



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the
Application of the

INTERNATIONAL
LONGSHOREMEN'S
ASSOCIATION

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

involving employees of
WISCONSIN CENTRAL LTD.

48 NMB No. 4

CASE NO. R-7555
(File No. CR-7215)

FINDINGS UPON
INVESTIGATION-
DISMISSAL

October 30, 2020

This determination addresses the application of the International Longshoremens' Association (ILA or Organization) alleging a representation dispute pursuant to the Railway Labor Act (RLA), 45 U.S.C. § 152, Ninth (Section 2, Ninth)¹, among "Freight Loaders and Handlers" employed by Wisconsin Central Ltd. (Carrier or Wisconsin Central) at its Hallett Ore Dock No. 5 (Hallett Dock) facility in Duluth, Minnesota.

For the reasons set forth below, the National Mediation Board (NMB or Board) concludes that the "Freight Loaders and Handlers" (also referred to as "Dock Control Operators" or "Control Operators") employed by the Carrier at Hallett Dock are not by themselves a separate craft or class but are properly part of the craft or class of Ore Dock Employees currently represented by Transportation Communications Union, IAM (TCU/IAM). Therefore, the ILA's application is dismissed.

¹ 45 U.S.C. § 151, *et seq.*

PROCEDURAL BACKGROUND

On April 21, 2020, the ILA filed an application seeking to represent nine “Freight Loaders and Handlers” employed by the Carrier at its Hallett Dock facility in Duluth, Minnesota.² The application was assigned NMB File No. CR-7215 and John S.F. Gross was assigned as the Investigator.

On July 2, 2020, the Carrier submitted information and an initial position statement to the Board. The information included a List of Potential Eligible Voters (List) as of June 7, 2020, the last day of the last payroll period prior to June 18, 2020.³ The Carrier also submitted signature samples of employees on the List. In its initial position statement, the Carrier noted that it employs approximately 68 hourly ore dock employees at its Duluth Ore Dock in Duluth, Minnesota (Duluth Dock) and its Two Harbors Ore Dock in Two Harbors, Minnesota (Two Harbors Dock) who perform work including loading and unloading of ships and other related work, and are represented by TCU/IAM.

On July 13, 2020, Investigator Gross requested additional information from the Carrier, and the Carrier supplied the information on July 20, 2020. Also on July 13, 2020, Investigator Gross requested a response from ILA to the information and initial position statement submitted by the Carrier. ILA provided its response on July 20, 2020. On July 27, 2020, Investigator Gross requested further information from the Carrier, including a list of all Carrier employees (by job classification and location) performing work including loading and unloading of ships and other related work (including work performed by Dock Control Operators), and the Carrier provided that information on August 3, 2020.

On July 29, 2020, Investigator Gross notified TCU/IAM of the ILA’s application, and provided it with the initial position statements and other information submitted to the Board by the Carrier and ILA as of that date. On July 31, 2020, TCU/IAM notified the Board it wished to submit a position statement in the case, and it did so on August 11, 2020.

On August 12, 2020, Investigator Gross notified ILA and the Carrier that the Board was in receipt of TCU/IAM’s August 11, 2020 position statement, and allowed them the opportunity to respond. On August 21, ILA submitted a

² Due to the COVID-19 pandemic, the NMB suspended the docketing of new representation applications from March 25, 2020 through June 15, 2020.

³ The List includes only those potential eligible voters employed by the Carrier at Hallett Dock.

response to TCU/IAM's position statement. The Carrier did not further respond, other than to clarify one statement made by TCU/IAM in its position statement regarding the "insourcing" of work at Hallett Dock.

On August 24, 2020, Investigator Gross notified the Carrier and TCU/IAM that the Board was in receipt of ILA's August 21, 2020 response, and allowed them the opportunity to respond. On August 31, 2020, TCU/IAM submitted a response. The Carrier did not further respond.

ISSUE

Are "Freight Loaders and Handlers" (also referred to as "Dock Control Operators" or "Control Operators") employed by the Carrier at its Hallett Dock facility a separate craft or class, or are they properly part of the craft or class of Ore Dock Employees currently represented by TCU/IAM?

CONTENTIONS

The Carrier

The Carrier did not take a position with respect to whether the applied-for employees at its Hallett Dock facility by themselves constitute a separate craft or class for representation purposes, or on whether the applied-for employees are already included in the certified, TCU/IAM-represented craft or class of Ore Dock Employees (including Dock Control Operators) employed at its Duluth and Two Harbors docks. However, it did supply information to assist the Board in making those determinations.

International Longshoremen's Association

ILA contends that the appropriate craft or class for the Hallett Dock Control Operators is a separate craft or class from the TCU/IAM-represented Ore Dock Employees at the Carrier's Duluth and Two Harbors dock facilities. While it agrees that all of the applied-for employees at Hallett Dock are "Dock Control Operators" (or "Control Operators"), and understands that the Carrier has a collective bargaining agreement with TCU/IAM that covers approximately 68 hourly ore dock employees at the Carrier's Duluth and Two Harbors docks (including Dock Control Operators), it asserts that the Dock Control Operators at Hallett Dock do not share a sufficient community of interest with the Ore Dock Employees working at those other dock facilities.

ILA claims the Hallett Dock operation is unique as compared to the Duluth and Two Harbors dock operations, and that the Dock Control Operators

at Hallett Dock have unique and different job duties and responsibilities, which have remained essentially unchanged since the Carrier acquired the Hallett Dock. A shared job title (“Dock Control Operators” or “Control Operators”) with the TCU/IAM-represented craft or class of Ore Dock Employees, it asserts, is not enough to establish that they share a work-related community of interest. It further asserts that the Hallett Dock employees’ connection to the Ore Dock Employees craft or class is simply too tenuous to find accretion appropriate given the unique nature of the work performed at Hallett Dock.

Transportation Communications Union/IAM

TCU/IAM contends that, since it already represents Ore Dock Employees, including Dock Control Operators, employed by the Carrier at its Duluth and Two Harbors ore dock facilities, the Carrier's newly employed Hallett Dock Control Operators are properly included in the existing craft or class of Ore Dock Employees it currently represents throughout the Carrier's system. TCU/IAM further contends that the work performed by the Hallett Dock Control Operators is not so different from the work performed by the Carrier’s other Ore Dock Employees to warrant carving out from that group a new, separate craft or class. It submits the Hallett Dock employees share the same general duties and responsibilities, nature of work, and community of interest with the TCU/IAM-represented Ore Dock Employees and are properly considered part of that existing craft or class. It further submits that, given that the RLA provides for representation on a system-wide basis, regardless of location, the Hallett Dock Control Operators belong in the existing craft or class of Ore Dock Employees it currently represents. Accordingly, it submits, ILA's application should be dismissed based on an insufficient showing of interest.

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.

Wisconsin Central is a carrier as defined in 45 U.S.C. § 151, First.

II.

ILA and TCU/IAM are labor organizations and/or representatives as defined in 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 FACTSThe Carrier and Its Ore Docks

The Carrier is a wholly-owned, indirect subsidiary of Canadian National Railway Company (Canadian National), which acquired the Carrier in October 2001. In May 2004, Canadian National completed its purchase of the rail and marine holdings of Great Lakes Transportation LLC (Great Lakes). The Great Lakes acquisition added two railroad operations to the Canadian National system, including the Duluth, Missabe & Iron Range Railway Co. (DM&IR), a common carrier of pelletized iron ore and taconite in Minnesota and Wisconsin. (The iron ore and taconite product was hauled by DM&IR to its ore docks at the Great Lakes ports of Duluth and Two Harbors, Minnesota.) In 2011, DM&IR was merged into Wisconsin Central, which took control of the Duluth and Two Harbors ore dock operations. On April 1, 2020, the Carrier concluded its acquisition of Hallett Dock, an ore dock also located in Duluth, Minnesota, from Hallett Dock Company, and commenced operations of the dock on that date.⁴

With its acquisition of Hallett Dock, the Carrier owns and operates three ore docks:⁵ Duluth Dock, Two Harbors Dock and Hallett Dock. All three ore

⁴ At the time of the transaction, Wisconsin Central moved approximately 90 percent of the traffic volume handled by rail at Hallett Dock. The transaction arose from Hallett Dock Company's decision to sell Hallett Dock and Wisconsin Central's desire to ensure its continued operation. As a result, Wisconsin Central and Hallett Dock Company entered into an Asset Purchase Agreement, which would preserve operation of Hallett Dock under Wisconsin Central's ownership

⁵ Ore docks are large intermodal structures used for loading ore and related materials between rails and shipping vessels for transport.

dock facilities are located in the same geographic area on Lake Superior: the Duluth Dock is located directly next to Hallett Dock in Duluth, Minnesota, and the Two Harbors Dock is located approximately 30 miles up the coast of Lake Superior in Two Harbors, Minnesota.

All three of the Carrier's ore docks are rail/water bulk commodity transfer and storage dock facilities that serve as intermodal rail/shipping facilities for the Carrier to move iron ore, taconite pellets (a form of processed iron ore), limestone, blast furnace trim, bentonite, and other materials from rail car to vessel, and vice-versa. All three facilities have outdoor areas for commodity storage, and Hallett Dock also has a covered dry storage area.

Work performed at each of the ore dock facilities involves the loading and unloading of ships and other related work and is largely automated. The Carrier's Duluth and Two Harbors docks are gravity-feed docks. They are long structures, high above water-level, with rail tracks along the top. Rail cars unload materials into holding pockets on the docks. Ships pull alongside the docks, and chutes are lowered to deposit material into the hulls of the boats. Conveyor loading systems are used to load product onto vessels, and high-speed receiving hoppers are utilized to handle inbound bulk material vessel cargoes. Front end loaders and other material handling equipment is used at the sites.

Hallett Dock is a ground-level commodity transfer facility that utilizes a "state of the art" rail car unloading system (for the off-loading of material from rail cars) and material handling equipment to transfer product from rail car to dock face (e.g., front-end loaders) and then onto vessels (e.g., mobile ship loader conveyors). Hallett Dock also has its own rail yard and conducts its own rail switching operations to handle material arriving and departing by rail.

Employees Covered by the TCU/IAM Collective Bargaining Agreement

TCU/IAM has represented Ore Dock Employees, including Dock Control Operators, on the property as the certified collective bargaining representative since 1940.⁶ They are currently covered by the terms of a collective bargaining agreement between TCU/IAM and DM&IR (CBA). As noted above, DM&IR was merged into Wisconsin Central in 2011. The CBA is dated October 1, 1970, and has been amended periodically since that time. The TCU/IAM-represented Ore Dock Employees participate in national freight rail bargaining (National Handling) along with other TCU/IAM-represented employees. The National

⁶ See NMB Certification R-642 (Aug. 6, 1940), certifying craft or class of Ore Dock Employees at DM&IR

Handling agreements have further amended the existing CBA over the years, including the most recent 2018 national agreement.

The CBA includes the following provisions:

Rule 1

SCOPE

(a) These rules shall govern the hours of service and working conditions of ore dock employees, such as General Foremen, Mechanics, Listmen, Trapping Machine Operators, Systems Control Operators, Reclaimer Operators, Front End Loader Operators, Conveyor Attendants, Laborers, and all other employees performing analogous services.

(b) Positions or work coming within the scope of this agreement belong to the employees covered thereby and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules, except by agreement between the parties signatory hereto.

At its Duluth Dock and Two Harbors Dock facilities, the Carrier employs approximately 68 hourly TCU/IAM-represented Ore Dock Employees, including Dock Control Operators (58), Mechanics, Foremen, and Janitors, who perform work including loading and unloading of ships and other related work. These employees are included on a single seniority list and covered by the same CBA.⁷

The job description for the Dock Control Operator position states as follows:

Role: The Control Operator operates control consoles, radios and scans belt scales to monitor and control dock, storage and shiploader facilities using approved operating and safety procedures often in elevated areas and over water.

Responsibilities: Control Operators are responsible for various tasks in a safety-oriented environment, including operating various types of equipment, small hand tools, technical instruments (meters, etc.), torches, jackhammers, rod & pry bars, and shovels.

⁷ Dock Janitors are also covered by the CBA.

May also drive various vehicles, including trucks, front-end loaders, and bulldozers; performing such other essential and nonessential functions as assigned. Completion of all inspection, defect and vessel loading reports in a timely manner is required.

Working Conditions: Frequent walking on uneven surfaces, climbing on inclined conveyor, in and out of pits, and on and off equipment and ladders. Must be constantly alert and always prepared for unusual conditions or circumstances, and absolutely must perform in a regular, predictable and reliable manner.

Requirements: Candidates with formal training and/or experience in operating heavy equipment are strongly preferred.

Employees Covered by the Application

The Carrier employs Dock Control Operators only at its Duluth, Two Harbors, and Hallett ore dock facilities, and the ILA's application covers only the nine Dock Control Operators employed by the Carrier at Hallett Dock.⁸ They are the former Hallett Dock Company employees who had performed Dock Control Operator work, including the loading and unloading of ships and other related work, at that facility. In connection with its acquisition of Hallett Dock, the Carrier hired them to continue performing that work there as employees of the Carrier.

Integration/Operations of the Duluth, Two Harbors, and Hallett Docks Since April 1, 2020

Since the Carrier acquired Hallett Dock on April 1, 2020, the Labor Relations and Payroll functions supporting Hallett Dock have been completely combined with the U.S. Labor Relations and Payroll functions that support the indirect, wholly owned, operating subsidiaries of Canadian National), including Wisconsin Central.⁹

Hallett Dock has also been integrated into the Carrier's departmental and management structures. All three ore docks are part of the Carrier's Supply Chain organization, and the Carrier's Senior Manager for Dock Operations,

⁸ The ILA does not dispute that the "Freight Loaders and Handlers" covered by its application are referred to and classified as Dock Control Operators or Control Operators.

⁹ According to ILA, although Labor Relations and some Payroll functions have been combined with the Carrier's U.S. Labor Relations and Payroll since the acquisition, an administrative employee remains on site at the Hallett Dock location and continues to process time cards and perform payroll entry exclusively for the Hallett Dock employees.

William Kline, oversees operations at all three of them. Reporting directly to Mr. Kline are Dock Managers Louis Weichselderfer (Duluth Dock), James Cone (Two Harbors Dock), and Charles Wicklund (Hallett Dock). Mr. Kline reports to Justin Waldeck, Director, Marketing Supply Chain Solutions. Mr. Waldeck reports to James B. Cairns, Senior Vice President, Rail Centric Supply Chain. Mr. Cairns reports to the President and Chief Executive Officer, Jean-Jacques Ruest.

Since the Carrier acquired Hallett Dock its operations have remained separate from the operations of the Duluth and Two Harbors docks,¹⁰ except that one product (blast furnace trim) previously transshipped by rail to Two Harbors and then to vessels, is now transshipped by rail to Hallett Dock, and then to vessels. The Carrier is in the process of redirecting limestone shipments from Duluth to be processed at Hallett Dock to free up the Duluth Dock for more pellet processing. The Carrier has also started integrating the warehouse for the Duluth and Hallett Docks, and supplies for Hallett Dock are ordered and now processed centrally by the Carrier.

To date, there has been no interchange or cross-utilization of hourly employees between Hallett Dock and the Duluth and Two Harbors Docks.¹¹ However, there is interchange of TCU/IAM-represented employees between the Duluth and Two Harbors Dock facilities. There is a single seniority roster covering those employees, and all TCU/IAM-represented positions are bulletined by location. As positions become available at Duluth or Two Harbors, employees exercise seniority based on the location-specific job bulletins. When the Carrier needs additional employees to work overtime or cover temporary vacancies such as vacations or other employee absences, the Carrier solicits employees at both locations.

¹⁰ ILA submits there is no integration of essential operations, such as scheduling or supervision, between Hallett Dock and the Carrier's other facilities, noting the Carrier does not, for example, publish combined schedules or combined routes, but rather the Hallett Dock employees operate under a schedule specific to and limited to the Hallett Dock facility. It further submits that Hallett Dock is managed by Manager Charles Wicklund and Assistant Manager Tony Cummings and that their supervisory duties do not extend to the Carrier's other facilities.

¹¹ According to TCU/IAM, while it has engaged in conversations with the Carrier about representing these new employees, the ILA's application halted these discussions pending a resolution of the present dispute before the Board. If the Board dismisses the application, it plans to resume its discussions with the Carrier regarding incorporating these new employees into the existing group of Ore Dock Employees.

Work Performed by the Hallett Dock Control Operators

There is no dispute among the parties regarding the actual duties performed by the Carrier's Hallett Dock Control Operators. The Carrier's job description for the Dock Control Operator position is the same for the Duluth, Two Harbors, and Hallett dock facilities, and ILA submits that "the Hallett Dock employees exclusively perform Dock Control Operator duties at the Hallett Dock facility."

It is ILA's contention, however, that while the Carrier employs "Dock Control Operators" or "Control Operators" at all three of its dock facilities, the actual duties and responsibilities of those employees are not identical. The Control Operators at the Carrier's facilities in Duluth and Two Harbors, it points out, work with TCU/IAM-represented Foremen, Mechanics, and Janitors. In contrast, it notes, the entire Hallett Dock facility is operated solely by the Control Operators it seeks to represent.¹²

According to ILA, despite nominally sharing a job title, the Control Operators at Hallett Dock are more "jacks-of-all-trades" in that they serve as Control Operators, Mechanics,¹³ and Janitors, and also perform rail car switching and operate locomotives on a daily basis, operating up to two to three trains a day. It further submits the equipment they operate is unique to

Hallett Dock (i.e., they do not have a gravity feed or receiving hopper, they operate a railyard utilizing their own locomotives and performing rail switching operations).

TCU/IAM counters essentially that the claimed distinctions are without any meaningful difference here. It asserts that the Ore Dock Employee work is generally the same at each of the Carrier's three ore dock facilities; and that while there may have been changes in how the Ore Dock Employees' job functions are performed in the 80 years since the TCU/IAM was first certified, namely as the result of technological advances, "the essential nature of the jobs" - the loading and offloading of rails and ships - remains the same.

TCU/IAM further asserts that while ILA argues that the Hallett Dock work is "unique" because the Dock Control Operators are "much more of a

¹² Although there are TCU/IAM-represented Foremen, Mechanics and Janitors assigned to the Duluth and Two Harbors docks, there are currently no Foremen, Mechanics, or Janitors assigned to the Hallett Dock location.

¹³ During the investigation, the Carrier provided the job description for the Mechanic position.

“jack-of-all-trades” in that, in addition to performing Dock Control Operator work, they also perform work as Mechanics and Janitors, that argument simply underscores their proper inclusion in the existing Ore Dock Employees craft or class, which also includes those functions and positions under its 1940 NMB certification and CBA with the Carrier. . That they may occasionally move a rail car around the rail yard or operate a ground-level ore dock rather than a gravity-feed ore dock, it further asserts, does not make their situation so “unique” as to warrant carving out a separate craft or class from the work performed by the Carrier's other Ore Dock Employees.

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.*, *Southwest Airlines*, 42 NMB 110 (2015); *Frontier Airlines, Inc.*, 41 NMB 202 (2014); *AirTran Airways, Inc.*, 31 NMB 45 (2003). The factor of work-related community of interest is particularly important. *US Airways, Inc.*, 31 NMB 324, 334 (2004). To evaluate this factor, the Board examines the actual duties and responsibilities of the employees, the environment in which the employees work, and the interaction among the employees involved. *American Airlines, Inc.*, 10 NMB 26, 39 (1982). The Board also typically examines both the physical aspects of a job and the purpose of the work performed, and employees need not have identical skill levels to be included in the same craft or class. *See, e.g.*, *AirTran Airways*, 31 NMB 45 (2003).¹⁴

The purpose of the community of interest test is to ensure that a particular grouping of employees “possess a sufficiently distinct community of interest and commonality of functional characteristics to ensure a mutuality of interest in the objective of collective bargaining.” *Continental Airlines, Inc. / Cont'l Express, Inc.*, 27 NMB 99, 109 (1999). The Board makes craft or class determinations case by case, based upon Board policy and precedent. *See, e.g.*, *United Parcel Serv. Co.*, 30 NMB 84 (2002); *USAir*, 15 NMB 369 (1988); *Simmons Airlines*, 15 NMB 124 (1988). It is a well-established Board policy not to fragment an existing craft or class. *Union Pac. R.R.*, 8 NMB 434 (1981).

¹⁴ *See also Pacific Southwest Airlines*, 14 NMB 10 (1986) (Board dismissed application seeking to represent flight simulator technicians as a separate and distinct craft or class from carrier's mechanics and related employees. There may be differences in skill level and work performed, but work performed is similar and closely related to employees in mechanics and related craft or class, particularly given that they all are engaged in a common function. “The significance of the community of interest relates to the fact that all members of the present craft or class are engaged in performing the same general function...”)

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).

Moreover, the Board has long held that craft or class representation must be on a system-wide basis. The craft or class must include all of the employees working in the classification deemed eligible, regardless of work locations. *Aircraft Serv. Int’l Group*, 40 NMB 43 (2012); *Aircraft Serv. Int’l Group*, 31 NMB 508 (2004); *National R.R. Passenger Serv. Corp.*, 31 NMB 178, 189 (2004); *LSG Lufthansa Servs., Inc.*, 25 NMB 96, 108 (1997); *International Total Servs.*, 20 NMB 537, 544 (1993).

Based upon the record in this case, the Dock Control Operators employed by the Carrier at its Hallett Dock facility do not by themselves constitute a separate craft or class for the purposes of Section 2, Ninth, but rather are properly part of the Carrier’s system-wide craft or class of Ore Dock Employees currently represented by TCU/IAM.

As noted above, “historical patterns of representation in the railroad industry provide the basis for craft or class determinations.” *Ontario Midland R.R.*, 10 NMB 18 (1982). Here, TCU/IAM has been certified – since 1940 – as the representative of a relatively broad group of Ore Dock Employees (including Dock Control Operators) on the Carrier’s property. Notably, the Board has long found that employees performing the type of work performed by the Ore Dock Employees, including Dock Control Operators, at all three of the Carrier’s ore docks – the loading and unloading of ships and other related work - belong in a system-wide craft or class by themselves, *see e.g., Rail-Term R.R.*, 29 NMB 186 (2002) (NMB certified craft or class of Railroad “Freight Loaders and Handlers”), *Foreign & Domestic Car Services, Inc.*, 28 NMB 429 (2001) (NMB certified craft or class of “Railroad Freight Loaders and Handlers”), *Pittsburgh & Conneaut Co.*, 18 NMB 110 (1991) (Board certified craft or class of carrier’s “Longshoremen” employees), *Georgia Ports Auth.*, 16 NMB 5614 (1989) (Board certified craft or class of “Marine Dock, Warehousemen and Related Employees”), or in much broader crafts or classes of railroad employees. In addition, the Board has historically and consistently dismissed representation applications that seek to represent subsets of employees performing that type of work, including by location.

For example, in *Pennsylvania Railroad*, 1 NMB 23 (1937), the ILA requested the Board investigate a representation dispute among employees identified as “loaders and unloaders of ships, known as truckers handling freight as actual longshoremen” employed by the Pennsylvania Railroad in

Cape Charles, Virginia. The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (Brotherhood) protested to the Board against any investigation or election being held on the ground that it was duly designated and authorized to represent the applied-for employees as part of a craft or class which included all other freight handlers, clerical, station and storehouse employees, all of whom were covered by an agreement between the Brotherhood and the carrier. In dismissing the ILA's application, the Board stated:

“It is clear that the [applied-for employees] at Cape Charles ...do not constitute a craft or class within the meaning of the [Act]. Across the bay, at Norfolk, [Virginia], there is a similar group of men doing the same kind of work, and along the whole line of [the carrier's] s]ystem there are freight handlers that belong to the same craft or class. The [Act] does not authorize the [NMB] to certify representatives for small groups of employees arbitrarily selected. Representatives may be designated and authorized only for the whole of a craft or class employed by a carrier.”

*Id.*¹⁵

Also, in *Delaware, Lackawanna & Western R.R. Co.*, 2 NMB 98 (1952), the Board dismissed an application filed by District 50, United Mine Workers of America (UMW) to represent marine coal dumper employees, including trimmers, car riders, operators, and laborers employed by the carrier at Oswego, New York. At the time application was received, the craft or class of marine coal dumper employees, including trimmers, car riders, operators, and laborers was represented by the ILA. The ILA was certified as the bargaining agent for all employees of the carrier in those classifications, regardless of location. At the time ILA was certified, the carrier's unloading facilities at Oswego were not in operation and there were no employees in service there. In dismissing UMW's application, the Board stated that, “[O]n many occasions, [it] has determined that it has no authority under Section 2, Ninth, of the [Act], to split a craft or class for representation purposes. Since the application filed by [UMW] seeks a certification from this Board for the marine coal dumper employees, including trimmers, car riders, operators, and laborers located at Oswego, N. Y., alone, it cannot be entertained. Certification may only be issued for an entire craft or class.” *Id.*

¹⁵ See also *Erie R.R. Co.*, 1 NMB 20 (1937) (Board dismissed ILA's application to represent Marine Freight Handlers at carrier's port of New York, finding that their work is in all respects similar to the work performed by the same class of employees at stations along the line of the railroad, and that they do not by themselves constitute a separate craft or class but are only a small fraction of the class or craft of which they are a part.)

The history of representation generally of employees performing the kind of work performed by the Carrier's Ore Dock Employees (including Dock Control Operators), and specifically of those employees on the Carrier's property, as well as relevant Board precedent and its policy against fragmentation, all weigh heavily in favor of including the Carrier's Hallett Dock Control Operators in the existing craft or class of Ore Dock employees currently represented by TCU/IAM; and the Board is unpersuaded that, on the facts of this case, departing from that history and precedent, and Board policy, by recognizing a stand-alone craft or class of Dock Control Operators at Hallett Dock is warranted.

With respect to ILA's contention that a separate craft or class of Hallett Dock Control Operators is appropriate because they do not share a sufficient work-related community of interest with the TCU/IAM-represented Ore Dock Employees at the Carrier's Duluth and Two Harbors docks, the work performed by the Dock Control Operators at Hallett Dock is not so different or unique as to warrant establishing a separate craft or class apart from the long-established and certified craft or class of Ore Dock Employees on the Carrier's property.

Although the actual work performed by the Hallett Dock Control Operators may not be identical to the work performed by the Control Operators at the Duluth and Two Harbors Docks, all of the Carrier's ore dock employees – including the Hallett Dock Control Operators - perform the same kind of work and support the same work function and purpose for the Carrier: the loading and unloading of material from rail to ship, and vice versa. This work is performed only at the Carrier's three ore docks, including the Hallett Dock, and only by the Carrier's Control Operators and other ore dock employees.

The fact that the Hallett Dock Control Operators use different or more technologically advanced, "state-of-the-art" equipment and/or processes to load and unload material, as compared to the equipment and processes utilized at the Duluth and Two Harbors Docks to accomplish that same basic function, does not change the essential nature of the loading/unloading work; nor is it a distinction sufficient to warrant segregating them from the Carrier's other ore dock employees for representation purposes. *See, e.g., Southwest Airlines*, 42 NMB 110 (2015) (Although technological advances have changed the way ticketing and related problems are resolved for passengers, the duties performed by the carrier's SOS Reps are done with the purpose of directly assisting the flying public, which the Board has held is the defining feature of Passenger Service Employees); *Illinois Central Railroad*, 38 NMB 206 (2011) (Jobs in question have evolved over time to accommodate changes in telecommunication technology, but the work performed is part of the

traditional Electrician craft or class); *Union Pacific Railroad*, 8 NMB 434 (1981) (Board finds that although there have been numerous and substantive changes over the years affecting the Clerical, Office, Station and Storehouse Employees craft or class and how their jobs are performed – including those “wrought by technological progress” - the essential clerical nature of the jobs has not changed).¹⁶

Here, ILA seeks to segregate a group of ore dock workers employed by the Carrier from an existing, certified craft or class of the Carrier’s Ore Dock Employees. However, in *Wisconsin Central Transportation Corporation*, 29 NMB 282 (2002) the Board concluded that ore dock work performed by employees at a carrier’s only ore dock was not unique or distinct enough to warrant carving it out even from a larger group of Maintenance of Way Employees – let alone so unique as to warrant carving it out from an existing craft or class of ore dock workers.

In *Wisconsin Central*, the Board dismissed an application filed by The United Steelworkers of America (USW) to represent “Rail Freight Loaders and Handlers,” including Foremen, Mechanics, Machine Operators, Technician Ore Dock, Millwrights and other “classifications as may be intimately connected with loading, unloading, moving, storing, checking, clerking and handling or moving ore at the carrier’s Escanaba, Michigan facility.” USW contended that the proper craft or class was a separate craft or class of Freight Loaders and Handlers at Escanaba dock because the Escanaba Dock was the only ore loading dock owned and operated by the carrier, and the Escanaba dock employees shared a work-related community of interest centered on the unique work associated with the trans-shipment of ore. It further asserted that the Board had repeatedly certified broad crafts and classes of dockworkers. The Board nevertheless concluded that the Escanaba dock employees were part of the carrier’s system-wide engineering department, and that the work performed by the department’s employees, including the Escanaba dock employees, was

¹⁶ *But see, Northwest Airlines*, 2 NMB 13 (1953) (separate craft or class appropriate where no definite or concrete relationship can be established between the applied-for position and any existing established craft or class of airline employees); *The Great N. Ry. Co.*, 3 NMB 144 (1953) (employees at issue entitled to representation as a “special separate unit” where they are “a unique group which cannot be allocated to any specific craft or class”); *Eastern Airlines, Inc.*, 4 NMB 54 (1965) (Changes in technology or in the organization of work could conceivably render obsolete an existing craft or class grouping for purposes of collective bargaining. “But the changed conditions, in order to constitute justification for a revision in a craft or class grouping would have to result in changed duties or functions which so alter the nature of the classifications as to make their inclusion in the existing grouping no longer appropriate.” Board noted that changes in the skill requirements of the classifications may constitute a basis for negotiation of wage differentials in collective bargaining but they do not constitute justification for the creation of a separate craft or class.)

maintenance of way work. It ultimately concluded that USW's application to represent only the Escanaba dock employees covered only a portion of the carrier's maintenance of way employees, and dismissed the application.

With respect to ILA's argument that a separate craft or class of Hallett Dock Control Operators is warranted because, unlike the Duluth and Two Harbors Control Operators, they are "jacks-of-all-trades," performing not just Dock Control Operator duties but also the duties of Mechanics and Janitors, the Board finds that argument equally unpersuasive. Like Control Operators, Mechanics and Janitors and their respective work duties and functions fall within the Ore Dock Employees craft or class and are covered by TCU/IAM's CBA with the Carrier. The fact that the Hallett Dock Control Operators perform duties in addition to those of Dock Control Operators that also fall within the existing Ore Dock Employees craft or class simply further deepens their community of interest with that group. In addition, the fact that the Hallett Dock Control Operators also move rail cars as part of their loading/unloading duties is insufficient to warrant segregating them from that group. Again, the basic nature of the work performed by the ore dock employees at each of the Carrier's ore docks is the same; and the functions and duties of the Hallett Dock Control Operators ILA seeks to have segregated into a separate craft or class are not so different or unique to justify such a split-off.

In addition to the above, the Board finds that other factors also weigh in favor of including the Hallett Dock Control Operators in the Ore Dock Employees craft or class, such as: the Labor Relations and Payroll functions supporting Hallett Dock have been completely combined with the Labor Relations and Payroll functions that support Wisconsin Central and other Canadian National subsidiaries; Hallett Dock has been integrated into the Carrier's departmental and management structures, with a single Senior Manager for Dock Operations responsible for overseeing operations at all three of the Carrier's ore docks; various products have been or are in the process of being redirected by the Carrier from its Duluth and Two Harbors Docks to the Hallett Dock; the Carrier has started integrating the warehouse for the Duluth and Hallett Docks; and supplies for Hallett Dock are now ordered and processed centrally at the Carrier.¹⁷

¹⁷ Although, to date, there has been no interchange or cross-utilization of hourly employees between Hallett Dock and the Duluth and Two Docks, the Board does not find that fact material to this determination – particularly given that the Carrier only recently acquired Hallett Dock (on April 1, 2020) and within weeks of the acquisition the ILA filed the instant application claiming the existence of a representation dispute. The Board also finds that other facts identified by ILA in support of its contention that a separate craft or class of Hallett Dock Control Operators is warranted (e.g., an administrative employee remains on site at the Hallett Dock location and continues to process time cards and perform payroll entry exclusively for the

As the Board previously recognized in *Eastern Airlines, Inc.*, 4 NMB 54, 63 (1965), “It is not to be inferred that once a craft or class determination is made it is thereafter immutable and sacrosanct. The [RLA] does not function in a static industry nor in an unchanging economy.” Nevertheless, the Board there rejected an effort by the Aircraft Mechanics Fraternal Association (AMFA) to place into separate bargaining units employees who have long had a community of interest, finding that AMFA had failed to establish that changes in the industry (including technological advances) had produced significant changes in the employees’ job duties and functions to justify their segregation.

Likewise, here, the facts do not warrant disturbing the long-established system-wide craft or class of Ore Dock Employees on the Carrier’s property by segregating the Hallett Dock Control Operators from that group.

CONCLUSION

Based on the record in this case and for the reasons discussed above, the NMB finds that the “Freight Loaders and Handlers” (also referred to as “Dock Control Operators” or “Control Operators”) employed by the Carrier at its Hallett Dock facility do not by themselves constitute a separate craft or class, but rather are properly part of the system-wide craft or class of Ore Dock Employees currently represented by TCU/IAM.

The ILA has failed to meet the requisite 50 percent showing of interest requirement as set forth in Board Rule 1206.2 and, therefore, its application is dismissed subject to Board Rule 1206.4. Case No. CR-7215 is converted to R-7555 and closed.

By direction of the NATIONAL MEDIATION BOARD.



Maria-Kate Dowling
Acting General Counsel

Hallett Dock employees, and that there is no integration of scheduling or supervision, between Hallett Dock and the Carrier’s other facilities) are not material to the Board’s determination here.