



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of the

NATIONAL ASSOCIATION OF
TRANSPORTATION
SUPERVISORS

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

involving employees of

LONG ISLAND RAIL ROAD

47 NMB No. 3

CASE NO. R-7536
(File No. CR-7202)

FINDINGS UPON
INVESTIGATION-
DISMISSAL

October 22, 2019

FINDINGS UPON INVESTIGATION

This determination addresses the application of the National Association of Transportation Supervisors (NATS or Applicant) alleging a representation dispute pursuant to the Railway Labor Act (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth),¹ among Plumber-Drivers² on the Long Island Rail Road (LIRR or Carrier). For the reasons set forth below, the National Mediation Board (Board or NMB) concludes that the Plumber-Drivers are part of the Sheet Metal Workers craft or class. Therefore, the Board dismisses the application.

PROCEDURAL BACKGROUND

On March 29, 2019, NATS filed an application alleging a representation dispute involving the “Plumber-Drivers” on LIRR. Currently, Plumber-Drivers

¹ 45 U.S.C. § 151, *et seq.*

² LIRR states that there is no formal title of “Plumber – Driver.” The Carrier refers to this position as “Plumber.” In this decision the two terms will be used interchangeably.

are in the Sheet Metal Workers craft or class and represented by the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART or Incumbent). The application was given NMB File No. CR-7202 and Eileen M. Hennessey was assigned as the Investigator. SMART provided an Initial Position Statement on April 12, 2019. The Carrier provided the Board with a Potential List of Eligible Voters (List) for the Sheet Metal Workers craft of class, including Plumber-Drivers, on April 17, 2019. LIRR provided an initial position statement on April 24, 2019. On May 10, 2019, NATS responded to the position statements provided by SMART and LIRR. On May 15, 2019, the Carrier provided the following information at the Board's request: Appendix A (wage rates) of the Collective Bargaining Agreement between LIRR and SMART; Job Specification form for the Buildings and Bridges Plumber (Plumber-Driver) position; Job Specification form for the Sheet Metal Worker/Pipefitter/Tinsmith position; and organization charts showing the placement of the Sheet Metal Workers craft of class within the Carrier's structure.

ISSUE

Are Plumber-Drivers on the LIRR part of the Sheet Metal Workers craft or class or do they constitute a separate craft or class?

CONTENTIONS

SMART argues that NATS application should be dismissed because the Applicant has not applied to represent a "system-wide, entire, class or craft, and has not presented authorization cards constituting over 50[percent] of the appropriate craft or class." SMART further argues that the crafts and classes in the railroad industry have been well-defined for more than a century, and the Board has always found that the Sheet Metal Workers craft or class includes plumbers, pipefitters, and water service employees. There is no separate craft or class for Plumber-Drivers in the railroad industry.

The Carrier states that it supports the right of employees to choose their representation but that the application is flawed because the craft or class that the Applicant seeks to represent has not historically existed, nor currently exists on the LIRR.

The Applicant "does not dispute that SMART represents employees in several railroads serving sheet metal workers and that, included within those sheet metal worker bargaining units are plumbers." However, NATS argues that the LIRR Plumber-Drivers do not perform work covered by the long-established definition of sheet metal work. NATS maintains that, although at one time the Plumber-Drivers may have performed duties consistent with the

historical definitions of the Sheet Metal Workers craft or class, “[t]hat state of affairs no longer exists due to the continued contracting out of Plumber-Driver work over the years.”

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.

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

II.

NATS and SMART 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 List for the Sheet Metal Workers craft or class submitted to the Board by the LIRR has 104 names on it, of which 51 are Plumbers, 33 are Sheet Metal Workers, 9 are Tinsmiths and 11 are Certified Pipefitter Welders. The Carrier and SMART are parties to a collective bargaining agreement (CBA) for the craft or class of Sheet Metal Workers, covering the job titles of Helper, Sheet Metal Worker (Pipefitter and Pipefitter Welder) Federal Inspector, Plumber, Tinsmith and Apprentices. These titles have historically been within the Sheet Metal Workers craft or class. According to a declaration provided by Michael Chirillo, Vice President of Labor Relations for LIRR, there is no formal title of “Plumber – Driver.”

The Carrier provided organization charts, position descriptions and wage information for the job titles within the Sheet Metal Workers craft or class. The Plumber position is within the Engineering or Maintenance of Way Department. All other Sheet Metal Worker positions are within the Maintenance of Equipment Department

The Plumber job description states that the position “works with construction crews installing new plumbing, heating, gas and fire suppression systems following schematics, diagrams or blueprints.” Pipefitters “replace, install, cut/fabricate and inspect all manner of hoses, piping, valves and tubing on locomotives and passenger cars and engines.” Tinsmiths and Sheet Metal Workers “perform tinsmithing, coppersmithing and engraving duties on locomotives, passenger cars, engines and related equipment.” According to the job description for Pipefitters, Tinsmiths and Sheet Metal Workers, incumbents in these positions must be able to “read and interpret blueprints, shop drawings, diagrams, technical manuals, schematics and other written documents in order to produce specified product.”

Mary L. Centauro, Senior Director of Human Resources for LIRR, stated in a declaration to the NMB that “[n]ew employees entering the Sheet Metal Workers craft or class are hired as Helpers and maintain that designation until they bid and are awarded a position on the Sheet Metal (Pipefitters) or Plumbers mechanic rosters. For the last 30 years the LIRR has not employed Apprentices.” Centauro also stated that “the requirement that certain titles hold and maintain a valid driver’s license has been considered secondary to the essential functions of the position, unless otherwise indicated in the job description. The Carrier considers a valid driver’s license secondary criteria for the consideration of applicants for a Plumber position.”

The Plumbers, Federal Inspectors, Pipefitter Welders, Certified Pipefitter Welders, Sheet Metal Workers, and Tinsmiths are on the same pay grade schedule set forth in the CBA. Wages for these positions range from and hourly rate of \$37.838 to \$40.706. Plumbers receive the same rate as Federal Inspectors, Pipefitter Welders and Tinsmiths working in the Tinshop. All of the employees covered by the CBA receive the same benefits, such as holidays, vacations, medical coverage, and sick leave.

DISCUSSION

Craft or Class Determination

For over eighty years plumbers have been considered to be part of the craft or class of Sheet Metal Workers craft or class. *The Wabash Ry. Co.*, 1

NMB 90, 93 (1938); *Chicago, Milwaukee, St. Paul & Pacific R.R. Co.*, 3 NMB 120 (1955) (CMS&P). The Applicant argues that today, Plumber-Drivers work is limited to repairs to water, waste, and fire lines and they do not perform the range of tasks identified in CMS&P. Thus, the Applicant maintains, “[t]he law ... is not static and the Board must recognize the evolution of work on railroads.”

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. *Southwest Airlines*, 42 NMB 110 (2015), *Louisville & Indiana R.R.*, 41 NMB 82 (2014); *Indiana S. R.R.*, 37 NMB 226 (2010); *Florida N. R.R.*, 34 NMB 142 (2007). 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 Applicant argues that the traditional definition of a Sheet Metal Worker requires that an employee must be a “tinner, coppersmith [or] pipefitter” and that the LIRR Plumber-Drivers don’t perform these duties. *CMS&P*, 3 NMB 120, 132 (1955). But the Board’s craft or class determinations do not require that all members of the craft or class perform the same duties. In addition, the Board recognizes that position descriptions will change over time, and for this reason also considers work-related community of interest shared by employees within the craft or class.

The Applicant further argues that where employees cease to perform the traditional duties of a craft or class, the NMB has not hesitated to modify the craft or class designation. See *National R.R. Passenger Corp.*, 10 NMB 510 (1983) (modifying telegraphers craft or class); *Railway Express Agency*, 4 NMB 227, 232 (1964) (modifying blacksmith craft or class). Where a carrier’s operations are unique, NATS argues that the NMB should and has created a new craft or class. See, e.g., *Federal Express*, 22 NMB 215, 221 (1995) (Global Operations Control Specialists); *Florida E. Coast Ry.*, 21 NMB 35, 44-45 (1994) (Train and Engine Service Employees). The instant case is distinguishable. The Plumber-Drivers have not ceased to perform work that is historically performed by members of the Sheet Metal Workers craft or class; nor are they performing new duties that no longer share a community of interest with the other members of that craft or class.

The Board has a policy against fragmenting traditional crafts or classes. See, e.g., *American Airlines, Inc.*, 21 NMB 60, 73 (1993) (“The Board has frequently stated its policy against fragmenting crafts or classes, and, indeed, recognizes that it is not authorized to make a determination for a unit smaller

than the entire craft or class”). NATS has not provided sufficient evidence or rationale to justify breaking from precedent, removing Plumber-Drivers from an established craft or class, and creating a new craft or class consisting only of Plumber-Drivers.

CONCLUSION

The Board finds that LIRR’s Plumber-Drivers are not a separate craft or class and are part of the Sheet Metal Workers craft or class. As there is no further basis for investigation, NMB File No. CR-7202 is converted to NMB Case No. R-7536 and dismissed.

By direction of the NATIONAL MEDIATION BOARD

A handwritten signature in black ink that reads "Mary L. Johnson". The signature is written in a cursive style with a large, looped "M" and "J".

Mary L. Johnson
General Counsel