



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the  
Application of the  
  
INTERNATIONAL ASSOCIATION  
OF SHEET, METAL, AIR, RAIL  
AND TRANSPORTATION  
WORKERS  
  
alleging a representation dispute  
pursuant to Section 2, Ninth, of  
the Railway Labor Act, as  
amended  
  
involving employees of  
  
RAPID CITY, PIERRE &  
EASTERN RAILROAD, INC.

47 NMB No. 19

CASE NO. R-7548 &  
R-7549

(File No. CR-7211)

FINDINGS UPON  
INVESTIGATION-  
AUTHORIZATION OF  
ELECTION

July 21, 2020

This determination addresses the application filed by the International Association of Sheet Metal, Air, Rail, and Transportation Workers (SMART or Organization) alleging a representation dispute pursuant to the Railway Labor Act (RLA), 45 U.S.C. §152, Ninth (Section 2, Ninth),<sup>1</sup> among “Maintenance of Way and Signal Department Employees” at Rapid City Pierre & Eastern Railroad, Inc. (RCPE or Carrier). For the reasons set forth below, the National Mediation Board (Board or NMB) concludes that “Maintenance of Way and Signal Department Employees” does not constitute an appropriate craft or class. Rather, the “Maintenance of Way Employees” and “Signal Department Employees” constitute separate and distinct crafts or classes of employees. The Board further finds that a dispute exists with respect to the representation of the “Maintenance of

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

Way Employees” and authorizes an election among the employees in that craft or class.

### PROCEDURAL BACKGROUND

On March 4, 2020, SMART filed an application alleging a representation dispute involving the “Maintenance of Way and Signal Department Employees” at RCPE. At the time the application was filed, these employees were not represented by any organization or individual. The application was given NMB File No. CR-7211 and Josie G. M. Bautista was assigned as the Investigator. On March 13, 2020, the Carrier submitted a List of Potential Eligible Voters (List) as of February 29, 2020, the last day of the last payroll period prior to March 4, 2020, as well as signature samples for those employees on the List. Neither SMART nor the Carrier filed an initial position statement.

On April 1, 2020, Investigator Bautista requested certain information from the Carrier regarding its employees. On April 13, 2020, the Carrier requested an extension to comply with the Investigator’s request. The Carrier supplied the requested information on April 20, 2020. Upon the Investigator’s request, SMART provided a position statement on April 28, 2020. The Carrier submitted additional information on May 15, 2020, also upon request from the Investigator.

### ISSUES

Is “Maintenance of Way and Signal Department Employees” an appropriate craft or class at RCPE? What are the representation consequences of that craft or class determination?

### CONTENTIONS

SMART contends that the combined craft or class of “Maintenance of Way and Signal Department Employees” is appropriate because the Signal Department employees report for duty at the same location as the Maintenance of Way Employees (MOW) and are supervised by the same Managers. Further, it contends that MOW employees and Signal Maintainers perform similar duties. To support that contention, SMART described one instance “when a Signal Maintainer was temporarily off of work and a MOW employee covered the vacant position and performed the duties” of the Signal Maintainer. SMART did not submit any affidavits or other evidence to support this contention.

The Carrier states that it “takes no issue with the unit proposed by the Organization.” When asked by the Investigator about SMART’s claim regarding the MOW employee performing the duties of a Signal Maintainer, the Carrier responded by stating that it “is unaware of any MOW employee ever being assigned to, or having performed the duties of Signal Maintainer.”

### 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.

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

#### II.

SMART 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 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

RCPE is a Class II railroad operating across South Dakota and southern Minnesota in the northern plains of the United States. Portions of the railroad’s operations also extend into Wyoming and Nebraska, with a total of 741 miles of track (owned and leased). RCPE was founded in 2014 and it is owned and operated by Genesee & Wyoming.

The List of “Maintenance of Way and Signal Department Employees” contains 58 names,<sup>2</sup> of which 53 are MOW employees and 5 are Signal Maintainers. The MOW employees consist of the following job titles: Bridge Laborer, Bridge Foreman, Track Machine Operator, Track Laborer, Foreman MOW, Track Inspector, Mechanic, and Welder. The position descriptions for the positions show that these employees are responsible for the road, track, and

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<sup>2</sup> The original List provided by RCPE contained 57 employees. During the investigation, SMART informed the Board of an employee who was inadvertently omitted from the List. RCPE agreed with SMART that the employee should be included on the List.

structural maintenance of the Carrier. These MOW positions share similar requirements in experience, skills and a high school or GED equivalent education.

The position description of Signal Maintainer states “repairs, maintains, and tests signal systems and inspects the construction and installation of signal systems.” The signal systems include “automatic-block signal systems, traffic-control systems, train-stop, train-control and cab-signal systems; rail-highway grade-crossing protection, automatic classification yards, hot-box detectors, broken-flange detectors, and other similar devices, appliances, and systems.” The Signal Maintainers also operate rail or highway vehicle for transportation to wayside locations to install, inspect, test, and maintain repaired grade crossing warning systems, signals, and signal equivalent. The position requires technical experience in the construction and installation of signal systems and a preference for an equivalent combination of an Associate’s degree with one to three years of related technical experience and training.

On February 15, 2018, following an election, the Board dismissed an application filed by SMART to represent the MOW employees at RCPE. (See *Rapid City, Pierre, and Eastern R.R.*, 45 NMB 19 (2018). Signal Maintainers were not included on the list of eligible voters for that election.

#### DISCUSSION

In determining the proper craft or craft 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). While the Board has modified traditional craft or classes, as needed, to take into consideration facts unique to a given carrier’s operation, the vast majority of the Board’s craft or class determinations fall along traditional craft or class lines.

In determining the proper craft or class for employees, the Board is guided by the Representation Manual (Manual) Section 9.1 which 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.

The Board has consistently held that “historical patterns of representation in the railroad industry provide the basis for craft or class determinations.” *Talleyrand Terminal R.R. Co.*, 35 NMB 28, 32 (2007); *Terminal R.R. Ass’n of St. Louis*, 28 NMB 187, 199 (2000); *Duluth, Missabe & Iron Range Ry. Co.* 16 NMB 495, 500 (1989).

The craft or class of Signalmen is a well-recognized, distinct craft or class in the railroad industry. *Kansas City Terminal Co.*, 2 NMB 238 (1953). These employees maintain signals and are recognized as a separate craft or class. *Dakota, Minnesota & E.R.R.* 29 NMB 105 (2001).

Maintenance of Way employees are another traditional craft or class in the railroad industry, made up of employees who are responsible for road, track and structural maintenance. *See, e.g. Florida E. Coast Ry.*, 18 NMB 460 (1991). This is the appropriate craft or class for those employees at RCPE who perform road, track, and structural maintenance. Because there is insufficient evidence of work related community of interest between the Maintenance of Way employees and the Signal Maintainers at RCPE, it is not appropriate to combine these two distinct class of employees into one craft or class.

SMART cites *Eastern Airlines, Inc.*, 4 NMB 54, 63 (1965) to support its contention that there is a “functional” connection between the two groups of employees because the job descriptions of those employees requires them to manage other projects and perform other duties as assigned. SMART, however, failed to present any evidence to support its contention of this “functional” connection between the two groups. It stated only that “this [functional connection] is apparent when a Signal Maintainer was temporarily off of work and a MOW employee covered the vacant position and performed the duties.” SMART did not provide an affidavit from any MOW employee that he/she performed the duties of the Signal Maintainer, and the Carrier is unaware of any MOW employee ever being assigned to, or having performed the duties of a Signal Maintainer. The record is also completely devoid of any evidence of cross-utilization of the MOW and Signal Department employees.

SMART also cites *Florida Northern R.R.*, 34 NMB 142 (2007) and *Brandywine Valley R.R. Co.*, 30 NMB 445 (2003) arguing that the Board has recognized that on smaller carriers, a small number of employees may be grouped together in a combined craft or class of non-operating employees especially when the carrier does not object to the representation of the craft or class. In essence, SMART is arguing here that the Board should take a distinct and separate craft or class of Signal Department employees and append it to the

Maintenance of Way craft or class, because it seeks to include only a small number of Signal Maintainers and the Carrier does not object to their inclusion in the applied-for craft or class. SMART's contention, however, is contrary to long-standing Board precedent against fragmenting traditional crafts or classes. *See, e.g., United Airlines*, 6 NMB 180, 183 (1977). Additionally, to accept SMART's position would be to disregard all the other employees that could potentially be grouped into a non-operating craft or class, which would include every group of employees other than train and engine service employees,<sup>3</sup> provided those non-operating employees share a work-related community of interest at RCPE.

### CONCLUSION

The Board finds that SMART's application for "Maintenance of Way and Signal Department Employees" is not a proper craft or class. Rather, the Board finds two distinct crafts or classes in this case, "Maintenance of Way Employees" and "Signal Department Employees." Accordingly, NMB File No. CR-7211 is converted to NMB Case No. R-7548 and NMB Case No. R-7549 respectively.

Based on the authorization cards submitted by the Organization, the Board finds that a dispute exists in NMB Case No. R-7548 regarding the representation in the Maintenance of Way Employees craft or class. The Board therefore authorizes an election among the craft or class of Maintenance of Way Employees, using a cut-off date of February 29, 2020.

The Board further finds there is an insufficient showing of interest with regard to the Signal Department Employees craft or class. Accordingly, NMB Case No. R-7549 is dismissed.

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 alphabetized names and current addresses of those employees on the List of Potential Eligible Voters in the craft or class of Maintenance of Way Employees. 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 also provide to the Board the name and sequence number of those potential eligible voters on military leave who are serving in foreign countries or who reside outside of the United States. The Carrier must use the most expeditious method possible, such

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<sup>3</sup> SMART was certified by the NMB as the representative of employee's in the Carrier's Train and Engine Service craft or class on August 28, 2014.

as overnight mail, to ensure that the Board receives the labels within five calendar days.

By direction of the NATIONAL MEDIATION BOARD

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

Mary L. Johnson  
General Counsel