



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the

**UNITED TRANSPORTATION
UNION**

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

involving employees of

FLORIDA NORTHERN RAILROAD

34 NMB No. 25

FILE NO. CR-6913
and CASE NO. R-7114

FINDINGS UPON
INVESTIGATION

May 1, 2007

This determination addresses the application filed by the United Transportation Union (UTU or Organization). The UTU seeks to represent the crafts or classes of Train and Engine Service Employees and Trackmen, Maintenance of Way Employees, and Signalmen on Florida Northern Railroad (Florida Northern or Carrier). Florida Northern requests the National Mediation Board (NMB or Board) to investigate whether Florida Northern, Florida Central Railroad (Florida Central), and Florida Midland Railroad (Florida Midland) are operating as a single transportation system. Further, Florida Northern seeks the Board's determination as to the proper craft or class for representation purposes.

The investigation establishes that Florida Central, Florida Northern, and Florida Midland operate as a single transportation system for purposes of the crafts or classes of Operating Employees and Non-Operating Employees.

PROCEDURAL BACKGROUND

On February 7, 2007, the UTU filed two applications alleging representation disputes involving employees on Florida Northern. The application to represent Train and Engine Service Employees was designated NMB Case No. R-7114. The application to represent Trackmen, Maintenance of Way Employees, and Signalmen was designated NMB File No. CR-6913. Both applications were assigned to Investigator Cristina A. Bonaca.

On February 20, 2007, Florida Northern filed an initial position statement. UTU responded with its position statement on February 22, 2007. Florida Northern supplied an additional statement on March 9, 2007, and the UTU provided additional information on March 16, 2007.

On March 20, Florida Northern filed a supplemental statement. The Organization responded on March 23, 2007. On that same day, the Investigator issued a letter to participants requesting additional information necessary to fully investigate the dispute. Florida Northern and UTU each filed final submissions on March 30, 2007.

ISSUES

Are Florida Central, Florida Northern, and Florida Midland a single transportation system? If so, what are the representation consequences?

What is the proper craft(s) or class(es) of employees at the single transportation system?

CONTENTIONS

UTU

The UTU contends that Florida Northern is a separate transportation system from Florida Midland and Florida Central. According to the Organization, this is evidenced by the facts that: the three Florida lines have completely non-contiguous service; they cover different geographic regions; and they employ different individuals. The UTU asserts that the

home duty points for the employees on the three respective lines are more than 100 miles from one another, and that with one exception, Florida Northern employees work only on the Florida Northern lines. In addition, the Surface Transportation Board (STB) has not issued a determination that Florida Central controls Florida Northern; rather, Pinsly Railroad Company, Inc. (Pinsly) is the entity that the STB approved “[t]o continue in control of the Florida Northern Railroad Company.” *Pinsly Railroad Company – Continuance in Control Exemption*, 1988 WL 225108 (ICC).

Further, according to the Organization, Pinsly markets each of its Florida railroads as distinct entities, despite the fact they share the same manager, executives, marketing director, mailing address, and fax number. In the UTU’s estimation, Florida Central, Florida Northern, and Florida Midland are operated as independent carriers.

The UTU contends that Florida Northern employees work primarily in one craft or class, and that it is unusual for employees to be cross-utilized. The Organization disputes the Carrier’s contention that there is significant overlap in work duties between Operating and Non-Operating Employees. A declarant for the UTU stated that over the past year, Florida Northern employees have spent the “overwhelming majority” of their time along traditional craft or class lines, with Operating Employees spending no more than five percent of their time performing Non-Operating duties.

Further, the UTU argues that having two crafts or classes would help in streamlining the railroad’s operation, and that there is adequate work to keep both Operating and Non-Operating crafts or classes gainfully employed in their respective lines of work. The Organization contends that the productivity of the railroad would be enhanced by splitting the Operating and Non-Operating Employees for bargaining purposes.

Florida Northern

Florida Northern asserts that the evidence of common ownership and management, integrated labor and personnel operations, standardized uniforms, and common insignia

clearly establish that Florida Central, Florida Northern, and Florida Midland constitute a single transportation system.

Florida Northern contends that its employees are part of a single craft or class of cross-trained and cross-utilized Operating and Non-Operating Employees. The Carrier contends that Pinsly's six Florida line segments cannot maintain enough employees at all locations to follow traditional craft or class distinctions, therefore, Pinsly's Florida employees "frequently" work in different positions when the need arises. Florida Northern states that Operating Employees may be required to repair cars, work on locomotives, and help with track and general maintenance. All of Pinsly's Florida Train and Engine Service Employees have been trained to do Maintenance of Equipment work so they are able to perform the 1000-mile initial test, which includes changing brake shoes on rail cars. In addition, many Non-Operating Employees possess Engineer or Trainmen certificates so they are able to work moving locomotives or trains. Therefore, in Florida Northern's estimation, the employees on its system constitute a single craft or class.

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.

Florida Northern, Florida Central, and Florida Midland Railroads are common carriers as defined in 45 U.S.C. § 151, First.

II.

The UTU 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

Background

Pinsly, based in Westfield, Massachusetts, was founded in 1938 and is one of the oldest short line railroad companies in the United States. Pinsly owns and controls five class III (short line) railroads: Florida Central, Florida Northern, and Florida Midland (all located in Florida); Arkansas Midland Railroad (located in Arkansas); and Pioneer Valley Railroad (located in Massachusetts).

Corporate Transactions

Pinsly is the sole owner of Florida Central, Florida Northern, and Florida Midland. Florida Central was acquired from CSX Transportation (CSXT)¹ in 1986 and operates one line segment from Orlando (70 track miles). Florida Midland

¹ CSXT is a Class I railroad in the United States, owned by the CSX Corporation.

was acquired from CSXT in 1987 and operates three non-contiguous line segments: Wildwood (5 track miles); West Lake Wales (19 track miles); and Winter Haven (7 track miles). Florida Northern was acquired from CSXT in 1998 and operates two non-contiguous line segments: Ocala (27 track miles); and West Coast Sub (76 track miles).

Management

Pinsly sets the capital and operating budgets, arranges financing and determines dividends, and otherwise commonly controls the finances of Florida Central, Florida Northern, and Florida Midland. Pinsly has appointed the same individuals as directors of all three Florida railroads.

Bennett J. Biscan is the Vice President (VP) of Florida Central, Florida Northern, and Florida Midland, and is responsible for all operational and administrative matters. All three railroads share a common management team including: General Manager Steve Chambers; Manager of Operations Dennis Maples; Manager of Administration Andrew Ikensaa; and Manager of Marketing Jim O'Donnell. The management team and their support staff are physically located in an office building in Plymouth, Florida. All aspects of management of the six line segments are handled through the Plymouth office.

Operations/Workforce

The Plymouth office handles all recruiting, hiring, and training for employees working at Florida Central, Florida Northern, and Florida Midland. Employee benefits are provided through Pinsly's headquarters in Massachusetts, but all local personnel functions including safety and discipline are administered in Plymouth for all Florida employees.

All employees of Florida Central, Florida Northern, and Florida Midland are paid on a single Florida Central payroll, and each employee's earning statement reflects Florida Central as the paying entity. Further, several form documents of a current Florida Northern employee were submitted which clearly identify Florida Central as the employer, including: 1) an authorization to release information, required for all applicants; 2) an authorization to conduct a search of the

National Driver Register; 3) an employee withholding consent form; and 4) an employee performance review.

Employees of Pinsly's Florida lines are governed by the same operating and safety rules, and safety committee. Although some employee-formed safety committees hold informal meetings at other locations, the Florida-wide Local Safety Committee meets primarily at Plymouth. All Operating and Non-Operating Employees' training classes are conducted in Plymouth, and all employees are required to take qualifying exams which contain specific questions about all three railroads.

The Carrier produced records evidencing that the workforce is consolidated and there is some interchange of employees among the lines.² Employees of Florida Central, Florida Northern, and Florida Midland receive the same fringe benefits and their pay scales are within a range depending on merit, experience, and seniority. The wage range, review process, and timing of wage increases (annually July 1) is the same for all Florida workers.

Public Relations/Marketing

The website for Pinsly is at <http://www.pinsly.com>. The hyperlink to "Florida Railroads," at the base of the main page, brings you to a web page which lists all three Pinsly Florida railroads: Florida Central, Florida Northern, and Florida Midland. The page also contains a picture of a sign in front of the Plymouth office which lists all three railroads, beginning with Florida Central, above the Pinsly name and logo. In addition, the links to each respective Florida railroad display the same management team, the same phone and fax number, the same email address: fc@fcrr.com, and the same physical address in Plymouth, Florida.

The UTU produced a picture taken by a Florida Northern employee of a "No Trespassing" sign on Florida Northern property which contains language stating that "Florida Northern Railroad" is the owner or occupant.

² During the month of January, approximately 20 percent of the Florida employees performed duties at two or more locations.

As previously discussed, the marketing for all three Florida railroads is handled by Manager of Marketing Jim O'Donnell from the central office in Plymouth.

Routes and Schedules

Florida Central, Florida Northern, and Florida Midland share two Florida local tariffs, *Switching and Accessorial Services*, and *Demurrage Rules and Charges*. See http://www.fcrr.com/florida_tariff_PDF.html. The tariffs are equally applicable to all three railroads.

Management of the six line segments is handled through the Plymouth office, including the scheduling of all crews. While local line supervisors handle a portion of daily operations, they report to Manager of Operations Dennis Maples in Plymouth. Train operations are controlled by train register or yard limit operations. Paperwork and switching instructions are relayed from Plymouth, and all delay sheets and conductor reports are faxed to Plymouth daily.

Signs, Logos, Uniforms, and Equipment

All employees working on Pinsly's Florida railroads are required to wear a lime green t-shirt as their uniform, and are issued 15-20 t-shirts a year. The "uniform" t-shirt has a large Pinsly logo on the back with the words "Pinsly Railroads," and a small logo above the front pocket which lists the three Florida railroads beginning with Florida Central.

All of Pinsly's Florida railroads have locomotives painted the same color red. According to the photos available at the Pinsly website, the locomotives pictured on the Florida Northern and Florida Central pages are painted with the name "Florida Central Railroad."

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. *General Comm. of Adjustment v. M.K.T. R.R.*, 320 U.S. 323 (1943); *Switchmen's Union of N. Am. v. Nat'l Mediation Brd.*, 320 U.S. 297 (1943). In *Air Line Pilots Ass'n, Int'l v. Texas Int'l Airlines, Inc.*, 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's Representation Manual (Manual) Section 19.4 provides that: "Any organization or individual may file an application, supported by evidence of representation or a showing of interest . . . seeking a NMB determination that a single transportation system exists." Manual Section 19.501 provides the factors for making a determination whether a single system of transportation exists.

In *Trans World Airlines/Ozark Airlines*, the Board cited the following indicia of a single transportation system:

[W]hether a combined schedule is published; how the carrier advertises its services; whether reservation systems are combined; . . . 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.

14 NMB 218, 236 (1987).

The Board finds a single transportation system when there is substantial integration of operations, of financial control, and of labor and personnel functions. *US Airways / America West Airlines*, 33 NMB 339 (2006); *GoJet Airlines, LLC and Trans States Airlines, Inc.*, 33 NMB 24 (2005); *Burlington N. Santa Fe Ry. Co.*, 32 NMB 163 (2005); *Huron & Eastern Ry. Co., Inc.*, 31 NMB 450 (2004); *American Airlines and Reno Air*, 26 NMB 467 (1999). Further, 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 and Valley Flying Serv., Inc., d/b/a Northeast Express Reg'l Airlines*, 20 NMB 619, 655 (1993). The Board's substantial integration of operations criteria does not, however, require total integration of operations. *Allegheny Airlines, Inc., and Piedmont Airlines, Inc.*, 32 NMB 21, 28 (2004).

Florida Central, Florida Northern, and Florida Midland are operating as a single transportation system (known as FCR for purposes of this decision). The three Florida railroads are commonly owned by Pinsky. Pinsky controls the capital, operating budget, and finances of the three entities and has appointed the same individuals as directors of the three railroads. Florida Central, Florida Northern, and Florida Midland are run by a common management team, including VP Biscan, General Manager Chambers, Manager of Operations Maples, Manager of Administration Ikensaa, and Manager of Marketing O'Donnell, all of whom are physically located and run operations from an office in Plymouth, Florida.

Florida Central, Florida Northern, and Florida Midland each operate non-contiguous lines located in Florida. Carrier management testified and produced records evidencing that its Florida workforce is consolidated and there is some interchange of employees among the lines. The fact that the lines are non-contiguous and the workforce not completely integrated is not sufficient to prevent a single transportation system finding. *See Burlington N. Santa Fe Ry. Co., above*, at 171-72 (2005) (Board found a single system of transportation even though the Line was not contiguous with any other track maintained by BNSF and the nine employees at issue worked exclusively on the Line).

The Plymouth office handles all recruiting, hiring, discipline, and local personnel administration for employees of the Florida railroads, except benefits which are administrated through Pinsly headquarters in Massachusetts. Administrative forms for Pinsly's Florida employees, including earning statements, performance reviews, and authorization forms all reflect Florida Central as the employer of record. All Florida employees are paid on a single Florida Central payroll, and employees are paid on the same wage scale, with a range depending on merit, experience, and seniority. All Florida Pinsly employees are subject to the same training classes, and are governed by the same operating rules, safety rules, and safety committee.

Operations for Florida Central, Florida Northern, and Florida Midland are centralized under the leadership of Manager of Operations Maples, and include all aspects of management and scheduling of crews. Paperwork and switching instructions are relayed from Plymouth, and all delay sheets and conductor reports are faxed to Plymouth daily.

Pinsly's website has a link to its "Florida Railroads," which lists Florida Central, Florida Northern, and Florida Midland, and reflects that the three entities share two local Florida tariffs, a common management team, one physical location, and a common phone, fax, and email address.

All employees wear standardized uniforms in the form of issued company t-shirts, which feature the Pinsly logo and the names of the three Florida railroads. All Florida Central,

Northern, and Midland locomotives are painted the same color red. According to the photos available at the Pinsky website, the locomotives pictured on the Florida Northern and Florida Central pages are painted with the name “Florida Central Railroad.”

Based upon the application of the principles cited above to the facts established by the investigation, the Board finds that Florida Central, Florida Northern, and Florida Midland operate as a single transportation system for representation purposes.

III.

Craft or Class

In determining the proper 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. *United Air Lines, Inc.*, 32 NMB 75 (2004); *National R.R. Passenger Corp.*, 31 NMB 178 (2004); *United Parcel Serv. Co.*, 30 NMB 84 (2002); *Frontier Airlines, Inc.*, 29 NMB 28 (2001). It is particularly important that the employees share a work-related community of interest. *Continental Airlines, Inc./Continental Express, Inc.*, 26 NMB 143 (1999); *LSG Lufthansa Servs., Inc.*, 25 NMB 96 (1997); *Airborne Express, Inc.*, 9 NMB 115 (1981). The Board makes craft or class determinations on a case by case basis, relying upon Board policy and precedent. *National R.R. Passenger Corp.*, *above*; *Simmons Airlines*, 15 NMB 124 (1988).

The Board recognizes that “historical patterns of representation in the railroad industry provide the basis for craft or class determinations.” *Terminal R.R. Ass’n of St. Louis*, 28 NMB 187, 199 (2000); *Duluth, Missabe & Iron Range Ry. Co.*, 16 NMB 495, 500 (1989). However, the Board does not base craft or class determinations solely on historical patterns of representation, and in recent years, the Board has recognized that on some smaller carriers, employees may work in more than one craft or class over a period of time. See *Florida East Coast R.R. Co.*, 21 NMB 35, 44 (1993); *Kiamichi R.R. Co., Inc.*, 19 NMB 212, 219 (1992).

In order to determine whether FCR's employees are effectively operating as one consolidated craft or class of both Operating and Non-Operating Employees, or alternatively operating as two distinct crafts or classes, the Board requested cross-utilization data for the month of January. Cross-utilization is a concept sometimes used in craft or class determinations, and is defined as the usage of employees based on the team concept of requiring employees to perform various job duties. *Terminal R.R. Ass'n of St. Louis, above*, at 201-02 (2000).

In *Florida East Coast R.R., above*, the Board was asked to make a craft or class determination and considered several factors, including a review of cross-utilization data. The Board found a combined craft or class of Train and Engine Service Employees due in large part to extensive cross-training and cross-utilization of Operating Employees, with more than 33 percent performing both train and engine service work. *Id.* at 45; *cf. The Kansas City Southern Ry., Co.*, 29 NMB 410 (2002) (declining to find a combined craft or class of Train and Engine Service Employees, as less than four percent worked in both train and engine service); *Union Pacific R.R. Co.*, 27 NMB 247 (2000) (declining to find a combined craft or class of Train and Engine Service Employees for a number of factors, including less than one percent cross-utilization over a 90 day period).

In order to measure the amount of cross-utilization among the employees on the Pinsky FCR system, the Board directed the Carrier to provide the actual payroll of all non-management Pinsky Florida employees for the month of January, indicating the specific jobs individual employees worked each day. In addition, the Board requested a list of all employee certifications. Below is a chart reflecting the information submitted by the Carrier. Employees are identified by random numbers for privacy purposes. In addition, the actual duty position that an employee was hired to perform is indicated in bold.

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Total # of FCR e's	Random #	Number of Days Worked in Position	Number of Days Worked in Position	Number of Days Worked in Position	Percentage Worked in Duty Position	Certifications
1	8	Trainman -- entire month			100% (operating)	Qualified Conductor
2	9	Trackman -- 4 days	Trainman -- 16 days		72% (operating)	Qualified Conductor
3	10	Supervisor, Maintenance of Way (MOW) -- entire month			100% (non-operating)	Commercial Driver's License (CDL) / Certified Track Inspector
4	11	Trainman -- entire month			100% (operating)	Qualified Conductor
5	12	Agent -- entire month			100% (non-operating)	
6	13	Trainman -- entire month			100% (operating)	Qualified Conductor
7	14	Engineer -- 21 days	Trackman -- 3 days		87% (operating)	Certified Engineer/ Qualified Conductor
8	15	Engineer -- 13 days	Trackman -- 7 days		65% (operating)	Certified Engineer/ Qualified Conductor
9	16	Administrative Clerk -- 22 days	Flagman -- 1 day	Engineer -- 1 day	91% (non-operating)	Certified Engineer/ Qualified Conductor
10	17	Sales Rep. -- 4 days	Engineer -- 21 days	Signal Maintenance -- 1 day	80% (operating)	Certified Engineer/ Qualified Conductor
11	18	Laborer -- entire month			100% (non-operating)	
12	19	Supervisor, Maintenance of Equipment (MOE) -- 22 days	Engineer -- 1 day		95% (non-operating)	Certified Engineer/ Qualified Conductor/ Car Inspector

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13	20	Engineer – 2 days	Trainman – 1 day	Transportation Supervisor – 19 days	86% (operating)	Certified Engineer/Qualified Conductor
14	21	Signal Maintenance – entire month			100% (non-operating)	
15	22	Agent – entire month			100% (non-operating)	
16	23	Engineer – 21 days	Engineer/ Locomotive Maintenance – 4 days	Track Maintenance/ Signal Maintenance – 1 day	80% (operating)	Certified Engineer/Qualified Conductor
17	24	Engineer – 14 days	Signal Maintenance – 7 days		66% (operating)	Certified Engineer/Qualified Conductor
18	25	Trackman -- 5 days	Engineer – 14 days		73% (operating)	Certified Engineer/Qualified Conductor
19	26	Trackman – 2 days	Engineer -- 20 days		90% (operating)	Certified Engineer/Qualified Conductor
20	27	Signal Maintenance – entire month			100% (non-operating)	Certified Engineer/Qualified Conductor
21	28	Trainman – 21 days	Trackman – 3 days		87 % (operating)	Student Engineer/Qualified Conductor
22	29	Mechanic's Helper – 20 days	Mechanic's Helper/ Conductor – 1 day	Trainman – 1 day	90% (non-operating)	Qualified Conductor

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23	30	Foreman, MOW - entire month				100% (non-operating)	Qualified Conductor/ Certified Track Inspector
24	31	Engineer - entire month				100% (operating)	Certified Engineer/ Qualified Conductor
25	32	Engineer -- 22 days	MOE - 2 days	Signal Maint.- 1 day	Engineer /MOW- Laborer - 1 day	84% (operating)	Certified Engineer/ Qualified Conductor
26	33	Engineer - entire month				100% (operating)	Certified Engineer/ Qualified Conductor
27	34	Engineer - 23 days	Signal Maintenance - 1 day			100% (operating)	Certified Engineer/ Qualified Conductor
28	35	Truck Driver - entire month				100% (non-operating)	CDL
29	36	Engineer - entire month				100% (operating)	Certified Engineer/ Qualified Conductor
30	37	Engineer - entire month				100% (operating)	Certified Engineer/ Qualified Conductor
31	38	Trainman - entire month				100% (operating)	Qualified Conductor
32	39	Laborer - entire month				100% (non-operating)	Qualified Conductor / CDL
33	40	Engineer - 18 days	Engineer/ Locomotive Maintenance - 4 days			81% (operating)	Certified Engineer/ Qualified Conductor

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34	41	Mechanic - 16 days	Trackman - 5 days	Trainman/ Conductor - 1 day	72% (non-operating)	Qualified Conductor/ Car Inspector
35	42	Engineer - 20 days	Trackman - 3 days		86% (operating)	Certified Engineer/ Qualified Conductor
36	43	Track Foreman - entire month			100% (non-operating)	CDL/Qualified Conductor/ Certified Track Inspector
37	44	Laborer - entire month			100% (non-operating)	
38	45	Engineer - 13 days	Trackman - 4 days		76% (operating)	Certified Engineer/ Qualified Conductor
39	46	Engineer - entire month			100% (operating)	Certified Engineer/ Qualified Conductor
40	47	Engineer - entire month			100% (operating)	Certified Engineer/ Qualified Conductor
41	48	Supervisor of Administration - entire month			100% (non-operating)	
42	49	Administrative Assistant - entire month			100% (non-operating)	
43	50	Trainman - 20 days	Trackman - 1 day		95% (operating)	Qualified Conductor
44	51	Engineer - entire month			100% (operating)	Certified Engineer/ Qualified Conductor
45	52	Signal Supervisor - entire month			100% (non-operating)	Qualified Conductor

46	53	Supervisor of Operations -- entire month				100% (operating)	Certified Engineer/Qualified Conductor
47	54	Engineer -- 2 days	Trackman -- 1 day	Mechanic -- 15 days		83% (non-operating)	Certified Engineer/Qualified Conductor
48	55	Laborer -- entire month				100% (non-operating)	
49	56	Engineer -- entire month				100% (operating)	Certified Engineer/Qualified Conductor
50	57	Engineer -- entire month				100% (operating)	Certified Engineer/Qualified Conductor
51	58	Engineer -- entire month				100% (operating)	Certified Engineer/Qualified Conductor
52	59	Trainman -- entire month				100% (operating)	Student Engineer/Qualified Conductor

The data provided for all Pinsky non-management Florida employees reveals that, on average during the month of January, employees spent 93 percent of their time working in their assigned duty position within the Operating or Non-Operating craft or class. While a fair number of employees possess certifications allowing them to be cross-utilized, employees spent a clear majority of their time performing their assigned Operating or Non-Operating duties. The evidence clearly establishes that each group shares a distinct community of interest and that two separate crafts or classes is appropriate. See *The Kansas City Southern Ry., Co.*, 29 NMB 410 (2002); *Union Pacific R.R. Co.*, 27 NMB 247 (2000). Accordingly, the Board finds that the appropriate crafts or

classes at FCR are Operating Employees and Non-Operating Employees.

CONCLUSION

The Board finds that Florida Central, Florida Northern, and Florida Midland are operating as a single transportation system for representation purposes under the RLA, for the crafts or classes of Operating and Non-Operating employees.

Consistent with the direction of the Board's February 7, 2007 docket letter, Florida Central must provide the Board with two alphabetized lists of all potential eligible voters, one of all Operating Employees, and one of all Non-Operating Employees.³ These lists are due May 8, 2007. Signature samples were previously provided. Once the lists of potential eligible voters are provided, the Investigator will determine whether the UTU's showing of interest is sufficient to proceed with the Board's investigation.

By direction of the NATIONAL MEDIATION BOARD.



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³ The list of potential eligible voters must contain all individuals with an employee-employer relationship as of February 4, 2007 (the last day of the last payroll period preceding February 7, 2007).