

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL MEDIATION BOARD**

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<i>In re ABX Air, Inc. and</i>)	
<i>Air Transport Int'l, Inc.</i>)	NMB Case No. CR-7157
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**SUPPLEMENTAL POSITION STATEMENT OF
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

This case presents the National Mediation Board with a unique corporate structure, one not found in prior air carrier single transportation system cases, in which a parent holding company has exercised its complete control over the corporate structure and operations of its affiliates to break out the core functions otherwise found in a single air carrier into a network of integrated subsidiaries. As will be discussed, ATSG has morphed into a highly integrated enterprise consisting of several subsidiaries and divisions working together to perform specific functions that previously had been performed directly by ABX Air and ATI. In this regard, ATSG removed from ABX Air core functions of fleet and fleet management, maintenance, marketing, flight following and logistics, and restructured those functions into other wholly-owned subsidiaries. Similarly, ATSG merged two of its air carrier subsidiaries, Air Transport International and Capital Cargo, Inc., into a single air carrier -- the surviving ATI. ABX and ATI operate together with the other ATSG subsidiaries to service ATSG's principal customers DHL Worldwide and Amazon. The subsidiaries act in an integrated fashion to perform the air services negotiated and structured by ATSG. ABX and ATI exchange aircraft and provide subservice to one another, for example, so that neither is required to engage a

third party for those services. Neither maintains a fleet. ATSG aircraft leasing subsidiary CAM owns their aircraft. ATSG transferred ABX's aircraft to CAM, which ATSG acquired in its CHI acquisition. It already held ATI's aircraft. AGS and CAM structure the arrangements under which ABX and ATI receive aircraft. The other ATSG subsidiaries provide ABX and ATI with marketing, flight following and maintenance services.

So, although ATSG holds itself out as providing "Aircraft, Crew, Maintenance and Insurance" service to customers, ABX and ATI effectively only provide the "C" of those services. The other services under the ACMI contracts are provided by other ATSG subsidiaries as directed by ATSG. Of course, ATSG is entitled to structure its business operations as it deems most efficient. What this case plainly presents to the Board, however, is a corporate structure in which the two ostensible air carriers, ABX and ATI, are not air carriers in the sense presented in other cases, but are dependent on other ATSG subsidiaries for core functions necessary to carry out the flying assigned to them by ATSG. ATSG has only maintained a limited and superficial appearance of separation between ABX and ATI at a non-strategic lower level in an effort to evade a single transportation system filing. Accordingly, based upon the specific circumstances involved here, achieving the Board's policy goal of rational labor relations in this case requires that the pilot craft or class be structured in a single transportation system to reflect the integrated carriers under ATSG's control so that the employees' representative and the NMB can fulfill their statutory duties under Sections 2, 5 and 6 to mediate and resolve major disputes without interruption to interstate commerce.

I. The Board’s Single Transportation System Inquiry Looks to the Present Reality of the Carriers’ Operational Structure, and Not Corporate Forms, To Establish A Representation Structure of the Affected Crafts or Classes That Achieves Rational Labor Relations Among the Parties and In the Board’s Statutory Function Under Section 5 of the Act

The single transportation system inquiry established in *TWA and Ozark Airlines*, 14 NMB 218 (1987), which informs the criteria set forth in Section 19.501 of the Board’s Representation Manual, is rooted in a Board policy seeking to maintain stable and rational labor relations between carriers and representatives notwithstanding corporate transactions that may occur. The Board’s investigation focuses on the “current and actual operating conditions for the purpose of rational labor relations.” *US Air-Shuttle, Inc.*, 19 NMB 388 (1992); *Midway Airlines, Inc.*, 14 NMB 447, 449 (1987). The Board has noted that its single transportation system inquiry does not "exalt form over substance." *Midway Airlines*, 14 NMB at 456, *citing Republic Airlines*, 8 NMB at 55-56. Indeed, the Board’s exercise of authority in merger transactions was for the purpose of “prevent[ing] carriers from frustrating representation rights by artful corporate devices.” *Continental Airlines-Continental Express*, 20 NMB 326, 336 (1993), *quoting Air Line Pilots Ass’n. v. Texas Air Int’l*, 656 F.2d 16, 22 (2d Cir. 1981). And while the Board has given weight to different criterion in different cases, what is clear is that the Board decides the single transportation system question based on the totality of the circumstances presented to it in a case with no single criterion being controlling of its inquiry.

As the IBT noted in its initial position statement, the Board has stated that it “has long recognized that it must be flexible in the application of its single carrier criteria in response to contemporary concerns and not allow form to govern substance in its determinations.” *World Airways-North American Airlines*, 40 NMB 29, 39-40 (2012),

citing Seaboard System Railroad-Clinchfield Line, 11 NMB 217, 225 (1984). Consistent with this pragmatic purpose, the Board previously determined that its policy goal of structuring craft or class representation in a manner that furthers rational labor relations supported a finding of a single transportation system in cases presenting unusual or unique corporate structures. The Board seeks to structure the craft or class to be consistent with the realities of corporate control, which determine the scope, economic condition and work of the craft or class since those are the factors that set the collective bargaining dynamic between the carrier and its employees. Structuring the craft or class to be consistent with the ultimate corporate control on the carrier side is the necessary corollary to the Board's long-standing policy of certifying as representative only the national level of an applicant labor organization, so that representation rights are placed at the ultimate decision-making level of the labor organization.

For example, the Board has determined scheduled carriers to be part of a single transportation system with a carrier operating under contract for other carriers (what is referred to as an ACMI carrier). As noted by the IBT in its initial position statement, for example, the Board found a single carrier to exist among Atlas Air and Polar Air Cargo when those carriers had separate operating certificates, separate fleets, separate brands, separate schedules and separate routes systems. *Atlas Air, Inc. and Polar Air Cargo Worldwide, Inc.*, 35 NMB 259, 269 (2008). Atlas is an ACMI carrier providing air cargo lift to other air carriers while Polar is a scheduled air cargo carrier.

Similarly, the Board found a single carrier among the carrier affiliates of Mesa Air Group although those carriers maintained separate operating certificates, did not share schedules (since they all flew as codeshare partners of mainline carriers in accordance

with the schedules established by the partners) and Mesa maintained a branded operation using just one of the carriers. *Mesa Air Group*, 29 NMB 359 (2002).

And in *Republic Airlines*, the Board found a scheduled “mainline” carrier, Frontier Airlines, to be part of a single transportation system with “regional carriers” providing ACMI services to mainline carriers due to the parent holding company exercising control over the operations, finances and corporate structure of the entities. *Republic Airlines*, 38 NMB 138 (2011). The Board so decided despite differences in the nature of the air carriers’ operations, separate operating certificates (and so separate fleets), and separate collective bargaining agreements covering the affected employees. These decisions reflect that “the Board’s examination of whether a single transportation system exists focuses on ‘current and actual operating conditions for the purpose of rational labor relations’”. *US Air-Shuttle, Inc.*, 19 NMB 388 (1992). The Board looks not simply at how the entities are structured, but to how they in fact function to determine if a single system exists. *TWA-Ozark*, 14 NMB at 236.

The Board has found a single transportation system to exist between a mainline carrier and its “regional carrier” subsidiaries based on the overall integrated nature of the entities’ operations, despite lower-level, “day to day” differences among the employee groups’ contracts, labor relations personnel, separate subsidiary corporate entities and the lack of a single seniority list covering the employees. In *Continental Airlines-Continental Express*, 20 NMB 326 (1993), the Board found Continental and its wholly-owned regional affiliates, Rocky Mountain Airways and Britt Airways, constituted a single transportation system. It noted that the carriers had integrated operations with Continental providing ground services, customer service and

reservations, and ticketing for Rocky Mountain and Britt, along with placing labor relations under the oversight of Continental's labor relations vice-president.

In *US Air, Inc.-Shuttle, Inc.*, 19 NMB 388 (1992), the Board determined that US Air and Shuttle, Inc., constituted a single transportation system despite the fact that US Air had not purchased Shuttle, Inc., but entered what the NMB described as a novel relationship to operate the Shuttle under a management agreement as an agent of Shuttle, Inc. Shuttle maintained its separate corporate status and ownership. It had a separate board of directors and corporate officers, including for labor relations, from US Air. While the Board found US Air had authority to negotiate contracts for Shuttle, including collective bargaining agreements, any contract over \$2 million had to be approved by Shuttle's board; US Air could not independently execute that agreement for Shuttle. The NMB noted that US Air's authority over Shuttle's corporate existence was limited since it could not modify Shuttle's certificate of incorporation or other agreements between it and Shuttle.

Yet the Board noted that US Air had full control over scheduling, passenger fares and pricing, catering, reservation policies, employment policies, investment of funds and maintenance of bank accounts, financial management and regulatory compliance. 19 NMB 388. US Air also had responsibility for Shuttle's reservations and scheduling.

The Board noted that Shuttle was held out as a "distinct part of US Air's operation" and was marketed separately from US Air's operation. But it concluded that distinction arose from the nature of a shuttle operation. It noted that US Air controlled virtually every aspect of Shuttle's operations and had consolidated Shuttle's scheduling and reservations functions into its own.

The NMB found that US Air had not integrated any of the Shuttle employee groups with US Air employee groups. But it also noted that many transactions contemplated by its merger procedures may result in two or more carriers operating as a single carrier. And it noted that its inquiry focuses on “current and actual operating conditions for the purposes of rational labor relations.” *Citing Midway Airlines, Inc.*, 14 NMB 447, 459 (1987). It concluded that policy goal required a finding of a single transportation system. Given the degree of US Air control over the aspects of Shuttle’s operations that then determined the scope of work for and size of the affected crafts or classes, the Board was correct in concluding that rational labor relations required a single transportation finding among US Air and Shuttle.

As discussed next, the record in this case establishes that ATSG exercises complete control over the corporate structure and operations of its subsidiaries, and that it has constructed an integrated network of subsidiaries operating together to provide the various services associated with a single carrier, as now reflected vividly in ATSG’s agreement with Amazon to provide ACMI services. ATSG controls the air carriers and its other subsidiaries to determine the conditions that set the size of the craft or class, the scope of work allocated to the craft or class, and the economic condition of the craft or class that in turn set the collective bargaining dynamic for the craft or class. Indeed, ATSG’s control over its air carrier subsidiaries exceeds that shown by US Air over Shuttle, Inc., since ATSG controls the corporate structure and existence of its carriers, their fleets, financials, permitted labor costs and customer base.

In the pilot craft or class, the integrated nature of these entities means that ABX and ATI, which employ pilots, should be found to constitute a single transportation system.¹

II. ATSG Has Used Its Control of Its Subsidiaries, Including ABX and ATI, To Construct An Integrated Network of Affiliates Who Function As A Single Carrier To Provide Air Services to Customers; ATSG's New Agreement with Amazon Vividly Illustrates This Fact

A. ATSG controls the structure, scope and finances of its subsidiaries including ABX and ATI

The various air carrier cases cited by the carriers through their counsel² involve conventional air carriers, which were self-contained as to the core functions of an air carrier -- fleet and fleet management, marketing, dispatch, maintenance and flight crews. The extent to which these self-contained air carriers were integrated together into a single system varied from case to case, and so the Board's decisions concerning the existence of a single transportation system varied from case to case. But this proceeding involves a markedly different corporate structure from the air carriers in those cases. Here, as the IBT noted in its initial position statement, ATSG has broken out from ABX Air core air carrier functions and transferred them to other subsidiaries. This left ABX Air with only limited air carrier functions, e.g., crew, flight scheduling and limited line maintenance. Similarly, ATI contains only limited functions of a traditional air carrier. Other ATSG entities provide these services to ABX and ATI. ABX and ATI had no say in ATSG removing these core air carrier functions and putting them in other entities, and received no compensation; just as they have no say in using their sister subsidiaries for these core functions as opposed to third party entities outside the ATSG

¹ The Board applies its single transportation system criteria on a craft or class basis, so the effect of the integrated nature of operations among all ATSG subsidiaries in another craft or class is not relevant to this proceeding.

² Mr. McClintock has appeared and submitted filings on behalf of both ABX and ATI despite the carriers' claims to be independent of each other.

family. ATSG has its subsidiaries deal with one another to maximize the “synergies” associated with its network. Its “family tree”, published by ATSG subsidiary LGSTX, illustrates the integrated nature of its subsidiaries.



<http://www.lgstx.com/about-us/history-timeline/>

While the carriers claim they perform their own marketing functions, the reality is that their sister entity, Airborne Global Solutions, with its president, ATSG Chief Operating Officer Corrado, provides marketing and customer solicitation to outside parties. As ATSG stated in its 2015 SEC Form 10-K:

Our business development and marketing activities are led by the Company's Airborne Global Solutions, Inc. ("AGS") subsidiary. AGS assists our businesses in achieving their sales and marketing plans by identifying customers' business and operational requirements and by providing sales leads to our subsidiaries. AGS develops bundled, turnkey cargo airline solutions that leverage the entire portfolio of the Company's subsidiaries' capabilities to provide flexible, customized services based on our experience in global cargo operations.

IBT Attachment W, p. 1. While ABX and ATI may have what are effectively customer service representatives who interact with the air carrier customers of ATSG for their allocated flying, it is AGS who markets the entirety of the ATSG family of businesses,

including ABX and ATI, to prospective customers. The carriers presented no evidence, other than conclusory assertions, in response to the evidence of how ATSG holds out its subsidiaries through AGS.

ATSG removed all aircraft from ABX and placed the equipment at CAM, an entity that ATSG acquired in its CHI transaction. Corrado is also President of CAM. CAM already contained the aircraft of ATI and CCIA. So ATSG combined ABX's fleet with that of the other air carriers in CAM. There of course can be no more fundamental factor affecting the pilot craft or class of an "ACMI" carrier than the carrier's aircraft. ABX was stripped of control of its fleet by ATSG. It now only receives aircraft as separately determined by AGS and CAM in dealings with customers. And ABX is required to take its aircraft from CAM.³ It cannot obtain aircraft independently of AGS and CAM. The same is true of ATI. This control over the air carriers' fleets by ATSG through AGS and CAM is powerful evidence of the single system maintained by ATSG.

ATSG similarly removed the bulk of ABX's maintenance department and placed it into the newly-created Airborne Maintenance and Engineering Services (AMES). AMES provides heavy-maintenance, line maintenance and engineering to ABX and ATI. Neither air carrier deals with outside maintenance providers except when an ATSG subsidiary is not able to provide services. *See, e.g.,* ATSG 2015 10-K, p. 14 ("We rely on certain third party aircraft modification service providers and aircraft and engine maintenance service providers that have expertise or resources that we do not have.") To the extent the carriers identify other companies with which they have agreements for

³ It is immaterial that AGS and CAM structure the aircraft transactions for ABX and ATI by leasing the aircraft to customers who in turn lease the aircraft to ABX and ATI. The fleet is still controlled by ATSG via AGS and CAM.

line maintenance services, for example, that is only in stations where ABX or ATI do not maintain line maintenance.

ATSG also removed from ABX its flight following services and placed those functions in the separate Global Flight Source, also under Corrado at AGS. GFS now provides flight following services to both ABX and ATI, its only customers.⁴ As with AMES, ATSG removed a core air carrier function from ABX and put it in a separate subsidiary, which then services both carriers. Of course, if ABX provided these heavy maintenance/engineering and flight following services directly to ATI, the integrated nature of these air carriers would be plain to see.⁵

ATSG transferred hub logistics services formerly under ABX into its subsidiary now known as LGSTX. It markets LGSTX's services along with ABX, ATI and its other subsidiaries.

The interdependence of these subsidiaries, and that ATSG's business is in fact conducted on a corporate family-wide basis, is shown by ATSG's statement that apart from ABX, ATI and CAM, none of its subsidiaries have sufficient outside revenue to warrant separate SEC reporting. ATSG 2015 10-K, p. 3 ("Our other business operations, including aircraft maintenance, engineering and modification services; aircraft part sales; equipment leasing and maintenance; and mail and package handling do not constitute reportable segments due to their size.")

⁴ The carriers attempt to sidestep the fact that GFS provides flight dispatch and following services to both carriers with an irrelevant argument concerning the regulatory requirement for such services.

⁵ ATSG has stated of ABX and ATI in its SEC filings "Due to the similarities among the Company's airline operations, they are aggregated into the ACMI Services segment." ATSG 2015 10-K, p. 3. This is the same consolidated reporting of subsidiaries used by Republic Airways Holdings. *Republic Airlines*, 38 NMB at 146, 157 (air carrier subsidiaries reported on consolidated basis).

Finally, as the IBT noted in its initial position statement, ATSG provides hull and liability insurance for both carriers through a single policy -- the "I" in ACMI. Again, ATSG has used its control over the air carriers to structure them so that they have no independent fleet or customer agreements and are dependent on other ATSG subsidiaries to provide necessary services to fulfill customer agreements. And it is ATSG that determines the amount of flying each carrier receives.

ATSG's integration of its subsidiaries has increased over time from the 2007 CHI transaction, as illustrated by ATSG's 2013 merger of ATI and CCIA. As Hete stated in March 2013, "This merger is the *most significant of a number of steps we are taking* throughout ATSG to better fit our airline overhead and operating cost structures to the airline operations we have today, and *expect to add in the future.*" IBT Attachment X (emphasis added). ATSG's ability to merge the air carriers when it wishes shows its full control over them. And this "most significant" step occurred more than five years after the CHI transaction. This increasing integration of the ATSG network over time illustrates why the NMB focuses on the current state of the carriers' operations under its single transportation system inquiry.

It bears repeating that Hete explained to a BB&T market conference in 2013 that ATSG's reasoning behind merging ATI and CCIA, but maintaining ABX and ATI unmerged, was driven by its view of the cost of the pilot contracts:

Questioner: you were able to combine ATI and CCIA. What limits you from not taking that combination and combining with ABX? *Is it a pilot contract?* But you'd like to do that, right?

Joe Hete:

Yeah. If you look at the -- when we first set up the business model with the acquisition of Cargo Holdings International back in '07, we actually had

the three airlines operating. ***An interesting part of that is each airline had a much different economics associated with its crew contract. So that's the key driver there in terms of the -- if we would roll them into ABX, for example, they always go to the highest common denominator, not the middle or the low, and so it's really a cost equation.***

IBT Attachment Y (BB&T conference transcript 2-13-13), p. 8 (emphasis added).

ATSG's complete corporate control over its subsidiaries dictates the collective bargaining dynamic in which the crafts or classes operate. The carriers, for example, concede that ATSG (and ABX) CEO Hete sets the corporate strategy of the entire ATSG family, including ABX and ATI, and sets the permitted financial cost for pilot contracts. Carriers' Response at 31; Vestal Decl. ¶ 5. Those two factors then set the collective bargaining goals for the carriers. While the carriers offer only conclusory assertions that Hete is not directly involved in negotiation strategy for ABX and ATI, assertions the IBT has refuted by evidence of his repeated involvement, even if that were true, his power over the financial cost of the agreements and the corporate strategy to be achieved under the agreements means negotiations strategy carried out by lower-level officers is nothing more than implementing Hete's strategy. It is Hete setting the outcomes that must be achieved by the carriers in bargaining. If he lets his subordinates arrange the contract in a way that achieves agreement within his set parameters, that is no different than the CEO and CFO of a carrier setting for a vice-president of labor relations the strategic goals and allowable cost for a contract, but leaving the particulars of achieving those parameters to the vice-president directly conducting the bargaining. No one would argue that the vice-president in this scenario is independent of the control of the CEO. But that is the argument made by the carriers, which they expect the Board to seriously entertain. Indeed, that the carriers make the same assertion about Hete's lack of

involvement in negotiations for ABX, of which he is CEO, as for ATI illustrates the absurdity of their argument.

The facts presented by the IBT illustrate the extent to which Hete uses this control to whipsaw the pilot groups against each other. As reflected in the declaration of Richard Ziebarth, Hete has routinely engaged in discussions with IBT Local 1224 concerning the separate pilot groups and the allocation of aircraft and flying among them, either to obtain agreement to the swapping of aircraft between the air carriers or to threaten the ABX pilots, whose contract is more costly to ATSG, with the transfer of current or future flying to ATI unless the ABX pilots accede to Company demands. See Attachment Z, Declaration of Richard Ziebarth, ¶¶ 5-7, 14-15. As will be seen next, ATSG's new agreement with Amazon vividly illustrates that the ATSG subsidiaries are marketed and contracted on a consolidated basis and that Hete exploits the Amazon contract in an effort to extract desired contract terms from the pilot groups.

B. ATSG's new Agreement with Amazon Was Contracted By ATSG Through AGS and ABX and ATI Only Receive the Flying Allocated to Them by ATSG in Its Dealings with Amazon

ATSG set forth in detail in its 2015 10-K report how it structured its new agreement with Amazon. The arrangements shows that ATSG markets and sells its subsidiaries' services on a consolidated basis, and the conclusory assertion of ABX and ATI executives to operate independently of one another and ATSG are a sham. ATSG stated:

In September, 2015, we began to operate a trial air network for Amazon Fulfillment Services, Inc. ("AFS"), a subsidiary of Amazon.com, Inc. ("Amazon"). The network grew to five dedicated Boeing 767 freighter aircraft during 2015 and includes services for cargo handling and logistical support. On March 8, 2016, the Company entered into an Air Transportation Services Agreement (the "ATSA") with AFS pursuant to which CAM will lease 20 Boeing 767 freighter aircraft to AFS, including 12 Boeing 767-200 freighter aircraft for a term of five years and

eight Boeing 767-300 freighter aircraft for a term of seven years. The ATSA, which has a term of five years, also provides for the operation of those aircraft by the Company's airline subsidiaries, and the performance of hub and gateway services by LGSTX. CAM owns all of the Boeing 767-200 freighter aircraft and either owns or has entered into commitments to purchase all of the Boeing 767-300 freighter aircraft that will be leased and operated under the ATSA. The ATSA becomes effective April 1, 2016.

IBT Attachment W (ATSG 2015 10-K) at 1. ATSG nowhere differentiates ABX and ATI under its "Air Transportation Services Agreement" with Amazon. And ATSG also negotiated agreements for its logistics subsidiary, LGSTX. It noted that CAM owned or would own all aircraft covered by the agreement. The carriers concede that ATSG through AGS entered the agreement with Amazon, and ABX and ATI only receive the amount of flying assigned to them by Amazon and ATSG, and execute "work orders" for the purpose of facilitating the flying allocated to them. Starkovich Decl. ¶ 23; O'Grady Decl. ¶ 25.

ATSG also explains that only it could make the agreement with Amazon because a crucial component of the agreement was that Amazon received 19.9% of ATSG equity in stock warrants.

In conjunction with the execution of the ATSA, the Company and Amazon entered into an Investment Agreement and a Stockholders Agreement. The Investment Agreement calls for the Company to issue warrants in three tranches, which will grant Amazon the right to acquire up to 19.9% of the Company's outstanding common shares measured as further described below. The exercise price of the warrants will be \$9.73 per share, which represents the closing price of ATSG's common shares on February 9, 2016

ATSG 2015 10-K, p. 2. Only ATSG could negotiate a commitment of its stock as part of the agreement with Amazon. And since that equity stake was premised on the overall value of the Amazon agreement to ATSG, it was obviously the parent who negotiated the agreement.

Moreover, if Amazon did not receive the ATSG stock warrants, it had the ability to refuse further aircraft deliveries, stop paying certain costs associated with the five aircraft then being operated by the ATSG carriers, and cancel further work orders for flying with the ATSG carriers.

Under the recently executed agreements with Amazon, we have issued warrants, which, upon their exercise in full, would exceed the number of ATSG common shares currently authorized by stockholders. The Company's stockholders will be asked to approve an amendment to the Certificate of Incorporation of the Company at the next annual meeting of stockholders to increase the number of authorized common shares and to approve the exercise in full of the related warrants. In the event that antitrust clearance or DOT approval is not obtained for Amazon's exercise of the warrants within six months of the applicable regulatory filing, or if stockholders do not approve at the next annual meeting the increase in the number of authorized common shares required for Amazon's exercise in full of the warrants, Amazon may elect to terminate the Investment Agreement. In the event of the termination of the Investment Agreement, the unvested portion of the warrants would be canceled and terminated. In addition, if Amazon terminated the Investment Agreement because the Company's stockholders did not approve the increase in the number of common shares required for Amazon's exercise in full of the warrants, under the terms of the ATSA, Amazon would have no obligation to (i) pay certain increased monthly charges associated with the operation of each the first five aircraft prior to the third anniversary of the ATSA and make a one-time payment in an amount constituting the difference between such increased monthly charges and the monthly charge then in effect between the execution of the ATSA and the third anniversary date; (ii) enter into any aircraft lease with respect to any additional aircraft for which the scheduled delivery date comes after May 31, 2016; (iii) take delivery of any additional aircraft that are subject to a signed aircraft lease for which the scheduled delivery date comes after May 31, 2016 (Amazon will be entitled to terminate any such aircraft lease without penalty); or (iv) enter into any further work orders as provided under the ATSA.

ATSG 2015 10-K, pp. 12-13. It was the equity terms which only ATSG could negotiate that then dictated the extent to which either air carrier continued to receive flying from Amazon. Neither ABX nor ATI has any independent ability to obtain flying from Amazon or obtain aircraft to service Amazon flying.

As he has previously done with additional DHL flying, IBT Attachment Z (Ziebarth Decl.) ¶¶ 4-7, Hete exploits ATSG's control of Amazon flying to leverage the pilots in collective bargaining. Following a service disruption in November 2016 precipitated by a major dispute between the parties, Hete met with ABX Air pilot representatives. Ziebarth Decl. ¶¶ 10-16. He asserted in that meeting that ABX would not receive any further flying from Amazon, but the flying would be directed to ATI. Ziebarth Decl. ¶ 13-14. Hete also demanded the resignations of the ABX pilot representatives and that the ABX pilots agree to transfer an ABX aircraft 313AZ to ATI to service Amazon. *Id.* ¶¶ 15-16. ABX would only receive a replacement aircraft later in 2017 after ATI received all of its Amazon aircraft. *Id.* Richard Corrado also discussed with Ziebarth transfer of this aircraft from ABX to ATI, although he is technically not an ABX officer. *Id.* ¶ 17.

Hete has continued his pattern of manipulating the currently separate crafts or classes in collective bargaining. On various occasions in 2015, Hete discussed with Ziebarth the issue of combining ATI and ABX. Ziebarth Decl. ¶ 8. He made clear he continued to follow the labor cost strategy he identified in relation with the ATI and CCIA merger of merging the air carriers where an "economic benefit" (i.e., favorable pilot labor contract terms) was obtained. He offered to combine ABX and ATI if the ABX pilots agreed to a long-term collective bargaining agreement. Ziebarth Decl. ¶ 8.

ATSG's total control over its subsidiary air carriers, and exploitation of that control in collective bargaining with the pilots of ABX and ATI, illustrates precisely the adverse collective bargaining dynamic that the single transportation system doctrine seeks to prevent. Employee groups are pitted against one another through the parent's control over the carriers' operations and finances to their mutual detriment. It is

essential to achieving the purposes of the Railway Labor Act expressed in Section 1(a), the effectiveness of the employees' representative and the Board's statutory function as mediator to establish a single transportation system among ABX and ATI that will accurately reflect the corporate control exercised by ATSG over both.

III. The Carriers' Reliance On Limited, Superficial Differences Among the Air Carriers Maintained by ATSG to Evade A Single Carrier Determination Cannot Offset the Record of Substantial Integration of ABX and ATI under ATSG

Predictably, the carriers' rely on the certain limited incidents of separation they have maintained under ATSG's corporate structure to argue against the existence of a single transportation system in this proceeding. The record here shows that in the critical areas of control of management, finance, fleet, labor relations, customer contracts, cross-utilization of aircraft, services and facilities, ABX and ATI have been substantially integrated into a single transportation system controlled by ATSG. Any limited differences among certain subsidiary officers, pilot training programs, or certain benefit plans or work rules, for example, are immaterial to ATSG's integration of the carriers. Further, these limited incidents of differences are to be expected when carriers maintain separate operating certificates and have different collective bargaining agreements covering their employees. The Board has repeatedly held that separate operating certificates among carriers do not preclude a single transportation system finding.⁶ Similarly, the Board has concluded that separate collective bargaining

⁶ See *Chautauqua Airlines-Shuttle America-Republic Airlines-Midwest Airlines-Frontier Airlines-Lynx Aviation*, 37 NMB 148 (2010); *Atlas Air, Inc.-Polar Air Cargo Worldwide, Inc.*, 35 NMB 259 (2008); *US Airways, Inc.-America West Airlines, Inc.* 33 NMB 339 (2006); *US Airways, Inc.-America West Airlines, Inc.*, 33 NMB 221 (2006); *US Airways, Inc.-America West Airlines, Inc.*, 33 NMB 151 (2006) *US Airways, Inc.-America West Airlines, Inc.*, 33 NMB 49 (2006); *American Airlines, Inc.-Trans World Airlines, LLC*, 29 NMB 240 (2002); *American Airlines, Inc.-Trans World Airlines, LLC*,

agreements, and necessarily differences in rates of pay, rules and working conditions between those separate agreements, do not preclude a finding of a single transportation system. *Flagship Airlines*, 23 NMB 331 (1995); *Republic Airlines*, 38 NMB at 150, 155. After all, that is to be expected in a single carrier proceeding involving different representatives. A single representative cannot negotiate a single contract until a single craft or class is established. And the fact that the employee groups have not been integrated does not prevent the finding of a single system. *Shuttle, Inc.*, 19 NMB 388 (1992).

A. *The Board Should View Control By the Overlapping ATSG Officers at Key ATSG Subsidiaries, and that Key Officials at All ATSG Subsidiaries Are Legacy ABX Executives Appointed by ATSG, as Supporting the Existence of a Single Transportation System*

As the IBT showed in its initial position statement, ATSG has staffed its subsidiaries' key executive positions with ATSG officers and legacy ABX officers. Joe Hete is CEO of ABX Air-- ATI has no CEO -- and that position facilitates his direct control over ATSG's larger air carrier. Rich Corrado, ATSG COO, is President of AGS, facilitating ATSG's direct control over the customer base and fleet of the air carriers. The other key officers of the ATSG subsidiaries are all legacy ABX personnel. And it was ATSG who placed them there. The carriers offer nothing in the record to establish that the officers of ABX, ATI and the other ATSG subsidiaries were selected independently of ATSG, for example, through a nationwide search by the subsidiaries' directors in which outside candidates were considered and ATSG was not involved. Rather, it was Hete

29 NMB 223 (2002); *American Airlines, Inc.-Trans World Airlines, LLC*, 29 NMB 201 (2002); *Flagship Airlines, Inc.-Executive Airlines, Inc.-Wings West Airlines, Inc.-Simmons Airlines, Inc.-AMR Eagle, Inc.-AMR Corp., and American Airlines*, 22 NMB 331 (1995); *Continental Airlines-Continental Express*, 20 NMB 326 (1993) *Midway Airlines, Inc.*, 14 NMB 447 (1987).

and ATSG who put the officers at ATI, AMES, etc., while reserving to himself and Corrado the lead executive positions at the most important ATSG subsidiaries. The Board should view the question of overlapping officers and directors in light of this control exercised by ATSG over its subsidiaries' officials, which is the same control Republic Airways Holdings exercised over the appointment of officers at its air carrier subsidiaries. *Republic Airlines*, 38 NMB at 147-48.

The carriers, as to be expected, emphasize different personnel in subordinate executive positions in an effort to evade a single system finding. Again, given the carriers' separate operating certificates, different officers is unsurprising. And the carriers fail to present credible evidence to refute the necessary inference that these subordinate executives were appointed by ATSG. The carriers' officers do interact when they need to cross-utilize for aircraft recovery, for example, and that is not "rare."⁷ Since these are ACMI carriers, with routes and schedules set by their customers, it is no surprise that the officers with day-to-day operations responsibility do not interact except when their assigned flying goes off schedule. If their respective operations are flying as assigned, there is no need for them to interact; any more than there is need for chief pilots in different fleets at an airline to interact when flight schedules are proceeding normally.

B. *The Carriers' Separation of "Day to Day" Labor Relations Does Not Affect ATSG's Clear Corporate Control of the Scope of the Carriers' Operations and the Parameters of the Carriers' Collective Bargaining Relationships*

⁷ In their effort to manufacture the appearance of separate management personnel who do not interact, the carriers go so far as to plagiarize a factual finding by the NMB in *World Airways-North American*, that the management officials rarely interacted except on a "social basis", and present it as the factual testimony of Robert Boja and John Vestal. *Compare Carriers' Position Statement* at 7, Boja Decl. ¶ 5 and Vestal Decl. ¶ 4, with *World Airways*, 40 NMB at 39. This amusing contrivance should of course be given no weight.

The carriers claim that ATSG does not control their labor relations. Carrier Position Statement at 31. Since Hete is CEO of ABX, the carriers' argument rests entirely on a claim that ATI labor relations are not under the control of ATSG and Hete. But, as the IBT has shown already, and the carriers concede, Hete determines the corporate strategy for the various ATSG entities, including ABX and ATI, and sets the permissible costs of their contracts. And ABX and ATI are wholly dependent on ATSG to obtain flying and aircraft. ATI management does not have the discretion to refuse the direction of Hete on the corporate strategy to be pursued in collective bargaining or to exceed the cost he sets. That Hete may leave to his subordinates the particulars of bargaining strategy to meet the parameters he sets is unsurprising and uninformative of the corporate control question at the heart of the single transportation system inquiry.⁸ Moreover, Hete has repeatedly intervened with the ABX pilot group in pursuit of his corporate goals. Ziebarth Declaration, ¶¶ 4-16.

That different personnel at the two carriers perform "day to day" contract administration of the separate pilot agreements is not material in this case. *Republic Airlines*, 38 NMB at 148 (noting that day to day labor relations administration was done by different personnel at Frontier and Republic.) It is no more material than the fact that the respective representatives have delegated contract administration responsibilities to their local organizations at ABX and ATI.

⁸ The carriers admit that ATI officers consult Hete on pilot terminations. Vestal Decl. ¶ 26.

C. The Carriers Admit They Regularly Engage In Cross-Utilization of Aircraft and the Transfer of Aircraft

The carriers concede they cross-utilize their services through subservice. Starkovich Decl. ¶ 30; O’Grady Decl. ¶ 34. They admit their work order agreements with DHL and Amazon were negotiated to only allow them to use an “affiliate” (that is, ABX or ATI), not a third-party carrier, in subservice. They continue to cross-utilize for this purpose; as shown by the October 2016 and February 2017 flights where ATI flew ABX’s Tampa (TPA) revenue flight and ABX flew ATI’s Phoenix (PHX) revenue flights to and from Wilmington, OH (ILN) so that the ABX crew could move an ABX plane from Phoenix to Wilmington for maintenance without a ferry flight. See IBT Attachment AA-1, AA-2 (10/21-25/16, 2/2-5/17 flight records). The carriers identify no instance in which they used a non-ATSG carrier in subservice. That they may perform subservice for other carriers is not the issue. Only they perform subservice for one another. They attempt to downplay their cross-utilization by noting that it only occurs due to an aircraft recovery to avoid a service failure.⁹ This is not true, as evidenced by the fact that the swap of flights in IBT Attachment AA was for scheduled maintenance purposes, not an “aircraft on ground.” But it is unsurprising that ACMI carriers, whose contracts specify the amount of “lift” they provide a customer and whose routes and schedules are set by the customer, usually only require cross-utilization when an aircraft is on the ground or they face another type of service failure. Otherwise, they simply fly their assigned schedule

⁹ The O’Grady and Starkovich declarations on this subject illustrate the contrived nature of the carriers’ evidence. O’Grady’s declaration includes the word “rare” before “occasions” in describing the frequency the air carriers recover one another’s flights, along with a notation from counsel for the carriers asking “can we say “rare”?” O’Grady Decl. ¶ 34. The word “rare”, however, does **not** appear in Starkovich’s declaration. Starkovich Decl. ¶ 30.

using the aircraft dedicated to it. The record shows that when ABX or ATI are not able to service their schedule, they use one another to cover it.

And the carriers admit they transfer aircraft. They misdirect this issue by falsely accusing the IBT of characterizing these aircraft transfers as “casual,” whatever that means. The regulatory requirements imposed by the FAA for such transfers are not the issue. The Republic carriers had similar requirements governing their aircraft swaps. *Republic Airlines*, 38 NMB at 152 (noting Republic transferred aircraft between the separate operating carriers). Nor is the issue that the carriers reexecute leases with the customer to support the transfer. What matters is the carriers exchange aircraft with each other and without compensation. And as Ziebarth’s declaration shows, it is Hete and Corrado who determine those transfers.

In addition to their cross-utilization of aircraft in subservice and transfer of aircraft, ABX and ATI cross-utilize facilities. ATI uses a facility in Allentown, PA for which ABX is the lease signatory. See IBT Attachment BB (Lehigh Valley Airport lease).

D. While Combined Flight Schedules and Routes Should Not Be A Material Factor In A Single System Determination Among ACMI Carriers, Since Their Customers Set Routes and Schedules, ATSG’s Amazon Service Is Published Internally On A Combined Basis for ABX and ATI

As the Board concluded in *Republic Airlines*, combined routes and schedules are not a material factor for a single system investigation among ACMI carriers given that the carriers’ customers determine the routes and schedules flown and different customers’ routes are not combined. *Republic Airlines*, 38 NMB at 151. But ATSG in fact publishes the Amazon flight schedule on a combined basis for ABX and ATI under an ABX heading. See IBT Attachment CC (Amazon Schedule)

E. The Carriers Concede They Provide Line Maintenance to One Another In Addition to Each Using AMES for Heavy Maintenance; There Is No Showing that the Carriers Use A Third-Party Instead of One Another

The carriers concede that they use one another's line maintenance services. Carriers' Position Statement, p. 22. They assert this is pursuant to contracts. That is immaterial. There is no showing, and cannot be, that those contracts were the subject of arms-length negotiations, for example, an open request for proposal process in which third parties competed. And there is no showing that either ABX or ATI uses a third-party instead of their affiliate in a station where ABX or ATI has line maintenance, or that they in fact have the discretion to not use one another. Similarly, each air carrier uses AMES for heavy maintenance, and, as ATSG states, they only use another heavy maintenance provider if AMES cannot provide the service. The carriers' maintenance practices reflect the integrated nature of the ATSG entities -- they use affiliates for all service the affiliates can provide.

F. The Carriers Admit They Use the Same Software for Scheduling and Training As Well As The Same Training Facility

The carriers acknowledge that they use the same software for scheduling and online training. Carriers' Position Statement, p. 27. They assert that their scheduling rules and training programs differ. Again, that is unsurprising for air carriers with separate operating certificates. The carriers in *Republic Airlines* had different scheduling rules and training programs based on their differing fleet types and collective bargaining agreements. ABX and ATI use ABX's training simulator to the extent of its capacity, rather than third parties. That the specific programs used in the simulator differ does not diminish this integration of training operations. And as shown by IBT Attachment DD, ATI uses the ABX simulator with an equivalent frequency to ABX.

G. Certain other TWA/Ozark indicia are immaterial to this investigation

The nature of ATSG's ACMI operation renders other indicia typically evaluated by the Board less relevant in determining whether ATSG's air carrier subsidiaries constitute a single transportation system. Under these ACMI arrangements, the carriers adopt the insignias, logos, livery and other markings related to Amazon and DHL. Both ABX and ATI's aircraft serving joint customers are in the same livery.

The uniforms and insignia, the carriers' nitpicking differences over pins, etc. aside, are substantially similar. Since these carriers do not carry public passengers, so this factor should not be considered material. *Republic Airlines*, 38 NMB at 152 (noting carriers would retain different uniform, log and insignia).

IV. The Board Should Request Further Documents From the Carriers

The IBT submits that the Board should request a copy of the agreement between AGS and Amazon Flight Services for inspection so that it may review the structure of the agreement and the operation of ATSG affiliates under it. The Board should also request copies of agreements between AFS and ABX and AFS and ATI. Finally, the Board should request the agreements between AGS and Amazon and AFS and the air carriers concerning aircraft so that it may review the structure of the transactions.

The Board should request the similar agreements among the ATSG entities and DHL.

And the Board should request all intercompany agreements among ABX or ATI and another ATSG affiliate (including among the air carriers).

Finally, the Board should request all agreements between ATSG affiliates and third parties which cover the type of services which are the subject of an intercompany agreement between ABX or ATI and another ATSG affiliate.

V. CONCLUSION

ATSG has moved steadily since its acquisition of CHI to construct a fully integrated network of subsidiaries, which together provide the range of ACMI-related services. That plan to “better align”, in Hete’s words, the ATSG entities to its current and future customers, IBT Attachment X, separated the air carriers’ core functions into a family of complementary subsidiaries, and has culminated, as seen in ATSG’s agreement with Amazon, in ABX and ATI, along with the other ATSG subsidiaries, constituting a highly-integrated and interdependent air operation. The air carriers cannot provide air services to DHL, Amazon or other customers absent the necessary airline functions provided by other ATSG affiliates. And they are wholly dependent on ATSG for customers and aircraft. The reality of ABX and ATI’s integrated and interdependent relationship with one another and the entire ATSG corporate family requires a determination that a single transportation system exists covering ABX and ATI in the pilot craft or class to align the employees’ representation rights with the reality of corporate control over the air carriers.

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