

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31**

**GATE GOURMET, INC.**

**Employer**

**and**

**Case 31-RC-129327**

**UNITED SERVICE WORKERS WEST, SERVICE  
EMPLOYEES INTERNATIONAL UNION**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

On May 23, 2014, the Petitioner, United Service Workers West, Service Employees International Union (the Petitioner or USWW), filed a petition under Section 9(c) of the National Labor Relations Act (NLRA or the Act), seeking to represent all full-time and regular part-time employees performing cabin cleaning services for the Employer, Gate Gourmet, at Los Angeles International Airport (LAX).

On August 11, 12, 13, and 18, 2015, a hearing was held before a Hearing Officer of the National Labor Relations Board (the Board). At the hearing, the parties agreed to amend the petition and other formal papers to correct the name of the Employer as Gate Gourmet, Inc. (the Employer or Gate Gourmet). The parties also agreed to amend the petition to clarify that the Petitioner seeks to represent the following unit:

Included: All full-time and regular part-time employees performing cabin cleaning services for the Employer, including lavatory and potable water employees, at Los Angeles International Airport.

Excluded: All other employees including guards and supervisors as defined by the Act.

The issues raised at the hearing are as follows:

1. Whether Gate Gourmet is subject to jurisdiction under the Act or under the Railway Labor Act (RLA).
2. Whether, assuming Board jurisdiction, the petitioned-for unit is an appropriate unit under the Act.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the Board. As explained below, based on the record, the parties' post-hearing briefs, and relevant Board law, I find that Gate Gourmet is subject to the Board's jurisdiction under the Act and that the petitioned-for unit is an appropriate unit under the Act.

## **I. The Parties' Positions**

### **A. The Employer's Position**

Gate Gourmet contends that it is subject to jurisdiction under the RLA. It argues that as recently as 2007, upon the Board's request and deferral to the National Mediation Board (NMB), the NMB ruled that the Employer was governed by the RLA based on evidence of control by carrier customers over Gate Gourmet's catering and commissary operations. *Dobbs International Services d/b/a Gate Gourmet*, 34 NMB 87 (2007). Gate Gourmet argues that the control exercised by Delta Air Lines, Inc. (Delta) over Gate Gourmet's cleaning and provisioning operation exercised at LAX in this case is no less extensive. Accordingly, Gate Gourmet argues that the Board cannot assert that the Act applies to one segment of Gate Gourmet's operations at LAX with Delta, cleaning and provisioning, while the RLA applies to the rest of Gate Gourmet's operations with Delta at LAX, catering and commissary, when there is no difference in the level of control exerted by Delta.

Gate Gourmet further contends that the petitioned-for unit is inappropriate. It argues that the petitioned-for unit shares an overwhelming community of interest with the RLA-certified, nationwide craft or class of "Kitchen, Commissary, Catering and Related Employees" represented by the IBT/HERE Employee Representatives' Council (the Council), and thus the only appropriate unit is the nationwide unit. Accordingly, Gate Gourmet argues that the petitioned-for unit should be accreted into the nationwide unit.

Alternatively, Gate Gourmet argues that the Board should refer this matter to the NMB for an advisory opinion. See *Federal Express Corp.*, 317 NLRB 1155 (1995).

### **B. The Petitioner's Position**

USWW contends that Gate Gourmet is subject to jurisdiction under the Act. It argues that the control Delta exerts over Gate Gourmet's cabin cleaners is no greater than that found in a typical subcontractor relationship, which is insufficient to establish NMB jurisdiction. See, e.g., *Menzies Aviation, Inc.*, 42 NMB 1 (2014); *Airway Cleaners*, 41 NMB 262 (2014); *Aero Port Services*, 40 NMB 139 (2013); *Bags, Inc.*, 40 NMB 165 (2013); *Huntleigh USA Corp.*, 40 NMB 130 (2013); *Air Serv*, 39 NMB 450 (2012), *reconsideration denied* 39 NMB 477.

USWW contends that the petitioned-for unit is appropriate. It argues that the single facility presumption has not been rebutted. See *J & L Plate, Inc.*, 310 NLRB 429 (1993). USWW further argues that Gate Gourmet's LAX cabin cleaning employees are a readily identifiable group and share a community of interest. See *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011).

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## **II. Facts**

### **A. Background**

Gate Gourmet is an independent provider of airline catering and provisioning services. It is a member of the gategroup family, which includes separate entities Gate Aviation Services, Inc. (Gate Aviation) and Gate Serve, LLC (Gate Serve). Gate Gourmet has active commercial agreements with nearly every major domestic airline as well as a significant amount of international airlines, across approximately 30 airports in the United States, including Delta at LAX. In 2000, the NMB certified the Council as the exclusive representative under the RLA of a nationwide craft or class of Kitchen, Commissary, Catering, and Related Employees employed by Gate Gourmet. See *Dobbs International Services d/b/a Gate Gourmet*, 27 NMB 537 (2000). Gate Gourmet and the Council first entered into a collective bargaining agreement which was effective 2000 through 2004. The parties negotiated a successor agreement which was effective 2006 through 2009. They are currently party to a National Master Agreement (NMA), effective July 1, 2010 through December 31, 2012. Although the NMA expired in 2012, the terms of the NMA remain enforceable under the RLA while the parties negotiate a new agreement. While IBT and UNITE HERE operate as the Council, they have divided representation of the nationwide unit by airport. IBT currently represents all of the approximately 1,107 employees working for Gate Gourmet at LAX.<sup>1</sup>

USWW has represented cabin cleaning employees at LAX as far back as the early 1990s. There are currently eight LAX employers that are signatory to a Master Passenger Service Agreement with USWW, including G2 Secure Staff, LLC (G2), the vendor that provided cabin cleaning services to Delta at LAX prior to May 2014. These various employers recognize USWW as the exclusive representative for the non-supervisory, non-clerical employees in the cargo, catering, janitorial, baggage, passenger service, cabin, and security job classifications at LAX passenger terminals, cargo warehouses and cabin cleaning locations. USWW and G2 had a collective bargaining relationship for at least 12 years, during part of which USWW represented cabin cleaning employees.

### **B. Gate Gourmet's Pre-Existing Operations at LAX**

Prior to May 2014, Gate Gourmet provided traditional catering and commissary services to Delta and other carriers at LAX. Traditional "catering" services include menu design and preparation of hot and cold meals, while "commissary" services include light provisioning of aircrafts, e.g., providing beverages and snacks. Gate Gourmet maintained the following 18 pre-existing classifications of employees in its traditional catering and commissary operation at LAX: Customer Service Representative, Porter, Dishroom, Food Storeroom Clerk, Set Up, Specialty Cook, First Cook, Flight Coordinator, Flight Checker, Flight Assembly Finalizer, Expediter, Special Meal Person, Bus Driver, Customer Service Assistant, Liquor Packer, Food

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<sup>1</sup> The petitioned-for unit of approximately 148 employees is included in the 1,107 employees. IBT is currently representing all Gate Gourmet employees at LAX, including those employees in the petitioned-for unit, pending the outcome of this jurisdictional dispute. IBT informed the Board that the Local was aware of the hearing scheduled in this case. IBT did not make an appearance or intervene.

Preparation Group, Food Storeroom Helper, and Equipment Storeroom Helper. These 18 pre-existing classifications are represented by the Council and subject to the NMA.

Gate Gourmet operates a kitchen facility at LAX from which it provides its catering and commissary services. The 18 pre-existing classifications of employees (catering employees) work out of this kitchen facility. In the kitchen facility, Gate Gourmet employees prepare hot and cold meals, stage and pack those meals into trollies and service carts, and transport those trollies and carts by truck to the proper aircraft. They also pack trollies and carts filled with beverages and snacks. According to Gate Gourmet, all of the meals are prepared at this kitchen facility according to specifications established by the various carriers, and the snack and beverage carts are packed to meet the specifications of the carrier depending on the size of the aircraft and a number of other factors. Gate Gourmet's kitchen facility also includes a warehouse to store necessary supplies and equipment. Much of the supplies and equipment stored in the warehouse are owned by Gate Gourmet's carrier customers. Gate Gourmet's kitchen facility is also used to store cleaning items for international customers.

Once the meals, snacks, beverages, and other supplies are packed into trollies and service carts at the kitchen facility, they are loaded into high-lift trucks and transported to the appropriate aircraft by the Customer Service Representatives (CSR) and Customer Service Assistants (CSA). The CSR drives the truck to the aircraft, positions it properly with help from a CSA, and applies the lift such that the container housing the service carts is level with the rear or front door of the aircraft. The CSR and CSA then load the trollies and carts into the aircraft, clean the galley (the kitchen on the aircraft), and remove the used trollies, carts, and trash and load them into the truck. They return the used equipment to the kitchen facility; dishroom workers ensure that the used equipment is washed and properly stored by carrier (i.e., United items are stored in one area and Delta items in another) in the kitchen facility and that unused items and trash are processed per carrier requirements.

In 2012 or 2013, Gate Gourmet created a new classification for a bus driver to transport catering employees between the kitchen facility and parking lots. Gate Gourmet and the Council agreed that the position was covered by the NMA's Scope provision and negotiated the rates of pay for that position.

### **C. Delta Awards Cabin Cleaning Contract**

In April 2013, Delta issued a Request for Proposal for "Commissary and Cabin Cleaning Services" at four different airports: Cincinnati, LAX, LaGuardia, and Memphis. According to Anthony Bralich, Gate Gourmet's Vice President of Labor and Employee Relations, Gate Gourmet learned that Delta was looking for a company that could provide what they referred to as "bundled services," meaning the catering services Gate Gourmet already provided along with cabin cleaning services. The end result would be that the same employer would be providing both the catering services to the aircraft as well as the cabin cleaning and the provisioning of certain items on the aircraft, such as pillows, blankets, cleaning supplies, paper towels, toilet paper, napkins, etc.

Gate Aviation bid on the work, and Delta awarded Gate Aviation the new contract at all four airports. Gate Aviation and Delta entered into an Airport Services Master Agreement (Services Agreement), effective September 15, 2013 and signed in December 2014, wherein Gate Aviation agreed to furnish airport services to Delta at certain airports, including LAX. In the Airport Annex for LAX, an addendum to the Services Agreement, effective May 14, 2014 to May 14, 2019, Delta agreed to purchase various services from Gate Aviation, including cabin cleaning services. The major components of Delta's cabin cleaning services are: Passenger Active Flights (PAFs), Remain Overnight Flights (RON), Deep Cleaning, and Lavatory and Potable Water Service. Since Gate Aviation is a management service company that does not have hourly employees, it subcontracted the work at LAX to Gate Gourmet.<sup>2</sup>

Until the new contract took effect in May 2014, Gate Gourmet did not provide cabin cleaning services for Delta at LAX other than those cleaning duties encompassed in the job duties of the pre-existing classifications, e.g., the CSR cleaned the aircraft galley area as necessary, including removing trash, wiping counters, cleaning floors, and cleaning compartments; the CSA assisted the CSR in cleaning the galley and cleaning the truck bed and cab; and the Porter cleaned the kitchen facility by sweeping and mopping, wiping and cleaning counters, removing trash sweeps receptacles, and performing heavy duty cleaning such as washing walls and air vents.

#### **D. Gate Gourmet's Cabin Cleaning Operations**

##### **1. Work Performed by Cabin Cleaning Employees**

On May 15, 2014, Gate Gourmet began to service the cleaning and commissary contract with Delta, in addition to Gate Gourmet's pre-existing operations described above. In order to service the new contract, Gate Gourmet created two new employee classifications: (1) Customer Service Representative/Porter and (2) Porter/Commissary Worker. Employees in the two new classifications (cabin cleaning employees) work out of a Delta warehouse located at LAX. The warehouse was previously used by G2 when it maintained a contract with Delta, and is a separate facility from the kitchen facility where Gate Gourmet stages its catering and commissary operation. The two facilities are about three to four miles apart. They are geographically separated such that employees cannot get from one facility to the other through the airport.

The cabin cleaning employees are responsible for provisioning the Delta aircrafts, meaning that they provide the pillows, blankets, lotions, soaps, paper towels, and other items the aircraft might need while in flight. However, they do not provision food-related products like cups, napkins, or beverages. The cabin cleaning employees also clean certain areas in the Delta aircraft, including the cockpit, the lavatory, and the cabin, and they perform security searches. The main difference between these two new classifications is that Customer Service Representative/Porter employees drive trucks and perform some lead functions in addition to normal cabin cleaning work performed by the Porter/Commissary Workers. Customer Service Representative/Porter employees also perform lavatory services, including dumping the lavatory waste from each aircraft and disposing of that waste, and potable water services.

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<sup>2</sup> Gate Aviation subcontracted the work at Cincinnati, LaGuardia, and Memphis to Gate Serve, Gate Gourmet's sister company.

Albert Shaw, a Gate Aviation employee who manages Gate Gourmet's cabin cleaning employees, testified that a few cabin cleaning employees have transferred permanently to the kitchen facility and one or two have transferred on a temporary basis and then returned to cabin cleaning. IBT Business Representative Jaime Villanueva testified that Gate Gourmet's cabin cleaning employees hired between late January and May 14, 2014 initially worked in the kitchen facility until they were transferred to the cabin cleaning operation on May 15, 2014, and since then, no employees moved between the catering and cabin cleaning operation on a daily, weekly, or monthly basis. IBT Business Representative Villanueva further testified that catering employees have not been assigned cabin cleaning work; that cabin cleaners do not perform catering work; and that when the cabin cleaning operation is short staffed, catering employees do not fill in for cabin cleaners and vice versa.

## **2. Carrier Control Over the Employer**

### **a. Carrier Control Over Manner in Which the Employer Conducts Business**

Delta provides the warehouse from which Gate Gourmet stages its cabin cleaning and provisioning operation at LAX. Gate Gourmet's cabin cleaning employees clock in at the warehouse, and Gate Gourmet's Human Resources Supervisor, who is responsible for both the cabin cleaning and catering operations, is located in the warehouse. Gate Gourmet uses the warehouse to store all of the supplies it uses to clean and provision the Delta aircraft, including mop sticks, mop pads, cleaning towels, cleaning solutions, pillows, blankets, soaps, lotions, toilet tissue, and paper towels. Delta selects and pays for all these supplies. Delta also selects the brands to be utilized and the vendors who provide the supplies. Gate Gourmet does not pay rent to use the Delta warehouse, and Gate Gourmet does not use any of its own supplies to clean and provision the Delta aircraft.

To obtain the necessary cleaning supplies, Gate Aviation Manager Shaw, either orders them from a website called eLogic or emails a Delta employee directly.<sup>3</sup> When ordering supplies from the website, Shaw uses a password provided by Delta. These supplies are then shipped to the Delta warehouse and unloaded by a Customer Service Representative/Porter using a Delta forklift. Gate Gourmet does not own any forklift that it uses to unload supplies at the Delta warehouse. Supplies ordered through the Delta employee are shipped to a Delta cargo facility in another location in the airport. Gate Gourmet's cabin cleaning employees pick up these supplies and transport them to the Delta warehouse using a Delta tug and Delta foreman cart.

Gate Gourmet's cabin cleaning employees load the cleaning supplies at the Delta warehouse onto Delta high lift trucks and drive them to the Delta terminal, where they spend most of the day. Gate Gourmet supervisors assign teams of five employees to each truck and, as mandated by Delta, they must meet the aircraft as soon as it arrives at the gate. The cabin cleaning employees raise the high lift truck to the aircraft's back door and, after receiving verification from a Delta flight attendant that the door has been disarmed, open the door and

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<sup>3</sup> The Services Agreement provides that Gate Aviation is responsible for maintaining inventory levels of supplies necessary to perform cabin cleaning services from sources specified by Delta.

begin cleaning and provisioning the aircraft. At the same time that the cabin cleaning employees are cleaning and provisioning the aircraft with pillows, blankets, etc., Gate Gourmet's catering employees are also on the aircraft cleaning the galleys and provisioning food and beverage items to the aircraft.

Gate Gourmet's cabin cleaning employees take their lunch breaks at the Delta warehouse and other breaks at the Delta terminal. The cabin cleaning employees do not take lunch with the catering employees. The cabin cleaning employees have access to breakrooms in the Delta terminal. Some of the breakrooms require a code, which is provided by Delta.

Delta provides Gate Gourmet with transportation equipment. In addition to the high lift trucks that transport cabin cleaning employees to and from Delta aircraft, Delta provides Gate Gourmet with lavatory trucks used in servicing the lavatories and the water trucks used to supply the aircraft with water. These trucks are all branded with Delta's name and logo. Delta contracts with a company called ASIG to provide fuel for the trucks, and Delta performs any necessary maintenance on the trucks. Delta also provides vans to transport Gate Gourmet supervisors and cabin cleaning employees to and from the Delta terminal or aircraft, and to pick up or drop off provision supplies to the aircraft. The vans are branded with Delta's name and logo, and Delta provides fuel and maintenance for the vans.

Delta provides Gate Gourmet with radios, computers, and email addresses to communicate with Delta's representatives. A Gate Gourmet dispatcher works in a Delta tower located in the Delta terminal, alongside Delta coordinators, Delta passenger service agents, and Delta mechanics. The dispatcher decides how to assign the cabin cleaning employees to the various Delta aircraft based on the flow of air traffic shown on two Delta computers in the Delta tower. Delta provides Gate Gourmet dispatchers with a Delta email address so that they can communicate with Delta employees about special needs on particular aircraft, e.g., wheelchair, biohazard clean, or delay. The dispatchers in turn communicate with the cabin cleaning employees via a Delta frequency on radios owned and maintained by Delta.<sup>4</sup>

Delta provides Gate Gourmet with various office equipment, including computers, desks, shelves, and filing cabinets. Gate Gourmet does not provide any office equipment. Delta provides Gate Aviation Manager Shaw with a computer and printer, as well as a Delta identification number and password for the computer that is used to access performance scores, to email Delta management, and for training cabin cleaning employees.

Under the Services Agreement, Gate Gourmet is required to provide safety and personal protective equipment.

Gate Gourmet aligns its employee schedules to Delta's flight schedule. Generally, Delta provides its schedule to Gate Gourmet 30 days in advance. Gate Gourmet then determines how many employees it needs to staff its cabin cleaning and commissary operation and how many

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<sup>4</sup> Although the Airport Annex for LAX provides that Gate Gourmet will provide and maintain radios in connection with the provision of services for Delta, testimony established that Delta provides and maintains the radios that Gate Gourmet uses in its cabin cleaning and provisioning operation.

employees it needs for each shift. When Delta increases its flight schedule (e.g., during busy summer months or holidays), or schedules a larger aircraft, Gate Gourmet staffs more employees. When Delta reduces its flight schedule, Gate Gourmet staffs fewer employees. When Delta's flight schedule changes due to, for example, weather delays, mechanical issues, or gate availability, Gate Gourmet must adjust its employee schedules accordingly, scheduling overtime or calling in additional employees. Gate Gourmet's Human Resources Department works with the union, IBT, to conduct shift bids and sets shifts based on Delta's flight schedule. Similarly, Gate Gourmet authorizes vacations by discussing requests with the union based on Delta's flight schedule.

Delta provides mandatory and detailed specifications concerning the manner in which Gate Gourmet must clean and provision Delta's aircraft. The Services Agreement provides that services must be performed in full compliance with Delta's standard practices, and incorporates hundreds of pages of Delta manuals, including Delta's Ground Operations Manual, Delta's Environmental Programs Manual, and Delta's Cabin Cleaning Services Manual for Cabin Cleaning Specifications. Another manual, the Delta Cabin Maintenance Deep Clean Manual, consists of hundreds of pages of detailed instructions and pictures of what and how to clean, the order in which to clean, as well as the specific materials used to clean the aircraft. The cabin cleaning manuals and specifications apply only to the cabin cleaning employees, not the catering employees. The Deep Clean Manual, for example, instructs the cabin cleaning employees not to clean items holding food (galley carts and coffee pots) handled by the catering employees. In the galley, the cabin cleaning employees are only allowed to clean the trash can, the table, and the floor. Delta provides hours of training on these specifications to the cabin cleaning employees through Delta's computer-based training system. Delta also regularly informs Gate Gourmet in writing when there are changes to the specifications. For example, in May 2015, Delta sent an email to Gate Gourmet instructing the cabin cleaning employees regarding the order of seat back contents for June 2015. The Services Agreement provides that, "Delta's cabin service cleaning procedures and specifications are designed to ensure that all domestic aircraft receive the same level of cleaning. Strict adherence to the specifications and cleaning schedule is required." Gate Gourmet has no discretion to waiver from Delta's specifications.

#### **b. Carrier Access to the Employer's Operations and Records**

Under the Services Agreement, Delta has access to and the right to audit all of Gate Gourmet's invoices, records, books, correspondence, instructions, memoranda, and similar data relating to its obligations, the Services Agreement, and any of the services provided. The Services Agreement requires Gate Gourmet to keep full and detailed documentation to support the amounts invoiced, and requires Gate Gourmet to preserve such documents and other records to which Delta has access rights. The Services Agreement further provides that Delta has the right to audit and inspect all operational and safety training records for Gate Gourmet employees, and that such training must be documented in the Delta automated training record-keeping system or other record-keeping system specified or approved by Delta.

Delta also has access to and audits Gate Gourmet's records of the security checks performed by the cabin cleaning employees and various forms. Delta requires Gate Gourmet's employees to conduct a security check on certain domestic and all international flights and to fill



out Delta-provided security forms for each security check. Delta also requires Gate Gourmet's employees to fill out the following Delta forms and reports each day: Cabin Services GSE Inspection Report; Lavatory Services Report; PSDF Daily Log Sheet; Potable Water Form; and Vendor RON/RAD Verification Report. Delta mandates that Gate Gourmet submit these forms directly to Delta or keep them for a specified period of time and available to Delta for inspection.

Under the Airport Annex for LAX, Gate Gourmet must maintain auditable records to support the straight time hours charged to Delta were actually worked by Gate Gourmet employees in performing the specified services.

### **c. Carrier Role in the Employer's Personnel Decisions**

When Delta awarded the airport services contract to Gate Aviation and Gate Aviation subcontracted the work at LAX to Gate Gourmet,<sup>5</sup> Gate Gourmet offered employment to all employees of the prior vendor, G2, who met Gate Gourmet's minimum requirements. Gate Gourmet also hired more employees that it thought necessary to staff the new operation. According to Gate Gourmet Vice President Bralich, Gate Gourmet made these hiring decisions because it was Delta's expectation that Gate Gourmet would do so to avoid any workforce disruption and to ensure a smooth transition from G2 to Gate Gourmet.

Gate Gourmet conducts background checks, as required by Delta and the Services Agreement, including employment histories and verifications, verifications of identity, and criminal history record checks, as well as drug testing.

Under the Services Agreement, Gate Gourmet furnishes its services as an independent contractor. The Services Agreement provides that all personnel utilized by Gate Gourmet in the furnishing of services to Delta "shall be employees or subcontractors of Contractor and under no circumstances shall be deemed employees of Delta." The Service Agreement also provides that Gate Gourmet bears sole responsibility for payment of wages and benefits, including workers compensation insurance, to its personnel. Accordingly, Gate Gourmet issues the cabin cleaning employees their paychecks.

Under the Airport Annex for LAX, Gate Gourmet must "obtain from Delta's Management Representative prior approval of all overtime worked by Contractor at the Airport that will be included in the Total Applicable Fees." The Airport Annex for LAX provides that Delta has no obligation to pay for these overtime hours "unless such hours have been expressly authorized by Delta's Management Representative."

When hired, Gate Gourmet cabin cleaning employees attend an orientation conducted by Gate Gourmet in the Delta warehouse. At the orientation, employees receive Gate Gourmet's New Employee Orientation Workbook containing, inter alia, a Code of Business Conduct and Ethics, Work Rules and Corrective Actions, and Anti-Discrimination and Anti-Harassment Policies. They also receive various work-related forms, including, inter alia, a day off with pay

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<sup>5</sup> Under the Services Agreement, Gate Aviation "may subcontract out or delegate any or all of the Services to be provided hereunder with the prior written consent of Delta, which will not be unreasonably withheld."

form, a vacation request form, a floating holiday request form, a swap day request form, and a sick call acknowledgment form.

In the event of a complaint from Delta, such as regarding a delay or an alleged violation of certain work rules or standards, Gate Gourmet will conduct an investigation and determine if any corrective action is necessary. Gate Gourmet employees can be disciplined up to and including termination for violating Gate Gourmet's work rules and policies. Gate Aviation Manager Shaw has the authority to hire, discipline, and recommend termination of Gate Gourmet employees without Delta's approval. Gate Gourmet's Human Resources Department reviews Shaw's disciplinary decisions. Gate Gourmet supervisors have also issued employees discipline. For example, when there was a one minute delay on a flight, Delta asked Gate Gourmet to follow up to find out what took place. Gate Gourmet disciplined the employee who caused the delay. Delta did not order Gate Gourmet to issue discipline and Gate Gourmet did not request Delta's approval prior to issuing the discipline.

There are two examples of Delta requesting that Gate Gourmet remove Customer Service Representative/Porters from driving duties. In the first case, the Gate Gourmet employee violated Delta's safety policies by driving under the wing of an aircraft. Delta observed and reported the incident to Gate Gourmet and issued a directive to Gate Gourmet that this employee should no longer work anywhere near Delta aircraft as a driver. In an email to Gate Gourmet and Gate Aviation, Delta stated:

[W]e just received this report of an egregious safety violation leading to a near miss.

We have specifically addressed using guides before, and you have responded that guides are used at all times.

Clearly, you have not taken the corrective actions stated in your various responses over the past few months.

Regardless of our well documented performance concerns, safety failures such as this will not be tolerated at any time.

Need an immediate response to your investigation and details of your corrective action. This corrective action must differ from your last corrective actions, as clearly they were was (sic) not effective.

We expect a reply by tonight. We are available by phone to discuss further if needed.

Gate Aviation replied, in relevant part:

I want to stress that Gate Aviation has a zero tolerance policy for employees that violate established procedures and assure that corrective action will be taken up to and including termination. I can assure that this will be reviewed with our staff

and a safety alert will be issued. The affected employee has been removed from service pending conclusion of our internal investigation, but assure (sic) this employee will no longer have any involvement in the Delta Cabin/Commissary operation.

Gate Gourmet then demoted the employee to the Porter/Commissary position. Gate Aviation Manager Shaw testified that he later reinstated the employee to the Customer Service Representative/Porter position without requesting approval from Delta.

In the second case, the Gate Gourmet employee drove too fast around aircrafts. A Delta Station Manager told Gate Gourmet that he observed a truck driving very fast around the aircrafts and said, "I do not want that individual driving around my aircrafts any longer." Gate Gourmet gave instructions to the cabin cleaning management staff to investigate and pull the employee off the ramp. Gate Gourmet Managing Director Rick Deshon testified that he could not confirm that the employee was disciplined.

#### **d. Degree of Supervision Exercised by Carrier**

Under the Services Agreement, Gate Gourmet is required to "maintain a qualified work supervisor (or other employee with responsibility for overseeing the performance of the Services) located at the Delta facilities at which the Services are to be performed, and to keep Delta's Management Representative continuously advised of the location(s) and telephone number(s) at which such work supervisor (or other employee with responsibility for overseeing the performance of the Services) may be contacted to be advised of emergencies, worker absences, accidents involving workers, or substandard performance of work."

Gate Aviation Manager Shaw oversees Gate Gourmet's cabin service operation. Shaw has six supervisors, employed by Gate Gourmet, that report to him and supervise the cabin cleaning employees. There are two supervisors assigned to the day shift, two supervisors assigned to the swing shift, one supervisor assigned to the midnight shift, and one supervisor rotating between shifts. The Gate Gourmet supervisors put together the teams of five cabin cleaning employees, who are then dispatched by a Gate Gourmet employee to the Delta aircrafts. Each team includes a lead (a Customer Service Representative/Porter) and four Porter/Commissary workers. The catering employees have separate managers and supervisors. Steve Callahan is the manager for Gate Gourmet's catering employees. He does not have any involvement with the cabin cleaning employees. The cabin cleaning employees and catering employees also have separate safety managers, who conduct safety trainings and safety observations and issue discipline for safety violations.

Delta's employees and agents audit and review Gate Gourmet's cabin cleaning employees' work against Delta's specifications. Delta supervisors board aircrafts to conduct audits, verifying that the seats, floors, lavatories, galleys, etc. are cleaned properly, and communicate directly with the cabin cleaning employees regarding the quality of their cleaning. Delta supervisors also send emails directly to Gate Aviation Manager Shaw with comments regarding the quality of the cleaning. Delta employs a third party company, Andy Fraine, who also audits Delta aircrafts to verify that the cabin cleaning employees have cleaned the aircrafts

according to Delta's specifications. Shaw meets with Delta twice a week to discuss the audit results and the cabin cleaning employees' performance. If the audit results do not meet Delta's expectations, Delta provides suggestions regarding areas in which Gate Gourmet needs to improve.

The Services Agreement provides that Gate Gourmet must "use commercially reasonable efforts to follow any instructions provided by Delta's designated management representative regarding the standards, procedures, and practices to be followed in furnishing Services pursuant to this Agreement."<sup>6</sup>

#### **e. Carrier Control Over Employee Training**

Under the Services Agreement, Gate Gourmet is responsible for ensuring that all personnel utilized in the performance of the contracted services receive all operational and safety training, including training required by Delta and training required by applicable laws. The Services Agreement provides that Gate Gourmet must also designate an employee to be its Training Coordinator responsible for the training of new employees, dissemination of new procedures and revisions to standard practices, and participation in Delta's "Train the Trainer" activities. Under the Services Agreement, Delta provides and pays for the initial "Train the Trainer" training using Delta's training materials, and Gate Gourmet performs and pays for all other required training.

Gate Gourmet's cabin cleaning employees must attend both initial and annual recurrent Delta-mandated training. They receive computer-based training which includes various courses and modules, attending lectures and presentations and watching videos. Delta determines the subjects of the training, which include the following: Cabin Cleaning Agent (a four-hour class), Aircraft Cabin Search-initial (an annual class), Regulated Garbage, Stormwater (an annual class), Potable Water Servicing (includes an annual class), Deep Cleaning (an eight-hour class), Operate Lavatory Service Truck (includes an annual class), Operate Cabin Service Truck (includes an annual class), Operate Bag Tug (includes an annual class), and Lav Service. Gate Gourmet is not involved in developing the content for any of this training. Delta creates the training modules and provides the training materials. Gate Gourmet's cabin cleaning employees attend the computer-based training and lectures in two Delta training rooms as well as in Gate Aviation Manager Shaw's office in the Delta warehouse on Delta computers. Delta issues the cabin cleaning employees a user identification number and password to log in to the Delta Learning Management System (LMS) to access the training modules on the Delta computers. A Gate Gourmet Safety Operational Supervisor provides the training.

Delta tracks the training provided to Gate Gourmet employees through the LMS, which contains a history of all the classes they have taken. Gate Aviation Manager Shaw meets with Delta trainers on a biweekly basis to verify that Gate Gourmet employees are in compliance with

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<sup>6</sup> Rebecca O'Hara, Gate Gourmet's Vice President of Sales and Service, based in Chicago, testified that carrier flight attendants may give instructions to Gate Gourmet's employees. For example, the flight attendants may ask the employees to leave additional water on the front galley or call out for additional meals.

Delta's training requirements. Shaw also receives monthly emails from a Delta trainer explaining which employees need what type of training.

**f. Whether Employees Are Held Out to Public as Carrier Employees**

Under the Services Agreement, all personnel utilized by Gate Gourmet "shall be properly and professionally attired" at Gate Gourmet's expense while on duty performing the contracted services. The Services Agreement provides that the uniforms and safety equipment must conform to "Delta's standards and requirements as contained in Delta's Ground Operations Manual and/or the equivalent standard practices and manuals of the Designated Carriers, as applicable, and approved in writing in advance by Delta." The Services Agreement further provides that the uniforms "shall include Contractor's or subcontractor's logo in accordance with Delta's standards," and that "Contractor's or subcontractor's employees will be expected to maintain an acceptable level of personal appearance" while performing the contracted services.

The uniforms for Gate Gourmet's cabin cleaning employees have a Gate Gourmet logo and safety vests branded with the letters C/S, which stand for cabin service. The uniforms do not have a Delta logo.

**E. Gate Gourmet Files Grievance/Arbitrator's Award**

Under the NMA between Gate Gourmet and the Council, IBT is the designated representative of Gate Gourmet employees at LAX. At first, IBT requested to negotiate the terms and conditions of Gate Gourmet's two new classifications of employees, the cabin cleaning employees. However, IBT later changed its position and on June 18, 2014, Gate Gourmet filed a grievance against IBT under the NMA for IBT's refusal to represent the cabin cleaning employees. The grievance claimed that the IBT was required to represent these employees under the NMA.

On July 29, 2014, Gate Gourmet and IBT participated in a full evidentiary hearing before a duly appointed labor arbitrator with the System Board of Adjustment. On August 30, 2014, the arbitrator held that the two new classifications created by Gate Gourmet to service the new contract with Delta were covered by the Scope provisions of the NMA. In so ruling, the arbitrator stated that her decision was limited strictly to the NMA contract interpretation issue and that nothing in the decision was intended to express or imply a determination of any related administrative or legal proceedings before the Board or the NMB.

**F. Previous NMB Decisions regarding Gate Gourmet**

In 2000, the NMB certified the Council as the exclusive representative under the RLA of a nationwide craft or class of Kitchen, Commissary, Catering, and Related Employees at Gate Gourmet. *Dobbs International Services d/b/a Gate Gourmet*, 27 NMB 537 (2000). Prior to the 2000 decision, Gate Gourmet operated under the NLRA and Gate Gourmet employees were covered under separate collective bargaining agreements for each specific facility where Gate Gourmet employees were represented. These agreements primarily included agreements between Gate Gourmet and the Teamsters or UNITE HERE. IBT/HERE then formed the Council and

requested that Gate Gourmet recognize it as the representative of all employees in the craft or class system-wide. In 2000, the NMB found that Gate Gourmet was a carrier subject to the RLA. It reached this decision because the facts at the time established that Gate Gourmet employees, on a nation-wide basis, performed work traditionally performed by airline industry employees and, at the time, Gate Gourmet was wholly-owned by SAirGroup, an airline holding company.

In 2007, the NMB reconsidered whether Gate Gourmet was still subject to the RLA. *Dobbs International Services d/b/a Gate Gourmet*, 34 NMB 97 (2007). That case arose out of an unfair labor practice charge filed with the NLRB against Gate Gourmet. In that charge, a union alleged that Gate Gourmet refused to bargain with it over working conditions of Gate Gourmet employees at the Dallas Fort Worth International Airport. In 2006, the Board requested an NMB opinion regarding the NMB's jurisdiction over Gate Gourmet. The NMB reviewed the record in the case to see if, since it last determined its jurisdiction over Gate Gourmet, carrier control over Gate Gourmet and its operations and employees had diminished. The NMB concluded that it had not, and that the facts supported a finding that the level of control exercised by carriers over Gate Gourmet's operations and employees was extensive and satisfied the control prong of the jurisdiction test.

In 2000 and 2007, Gate Gourmet did not have a contract to provide cabin cleaning services to any airline.

### **III. Discussion**

#### **A. Jurisdiction**

The NMB is endowed by the RLA with jurisdiction over common carriers by rail and air engaged in interstate or foreign commerce. Section 2(2) of the NLRA defines "employer" to exclude from the Act's coverage "any person subject to the [RLA]." With respect to determinations of whether to assert jurisdiction over an employer potentially covered by the RLA, "[t]here is no statutory requirement that the Board first submit a case to NMB for opinion prior to determining whether to assert jurisdiction." *Spartan Aviation Industries, Inc.*, 337 NLRB 708, 708 (2002) (citing *United Parcel Service*, 318 NLRB 778, 780 (1995)). It has been the Board's practice to refer the issue of jurisdiction to the NMB in cases where NLRA jurisdiction is doubtful. *Federal Express Corp.*, 317 NLRB 1155, 1155 (1995). The Board gives "substantial deference" to NMB decisions in making jurisdictional determinations. *DHL Worldwide Express*, 340 NLRB 1034, 1034 (2003). However, the Board "will not refer a case that presents a jurisdictional claim in a factual situation similar to one in which the NMB has previously declined jurisdiction." *Spartan Aviation Industries, Inc.*, *supra*.

When an employer is not a rail or air carrier engaged in transportation of freight or passengers, the NMB applies a two-part test in determining whether the employer is subject to the RLA. First, the NMB determines whether the nature of the work is the type 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. *Spartan Aviation Industries, Inc.*, *supra*. Both parts of the test must be satisfied for the NMB to assert jurisdiction. *Airway Cleaners, LLC*, 41 NMB 262 (2014); *Aeroport*

*Services, Inc.*, 40 NMB 139 (2013); *Air Serv Corp.*, 39 NMB 450 (2012), *reconsideration denied* 39 NMB 477 (2012). In most cases involving employers who provide ground services under contract to air carriers, such as Gate Gourmet, there is little dispute about whether contracted services are services traditionally performed by employers in the airline industry. The real question that must be resolved is the degree of direct or indirect ownership or control exercised—not simply contracted for—by the carriers over the employer’s operations. To determine whether there is carrier control over an employer, the NMB looks for evidence of whether a sufficient degree of control exists between the carrier and the subject employer for the latter to be deemed a carrier. The factors the NMB considers include: 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, the carrier’s role in personnel decisions, the degree of supervision exercised by the carrier, the carrier’s control over training, and whether the employees in question are held out to the public as carrier employees. *Menzies Aviation, Inc.*, 42 NMB 1, 5 (2014); *Bags, Inc.*, 40 NMB 165, 169 (2013) (citing *Bradley Pacific Aviation, Inc.*, 34 NMB 119, 130 (2007)).

As noted above, where a party claims RLA jurisdiction, the Board has referred cases to NMB for determination where NLRA jurisdiction appears doubtful. Before deferring to the NMB, the Board will first examine if there is any basis for it to assert jurisdiction over the employer. Thus, the Board has asserted jurisdiction without NMB deferral when the NMB has previously declined jurisdiction in similar factual situations. *D & T Limousine Service*, 320 NLRB 859 (1996) (quoting *United Parcel Service*, 318 NLRB 778 (1995)).

The NMB in recent cases with similar factual situations as the instant case has declined to exercise jurisdiction, finding that the control exercised by carriers, such as providing detailed specifications as to an employer’s performance of work traditionally performed by carriers, is typical of any contract between a service provider and a customer. See, e.g., *Allied Aviation Service Company of New Jersey*, 362 NLRB 173 (2015); *Menzies Aviation, Inc.*, 42 NMB 1 (2014) (the NMB declined jurisdiction in circumstances where through its agreement with the employer, the carrier created performance standards for the employer’s employees; the carrier allowed the employer to use its equipment and facilities for performing the services under the contract; the carrier had the authority to require the employer to remove employees it found unacceptable; the carrier audited the work performed by the employer’s employees; and the carrier required the employer’s employees to comply with the carrier’s initial and recurrent training requirements); *Airway Cleaners*, 41 NMB 262 (2014) (the NMB found that the extent to which the carrier controls the manner in which the employer conducted its business was no greater than that found in a typical subcontractor relationship where the contract did not permit the employer to materially change the composition of its staff without written consent of the carrier and required the employer to provide the carrier 30 days’ notice prior to any staffing changes; the employer had weekly follow-ups with the carrier’s management on staffing issues; the employer retrained an employee at the request of the carrier; and the employer hired a general manager recommended by the carrier); *Bags, Inc.*, 40 NMB 165 (2013) (where the employer provided skycap and other airport services to Delta, the NMB declined to exercise jurisdiction despite the following facts: the carrier required the employer to perform services in compliance with its standard practices; the carrier required training mandated by the Federal Aviation Administration and additional carrier training; the carrier provided training to the

employer's employees who in turn trained other employees; the carrier provided space and equipment to perform the contracted services; and the carrier had the right to bar employees from the airport if they did not comply with safety and other standards).

The Board also recently found that Gate Serve, Gate Gourmet's sister company, was subject to NLRA jurisdiction. *Gate Serve, LLC*, Case No. 29-RC-155741, 2015 WL 7278473 (November 17, 2015). When Delta awarded Gate Aviation the cabin cleaning contract at the four airports, including LAX, Gate Aviation subcontracted the work at LaGuardia Airport to Gate Serve. The facts in the Gate Serve case are substantially similar to the instant case.

In light of the foregoing, and inasmuch as Gate Gourmet does not fly aircraft and is not directly or indirectly owned by an air carrier, I will apply the NMB's two-part test. As an initial matter, it appears that the work performed by Gate Gourmet to support Delta is the type of work traditionally performed by employees of air carriers. See, e.g., *Airway Cleaners, LLC*, 41 NMB 262 (2014) (where the NMB found work consisting of cleaning aircraft and terminals to be traditionally performed by employees of carriers). Since Gate Gourmet's employees at LAX perform duties that have been traditionally performed by carrier employees, I will proceed to the second prong of the test, i.e., the control exercised by Delta over Gate Gourmet.

The control exercised by Delta over how Gate Gourmet conducts business is insufficient to establish RLA jurisdiction. Delta provides Gate Gourmet with warehouse and office space to stage its cabin cleaning and provisioning operation, along with breakrooms in the Delta terminal. Gate Gourmet is required to provide safety and personal protective equipment under the Services Agreement, while Delta provides cleaning supplies, selecting the brands and vendors, as well as equipment, including transportation equipment, office equipment, radios, computers, and email addresses Gate Gourmet uses in its cabin cleaning business. However, evidence of space and equipment provided by Delta is insufficient to establish jurisdictional control without additional evidence of material control by Delta. See, e.g., *Menzies Aviation, Inc.*, supra (the NMB declined jurisdiction in circumstances where the carrier allowed the employer to use its equipment and facilities for performing the services under the contract); *Bags, Inc.*, supra (the NMB declined to exercise jurisdiction where the carrier provided space and equipment to perform the contracted services). While Gate Gourmet aligns its employee schedules, staffing, and shift assignments according to Delta's flight schedule, such evidence similarly does not show that Delta exerts sufficient control over labor relations to find RLA jurisdiction. See, e.g., *Menzies Aviation, Inc.*, supra (insufficient control to establish RLA jurisdiction where the carrier and the employer together determined appropriate staffing levels with final approval by the carrier, at its sole discretion); *Bags, Inc.*, supra (insufficient control to establish RLA jurisdiction where the carriers' daily schedules dictated the staffing levels and shift assignments of the employer's employees). Additionally, the fact that Gate Gourmet's cabin cleaning employees must clean and provision Delta's aircraft according to Delta's detailed specifications, filling out various Delta forms, demonstrates control no greater than that found in a typical subcontractor relationship. See, e.g., *Menzies Aviation, Inc.*, supra ("The fact that [the carrier] dictates standards for work performed is not unusual in a contract for services and does not evidence a significant degree of control over [the employer]'s operations. All contracts specify certain standards that a company must follow in performing services for a carrier."); *Bags, Inc.*, supra (the fact that agreements between the carriers and the employer dictated certain standards that the employer's employees



should follow in performing services for the carriers did not establish that the carriers exercised substantial control over employer's operations because, inter alia, it was expected that carriers would outline what services were necessary under the parties' contractual relationship).

Delta's access to Gate Gourmet's operations and records is likewise insufficient to establish a significant degree of carrier control. Delta has access to and audits Gate Gourmet's records related to the cabin cleaning services it provides to Delta, including, inter alia, employee training records, security checks performed by the employees, various forms Delta requires the employees to fill out, and the hours worked by the employees. However, such evidence is insufficient to establish RLA jurisdiction without additional evidence of material control by Delta. See, e.g., *Menzies Aviation, Inc.*, supra (no RLA jurisdiction where the contract between the carrier and the employer allowed the carrier to audit the employer's records with reasonable notice and the carrier performed a monthly audit of the employer's "operational performance, execution, compliance, quality, training communication, budget, key performance indicators (KPIs) and administrative record keeping").

Significantly, Delta does not exercise meaningful control over Gate Gourmet's personnel decisions. While Gate Gourmet apparently hired all employees of the prior vendor, G2, and hired more employees than it thought necessary at Delta's request, there is no evidence that Delta was present during the application process for hiring Gate Gourmet employees, at interviews, or at orientation of newly hired employees. Thus, although Delta may have had some influence over the initial staffing levels, Gate Gourmet made the final decisions as to which employees to hire based on whether they met Gate Gourmet's minimum requirements. See, e.g., *Menzies Aviation, Inc.*, supra (insufficient control to establish RLA jurisdiction where the carrier and the employer together determined appropriate staffing levels with final approval by the carrier, at its sole discretion). The Airport Annex for LAX provides that Delta approves overtime worked by Gate Gourmet employees, but Gate Gourmet selects the employees who work the overtime and is solely responsible for the payment of wages and benefits, including workers compensation insurance, to its cabin cleaning employees. Gate Aviation Manager Shaw, who oversees Gate Gourmet's cabin service operation, has the authority to hire, discipline, and recommend termination of the cabin cleaning employees without Delta's approval, and Gate Gourmet's Human Resources Department reviews Shaw's disciplinary decisions. Unlike NMB cases finding RLA jurisdiction, there is no evidence that the employer complied with the carrier's direction to hire, fire, or discipline specific employees. Cf., e.g., *Aircraft Services International, Inc.*, 32 NMB 30, 33-34 (2004) (NMB found sufficient control where employer provided evidence that it complied with carrier requests to terminate, discipline, and reassign employees, including terminating a ground service employee after the carrier requested he be removed from the ramp). Here, the evidence shows that final decisions on hiring, firing, and discipline of Gate Gourmet's cabin cleaning employees ultimately rests with Gate Gourmet or Gate Aviation, not Delta.

The examples of discipline in the record do not demonstrate that Delta exercises meaningful control over personnel decisions. In the case where a Gate Gourmet employee was disciplined for causing a delay, Delta did not order Gate Gourmet to issue discipline and Gate Gourmet did not request Delta's approval prior to issuing the discipline. In the case where a Gate Gourmet employee drove under the aircraft wing, Delta merely stated that Gate Gourmet's

corrective action must differ from its previous corrective actions. Gate Gourmet only demoted the employee to the Porter/Commissary position, even though it assured Delta the employee would no longer have any involvement in Delta's cabin cleaning and commissary operation. In fact, Gate Gourmet later reinstated the employee to the Customer Service Representative/Porter position without requesting approval from Delta. See *Primeflight Aviation Services, Inc.*, Case No. 12-RC-113687, 2015 WL 3814049 (June 18, 2015) (when carrier requested removal of an employee, the employer could and did reassign the employee, conduct its own investigation, and decide on the appropriate discipline). In the case where a Gate Gourmet employee drove too fast around aircrafts, although Gate Gourmet gave instructions to its cabin cleaning management staff to pull the employee off the ramp, the evidence does not establish whether or not the employee was in fact disciplined.

The degree of supervision exercised by Delta is also no greater than that found in a typical subcontractor relationship. A Gate Aviation manager, not a Delta manager, oversees Gate Gourmet's cabin service operation. Gate Gourmet supervisors directly manage the cabin cleaning employees and assign them to teams. While Delta's flight operations may require changes in shift assignments and staffing due to weather or other circumstances, such changes do not demonstrate that Delta exercises a significant degree of control over Gate Gourmet. See, e.g., *Bags, Inc.*, supra. Delta personnel do tell the Gate Gourmet dispatcher in the Delta tower about special needs on aircraft, but the dispatcher is the individual who then advises the cabin cleaning employees to provide the services necessary. Delta flight attendants may also give instructions to Gate Gourmet's employees regarding, for example, additional cleaning, but the evidence does not establish how often these additional services are requested. The fact that Delta audits the performance of the cabin cleaning employees does not establish the necessary control. In this regard, Delta supervisors and its third party auditor inspect the work performance of the cabin cleaning employees and report any performance failures to Gate Aviation Manager Shaw. Delta supervisors may communicate directly with cabin cleaning employees about the quality of their cleaning but it is Shaw and Gate Gourmet who investigates and determines if any corrective action should issue. Thus, such evidence does not establish that Delta exercises control greater than that found in a typical subcontractor relationship and is insufficient to establish RLA jurisdiction. See, e.g., *Menzies Aviation, Inc.*, supra.

In addition, Delta's control over Gate Gourmet's employee training is similarly insufficient to establish RLA jurisdiction. Under the Services Agreement, Gate Gourmet must ensure that all its cabin cleaning employees receive operational and safety training, including training required by Delta and training required by applicable laws, and designate a training coordinator who will train employees and participate in Delta's "Train the Trainer" activities. Although Delta determines the subjects, develops the content, and provides the training materials, and Gate Gourmet employees attend the trainings on Delta computers in Delta training rooms, a Gate Gourmet Safety Operational Supervisor actually administers the trainings to the cabin cleaning employees. Delta tracks the training provided to Gate Gourmet employees and merely advises Gate Aviation Manager Shaw if any employees have not fulfilled the required training. Such control over employee training does not demonstrate that Delta exercises a significant degree of control over Gate Gourmet. See, e.g. *Menzies Aviation, Inc.*, supra (where carrier maintained initial and recurrent training requirements and a "train the trainer" program, the NMB found there was insufficient evidence of control to establish RLA jurisdiction); *Airway*

*Cleaners, LLC*, supra (where employees received general and special training by viewing carrier training tapes; representatives of the employer were sent to a carrier training center for several days so they could return to train other employees; and the carrier maintained records of the employees' training, the NMB found insufficient degree of control over the employer to assert jurisdiction); *Bags, Inc.*, supra (where carriers provided training to an employee of the employer who in turn trained other employees, the NMB found such example typical control exercised by a carrier over a subcontractor).

Finally, Gate Gourmet's employees are not held out to the public as Delta's employees. Even though the Services Agreement requires Gate Gourmet's employees to be properly and professionally attired and that uniforms conform to Delta's standards, Gate Gourmet's cabin cleaning employees are attired at Gate Gourmet's expense and their uniforms have a Gate Gourmet logo, not a Delta logo. Furthermore, the Services Agreement specifically states that Gate Gourmet employees are under no circumstances deemed employees of Delta. As such, this factor does not support finding that Delta exercises a significant degree of control over Gate Gourmet.

Since the NMB has recently declined to assert jurisdiction in cases with similar facts, and the Board asserted jurisdiction in the Gate Serve case with substantially similar facts, I find that this case should not be referred to NMB and that Gate Gourmet is subject to NLRA jurisdiction. See *Allied Aviation Service Company of New Jersey*, 362 NLRB 173 (2015); *Menzies Aviation, Inc.*, 42 NMB 1 (2014); *Airway Cleaners*, 41 NMB 262 (2014); *Bags, Inc.*, 40 NMB 165 (2013); *Spartan Aviation Industries*, 337 NLRB 708 (2002); *Gate Serve, LLC*, Case No. 29-RC-155741, 2015 WL 7278473 (November 17, 2015).

In so finding, I recognize that in 2000, the NMB certified the Council as the exclusive representative under the RLA of a nationwide craft or class of Kitchen, Commissary, Catering, and Related Employees employed by Gate Gourmet; that in 2007, the NMB found that Gate Gourmet's Dallas Fort Worth employees were subject to RLA jurisdiction; and that in 2014, a System Board of Adjustment arbitrator held that the cabin cleaning employees were covered by the Scope provisions of the NMA between Gate Gourmet and the Council.

First, when the NMB found that Gate Gourmet was a carrier subject to the RLA in 2000, Gate Gourmet was a wholly-owned subsidiary of SAirGroup, an airline holding company, and the NMB did not apply its traditional two prong test to determine jurisdiction. Although the NMB applied this test to find that Gate Gourmet was within its jurisdiction in 2007, the NMB has repeatedly stated that because contracts and local practices might vary for different employee groups, different operations, and different locations, the NMB's opinion regarding jurisdiction is based on the record before it in each case. See, e.g., *Huntleigh USA Corporation*, 40 NMB 130, 135-136 (2013) (the NMB found employer's George Bush Intercontinental Airport employees were not subject to the RLA even though the NMB found the employer's Oakland Airport employees were subject to the RLA in 2001); *Air Serv Corporation*, 39 NMB 450, 455-456 (2012) (the NMB found employer's shuttle service employees at LaGuardia Airport were not subject to the RLA even though the NMB found the employer's other employees at various airports were subject to the RLA in 2006, 2008, and 2011). The facts in the instant case, as discussed above, are insufficient to establish RLA jurisdiction based on current NMB law.

Second, it is well established by the NMB that the job functions of the cabin cleaning employees herein, i.e. cleaning the cabin interior, are traditionally performed by members of the mechanics craft or class. In this regard, the NMB in *Aircraft Mechanics Fraternal Association (Northwest Airlines)*, 22 NMB 29 (1994), finding cabin cleaning employees a part of the craft or class of “Mechanics and Related Employees,” stated:

In *United Air Lines, Inc.*, 6 NMB 134 (1977), the NMB outlined the following duties as typical of Mechanics and Related Employees:

A. Mechanics who perform maintenance work on aircraft, engine, or accessory equipment.

B. Ground service personnel who perform work generally described as follows: washing and cleaning airplane, engine and accessory parts in overhaul shops, fueling of aircraft and ground equipment, maintenance of ground and ramp equipment, maintenance of buildings, hangars and related equipment, *cleaning and maintaining the interior of aircraft*, servicing and control of cabin service equipment, air conditioning of aircraft, cleaning of airport hangars, building, hangar and ramp equipment.

C. Plant maintenance personnel including employees who perform work consisting of repairs, alterations, additions to and maintenance of buildings, hangars, and the repair, maintenance and operation of related equipment including automatic equipment.

(Emphasis added.) The definition of “Mechanics and Related Employees” as set forth in the *United* decision, and many later cases quoting this definition, remains in effect today. Similarly, employees performing cabin cleaning and lavatory service for a preponderance of their work time are properly placed in the “Mechanics and Related Employees” craft or class. See *American Airlines*, 31 NMB 539 (2004). While there is evidence that Gate Gourmet’s cabin cleaning and catering employees provide some “provisioning,” the traditional commissary items, i.e., beverages and snacks, delivered to the plane by the catering employees are different from the non-food supplies that are replenished by the cabin cleaning employees, i.e., pillows, blankets, and lavatory supplies. The cabin cleaning and catering employees otherwise perform different functions. They are based out of different facilities about three to four miles apart, and they have separate managers and supervisors who do not supervise each other’s employees. Thus, Gate Gourmet’s cabin cleaning employees at LAX would not properly be included in the unit described in the 2000 NMB Certification.

Third, despite the System Board of Adjustment arbitrator’s 2014 ruling, the arbitrator specifically stated that her decision was limited strictly to the NMA contract interpretation issue and that nothing in the decision was intended to express or imply a determination of any related administrative or legal proceedings before the Board or the NMB.

In these circumstances, the decision not to refer this case to the NMB and instead to rely on recent NMB decisions that reflect extant NMB law in an analysis of jurisdiction is appropriate. Accordingly, applying the NMB's two-part test, I find that Gate Gourmet is subject to NLRA jurisdiction because it is not owned or sufficiently controlled by a carrier, as detailed above, to fall under RLA jurisdiction.

## **B. Appropriateness of the Unit**

### **1. Single Facility Presumption**

The Board has long held that a petitioned-for single-facility unit is presumptively appropriate, unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. See *Sutter West Bay Hospital*, 357 NLRB No. 21 (2011); *J & L Plate, Inc.*, 310 NLRB 429 (1993). The party opposing the single-facility unit has the heavy burden of rebutting its presumptive appropriateness. To rebut this presumption, the party opposing the presumption "must demonstrate integration so substantial as to negate the separate identity." See *Sutter West Bay Hospitals*, 357 NLRB No. 21 (2011); *D&L Transportation*, 324 NLRB 160 (1997).

To determine whether the single-facility presumption has been rebutted, the Board examines a number of community of interest factors, including (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between the locations; and (5) bargaining history, if any exists. *J & L Plate, Inc.*, 310 NLRB 429 (1993). The Board considers the degree of interchange and separate supervision to be of particular importance in determining whether the single-facility presumption has been rebutted.

First, the record demonstrates local autonomy over daily operations and labor relations. Local Gate Aviation Manager Shaw and his local supervisors oversee Gate Gourmet's cabin cleaning employees on a daily basis, make day-to-day assignments, and direct the cabin cleaning work. There is no evidence that Shaw and his supervisors are responsible for employees at Gate Gourmet's other airport locations. Additionally, Gate Gourmet has a Human Resources Supervisor who handles labor issues on site at LAX. Shaw, his supervisors, and the local Human Resources Supervisor make final determinations on personnel issues including discipline of the cabin cleaning employees. While there is evidence that labor negotiations with the Council are centrally controlled, the day-to-day direction and assignment of the cabin cleaning employees at LAX are handled locally.

Second, there is little to no evidence regarding the commonality of Gate Gourmet's employee skills, functions, and working conditions among the different airport locations. While there is some vague evidence of carrier requirements in the catering operation at the other airports, there is no evidence about Gate Gourmet's cabin cleaning services at locations other than LAX. The Services Agreement between Gate Aviation and Delta requires the performance of cabin cleaning services at all four airport locations (LAX, Cincinnati, LaGuardia, and

Memphis), but Gate Aviation subcontracted the cabin cleaning work at the three other locations to Gate Serve, Gate Gourmet's sister company.

Third, there is no evidence of interchange of Gate Gourmet's employees between its operations located at LAX and any other airports. There is also no evidence of contact between Gate Gourmet's LAX employees and its employees at any other airports or facilities.

Fourth, the distance between locations is substantial. Initially, there is no evidence of Gate Gourmet employees providing cabin cleaning services at other locations other than LAX under the Services Agreement with Delta. But, as discussed above, Gate Aviation subcontracted cabin cleaning work under the Services Agreement to Gate Serve in Cincinnati, LaGuardia, and Memphis. These airports are in different states and considerable distances apart.

Fifth, the fact that Gate Gourmet has bargained in a system-wide or multi-location unit in the past is not controlling. Gate Gourmet and the Council have had three collective bargaining agreements since 2000 covering a nationwide craft or class of Kitchen, Commissary, Catering and Related Employees. The system-wide unit is much broader than the petitioned-for unit in terms of the locations included. Furthermore, the system-wide unit is not limited to cabin cleaning employees, but also includes catering employees performing kitchen and food-service related work.

Considering these factors, I find that the single unit presumption has not been rebutted. The local autonomy, lack of regular and substantial interchange or contact between Gate Gourmet's employees at LAX and its employees at other locations, in addition to the distances between locations, outweigh the centralized control of labor negotiations and the recent labor negotiations related to cabin cleaning employees. Accordingly, the evidence does not demonstrate integration so substantial as to negate the separate identity. See *Sutter West Bay Hospitals*, 357 NLRB No. 21(2011); *D & L Transportation*, 324 NLRB 160 (1997).

## **2. Accretion**

The Board has defined an accretion as the addition of a relatively small group of employees to an existing unit where these additional employees share a community of interest with the unit employees and have no separate identity. *Safeway Stores*, 256 NLRB 918 (1981).

The Board has followed a restrictive policy in finding accretions to existing units because it seeks to insure that the employees' right to determine their own bargaining representative is not foreclosed. It will find a valid accretion "only when the additional employees have little or no separate group identity and when the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted [footnotes omitted]." *Safeway Stores*, supra. In making this determination, the Board considers many different factors, including the geographic proximity of the facilities, bargaining history, whether the facilities have an integrated operation, similarity in skills and duties of the employees at the facilities, similarity of their working conditions, contact between employees at the facilities, the degree of their interchange, and the extent of common day-to-day supervision of the groups of employees at the separate facilities. *Staten Island University Hospital*, 308 NLRB 58 (1992).

Inasmuch as I have determined that a single location is presumptively relevant, I will now consider whether the cabin cleaning employees are an accretion to the existing unit of catering employees at LAX.

First, the warehouse, where the cabin cleaning employees are based, and the kitchen facility, where the catering employees are based, are geographically separated. The two facilities are about three to four miles apart, and employees cannot get from one facility to the other through the airport.

Second, USWW has a long history of representing cabin cleaning employees at LAX, as far back as the early 1990s. USWW and G2, the vendor that provided cabin cleaning services to Delta at LAX prior to May 2014, had a collective bargaining relationship for at least 12 years. There are currently eight LAX employers that are signatory to a Master Passenger Service Agreement with USWW that covers, inter alia, passenger service employees which includes cabin cleaners. On the other hand, the NMA between Gate Gourmet and the Council does not specifically include the new cabin cleaning classifications. When the NMB certified the Council as the exclusive bargaining representative of the nationwide craft or class of Kitchen, Commissary, Catering, and Related Employees in 2000 and 2007, Gate Gourmet did not have a contract to provide cabin cleaning services to any airline. Until the new contract went into effect on May 15, 2014, Gate Gourmet did not employ cabin cleaning employees. And as discussed above, although the System Board of Adjustment arbitrator ruled that the NMA's Scope provision covered the cabin cleaning employees, the arbitrator specifically stated that her decision was limited strictly to contract interpretation and that nothing in the decision expressed or implied a determination of any related administrative or legal proceedings before the Board or the NMB. While there is evidence of a single instance when Gate Gourmet incorporated a new classification, bus driver, into the NMA, the bus driver only transported catering employees between the kitchen facility and parking lots. Moreover, there is no evidence that IBT has any history of representing cabin cleaning employees at LAX. IBT initially requested to negotiate the terms and conditions of Gate Gourmet's cabin cleaning employees, but later refused to represent them, which led to the dispute before the arbitrator. Thus, any brief bargaining concerning any terms and conditions of employment of the cabin cleaning employees around when the new contract went into effect is too brief to negate the separate identity of the cabin cleaning employees at LAX.

Third, the catering and cabin cleaning operations are not functionally integrated and the two groups of employees generally have different working conditions. The two operations are based in geographically separate facilities three to four miles apart such that employees cannot get from one facility to the other through the airport. The cabin cleaning employees primarily perform their work (cabin cleaning) on the aircraft in the terminal while the catering employees primarily perform their work (preparing meals) at the kitchen facility. The only time the two groups of employees appear to have contact is when they are both on the aircraft, but their skills and duties are separate and distinct. The cabin cleaning employees clean the cabin, cockpit, and the lavatory; perform security searches; dispose the lavatory waste; and provide potable water services to the aircraft. The catering employees, on the other hand, prepare meals, stage and pack those meals along with beverages and snacks into trollies and service carts, and transport those

trolleys and carts to the aircraft. As discussed above, while there is evidence that both cabin cleaning and catering employees provide some “provisioning,” the traditional commissary items, i.e., beverages and snacks, delivered to the plane by the catering employees are different from the non-food supplies that are replenished by cabin cleaning employees, i.e., pillows, blankets, and lavatory supplies. And while there is evidence that the catering employees perform some cleaning (e.g., equipment in the kitchen, galley in the aircraft), the cabin cleaning employees are specifically instructed not to clean items and areas containing food (e.g., galley carts, coffee pots), which are handled by the catering employees. The cabin cleaning and catering employees otherwise perform different functions. The two groups do not take lunch breaks together, and they have separate managers and supervisors who direct their work on a day-to-day basis.

Finally, the degree of interchange between the cabin cleaning and catering employees is extremely limited. Gate Aviation Manager Shaw testified that only a few cabin cleaning employees have transferred permanently to the kitchen facility and that one or two transferred on a temporary basis and then returned to cabin cleaning. While IBT Business Representative Villanueva testified that the cabin cleaning employees hired between late January and May 14, 2014 initially worked in the kitchen and were transferred to the cabin cleaning operation on May 15, 2014, since then, no employees have moved between the catering and cabin cleaning operation on a daily, weekly, or monthly basis. IBT Business Representative Villanueva further testified that catering employees have not been assigned cabin cleaning work; that cabin cleaners do not perform catering work; and that when the cabin cleaning operation is short staffed, catering employees do not fill in for cabin cleaners and vice versa. This evidence is insufficient to demonstrate a substantial and significant interchange between the cabin cleaning and catering employees to show that there is an overwhelming community of interest between them.

Applying the above factors to the instant case, the evidence is insufficient to establish that Gate Gourmet’s cabin cleaning employees at LAX have lost their group identity or that they share an overwhelming community of interest with the catering employees.

Thus, I find that the petitioned-for unit of cabin cleaning employees is not an accretion to the existing RLA-certified, nationwide unit of catering employees.

### **3. Appropriateness of Petitioned-For Unit**

Based upon a consideration of the community of interest and other factors set forth in my discussion above, I find that the petitioned-for unit is appropriate for the purposes of collective bargaining. See *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011) (“when employees or a labor organization petition for an election in a unit of employees who are readily identifiable as a group (based on job classifications, departments, functions, work locations, skills, or similar factors), and the Board finds that the employees in the group share a community of interest after considering the traditional criteria, the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that employees in the unit could be placed in a larger unit which would also be appropriate or even more appropriate, unless the party so contending demonstrates that employees in the larger unit share an overwhelming community of interest with those in the petitioned-for unit”); see also *Fraser Engineering*



*Company, Inc.*, 359 No. 80 (2013), and *Guide Dogs for the Blind, Inc.*, 359 NLRB No. 151 (2013) (both cases applying *Specialty Healthcare* and finding that efforts to add employees to otherwise appropriate units were not supported by overwhelming evidence). I so find because the cabin cleaning employees are a readily identifiable group of employees who share a community of interest and Gate Gourmet has failed to establish that its cabin cleaning employees, the petitioned-for unit, share an overwhelming community of interest with the craft or class of catering employees.

#### **IV. Conclusions and Findings**

Based upon the entire record in this matter, including stipulations by the parties, I find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. Gate Gourmet is an employer within the meaning of Section 2(2) of the Act.
3. Gate Gourmet is engaged in commerce within the meaning of Section 2(6) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>7</sup>
4. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of Gate Gourmet.
5. There is no contract bar, or any other bar, to this proceeding.
6. A question affecting commerce exists concerning the representation of certain employees of Gate Gourmet within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
7. The following employees of Gate Gourmet constitute an appropriate unit ("the Unit") for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Included: All full-time and regular part-time employees performing cabin cleaning services for the Employer, including lavatory and potable water employees, at Los Angeles International Airport.

Excluded: All other employees including guards and supervisors as defined by the Act.

Accordingly, I direct an election in the Unit above.

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<sup>7</sup> Gate Gourmet is a Delaware corporation with a principal location in Virginia and a branch location in Los Angeles, California. It is engaged in the business of airline catering, provisioning, and commissary services. During the year preceding the filing of the petition, a representative period, Gate Gourmet purchased and received, at its Virginia facility, goods valued in excess of \$50,000, directly from points located outside the State of Virginia.

## **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by UNITED SERVICE WORKERS WEST, SERVICE EMPLOYEES INTERNATIONAL UNION.

The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### **Voting Eligibility**

Eligible to vote in the election are those in the voting groups/units who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **Employer to Submit Lists of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office election eligibility lists, one list for each voting group/unit, containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The lists must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the lists should be alphabetized (overall or by department, etc.). These lists may initially be used by the Region to assist in determining an adequate showing of interest. The Region shall, in turn, make the lists available to all parties to the election.

To be timely filed, the lists must be received in the NLRB Region 31 Regional Office, 11500 W. Olympic Boulevard, Suite 600, Los Angeles, California 90064, on or before **February**

**19, 2016.** No extension of time to file these lists will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file these lists. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The lists may be submitted to the Regional office by electronic filing through the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>8</sup> by mail, by hand or courier delivery, or by facsimile transmission at (310) 235-7420. The burden of establishing the timely filing and receipt of these lists will continue to be placed on the sending party. Since the lists will be made available to all parties to the election, please furnish a total of **two** copies, unless the lists are submitted by facsimile or e-filing, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations,<sup>9</sup> the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1015 Half Street SE, Washington, DC 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EDT on **February 26, 2016**. The request may be filed electronically through the Agency's web site, [www.nlr.gov](http://www.nlr.gov),<sup>10</sup> but may not be filed by facsimile.

Dated at Los Angeles, California this 12th day of February, 2016.



Mori Rubin, Regional Director  
National Labor Relations Board, Region 31  
11500 W Olympic Blvd Ste 600  
Los Angeles, CA 90064-1753

<sup>8</sup> To file the eligibility list electronically, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

<sup>9</sup> All references to the Board's Rules and Regulations (Board's Rules) herein are to the Board's Rules as they existed prior to April 14, 2015.

<sup>10</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.