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June 16, 2014

236195

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
June 17, 2014
Part of
Public Record

Re: **Finance Docket No. 35783**
Florida Department of Transportation -- Petition for
Declaratory Order -- Rail Line of CSX Transportation, Inc.
Between Riviera Beach and Miami, Florida

Dear Ms. Brown:

Petitioner Florida Department of Transportation ("FDOT") hereby replies to the comments filed on May 27, 2014 by the Brotherhood of Railroad Signalmen ("BRS") regarding FDOT's petition for declaratory order in the above-captioned proceeding.

BRS is explicit that it "does not oppose the petition filed by FDOT in the instant case." BRS Comments at 10. Because it is concerned that the "absence of union response to exemptions and ex parte petitions" in the "State of Maine" context might be characterized "as acceptance of, or acquiescence in, the results of the decisions and exemptions," BRS Comments at 2, BRS includes a lengthy recitation of its position against State of Maine and its progeny. FDOT acknowledges that BRS disagrees with current governing agency and judicial precedent on State of Maine matters. BRS does not dispute, however, that FDOT's petition falls well within that precedent.

BRS also refers to a so-called "13(c) agreement" between, *inter alia*, BRS and the South Florida Regional Transportation Authority ("SFRTA"). BRS Comments at 2, 10. BRS has separately corresponded with SFRTA regarding such matters, and SFRTA has confirmed that it will comply with whatever obligations it may have under applicable 13(c) agreements. See Exhibits 1 and 2 hereto. While BRS's comments include a substantive characterization of its 13(c) rights in the current transaction, 13(c) agreements are "contracts to be governed by state law applied in state courts." Jackson Transit Auth. v. Local Div. 1285, Amalgamated Transit Union, 457 U.S. 15, 29 (1982). They do not involve or implicate the Board and its processes in making a State of Maine determination.

FLETCHER & SIPPEL LLC

Ms. Cynthia T. Brown
June 16, 2014
Page 2

FDOT certifies that it has served a copy of this letter by overnight delivery upon counsel for BRS.

Respectfully submitted,



Thomas J. Litwiler
Attorney for Florida Department of Transportation

TJL:tl

Attachments

cc: Richard S. Edelman, Counsel for BRS
Charles A. Spitulnik, Counsel for SFRTA

RECEIVED

MAY 21 2014

EXECUTIVE OFFICE

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(1907-1993)

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**NOT ADMITTED IN DC

May 20, 2014

By Overnight Delivery

Chairman & Members
South Florida Regional Transportation Authority
800 NW 33rd Street, Suite 100
Pompano Beach, FL 33064

Re: Signal And Maintenance of Way Work on SFRTA/Tri-Rail Lines

Dear Mr. Chairman and Authority Members:

I am once again writing on behalf of the Brotherhood of Railroad Signalmen ("BRS") and the Brotherhood of Maintenance of Way Employes Division/IBT ("BMWED") regarding the performance of maintenance of way and signal work on the South Florida Regional Transportation Authority ("SFRTA")/Tri-Rail lines in Miami-Dade, Broward and Palm Beach counties.

On November 21, 2013 I wrote to you stating that it was the understanding of BRS and BMWED that SFRTA is planning to assume responsibility for maintenance of way and signal work on the SFRTA/Tri-Rail Lines in connection with the South Florida Operating and Management Agreement (SFOMA) between the State of Florida and CSX Transportation ("CSXT") which would transfer all responsibility for maintenance of way and signal work to SFRTA, and that SFRTA intended to solicit bids from potential signal/maintenance of way contractors in 2014. My November 21 letter also noted and summarized letters sent to SFRTA regarding a prior plan of SFRTA to solicit bids from maintenance of way and signal contractors. Those letters reminded the Authority of its obligations and the rights of employees represented by the Unions under the "13(c) Agreement" that implemented the protections for mass transportation employees under the Federal Transit Act ("FTA") which has been applied to various Federal grants to, and for, the benefit of, SFRTA/Tri-Rail and FDOT. The Unions urged SFRTA to keep its 13(c) Agreement obligations in mind when it designed a request for proposals or other solicitation for bids for performance of signal and maintenance of way work. The letter closed by offering to meet with SFRTA and to work cooperatively with SFRTA to address 13(c) agreement issues and related issues well before the Authority engages a contractor or contractors

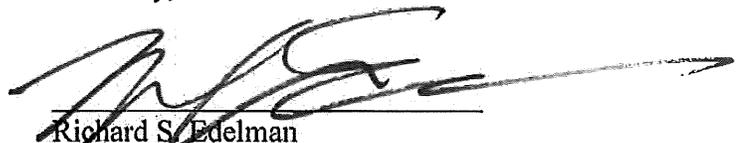
to perform maintenance of way and signal work so that such contract or contracts is/are implemented in compliance with the 13(c) Agreement and maintain the working conditions and rights of BRS and BMWED members in a manner that will ensure the reliability, efficiency and safety of SFRTA/Tri-Rail operations.

To date we have not received any response to my November 21 letter or any other assurances that any change in provision of maintenance of way and signal work on the South Florida lines would be accomplished in accordance with the 13(c) Agreement. Nor has SFRTA responded to the offer of BRS and BMWED to work cooperatively to address 13(c) issues.

However, on May 5, 2014, FDOT filed a petition with the STB for a declaratory order that FDOT's continued ownership of the rail lines, along with SFRTA's new responsibility for dispatching and maintenance of the lines under the SFOMA, do not render it a rail carrier under the Interstate Commerce Act. In the petition, FDOT states that SFRTA will be responsible for maintaining the lines, and that the change in maintenance responsibility from CSXT to SFRTA could happen as early as June 30, 2014 but is anticipated to occur in October of 2014. Given that time frame, the Unions reiterate their assertions that any such change must comply with the 13(c) Agreement and they again urge SFRTA to ensure that any requests for proposals, bid processes or contracting arrangements conform to the requirements of the 13(c) Agreement. The Unions also renew their offer to work cooperatively with SFRTA to address 13(c) agreement and related issues before the Authority engages any contractor to perform maintenance of way and signal work.

Finally, the Unions request that they be provided with copies of any request for proposals, request for showing of interest, request for qualifications, etc. that may be issued in connection with the plan to change the manner in which signal and maintenance of way work is provided on the lines operated by SFRTA; and that the Unions be considered "document holders" in any RFP/RFI or RFQ process. Any such document can be sent to me as counsel for the Unions.

Sincerely,



Richard S. Edelman
O'Donnell, Schwartz & Anderson, P.C.

Counsel for the Brotherhood of Railroad Signalmen
and Brotherhood of Maintenance of Way Employees
Division/IBT

cc: Dan Pickett, President BRS
Freddie Simpson, President BMWED
Michael Williams, President Florida AFL-CIO

Jack L. Stephens, Executive Director SFRTA



**SOUTH FLORIDA
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June 6, 2014

Richard S. Edelman, Esq.
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Washington, DC 20005-4126

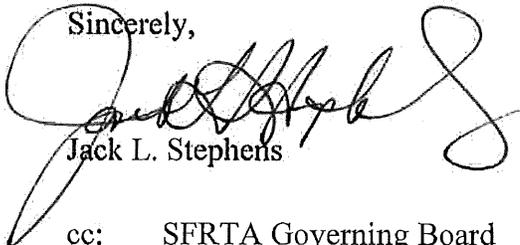
Re: Signal and Maintenance of Way Work on Rail Lines Used by SFRTA

Dear Mr. Edelman:

This is in response to your letter of May 20, 2014 to the Chairman and Members of the Board of the South Florida Regional Transportation Authority (“SFRTA”). The Chairman and Members of the Board also received your letter of November 21, 2013 relating to this same subject.

Your letters relate to the transfer of the signal and right-of-way maintenance services on the rail corridor between Mangonia and Miami that is owned by the Florida Department of Transportation from CSX Transportation, Inc. to SFRTA. We appreciate your reminding SFRTA of your understanding of the agency’s obligations under its Section 13(c) agreements. This is to confirm that SFRTA intends to comply fully with any obligations it may have to the employees represented by the Brotherhood of Railroad Signalmen and the Brotherhood of Maintenance of Way Employees Division/IBT that arise out of that assumption of responsibilities. To be clear, please do not interpret this statement as an indication that SFRTA accepts your premise. Rather, SFRTA is solely confirming that the agency will comply with our obligations, if any, under the applicable agreements.

Sincerely,



Jack L. Stephens

cc: SFRTA Governing Board
Teresa Moore, General Counsel
Charles Spitulnik, Kaplan Kirsch & Rockwell