



**NATIONAL MEDIATION BOARD**  
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34 NMB No. 33  
June 21, 2007

William B. Cowen  
Solicitor  
National Labor Relations Board  
1099 14<sup>th</sup> Street, N.W.  
Washington, DC 20570-0001

Re: NMB File No. CJ-6914  
PrimeFlight Aviation Services, Inc.

Dear Mr. Cowen:

This letter responds to your request for the National Mediation Board's (NMB or Board) opinion regarding whether PrimeFlight Aviation Services, Inc. (PrimeFlight) is subject to the Railway Labor Act (RLA), 45 U.S.C. § 151, *et seq.* On February 9, 2007, the National Labor Relations Board (NLRB) requested an opinion regarding whether PrimeFlight's operations at LaGuardia Airport (LGA) in Flushing, New York are subject to the RLA.

For the reasons discussed below, the NMB's opinion is that PrimeFlight's operations and its employees at LGA are subject to the RLA.

**I. PROCEDURAL BACKGROUND**

This case arose out of a representation petition filed by Local 726, International Union of Journeymen and Allied Trades (Local 726) on December 12, 2006, in NLRB Case No. 29-RC-11405. Local 726 seeks to represent all full-time and regular part-time skycaps, wheelchair service employees, baggage handling employees, baggage service agents, priority parcel service agents, passenger service employees, and ticket

verification employees employed by PrimeFlight at LGA<sup>1</sup>. PrimeFlight objected to the NLRB's jurisdiction arguing that its employees and operations at LGA are subject to the RLA.

A hearing was held in NLRB Region 29 on December 28, 2006. On February 9, 2007, the NLRB requested an NMB opinion regarding NMB jurisdiction over PrimeFlight's operations at LGA. The NMB assigned Susanna F. Parker to investigate. On February 21, 2007, Local 726 filed its position statement. On February 23, 2007, PrimeFlight filed its response.

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 submissions from the participants.

## II. PRIMEFLIGHT'S CONTENTIONS

PrimeFlight states that its employees are subject to RLA jurisdiction under the NMB's two-part function and control test for determining jurisdiction of employers that are not owned or under common ownership with an RLA carrier. PrimeFlight states that its employees perform work traditionally performed by employees in the airline industry. Therefore, PrimeFlight asserts that its employees satisfy the function part of the test. PrimeFlight contends that it satisfies the control part of the test since the Carriers retain a significant degree of control over PrimeFlight's workforce. PrimeFlight also contends that although the Carriers do not have direct control over the hiring process, they do maintain certain requirements such as background checks and drug and alcohol tests. Additionally, PrimeFlight states that once the employees are hired, the degree of Carrier control is considerable. According to PrimeFlight, the Carriers determine the number of employees needed and at times, these employees are directly supervised by Carrier employees. PrimeFlight states that although the Carriers do not determine the employees' wages, they do set

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<sup>1</sup> This excludes all ramp service employees, lavatory service employees, ground-handling employees, security employees, club room employees, software support service employees, housekeeping employees, maintenance employees, guards, and supervisors.

specific per-hour prices for each service, which has a direct effect on each wage amount. PrimeFlight asserts that the majority of employee training is Carrier controlled and the Carriers audit PrimeFlight's training records. In its submission, PrimeFlight states that it also uses Carrier equipment and office space. Finally, PrimeFlight contends that the Carriers effectively recommend discipline and discharge PrimeFlight's employees.

### III. LOCAL 726's CONTENTIONS

Local 726 contends that PrimeFlight and its employees are not subject to the RLA. According to Local 726, the employees of PrimeFlight are private sector employees who are entitled to vote in an NLRB-conducted election. Although Local 726 stipulates that PrimeFlight's employees perform work traditionally performed by employees in the airline industry, Local 726 states that PrimeFlight is not directly or indirectly owned or controlled by, or under common control with, a carrier or carriers. Local 726 asserts that Carriers do not have a significant role in hiring, firing, or discipline of employees. In fact, Local 726 states that PrimeFlight maintains its own staff and supervisors and managers and operates on a day-to-day basis with little interaction with Carrier officials. Local 726 also contends that Carriers have little to no input on the terms and conditions of employment for PrimeFlight employees and that PrimeFlight controls all employee training. Finally, Local 726 states that PrimeFlight employees: do not share office space with Carriers; are not held out as employees of a Carrier; and, are not directly supervised by Carriers.

### IV. FINDINGS OF FACT

PrimeFlight is a wholly-owned subsidiary of SMS Holdings (SMS) and operates at a number of airports around the country and employs approximately 400 individuals. PrimeFlight provides skycap, wheelchair, baggage, priority parcel, and ticket verification and other passenger services under contracts with American Airlines (American), US Airways (US Air), Continental Airlines, JetBlue Airways, Air Canada, Midwest Airlines, Frontier Airlines, Spirit Airlines, American Trans Air, and AirTran Airways (collectively referred to as the Carriers) at LGA. The services provided to American constitute

just less than half of PrimeFlight's overall operations at LGA. The combination of services for American and US Air constitutes approximately two-thirds of all of PrimeFlight's LGA operations.

The services currently provided to PrimeFlight's customers at LGA were previously provided by International Total Services (ITS). After the terrorist attacks of September 11, 2001, Congress created the Transportation Security Administration (TSA) and removed passenger and baggage screening duties from private companies such as ITS. ITS continued to provide non-screening duties at LGA. Shortly after September 11, 2001, ITS entered into an asset purchase agreement with PrimeFlight's parent company SMS. Since TSA had removed the majority of screening functions from private vendors, SMS divided ITS' operations into two companies – PrimeFlight, which would perform all non-screening duties, and FirstLine Transportation Security, Inc., which would provide screening duties where federal law allowed. Aside from the loss of screening duties (which are not performed by the above listed employees), the transition from ITS to PrimeFlight was fairly seamless, and PrimeFlight currently performs the same services at LGA that ITS had provided before September 11, 2001 and its asset purchase agreement with SMS.

#### Nature of the Work Performed

Skycap employees check bags and give passengers boarding passes and receipts for their bags. Skycaps may also assist passengers with luggage in the arrival area. Wheelchair service employees assist disabled passengers around the airport. Baggage handling employees move bags from X-ray machines to baggage belts and baggage service agents assist customers who have lost luggage. Priority parcel service agents accept and inspect cargo to be shipped on airlines. Finally, ticket verification employees work in front of the security checkpoints to match boarding passes with passengers' identification and direct them to the proper screening areas.

Carrier Control over PrimeFlight's LGA Operations and  
Employees

Training

According to Ralph Hasbun, General Manager of PrimeFlight, all PrimeFlight employees receive training by at least one of the following methods: (1) training directly by Carrier personnel; (2) training by a PrimeFlight trainer who has been trained by Carrier personnel; or (3) training pursuant to Carrier materials such as written guides, computer programs, or videotapes. Under American's "train the trainer" program, a PrimeFlight trainer spends a week in American's "train the trainer" program to qualify to train PrimeFlight employees performing work for American. Hasbun testified that approximately half of PrimeFlight employees are trained directly by Carrier employees and the other half are trained by a PrimeFlight employee who has received training from a Carrier. PrimeFlight's contract with American states that "American shall . . . provide training for Passenger Service Agents at an American named facility." The contract also states "American shall provide such initial orientation or training of [PrimeFlight's] personnel as may be required in connection with the furnishing of services hereunder and such recurrent training required. . . ." According to Hasbun, all the Carriers have their own training modules that each PrimeFlight employee is required to complete and training occurs on a yearly recurrent basis.

The Carriers have access to all of PrimeFlight's training records. Hasbun testified that Carrier representatives can demand to see the training records for any PrimeFlight employee at any time. For example, PrimeFlight's contract with American states that "American may, at its discretion, monitor or test [PrimeFlight's] employees training levels. If American determines the training level of one or more of [PrimeFlight's] employees is insufficient, then PrimeFlight will institute such additional training . . . to bring PrimeFlight's employees to the level of training required. . . ." Additionally, Carriers track PrimeFlight's employee training electronically and alert PrimeFlight if any employee fails to meet the training deadlines.

### Scheduling and Staffing

The Carriers give PrimeFlight specific allocations of hours to work on a yearly basis. However, as staffing needs change, the Carriers determine staffing levels and communicate these needs to PrimeFlight via e-mail, weekly meetings, and phone calls. Hasbun testified that he meets with American managers twice a week and with USAir managers once a week.

Additionally, the Carriers also determine specific assignments or transfers of PrimeFlight employees based on staffing needs. Hasbun testified that Carriers also make all decisions regarding changes in daily assignments.

### Authority to Hire, Remove, and Discipline PrimeFlight Employees

PrimeFlight makes its own hiring decisions. However, Carriers require background checks, high school diplomas, and potential employees pass alcohol and drug tests for safety-sensitive positions. PrimeFlight sets the wages and benefits for its employees, however the Carriers set specific per-hour prices for each service, which affects wage amount.

According to Hasbun, Carriers determine when and if they do not want a particular employee working for them. In one case, a baggage handler placed luggage down the oversize chute and the bag hit an American agent. American said they did not want this employee working for them anymore and PrimeFlight complied with American's request. Hasbun stated that he can only recall one occasion when a Carrier requested that an employee be terminated and PrimeFlight instead chose to transfer the employee to a different Carrier.

Additionally, Hasbun recalled an incident in which a skycap mistakenly bypassed the baggage screening area and placed bags directly on the chute. TSA noticed the error and alerted American. American later received a citation from TSA regarding the incident. Although PrimeFlight wanted to terminate the employee, American requested that PrimeFlight discipline the employee and allow him to return to work after a suspension. PrimeFlight complied with American's request,

and the employee returned to work after a few days of suspension.

#### Equipment and Facility

The Carriers provide the bulk of PrimeFlight's equipment including computer equipment, radios, most wheelchairs and luggage carts, conveyor belts, and machines.

The Carriers also provide training space for PrimeFlight employees, office space for PrimeFlight's baggage service agents, and locker and break rooms for certain PrimeFlight employees at no cost to PrimeFlight.

#### Uniforms

PrimeFlight's baggage service agents and priority parcel service employees wear Carrier uniforms, and the other PrimeFlight employees wear PrimeFlight uniforms bearing PrimeFlight logos that consist of a white shirt and blue pants. The Carriers approve all uniforms.

### V. 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. *Bradley Pacific Aviation, Inc.*, 34 NMB 119 (2007); *Dobbs Int'l Servs. d/b/a Gate Gourmet*, 34 NMB 97 (2007). 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. *Bradley Pacific Aviation, above*; *Dobbs Int'l Servs. d/b/a Gate Gourmet, above*. See also *Aircraft Servs. Int'l Group, Inc.*, 33 NMB 200 (2006).

PrimeFlight does not fly aircraft and is not directly or indirectly owned by an air carrier. The parties stipulated that

the work performed by PrimeFlight employees at issue is work traditionally performed by employees in the airline industry. Therefore, to determine whether PrimeFlight is subject to the RLA, the NMB must consider the degree of direct or indirect control exercised over PrimeFlight's LGA operations by its Carrier customers.

### Carrier Control over PrimeFlight and Its Employees

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: 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. *Bradley Pacific Aviation, above; Dobbs Int'l Servs. d/b/a Gate Gourmet, above; Aircraft Servs. Int'l Group, above; Signature Flight Support/Aircraft Serv. Int'l, Inc.*, 32 NMB 30 (2004).

The record in the instant case establishes that the Carriers exercise substantial control over PrimeFlight's LGA operations. The Carriers require PrimeFlight to maintain records of employees who have successfully completed the Carrier-mandated training and the Carriers have access to PrimeFlight's employee training records. Carrier representatives train and designate PrimeFlight employees as Carrier trainers who, in turn, train other PrimeFlight employees. *See e.g., Bradley Pacific Aviation, above* at 131; *Signature Flight Support, above* at 39; *DalFort Aerospace, L.P.*, 27 NMB 196, 209 (2000). The Carriers' schedules dictate the staffing levels and shift assignments of PrimeFlight employees and Carrier officials make changes in daily assignments regularly. *See e.g., Signature Flight Support, above.*

Although PrimeFlight hires its own employees and sets their wages and benefits, the Carriers report problems with PrimeFlight's employees. *See e.g., Aircraft Servs. Int'l Group, Inc.*, 33 NMB 258 (2006). PrimeFlight has complied with the



Carrier's request to reassign a PrimeFlight employee. PrimeFlight's baggage service agents and priority parcel service employees wear Carrier uniforms. The rest of PrimeFlight's employees wear PrimeFlight uniforms approved by the Carriers.

The services provided at LGA by PrimeFlight were previously provided by ITS. The NMB has repeatedly found ITS' operations to be subject to the RLA. *International Total Servs.*, 20 NMB 537 (1993) (finding ITS' skycaps at Logan Airport to be subject to RLA jurisdiction); *International Total Servs., Inc.*, 16 NMB 44 (1988) (finding ITS' skycaps and baggage handling employees at San Francisco International Airport to be subject to RLA jurisdiction); *International Total Servs., Inc.*, 11 NMB 67 (1983) (finding ITS' maintenance, janitorial, and security services at Chicago O'Hare Airport to be subject to RLA jurisdiction); *International Total Servs./Servs. & Sys., Ltd.*, 9 NMB 392 (1982) (finding ITS' maintenance, janitorial, and security services at Dallas-Fort Worth Airport to be subject to RLA jurisdiction). The determination in the instant case that PrimeFlight's LGA operations are subject to the RLA is consistent with these prior determinations.

### CONCLUSION

Based on the record in this case and for the reasons discussed above, the NMB's opinion is that PrimeFlight's operations and its employees at LGA are subject to the RLA. This opinion may be cited as *PrimeFlight Aviation Servs., Inc.*, 34 NMB No. 175 (2007).

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson  
General Counsel

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