



**NATIONAL MEDIATION BOARD**

WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the  
Application of the

INTERNATIONAL  
LONGSHOREMEN'S  
ASSOCIATION, AFL-CIO

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

involving employees of

GEORGIA PORTS AUTHORITY

31 NMB No. 72

CASE NO. R-6999  
(File No. CR-6802)

DETERMINATION OF  
JURISDICTION -  
DISMISSAL

March 23, 2004

This determination addresses the application of the International Longshoremens' Association, AFL-CIO (ILA or Organization), alleging a representation dispute pursuant to the Railway Labor Act<sup>1</sup> (RLA or Act), 45 U.S.C. § 152, Ninth, (Section 2, Ninth), among "nonsupervisory operators, drivers, clerks, and mechanics," employees of the Georgia Ports Authority (GPA). At the time this application was received, these employees were not represented by any organization or individual.

For the reasons set forth below, the Board finds that the GPA is not a carrier subject to the Act. Therefore, the Board dismisses the application.

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<sup>1</sup> 45 U.S.C. § 151, *et seq.*

PROCEDURAL BACKGROUND

On September 29, 2003, the ILA filed an application alleging a representation dispute among GPA's "nonsupervisory operators, drivers, clerks, and mechanics." The Board assigned Maria-Kate Dowling as the Investigator.

On October 13, 2003, the GPA submitted a List of Potential Eligible Voters and signature samples. On October 15, 2003, the GPA and the ILA each filed position statements. The GPA and the ILA requested and were granted permission to file responses to the initial position statements. These responses were filed on October 22, 2003. The ILA also requested that the NMB conduct an on-site investigation.

On November 24, 2003, the Investigator notified the parties that an on-site investigation was necessary and that the Investigator would tour the GPA facility and interview GPA managers and ILA witnesses as well as employees in each of the classifications.

The Investigator conducted an on-site investigation at the GPA's Garden City and Ocean Terminals the week of December 8, 2003. During the field investigation, the Investigator toured the container operations including the James D. Mason Intermodal Container Transfer Facility (Mason ICTF). In addition, the Investigator interviewed six randomly selected GPA employees and witnesses proffered by the ILA and the GPA. The Investigator conducted an additional telephone interview with an ILA witness on December 18, 2003.

ISSUE

Whether GPA is a carrier within the meaning of § 151, First, of the RLA?

CONTENTIONSILA

The ILA argues that the GPA is the de facto operator of the railroad facility located at its Garden City Terminal and the adjacent Mason ICTF. GPA has retained ownership of the tracks and has the right to terminate or non-renew the easement agreement between it and Rail Link, Inc. (Rail Link) at its sole discretion. GPA also directs all movements and placement of containers and of rail equipment. The ILA further argues that the GPA directs and controls the work of the Savannah Port Terminal Rail Road (SPTRR) employees and, on the basis of that direction and control, the ILA is entitled to petition for an election to be recognized as the exclusive representative of the employees under the RLA. Finally, the ILA argues that GPA holds itself out to the public as providing railroad services in interstate commerce for compensation. As support for this contention, the ILA submitted copies of information on the GPA website describing the rail services offered at the Garden City Terminal and the Mason ICTF and GPA tariffs governing “Dockage, Wharfage, Handling, Storage, Ro-Ro Service, Handling of Containers, Equipment Lease and Other Miscellaneous Services” and “Handling and Storage of Containers and Trailers and Other Miscellaneous Services.”

GPA

GPA contends that it is not subject to the Board’s jurisdiction because it is not a “carrier” as defined by the RLA. GPA asserts that it is neither a common carrier by rail nor owned or controlled by a common carrier by rail. Prior to 1998, GPA concedes that it operated two common carrier short line railroads that provided railroad switching services to and within two large GPA port facilities. In 1998, however, GPA sold the locomotives and related equipment used by these short lines to two new, independent short line railroads, SPTRR and the Golden Isles Terminal Railroad (GITRR), operated by Rail Link. GPA further asserts that although it retains ownership of the tracks, under the easement agreement, Rail Link retains ample authority and power to fulfill its common carrier

obligations free from any control or interference by GPA. GPA also contends that what the ILA portrays as control is nothing more than the typical relationship between a terminal operator and a railroad providing switching services to facilitate the loading and unloading of containers.

### 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.

45 U.S.C. § 151, First, defines the term carrier to include:

[A]ny railroad subject to the jurisdiction of the Surface Transportation Board, any express company that would have been subject to subtitle IV of title 49, United States Code, as of December 31, 1995, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier".

#### II.

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

STATEMENT OF FACTS

Background

GPA was created by the Georgia legislature as a semi-autonomous state entity with the responsibility for developing and managing the nine state-owned ports: (1) Garden City Terminal in Savannah; (2) Colonel's Island Terminal in Glynn County; (3) Ocean Terminal in Savannah; (4) Mason ICTF in Savannah; (5) Mayor's Point facility in Brunswick; (6) Bainbridge Terminal in Bainbridge; (7) Newport Terminal in Port Wentworth; (8) Marine Port Terminal in Brunswick, and; (9) Columbus Terminal in Columbus. GPA is governed by a 13-person Board of Directors appointed by the Governor to staggered four-year terms.

GPA does not conduct any operations at the Newport, Marine Port, and Columbus Terminals which are leased to and operated by private companies. GPA's role at these terminals is limited to that of a landlord. GPA operates the remaining six facilities with its own employees.

The Colonel's Island and Garden City Terminals are GPA's two largest port facilities. The Garden City complex includes approximately 18 miles of railroad track. This track extends beyond the perimeter of the terminal to connection tracks belonging to Norfolk Southern (NS) and CSX Railroads. The Colonel's Island facility includes about 24 miles of track which also extend beyond the facility to connect with NS and CSX.

The two other GPA terminals in Savannah, Mason ICTF and Ocean Terminal, are served only by NS. The Mason ICTF contains approximately five miles of track. The Ocean Terminal site is adjacent to the rail lines of Central Georgia Railroad (CGR), a NS subsidiary. NS sold this track to GPA in 1958 but reserved in perpetuity an exclusive right to provide rail service to and on the Ocean Terminal's nine miles of track.

Prior to 1998, GPA provided railroad switching service at the Garden City and Colonel's Island terminals, moving railcars

within the terminal to facilitate loading and unloading of rail cars and moving railcars back and forth to interchange tracks located adjacent to NS and CSX track. These switching services were provided by GPA through its unincorporated divisions: Savannah State Docks Railroad (SSDRR) at Garden City and Colonel's Island Railroad (CIRR) at Colonel's Island. The SSDRR and CIRR published tariffs specifying their charges for switching services and were parties to interchange agreements and car hire agreements with NS and CSX.

#### Privatization of SSDRR and CIRR

In 1998, GPA's Board of Directors authorized management to solicit offers from short line operators to take over the Garden City and Colonel's Island rail operations. Rail Link, a subsidiary of the Genesee and Wyoming Railroad, was the successful bidder and on June 1, 1998, the Board approved the sale of GPA's Garden City railroad operations to SPTRR, a new subsidiary of Rail Link and the sale of GPA's Colonel's Island railroad operations to GITRR, another subsidiary of Rail Link.

By decisions dated July 1, 1998, the Surface Transportation Board (STB) recognized that following the acquisition of the respective easements and operation rights by SPTRR and GITRR, SSDRR and CIRR would permanently relinquish their rights to operate as common carrier railroads. By letters dated May 11, 1999 and July 8, 1999, the Railroad Retirement Board (RRB) terminated the employer status of GPA's CIRR and SSDRR respectively.

#### Easement Agreements for Rail Services at the Garden City and Colonel's Island Terminals

Under its easement agreements with GPA, SPTRR and GITRR agreed to initially perform rail services under the existing GPA tariffs and to assume existing contracts and agreements with GPA's customers and other carriers. SPTRR and GITRR were thereafter free to "modify or cancel any such Tariff or agreement in such lawful manner" deemed appropriate. SPTRR and GITRR are required by the easement

to maintain agreements with CSX, NS and any other railroad “pursuant to which those carriers pay and absorb” the switching charges. The easements also provide that SPTRR and GITRR furnish “all locomotives, equipment, tools, supplies, labor, supervision and any and all materials necessary to perform operating services and track maintenance, and shall perform the services in a good, efficient, safe and workmanlike manner.” SPTRR and GITRR also pay for utilities and other related services incurred in the conduct of their rail operations and to perform its operations on the tracks and maintain and repair the tracks in no less than Class II condition as defined by the Federal Railroad Administration (FRA). SPTRR and GITRR are required to maintain monthly reports detailing the work performed on the tracks and planned related activities and to furnish these reports to GPA for review. Also the easement agreements require that all FRA Inspection Reports and responses “shall be available to and copies furnished to GPA promptly.” As consideration for the easements, SPTRR and GITRR pay GPA a fixed annual consideration plus a portion of the revenue defined in the agreement as “volume participation payments.” Finally, the easement agreements require that notwithstanding either the expiration or termination of the easements both SPTRR and GITRR continue to provide rail service unless or until the STB either authorizes a replacement rail carrier or approves the abandonment or discontinuance of common carrier operations.

#### Agreement for Rail Services at the Mason ICTF

SPTRR also performs the switching operations at the Mason ICTF under a separate agreement with GPA. Under this agreement, SPTRR performs as and assumes all responsibilities of the “rail operator” in the agreement between GPA and NS. The agreement between GPA and NS provides that GPA will be “responsible for the operation of the Intermodal Terminal. The operation shall include the loading and unloading of intermodal railroad cars, the movement of containers, with or without chassis, within the Intermodal Terminal and the check in and out functions at the gate of the Intermodal Terminal.” The agreement further provides that:

A qualified railroad operator, hereinafter referred to as the "Rail Operator" granted an easement to perform switching at the Intermodal Terminal by the GPA, shall switch railroad cars and perform related activities at the Intermodal Terminal. The switching shall include, but not be limited to, the movement of railroad cars between the tracks of the Intermodal Terminal to insure that outbound railroad cars are loaded to keep the number of empty hitches to a minimum and to insure that outbound railroad cars are properly blocked per instructions issued by [NS]. It is agreed that the Rail Operator shall not use [NS's] tracks while performing any switching activities at the Intermodal Terminal. The Rail Operator shall also follow the instructions of [NS] regarding the placement of empty railroad cars into outbound trains. At the request of [NS], the Rail Operator shall also arrange for outbound railroad cars to be mechanically inspected and have air brakes pre-charged and pre-tested with an end-of-train (EOT) device attached to the rear railroad car, and be properly certified and available for immediate movement by [NS]. . . . At the request of [NS], the Rail Operator will leave the outbound train(s) "on air." GPA further agrees to require the Rail Operator to perform its switching activities in such a manner so as not to delay the spotting of inbound trains or the doubling of outbound trains by [NS] . . . . GPA shall assure that the Rail Operator adheres to all applicable provisions of this Agreement.

The agreement also provides that "GPA will establish standard working hours at the Intermodal Terminal consistent with both normal container operations and the reasonable needs" of NS. Pursuant to the agreement, GPA and NS agree to the transfer of "such electronic information to each other as is reasonably required to facilitate their operations."



The agreement also requires that:

[NS] will spot inbound trains onto the Intermodal Terminal working tracks . . . as designated by GPA. GPA agrees not to require inbound [NS] train crews to spot the inbound trains onto more tracks than the minimum necessary taking into account track lengths and the presence of railroad cars already on the tracks. [NS] will not be required to move railroad cars between working tracks, nor will [NS] be required to spot railroad cars onto a track that will not allow the locomotives of the inbound train to leave the Intermodal Terminal immediately after the inbound train has been spotted.

[NS] will move outbound trains from the working and storage tracks . . . after a release is obtained from the GPA and after the railroad cars have been inspected, tested, and certified by the Rail Operator . . . .

Finally, the agreement provides that:

Railroad cars delivered to the Intermodal Terminal by [NS] shall stay in the car hire, per diem, mile charge accounts of [NS] while at the Intermodal Terminal, and shall not be considered interchanged to the Rail Operator.

. . . .

Neither GPA nor the Rail Operator shall be identified in the waybill routing of any railroad cars delivered to or pulled from the Intermodal Terminal by [NS].

Agreement for Rail Services at Ocean Terminal

At Ocean Terminal, some shippers require cargo to be transferred directly from ships to railcars rather than off-loaded to either warehouses or storage yards on the terminal

property. Since NS was initially unwilling to provide this service because its locomotives could not access the dockside track, GPA provided shuttle car service, navigating the sharp turns in the track with a “shuttle wagon,” which has steel wheels that can be lowered onto the rails in order to maintain proper alignment when pushing or pulling rail cars. In January 2003, NS, through its subsidiary CGR, assumed responsibility for this service through a subcontract with SPTRR. This subcontract requires that SPTRR provide “a minimum of a two-person crew and car moving equipment sufficient to provide needed intra-terminal car movements to and from dockside on GPA-owned tracks.” Pursuant to an agreement dated January 30, 2003, GPA sold the shuttle wagon to SPTRR.

#### Rail Link’s Day to Day Operations

According to Robert Eugene Booker, the Director of Operations for Rail Link, SPTRR “spots” and “pulls” rail cars for loading and unloading at the Garden City Terminal, Ocean Terminal and the Mason ICTF. Noting that “spot” is a railroad term for placement, Booker described the interchange of rail cars from storage or holding track to working track:

When we bring the cars in from the interchange point with CSX and NS, we place them at the various points within the Port proper. When cars are ready to be pulled, we receive a pull sheet from GPA and we remove cars from the track. The pull sheet, which can be faxed or hand delivered from GPA, provides information including the car number and the commodity. As soon as track becomes available, we move cars from the holding/storage track onto the available working track. . . . The Port Authority is like any other customer. When the cars are ready to go they give us a pull sheet and we move the cars and deliver them to the [interchange point with NS or CSX].

Booker also described how he schedules his employees:

I schedule my employees and equipment based on the traffic into and out of the Port. A crew is composed of one engineer, one conductor and one switchman. NS and CSX electronically advise me what trains are coming in and we do the same for them with regard to what we are pulling out. I have four train crews per day, six days a week. That is consistent unless a customer requires a special switch. A special switch would be an unscheduled delivery or shipment. The scheduling is pretty regular with the Port Authority.

According to Booker, he and his assistant manager inspect their employees' work and perform efficiency tests and spot checks for compliance with federal rules and regulations. Booker stated that he is not aware of any GPA work rules that are applicable to his employees and that "[w]e work according to our own work rules." Booker also stated that GPA does not require any particular training for SPTRR employees and Rail Link does not require any training for GPA employees. Booker further stated that neither GPA nor its employees use any carrier equipment and that neither Rail Link nor its employees use any GPA equipment. SPTRR employees wear red uniforms with reflective striping. These uniforms have the Rail Link insignia on the chest.

Rail Link has a separate office from GPA at the Garden City terminal where it maintains its FRA files. According to Booker, all personnel records are maintained by Rail Link's corporate office in Jacksonville, Florida. Booker noted that he does not have access to GPA's NAVIS system, a computer system used by GPA to track the movement of containers at its terminals. Booker stated that, in addition to GPA, SPTRR provides switching and "general railroad" functions for five other customers.

#### GPA's Day to Day Operations

According to Osmos Lanier, GPA's General Manager of Container Operations:

There is no real schedule as to when loading and unloading has to happen. We have deadlines for when load back of containers has to be completed so that pull back can occur and the cars can be delivered to [NS and CSX]. There are schedules that [NS and CSX] attempt to meet but that doesn't always happen. We know when the tracks are available to be spotted again but we don't know anything about the schedules between Rail Link and the [interchange point at] Savannah Yard. On the CSX side, SPTRR determines when loaded rail cars are spotted on working tracks. GPA's completion of load back determines when the cars can be pulled. On the NS side it is basically the same. NS, if it is on schedule, determines when the cars arrive and are available to work. The deadline for load back and to make the cars available to the NS rail yard in Austell, Georgia determines when the cars are pulled.

According to Lanier, the spotting of rail cars by SPTRR is "automatic" and not done at the direction of GPA.

#### Work Performed by GPA Employees at Garden City

GPA employees perform the loading and unloading of rail cars. Loading includes preparation of rail cars for placement of the containers. A GPA foreman "books" inbound rail cars after they have been spotted on the working track. To book the cars, the foreman gets an inventory of the rail car numbers and the container numbers which are on the rail cars. Then he supervises the unloading of the containers by the top lift operators and the jockey truck drivers. Once unloaded, the containers are moved to their point of rest at the Port and the booking sheet is given to a clerk.

With regard to outbound containers, the foreman receives a computer generated plan that determines which containers go on which empty rail cars on the working track. This plan is generated by GPA based on the types of containers

that need to be shipped and the types of empty rail cars available for loading. The foreman directs his crew to load the containers on the rail cars according to this plan. Once the containers are loaded, the foreman prepares a pull sheet containing among other information, the track number, railroad (either NS or CSX), ultimate destination, and container number. If the pull sheet information matches the cars as loaded and the containers are “locked down properly,” the pull sheet is given to Rail Link. Based on that pull sheet, SPTRR pulls the cars off the working track and makes them available to NS and CSX.

A GPA employee described the spotting and pulling of rail cars:

For CSX, SPTRR spots cars on arrival when track space is available. This is a standing order from GPA. [GPA employees perform] the unloading and loading back of the cars. Once loaded, I take the pull sheets to Rail Link’s office and turn them in so they can pull the track and then spot it.

According to GPA employees, on some occasions on the CSX side, a GPA foreman will change the standing order not to spot track because the area is temporarily being used as a “stack” or point of rest for containers while a vessel is being loaded or unloaded.

#### Work Performed by GPA Employees at the Mason ICTF

According to GPA employees at the Mason ICTF, SPTRR works with outbound trains since “NS brings a train straight in and straight out.” Outbound trains are “blocked” by cities. Thus all containers bound for a particular city are grouped together on adjacent rail cars. After the containers are placed on the cars according to the computer generated plan, the GPA foreman gives the pull sheet to the SPTRR crew. Based on the pull sheet, SPTRR performs the switching and moving of cars to block it. The GPA foreman provides the daily supervision and inspects the work of the GPA employees who load and unload the rail cars. GPA employees do not interact with SPTRR

employees while they are working. As one GPA employee stated: "I'm loading and they may be inspecting the track. I might yell or wave or tell them to get out of the way but that's it." Another Mason ICTF employee stated: "The only time we see them is when they are spotting the track or pulling the cars. . . . Rail Link does all the spotting. We do all the loading and unloading. We communicate with them to get the cars in and out."

According to GPA employees, there is a standing order at the ICTF to spot rail cars to available track. With inbound trains, NS will radio and ask which tracks are open. A GPA employee of the Mason ICTF stated: "We try to make available some track every day so [NS] can spot cars and we don't have to bring in SPTRR to do the switching. That saves GPA some money." The one exception is a "hot box" situation. If a stevedore tells GPA that it needs a certain container or "hot box" that is on a car on the storage track, the GPA foreman will verify that the container is there and note the track and car. The GPA foreman will then tell Rail Link to spot that car when working track becomes available.

#### Agency and Supervisory Authority

No GPA employees receive supervision or direction from Rail Link, NS or CSX. The only direction that Rail Link employees receive from GPA is the pull sheet. A GPA employee stated, with regard to the Mason ICTF, that he had not observed railroad employees getting direction or being supervised by GPA, rather they are "just passing on information to the railroad that we need for pulling cars. We request movement and they do it according to their own time." On occasion, according to one GPA employee, a GPA foreman might make suggestions about switching.

There is no evidence that GPA employees act as the agent of any of the rail carriers with regard to any matters. There is also no evidence that Rail Link employees act as the agent of GPA with regard to any matters.

### Description of Services Offered by GPA

The information on GPA's website indicates that the Mason ICTF "provides expedited, overnight rail service to Atlanta and offers users seamless 3-day delivery, or less, by rail to major American hubs." The website also states that GPA's goal is to provide "seamless, expedited rail service." Promoting the benefits of the NAVIS software used by GPA, the website also notes that the "system enhances GPA's gate operations, import/export processing, bookings, billings . . . work order tracking and vessel, rail and yard operations management." The tariffs submitted by the ILA indicate that certain information is required by GPA for its terminal operating system for each container. Where the container has been received by rail, this information includes rail car number. The tariffs further specify charges that apply for loading and unloading containers from rail cars and for moving these containers to and from their point of rest.

### DISCUSSION

#### Applicable Legal Standards

Under Section 151, First, an entity may be a carrier either directly, by operating a railroad, or indirectly as a subsidiary or derivative carrier. *North Carolina State Ports Auth.*, 26 NMB 305 (1999); *see also Federal Express Corp.*, 23 NMB 32, 75 (1995). A derivative or subsidiary carrier is one that is "directly or indirectly owned or controlled by or under common control with any carrier by railroad." 45 U.S.C. § 151, First.

When the Board seeks to determine whether an entity is a subsidiary or derivative carrier, it applies a two-part test. The Board determines whether the nature of the work is that traditionally performed by employees of rail or air carriers and whether the company at issue is directly owned or indirectly owned or controlled by, or under common control with a carrier or carriers. Both parts of the test must be satisfied for the NMB to assert jurisdiction. *John Menzies PLC, d/b/a Ogden*

*Ground Servs. Inc.*, 30 NMB 463 (2003); *AvEx Flight Support*, 30 NMB 355 (2003).

Previously, the Board found GPA to be a “carrier” within the scope of Section 1, First, of the Act. In *Georgia Ports Auth.*, 5 NMB 269, 271-272 (1970), the Board asserted jurisdiction over GPA and SSDRR noting that:

[SSDRR], a wholly-owned subsidiary of [GPA], is certified by the [Interstate Commerce Commission] as a Class II switching and terminal company. The Railroad operates under a tariff which sets forth the charges, rates, rules and regulations governing the switching, weighing, and other terminal charges or allowances . . . . The Railroad’s employees are covered by the Railway Retirement Act, Railroad Unemployment Compensation, and Federal Employers Liability Act.

The Board also relied on the fact that: “Rail lines connecting with or serving the Garden City Terminal deliver rail cars to the inbound yard of the Railroad where they are switched to various locations within the Garden City Terminal by the Railroad and its employees.” *Id.* at 272.

It is undisputed, however, that GPA ceased its direct operation of a rail carrier in 1998. Since 1998, GPA has neither directly nor indirectly owned a rail carrier. Therefore, in order to determine whether GPA is subject to the RLA, the Board must consider the nature of the work performed and the degree of control between GPA and the rail carriers

GPA Employees Perform Work Traditionally  
Performed by Employees of Rail Carriers

Applying the function part of the two-part test, the functions performed by the GPA employees are functions generally performed by rail employees. Loading and unloading containers onto and off rail cars is a service in connection with the transportation of freight by railroads. *Union Pacific Motor Freight*, 27 NMB 441 (2000); *see also Glenway, Inc.*, 17 NMB



257 (1990) (finding that employees who use specialized container handling equipment to load and unload ocean and marine steamship containers on and off rail cars perform work traditionally performed by employees of rail carriers); *Georgia Ports Auth. supra* (finding that employees engaged in activities relating to the loading, unloading, receipt, delivery, transfer in transit, storage and handling of property transported by railroad are performing work of carrier employees). Therefore, the Board finds that the work performed by GPA's employees meets the first part of the two-part test.

#### Direct or Indirect Control

With regard to the second part of the test, the Board looks for evidence of whether a material degree of control exists between the rail carrier and the entity in question for the latter to be deemed a carrier. *C.W.S., Inc.*, 17 NMB 371 (1990). The degree of control is examined in the context of the day to day business operations. This inquiry typically involves the control exercised by a rail carrier over the manner in which the entity in question conducts its business. Significant factors in the Board's analysis include: (1) whether the entity's employees are supervised by the carrier; (2) whether the employees of the entity in question act as the carriers' agents; (3) whether carrier officials have the ability to make effective recommendations regarding the hiring and firing of the entity's employees; (4) whether the entity in question uses equipment owned by the carrier to perform its duties; (5) whether the carrier has a significant degree of control over the training of the entity's employees, and; (6) whether the entity performs work for more than one company and retains control over its operations. See *Bankhead Enters.*, 17 NMB 153 (1990); *Inter Mobile Co.*, 17 NMB 223 (1990); *Pacific Rail Servs. d/b/a Intermodal Mgmt. Servs.*, 16 NMB 468 (1989); *Track Maint., Inc.*, 8 NMB 86 (1980).

In the instant case, the ILA contends that GPA exerts sufficient meaningful control over the day to day operations of SPTRR that GPA should be deemed a carrier within the meaning of the Act. For the reasons set forth below, the Board finds insufficient direct or indirect control between GPA and SPTRR to establish RLA jurisdiction.

Although GPA has retained ownership of the tracks upon which SPTRR operates, mere ownership of tracks does not create RLA jurisdiction. *North Carolina State Ports Auth.*, 26 NMB 305, 317 (1999). While the contractual agreements between Rail Link and GPA are evidence of some degree of control by a carrier, the record as a whole establishes that GPA does not exercise any meaningful control over SPTRR. SPTRR's employees are supervised by Rail Link managers. There is no evidence that GPA managers or supervisors provide any day to day supervision, assignment or direction of SPTRR employees or Rail Link. There is also no evidence that Rail Link provides any day to day supervision, assignment or direction to GPA employees. There is only minimal interaction between SPTRR employees and GPA employees as they perform their work assignments. SPTRR employees wear uniforms bearing the Rail Link insignia.

The only information exchanged between GPA employees and Rail Link is the pull sheets informing Rail Link that rail cars are ready to be pulled from the track. Although the ILA contends that GPA exercises meaningful direction and control of SPTRR with regard to the spotting of tracks and rail equipment, the record indicates that there is a standing order to spot rail cars when tracks become available. Nor do the exceptions to this standing order, a hot box situation or the unavailability of track while it is being used as a stack, establish meaningful control. This information exchange regarding spotting and pulling rail cars is required for SPTRR to perform its contractual obligations to GPA but it falls short of establishing RLA jurisdiction.

SPTRR employees do not use or operate any GPA equipment. GPA employees do not use or operate any Rail Link equipment. Rail Link neither provides nor requires training for

GPA employees. Similarly, GPA neither provides nor requires training for SPTRR employees. There is no evidence that GPA determines the discipline or other personnel matters of SPTRR and Rail Link. Rail Link maintains a separate office at the Garden City Terminal where its FRA files are maintained. Rail Link's personnel records are maintained in its corporate office. Rail Link has no access to the NAVIS computer system used by GPA to manage the Port. GPA is not SPTRR's only customer. SPTRR provides switching and general railroad functions for five other companies.

Finally, the Board finds that GPA does not hold itself out as providing rail services. The information on its website merely indicates that GPA offers certain services in connection with the intermodal transportation of freight.

CONCLUSION AND DISMISSAL

The Board finds that GPA does not directly or indirectly own or control a carrier subject to the RLA. Accordingly, GPA does not fall under the Board's jurisdiction. Therefore, the case is docketed as NMB Case No. R-6999, and the ILA's application is dismissed.

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson  
General Counsel

Copies to:  
G. Paris Sykes, Jr., Esq.  
Ray Smiley  
Walter C. Hartridge, Esq.  
Clyde Fitzgerald  
Charles Spencer