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BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35110

FLORIDA DEPARTMENT OF TRANSPORTATION  
-ACQUISITION EXEMPTION--  
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.

**MOTION FOR LEAVE TO SUPPLEMENT THE RECORD  
AND SECOND DECLARATION OF R.G. DEMOTT**

The Brotherhood of Railroad Signalmen ("BRS") hereby seeks leave to supplement the record before the Board by submission of the attached Second Declaration of BRS General Chairman R.G. Demott.

The Florida Department of Transportation's ("FDOT") reply to BRS' opposition to FDOT's motion for dismissal of its notice for exemption of in this proceeding contained a number of assertions of facts (unsupported by a declaration, affidavit or verified statement) regarding: 1) the Union's dealings with CSX Transportation and FDOT, prior to FDOT's filings with the Board; 2) the potential impact of the proposed transaction on Railroad Signalmen; 3) the interests of Signalmen and their Union in the transaction and the manner in which the transaction has been structured and presented to the Board; 4) agreements that other unions entered with CSXT; 5) and dealings between FDOT and the leadership of the Florida legislature, and positions taken by the State Federation of the AFL-CIO, regarding passage of State enabling legislation for rail line acquisitions in the State, which dealt with such issues as liability, indemnity and funding. The Second Demott declaration responds to each of these areas of allegations of fact offered by FDOT.

BRS respectfully submits that its motion for leave to supplement the record should be granted and the record should be supplemented with the Second Demott Declaration. BRS does

not seek to submit rebuttal argument on the legal issues, or to respond to the decision in *Massachusetts Department of Transportation –Acquisition Exemption– Certain Assets of CSX Transportation*, F.D. 35312, Served May 3, 2010, that is heavily relied on by FDOT. (BRS relies on its brief in opposition to the FDOT motion to dismiss which shows that the Board has continued to apply an erroneous interpretation of the ICA that is inconsistent with the language of the Act, contrary to applicable precedent, is illogical and is internally inconsistent). Instead, BRS seeks only to respond to FDOT's allegations of fact that were first presented in FDOT's reply brief. As the record now stands, FDOT has submitted three sets of substantive filings: the original motion, the supplemental filing on March 31, 2010 that sought reactivation of this proceeding and the recent reply. BRS's only substantive filing has been its brief in opposition to the FDOT motion to dismiss; and BRS has had no prior opportunity to address the allegations of fact advanced by FDOT in its reply. Given all these circumstances, BRS submits that it should be allowed to submit the Second Demott Declaration. Acceptance of the Second Demott Declaration will ensure that there is a complete record in this case for any decision to be rendered in this matter.

For all these reasons, BRS' motion should be granted and the Second Demott Declaration should be accepted into the record in this proceeding.

Respectfully submitted,

/s/ 

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June 2, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused to be served copies of the foregoing Motion for Leave to Supplement the Record, and Second Declaration of R.G. Demott by First Class Mail, to the offices of the following:

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June 2, 2010

  
/s/ Richard S. Edelman

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**SECOND DECLARATION OF R. G. DEMOTT**

I, R. G. Demott, declare under penalty of perjury that the following is true and correct and based on personal knowledge.

1. I am the General Chairman of the Southeast General Committee of the Brotherhood of Railroad Signalmen ("BRS"). BRS is the collective bargaining representative under the Railway Labor Act ("RLA"), 45 U.S.C. §151 *et seq.*, of persons employed by rail carriers in the craft or class of Railroad Signalman, primarily employees who do maintenance, repair, rehabilitation and construction work on signal systems; and construction, maintenance and repair on communication systems and equipment, including employees of CSX Transportation, Inc. ("CSXT") who perform such work. BRS and CSXT are parties to a collective bargaining agreement covering Signalmen employed by CSXT.

2. I previously submitted a declaration in this proceeding. I am submitting this second declaration to respond to certain allegations of fact asserted by the Florida Department of Transportation ("FDOT") in its reply to BRS' opposition to FDOT's motion for dismissal of its notice for exemption of its acquisition of CSXT's lines north and south of Orlando (Central Florida line) from Board approval under Section 10901.

3. FDOT suggests that the Board should give no consideration to the issues raised by BRS and give little weight to the impact of the planned transaction on Signalmen because CSXT offered *New York Dock*-type protections for the 8 current signal maintainers on the line and BRS

did not accept CSXT's offer, whereas other organizations did. FDOT Reply pages 19-20.

4. Initially, I note that the agreement proposed by CSXT would have required BRS to waive any challenge to the FDOT acquisition (FDOT Reply Ex. 6). BRS believes that the structuring of the FDOT transaction to evade STB jurisdiction and rail carrier status, even though the transaction involves the acquisition of a line of railroad that will still be used for interstate rail transportation, is not just injurious to the interests of Signalmen, it is also contrary to the Interstate Commerce Act and leading decisions under the Act. So merely providing benefits to 8 maintainers would not resolve the Union's concerns about FDOT's position before the STB. As the Board is well aware from other recent proceedings, BRS believes that the Board has developed an erroneous rule that is at odds with the statute, and that the STB must return to a correct application of the Act, which will only happen if this interpretation of the Act is challenged before the Board and, if necessary, an appellate court. Therefore, BRS could not accept the agreement proposed by CSXT that would have required the Union to refrain from attempting to bring about a restoration of the law.

4. Additionally, FDOT overstates the extent to which CSXT's proposal would have mitigated the adverse impact on the 8 maintainers, erroneously assumes that the only Signal employee interests are those of the 8 maintainers, and fails to recognize broader concerns of Signalmen in Florida and elsewhere in the United States that are implicated by the planned transaction.

5. Given the bare bones complement of Signalmen currently employed by CSXT, the actual import of CSXT's proposal was that 8 signal maintainers would have the ability to relocate to other positions on CSXT. What that would mean is that certain Signalmen would have to move, perhaps out-of- state. While the 8 maintainers currently working on the Central

Florida line might avoid moving by displacing other less senior Signalmen, ultimately 8 Signalmen would have to move. So there would be an impact on members of BRS even if BRS had accepted the CSXT proposal. And there is no reason for any Signalmen to have to move when there is still existing and new signal work to be done on a line of railroad still used by CSXT for interstate freight on a line covered by a collective bargaining agreement that reserves such work to Signalmen.

6. Additionally, while criticizing BRS for not accepting the proposal offered by CSXT, FDOT ignores the facts set forth in my first declaration regarding the Union's efforts to reach agreements with CSXT and FDOT. Specifically, that BRS made numerous efforts to meet with FDOT and CSXT officials regarding plans for signal work on the Central Florida line and BRS proposed that the line be upgraded by BRS Signalmen just as was successfully done on the South Florida line. Both CSXT and FDOT were absolutely resistant to having Signalmen do the work as it was and is done on the South Florida line. Moreover, both had signed a "secrecy agreement" in connection with the transaction, and BRS was unable to glean candor or information from the parties until after the "Agreement in Principle" between CSXT and FDOT was reached.

7. Also, by focusing only on Signal Maintainers, FDOT has ignored the substantial volume of Signal construction work to be performed in improving and upgrading the Central Florida line. Again, this is work that is reserved to Signalmen under the BRS-CSXT Agreement on a line that CSXT will still use. The sale of the Central Florida line under the arrangements planned by FDOT would mean that perhaps 50-75 signal construction jobs would be filled by persons other than Signalmen on a line still used by CSXT. In South Florida, the improvement and upgrade work consistently provided numerous local Signal construction jobs throughout many phases of upgrades, including the final phase (Phase 5), which provided work for

approximately 75 Signalmen for about 5 years. With these upgrades completed, approximately 20 permanent maintenance employees continue performing the signal work on the line today. It is reasonable to assume that there will ultimately be a similar number of permanent signal maintenance jobs on the Central Florida line.

8. FDOT also misses the larger interests of BRS and its members that will be affected by the proposed transaction. As set forth in the State's "Vision Plan" ([www.dot.state.fl.us/rail/publications/plans/06visionplan](http://www.dot.state.fl.us/rail/publications/plans/06visionplan)), Florida intends to acquire more lines from freight railroads where Signalmen currently perform the Signal work; and the enabling legislation enacted by Florida this year applies to any line acquisition in the State. BRS and its members have an interest in proper classification of the Central Florida transaction, and Board jurisdiction over that transaction to ensure that future acquisitions of rail lines in the State are properly handled. This is not only to preserve work for Signalmen, but also to prevent the undercutting of standard rates of pay, rules and working conditions of Signalmen covered by BRS agreements as a result of Florida's acquisition of active rail lines and assignment of the work on those lines to non-rail/non-union entities (as is expressly planned in exhibits 2, 3, and 7 to my first declaration). Furthermore, FDOT's plan would undercut the ability of actual rail carrier entities to perform the work on the Central Florida line because they would be competing against non-rail entities that are not subject to the Federal Railroad laws (Railway Labor Act, Railroad Retirement Act, Railroad Unemployment Act, and Federal Employer's Liability Act). Additionally, to the extent rail work is not performed by railroad workers, the financial foundation of the Railroad Retirement system is damaged.

9. FDOT's suggestion (Reply page 20) that BRS does not have a legitimate interest in the collective bargaining rights and representation status of employees who will perform Signal

construction work on the Central Florida line also ignores the facts that: Signalmen currently have the right to perform that work on the Central Florida line, Signalmen perform signal construction and upgrade work all over the United States, and Signalmen did all signal work for the South Florida line since its inception. BRS certainly has a legitimate interest in the collective bargaining status and representation rights of the workers who will do the Signal upgrade work on the Central Florida line, especially given Florida's explicit plan to assign such work to non-rail, non-union entities. If the Board properly asserts jurisdiction over the transaction, application of the other Federal Railroad laws will follow; jobs on the line will not be unacceptable to current railroad workers, and those workers will be able to organize under the RLA and be represented by BRS. As the representative of those workers, BRS would be able to negotiate agreements on their behalf that would both improve their terms and conditions of employment, and prevent undercutting of standard rates of pay, rules, and working conditions for all Signalmen. If the Board improperly denies jurisdiction over the transaction, and FDOT proceeds with its plans outlined in exhibits 2, 3 and 7 of my first declaration, the persons performing signal work on the line will not be able to choose BRS representation under the RLA. FDOT's attempt to denigrate the legitimacy of BRS' interests in representing the workers who perform the signal construction and upgrade work by reference to the State's so-called "right to work" law (Reply page 21, footnote 7) is also misguided because, if the Board properly asserts jurisdiction over the transaction, application of the Railway Labor Act will follow and there is no provision for so-called "right to work" laws under the RLA.

10. FDOT has suggested that it is somehow relevant to the Board's consideration of the impact of the planned transaction on Signalmen that other rail unions signed agreements offered by CSXT. FDOT Reply page 19. I cannot speak for what motivated those organizations, whether

they were able to advance other interests of their crafts in their negotiations with CSXT, or whether they were aware of the true nature of the proposed transaction and Florida's plans before they entered the agreements. I can say for BRS' part that it first appeared that we were being contacted about a simple Section 10901 line sale. But we later learned that not only would CSXT continue to operate on the Central Florida line after the sale, CSXT would retain branch and feeder lines that connect to the Central Florida line and that those branch and feeder lines comprise about the same or more track mileage as the line being conveyed; it therefore became apparent to us that CSXT would be continuing substantial revenue producing operations on the lines it planned to sell, lines where our agreement with CSXT reserved signal work to Signalmen. Additionally, as I explained above, BRS has adopted a very firm position against the sort of transaction designed by FDOT and CSXT; BRS simply would not sign the agreement proposed by CSXT that required that the Union refrain from challenging FDOT's motion to dismiss and assertion that the Board lacks jurisdiction over the transaction in proceedings before the Board and, if necessary, in court. Finally, in this regard, I am aware that some of the other unions sought to oppose the transaction after they learned more about it and FDOT's scheme to use non-union/non-rail contractors, but CSXT threatened them with litigation under the waiver clause that was included in the agreements that they signed that BRS refused to sign.

11. FDOT has also sought to minimize BRS' interest in the Central Florida transaction by noting that the FDOT made a commitment to the leadership of the Florida legislature to arrange that the signal work on the Central Florida line would be done by Railroad Signalmen. FDOT Reply page 20 and FDOT Reply Ex 8. FDOT finds it "curious" that BRS would oppose FDOT's motion to dismiss when, according to FDOT, a newspaper article reported that "rail labor" accepted the compromise between FDOT and the leadership of the Florida legislature and

withdrew its opposition to the SunRail legislation. FDOT Reply page 20. However, FDOT has misquoted the article; and it has mischaracterized the issues discussed in the article, as well as what happened in Tallahassee.

12. The newspaper article did not even refer to “rail labor”; it referred to the [State] AFL-CIO and then said that the union [the State AFL-CIO] withdrew its opposition to the legislation. It was the State Federation, not BRS that withdrew its opposition to the legislation; the article did not even mention BRS.

13. Additionally, the article discussed FDOT’s last minute efforts to secure the State legislature’s passage of enabling legislation necessary for the Central Florida transaction which concerned funding and liability issues. That legislation had nothing to do with the manner in which the line acquisition was structured and presented to the STB, the carrier status of FDOT or its contractors, or the STB’s jurisdiction over FDOT’s acquisition of a rail line still used for interstate rail transportation. The State Federation agreed only to withdraw opposition to the state legislation, the State Federation agreed to nothing about FDOT’s attempt to evade the jurisdiction of the STB or any position taken by FDOT before the STB. In implying that BRS’ opposition to the motion to dismiss is somehow in bad faith because of the FDOT letter (FDOT Reply page 20), FDOT has confused the State policy issues involved in the enabling legislation and the federal legal and regulatory issues involved in FDOT’s motion to dismiss. With or without the state enabling legislation BRS would not have opposed FDOT’s acquisition of the Central Florida line if the acquisition was to be accomplished by application or notice of exemption under Section 10901. Even today, BRS does not necessarily oppose FDOT’s acquisition of the CSXT line; but BRS does oppose effectuation of the acquisition by attempted evasion of STB jurisdiction and attempted evasion of the other Federal railroad laws such as the

**Railway Labor Act, Railroad Retirement Act, Railroad Unemployment Act and Federal Employer's Liability Act.**

**14. FDOT has also generally mischaracterized what happened in Tallahassee. FDOT's letter made a unilateral commitment to state legislators in order to win a very close vote on the enabling legislation; it said nothing about the form of the transaction or positions to be taken before the Board. BRS made no agreement and the Union's name does not even appear in the FDOT letter. I was in Tallahassee at the close of the Special Session when the commitment was made and BRS never agreed to refrain from challenging FDOT's motion to dismiss. As for the State Federation, it is comprised of most of the unions in the State, some of which were anxious for initiation of the project because of the potential increase in non-rail employment. While the State Federation decided to balance its interests and withdraw its opposition to the legislation (it did not support the legislation), BRS never made any commitment in that regard, and neither BRS nor the State Federation agreed in any way not to challenge FDOT's attempt to evade STB jurisdiction.**

**15. While FDOT appears to believe that its letter to the state legislators took care of all of BRS' concerns, FDOT has done nothing yet to implement the written commitment that it made regarding the signal services work. It is also important to note BRS' interests in this transaction, and the interests of its members, including those currently working on the Central Florida line, go far beyond the "concerns of the eight (8) signalmen" for their current positions, these signalmen and the BRS were and are concerned about all of the signal work and/or signal services for the Central Florida line and other lines in Florida. Consequently, FDOT ignores the legitimate interests of the Signalmen in the signal construction and upgrade work on the Central Florida line, and application of the Federal railroad laws to that railroad work as well as**

protection of standard rates of pay rules and working conditions for railroad workers. Nor has FDOT discussed additional commitments that were made regarding work on the South Florida line.

16. Finally, I note that, in response to exhibits 2, 3 and 7 of my declaration showing FDOT's animus toward unionized railroad workers, FDOT has responded with one sentence in a footnote authored by its counsel, simply declaring that FDOT is not anti-union. The documents that I provided to the Board, which FDOT has not bothered to address, show otherwise; they show that FDOT specifically sought to have the Central Florida operation be a non-rail, non-union operation, provided or at least endorsed union-avoidance training at an FDOT sponsored training session, and sought considerable financial advantage by evasion of the Federal Railroad laws.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

June 2, 2010

  
R. G. Demott