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Before the
SURFACE TRANSPORTATION BOARD

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Ex Parte No. 699

ASSESSMENT OF MEDIATION AND ARBITRATION PROCEDURES

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NOTICE OF INTENT

JUL 19 2012

Part of
Public Record

Samuel J. Nasca^{1/} for and on behalf of United Transportation Union-New York State Legislative Board (UTU-NY), gives Notice of Intent to participate at the hearing scheduled for August 2, 2012. 77 Fed. Reg. 39572-73. (July 3, 2012).

The undersigned counsel is the proposed speaker. An allotment of five (5) minutes is requested.

A summary of the intended presentation is attached.


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1025 Connecticut Ave., N.W.
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July 19, 2012

Attorney for Samuel J. Nasca

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Before the
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HEARING STATEMENT
ON BEHALF OF
SAMUEL J. NASCA

This hearing statement is submitted on behalf of Samuel J. Nasca, who serves as New York State Legislative Director for United Transportation Union, with offices in Albany, NY. He is a full-time elected official of the United Transportation Union-New York State Legislative Board, a position he has held since March 1984. His railroad seniority commenced in 1967 on the former Erie-Lackawanna Railroad Company.

1. UTU-NY submitted comments in this proceeding on May 17, and reply comments on June 18, 2012. Earlier, on October 25, 2010, comments were filed by counsel, which subsequently were endorsed by UTU-NY after the Board issued its March 28, 2012 Notice of Proposed Rulemaking (NPRM). The Board is invited to review these three prior pleadings, the contents not repeated herein.

2. The ICC/STB has professed a lack of expertise and competence in the field of collective bargaining and labor-

management relations, and has so stated on a number of occasions, e.g., Brotherhood of Locomotive Engineers v. C&NW Transp. Co., 366 I.C.C. 867, 861 (1983); Leavens v. Burlington Northern, 348 I.C.C. 962, 975 (1977); Investigation of Railroad Freight Service, 345 I.C.C. 1223, 1302 (1976). See: Mahoney, William G., Book Review, 77 J. Transp. L. Logist. & Pol'y 181, 184 (2010). Clearly, the Board's mediation and/or arbitration procedures should not be made applicable to disputes involving rail employee matters or employee protective conditions, contrary to features of the NPRM. In short, and respectfully, the Board lacks competence in this field, which it has acknowledged.

3. Examination of the Interstate Commerce Act, as amended, does not reveal any mention of mediation or arbitration, of which UTU-NY is aware. On the other hand, the National Mediation Board is specifically mandated with railroad management-labor mediation and arbitration under the Railway Labor Act.

4. Rail carrier employees frequently have an interest, and participate in, Board proceedings involving commercial disputes between carriers and non-carrier parties, but which nevertheless affect rail employee interest even though the applicable statute may not specifically mandate employee conditions. Accordingly, UTU-NY is concerned with virtually all aspects of the mediation and arbitration procedures proposed by the Board. While mediation appears akin to the extensive pre-hearing conferences conducted by the ICC and Board, arbitration is a new approach. In essence, arbitration is suggested as a substitute for the former ICC's Administrative Law Judge (ALJ) staff. UTU-NY does not consider such substitution to be appropriate. The Federal Maritime

Commission, Federal Energy Regulatory Commission, and Department of Transportation, use ALJ personnel. To be sure Board staff may feel threatened by the more experienced and independent ALJs, but UTU-NY considers the ALJ process would be fair, more reliable, more accountable, and of greater assistance to the Board members and to the public, than the proposed arbitration.

5. The Board has promulgated arbitration rules for certain disputes in recent years, but thus far without any acceptance by the railroad industry, its employees, or its customers. The Board's August 20, 2010 Notice stated the agency favors private resolution of disputes, but it does not follow that such desire should "encourage greater use of mediation or arbitration," as repeated in subsequent notices issued December 3, 2010, March 28, 2012, or June 28, 2012. Better Board regulation may be the answer, such as reinstatement of the ALJ process.

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