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 HURON AND EASTERN RAILWAY COMPANY, INC.	31 NMB No. 94 FILE No. CR-6850 FINDINGS UPON INVESTIGATION July 20, 2004

This determination addresses an application filed by the Transportation Communications International Union (TCU or Organization). TCU seeks to represent the Train and Engine Service Employees, Signalmen, Machinists, Carmen, and Maintenance of Way Employees on Huron and Eastern Railway Company, Inc. (Huron or Carrier) and requests the National Mediation Board (NMB or Board) to investigate whether Huron and Central Michigan Railway Company (Michigan) have effectively merged and are operating as a single transportation system.

The investigation establishes that Huron and Michigan constitute a single transportation system.

PROCEDURAL BACKGROUND

On April 29, 2004, TCU filed an application alleging a representation dispute involving the Train and Engine Service Employees, Signalmen, Machinists, Carmen, and Maintenance of Way Employees of Huron. The application was given NMB File No. CR-6850, and the Board assigned Cristina A. Bonaca to investigate.

The Organization and Carrier submitted their initial position statements on May 19, 2004. In response to a request from the Investigator for information on whether Michigan and Huron were operating as a single transportation system, TCU responded on June 9, 2004, and Huron responded on June 10, 2004.

ISSUE

Are Michigan and Huron a single transportation system?

CONTENTIONS

I. TCU

TCU contends that Huron is a single transportation system created by the merger of Huron and Michigan. TCU represented the Train and Engine Service Employees, Signalmen, Machinists, Carmen, and Maintenance of Way Employees on Michigan through an act of voluntary recognition by the carrier. *Central Michigan Ry. Co.*, 16 NMB 294 (1989).

TCU argues that, “this is an ‘end-to-end’ merger creating a single transportation system.” The Organization asserts that the merger has resulted in: a common workforce with employees subject to a uniform personnel policy and common management; integrated essential operations, including central handling of dispatching and sales; and common marketing, including one official letterhead and phone number which only identifies Huron.

The Organization contends that the NMB has clear authority to decide representation disputes resulting from mergers. Further, TCU states that, "clear evidence of representation such as collective bargaining agreement, membership applications, etc., demonstrate employee desires for union representation as much as authorization cards."

The Organization additionally states that the appropriate crafts or classes in the instant matter are co-extensive with the job classifications covered by its collective bargaining agreement (CBA) with Michigan. However, TCU states that it "is not necessarily adverse" to the Carrier's position that the appropriate craft is all of its statutory employees, and "reserves the right to comment further on this issue."

II. HURON

Huron agrees with TCU's position that Huron and Michigan have effectively merged and are a single system for purposes of the RLA, and lists a number of factors (common marketing, central management and control, and a combined workforce) supporting its contention.

However, the Carrier contends that the NMB's Merger Guidelines exceed the Board's authority "to the extent they authorize an investigation in the absence of any dispute among the employees of the 'merged' railroads." Specifically, Huron asserts that TCU has not provided evidence of a representation dispute since it has not presented any authorization cards. The Carrier asks the Board to dismiss TCU's application since, in its estimation, the Organization has not provided evidence of a representation dispute.

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.

Huron and Michigan are common carriers as defined in 45 U.S.C. § 151, First.

II.

TCU 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. 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

On April 18, 1989, TCU was voluntarily recognized by Michigan as the collective bargaining representative of employees in the crafts or classes of Locomotive Engineers, Conductors, Brakemen, Maintenance of Way & Structures, Signalmen, Machinists, and Carmen. *Central Michigan Ry. Co., above*. There has been a CBA between Michigan and TCU in effect since January 1, 1990.

On January 5, 2004, Huron filed a Notice of Exemption for the approval of its acquisition of Michigan. On February 4, 2004, the Surface Transportation Board (STB) approved Huron's acquisition and operation of Michigan's approximately 99.87 miles of rail line and incidental track rights. Huron is currently operating all of the lines formerly owned by Michigan.

The following is information on the current Huron operation.

1. Published Combined Schedules/Combined Routes

Huron publishes combined tariffs for the lines previously owned by Michigan and for Huron's pre-existing lines.

2. Standardized Uniforms

Huron does not supply uniforms to any of its employees.

3. Common Marketing, Markings, or Insignia

Huron markets services both for the lines previously owned by Michigan and for Huron's pre-existing lines. In addition, Michigan no longer has a separate letterhead or phone number, and phone calls to Huron are not answered identifying the number as also being part of Michigan.

4. Integrated Essential Operations

Huron's central office handles train dispatching, sales, and employee assignments both for the lines previously owned by Michigan and for Huron's pre-existing lines.

5. Centralized Labor and Personnel Operations

Huron's central office handles human resources both for the lines previously owned by Michigan and for Huron's pre-existing lines.

6. Common Management

Huron's officers manage both the lines previously owned by Michigan and Huron's pre-existing lines. The entire system is managed by General Manager John Bixby and Vice President J. Polley.

7. Combined Workforce

There is a single combined workforce both for the lines previously owned by Michigan and for Huron's pre-existing lines. Huron hired 35 employees from Michigan who are covered by the same personnel policies as other Huron employees, and report to the same management.

8. Common/Overlapping Ownership

Substantially all the assets constituting the lines previously owned by Michigan are now owned by Huron.

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 of N. Am. v. Nat'l Mediation Brd.*, 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." *See IAM v. Northeast Airlines, Inc.*, 536 F.2d 975, 977 (1st Cir. 1976) (federal courts leave resolution of representation disputes resulting from mergers to the NMB).

Section 19 of the Board's Representation Manual (Manual) outlines the Board's procedures for mergers. Section 19.401 discusses how an organization or individual may file an

application, supported by evidence of representation, seeking an NMB determination that a single transportation system exists. Specifically, Section 19.401 provides:

> If the organization or individual filing the application represents any of the employees covered by the application, the organization or individual must submit evidence of representation including, but not limited to, a seniority list, dues check-off list, a current collective bargaining agreement or a certification, or other indicia of current representation.

TCU properly filed an application for a single system determination under Section 19.401, as the Organization representing the Train and Engine Service Employees, Signalmen, Machinists, Carmen, and Maintenance of Way Employees on Michigan. TCU also appropriately presented "evidence of representation" when it provided the CBA between Michigan and TCU, effective since 1990 and other indicia of current representation.

The evidence provided by TCU was sufficient to satisfy Section 19.401 and to trigger the Board's single system investigation. Until the Board receives the List of Potential Eligible Voters from Huron, it cannot determine whether authorization cards will be needed to supplement the showing of interest requirement. *See* Manual Section 19.601 (Incumbent organizations have thirty (30) calendar days from the date of the NMB's single transportation system determination to file an application supported by at least thirty-five (35) percent *or to supplement the showing of interest*) (emphasis added).

The Board has clear statutory authority to investigate representation disputes arising from mergers, when the request is initiated by an organization or an individual. *See Air Line Pilots Ass'n, Int'l v. Texas Int'l Airlines, above*; *IAM v. Northeast Airlines, Inc.*, *above*. In *Ry. Labor Executives' Ass'n v. Nat'l Mediation Brd.*, 29 F.3d 655 (D.C. Cir. 1994), the court did not question the Board's authority to investigate representation

disputes following a merger when it was initiated by a request from an organization or an individual. Rather, the court said that allowing carriers or the Board itself to initiate investigations after a merger or corporate restructuring was unlawful. *Id*. at 665-666.

II. Single Transportation System

The Board finds a single transportation system when there is substantial integration of operations, of financial control, and of labor and personnel functions. *Portland & Western R.R.,* 31 NMB 71 (2003); *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, 108-09 (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 [include] . . . whether labor relations and personnel functions are handled by one carrier; whether there are a 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, 314-15 (1997); *Wisconsin Cent. Ltd./Fox Valley & Western Ltd.*, 21 NMB 431, 442-43 (1994); *Fox Valley & Western Ltd.*, 21 NMB 112, 128 (1994); *See also* Manual Section 19.501 (Factors Indicating a Single Transportation System).

Huron and Michigan are operating as a single transportation system. Huron's acquisition and operation of Michigan's 99.87 miles of rail line was approved by the STB on February 4, 2004. Huron owns substantially all assets constituting the lines previously owned by Michigan. The entire system is managed by General Manager John Bixby and Vice President J. Polley.

Huron publishes combined tariffs and markets services for the lines previously owned by Michigan and for Huron's pre-existing lines. After the merger, Huron hired 35 former Michigan employees; these employees are currently covered by the same personnel policies and management as the pre-existing Huron employees. Additionally, Huron's central office handles human resources, train dispatching, sales, and employee assignments both for the lines previously owned by Michigan and for Huron's pre-existing lines. Michigan no longer has a separate phone number or letterhead, and all calls to the merged system are identified as calls to Huron.

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

CONCLUSION

The Board finds that Huron and Michigan are operating as a single transportation system for representation purposes under the RLA.

Consistent with the direction of the Board's April 30, 2004 docket letter, Huron must provide the Board by **July 27, 2004** with: three copies of the alphabetized Lists[1] of Potential Eligible Voters, organized on a system-wide basis; one copy of the Lists on a diskette or CD as a Microsoft-Excel file; one set of signature samples for the eligible voters; and notice as to the last day of the last payroll period prior to April 29, 2004.

Once the Lists of Potential Eligible Voters are provided, the Investigator will determine whether TCU's showing of interest is sufficient or needs to be supplemented.

By direction of the NATIONAL MEDIATION BOARD.

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[1] Since TCU has applied to represent five crafts or classes (Train and Engine Service Employees, Signalmen, Machinists, Carmen, and Maintenance of Way Employees) on Huron, the Carrier is directed to produce five separate Lists of Potential Eligible Voters. The issue of what are the proper crafts or classes on Huron will be addressed in a subsequent decision.