



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the
Application of

GERARD A. DAVIS

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

involving employees of

LONG ISLAND RAIL ROAD

51 NMB No. 7

CASE NO. RD-7610

FINDINGS UPON
INVESTIGATION-
DISMISSAL

January 5, 2024

This determination addresses the decertification application of Gerard A. Davis (Applicant) alleging a representation dispute pursuant to the Railway Labor Act (RLA or Act), 45 U.S.C. § 152, Ninth (Section 2, Ninth),¹ among 25 “Station Managers” employed by Long Island Rail Road (Carrier or LIRR). At the time of the application, these employees were represented by Transportation Communication Union/IAM (TCU/IAM or Organization) under a voluntary recognition agreement.

For the reasons set forth below, the National Mediation Board (NMB or Board) finds that the Station Managers, with the exception of one job title discussed below, are not management officials and do not constitute a distinct craft or class at LIRR. The Station Managers are properly part of the Clerical, Office, Station and Storehouse Employees craft or class currently represented by TCU/IAM. Accordingly, the application is dismissed subject to 1206.4(b) of the Board’s Rules.

PROCEDURAL BACKGROUND

On April 12, 2023, the Applicant filed an application seeking to decertify the employees’ incumbent representative, TCU/IAM. The application was

¹ 45 U.S.C. § 151, *et seq.*

assigned NMB Case No. RD-7610 and Josie G.M. Bautista was assigned as the Investigator.

On April 26, 2023, the Carrier requested and was granted a one-week extension to file its initial position statement, the List of Potential Eligible Voters (List), and signature samples. The TCU/IAM filed its initial position statement on April 27, 2023 and the Applicant filed his response to the TCU/IAM on April 28, 2023. On May 3, 2023, the Carrier filed its initial position statement as well as the List containing the names and job titles of 25 station department managers. The Carrier also provided the signature samples for the 25 Station Managers. By letter dated May 5, 2023, the Applicant responded to the Carrier's position statement. By letter dated June 9, 2023, the TCU/IAM filed its response to the Carrier and the Applicant. On June 12, 2023, the Applicant replied to TCU/IAM's response. Pursuant to the Investigator's request, the Applicant, Carrier and the Organization submitted information to the Investigator on July 14, 2023. The information provided consisted of job descriptions, organizational charts, collective bargaining agreements, notices to Station Department employees, email communications, copies of disciplinary notices issued by the Carrier, and declarations from several employees covered under the application.

ISSUES

Are the Station Managers at LIRR management officials? If not, are they properly part of the Clerical, Office, Station and Storehouse Employees craft or class currently represented by TCU/IAM?

CONTENTIONS

The Applicant contends that Station Managers are management officials and therefore ineligible to be represented under the RLA. He argues that Station Managers have the ability to approve overtime, create reports and performance appraisals, issue discipline and represent management, including before local governments, educational facilities, civic groups, and businesses. The Applicant further asserts that Station Managers actively create Carrier policy; develop technical specifications for contracts; develop written procedures for internal control of ticket offices and device maintenance; provide input on annual operating plans and budget requirements; and, are designated "Policy Makers" that must complete financial disclosure statements under the New York State Public Officers Law & the Metropolitan Transportation Authority (MTA) Code of Ethics.

TCU/IAM contends that the Station Managers are not a unique craft or class but rather are part of the Clerical, Office, Station, and Storehouse Employees craft or class, which includes a total of 1,357 employees. TCU/IAM further contends that the application lacks the requisite 50% showing of interest

among the appropriate craft or class and the Board must therefore dismiss it. Further, TCU/IAM argues that the Station Managers are not management officials because they do not have the authority to discipline or recommend discipline or authorize or approve overtime; do not make recommendations for hire; and do not possess or exercise any other managerial authority that would render them ineligible for representation under the RLA.

The Carrier states that it has agreed to voluntarily recognize TCU/IAM as the representative of the Station Managers and include them under Exception 5 of the Collective Bargaining Agreement (CBA) covering the Clerical, Office, Station and Storehouse Employees craft or class at the LIRR. The Carrier contends that although the Station Managers have responsibilities for operational response, subordinate overtime approval, employee attendance monitoring, involvement in policy enforcement and other functions, there are additional levels of management approvals required and they are not the final decision makers. According to the Carrier, the Station Managers have limitations on their authority and do not have authority over important decisions such as hiring, firing, financial commitments, contracts, etc.

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, First.

II.

TCU/IAM is a labor organization and/or representative as provided by 45 U.S.C. § 151, Sixth, and § 152, Ninth.

III.

45 U.S.C. §151, Fifth, defines employee as “[E]very person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Surface Transportation Board now in effect”

IV.

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.”

V.

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

In 1981, the TCU/IAM (a successor of the Brotherhood of Railway, Airline, and Steamship Clerks) was certified as the authorized representative of the Carrier’s Clerical personnel pursuant to NMB Certifications Nos. R-98 and R-5109. *See Long Island R.R.*, 8 NMB 431 (1981). In 1997, the Board found that certain positions² at the LIRR that possessed authorities such as approving overtime, issuing discipline, and committing carrier funds were not management officials and belonged in the Clerical, Office, Station and Storehouse Employees craft or class at LIRR. *See Long Island R.R.*, 24 NMB 664 (1997). In that case, the Board, noting “Exception 5”, which is the provision in the CBA between TCU and LIRR that covers “supervisory and/or professional employees”, accreted the employees in those positions to the Board’s certification in R-5109. *Id.* at 676.

The Clerical, Office, Station and Storehouse Employees craft or class at LIRR consists of approximately 1400 employees. The CBA covering these employees includes supplemental agreements that cover certain employee groups within the Clerical, Office, Station and Storehouse Employees craft of class. One example is the supplemental agreement that covers the “supervisory/or professional employees” mentioned above and generally referred to by the parties as the “Exception 5 CBA”. The Exception 5 CBA covers employees with job titles that have underlying clerical functionality but with added supervisory, technical, and operationally critical skills, abilities and job duties. The Exception 5 CBA sets forth rules and working conditions that closely mirror many of the Carrier policies in place for non-represented employees at LIRR.

As relevant background, on March 14, 2022, the TCU/IAM sought to accrete the Station Managers at LIRR to the Clerical, Office, Station, and Storehouse Employees craft or class and the Board assigned its application File No. CR-7231. During the Board’s pre-docketing investigation, the Carrier notified the Board by letter dated June 8, 2022 that it had agreed to voluntarily

² Some of these positions include the following: Manager- Service Analysis, Assistant Manager- Grant Management, Assistant Manager- Financial Analysis, Assistant Manager- Material Control, Assistant Manager – General Material, Assistant Manager – Systems Development, Manager- Technical Services (Support), and, Assistant Manager- Systems Development.

recognize the TCU/IAM as the representative of the Station Managers. Subsequently, by letter dated June 10, 2022, the TCU/IAM informed the investigator that the dispute was resolved and that it was withdrawing its application during the Board's pre-docketing investigation.³ On the basis of the Organization's withdrawal request, the Board dismissed the dispute on June 13, 2022. *See Long Island R.R.* 49 NMB 122 (2022). Here, the instant application was filed on April 12, 2023 seeking to decertify the TCU/IAM as the representative of the Station Managers and claiming that these employees are management officials and ineligible for representation under the RLA.

The LIRR provided Position Description Questionnaires (PDQ) for the following Station Manager positions covered by the instant application: Assistant Terminal Manager, Branch Line Manager, Lead Branch Line Manager, Manager Budget Development/Analysis & Operations Support, Manager Parking and Stations, Manager Station Employee Application & Operations Support, Manger Station Service Support, Manager Ticket Selling & Technology, Manager Ticket Services, Senior Manager Station Operations Control & Safety, Senior Manager Ticket Selling Operations, Senior Manager Ticket Selling Systems, and Terminal Manager. These positions fall within six main functional areas within the Stations Department: 1) Parking and Stations; 2) Safety and Training; 3) Stations Operations; 4) Station Services Support; 5) Terminal Operations; and 6) Ticket Selling & Technology.

The Station Managers are responsible for the overall operation and coordination of the six functional areas of the Stations Department. They provide daily supervision to station department employees (e.g. Ticket Clerks, Station Appearance Maintainers, Agents, Foremen, and Chief Clerks) in the operation and coordination of ticket sales, cleaning services, parking and station services, maintenance inspections, etc., in order to ensure the highest quality of service and environment for the Carrier's customers. Station Managers are also responsible for conducting preliminary fact-finding interviews that may lead to discipline and may elevate alleged misconduct to the Trial and Investigation stage. When the Carrier conducts the formal investigation of an employee, the Notice of Trial is issued by the Stations Department Directors. Disciplinary actions, including low level discipline such as Letters of Warning, are issued by Stations Department Directors. The record is replete with copies of Trial Notices and disciplinary actions issued by Directors Theresa Dorsey (who held the title of Director before being promoted to Chief Station Officer), Charles Garbowski, and John Kelly.

³ In its position statement to the NMB in this matter, the Organization raises arguments as to whether the instant application was time-barred under the NMB's Rules. 29 CFR §1206.4(b) states that a one year dismissal bar applies where the Board dismisses "docketed applications." As the application was withdrawn during the pre-docketing investigation, the Board in CR-7231 followed its long-standing policy and dismissed the application without applying the bar. *See US Airways*, 27 NMB 565 (2000); *Hawaiian Airlines*, 27 NMB 407 (2000).

Station Managers participate in interviewing job applicants in the Stations Department by rating the candidates' performances in answering standardized interview questions prepared by the Carrier's Human Resources (HR) personnel. Any recommendations to hire a candidate are made at the Director level or above in coordination with HR. Carrier policies and procedures applicable to LIRR's Stations Department personnel are issued under the signature of the Chief Stations Officer, Theresa Dorsey.

Senior Station Managers may approve compensatory time for lower level Station Managers, however, the compensatory time form requires the Department Head's signature, which is at the Director level. Whenever additional staffing is required due to various events that increase passenger load at the Carrier's stations and terminals, approval for the additional staffing is required from the Chief Stations Officer.

The Stations Department is led by Chief Stations Officer Dorsey, and six Directors report directly to her. Reporting directly to the Directors within their stations are the Lead Branch Line Managers, Terminal Managers, Senior Manager – Ticket Selling Operations, Senior Managers – Ticket Selling Systems, Manager - Parking Stations, and the Sr. Manager Stations Operations Control.

The following positions also report directly to the Directors – Station Operations Support and Control: Sr. Managers Stations Operations Control and Safety; Manager Budget Development/Analysis & Operations Support; Manager-Station Employee Applications & Operations Support; and Manager – Station Services Support.

DISCUSSION

Status as Management Officials

The Board's Representation Manual (Manual) addresses the ineligibility of management officials. Section 9.211 of the Manual provides:

Management officials are ineligible to vote. Management officials include individuals with:

- (1) the authority to dismiss and/or discipline employees or to effectively recommend the same;
- (2) the authority to supervise;
- (3) the ability to authorize and grant overtime;
- (4) the authority to transfer and/or establish assignments;
- (5) the authority to create carrier policy; and,
- (6) the authority to commit carrier funds.

The Investigator also considers:

- (1) whether the authority exercised is circumscribed by operating and policy manuals;
- (2) the placement of the individual in the organizational hierarchy of the carrier; and,
- (3) any other relevant factors regarding the individual's duties and responsibilities.

When evaluating managerial authority, the Board evaluates the above factors cumulatively. *Allegiant Air*, 45 NMB 43 (2018). “In many cases, the Board finds that while there are certain factors indicating some level of authority, when all the factors are viewed cumulatively the individuals at issue generally are first-line supervisors, not management officials.” *USAir*, 24 NMB 38, 40 (1996) (citing *Pan Am. World Airways, Inc.*, 5 NMB 112, 115 (1973)); *Long Island R.R.*, 24 NMB 664, 698-699 (1997).

Senior Manager - Ticket Selling Operations

The Senior Manager -Ticket Selling Operations is responsible for the operations of all ticket selling devices, Ticket Vending Machines (TVMs) and Ticket Office Machines in production, which includes all maintenance and revenue enhancement functions. The major objective of the position is to ensure the reliability of customer- operated machines at a level that is acceptable to LIRR's customers and consistent with Carrier goals and policies. The position supervises the Manager -Ticket Selling & Technology and is responsible for mid-year and annual reviews for the managers below him and setting the performance goals for employees. He also approves the payroll for the managers and supervisors below him. As Senior Manager, he is responsible for approving vendor quotes, vendor invoices, ordering contractual and non-contractual equipment, stocks, parts, supplies and services, and renewing, extending or replacing vendor contracts. The evidence demonstrates that since 2020, the position has approved invoices totaling over \$9.4 million. Additionally, the evidence reveals that this position performs the function of the Director of the department when the Director is out. Thus, the Board finds that the Senior-Manager - Ticket Selling Operations is a management official in light of his clear authority to make significant and unfettered expenditures of carrier funds. This position is similar to the position of Assistant Manager of Corporate Accounting who was found to be a management official by the Board in its 1997 determination with the authority to authorize and approve expenditures of \$1.5 million. *See id.* at 681. Accordingly, the Board finds that the Senior Manager – Ticket Selling Operations is not eligible for representation under the RLA because he is a management official.

Senior Manager – Ticket Selling Systems

The Senior Manager – Ticket Selling Systems is responsible for maintaining and developing all current and future ticket selling systems from an operating and planning perspective (end user). The PDQ states that the position ensures reliability of customer operated machines at a level that is acceptable to customers and consistent with corporate goals and strategies. The PDQ states further that the position develops and administers policies related to ticket office sales and customer assistance. The position supervises the Manager-Ticket Selling & Technology and Manager-Ticket Services. The PDQ states further that the position must refer policy decisions, final budget decisions and new labor agreements to senior management.

The record is devoid of any evidence that the Senior Manager – Ticket Selling System possesses and exercises management authority other than supervising the two managers. As noted above, the record unequivocally demonstrates that discipline, including low level discipline, is issued by the Directors in the Stations Department. There is no evidence of the position's authority to approve overtime, approve staffing, approve invoices, budget preparation, or create carrier policies. Unlike the position of Senior Manager-Ticket Selling Operations, the record lacks evidence establishing the position's authority to commit carrier funds. No evidence was presented to show that the incumbent has exercised actual authority to control department labor and material resources as indicated in the PDQ.

In determining whether an individual is a management official, what matters is the authority actually possessed and the work actually performed. As the Board has held, "[t]he paper authority granted by a position description is insufficient to establish that an individual is a management official without evidence that the individual actually exercises that authority." *Pan Am Rys.*, 37 NMB 270, 278 (2010); *see also Allegiant Air*, 45 NMB 43 (2018); *Buffalo & Pittsburgh R.R.*, 17 NMB 14, 18 (1989); *Southern Jersey Airways*, 13 NMB 404, 406 (1986). Accordingly, the Board finds that the Senior Manager- Ticket Selling Systems is not a management official and is eligible for representation under the RLA.

Senior Manager Station Operations Control & Safety

The Senior Manager Station Operations Control & Safety is responsible for leading and managing the Stations Operations Control Desk with the Movement Bureau. The Control Desk is responsible for communicating all station and train related activity/information to and from the Movement Bureau personnel to stations field personnel and coordinating all aspects of emergency bus call outs. According to the PDQ, the position will manage and coordinate the five agents who work at the desk 24/7 and is responsible to direct, develop, maintain and coordinate all programs, procedures and initiatives related to safety within the Stations Department. The PDQ states further that the position has the authority to select, develop, motivate and evaluate department personnel; oversee safety

and training related issues requiring resolution; oversee enforcement of all LIRR safety rules and security policies; approve payment of invoices for emergency bus usage; call out buses to handle customers during emergencies; and develop and implement policies and protocols for the Stations Operations Control Unit. The PDQ also states that “resolution of safety and security issues requiring extensive man power and/or funding” must be referred to the Chief Stations Officer for approval.

The record lacks any evidence of the Senior Manager Station Operations Control and Safety possessing the requisite level of the authority of a management official. There is no actual evidence presented of the incumbent’s authority to hire, authority to discipline employees, authority to create policy or authority to commit carrier funds. The PDQ mentions his authority to approve payment of invoices but the record contains no evidence of the incumbent’s ultimate authority to commit significant amounts of carrier funds. Job descriptions, like the ones described in the PDQ are insufficient to show that the incumbent has the authority to make significant or unfettered expenditures of carrier funds to render him ineligible as a management official. *See Metro-North R.R.*, 39 NMB 460, 467 (2012) (citing *United Airlines*, 32 NMB 75, 117 (2004) and *Hawaiian Airlines*, 29 NMB 308, 313 (2002)). Additionally, the PDQ limits the position’s authority to resolve safety and security issues if the resolution requires extensive manpower and funding and mandates that the position request approval from the Chief Stations Officer, thereby demonstrating his limited authority as a senior manager. Accordingly, when all factors are viewed cumulatively, the Board finds that the Senior Manager Station Operations Control & Safety is not a management official and is eligible for representation under the RLA.

Lead Branch Manager

The Lead Branch Manager manages the operation of all cleaning services, maintenance inspections at branch line stations and assigned employee facilities to ensure the highest quality station environment for customers. This position is at the same level as the three senior manager positions discussed above within the Stations Department organizational chart. The current Lead Branch Manager provided a declaration and stated that he provides support and guidance to Branch Line Managers and their subordinates when necessary. The PDQ states that the position supervises five Branch Line Managers and one Lead Foreman. The incumbent declares that he works with the Director in developing customer service initiatives and operating budget guidelines, identifying efficiencies and recommending cost-effective improvements but he does not have the authority to create policy on behalf of the department because “policies are developed in coordination with his Director, Chief Station Officer, and HR and LR.” He stated that he has minimal authority to commit budgeted funds, limited to \$1,000 or less for station materials and his authority to do so is circumscribed by the LIRR’s procurement policy which requires Director approval for specified

values of purchases. He does not have the authority to transfer and/or establish assignments without approval from the Director and Chief Station Officer. Regarding overtime, he has to request approval for overtime shifts and extra staff from his Director for reasons like emergencies, train disruptions, crowding on the platform, and sporting events.

The PDQ states that the position must refer policy, final budget and new labor agreements to senior management for approval, which is consistent with the incumbent's declaration as to the limitations of his position. Accordingly, when viewing all the factors cumulatively, the Board finds that the Lead Branch Manager is not a management official and is eligible for representation under the RLA.

Branch Line Manager

The Branch Line Managers are responsible and accountable (operationally and financially) for station operations including cleaning, maintenance, and ticket office functions for LIRR stations. The position is proactively involved with customers, civic and government officials to ensure timely responses to inquiries and suggestions which impact LIRR stations. The position reports directly to the Lead Branch Line Manager and supervises 29 Agents, 30 Ticket Clerks, 107 Station Appearance Maintainers and nine Foremen.

The record demonstrates that the Branch Line Managers do not possess the authority to hire, discipline employees, create policy, or commit carrier funds regardless of the numerous authorities listed on the PDQ. The five incumbents have less authority than the Lead Branch Manager and the record lacks any evidence that demonstrate that any of the incumbents exercise the authority of a management official other than supervising the work of subordinate employees. When viewing all the factors cumulatively, the Board finds that the Branch Line Managers are supervisors and not management officials. Accordingly, Branch Line Managers are eligible for representation under the RLA as subordinate officials.

Terminal Managers

Terminal Managers are responsible and accountable for the operation and customer services at assigned terminals (Penn Station, Grand Central Station, and Atlantic Terminal/Jamaica). The position is the publicly identified person responsible for building and maintaining customer confidence in the LIRR by being proactive and responsive to customer concerns regarding the environment in terms of cleaning and required maintenance, adequate ticket selling to meet the customer's demand, way finding and first-class customer service. The PDQ states that the position supervises up to five Assistant Terminal Managers and has the authority to select new hires. However, Terminal Manager John Persico provided a statement and confirmed that, like other Station Managers, he

participates in interviews by asking questions prepared by HR. After the scores of applicants are submitted, he stated that HR takes over the process and he does “not take part in the selection of employees who are interviewed or hired.” Terminal Manager Jennifer Uhllein also confirmed that hiring or extending job offers are performed by Managers in HR. Likewise, there is no evidence that Terminal Managers discipline employees.

The PDQ also limits the position’s authority and requires that policy decisions, final budget, and labor agreements are referred to Senior Managers for approval. Accordingly, the Board finds that the Terminal Managers are not management officials and are eligible for representation under the RLA.

Assistant Terminal Manager

The Assistant Terminal Managers are responsible and accountable for terminal operations which includes ticket sales, cleaning and customer service along with coordinating building maintenance activities. They coordinate and implement emergency action plans when required. They report directly to the Terminal Manager and they supervise 23 Ticket Clerks, 71 Station Appearance Maintainers, six Foremen, eight Customer Service Ambassadors and three Agents.

The record demonstrates that other than supervising their subordinate employees, the Assistant Terminal Managers do not possess the authority that would render them ineligible as management officials. The record reveals that they do not issue discipline or hire employees, as confirmed by the Terminal Managers. There is no evidence presented that any of the Assistant Terminal Managers have exercised the authority to create policy or commit carrier funds. Similar to the Terminal Managers who have slightly more authority than the Assistant Terminal Managers, the Board finds that Assistant Terminal Managers are not management officials. Accordingly, the Assistant Terminal Managers are eligible for representation under the RLA.

Manager Budget Development Analyst & Operations Support

The primary role of the Manager Budget Development Analysis & Operations Support is the development of the Stations Department budget and required deliverables. The position generates reports on an ad-hoc basis, provides monthly budgetary updates to the Department head, identifies and communicates financial needs to the Department Head, as well as the LIRR Senior Staff and Office of Management and Budget as required, and provides recommendations and/or initiates corrective actions in response to budget variances. The PDQ also states that the position supervises Agents and the Stations Operations Desk during the processing of the busing invoices and must ensure that the invoices are processed correctly and accurately according to contractual obligations. The PDQ states that this position has authority for

determining methods employed in the development of budgets, forecasts, and analysis and the authority to develop in-house departmental databases. However, the PDQ also states that this position has to refer changes in programs and levels of service to LIRR customers to the Station Department management, the Senior VP Operations, and the LIRR President because those are the positions with the authority to make changes in programs and levels for services for LIRR customers. The incumbent also has to request approval to hire and train the station department workforce from those senior management staff.

There is no evidence presented that the Manager Budget Development Analysis & Operations Support has the authority to dismiss or discipline employees, to authorize and grant overtime, or to perform any other tasks associated with management officials other than supervising the employees who process the busing invoices. While the incumbent is very knowledgeable in the areas of budgeting, accounting, and cost control, there is no evidence that the incumbent has the ultimate authority for the Department's budget or has the authority to commit carrier funds. Accordingly, the Board finds that the Manager Budget Development Analysis & Operations Support is not a management official and is eligible for representation under the RLA.

Manager of Ticket-Selling and Technology

The Manager of Ticket-Selling and Technology is accountable for the daily operation of LIRR's ticket selling machines, supporting data communication network, and direct implementation of new ticket selling technologies at stations, terminals and vending machines. The position ensures customer claims, chargebacks and seller's over/shorts are researched and processed timely and in accordance with established guidelines. One of the incumbents provided a declaration and states that he supervises the agent in charge of processing claims from various LIRR ticket stations. He assigns tasks and projects to the agent and he represents LIRR in interactions with customers and vendors. He states that he has authorized access to LIRR's bank accounts with full authority to view charges and chargebacks with the system's bank account. He also states that he has created policy with respect to disputing chargebacks and he makes recommendations for hire.

The evidence reveals that while the Manager of Ticket-Selling and Technology has the authority to supervise employees in charge of processing claims from various LIRR ticket stations, he lacks the authority to issue discipline, approve overtime, and perform other tasks associated with management officials. There is insufficient evidence presented to demonstrate that he has the authority to create carrier policy and the position must refer policy to senior management. *See Metro-North R.R.*, 29 NMB 423, 437 (2012) (citing *United Airlines*, 32 NMB 75, 114 (2004) (work writing departmental policies and procedures insufficient to establish that employees create carrier policy as no evidence presented with respect to final review of policies or how

limited the employees were by pre-existing carrier policies, manuals, or directives)). Further, the incumbent admitted that he has not adjusted grievances and he was required to ask for approval from senior management for additional staffing when his agent complained of understaffing. Notably, the PDQ for the position also states that the incumbent must refer final budget and new labor agreements to senior management. Accordingly, when viewing all the factors cumulatively, the Board finds that the Manager of Ticket-Selling and Technology is not a management official and is eligible for representation under the RLA.

Manager of Ticket Services

The Manager of Ticket Services is accountable for the daily operation of the Mail & Ride Joint Fare Card (JFC Program) & Web Ticket Operations and provides efficient, convenient ticketing services to LIRR and NYCT customers. The incumbent for the position provided a declaration and stated that she supervises five clerks and decides whether her clerks should grant or deny charge back requests made by customers and vendors. She states that she has “near unilateral authority to hire” her immediate subordinate, the head clerk; authority to discipline clerks; authority to demote clerks for poor performance; authority to grant overtime to employees; authority to make purchases up to \$2,500; authority to create carrier policy by changing the LIRR’s policy for delinquent accounts and she has the authority to adjust grievances.

The evidence demonstrates that the actual authority exercised by the Manager of Ticket Services is insufficient to render the position a management official. The evidence reveals that the position does not have the authority to hire or discipline because the hiring and disciplining of employees is done at the Director level or above, in consultation with HR. The record is also devoid of any evidence of the incumbent demoting clerks for poor performance. The record indicates that the position must refer policy direction to senior management. As for the incumbent’s claim that she has the authority to adjust grievances, the evidence provided was deficient because her example did not include an actual grievance filed by the union. Moreover, while the position has the authority to make purchases up to \$2,500, there is no evidence of the ability to commit significant carrier funds. This position possesses less authority than the supervisors covered in the Boards 1997 determination who possessed the authority to issue discipline, grant overtime, and commit limited amounts of carrier funds. *See Long Island R.R., above* at 699-700. Accordingly, the Board finds that the Manager of Ticket Services is not a management official and is eligible for representation under the RLA.

Manager Parking and Stations

The Manager Parking and Stations is responsible for coordinating efforts to ensure that 110 LIRR parking facilities are maintained in a state of good

repair; LIRR parking inventory is maintained and accessible by LIRR user departments and the public through LIRR's intra/internet; that parking improvement projects are identified and implemented utilizing Capital Program funds; and, that all parking garages are fully functional and revenue is collected accurately. The PDQ states that the position can make decisions as part of a technical evaluation committee on the selection of third-party parking operators to manage LIRR owned parking facilities; recommend potential parking rehabilitation and expansion projects for parking capital program inclusion; and determine updates to the LIRR's commuter parking database, parking maps and station profile sheets. The PDQ states further that the position is responsible for parking garages with approximately \$2 million budget and authorized to make budget related decisions with regards to operations of these parking garages. According to the PDQ, the position determines safety related priorities for upgrades and establishes repair procedures for all parking garages; establishes a preventative maintenance plan for structural integrity of parking garages; and, coordinates the work being performed by the vendors to ensure that customers are offered the highest level of service possible.

The PDQ states that the following decisions of the Manager Parking and Stations are referred to others for final approval: parking and stations access outreach strategy/schedule with community /government officials; parking rehabilitation projects in MTA/LIRR Capital Program; parking database, parking map and station profile updates; correspondence to MTA, Federal Transit Administration, Department of Transportation, community/government officials; and, pricing and ownership gets referred to MTA Real Estate Department. The Manager of Parking and Stations supervises the Chief Operations Division Support Clerk and reports directly to the Director of Parking and Stations. The record lacks any evidence demonstrating that the incumbent has the authority to dismiss or discipline employees, to authorize and grant overtime, or to perform any other tasks associated with management officials other than supervising the Chief Operations Division Support Clerk. The record is also devoid of any evidence that the incumbent has final approval of the budget or that his authority to make budget related decisions is significant or unfettered. Accordingly, the Board finds that the Manager of Parking and Stations is not a management official and is eligible for representation under the RLA.

Manager Station Employee Applications and Operations Support

The Manager Station Employee Applications and Operations Support is responsible for monitoring the Station Department's dispatching system and Stations Employee Assignment Management System (SEAMS); working with MTA Information Technology (IT); and, where appropriate with the vendor, to ensure systems are working as intended. The PDQ states that the position is responsible for formulating a training plan for dispatchers and payroll staff for initial onboarding of systems and for future training. It serves as liaison between the Stations Department systems and the MTA IT Department for various

systems and applications the Station's Department employees use. The PDQ further states that the position develops and maintains training manuals. The position reports directly to the Director – Stations Support and Administration. The PDQ also states that the following decisions are referred to others for approval: policy direction, labor contract interpretations, change in employee access levels with all applications, large cost changes or upgrades to applications, and changes to applications or system.

The record lacks sufficient evidence demonstrating that the Manager Station Employee Applications and Operations Support possesses the authority to dismiss or discipline employees, authorize and grant overtime, create policy or perform any other tasks associated with management officials other than supervise the Chief Dispatcher according to the Carrier's organizational chart. The Board has consistently held that the incumbent's authority to write training manuals for employees does not create carrier policy. *See Metro-North R.R., above* at 437; *United Airlines, above* at 114. Additionally, the incumbent is required to have a Bachelor's degree in Computer Science or related field and must possess a strong understanding of IT. Thus, the independent judgment he utilizes in his position is based on his technical expertise but does not render him a management official. *See US Airways, 28 NMB 91, 100 (2000)* (citing *US Airways, 26 NMB 359, 370 (1999)* (supervisors' exercise of judgment was based upon technical expertise and not "the same type of judgment which the Board finds is typically exercised by management officials")). Accordingly, the Board finds that the Manager Station Employee Applications and Operations Support is not a management official and is eligible for representation under the RLA.

Manager Station Service Support

The purpose of the Manager Station Service Support is to perform the required support functions of the Stations Department. The major responsibilities of the position include ensuring that the proper manpower resources are available and allocated for daily operation of ticket offices, TVM servicing and cleaning of stations; ensuring accuracy of department payroll; coordinate all training; and maintaining the attendance and disciplinary records for the department. The position reports to the Director of Stations Support and Administration and supervises one Chief Clerk, one ATS support clerk, and six Crew Dispatchers. The PDQ states that the position makes the following decisions with complete authority: staffing compliance to meet service level requirements; approve overtime to ensure that service levels are met; review of department payroll for approval; hiring of new employees; conduct performance evaluations and probationary reviews; and, act on behalf of Station Support and Administration when required. The PDQ further states that the incumbent must request approval for budget for responsible area to the Chief Stations Officer.

The record lacks sufficient evidence that supports the incumbent's authority as a management official other than what is stated in the PDQ. While

the organizational chart supports the incumbent's supervision of the clerks and dispatchers below the position, no evidence demonstrates the incumbent's ability to affect staffing within the station department or approve overtime to ensure service levels are met within the department. Even if the PDQ is correct that the position approves overtime, it is not enough to be deemed a management official without the authority to hire and discipline employees. The job descriptions in the PDQ are also insufficient to show that the incumbent has the authority to make significant or unfettered expenditures of carrier funds to render the position ineligible as a management official. See *Metro-North R.R., above* at 467 (citing *United Airlines, above* at 117 and *Hawaiian Airlines, above* at 308). Moreover, the record demonstrates that while some Station Managers participate in interviewing applicants, they do not hire new employees because senior management at the Director level or above hires new employees, in consultation with the Carrier's HR Department. Accordingly, the Board finds that the Manager Station Service Support is not a management official and is eligible for representation under the RLA.

The Applicant relies on *British Airways*, 8 NMB 25 (1980) to support his position that Station Managers should be excluded from representation as required under the RLA. In that case, the Board determined that the Customer Relations Manager and the Assistant to the Deputy Airport Manager were management officials. The Board based its findings on the authority to authorize overtime and to impose discipline, to set policies governing the work of the Customer Relations Department, to prepare annual performance reviews and work schedules, to provide training and technical guidance, and to provide day-to-day direction to employees. The Customer Relations Manager had "complete administrative responsibility for the employees in her department." *Id.* at 26. Here, in contrast, while the Station Managers provide daily supervision, they lack the authority to hire, discipline, approve overtime without the Director's signature, and set policies governing the work of the Stations Department. They do not have complete responsibility for the employees in the Stations Department. Complete responsibility for the employees in the Stations Department falls within the jurisdiction of the Director and the Chief Stations Officer.

The Applicant also relies on *Daniels v. Burlington Northern R.R.*, 916 F.2d. 568, 570 (9th Cir. 1990). The court in that case remanded the case for further determination as to whether Daniels, who held the position of Trainmaster, had authority to "employ, dismiss, or otherwise discipline employees" and thus not subject to the RLA. In this case, the Board finds that the Station Managers do not "employ, dismiss, or otherwise discipline employees" as demonstrated by the evidentiary record and are therefore subject to the RLA. Adhering to the guidance provided by the Board's 1997 determination at LIRR, even if the Station Managers possessed the authority to discipline employees, that authority is

insufficient to render the Station Managers management officials under the RLA. *See Long Island R.R., above* at 699-700.

Based upon the evidence presented and Board precedent, the Station Managers, with the exception of the position of the Senior Manager – Ticket Selling Operations, are not management officials and are eligible for representation under the RLA.

Craft or Class Determination

The RLA does not preclude a carrier from voluntarily recognizing a particular union as the representative of a group of employees, which may or may not constitute a proper craft or class. *Grand Trunk Western R.R.*, 17 NMB 494 (1990); *British Airways*, 7 NMB 369 (1980); *China Airlines*, 6 NMB 434 (1978); *Galveston Wharves*, 4 NMB 200 (1962). However, the Act vests the Board with the final authority to determine the appropriate craft or class when its services are invoked under Section 2, Ninth. *China Airlines, above* at 439. The Board must make an independent craft or class determination.

In determining the proper craft or class for a group of employees, the Board considers a number of factors, which include functional integration, work classifications, terms and conditions of employment, and work-related community of interest. *Southwest Airlines*, 42 NMB 110 (2015); *Endeavor Air*, 41 NMB 281 (2014). *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 on a case by case basis, relying upon NMB policy and precedent. *US Airways*, 28 NMB 104 (2000); *US Air*, 15 NMB 369 (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. *Northern Air Cargo*, 47 NMB 58 (2020).

The Board has examined the scope of the craft or class of Clerical, Office, Station, and Storehouse employees in numerous decisions and has found it to consist of “employees of varying skills and abilities ranging from the highest type of technical clerical workers down to the scale of janitors and labors.” *Illinois & Midland R.R.*, 25 NMB 57, 66 (1997) (citing *National Airlines, et. al*, 1 NMB 423, 438-39 (1947)). The Board determined that employees who sell tickets, handle and route train orders, and handle customer inquiries are included in the Clerical craft or class. *See National R.R. Passenger Corp.*, 10 NMB 510 (1983).

Notably, the Board has found that employees who hold positions that are highly technical and supervisory in nature belong to the existing Clerical, Office, Station and Storehouse Employees craft or class at the LIRR. *See Long Island*

R.R., 24 NMB 664 (1997). The parties have decades of bargaining history that places highly technical and supervisory employees into the existing Clerical, Office, Station and Storehouse Employees craft or class at LIRR. The record here demonstrates that the Station Managers' functions, duties, and responsibilities are very similar to the duties, functions and responsibilities of the "supervisory and/or professional employees" that the Board determined to be part of the TCU/IAM's certification. *Id.* at 699-700.

The Station Managers' supervisory functions and responsibilities within the Station Department support their proper classification with the employees covered under the Exception 5 CBA. For example, the Exception 5 roster includes the positions of Stationmaster and Assistant Stationmaster. These positions support the operation and coordination of passenger movement at the LIRR's stations and terminals and provide supervision to the employees needed to carry out the functions of their department, similar to the Station Managers. In addition, and more significantly, the Station Managers share common terms and conditions of employment with Exception 5 employees - similar work rules, pay, and benefits - which further solidify their inclusion under the Exception 5 CBA.

Further, the Station Managers placement within the Station Department's structure demonstrates their functional connections with the clerical employees in the Stations Department, especially the employees they supervise (Agents, Foremen, Ticket Clerks, Station Appearance Maintainers, etc.). Similar to hundreds of employees already covered under the TCU/IAM's certification, the Station Managers' job functions include clerical and other tasks performed in an office environment and like those other employees, they support the critical functions of the Stations Department, including customer service, station cleaning, parking, ticket selling, and related functions.

Moreover, the Board has consistently held that "historical patterns of representation in the railroad industry provide the basis for craft or class determinations." *Rapid City, Pierre & Eastern R.R.*, 47 NMB 80 (2020); *Talleyrand Terminal R.R.*, 35 NMB 28, 32 (2007); *Terminal R.R. Ass'n of St. Louis*, 28 NMB 187, 199 (2000); *Duluth, Missabe & Iron Range Ry.*, 16 NMB 495, 500 (1989). The Board has a policy against fragmenting traditional crafts or classes. *See, e.g., American Airlines*, 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"). Here, the Board sees no reason to justify breaking from precedent by removing the Station Managers from the established Clerical, Office, Station, and Storehouse Employees craft or class, and creating a new craft or class consisting only of Station Managers. Accordingly, the Board finds that "Station Managers" is not a distinct craft or class at LIRR and that the Station Managers, with the

exception of the Senior Manager – Ticket Selling Operations, are properly part of the Clerical, Office, Station, and Storehouse employees craft or class.

CONCLUSION

The Board finds that the Station Managers covered by the application, with the exception of the Senior Manager – Ticket Selling Operations, are part of the system-wide craft or class of Clerical, Office, Station and Storehouse Employees at LIRR. Accordingly, the Applicant has failed to support his application with the required number of authorizations from employees in the craft or class as set forth in Part 1206.2(a) of the Board's Rules.

Therefore, the Board finds no basis upon which to proceed in this matter and the application is dismissed subject to 1206.4(b) of the Board's Rules.

By direction of the NATIONAL MEDIATION BOARD.



Maria-Kate Dowling
General Counsel