

BEFORE THE SURFACE TRANSPORTATION BOARD

BLET-2

238848

_____)
In the Matter of:)
))
SHERWIN ALUMINA COMPANY, LLC)
))
v.)
))
UNION PACIFIC RAILROAD COMPANY)
_____)

ENTERED
Office of Proceedings
July 17, 2015
Part of
Public Record

STB Finance Docket No. NOR 42143

RESPONSE IN SUPPORT OF INTENT TO PARTICIPATE

Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference of the International Brotherhood of Teamsters (“BLET”) hereby responds to Petitioner Sherwin Alumina Company (“Sherwin”)’s filing of July 14, 2015, in which Sherwin posits that the Board should “reject” BLET’s Notice of Intent to Participate in the above-captioned matter. As shown below, the Board should deny Sherwin’s request and allow BLET to participate in this proceeding.

As an initial matter, it is beyond disingenuous for Sherwin to assert that BLET has no direct interest in the proceeding before the Board. BLET represents the locomotive engineers employed by Respondent Union Pacific Railway Company (“UP”). Sherwin has asked the Board to compel UP to provide common carrier transportation to Sherwin’s facility – a facility where Sherwin has chosen to lock-out its unionized workforce for over nine months now. If Sherwin’s petition is granted and the STB issues the order Sherwin has requested, the locomotive engineers that BLET represents might be forced to operate trains through the picket lines that have been set up by Sherwin’s locked-out employees, thereby becoming targets for the anger of

those employees. Thus, it is BLET's members who could suffer the consequences of the remedy that Sherwin seeks.

Furthermore, the issues that are raised in this proceeding are of broad concern to the railroad operating crafts beyond the particular facts of this case. The BLET represents over 35,000 locomotive engineers and trainmen employed by all of the nation's major rail carriers. All of these employees stand to be impacted by the outcome of this proceeding. Given both of these realities, there is no question that BLET has a clear and important interest in this proceeding, one that provides ample support for its participation.

There is no basis for Sherwin's assertion that BLET's Notice of Intent to Participate is "procedurally defective" or untimely. The rules upon which Sherwin relies in making these assertions are found in 49 CFR Part 1112, but those rules apply when the Board has decided to hear a matter under "modified procedures." "Modified procedure may be ordered on the Board's initiative, or upon approval of a request by any party." 49 CFR § 1112.1. Here, the Board has not ordered the use of modified procedures. Accordingly, the rules set forth in Part 1112 do not apply. Furthermore, there are no existing requirements that do apply in this proceeding – e.g., a scheduling order or other Board-issued order – with which the Notice fails to comply.

BLET is seeking only to participate in the proceedings; it is not seeking to intervene as a party. But even if it were seeking party status in a matter governed by modified procedures (which this matter is not), the Board's own rules and precedent would support BLET's position. As Sherwin itself notes in its filing, the Board has held that "pursuant to 49 CFR § 1112.4, intervention may be granted if it will not unduly disrupt the procedural schedule nor unduly broaden the issues raised in the proceeding." *Dakota, Minnesota & E. R.R. Corp & Cedar Am. Rail Holdings, Inc. – Control – Iowa, Chicago & E. R.R. Corp.*, FD 34178, slip. op. at 2 (STB

served Nov. 27, 2002). BLET did not file its Notice in an attempt to delay the proceedings. We filed our Notice because of the important issues at stake and our clear interest in those issues. We intend to submit our substantive filing, focused solely on the issues already raised in this proceeding, by no later than July 31, 2015. Thus, BLET's participation will not cause any undue delay nor unduly broaden the issues presented.

BLET filed its Notice of Intent to Participate because it has a strong interest in this matter and can contribute to the Board's consideration of the issues involved. If the Board believes that rather than filing a Notice, BLET should instead intervene as a party or participate as an amicus curiae, BLET will of course do so. Regardless of the posture of its involvement, however, it is clear that BLET should be allowed to participate in this matter.

Accordingly, the Board should deny Sherwin's request that it reject BLET's Notice of Intent to Participate and should allow BLET's participation in this proceeding.

Respectfully submitted,

/s/ Michael S. Wolly

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CERTIFICATE OF SERVICE

This is to certify that a copy of the attached Response in Support of Intent to Participate was served by first class mail, postage prepaid, this 17th day of July, 2015 on the following:

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