



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the

INTERNATIONAL ASSOCIATION
OF SHEET METAL, AIR, RAIL AND
TRANSPORTATION WORKERS

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

EASTERN ILLINOIS RAILROAD
COMPANY

43 NMB No. 8

CASE NO. R-7437

FINDINGS UPON
INVESTIGATION –
AUTHORIZATION OF
ELECTION

November 30, 2015

This determination addresses the application filed by the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART or Organization) alleging a representation dispute pursuant to the Railway Labor Act¹ (RLA). SMART alleged a representation dispute among Train and Engine Service Employees (T&E Employees) of Eastern Illinois Railroad Company (EIRC or Carrier).

For the reasons set forth below, the National Mediation Board (NMB or Board) concludes that the appropriate craft or class for the employees covered by the application is Operating/Non-Operating Employees.

¹ 45 U.S.C. § 151, *et seq.*

PROCEDURAL BACKGROUND

On June 29, 2015, SMART filed an application alleging a representation dispute involving T&E Employees at EIRC. The application was assigned NMB File No. R-7437 and Andres Yoder was assigned as the Investigator.

On July 14, 2015, EIRC filed a List of Potential Eligible Voters, signature samples, and an initial position statement. On July 16, 2015, Investigator Yoder requested additional information from EIRC. EIRC submitted the requested information on July 30, 2015.

On August 13, 2015, SMART filed a response to EIRC's initial position statement and submission. In its response, SMART continued to allege a representation dispute among the employees covered by the application. But this time, rather than arguing the appropriate craft or class is T&E Employees, SMART argued the appropriate craft or class is Operating/Non-Operating Employees. SMART also made an alternative argument that two crafts or classes are appropriate: Operating Employees and Non-Operating Employees.

ISSUE

What is the appropriate craft or class (or crafts or classes) for the employees covered by the application?

CONTENTIONS

EIRC

EIRC asserts that T&E Employees is the appropriate craft or class for the employees covered by the application.

SMART

SMART argues that Operating/Non-Operating Employees is the appropriate craft or class for the employees covered by the application. In the alternative, SMART argues that the appropriate crafts or classes are Operating Employees and Non-Operating Employees.

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.

EIRC is a common carrier as defined in 45 U.S.C. § 151, First.

II.

SMART is a labor organization and/or representative as defined in 45 U.S.C. § 151, Sixth, and § 152, Ninth.

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 to designate who may participate as eligible voters in the event an election is required.

STATEMENT OF FACTS

The eight employees covered by the application perform operating work, which includes work performed by conductors and engineers; and non-operating work, which includes work performed by laborers, signal maintainers, track supervisors, and track inspectors.

Using a 90-day representative period from April 1, 2015 to June 30, 2015, the following table identifies who the EIRC employees are, what their job titles are, and the amount of time they spent performing operating work versus non-operating work:

	Name	Title	Work Type	
			Percent time doing operating work	Percent time doing non-operating work
1	Employee A	Laborer	18.02 percent	81.98 percent
2	Employee B	Track Supervisor	2.27 percent	97.73 percent
3	Employee C	Signal Maintainer	0.00 percent	100.00 percent
4	Employee D	Engineer/Conductor	82.66 percent	17.34 percent
5	Employee E	Engineer/Conductor	89.74 percent	10.26 percent
6	Employee F	Track Inspector	6.44 percent	93.56 percent
7	Employee G	Mechanic	16.83 percent	83.17 percent
8	Employee H	Laborer/Conductor Trainee	36.29 percent	63.71 percent

During the representative period, one of the employees – Employee H – switched from the non-operating job of Laborer to the operating job of Conductor Trainee. As a result, the percent of time Employee H spent performing operating work and non-operating work was in a state of flux.

When Employee H’s work-type breakdown is not considered, EIRC employees spent an average of 89.86 percent of their time performing a work type that covers their job title, and an average of 10.14 percent of their time performing a work type that is outside their job title.

DISCUSSION

In determining the appropriate craft or class for a group of employees, the Board considers a number of factors, including functional integration, work classifications, terms and conditions of employment, and work-related community of interest. *Louisville & Indiana R.R.*, 41 NMB 82, 85-86 (2014). The Board makes craft or class determinations case by case, based upon Board policy and precedent. *USAir*, 15 NMB 369, 392 (1988).

The general rule is that “historical patterns of representation in the railroad industry provide the basis for craft or class determinations.” *Ontario Midland R.R.*, 10 NMB 18 (1982). However, in *Florida East Coast Ry.*, 21 NMB 35 (1993), the Board made an exception. “[O]n smaller carriers with a significant degree of cross-utilization,” the Board explained, “perpetuating historic crafts and classes could result in artificial fragmentation of employees[.]” *Id.* at 44. As a result, when a carrier is small and when its

employees are cross-utilized, the Board may look beyond traditional craft or class designations. *Id.* at 45.

The Board looked beyond traditional craft or class lines in *Florida Northern R.R.*, 34 NMB 142 (2007). In that case, the Board considered whether 52 cross-utilized employees at a small carrier were a single Operating/Non-Operating craft or class, or whether they were separate crafts or classes. Because the employees spent an average of 93 percent of their time working in either operating or non-operating jobs, the Board determined the employees were working as separate crafts or classes.

The Board also looked beyond traditional craft or class lines in *Columbia & Cowlitz Ry., LLC & Patriot Woods R.R., LLC*, 38 NMB 264 (2011) (*Columbia & Cowlitz*). In that case, the Board considered whether 17 cross-utilized employees at a small carrier were a single Operating/Non-Operating craft or class, or whether they were separate crafts or classes. After noting “the small size of the workforce,” the Board determined the employees were working as a single craft or class. *Id.* at 272.

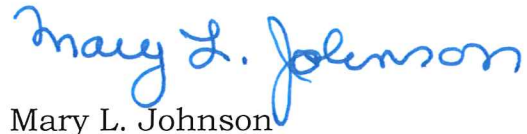
This case is most like *Columbia & Cowlitz*. The investigation discloses that EIRC is a small carrier, that EIRC cross-utilizes its employees, and that EIRC’s workforce is small. Accordingly, the Board finds that the appropriate craft or class for the employees covered by the application is Operating/Non-Operating Employees.

CONCLUSION AND AUTHORIZATION OF ELECTION

The Board finds that the appropriate craft or class for the employees covered by the application is Operating/Non-Operating Employees, and that a dispute exists among that craft or class.

An internet and TEV election is hereby authorized using a cut-off date of June 15, 2015, with a tally in Washington, DC.

By direction of the NATIONAL MEDIATION BOARD.



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