



NATIONAL MEDIATION BOARD

WASHINGTON, DC 20572

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In the Matter of the
Application of the

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS/INTERNATIONAL
BROTHERHOOD OF
LOCOMOTIVE ENGINEERS RAIL
OPERATING EMPLOYEES'
COUNCIL

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

involving employees of

PORTLAND & WESTERN
RAILROAD, INC.

31 NMB No. 17

CASE NO. R-6966

FINDINGS UPON
INVESTIGATION

December 9, 2003

This determination addresses an application filed by the International Brotherhood of Teamsters/International Brotherhood of Locomotive Engineers Rail Operating Employees' Council (IBT/IBLE). The IBT/IBLE seeks to represent the craft or class of Train and Engine Service Employees and requests the National Mediation Board (Board) to investigate whether Portland & Western Railroad, Inc. (P&W) and Willamette & Pacific Railroad, Inc. (W&P) are operating as a single transportation system.

The investigation establishes that P&W and W&P constitute a single transportation system.

PROCEDURAL BACKGROUND

On September 5, 2003, the IBT/IBLE filed an application alleging a representation dispute involving the Train and Engine Service Employees of P&W. The Board assigned Susanna C. Fisher to investigate.

On October 3, 2003, IBT/IBLE provided an initial position statement seeking to amend its application to include employees on the "P&W/W&P" system. P&W responded to the IBT/IBLE's position statement on October 14, 2003.

ISSUES

Are W&P and P&W a single transportation system?

CONTENTIONS

IBT/IBLE

The IBT/IBLE contends as follows:

W&P and P&W are wholly-owned subsidiaries of Genesee & Wyoming, Inc. (GWI) and have been held out to the public as a single carrier under the P&W name since December 2000. The route map on the GWI website for W&P and P&W shows only the P&W logo and does not distinguish between the lines of the carriers. W&P and P&W share rail cars and locomotives which are painted with the corporate black and orange colors of GWI. All locomotives built or painted since 2000 now bear the P&W logo and the carriers are in the process of repainting the remaining locomotives with the P&W logo.

W&P and P&W have combined operations and corporate headquarters and share common officers, managers, and supervisors. In addition, the human resources and labor relations functions are handled together in the same corporate office. Furthermore, all marketing, customer service functions, and dispatching functions for W&P and P&W are centralized. The route schedules for W&P and P&W are integrated and both carriers operate off one time table. W&P and P&W use the

same set of operating rules and the same corporate safety handbook.

The employees of W&P and P&W receive the same wages and benefits, are listed on the same seniority list, and are subject to the same disciplinary policies and personnel practices. In addition, the employees on W&P and P&W receive profit-sharing checks based upon the combined profits of the carriers. Finally, W&P and P&W are in the process of issuing employee identification cards identifying employees only as P&W employees.

The IBT/IBL provided copies of the GWI website which included: a route map and a list of officers, managers, and supervisors; a Department of Transportation news release; and a System Time Table for "Portland & Western Railroad Inc. including Willamette & Pacific Railroad Inc." in support of its position. The IBT/IBL also submitted a November 30, 2000, memorandum to all W&P and P&W employees in support of its contentions.

Therefore, the IBT/IBL requests that its application be amended to cover employees on both W&P and P&W and that an election be authorized among the Train and Engine Service Employees on this single transportation system.

Portland & Western Railroad

P&W contends as follows:

P&W is a separate entity from W&P. W&P employees are paid by W&P on W&P checks, from which W&P pays their employment taxes and Railroad Unemployment Insurance (RUI) to the Railroad Retirement Board (RRB) and the Internal Revenue Service (IRS) under Employer Number 06-1020582 and RRB Number 2764. Similarly, P&W employees are paid by P&W on P&W checks, from which P&W pays their employment taxes and RUI to the RRB and the IRS under Employer Number 16-1483630 and RRB Number 2276. "The use of P&W to refer to the entire system was a convention adopted in 2000 to simplify the marketing efforts of the two affiliated carriers. It

did not change the legal or operational distinction between them.”

W&P and P&W employees are paid the same rates of pay and receive the same benefits, because they are the two entities that make up GWI’s Oregon region. Although W&P and P&W employees receive the same benefits, they are paid from two separate insurance policies. Additionally, W&P and P&W maintain separate budgets, payroll and group medical and dental plans.

W&P and P&W receive separate regulatory authority to operate from the Surface Transportation Board (STB) and have never sought authority to merge. In addition, accident and incident reports are filed separately with the Federal Railroad Administration (FRA). The State of Oregon regards W&P and P&W as separate railroads: for property taxes, inspection purposes, and enforcement of FRA track, equipment and operations standards; for allocation of state funds for branch line rehabilitation; and for enforcement of crossing blockage and repairs.

Although locomotive maintenance, inspection, and repair for both W&P and P&W is performed exclusively by W&P employees, P&W is billed for these services. All leases and operating agreements are unique to each railroad. In addition, all revenues generated by W&P and P&W are credited to the account of the individual railroad. Furthermore, the “management personnel . . . perform professional services for both entities” as is “common among short line railroads and does not mean they are integrated.”

Although the System Time Table for W&P and P&W is printed as a single document, this is solely a financial decision. Further, districts on the System Time Table are designated as either W&P or P&W. Although the Capital Expenditures Report for W&P and P&W is consolidated, expenses for engineering projects, locomotives, vehicles, structures and any other capital project for the railroads are distinguishable. In addition, dispatching is centralized for W&P and P&W.

P&W submitted the following documents in support of its contentions: Letter to W&P and P&W employees regarding an association meeting dated August 14, 1996; Statement from Robert I. Melbo, former President of W&P and P&W; Application for Employment with W&P; Application for Employment with P&W; Annual Railroad Retirement Tax Return for W&P; Annual Railroad Retirement Tax Return for P&W; Blue Cross Blue Shield billing statement for W&P; Blue Cross Blue Shield billing statement for P&W; W&P Operating Assignments and Characteristics; P&W Operating Assignments and Characteristics; System Time Table for P&W (including W&P); Accident/Incident Report for W&P; Accident/Incident Report for P&W; Letter from the FRA approving W&P's random drug and alcohol testing plan; Letter from the FRA approving P&W's random drug and alcohol testing plan; Property Tax Bill from the state of Oregon for W&P; Property Tax Bill from the state of Oregon for P&W; Timesheet-Detail Inquiry Report for W&P Derailment; and the Capital Expenditures Report for W&P and P&W.

FINDINGS OF LAW

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

I.

The P&W and the W&P are common carriers as defined in 45 U.S.C. § 151.

II.

IBT/IBL is a labor organization and/or a representative as provided by 45 U.S.C. § 151, Sixth, and § 152, Ninth.

III.

45 U.S.C. § 152, Fourth, gives employees subject to the 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 the 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. In determining the choice of the majority of employees, the Board is “authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives . . . by the employees without interference, influence, or coercion exercised by the carrier.”

STATEMENT OF FACTS

In 1993, GWI created W&P to lease approximately 184 miles of operating assets from Southern Pacific Transportation Company (SP). In 1995, GWI created P&W to lease approximately 53 miles of operating assets from SP. In 1996, P&W leased approximately 53 miles from the Burlington Northern and Santa Fe Railway (BNSF). In August 1997, the STB granted GWI the authority to “continue in control of the two contiguous carriers, as required by 49 U.S.C. § 11323-11326.” P&W purchased the Astoria Line, a leased track, and an additional 86 miles of track from BNSF in 1997. In 2002, P&W leased an additional 78 miles from BNSF and hired additional employees.

When P&W was created in 1995, W&P employees were given the opportunity to resign from W&P and work for P&W. Nine W&P employees resigned from W&P and began working for P&W. W&P and P&W employees worked on their respective railroads until August 14, 1996, when the employees proposed that they be allowed to bid jobs on both W&P and P&W. The employees are now able to bid jobs on both W&P and P&W. W&P employs 99 employees, P&W employs 58 employees (43 in train operations), and eight people perform staff functions at the regional level for both railroads.

On November 30, 2000, Robert I. Melbo, then President of W&P and P&W, issued a newsletter with employee paychecks stating that effective December 1st,

[T]he long-awaited adoption of the Willamette & Pacific by Portland & Western officially will occur. The principal change is the listing by P&W of all W&P stations as P&W points. Henceforth, W&P and P&W operations in Oregon will be conducted as P&W insofar as Union Pacific and Burlington Northern & Santa Fe are concerned. Going forward, the Portland & Western name will dominate on signs, stationary, business cards and rolling stock. Locomotives that are painted in the future will be lettered for Portland & Western. However, we intend to keep using WPRR reporting marks.

The route map on the GWI website for W&P and P&W shows only the P&W logo and does not distinguish between the lines of the carriers. In addition, W&P and P&W share rail cars and locomotives which are painted with the corporate black and orange colors of GWI. All locomotives built or painted since 2000 now bear the P&W logo and the carriers are in the process of repainting the remaining locomotives with the P&W logo.

W&P and P&W share common management and administrative functions and the human resources and labor relations functions are handled together in the same corporate office. In addition, marketing, customer service functions and dispatching for W&P and P&W are centralized. W&P and P&W share the same President, Vice-President of Marketing, Director of Customer Service, Chief Mechanical Officer, Manager of Asset Utilization, Assistant Vice-President of Transportation, Manager of Human Resources and Finance, and Assistant Vice President of Engineering. Both W&P and P&W use the same set of operating rules and the same corporate safety handbook. The employees of W&P and P&W receive the same wages and benefits, and are subject to the same disciplinary policies and

personnel practices. Furthermore, the System Time Table for W&P and P&W is printed as a single document.

DISCUSSION

I.

The Board's Authority

45 U.S.C. § 152, Ninth, authorizes the Board to investigate disputes arising among a carrier's employees over representation and to certify the duly authorized representative of such employees. The Board has exclusive jurisdiction over representation questions under the RLA. *Switchmen's Union v. National Mediation Board*, 320 U.S. 297 (1943); *General Comm. Of Adjustment v. M.K.T.R.R.*, 320 U.S. 323 (1943). In *Air Line Pilots Ass'n, Int'l v. Texas Int'l Airlines*, 656 F.2d 16, 22 (2d Cir. 1981), the court stated, "the NMB is empowered to . . . decide representation disputes arising out of corporate restructurings."

II.

Single Transportation System

The Board finds a single transportation system only when there is substantial integration of operations, financial control, and labor and personnel functions. *American Airlines and Reno Air*, 26 NMB 467 (1999); *AirTran Airways and AirTran Airlines*, 25 NMB 429 (1998). The Board has noted that a substantial degree of overlapping ownership, senior management, and boards of directors is critical to finding a single transportation system. *Precision Valley Aviation, Inc., d/b/a Precision Airlines/Valley Flying Serv., Inc., d/b/a Northeast Express Reg'l Airlines*, 20 NMB 619 (1993).

The Board adopted its current criteria for single transportation status in the railroad industry in *Missouri Pacific R.R.*, 15 NMB 95, 108 (1988). In that decision, the Board, quoting its earlier decision in *Trans World Airlines/Ozark Airlines*, 14 NMB 218 (1987), adopted the

following factors for evaluating when two or more carriers' operations have or will be integrated into a single transportation system.

[W]hether the two systems are held out to the public as a single carrier . . . whether a combined schedule is published; how the carrier advertises its services; whether reservation systems are combined; whether tickets are issued on one carrier's stock; if signs, logos and other publicly visible indicia have been changed to indicate only one carrier's existence; whether personnel with public contact were held out as employees of one carrier; and whether the process of repainting . . . equipment, to eliminate indications of separate existence, has been progressed.

Other factors investigated by the Board seek to determine if the carriers have combined their operations from a managerial and labor relations perspective. Here the Board investigates whether labor relations and personnel functions are handled by one carrier; whether there are common management, common corporate officers and interlocking Boards of Directors; whether there is a combined workforce; and whether separate identities are maintained for corporate and other purposes.

Id. at 236. See also *Wisconsin Cent. Transp. Corp. R.R.s*, 24 NMB 307, 314 (1997); *Wisconsin Cent. Ltd./Fox Valley & Western Ltd.*, 21 NMB 431, 442 (1994); *Fox Valley & Western Ltd.*, 21 NMB 112, 128 (1994); *Guilford Rail Division*, 18 NMB 435 (1991) (applying these standards, the Board has emphasized that the most persuasive factor is whether operations have been merged or are in the process of a merger); *Missouri Pacific R.R.*, 15 NMB 95, 107 (1988).

Although W&P and P&W have separate regulatory authority to operate from the STB and are considered separate for tax purposes by the state of Oregon, the route map on the GWI website for W&P and P&W shows only the P&W logo and does not distinguish between the lines of the carriers. Additionally, W&P and P&W share rail cars and locomotives which are painted with the corporate black and orange colors of GWI. All locomotives built or painted since 2000 now bear the P&W logo and the carriers are in the process of repainting the remaining locomotives with the P&W logo. Furthermore, the System Time Table for W&P and P&W is printed as a single document.

In addition to sharing common management and administrative functions, the human resources and labor relations functions for W&P and P&W are handled together in the same corporate office. All marketing, customer service functions and dispatching for W&P and P&W are centralized. Further, W&P and P&W share the same President, Vice-President of Marketing, Director of Customer Service, Chief Mechanical Officer, Manager of Asset Utilization, Assistant Vice-President of Transportation, Manager of Human Resources and Finance, and Assistant Vice President of Engineering.

Both W&P and P&W use the same set of operating rules and the same corporate safety handbook. Finally, the employees of W&P and P&W receive the same wages and benefits, and are subject to the same disciplinary policies and personnel practices.

Based upon the application of the principles cited above to the facts established by the investigation, the Board finds that W&P and P&W operate as a single transportation system.

CONCLUSION

The Board finds that W&P and P&W are operating as a single transportation system for representation purposes under the RLA. Accordingly, pursuant to Section 2.4 of the Board's Representation Manual, the P&W must deliver to the Board's

Office of Legal Affairs by 10 a.m., ET, December 23, 2003, three copies of an alphabetized list of potential eligible voters and a copy of the alphabetized list on a diskette or CD as a Microsoft-Excel file. The format of the list of potential eligible voters must be prepared in five columns or fields exactly as the enclosed sample format displays. There must not be any other information or data in the file or on the diskette or CD except as displayed in the five columns or fields on the sample format. The column or field headers must be contained on one row only. The P&W must not include any hidden columns or fields in the Excel file. Note that employee middle initials appear with the first name. Do not make a separate column or field for the middle initial. A sample format follows:

SAMPLE FORMAT OF THE SPREADSHEET LIST FIELDS

SeqNum	LastName	FirstName	JobTitle	DutyStation
1	Able	John, Jr.	Pilot	Chicago, IL
2	Baker	Mary A.	Pilot	Tampa, FL
3	Charles	William J.	First Officer	Detroit, MI

The list of potential eligible voters must contain all individuals with an employee-employer relationship as of the last day of the last payroll period prior to September 5, 2003.* The list must be alphabetized on a system-wide basis. The P&W must provide a copy of the list to the Organization.

The P&W must also provide one set of signature samples for the eligible voters solely to Investigator Fisher by December 23, 2003. The alphabetized signature samples must be in the same order as the names on the list of eligible voters. Until an applicable list and the signature samples are received by the Investigator in compliance with the above requirements, the

* Section 9.2 of the NMB's Representation Manual defines the categories of individuals with an employee-employer relationship under the Railway Labor Act. That section of the Manual is available at www.nmb.gov/representation/repman1102.pdf.

Investigator will continue to accept additional authorization cards.

By direction of the NATIONAL MEDIATION BOARD.

Benetta M. Mansfield

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