



## NATIONAL MEDIATION BOARD

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40 NMB No. 49

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### **Via Email**

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Re: NMB File No. C-7054/Case Nos. R-6282, R-6299, R-6303  
SMART/Newburgh and South Shore Railroad Company/UTU

Participants:

This determination addresses the request from the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART) to transfer the certifications in Case Nos. R- R-6282, R-6299, and R-6303 from the United Transportation Union (UTU) to SMART. For the reasons discussed below, the National Mediation Board (Board) grants the request and transfers the UTU's certifications in R-6282, R-6299, and R-6303 to SMART.

### **BACKGROUND**

The UTU was certified to represent the Maintenance of Way Employees in Case No. R-6282 (1994), the Machinists in Case No. 6299 (1994), and the Conductors/Engineers in Case No. R-6303 (1994) on the Newburgh and South Shore Railroad. In a letter dated April 25, 2012, SMART notified the Board of the merger between the UTU and the Sheet Metal Workers' International Association (SMWIA) (collectively the Organizations) to form SMART effective

December 1, 2011.<sup>1</sup> SMART requested that the Board transfer all representation certifications issued to the UTU and SMWIA to SMART and that all pending and future certifications involving either labor organization be issued to SMART. On June 5, 2012, SMART requested that the Board transfer the certifications in Case No. R-6282 for the Maintenance of Way Employees, in Case No. 6299 for the Machinists, and in Case No. R-6303 for the Conductors/Engineers on the Newburgh and South Shore Railroad. The Board notified the Carrier of the SMART's request and gave the Carrier until June 22, 2012 to provide the Board with any comments. The Carrier did not submit any comments in this matter.

### THE MERGER OF UTU and SMWIA

SMWIA and the UTU entered into an agreement to merge their separate labor organizations into a consolidated labor organization to be known as SMART on August 8, 2007. Because questions were raised concerning the validity of the merger, a federal court compelled arbitration pursuant to the arbitration article in the Merger Agreement. After a hearing on the matter, Arbitrator Michael Gottesman issued an award finding that the SMWIA/UTU merger was valid. Neither union sought to vacate the arbitration award.

In support of its request to transfer the certifications, SMART submitted the SMWIA/UTU Merger Agreement dated August 8, 2007, Arbitrator Gottesman's October 10, 2011 Award and a letter dated November 30, 2011 from the UTU stating that it would not appeal Gottesman's Award. According to the arbitration award and consistent with the Organizations' Constitutions and the By-laws, the governing bodies of both unions have approved a merger agreement.

### DISCUSSION

The Railway Labor Act<sup>2</sup> requires only that the Board investigate a transfer of certification based on a union merger rather than mandating any procedures for such an investigation. *Continental Airlines, Inc., v. Nat'l Mediation Bd.*, 793 F. Supp. 330 (D.D.C. 1991), *aff'd mem.*, 957 F.2d 911 (D.C. Cir. 1992).

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<sup>1</sup> On March 5, 2013, SMART notified the Board that the effective date of the merger had been amended according to the terms of the SMWIA-UTU Merger Agreement. The amended effective date is January 1, 2012.

<sup>2</sup> 45 U.S.C. § 151, *et seq.*

In most instances, the Board grants a transfer request based upon assertions contained in the request letters. *Capitol Cargo Int'l Airlines, Inc.*, 34 NMB 190 (2007); *St. Lawrence & Atlantic R.R., Inc.*, 32 NMB 49 (2004); *Consolidated Rail Corp.*, 28 NMB 30 (2000); *Big Sky Transp. Co.*, 25 NMB 376 (1998); *Desert Sun Airlines*, 24 NMB 137 (1997); *Northwest Airlines*, 18 NMB 446 (1991). The Board views an organization's decision to merge into another organization as an internal union matter and will grant requests for transfers of certification based on union mergers unless there is evidence of fraud or gross abuse in the merger or election. *Northwest Airlines, above*, at 448.

There is no evidence of fraud or gross abuse in the merger or election process in this case. Based on its investigation, the Board finds that, in accordance with the Merger Agreement and the Organizations' Constitutions and By-laws, UTU and SMWIA have merged forming SMART. The Board's records are revised to reflect the transfer of the certifications issued to the UTU in NMB Case Nos. R-6282, R-6299, and R-6303 to SMART.

By direction of the NATIONAL MEDIATION BOARD.

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

Mary L. Johnson  
General Counsel