



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the  
Application of the  
  
INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS  
  
alleging a representation dispute  
pursuant to Section 2, Ninth, of  
the Railway Labor Act, as  
amended  
  
involving employees of  
  
PORT AUTHORITY  
TRANS-HUDSON CORPORATION

37 NMB No. 2  
  
CASE NO. R-7213  
  
FINDINGS UPON  
INVESTIGATION  
  
October 14, 2009

This determination addresses the application filed by the International Brotherhood of Electrical Workers (IBEW or Applicant) alleging a representation dispute pursuant to the Railway Labor Act<sup>1</sup> (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth). IBEW seeks to represent the craft or class of Transportation Operations Examiners at the Port Authority Trans-Hudson Corporation (PATH or Carrier).

For the reasons discussed below, the National Mediation Board (Board or NMB) finds that Transportation Operation Examiners are not management officials and that Transportation Operations Examiners is an appropriate craft or class. Accordingly, the Board authorizes an election.

PROCEDURAL BACKGROUND

On July 13, 2009, the IBEW filed an application with the Board alleging a representation dispute among the Transportation Operations Examiners at PATH. The Board had previously conducted an election among PATH's

---

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

employees in the craft or class of Transportation Operations Examiners. *Port Auth. Trans-Hudson Corp.*, 34 NMB 81 (2007) (*PATH I*); *Port Auth. Trans-Hudson Corp.*, 34 NMB 136 (2007) (*PATH II*). On July 27, 2009, PATH filed a list of potential eligible voters with the Board and stated its position that Transportation Operations Examiners are ineligible to vote since they are management officials under Section 9.211 of the Board's Representation Manual (Manual). By letter dated July 31, 2009, the Board requested that PATH submit information supporting its position and requested that the Applicant respond to PATH's position. On August 7, 2009, PATH filed a supplemental position statement with supporting information. On August 14, 2009, the IBEW filed its response. On August 28, 2009, PATH submitted a reply to IBEW with additional evidence in support of its position. By letter dated September 8, 2009, the IBEW responded to PATH's submission.

### ISSUE

Are PATH's Transportation Operations Examiners management officials ineligible for representation?

If not, do PATH's Transportation Operations Examiners constitute an appropriate craft or class under the RLA?

### CONTENTIONS

#### PATH

PATH contends that the Transportation Operations Examiners (Operations Examiners) are management officials and thus ineligible to vote in representation elections. According to PATH, the duties of the Operation Examiners have changed in material ways since the Board's investigation in 2007, and these employees now possess and exercise managerial authority. PATH states that the Operations Examiners re-instruct subordinates in proper work methods and, when necessary, investigate and initiate disciplinary proceedings. Since the reclassification of the position, PATH asserts that the Operations Examiners also regularly participate as carrier representatives in administrative and disciplinary hearings. In addition, PATH contends that the Operations Examiners regularly supervise other PATH employees, conduct training, and administer promotional and qualifying exams. PATH further contends that they perform written evaluations and assignment work. According to PATH, they also conduct recertification testing and performance appraisals of train engineers as required by the Federal Railway Administration (FRA) Certification Program. PATH also states that the Operations Examiners possess the authority to create carrier policy and, through their expanded

authority to authorize overtime, commit carrier funds. Finally, PATH asserts that the craft or class of Transportation Operations Examiners is not appropriate, and requests that the Board conduct an on-site investigation.<sup>2</sup>

### IBEW

IBEW states that the reclassification of the Operations Examiner position since the Board's previous determination has been in form only and did not result in a material change to the authority or responsibility of these employees. According to IBEW, the Operations Examiners do not possess the authority to terminate or demote employees or effectively recommend such action. IBEW asserts that while they have some authority for supervising employees on a day-to-day basis this level of authority has remained unchanged since the previous representation dispute. IBEW further asserts that the Operations Examiners have a limited role in discipline of employees. They may also be called as fact witnesses in disciplinary hearings but play no other role. IBEW also asserts that the Operations Examiners have little responsibility in PATH's hiring process. IBEW contends that the Operations Examiners do not set employee schedules, do not grant or deny employee sick leave and/or vacation, do not generally authorize overtime, and do not commit carrier funds. With regard to the appropriate craft or class, the IBEW states that the Board has previously found that Transportation Operations Examiners is an appropriate craft or class and the Carrier has offered no evidence to the contrary.

### FINDINGS OF LAW

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

#### I.

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

#### II.

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

---

<sup>2</sup> The Carrier's request for an on-site investigation is denied as the record provides ample evidence for a ruling in this case.

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

STATEMENT OF FACTS

PATH is a wholly owned subsidiary of the Port Authority of New York and New Jersey, a bi-state agency created by compact between the states of New York and New Jersey. PATH operates an inter-urban electric railway between locations in New York City and New Jersey.

According to the organizational chart submitted by the Carrier, PATH is organized into operational divisions, including the Ways and Structures Division; the Car Equipment Division; the Power, Signals and Communication Division; and the Transportation Division. Based on the divisional organizational chart submitted by PATH, Operations Examiners are located under the Chief Operations Examiner and above Tower Operators, Yard Supervisors in the Transportation Division. The Operations Examiners also occupy the same level in the Division hierarchy as the Train Master, Yard Master, Operations Analyst and Supervisor of Train Services.

PATH states that the position at issue was “reclassified” and, according to a position description dated November 25, 2008, an Operations Examiner “oversees train operations in the field, investigates performance irregularities and takes or recommends corrective action. Operations Examiners respond to service disruptions and coordinate the activities of responding personnel with the Control Center to return the railroad to normal operating conditions.” This position description also lists as the major changes in responsibilities that have occurred during reclassification that:

Operations Examiners are involved in the creation of carrier policy and have some ability to commit carrier funds. Authority to transfer or establish assignments

and have the ability to authorize and grant overtime. Schedule and conduct re-certification testing for train Engineers as required by FRA Engineer Certification Program. Perform train crew efficiency testing in accordance with FRA Part 217, and reinstructs crews on proper procedures as required. Implement notification to operating employees and completes documentation in accordance with FRA mandated Random Drug and Alcohol screening Implement FRA mandated post accident and PATH Managerial Authority drug and alcohol screening. Conducts FRA mandated on track safety training classes for PATH and contract employees.

In a section titled "Decision Making Authority," the position description states that:

Operations Examiners have the authority to supervise represented employees. Operation [sic] Examiners are involved in the creation of carrier policy for operating rules, practices and promotional standards. Operation [sic] Examiners have authority to transfer or establish assignments among subordinates. Operation [sic] Examiners have the ability to authorize and grant overtime. PATH Operation [sic] Examiners have some ability to commit carrier funds to the purchase of equipment.

According to the declaration of Astagne J. Avril, PATH's Chief Operations Examiner, all Operations Examiners must be certified engineers who are qualified on the physical characteristics of the railroad. Avril states that, prior to being appointed as Operations Examiners, individuals must have held operating certificates in the class of Locomotive Engineers for a minimum of two years and must maintain this certification during their tenure as Operations Examiners.

#### Role in Evaluation

In a declaration submitted by the IBEW, an Operations Examiner states that:

I do not have authority to promote or demote any employee. I can, however, make recommendations as

to who should be promoted or demoted during training classes for Engineer/Switching or Conductors. The Chief Operations Examiner, Assistant Superintendent, and Superintendent have final authority on who should be promoted or demoted, and at times have disregarded the recommendations of Operations Examiners.

Chief Operations Examiner Avril states that he has reviewed actions that were:

commenced and/or recommended by Operations Examiners working in the capacity of class instructors for the Extra Engineers Switching class. Specifically, a number of employees were demoted because, in the assessment of the Operations Examiners . . . acting as Lead Instructors – these demoted employees were not able to demonstrate that they can work in the capacity of Engineer Switchmen and therefore recommended that they be removed from the training classes and resume their previous job titles.

#### Role in Discipline

According to PATH's Book of Rules, Operations Examiners "see that train operations are in accordance with established schedules and procedures and investigate Book of Rules infractions. They investigate all accidents involving train operations and report their findings to the Superintendent of Transportation."

With regard to discipline, Operations Examiners hold crews out of service for drug and alcohol testing. They re-instruct conductors or engineers in the proper work methods and, if necessary, investigate and initiate discipline proceedings pursuant to existing collective bargaining agreements. According to the declaration of an Operations Examiner submitted by the IBEW:

I do not initiate discipline. If I observe an employee commit a rules violation, I will reinstruct the employee on what they did wrong. If necessary, I complete a written report documenting the violation. In that case, the employee also submits a written report of what took place. These reports are used by the Chief Operations Examiner, Assistant Superintendent,

and/or the Superintendent, who determine whether the employee should be disciplined, and, if so, what that discipline should be. I do not make recommendations about whether employees should be disciplined, and I am not asked for my opinion.

With regard to accidents or injuries on the job, the same Operations Examiner stated that:

When appropriate, I determine what occurred by speaking with witnesses, crewmembers, and anyone else with relevant information. I then complete the supervisor section of a TH360 Report, which I then file with the Chief Operations Examiner. The facts I include in these reports may include a description of what happened, what was said, what might have led to the incident, report who responded, what was done to rectify the situation, what was done to minimize any service interruption, what rule was violated, and any damage to signals and tracks. My job in these instances is to report the facts of what occurred. While this form requires us to state whether the employee contributed to the act or injury, and to determine whether safety rules and safe work practices were followed, we do not recommend whether or not the employee involved should be disciplined.

When such incidents occur, many other carrier employees and officials respond as well, such as employees in the track department, signal department, and car equipment department.

Chief Operations Examiner Avril states that the reports filed by the Operations Examiners are the basis of any subsequent disciplinary action. Operations Examiners also participate in disciplinary hearings that may result from incidents. Avril also states that “[w]hile it is true that the final institute of disciplinary action falls on the Superintendent, Assistant Superintendent, and Chief Operations Examiner,” the written reports generated by Operations examiners as a result of their investigations “are often the most critical component to management’s assessment of the gravity of an incident and the resulting level of disciplinary action taken against an employee.”

According to the statements of the Operations Examiners submitted by

the IBEW, they serve as “fact witnesses at an investigatory hearing, At times Operations Examiners are called as the witnesses by the employee who is defending against proposed discipline or termination.” Avril states that the “Operations Examiners called to testify do so as company representatives. If called by union officers to testify, Operations Examiners are generally questioned on their role in the investigative process.”

### Day to Day Supervision

PATH’s Book of Rules states that the following positions report to and receive instructions from the Operations Examiners: Train Dispatcher/Terminal Supervisor, Tower Operators, Engineers, Yard Supervisors and Engineer/Switching Conductors. However, the Book of Rules also states that these employees also report to and receive instructions from the Trainmaster, Assistant Trainmaster, and the Train Dispatchers/Terminal Supervisors. The Book of Rules further states that the Yard Supervisor and Engineer/Switching Conductor is “under the supervision of the Train Dispatcher/Terminal Supervisor at the point where they are assigned to duty.” PATH’s Chief Operations Examiner Avril acknowledges that Trainmasters and Terminal Supervisors have “primary responsibility for supervising” Tower Operators, but states that Operations Examiners have the ability to remove Tower Operators from service if evidence indicates an individual may have been negligent in his or her work performance.

Operations Examiners train and monitor operating crews to ensure that employees are fit for duty and that trains depart on time. They also conduct crew refresher training for operating employees and conduct track safety training and flagging classes. In addition, they conduct recertification testing and semi-annual performance appraisals of train engineers and conductors as required by the FRA and PATH’s Book of Rules. These checks include observing engineers perform running and standing brake tests, train handling, station stops, and checking the horns and wipers. Conductors are checked for tasks such as proper door operations, and FRA air test and regulations.

Operations Examiners also play a role in the FRA drug and alcohol screening of employees. According to the declarations from the Operating Examiners, when a major accident involving a fatality, injury to a passenger or significant property damage occurs, FRA regulations require that the crew members involved be removed from service and submit to drug and alcohol screening. If an Operations Examiner suspects that an employee is under the influence of drugs or alcohol, he or she will seek the opinion of a second supervisor. If both supervisors believe the employee is impaired, the employee may be pulled out of service and required to submit to testing.



## Scheduling

Chief Operations Examiner Avril states that “assigning jobs to employees is a specific function of the Transportation Division’s Assignment Coordinators Desk as contained in the applicable collective bargaining agreements.” According to Avril, however, Operations Examiners have the authority to request personnel or train crews for “qualifying trains” or other operations during inclement weather and to schedule employees or train crews for reinstruction on specific job duties. According to the declaration of a PATH Operations Examiner submitted by the IBEW, work assignments are the responsibility of the Assignment Coordinator, Dispatchers and Trainmaster, but Operations Examiners can schedule training classes. Further, in the event an employee is pulled from service to submit to drug or alcohol testing following an accident, the Operations Examiner will notify the Dispatcher/Assignment Coordinator that a replacement is needed.

## Overtime

Chief Operations Examiner Avril states that Operations Examiners may, in times of personnel shortages such as major holidays or inclement weather, direct certain employees to work mandatory overtime to maintain service. In one of the employee declarations submitted by the IBEW, the Operations Examiner states:

I do not have discretion or authority to approve overtime. In the event of an accident, injury, or other emergency, I may request that the Assignment Office (1) bring in another [Operations Examiner] to provide assistance if no other Operations Examiners are available; (2) compensate employees who were forced to work through their break periods in order to comply with an investigation; and (3) pursuant to FRA regulations, hold employees in service, when necessary, in order to submit to drug and alcohol testing.

I do not have authority to authorize and grant overtime when necessary for holiday coverage. Either the Superintendent or, in her absence, the Trainmaster, gives authority to require employees to work mandatory overtime. Once they make this decision, they will coordinate with Train Dispatchers to determine how many employees need to work

overtime. Attempts are then made to locate employees who will volunteer to work overtime. If not enough employees volunteer, Operations Examiners may order individuals to remain in service.

According to one of PATH's Operations Examiners, they are responsible for scheduling crew training on new railcars. This training has replaced a previous two day refresher training course that Operations Examiners were responsible for scheduling. The Operations Examiner states that, in approximately four or five instances when scheduled training would have resulted in significant vacancies and therefore overtime, the Chief Operations Examiner cancelled or postponed training until the vacancies could be covered without paying overtime.

#### Creating Carrier Policy and Committing Carrier Funds

In a declaration submitted by the IBEW, an Operations Examiner states that they have recently been assigned the task of assisting with the revision of the Book of Rules. The Operations Examiners are assigned to review Transportation Division notices that amend Rules either permanently or for a limited period of time. Operations Examiners are tasked with suggesting which permanent changes should be incorporated in the Book of Rules and submitting those recommendations to the Superintendent of Transportation.

Since June 2008, Operations Examiners have been involved in writing operating manuals in support of newly purchased railcars. According to one of PATH's Operations Examiners, they review drafts of the proposed manual and make suggested changes which may or may not be incorporated. They have written work orders for the railcars' manufacturer to modify design specifications and fabrication of new railcars and training simulators. According to one Operations Examiner, if an Operations Examiner identifies an issue that needs to be addressed with a new railcar, he or she can submit a work order to the Transportation Division, either the Superintendent or Assistant Superintendent who makes the decision whether or not to authorize the work order. According to one of the Operations Examiners, the submitted work orders are denied or ignored "[m]ore than 50% of the time."

In another declaration, an Operations Examiner states that "I do not establish company policy, though I do monitor compliance." As an example, this employee states that "I am responsible for conducting uniform checks to ensure that engineers carry all required PATH-issued equipment, including safety shoes, vests, flashlights, etc., as required in PATH's Book of Rules."

According to Avril, Operations Examiners can also issue “stop work” orders to employees who are violating PATH policy and practices while performing maintenance or capital improvement projects. As an example, Avril states that Operations Examiners observed “unsafe high rail vehicles” and cancelled the equipment and this resulted in delay to the project and “substantial cost in lost labor productivity.”

With regard to committing PATH funds, the Operations Examiners state that they use a PATH gas card to fuel company vehicles when using those vehicles. They also seek reimbursement for expenses incurred in buying required company equipment, such as safety shoes. When additional supplies are required, such as flashlight batteries, vests or gloves, or new equipment in their office space, Operations Examiners must sign purchase orders and submit them to the head Accountant Clerk.

When representatives of the FRA or the United States Department of Transportation visit PATH’s property, Operations Examiners may escort them during that visit. The Operations Examiner will represent PATH during such visits by performing required checks. For example, Avril states that “when requested to perform radar checks on the Operating crews, it is the Operations Examiner, representing the Carrier, who demonstrates the radar device, how it works and the method used in implementing it.” During major incidents, the Operations Examiners interact with police, fire and rescue or medical responders to bring resolution of the event and maintain or restore service.

### Role in Hiring

Chief Operations Examiner Avril states that, although he does not participate in the hiring process, the Operations Examiners do participate in many PATH interviews. He acknowledges that the interview process is a “structured interview process” with pre-arranged, job-related technical questions that have been developed by PATH’s Human Resources Department (HR Department). According to Avril, Operations Examiners score the recorded answers of prospective candidates and compare scores with a representative of the HR Department. Avril states that the interview team, comprised of a representative from the HR Department and an Operations Examiner, makes a recommendation as to whether a candidate should be hired.

In a declaration submitted by the IBEW, an Operations Examiner states that the HR representative conducts the interview and asks questions “from prearranged questionnaires.” This employee also states that “[e]ach person attending the interview separately score the interviewees’ responses according to the keys provided by the carrier.”

## Pay

Operations Examiners are paid hourly and, according to PATH, have a salary range that is similar to ranges for managerial employees. According to the declarations from various Operations Examiners, they are eligible to receive overtime. PATH states that Operations Examiners also participate in the managerial benefit package including vacation and sick leave and the managerial pension plan. They also receive the same healthcare, vision, and dental benefits as other managerial employees. The IBEW acknowledges that Operations Examiners receive some of the same benefits as management officials.

### DISCUSSION

#### I. Are PATH's Operations Examiners Management Officials?

Section 151, Fifth, of the RLA specifically defines employees subject to its coverage to include subordinate officials. Section 9.211 of the Board's Representation Manual (Manual) details factors to be considered in determining whether an individual is a management official and ineligible to vote. These factors include:

- (1) the authority to dismiss and/or discipline employees or to effectively recommend the same;
- (2) the authority to supervise;
- (3) the ability to authorize and grant overtime;
- (4) the authority to transfer and/or establish assignments;
- (5) the authority to create carrier policy; and
- (6) the authority to commit carrier funds.

The Investigator also considers:

- (1) whether the authority exercised is circumscribed by operating and policy manuals;
- (2) the placement of the individual in the organizational hierarchy of the carrier; and
- (3) any other relevant factors regarding the individual's duties and responsibilities.

These factors are considered cumulatively. See *Pan Am. World Airways*,

*Inc.*, 5 NMB 112 (1973). Further, the Board's determination regarding an individual's authority to hire, fire and discipline is "dependent not only upon whether the subject individual possess(es) such authority, but also on whether (he/she) actually exercise(s) this authority or effectively recommend(s) actions in these areas." *Challenge Air Cargo*, 17 NMB 501, 515 (1990); *Buffalo & Pittsburgh, So. Jersey Airways, Inc.*, 13 NMB 404 (1986); *British Airways, Inc.*, 7 NMB 369 (1980).

The Board has previously found that PATH's Operations Examiners are not managerial officials and are therefore eligible to vote. *PATH I*, 34 NMB 81 (2007); *PATH II*, 34 NMB 136 (2007). PATH's position is that, since those decisions, the position of Operations Examiner has been reclassified and the duties and authorities of that position have materially changed. Considering the evidence cumulatively, the Board finds, for the reasons set forth below, that the Operations Examiners are not management officials.

As in the previous case involving the Operations Examiners, PATH relies on the role of Operations Examiners in evaluating employees during training, in disciplining employees, in supervising, in hiring, and in formulating Carrier policy and committing Carrier funds. The evidence established during the investigation shows that despite the "reclassification," the duties of the Operations Examiners remain reportorial and ministerial and not indicative of managerial status. It is clear that Operations Examiners submit recommendations regarding whether or not a trainee is making satisfactory progress in a given training program. The Board, however, has long held that training and evaluating personnel in training does not render a position outside the coverage of the RLA. *PATH I*, above at 90. See also *United Air Lines, Inc.*, 4 NMB 30 (1965).

While the Operations Examiners conduct accident and incident investigations, write reports with their findings and recommendations, and serve as fact witnesses in any subsequent disciplinary hearings, their role is limited to reporting the circumstances of the accident and any recommendation is reviewed by higher authorities who make the final decision. They continue to have the authority to remove employees from service for egregious violations of work or safety rules or in situations that present imminent danger. However, this authority is dictated by PATH's Book of Rules and the mandates of the FRA. Further, to the extent that the PATH emphasizes the important safety role played by the Operations Examiners, it is important to note that "such a cardinal matter as safety can be divorced from the functions and responsibilities of every employee of the Carrier...." *United*, above at 45.

With regard to their role in hiring, Operations Examiners serve as one

member of an interview panel and they evaluate interviewees' responses according to Carrier guidelines. Their authority regarding scheduling and overtime is similarly circumscribed and the Chief Operations Examiner concedes that they do not assign work.

The Board has long held that if an individual actively participates "in the formulation of company policy and had the authority to establish such policy, this would be a strong indication that such a person was in fact a member of management." *Pan Am. World Airways, Inc.*, 4 NMB 151, 156 (1967). In the instant case, there is no evidence that the Operations Examiners exercise such a degree of policy making authority to make them management officials.

PATH argues that the Operations Examiners create policy, but their role reviewing existing or draft policies and suggesting changes that may or may not be accepted falls short of formulating company policy. Their ability to commit carrier funds is also limited and routine, such as purchase orders for necessary work and safety equipment. PATH also relies on the Operations Examiners' ability to issue stop work orders after observing unsafe conditions; however this role is based on ensuring operational safety and any costs incurred by the PATH are ancillary to the safety issue. With regard to both making carrier policy and committing carrier funds, the Operations Examiners' duties are "far removed from the activities of an employer or executive responsible for the administration and direction of a business enterprise." *Pan Am. World Airways, Inc.*, *above* at 156.

## II. Is Transportation Operations Examiners an Appropriate Craft or Class?

Under the RLA, the NMB may certify a craft or class that consists of or includes "subordinate officials." In determining the appropriate craft or class, Manual Section 9.1 states:

In craft or class determinations, the NMB considers many factors, including the composition and relative permanency of employee groupings along craft or class lines; the functions, duties, and responsibilities of the employees; the general nature of their work; and the extent of community of interest existing between job classifications. Previous decisions of the NMB are also taken into account.

In *PATH I*, *above*, the Board found that the Operations Examiners constituted a separate craft or class. PATH asserts that the "alleged craft or class is inappropriate," but offers no evidence in support of this assertion.

Accordingly, the Board finds no reason to depart from its previous determination and therefore finds that the Operations Examiners constitute an appropriate craft or class for representation purposes.

### CONCLUSION

As discussed above, the Operations Examiners, are employees eligible for representation under the RLA. The Board finds a dispute to exist in NMB Case No. R-7213, among the Transportation Operations Examiners of PATH, sought to be represented by IBEW and presently unrepresented.<sup>3</sup> An Internet and TEV election is hereby authorized using the cut-off date of July 11, 2009.

Pursuant to Manual Section 12.1, the Carrier is hereby required to furnish, within five calendar days, 1" X 2 5/8", peel-off labels, bearing the

---

<sup>3</sup> In its initial position statement, the Carrier requests that it "be given the opportunity to examine the cards submitted by the Organization in support of its application so that the Carrier may be assured that such cards comply" with the Board's Rules. In particular, PATH cites 29 CFR § 1206.3 (Age of Authorization Cards). In the alternative, the Carrier states that it "would accept a verified affirmation by the Investigator that all the cards submitted by the [Organization] are compliant with the above cited regulation." Both Carrier requests are denied.

First, it is the Board's long standing policy to treat the evidence submitted in connection with a representation dispute as confidential. See 29 CFR § 1208.4(b). As Manual Section 3.5 provides, authorization cards will be handled only by NMB representatives and all authorizations are kept confidential. Second, as the Board stated in *Eastern Airlines, Inc./Continental Airlines, Inc.*, 17 NMB 432, 436 (1990), "the Board's showing of interest standards are neither jurisdictional nor imposed by statute. . . . since the showing of interest requirement is meant to conserve administrative resources, it is a matter solely of concern to the Board and to no one else." In this regard, the courts have uniformly held that "the validity of the showing of interest is for administrative determination and may not be litigated...." *Air Canada v. NMB*, 478 F. Supp. 615, 618 (S.D.N.Y. 1979), *on final hearing*, 107 LRRM 2028 (S.D.N.Y. 1980), *aff'd*. 659 F.2d 1057 (2d Cir. 1979), *cert. denied*, 454 U.S. 965 (1981). Third, it is well-settled that administrative agencies and government officials are presumed to act in good faith and follow agency regulations. *Paralyzed Veterans of Am. v. Secretary of Veterans Affairs*, 345 F.3d 1334, 1349 (Fed. Cir. 2003) (citing *Schism v. United States*, 316 F.3d 1259, 1302 (Fed. Cir. 2002)).

alphabetized names and current addresses of those employees on the List of Potential Eligible Voters. The Carrier must print the same sequence number from the List of Potential Eligible Voters beside each voter's name on the address label. The Carrier must use the most expeditious method possible, such as overnight mail, to ensure that the Board receives the labels within five calendar days. Tally in Washington, DC.

By direction of the NATIONAL MEDIATION BOARD.

A handwritten signature in cursive script that reads "Mary L. Johnson".

Mary L. Johnson  
General Counsel

Copies to:

Philip Kellett  
Stephen Powell  
Cynthia Bacon  
William Bohne, Jr.  
Michael Giansante  
Michael Wolly