



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the

**SOUTH KANSAS & OKLAHOMA
RAILROAD MAINTENANCE OF
WAY**

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

involving employees of

**SOUTH KANSAS & OKLAHOMA
RAILROAD**

40 NMB No. 64

CASE NO. R-7368
(File No. CR-7091)

FINDINGS UPON
INVESTIGATION-
AUTHORIZATION OF
ELECTION

July 10, 2013

This determination addresses the application of the South Kansas & Oklahoma Railroad Maintenance of Way (SKOL MOW or Organization) alleging a representation dispute pursuant to the Railway Labor Act (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth).¹ SKOL MOW alleged a representation dispute among “Track Inspectors, Track Foremen and Track Laborers” of South Kansas & Oklahoma Railroad (SKO or Carrier).

For the reasons set forth below, the National Mediation Board (NMB or Board) concludes that the proper craft or class for the employees covered by the application is “Maintenance of Way and Structure Employees.”

¹ 45 U.S.C. § 151, *et. seq.*

PROCEDURAL BACKGROUND

On June 3, 2013, SKOL MOW filed an application alleging a representation dispute involving Track Inspectors, Track Foremen and Track Laborers at the Carrier. The application was assigned NMB File No. CR-7091 and Norman L. Graber was assigned as the Investigator. The Brotherhood of Maintenance of Way Employees Division, International Brotherhood of Teamsters (BMWED) was certified to represent the Maintenance of Way and Structure Employees craft or class of employees at the Carrier in NMB Case No. R-7065, *South Kansas & Oklahoma RR*, 33 NMB 79 (2006).

On June 10, 2013, the Board requested, inter alia, position statements from all participants. On June 24, 2013, SKO filed its List of Potential Eligible Voters (List), signature samples, a position statement, and a copy of its contract with BMWED. Neither SKOL MOW nor BMWED filed position statements.

ISSUE

What is the proper craft or class for employees at the Carrier covered by the application?

CONTENTIONS

Carrier

SKO contends that the appropriate craft or class of employees for representation purposes for its employees covered by the application includes all maintenance of way team members, including all track inspectors, track foremen, boom truck operators or machine operators, trackmen first class, and track laborers.

SKOL MOW

SKOL MOW filed its application for a craft or class of the Carrier's Track Inspectors, Track Foremen and Track Laborers, but did not file any position statement with the Board.

BMWED

BMWED did not file a position statement or other information with the Board.

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.

SKO is a common carrier as defined in 45 U.S.C. § 151.

II.

SKOL MOW and BMWED are labor organizations and/or representatives as provided by 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 the 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

The Carrier provided an initial position statement and a copy of the collective-bargaining agreement (CBA) between SKO and BMWED covering the maintenance of way team members as described in the contract.

Article 1 of the CBA provides: “The use of the terms ‘MW Team Member’ or ‘MW Team Members’ shall mean all Maintenance of Way (‘MW’) persons represented by the Union.”

Article 3.B. of the CBA provides as follows:

The term ‘MW Team Member’ as used in this Agreement refers to the following positions:

Track Inspectors, Track Foreman, Boom Truck Operators/Machine Operators, Trackmen First Class, and Track Laborers, collectively referred to as Maintenance of Way Team Members.

Article 3.E. of the CBA provides as follows:

MW Team Members included within the scope of this Agreement perform work in connection with the construction, maintenance, repair, and dismantling of track, road beds, structure facilities, and appurtenances related thereto, located on the right of way and or used in the operation of the Carrier in the performance of common carrier service, and other duties as assigned.

DISCUSSION

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. *Columbia & Cowlitz, Ry. and Patriot Woods R.R.*, 38 NMB 264 (2011); *Florida Northern R.R.*, 34 NMB 142 (2007); *Frontier Airlines, Inc.*, 29 NMB 28 (2001); *United Airlines, Inc.*, 28 NMB 533 (2001). The Board makes craft or class determinations case by case, based upon Board policy and precedent. *USAir*, 15 NMB 369 (1988); *Simmons Airlines*, 15 NMB 124 (1988).

The Board has long held that the Maintenance of Way craft or class encompasses the employees covered by the SKO/BMWED CBA. See *Hudson & Manhattan RR Co.*, 2 NMB 132, 138 (1949). Further, in 2006, the Board conducted an election for the Maintenance of Way and Structure Employees for this particular carrier. *South Kansas & Oklahoma RR*, 33 NMB 79, (2006).

For these reasons, the Maintenance of Way and Structure Employees craft or class is appropriate in this case.

CONCLUSION

The Board finds that the proper craft or class at SKO is Maintenance of Way and Structure Employees. Accordingly, NMB File No. CR-7091 is converted to NMB Case No. R-7368.

Pursuant to the Board's June 10, 2013 docket letter, the Carrier has provided the Board with a single alphabetized List for Maintenance of Way and Structure Employees. The Carrier also has provided the Board with signature samples.

The Board finds a dispute to exist in NMB Case No. R-7368, among Maintenance of Way and Structure Employees of South Kansas & Oklahoma Railroad, sought to be represented by SKOL MOW and presently represented by the BMWED. An Internet and Telephone Election is hereby authorized using the cut-off date of May 24, 2013. Pursuant to Section 12.1 of the NMB Representation Manual, the Carrier is hereby required to furnish, within 5 calendar days, 1" x 2-5/8" peel-off labels bearing the alphabetized names and current addresses of those employees on the List. The Carrier must print the same sequence number from the List beside each voter's name on the address label. The Carrier must also provide to the Board the name and sequence number of those potential eligible voters who reside outside of the United States. The Carrier must ensure that the Board receives the labels within 5 calendar days. The tally will be in Washington, D.C.

By direction of the NATIONAL MEDIATION BOARD.



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