NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

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Re: NMB File No. C-7037/ Case No. R-5438
Providence and Worcester Railroad Company

Participants:

This determination addresses the request from the Association of Sheet Metal, Air, Rail and Transportation Workers (SMART) to transfer the certification in Case No. R-5438 from the United Transportation Union (UTU) to SMART. For the reasons discussed below, the National Mediation Board (Board) grants the request and transfers UTU's certification in R-5438 to SMART.

BACKGROUND

The UTU was certified to represent the Trainmen on Providence and Worcester Railroad Company (Carrier) in Case No. R-5438 (1984). In a letter dated April 25, 2012, SMART notified the Board of the merger between the UTU and the Sheet Metal Workers' International Association (SMWIA) (collectively the Organizations) to form SMART effective December 1, 2011. SMART requested that the Board transfer all representation certifications issued to the

UTU and SMWIA to SMART and that all pending and future certifications involving either labor organization be issued to SMART. On May 15, 2012, SMART requested that the Board transfer the certification in R-5438 for the Trainmen on the Providence and Worcester Railroad. The Board notified the Carrier of SMART's request and gave the Carrier until May 31, 2012 to provide the Board with any comments. The Carrier did not submit any comments in this matter.

THE MERGER OF UTU and SMWIA

SMWIA and the UTU entered into an agreement to merge their separate labor organizations into a consolidated labor organization to be known as SMART on August 8, 2007. Because questions were raised concerning the validity of the merger, a federal court compelled arbitration pursuant to the arbitration article in the Merger Agreement. After a hearing on the matter, Arbitrator Michael Gottesman issued an award finding that the SMWIA/UTU merger was valid. Neither union sought to vacate the arbitration award.

In support of its request to transfer the certification, SMART submitted the SMWIA/UTU Merger Agreement dated August 8, 2007, Arbitrator Gottesman's October 10, 2011 Award and a letter dated November 30, 2011 from the UTU stating that it would not appeal Gottesman's Award. According to the arbitration award and consistent with the Organizations' constitutions and by-laws, the governing bodies of both unions have approved a merger agreement.

DISCUSSION

The Railway Labor Act* requires only that the Board investigate a transfer of certification based on a union merger rather than mandating any procedures for such an investigation. *Continental Airlines, Inc., v. Nat'l Mediation Bd.*, 793 F. Supp. 330 (D.D.C. 1991), *aff'd mem.*, 957 F.2d 911 (D.C. Cir. 1992).

In most instances, the Board grants a transfer request based upon assertions contained in the request letters. *Capitol Cargo Int'l Airlines, Inc.*, 34 NMB 190 (2007); *St. Lawrence & Atlantic R.R., Inc.*, 32 NMB 49 (2004); *Consolidated Rail Corp.*, 28 NMB 30 (2000); *Big Sky Transp. Co.*, 25 NMB 376 (1998); *Desert Sun Airlines*, 24 NMB 137 (1997). The Board views an organization's decision to merge into another organization as an internal union matter and will grant requests for transfers of certification based on union

* 45 U.S.C. § 151, *et seq.*

mergers unless there is evidence of fraud or gross abuse in the merger or election. *Northwest Airlines,* 18 NMB 446, 448 (1991).

There is no evidence of fraud or gross abuse in the merger or election process in this case. Based on its investigation, the Board finds that, in accordance with the Merger Agreement and the Organizations' constitutions and by-laws, UTU and SMWIA have merged, forming SMART. The Board's records are revised to reflect the transfer of the certification issued to UTU in NMB Case No. R-5438 to SMART.

By direction of the NATIONAL MEDIATION BOARD.

Mary L. Johnson
General Counsel