



**NATIONAL MEDIATION BOARD**

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34 NMB No. 17

March 2, 2007

Richard A. Siegel  
Associate General Counsel  
National Labor Relations Board  
1099 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20571-0001

Re: NMB File No. CJ-6905  
Dobbs International Services d/b/a Gate Gourmet

Dear Mr. Siegel:

This letter responds to your request for the National Mediation Board's (NMB or Board) opinion regarding whether Dobbs International Services d/b/a Gate Gourmet (Gate Gourmet) is subject to the Railway Labor Act (RLA or Act), 45 U.S.C. §151, *et seq.* For the reasons discussed below, the NMB's opinion is that Gate Gourmet is subject to the RLA.

I. PROCEDURAL BACKGROUND

This case arose out of an unfair labor practice (ULP) charge filed with the National Labor Relations Board (NLRB) against Gate Gourmet filed on April 10, 2006, by the Bakery, Confectionary and Tobacco Workers (BCTW) in NLRB Case No. 16-CA-24913. In the ULP, BCTW alleges that Gate Gourmet refuses to bargain with BCTW over changes in wages, hours and working conditions of Gate Gourmet's employees at the Dallas Fort Worth Airport. On July 24, 2006, the NLRB requested an NMB opinion regarding the NMB's jurisdiction over Gate Gourmet. On August 7, 2006, the Board assigned Eileen M. Hennessey as an Investigator in this matter.

The NMB certified the IBT/HERE Employee Representatives' Council (Council) as the exclusive representative under the RLA of the craft or class of Kitchen, Commissary, Catering, and Related Employees at Gate Gourmet in 2000. The NMB notified Gate Gourmet, the Council and BCTW of the jurisdictional referral from the NLRB and set a schedule for filing position statements in this matter. On September 5, 2006, Gate Gourmet, the Council, and BCTW filed individual submissions with the Board.

The NMB's opinion in this case is based upon the request and record provided by the NLRB and the position statements submitted by Gate Gourmet, the Council, and BCTW.

#### Employee Representation at Gate Gourmet

Until 2000, when SAir Group, an air carrier, acquired total ownership of it, Gate Gourmet, then known as Dobbs International Services, Inc., operated under the National Labor Relations Act, 29 U.S.C. §§ 151, *et seq.* (NLRA). Approximately 80 percent of its employees were represented, but under the NLRA, each of its facilities was considered a separate bargaining unit and it had collective bargaining agreements (CBAs) with several different unions. Of those represented employees, one-third were covered by CBAs between the Carrier and the IBT, and one-third were covered by CBAs between the Carrier and HERE. The remaining represented employees were covered by CBAs between the Carrier and several other AFL-CIO labor organizations, including BCTW and the IAM.

Subsequently, IBT and HERE formed the Council and on May 15, 2000, the Carrier voluntarily recognized the Council as the representative of employees in the craft or class system-wide. The Council and the Carrier also negotiated a National Master Agreement (Master Agreement) and agreed that certain existing local CBAs (Local CBAs) would continue, with certain caveats, at those facilities. The Council also designated, pursuant to Section 2, Third, of the RLA, AFL-CIO labor organizations that had represented employees under the NLRA

at certain local facilities as the Council's agents for collective bargaining purposes at those facilities. The IAM was so designated at Gate Gourmet's Boston, Houston, and Tampa facilities. BCTW was designated as the Council's agent at Gate Gourmet's Dallas-Fort Worth facility.

On May 18, 2000, the Council filed an application with the Board pursuant to Section 2, Ninth, of the RLA, alleging the existence of a representation dispute among the Carrier's Kitchen, Commissary, Catering, and Related Employees and requesting that the Board certify, without an election, the Council as the exclusive bargaining representative of the employees in the craft or class.

The Board confirmed RLA jurisdiction in *Dobbs Int'l Servs., Inc.*, 27 NMB 537 (2000). In *Dobbs Int'l Servs., Inc., d/b/a Gate Gourmet*, 28 NMB 7 (2000), the Board certified the Council as the representative of the system-wide craft or class. The Board stated that its investigation disclosed that an established collective bargaining relationship existed between the Carrier and the Council, that the Carrier and the Council agreed in writing to certification without an election pursuant to the Board's Representation Manual, and that the Council was the only organization involved in the representation dispute. *Id.* at 10. The Board noted that the voluntary recognition agreement and the Master Agreement cover all employees in the craft or class formerly represented by HERE and IBT separately as well as the unrepresented employees and the employees represented by other labor organizations pursuant to certifications under the NLRA. *Id.* With regard to the other labor organizations, the Board noted that these organizations had been designated as the Council's agents for collective bargaining purposes. *Id.* at 10, fn. 3.

The Master Agreement became amendable in 2004. During negotiations, the Council and Gate Gourmet disagreed over what effect the Local Agreements would have under the new Master Agreement. In August 2005, after failing to reach agreement on a new Master Agreement, the Council and Gate Gourmet agreed to interest arbitration. One of the issues for

the arbitration was application of the new Master Agreement to the Local Agreements. Further, the interest arbitration agreement between the Council and Gate Gourmet provided that the arbitration award would be binding on all Gate Gourmet employees in the Kitchen, Commissary, Catering, and Related Employees craft or class.

The arbitrator's award was issued on December 19, 2005, and became effective December 31, 2005. The award provided that the Master Agreement would be the principal CBA and the Local Agreements would control only with respect to the administration of non-economic or non-operational provisions at the local facilities. The arbitrator further found that:

[T]he certification by the National Mediation Board is the controlling document insofar as the statutory responsibilities and obligations are concerned. The National Mediation Board certified the Council as the representative of the entire craft or class, and as such the Council has the authority to negotiate with Gate Gourmet for collective bargaining agreement provisions which may have system-wide applicability or less than system-wide applicability.

On April 13, 2006, shortly after BCTW filed its ULP with the NLRB, the IAM contacted the NMB and requested a clarification of the NMB's October 11, 2000 certification of Kitchen, Commissary, Catering, and Related Employees craft or class at Gate Gourmet. Specifically the IAM requested a finding that it is the designated collective bargaining agent for the Tampa, Houston, and Boston facilities; that Gate Gourmet is obligated to treat with IAM at these locations; and that IAM's bargaining relationship with Gate Gourmet remains as it was at the time of the NMB's certification. Both Gate Gourmet and the Council opposed the IAM's request.

The Board found that there was no dispute among employees as to the employees' exclusive representative and

that the IAM's dispute was with the Council as to the collective bargaining arrangement with Gate Gourmet. *Dobbs Int'l Servs., Inc., d/b/a Gate Gourmet*, 34 NMB 60 (2006). The NMB noted that the "IAM concedes, and it is clear from the Board's certification, that the Council is the exclusive bargaining representative of [these employees]." *Id.* at 64.

## II. BCTW's CONTENTIONS

BCTW asserts that the NLRB has jurisdiction over it and Dobbs/Gate Gourmet for all purposes concerning the employees in question. BCTW contends that it is covered by the NLRA because its employees have been treated as such at least since the NLRB's certification in 1969. BCTW states that it has bargained for several agreements with Gate Gourmet; the last agreement expired in 2004.

BCTW also contends that Gate Gourmet is not covered by the RLA because the NMB's two-part jurisdiction test cannot be met. BCTW states that the second prong of the test requires that an entity be owned by an airline carrier. BCTW states that at the time the NMB asserted jurisdiction over Gate Gourmet, it was owned by SAir Group, the owner of Swiss Air, an air carrier. However, SAir no longer owns Gate Gourmet. Since 2002, Gate Gourmet has been owned by a "non-Railway Labor Act-covered holding company" and therefore, BCTW contends that Gate Gourmet falls outside of the RLA's coverage.

## III. GATE GOURMET'S CONTENTIONS

Gate Gourmet asserts that it remains subject to the RLA under the NMB's two-part test. Gate Gourmet maintains that its employees perform services traditionally performed by carriers and that its air carrier customers exercise considerable control over Gate Gourmet's everyday operations and the manner in which its employees perform their work. Gate Gourmet argues that the facts in this case demonstrate a level of carrier control over Gate Gourmet's operations and employees that is comparable to cases in which the NMB has determined that the control portion of the test was satisfied.

Gate Gourmet argues that the facts in this case are very similar to the facts in *Air Serv Corp.*, 33 NMB 272 (2006).

#### IV. THE COUNCIL'S CONTENTIONS

The Council argues that the NMB found that Gate Gourmet was subject to the RLA in 2000. Prior to that there was no system-wide CBA. Instead, the Council states that the various unions representing Gate Gourmet employees under the NLRA had entered into separate CBA's for each specific facility where Gate Gourmet employees were represented. Prior to the NMB's certification of the Council, approximately 15 percent of Gate Gourmet's employees were represented by labor organizations that were not part of the Council. After the certification of the Council by the NMB, the Council designated all but one of the non-Council labor organizations as the Council's bargaining agent. BCTW was one of the non-Council bargaining agents. However, the Council states that this designation did not diminish the Council's NMB certification.

The Council argues that Gate Gourmet continues to meet both prongs of the NMB's jurisdiction test and the change in Gate Gourmet ownership does not alter the NMB's jurisdiction in this matter. The Council argues that the RLA's definition of "carrier" is not limited to entities that actually transport people or property by rail or air. The Council maintains that Congress intended to include within the RLA's coverage "those companies that carriers might establish through either ownership or close ties to perform work that is an integral part of the transportation function." It is for this reason, the Council argues, that Congress in Section 151, First, of the RLA imposed an "either or" test in defining a carrier—either showing common ownership or by direct or indirect control. Finally, the Council states that BCTW's assertion that it has enjoyed a certification from the NLRB since 1969 is incorrect because that certification ceased to exist when Gate Gourmet became subject to the RLA and the NMB certified the Council as the certified representative in October 2000.

V. FINDINGS OF FACT

Gate Gourmet

Gate Gourmet presently has approximately 28 active commercial agreements with airlines to provide in-flight catering services at 36 airports in the United States. Gate Gourmet addressed its relationship with six of its largest airline customers in its position statement to the NMB. These six airlines collectively represent approximately 80 percent of the Gate Gourmet's 2005 and 2006 U. S. revenues.\* Gate Gourmet has separate and detailed agreements (Carrier Agreements) with each of these six airlines, which typically incorporate by reference even more detailed service manuals and performance evaluation plans.

Nature of Work Performed

Gate Gourmet provides in-flight catering services to the airlines by preparing and/or assembling meals, snacks, beverages, and catering supplies to be served and used on flights, delivering these items to the aircraft, and stocking the aircraft with these catering items.

Carrier Control over Gate Gourmet's Operations and Employees

A. Work Scheduling

The Carriers' flight schedules determine the schedules of Gate Gourmet's employees. Generally, Gate Gourmet receives Carrier flight schedules on a monthly basis, and must create its own Gate Gourmet employee schedules to align with the

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\* Because of concerns regarding the confidentiality of some of the information included in its position statement, Gate Gourmet submitted to the Board redacted and unredacted versions of its position statement. Redacted submissions were served on BCTW and the Council. In the redacted statement, Carrier names were replaced with numerical references. This decision will use the numerical references or refer to the Carriers collectively as the "Carriers."

Carriers' schedules. This scheduling alignment is dictated by the Carrier Agreements. When the Carriers adjust their flight schedules, Gate Gourmet immediately adjusts its employees' schedules accordingly. The Carriers' Agreements also dictate that Gate Gourmet must perform its services within precise time limits established by the Carriers. Minute delays are noted by the Carriers; other delays may lead to Gate Gourmet incurring financial penalties which are regularly enforced by the Carriers.

B. Carrier Authority in Personnel and Performance Matters

The Carriers exercise access rights provided under the Carrier Agreements to access Gate Gourmet's facilities and records including rights to conduct unannounced kitchen inspections by the Carriers' representatives, and inspections of goods, books, and testing and training records. Each of the Agreements contains Performance Evaluation Programs which detail the measures each Carrier will employ in routinely monitoring Gate Gourmet's performance of the Agreement.

Certain Carriers require that Gate Gourmet employ individuals in certain types of positions. These positions include chefs and global account managers. In general, Carriers provide feedback on specific Gate Gourmet employees, and Flight Attendants provide written feedback as part of most of the Performance Evaluation Programs. Gate Gourmet has taken corrective action, including discipline or termination of employees, based upon this feedback.

The Carriers will also provide input on whether particular employees should be hired or promoted. For example, Carrier 4 has conducted interviews of potential Gate Gourmet account managers in certain cities and regularly interviews candidates for senior sales and service account related positions before Gate Gourmet can assign them to Carrier 4 accounts.

Carrier Agreements also include specifics regarding employee background checks and drug and alcohol testing.



Gate Gourmet is required by law to be “sponsored” in order to obtain employee security clearance badges. As a condition of Carrier sponsorship, the Carriers require access to employee records to verify that Gate Gourmet is satisfying all security requirements because the Carriers are subject to penalties in the event Gate Gourmet fails to do so.

C. Menus, Equipment, and Supplies

The Carriers dictate all facets of how menus and meals are prepared and presented. Certain Carrier Agreements include specifications covering meal appearance, portion size, and proportion of ingredients. The Carriers have the right to, and actually do, schedule Gate-Gourmet-prepared menu presentations to permit the Carriers to either test compliance with its menu specifications or to approve future menu options. The meals prepared by Gate Gourmet are often based on menus owned by, or designed with input and approval from, its Carrier customers. For example, Carrier 1’s Agreement states “Caterer acknowledges and agrees that [Carrier 1] owns all rights, title and interest in . . . plans and recommendations . . . developed by the Caterer relating to [Carrier 1’s] In Flight food service”. If Gate Gourmet’s meals do not conform to the menu and meal preparation specifications, the Carriers have imposed penalties on Gate Gourmet for lack of compliance.

All of the Carrier Agreements specify that Gate Gourmet is to use equipment, supplies and/or food items supplied or purchased by the Carrier. For example, Carrier 6’s agreement states that the Carrier will supply and maintain at its sole cost and expense the equipment required to serve the food and beverages delivered by Gate Gourmet, including, but not limited to, dishes, eating utensils, service trays, service tray carriers, carts and aircraft ovens.

Even when the Carriers do not supply certain goods or equipment used by Gate Gourmet, the Carriers regularly dictate the vendors Gate Gourmet must use. For example, Carrier 3 specifies the brand and size of orange juice that is to be served on its flights and the vendor from whom Gate

Gourmet must purchase the orange juice. Some of the Carrier Agreements also state that Gate Gourmet will cooperate with the Carrier to achieve a general objective of including small, minority, and women-owned supplier firms as suppliers.

Each of the Carriers determines the computer software or web-based system or systems that Gate Gourmet uses to communicate with the Carrier. These systems are used to accomplish a variety of functions, including daily communication regarding the Carriers' flight and meal distribution schedules, providing menu and service specifications and codes, diagrams and tools for provisioning flights, and billing and inventory. Gate Gourmet also uses Carrier-provided computers and printers.

#### D. Facilities

Gate Gourmet conducts some of its operations in facilities owned or leased by the Carriers. Some Carriers require Gate Gourmet to devote certain facilities to providing menu development and catering services solely to those Carriers. For example, Gate Gourmet reconstructed and expanded its operations at a certain airport in accordance with Carrier 4's specifications. Some Carriers have permanent office space for Carrier employees in Gate Gourmet's kitchen facilities.

#### E. Manuals/Carrier Specifications

Each Carrier Agreement also incorporates detailed Service Manuals, in some instances consisting of hundreds of pages. The Service Manuals, among other things, provide detailed instructions regarding how multiple tasks and procedures are to be performed, the standards to be adhered to and the forms to be used in completing the procedures. For example, one provision of Carrier 2's manual contains a six-step instruction detailing the preparation of sample meals (meals that are used by staff in preparing meals). Carrier 4's manual, among other provisions, contains detailed instructions on tray linen folding and instructions on how to roll the

flatware in the linen. Safety and security concerns require Carriers to provide Gate Gourmet with specific instructions concerning vehicle operation around aircraft, including instruction on testing brakes, starting the vehicle, departing and approaching the aircraft and opening and closing the aircraft doors.

#### F. Interaction with Carrier Employees

Gate Gourmet employees have daily interaction with Carrier employees. The Gate Gourmet employees are responsible for transporting the meals to the aircraft and interact with ramp employees, crew chiefs, and flight attendants. For security reasons certain deliveries are sealed, and the seal may only be broken by a Carrier employee before the delivery can be completed by a Gate Gourmet employee. In addition, Carrier employees have stopped Gate Gourmet employees during meal production for the purpose of correcting mistakes.

#### G. Training

The Carriers conduct or influence Gate Gourmet employee training, including the menus Gate Gourmet prepares, the manner in which they are prepared, use of certain equipment, and the use of computer programs mandated by the Carriers. For example, Carrier 1 provides “train the trainer” training to Gate Gourmet on the software program used by it. Carrier 3 provides training videos to the transportation employees used to service its account and requires that these employees certify that they have viewed the videos. Another example is that Gate Gourmet sends its chefs to periodic chef training seminars conducted by Carrier 1, Carrier 3, Carrier 4, and Carrier 6 to learn new menus from those Carrier’s corporate chefs.

## VI. DISCUSSION

### Applicable Legal Standard

When an employer is not a rail or air carrier engaged in the transportation of freight or passengers, the NMB applies a two-part test in determining whether the employer and its employees are subject to the RLA. *Aircraft Servs. Int'l Group, Inc.*, 33 NMB 200 (2006). First, the NMB determines whether the nature of the work is that traditionally performed by employees of rail or air carriers. Second, the NMB determines whether the employer is directly or indirectly owned or controlled by, or under common control with, a carrier or carriers. Both parts of the test must be satisfied for the NMB to assert jurisdiction. *Aircraft Servs. Int'l Group, above*; see also *AvEx Flight Support*, 30 NMB 355 (2003).

Gate Gourmet does not fly aircraft and is not directly or indirectly owned by an air carrier. The Gate Gourmet employees at issue perform work that is traditionally performed by employees in the airline industry. See, e.g., *John Menzies PLC, d/b/a Ogden Ground Servs., Inc.*, 30 NMB 405 (2003); *Sky Chefs, Inc.*, 15 NMB 397 (1988). Therefore, to determine whether Gate Gourmet is subject to the RLA, the NMB must consider the degree of direct or indirect control exercised over Gate Gourmet's operations by carriers.

### Carrier Control of Gate Gourmet's Operations

The standard for satisfying the control prong of the NMB's jurisdiction test is the degree of influence that a carrier or carriers has over discharge, discipline, wages and working conditions. To determine whether there is sufficient carrier control over a company, the NMB looks to several factors, including: the extent of the carrier's control over the manner in which the company conducts its business; access to the company's operations and records; role in personnel decisions; degree of supervision of the company's employees; whether employees are held out to the public as carrier employees; and control over employee training. *Aircraft Servs. Int'l Group*,

*above*; *John Menzies PLC, d/b/a Ogden Ground Servs., above*; *Signature Flight Support of Nevada*, 30 NMB 392 (2003); *Aeroground, Inc.*, 28 NMB 510 (2001); *Miami Aircraft Support*, 21 NMB 78 (1993).

Regardless of BCTW's assertions to the contrary, the NMB has found jurisdiction over companies which were at one time owned by a carrier but were subsequently sold to a non-carrier. *Sky Chefs, above*; *International Total Servs./Servs. & Sys., Ltd.*, 9 NMB 392 (1982). In another case involving an airline catering company, the Board found that despite Sky Chefs sale to a non-carrier, carriers still exercised a great deal of control over the catering company's operations and employees. For example:

Sky Chefs employees prepare food for American flights according to instructions from American contained in manuals, relayed via computers, or received directly from American's food service representatives. American has effectively recommended the discipline and termination of Sky Chefs employees and exercises control over certain employee work assignments. American personnel have directly trained Sky Chefs' employees. Sky Chefs' other airline customers also exercise direct control over Sky Chefs' employees. The Lufthansa representative directs Sky Chefs employees in the performance of their work on a regular basis. Northwest and Pan Am have effectively recommended the dismissal of Sky Chefs' employees. Several of the airlines provide training to Sky Chefs' employees as a prerequisite to the Sky Chefs' employees preparing certain meals or working with new equipment.

*Sky Chefs, above*, at 404 (1988).

The record in the instant case establishes that carriers exercise sufficient control over Gate Gourmet's operations to support a finding of RLA jurisdiction. BCTW's assertion that

Gate Gourmet's change in ownership to a non-carrier renders it outside of the RLA's jurisdiction is erroneous. Section 151, First, of the RLA extends its coverage to entities owned or controlled by a carrier. (Emphasis added.) The NMB has reviewed the record in this case to see if, since it last determined its jurisdiction over Gate Gourmet, carrier control over Gate Gourmet and its operations and employees has diminished. The NMB concludes that it has not.

Recently, in *Air Serv Corp.*, 33 NMB 272 (2006), the NMB found that Air Serv, a non-carrier owned business, fell within its jurisdiction. The NMB cited the following facts as determinative of carrier control over Air Serv's operations: United's flight schedules affected the work schedules of Air Serv employees; United provided and repaired the equipment used by Air Serv to service the Carrier's aircraft; United provided many of the supplies Air Serv used to service the aircraft; United specified the cleaning supplies to be used to clean its aircraft; United had access to Air Serv's records regarding personnel, maintenance, and training in order to perform periodic security and safety audits; and United had an extensive set of regulations and standards which governed training and servicing and other aspects of performance under the Agreement.

The instant case is similar to *Air Serv, above*, and *Sky Chefs, above*. In particular, the service contracts, service manuals and performance evaluation plans between Gate Gourmet and the Carriers dictate in almost infinite detail all aspects of Gate Gourmet's operations. Gate Gourmet's employee scheduling is aligned to the Carriers' schedules. The Carriers routinely exercise their rights to access Gate Gourmet's facilities and records including rights to conduct unannounced kitchen inspections by the Carriers' representatives, and inspections of goods, books, and testing and training records. Each of the Agreements contains Performance Evaluation Programs which contain measures that monitor Gate Gourmet's performance on a flight-by-flight basis. Certain Carriers require that Gate Gourmet employ individuals in certain types of positions. The Carriers also

provide input on whether particular employees should be hired or promoted. Carrier Agreements include specifics regarding employee background checks and drug and alcohol testing. The Carriers dictate all facets of how menus and meals are prepared and presented. Some Gate Gourmet employees work at facilities owned or leased by the Carriers and some Carrier employees work at facilities owned by Gate Gourmet. The record contains multiple examples of Carrier employees directing, correcting or evaluating Gate Gourmet employees. Finally, the Carriers either directly train, provide training materials or provide training guidance to Gate Gourmet and its employees. The NMB finds, therefore, that the level of control exercised by the Carriers over Gate Gourmet's operations and employees is extensive and satisfies the control prong of the jurisdiction test.

#### CONCLUSION

Based on the record in this case and for the reasons discussed above, the NMB's opinion is that Gate Gourmet is subject to RLA jurisdiction. This opinion may be cited as, 34 NMB 97 (2007).

By direction of the NATIONAL MEDIATION BOARD.



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