



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the

TRANSPORTATION
COMMUNICATIONS
INTERNATIONAL UNION

alleging a representation dispute
pursuant to Section 2, Ninth, of
the Railway Labor Act, as
amended

involving employees of

METRO-NORTH RAILROAD

39 NMB No. 55

FILE NO. (CR-6985)

FINDINGS UPON
INVESTIGATION

June 28, 2012

This determination is a clarification to the Board's decision issued June 13, 2012 which addressed the application of the Transportation Communications International Union (TCU or Organization), an affiliate of the International Association of Machinists and Aerospace Workers, alleging a representation dispute pursuant to the Railway Labor Act¹, 45 U.S.C. § 152, Ninth (Section 2, Ninth), among Information Technology (IT) employees at Metro-North Railroad (Metro-North or Carrier). *Metro-North RR*, 39 NMB 423 (2012). TCU currently represents the Clerical, Office, Station and Storehouse Employees at Metro-North and asserts that the IT employees are part of the Clerical, Office, Station and Storehouse Employees craft or class. In its previous decision, the National Mediation Board (NMB or Board) found Metro-North's IT employees part of the craft or class of Clerical, Office, Station and Storehouse Employees. This decision addresses the following seven positions that were not addressed due to a clerical error: 1) Computer Support Analyst

¹ 45 U.S.C. § 151, et seq.

II, 2) Database Administrator, 3) Database Administrator/Architect, 4) Manager Projects & Assets, 5) Manager Systems, 6) Manager Administration & Budgets, and 7) Sr. Firewall Support Analyst.

For the reasons set forth below and in the Board's prior determination, the Board finds the seven additional IT positions at Metro-North are part of the craft or class of Clerical, Office, Station and Storehouse Employees.

PROCEDURAL BACKGROUND

On July 21, 2010, TCU filed its application with the Board and it was assigned File No. CR-6985. The Board assigned Maria-Kate Dowling to investigate. On August 13, 2010, Metro-North filed its initial position statement. TCU filed its response on September 9, 2010. On September 17, 2010, pursuant to the Investigator's request, Metro-North provided job descriptions for all job titles at issue, as well as company organizational charts describing the supervisory structure of the Carrier's IT Department.² Metro-North filed an additional statement on September 20, 2010. Investigator Dowling requested additional information from the participants, with both TCU and Metro-North responding on October 29, 2010. The case was reassigned to Investigator Cristina A. Bonaca on March 6, 2012.

ISSUES

Are Metro-North's IT employees management officials? If not, are they properly in the Clerical, Office, Station and Storehouse Employees craft or class?

CONTENTIONS

METRO-NORTH

Metro-North opposes the TCU's application and requests the Board to dismiss it in its entirety or authorize an election for the employees in its IT Department. Metro-North first contends that the positions are managerial in nature and have been considered management positions for over 25 years. *See Metro-North, above*, at 424 (employees exercise a high level of autonomy and independent judgment, supervise other employees, commit carrier funds, affect company policy, have access to confidential and privileged information, and are salaried and participate in management compensation and benefit programs).

² In its September 17, 2010 submission, Metro-North noted that three positions are no longer in existence at Metro-North: 1) Administrative Assistant, 2) Sr. Assurance Analyst, and 3) Sr. Systems Programmer.

Next, Metro-North argues that the IT employees should be excluded under the alter ego doctrine as these positions are so “substantially intertwined with the significant managerial responsibilities....that they are effectively the managers’ alter ego for purposes of representation under the Railway Labor Act.” See *China Airlines, Ltd.*, 6 NMB 434, 440 (1978). Finally, Metro-North contends that the IT employees do not share a community of interest with the Clerical, Office, Station and Storehouse Employees craft or class. See *Metro-North*, 39 NMB 423, 425 (2012) (positions currently represented in the Clerical, Office, Station and Storehouse Employees craft or class at Metro-North are unskilled hourly positions that do not require any level of advanced education or training).

TCU

The TCU contends that Metro-North’s IT employees are appropriately part of the Clerical, Office, Station and Storehouse Employees craft or class. *Id.* at 425 (Board has repeatedly found IT employees part of the Clerical, Office, Station and Storehouse Employees craft or class); *Long Island Rail Road*, 24 NMB 664 (1997); *Republic Airlines, Inc.*, 11 NMB 57 (1983). Further, TCU states that the IT employees are not management officials as they cannot hire fire or discipline employees, they cannot create carrier policy, and their ability to exercise independent judgment is based on their technical knowledge. The Organization also states that the alter ego argument does not apply here and was not supported by substantive evidence.

FINDINGS OF LAW

Determination of the issues in this case is governed by the RLA, as amended, 45 U.S.C. § 151, *et seq.* Accordingly, the Board finds as follows:

I.

Metro-North is a common carrier by rail as defined in 45 U.S.C. § 151.

II.

TCU is a labor organization and/or representative as provided by 45 U.S.C. § 151, Sixth.

III.

45 U.S.C. § 152, Fourth, gives employees subject to its provisions “the right to organize and bargain collectively through representatives of their

own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for purposes of this chapter.”

IV.

45 U.S.C. § 152, Ninth, provides that the Board has the duty to investigate representation disputes and shall designate who may participate as eligible employees in the event an election is required.

STATEMENT OF FACTS

The additional Metro-North IT positions under consideration are 1) Computer Support Analyst II, 2) Database Administrator, 3) Database Administrator/Architect, 4) Manager Projects & Assets, 5) Manager Systems, 6) Manager Administration & Budgets, and 7) Sr. Firewall Support Analyst.

TCU provided a declaration from one of Metro-North’s Computer Analysts. The declarant stated that he has working knowledge of the jobs at issue as he works directly with these employees in the IT Department. He states that the main duty of these positions is to operate and maintain the computer systems for Metro-North, and that all of these positions have least three levels of management above them. Further, he states that none of the positions, including those called “manager,” have the authority to hire, fire, or discipline employees, to direct or assign work, to make policy, or to control overtime or leave requests. In addition, the declarant states that none of these positions controls the budget or has the authority to expend significant resources without approval at a higher level.

Metro-North provided position descriptions for the jobs at issue, which are listed in detail below:

1. Computer Support Analyst II. The primary purpose of this position is to provide quality help desk software and hardware support to the Metro-North microcomputer user community. Major responsibilities include install, configure and troubleshoot complex hardware and software solutions; evaluate customers’ requirements for automated solutions and recommend the necessary hardware and software; serve as a technical resource; evaluate new products and technology; provide backup support to Desktop positions; and provide administrative/technical support to various departmental

functions. While an Associate's degree is preferred, the position description says other experience, education and technical credentials will be considered. This position does not supervise any employees.

2. Database Administrator. The primary purpose of this position is to implement, maintain tune and optimize all SQL databases in Metro-North's client/server environment. Major responsibilities include the following: perform all database administration tasks; install, configure and maintain database software modules and applications; develop system backup schedules and verification testing; and coordinate activities with the network and application groups. While a Bachelor's degree is preferred, the position description says other experience, education and technical credentials will be considered. This position does not supervise any employees.
3. Database Administrator/Architect. The primary purpose of this position is to design data models and interfaces to facilitate the efficient development of applications and utilization of company resources. Other main duties include the following: provide functional and technical expertise in all aspects of database design to programming staff; create database/SQL coding standards; and ensure programming/databases meet application requirements. A Bachelor's degree in Information Sciences is preferred for this position. This position does not supervise any employees.
4. Manager Projects & Assets. The primary duties of this position are to plan and coordinate the hardware, software, and PC supply requirements and associated budget; manage the procurement, receipt and inventory of all asset management purchases; manage associated databases and procedures; work with budget manager on analysis of expenditures; manage asset management staff and ensure proper procedures are in place. No information about educational requirements was provided on the job description. This position supervises the Asset Management Specialist and the Asset Management Analyst. This position reports to the

Assistant Director, Finance and Administration.

5. Manager, Systems. The primary purpose of this position is to assist in managing the IT programming area's support of corporate and strategic objectives through maintenance of software, software development, and improvement of the applications supporting the work of IT customer departments and providing technical consulting services to IT staff and administrative functions to direct reports. A Master's degree is preferred for this position, but a Bachelor's degree in Business or Computer Science is also accepted. This position does not supervise any employees. This position reports to the Deputy Director or Assistant Director, who report to the Chief Information Officer.
6. Manager Administration & Budgets. The primary objectives of this position are to plan, coordinate, and prepare various budget documentation and reports for IT & VP Finance; coordinate budget allocations by preparing required paperwork and reviewing requests for purchases; analyze and report on all expenditures; and manage the administration staff. A Bachelor's degree in finance or accounting or equivalent experience is required. This position reports to the Assistant Director of Finance & Administration. The job description states that this position supervises the Administrative Assistants, however Metro-North stated that it no longer has an Administrative Assistant position.
7. Sr. Firewall Support Analyst. The primary purpose of this position is to provide Metro-North with quality network security that protects the corporate data network from intrusion, and provide quality customer support to those using the network. Major duties include the following: configure and install checkpoint firewalls, VPN, and eSafe applications throughout the corporate data network; take leadership role in installation, configuration, documentation, and maintenance of all network security equipment; work with network administrators and other staff to insure trouble-free interaction between firewalls and the

networks they run on; and access and trouble-shoot all firewall communications problems and provide quality solutions. A Bachelor's degree in electrical engineering or computer science or equivalent experience is required. This position does not supervise any employees. This position reports to the Sr. Technical Team Lead.

DISCUSSION

I. Status as Management Officials

Metro-North asserts that its IT employees are management officials, and therefore, not part of the Clerical, Office, Station and Storehouse Employees craft or class.

The Board's Representation Manual (Manual) addresses the ineligibility of management officials. Manual Section 9.211 states:

Management officials are ineligible to vote. Management officials include individuals with:

- (1) the authority to dismiss and/or discipline employees or to effectively recommend the same;
- (2) the authority to supervise;
- (3) the ability to authorize and grant overtime;
- (4) the authority to transfer and/or establish assignments;
- (5) the authority to create carrier policy; and
- (6) the authority to commit carrier funds.

The Investigator also considers:

- (1) whether the authority exercised is circumscribed by operating and policy manuals;
- (2) the placement of the individual in the organizational hierarchy of the carrier; and

- (3) any other relevant factors regarding the individual's duties and responsibilities.

When evaluating managerial authority, the Board evaluates the above factors cumulatively. See *United Air Lines, Inc.*, 32 NMB 75, 110 (2004); *USAir*, 24 NMB 38, 40 (1996) (citing *Pan American World Airways*, 5 NMB 112, 115 (1973)). "In many cases, the Board finds that while there are certain factors indicating some level of authority, when all the factors are viewed cumulatively the individuals at issue generally are first-line supervisors, not management officials." *USAir*, *above* at 41.

The main duty of this employee group is to support all IT functions at Metro-North. The position descriptions offered as evidence do not describe access to confidential information as a core job function, or even describe the types of information that these employees have access to. Fairly universally, IT employees in any company will have access to proprietary and confidential information stored in its computer systems, but this does not elevate them to management status. Access to confidential information, without other indicia of management status, is insufficient to render an employee a management official. *United Air Lines*, *above*, at 117.

Of the seven positions at issue here, only two have the authority to direct subordinates, and as discussed above, the Manager Administration & Budgets no longer supervises Administrative Assistants. See note 2 (Metro-North no longer has any Administrative Assistant positions). According to the job description, the Manager Projects & Assets directs the Asset Management Specialist and the Asset Management Analyst. However, no evidence was presented that either the Manager Administration & Budgets or the Manager Projects & Assets has the authority to dismiss or discipline employees, to authorize and grant overtime, or to perform any other of the duties associated with management officials. Further, while both positions work with and analyze budget expenditures, there was no evidence that either have ultimate authority for the IT budget or other authority to commit carrier funds.

No evidence was presented in support of Metro-North's contention that some of the positions at issue have the ability to affect staffing within the IT department, resulting in overtime costs that commit carrier funds. The job descriptions are insufficient to show that any employee has the authority to make significant and unfettered expenditures of carrier funds so as to render him ineligible as a management official. See *United Air Lines, Inc.*, 32 NMB 75, 117 (2004); *Hawaiian Airlines, Inc.*, 29 NMB 308, 313 (2002).

There was also insufficient evidence presented to demonstrate that any of the IT positions has the authority to create carrier policy. *See Metro-North RR*, 39 NMB 423, 437; *See United Air Lines, above*, at 114 (2004) (work writing departmental policies and procedures insufficient to establish that employees create carrier policy as no evidence presented with respect to final review of policies or how limited the employees were by pre-existing carrier policies, manuals, or directives).

With respect to Metro-North's assertion that the IT employees' independent judgment renders them management officials, the evidence demonstrates that these employees' exercise of judgment is based on their technical expertise, and is limited by Metro-North's procedures and policies. *See US Airways, Inc.*, 28 NMB 91, 100 (2000) (*citing US Airways*, 26 NMB 359, 372 (1999) (supervisors' exercise of judgment was based upon technical expertise and not "the same type of judgment which the Board finds is typically exercised by management officials"))).

Metro-North contends that some of the IT employees are salaried as management officials but presented insufficient evidence to support this contention. Further, the Board has consistently said that the receipt of management benefits and/or salary is insufficient to render an employee a management official. *See United Air Lines*, 32 NMB 75, 114 (2004); *US Airways*, 26 NMB 359, 372 (1999); *Continental Airlines, Inc./Continental Express, Inc.*, 26 NMB 343, 351 (1999).

II. Alter Ego Doctrine

For the reasons discussed in the Board's prior decision, we find the alter ego doctrine does not convert Metro-North's IT employees into management officials. *Metro-North RR*, 39 NMB 423, 438-439 (2012); *see also Pakistan Internat'l Airlines*, 29 NMB 149 (2002) (Board upheld an investigator ruling that a secretary was not the alter ego of her manager, as her work was exclusively administrative and she did not perform tasks generally performed by managers); *Pakistan Internat'l Airlines, Inc.*, 8 NMB 531, 540 (1981) (record did not show that employees functioned on such a close capacity to an official having critical labor relations or personnel authority that their exclusion is warranted).

III. Work-Related Community of Interest

As articulated in the Board's prior decision, the Metro-North IT positions at issue here are appropriately in the Clerical, Office, Station and Storehouse

Employees craft or class. *Metro-North, above*, at 439-441 (Clerical, Office, Station and Storehouse Employees craft or class includes employees of varying skills and abilities, and their primary function is the receipt, storage, and use of information); *See also Long Island Rail Road*, 24 NMB 664 (1997) (11 IT positions, including Database Administrator, Senior Database Technician, Senior Database Design Specialist etc. shared a sufficient community of interest to be accreted into the Clerical, Office, Station and Storehouse Employees craft or class); *Republic Airlines*, 11 NMB 57 (1983) (Network Coordinators who monitored communications system, diagnosed problems, and documented actions were found to be Office Clerical employees); *American Airlines, Inc.*, 10 NMB 26 (1982) (Data Processing employees share a community of interest with the Office Clerical craft or class).

CONCLUSION

The Board finds that Metro-North's IT Department employees are part of the craft or class of Clerical, Office, Station and Storehouse Employees.

By direction of the NATIONAL MEDIATION BOARD



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