity involved RLA carriers, Korean Airlines and AMR Services and that secondary activity is permitted under RLA)). Unlike Signature, AMR Services had been previously found to be an RLA carrier.

Commercial Aviation Serv. of New York City, Inc., 22 NMB 223 (1995), is also distinguishable. The NMB had previously found that Sky Valet, the majority owner of the employer, Commercial Aviation Services (CAS), was an RLA carrier. Thus the Board concluded that CAS, an entity directly owned by a carrier and performing airline work, was also subject to the RLA. However, the Board also relied on the "extensive control over all aspects of CAS's operations" by Delta Airlines over CAS' operations. *Id.* at 229. Thus, in contrast to the instant case, the employer was both directly owned by a carrier and subject to extensive control by a carrier.

Finally, in *O/O Truck Sales, Inc.*, 21 NMB 258 (1994), the Board concluded that O/O satisfied the second part of the jurisdictional test because O/O and rail carrier CSX Transportation (CSXT) were controlled by the same corporate parent, CSX Corporation.[2] The NMB cited conflicting evidence regarding CSXT's control over O/O's day-to-day operations, however, the NMB did conclude that "the vast majority of O/O's work is performed for CSXT, a rail carrier." *Id.* at 267. Further, in addressing the "trucking services" exception of 45 U.S.C. § 151, First, the NMB found that "O/O performs services almost exclusively for CSXT" and "O/O exists principally to provide fueling and related services for CSXT's rail operations." *Id.* at 268, 272. Thus, O/O provided services "integrally related" to its corporate relative's rail operations. *Id.* at 269. By contrast, there is no similar relationship between ASII, the RLA carrier, and Signature. Signature performs no airline or related services for ASII.

Accordingly, the NMB finds that common ownership of a carrier and another entity by a non-carrier without more does not satisfy the second part of the Board's jurisdictional test. The second part of the jurisdictional test requires indirect or direct ownership by a carrier. Such ownership is not present in this case.

CONCLUSION

Based on the record in this case and for the reasons discussed above, the NMB's opinion is that Signature and its employees at White Plains are not subject to the RLA. This

---

[2] In reaching this conclusion, the decision cited *AMR Servs. Corp.*, 18 NMB 348 (1991) and *Chelsea Catering Corp.*, 19 NMB 301 (1994). As discussed, above, the facts of these cases do not support the sweeping statement that common ownership alone is a basis for RLA jurisdiction. The decision also cited *Delpro Co. v. National Mediation Brd.*, 509 F. Supp. 468 (D. Del 1981); *Delpro Co. v. Brotherhood Ry. Carmen*, 519 F. Supp. 842 (D. Del. 1981), *aff'd.* 676 F.2d 960 (3d Cir.), *cert. denied*, 459 U.S. 989 (1982). Once again, that case is distinguishable on its facts. Delpro was a wholly-owned subsidiary of Trailer Train, which was owned by a consortium of rail carriers. Thus, the question presented for the court and the Board was whether indirect ownership by carriers conferred RLA jurisdiction. This case involves whether common ownership by a non-carrier satisfies the requirement of direct or indirect ownership by a carrier.

opinion may be cited as *Signature Flight Support*, 34 NMB 1 (2006).

By direction of the NATIONAL MEDIATION BOARD.

Mary L. Johnson
General Counsel

Copies to:
Douglas W. Hall, Esq.
Timothy McCole
Curtiss T. Jameson, Esq.
Harold Welsh