



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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In the Matter of the
Application of
**INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS**
alleging a representation dispute
pursuant to Section 2, Ninth, of
the Railway Labor Act, as
amended
involving employees of
**BUFFALO & PITTSBURGH
RAILROAD**

44 NMB No. 28

CASE NO. R-7496
(FILE NO. CR-7161)

FINDINGS UPON
INVESTIGATION-
DISMISSAL

June 2, 2017

This determination addresses the application of the International Brotherhood of Electrical Workers (IBEW) alleging a representation dispute pursuant to the Railway Labor Act (RLA),¹ 45 U.S.C. § 152, Ninth (Section 2, Ninth), among Electricians at Buffalo & Pittsburgh Railroad (Carrier or BPRR). IBEW maintains that the applied-for employees belong in the Electrical Workers craft or class at BPRR, and that the National Mediation Board (Board or NMB) has already certified it as the representative of that craft or class.

For the reasons set forth below, the Board concludes that the employees covered by the application belong in BPRR's Electrical Workers craft or class. Because IBEW is already the certified representative of that craft or class, the Board dismisses the application.

¹ 45 U.S.C. § 151, *et seq.*

PROCEDURAL BACKGROUND

On January 9, 2017, IBEW filed an application alleging a representation dispute involving the Electricians at BPRR. IBEW requests that the Board accrete those employees to the Electrical Workers craft or class, and supports its request with authorization cards. The application was given NMB File No. CR-7161 and Andres Yoder was assigned as the Investigator.

On February 3, 2017, BPRR submitted a position statement, the List of Potential Eligible Voters, and signature samples for those potential voters. BPRR then submitted documentation in support of its statement on February 23, 2017. On February 7, 2017, IBEW submitted its own position statement with supporting documentation. Then on March 13, 2017, in response to BPRR, IBEW submitted a second statement with supporting documentation.

ISSUE

Do the applied-for employees belong in BPRR's Electrical Workers craft or class?

CONTENTIONS

BPRR

The Carrier argues that the employees at issue do not belong in the Electrical Workers craft or class. Rather, they are properly included in a proposed craft or class of "[C]omposite [M]echanics."

IBEW

IBEW asserts that the employees at issue belong in the Electrical Workers craft or class because the two groups perform "the same type" of work.

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.

BPRR is a carrier 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.

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.

STATEMENT OF FACTS

Background

BPRR is a railroad with operations in Pennsylvania and New York. Among its employees are individuals who work out of the following five Pennsylvania locations: Butler; Brookville; Homer City; Punxsutawney;² and Warren. In 1998, the Board certified IBEW as the representative of the Electrical Workers craft or class at BPRR. *See Buffalo & Pittsburgh R.R., Inc.*, 25 NMB 442 (1998) (NMB Case No. R-6614).

The Carrier and IBEW agree that IBEW’s certification covers certain employees at BPRR’s Butler and Punxsutawney locations. However, IBEW argues that its certification also covers three employees at BPRR’s Brookville location. In response, the Carrier maintains that those three employees are instead part of a proposed Composite Mechanics craft or class, along with 12 other employees who work out of Brookville, Homer City, and Warren.

² In its submissions, the Carrier sometimes refers to a “Riker Yard” location. Riker Yard is a rail yard in Punxsutawney.

The IBEW Collective Bargaining Agreement

The collective bargaining agreement that resulted from IBEW's certification (IBEW CBA) identifies two jobs, "Locomotive Electricians" and "Electrician Helpers," and summarizes those jobs as "servicing and maintaining locomotives and their appurtenances" Locomotive Electricians' particular duties include:

- "[S]ervice, inspect and supply locomotives with fuel, water, lubricating material, sand, station[e]ry, [and] cab and sanitary supplies."
- "[R]epairing, installing, removing, inspecting, testing and maintaining the electrical components of generators, switchboards, motors and controls, rheostats and controls, static and rotary transformers, motor generators, electric headlights storage batteries, battery boxes and axle lighting equipment."
- "Uploading and downloading locomotive computer software, utilizing laptop computers to troubleshoot and analyze locomotive computer systems, installing, removing, maintaining, repairing, inspecting, testing and performing other assigned duties associated with locomotive computer system repairs."
- "From time to time electricians may be required to perform minor mechanical repairs that are incidental to servicing and inspecting or in case of emergency. Incidental mechanical repairs should not be a 'preponderant part of the assignment.'"

Electrician Helpers' particular duties include:

- "Service, inspect and supply locomotives with fuel, water[,] lubricating material, brake shoes, sand, sand hoses and their piping, [and] cab supplies"
- "[W]ash and clean locomotives, cabs and cab bodies."
- "[A]ssist . . . [E]lectrician[s]"

Finally, in Appendix C of the IBEW CBA, an agreement entitled "Letter of Understanding #2 on Electrician Helpers Training Program" "establish[es]" an "approach to train [an] Electrician Helper to become a Journeyman Electrician within [24] months." The training approach includes on-the-job training and 48 "education lessons" that cover the following topics: "Basic Electricity and Electronics, Circuit Diagrams, Electronics on the Rails, Electrical Maintenance

Work, Generator and Motor Maintenance, Locomotive Systems Maintenance, [and] Basic Locomotive Troubleshooting Electrical.”

The Employees Covered by the Application

The Carrier argues that 15 employees are covered by IBEW’s application, and that their job duties are “notably wider” than the duties performed by the existing Electrical Workers craft or class, which are outlined in the IBEW CBA. According to the Carrier, the 15 employees are called “[C]omposite [M]echanics[,]” and “it would not be feasible or practical to . . . divide [their duties] into separate specific crafts”

The Carrier supports its argument with a position profile for a job called “Mechanic I” (Mechanic I Profile), which, according to the Carrier, delineates the work Composite Mechanics perform. The Mechanic I Profile summarizes the Mechanic I job as “[i]nspect[ing,] servic[ing,] and maintain[ing] . . . locomotives[,]” and lists duties that include the following:

- “Performs daily . . . locomotive inspection”
- “Performs periodic service on locomotives”
- “Replaces locomotive and diesel engine components”
- “Diagnoses malfunctions in diesel engines, air equipment, trucks, or other components”
- Maintains knowledge as to the “handling of hazardous and non-hazardous waste products.”
- “Performs daily service of locomotives”
- “Performs periodic and annual inspections” of locomotives.

The Carrier also supports its argument with an “Employee Agreement” that names 12 of the 15 employees it identifies as Composite Mechanics. The Employee Agreement applies to BPRR employees who are not “represented by a duly accredited labor organization[,]” and whose job classifications are described as “Carmen, Car Inspectors, Mechanics, [and] Mechanic/Electricians and their Helpers.” In addition, Exhibit 5 of the Employee Agreement separately “outline[s] the seniority” for employees who are “responsible for . . . dumping coal and limestone” at BPRR’s dump site in Homer City.

IBEW responds by asserting that its application only covers three of the 15 employees the Carrier names: Michael Jimenez, Joseph Sherman, and Patrick Stine. IBEW also asserts that those three employees perform job

functions that are similar to those performed by the existing Electrical Workers craft or class.

IBEW supports its argument with declarations from Jimenez, Sherman, and Stine. In those statements, they each said, “Even though my job title is Mechanic, the vast majority of my responsibilities involve electrical work.” Each also stated that “no other employees do any electrical work except on the rare occasion when one of us may need assistance.” Finally, each described their job duties as follows:

- “[R]epairing, installing, removing, inspecting, testing and maintaining the electrical components of generators, switchboards, motors and controls, rheostats and controls, static and rotary transformers, motor generators[,] electric headlights, storage batteries, battery boxes and axle lighting equipment.”
- “Uploading and downloading locomotive computer software, utilizing laptop computers to troubleshoot and analyze locomotive computer systems, installing, removing, maintaining, repairing, inspecting, testing and performing other assigned duties associated with locomotive computer system repairs.”

IBEW also supports its argument with website printouts showing that Jimenez, Sherman, and Stine have completed distance training lessons with an organization called “The Railway Educational Bureau.” Jimenez’s printout identifies him with the “Craft” of “Electrician[,]” and shows that he has completed 34 lessons with titles like “Electric rotating equipment, control Stand;” “General maintenance . . . [and] traction motors;” and “Troubleshooting.” Sherman’s printout identifies him with the “Craft” of “Locomotive Electrical[,]” and shows that he has completed 21 lessons with titles like “Control circuits and devices;” “Electric rotating equipment, control Stand;” “Electrical Equipment;” and “Troubleshooting guide.” Stine’s printout identifies him with the “Craft” of “Electrician[,]” and shows that he has completed 27 lessons with titles like “Diesel locomotive schematic circuit diagrams;” “Electrical Equipment;” “General maintenance . . . [and] traction motors;” and “Troubleshooting outlines”

Additionally, IBEW supports its argument with a copy of a letter from Sherman, dated October 24, 2011. In the letter, Sherman says he is “applying for the Locomotive Electrician job”

Finally, IBEW supports its argument with a copy of a Carrier document entitled “Manager’s New Employee Information Sheet,” dated September 3, 2013. The document identifies Stine, and indicates that his job title is “Electrician Helper.”

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. *E.g.*, *US Airways, Inc.*, 28 NMB 104 (2000). The Board makes craft or class determinations case by case, based upon Board policy and precedent. *E.g.*, *United Parcel Serv. Co.*, 30 NMB 84 (2002). In general, “historical patterns of representation in the railroad industry provide the basis for craft or class determinations.” *Ontario Midland R.R.*, 10 NMB 18 (1982). However, in some cases, when employees work in more than one craft or class, the Board may look beyond traditional groupings. *E.g.*, *Bauxite & N. Ry.*, 44 NMB 7 (2017).

Here, the Carrier argues that the employees at issue have job functions that are broader than those of the existing Electrical Workers craft or class. Accordingly, the Carrier proposes a craft or class of Composite Mechanics, and argues that the applied-for employees are properly included in that craft or class. The Carrier, however, has failed to support its argument.

The Carrier maintains that the 15 employees it identifies are responsible for the job duties listed in the Mechanic I Profile. But the Carrier did not submit any documentation that shows the employees at issue actually perform those job duties.

Additionally, the Carrier has not provided any evidence that it cross-utilizes the 15 employees across traditional craft or class lines. The Employee Agreement identifies work classifications that are consistent with well-established crafts or classes like Mechanics, Carmen, and Electricians,³ and it mentions a separate group of employees who dump coal and limestone.

³ See, *e.g.*, *Atlantic Coast Line R.R. Co.*, 1 NMB 12 (1937) (certifying a representative for “machinists, their helpers and apprentices”); *Southern Pac. Lines – Texas & Louisiana (Texas & New Orleans R.R. Co.)*, 1 NMB 96 (1938) (authorizing separate elections among the crafts or classes of “carmen” and “electrical workers”).

However, the Employee Agreement does not reference a Composite Mechanic job that combines those job classifications. In fact, nothing in the record shows that the employees at issue split time between job classifications.

IBEW asserts that the three employees it identifies perform job duties that are similar to those performed by the existing Electrical Workers craft or class, and supports that point with documentation. IBEW submitted declarations saying that those three employees' job duties are similar to the duties outlined in the IBEW CBA, which describes the work performed by the existing Electrical Workers craft or class. IBEW also submitted website printouts that suggest all three employees participate in a training program that is comparable to the program described in Appendix C of the IBEW CBA. In addition, IBEW submitted a letter and a Carrier document that respectively suggest Sherman and Stine engage in electrical work.

Finally, in the recently decided case *Buffalo & Pittsburgh R.R.*, 44 NMB 133 (2017), the Board rejected the Carrier's arguments regarding a craft or class of Composite Mechanics and accreted five of the 15 employees the Carrier identifies here to an existing Machinists and Machinists Helpers craft or class. The Board, however, did not make a finding as to the appropriate craft or class for the three employees IBEW identifies here. *See id.*

In this case the record supports the finding that the three employees identified by IBEW perform work that is similar to the work performed by the existing Electrical Workers craft or class. The two groups work on the same electrical components. As a result, those three employees belong in the Electrical Workers craft or class.

Accretion

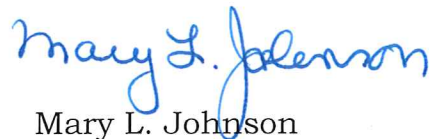
The Board has broad discretion to determine the manner in which it conducts investigations in representation disputes. *See Brotherhood of Ry. & S.S. Clerks v. Ass'n for the Benefit of Non-Contract Employees*, 380 U.S. 650 (1965). When a labor organization submits an application to represent employees who already belong in a craft or class it is certified to represent, the Board's established policy is to dismiss the application on the grounds that an election is unnecessary. *E.g., Ross Aviation, Inc.*, 22 NMB 89 (1994). In such cases, if the application is supported by the requisite 50 percent showing of interest, the Board accretes the employees to the craft or class in which they belong. *E.g., Southwest Airlines*, 42 NMB 110 (2015).

In this case, IBEW is already certified to represent BPRR's Electrical Workers craft or class; the three employees IBEW applied for belong in that craft or class; and IBEW supported its application with more than the requisite 50 percent showing of interest. Consequently, it is appropriate to accrete the applied-for employees to BPRR's Electrical Workers craft or class.

CONCLUSION

The Board finds that the employees covered by IBEW's application belong in BPRR's Electrical Workers craft or class, a group IBEW is already certified to represent. As there is no further basis for investigation, NMB File No. CR-7161 is converted to NMB Case No. R-7496 and dismissed.

By direction of the NATIONAL MEDIATION BOARD.



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