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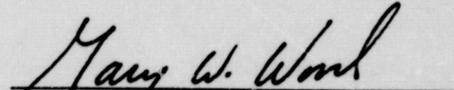
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**VERIFICATION**

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on this 7<sup>th</sup> day of December, 1998.

  
\_\_\_\_\_  
Gary W. Woods

ALL STATE LEGAL 800-222-6110 EDS11 RECYCLED





2. I have held a General Manager position with NS since 1993, when I was named General Manager--Eastern Region. In May 1997, I assumed my current position as General Manager--Northern Region, one of three General Managers for NSR's entire system, when the position was created in preparation for the Conrail Transaction. In this capacity, I am responsible for planning and launching the new train operations for NSR's expanded rail system. When NSR assumes operation of its allocated Conrail properties, I will have primary responsibility for train operations on the allocated properties, which will make up NSR's new Northern Region.

3. I joined Southern Railway (which is now a subsidiary of NS) in 1970, as a management trainee in the Engineering Department, which has responsibility for maintenance of way operations. I worked in maintenance of way operations for two years, supervising gangs of employees involved in both day-to-day line maintenance, as well as construction, and program renewal work. After 3 years in the Engineering Department, I received my first of several promotions to positions in the Transportation Department.

**A. Description of the Conrail Transaction**

4. The Conrail Transaction will fundamentally restructure railroad operations in the eastern United States. Rail service in the East today is provided by three "Class I" railroads and a number of short line and connecting railroads. NSR and CSXT operate largely parallel route systems, reaching all major rail markets in the Southeast and Midwest regions. Among other points, NSR and CSXT both serve directly Chicago, Illinois; St. Louis, Missouri; New Orleans, Louisiana; Memphis, Tennessee; Jacksonville, Florida; Charlotte, North Carolina; Charleston, South Carolina; Hampton Roads, Virginia; Atlanta, Georgia; Detroit, Michigan; Birmingham, Alabama; and

Louisville, Kentucky. NSR and CSXT compete head-to-head for traffic in all major commodity groups throughout large portions of their service territories.

5. No similar competitive balance exists in the Northeast, where Conrail has been the dominant railroad for more than two decades. Conrail today operates approximately 10,500 miles of rail lines (depicted in blue on the map submitted as Carriers' Exhibit A-45) located in thirteen states, the District of Columbia, and Canada. Conrail's principal routes form two major legs, which cross in the shape of an "X" just south of Cleveland, Ohio. One leg of the Conrail "X" extends from New England and New York/New Jersey in the east to St. Louis in the west; the other links New York/New Jersey, Pennsylvania (Pittsburgh, Harrisburg, and Philadelphia), Baltimore, and Washington, D.C. with Chicago. Conrail's system meets largely end-to-end with NSR's and CSXT's existing systems in the East. Conrail lines parallel the NSR and CSXT systems between Buffalo, Chicago, and St. Louis, and adjoin NSR or CSXT at Cleveland, Detroit, Cincinnati, Columbus, St. Louis, and Washington, D.C. However, many of Conrail's major markets, including the Northern New Jersey/New York metropolitan area, Southern New Jersey/Philadelphia, Boston, the Monongahela coal fields, and Harrisburg, are not now served by any other major railroad.

6. The Conrail Transaction will bring vigorous and balanced rail competition to these and other markets by allocating Conrail's trunk lines between NSR and CSXT and by giving both carriers equal access to certain key terminal areas. NSR will exclusively operate most of the leg of the Conrail "X" from Chicago to Cleveland and New York/New Jersey via Pittsburgh and Philadelphia. These NSR-allocated lines include approximately 6,000 miles of Conrail lines and trackage rights in New Jersey, Pennsylvania, Ohio, New York, West Virginia, Indiana, Illinois, Michigan, Maryland, and Delaware (depicted on the map submitted as Carriers' Exh. A-46). NSR

will operate these allocated lines as part of NSR's system, which currently consists of approximately 14,282 railroad route miles (including approximately 1,520 miles of trackage rights) in 20 states and the Province of Ontario, Canada. NSR Exh. 11 depicts the expanded NSR system as it will exist upon consummation of the Transaction.

7. In addition, NSR will serve three so-called "Shared Assets Areas," which are being established to extend two-carrier competition to shippers in three key terminal areas -- South Jersey/Philadelphia, Northern New Jersey/New York, and Detroit. The Shared Assets Areas will be operated by Conrail as extensions of both the NSR and CSXT systems under operating agreements granting both carriers access on equal terms to shippers located within the Shared Assets Areas.

#### **B. NSR's Operating Plan**

8. The Operating Plan NSR submitted as part of its Application for STB approval of the Conrail Transaction (Carriers' Exhibit A-4) contains a comprehensive description of NSR's plan to operate the allocated former Conrail properties as part of the expanded NSR system for all purposes, including maintenance of way operations.

9. The Operating Plan describes in detail our planned train operations, including the train schedules that we are preparing to offer on our expanded system. The expanded NSR system will be structured around eight principal routes, which will be linked to handle traffic between any two points on the system. The eight new routes are: the Penn Route (as depicted in the map submitted as NSR Exh.6), the Southern Tier Route (as depicted in the map submitted as NSR Exh. 3), the Piedmont Route (as depicted in the map submitted as NSR Exh. 7), the Shenandoah Route (as depicted in the map submitted as NSR Exh. 8), the Southwest Gateway Route (as depicted in the map submitted as NSR Exh. 9), the Bridge Route (as depicted in the map submitted as NSR Exh. 3),

the Mid-South Route (as depicted in the map submitted as NSR Exh. 5), and the Butler Cut-Off Route (as depicted in the map submitted as NSR Exh. 4).

10. NSR's principal east-west route, the Penn Route, will be formed by combining and upgrading Conrail's former Lehigh, Reading, Harrisburg, Pittsburgh, Cleveland and Chicago lines. The new Penn Route will be the shortest rail route from three important eastern rail markets (northern New Jersey, Philadelphia/southern New Jersey, and Wilmington/Baltimore/Washington) to points in the Midwest, including Chicago, with intermediate connections to mainline routes serving the Northeast and eastern Canada, the Southeast, and Detroit.

11. Other new routes will be formed by combining former Conrail main lines and segments with adjoining NSR lines. NSR's new Southern Tier Route, for instance, is a combination of Conrail's former Southern Tier Line between Suffern and Buffalo, New York, and NSR's current mainline from Buffalo to Cleveland. These two currently "dead-end" mainlines will be connected to form a viable through route.

12. The expanded route system will enable NSR to provide efficient, seamless service between points on NSR's existing and allocated lines. These new single-line operations will eliminate the delay, risk, and expense associated with interchange operations. And NSR will take advantage of other opportunities to eliminate and streamline intermediate handling by consolidating yard operations and by grouping traffic according to traffic type and service needs.

13. These operational changes will produce immediate improvements in train service. Shippers will benefit directly from the expansion of single-line service and the elimination of costly and time-consuming interchange operations. NSR will offer new and more competitive train

schedules for every major traffic type currently handled by Conrail (including coal, automotive, general merchandise, and intermodal).

14. NSR's expanded system will face stiff competition. By design, NSR and CSXT will be placed in head-to-head competition for most of the traffic that currently moves exclusively or principally by Conrail. Meeting that competition will require NSR to offer responsive and efficient service, which in turn will produce immediate and substantial transportation benefits for Conrail's existing rail customers. But meeting rail competition alone will not suffice. To a large degree, both financially and operationally, the public benefits of the Conrail Transaction depend on our ability to expand the traffic base by attracting freight that is currently moving by truck. NSR's expanded single-line routes are designed to compete directly with highway traffic (particularly in the I-70, I-80, I-81, I-85, I-90, and I-95 highway corridors).

15. Competition will be most intense for our intermodal traffic, which accounts for a large share of the projected traffic on the Northern Region. Intermodal service involves the movement of standardized containers that can be shipped by (and readily interchanged between) two or more modes of transportation, with minimal intermediate handling. Because containers can be handled readily by truck, intermodal is the railroad's most service- and time-sensitive traffic. NSR's ability to compete for intermodal traffic depends on the railroad's ability to offer frequent, on-time service on very demanding train schedules.

16. NSR's Operating Plan (Carriers' Exh. A-5, App. D at 459-470) projects traffic increases on many line segments, yards, and terminals on the expanded system. Traffic density will increase immediately at certain locations as a result of traffic shifts related to the route restructuring. For example, traffic on Conrail's high density Harrisburg Line (between Harrisburg and Reading,

Pennsylvania) will increase with the segment between Harrisburg and Rutherford, Pennsylvania handling an average of 59 trains per day, 13.6 more than Conrail currently operates on that segment. NSR Operating Plan, App. D at 462. NSR's new Southern Tier Route is currently expected to handle six trains per day more than Conrail now operates on the segment between Corning and Buffalo, New York. And the NSR will operate on average 20 more trains per day on the segment of Conrail's Cleveland Line between White and Cleveland, Ohio. Over time, NSR expects to expand its traffic base substantially, adding significant additional traffic on its existing and allocated lines.

### **C. Maintenance of Way Operations**

17. No degree of coordination in train operations will reduce transit times or otherwise improve customer service if the railroad fails to maintain its rail infrastructure. Track conditions, more than any other single factor, contribute to train delays and disruptions and compromise safe train operations. Operations of trains over track causes wear to individual components (i.e. rails, ties, fasteners, etc.) and to the geometry and alignment of the track structure as a whole. Replacement of those worn components and correction of geometry and alignment is continually necessary to safely operate trains at the designed speeds. A loose bolt, if undetected, can literally derail a train. Likewise, any number of track conditions -- a rail that has cracked from heavy loads, and weather conditions, or has separated due to defective welds, or a low joint resulting from the stress of heavy loads, for instance -- can, if neglected, cause catastrophic operating problems. To prevent such problems, NSR adheres to the highest reasonable maintenance standards. We inspect our mainline system on a daily basis. NSR maintains its track to standards that exceed both federal requirements and the preventive maintenance standards of other U.S. railroads, including Conrail. And we invest heavily in ongoing preventive maintenance and capital renewal on all of our lines.

Through these and other practices, NSR consistently achieves the highest safety and service record of all U.S. Class I railroads.

18. But thorough maintenance of way operations impose their own operational constraints. Track must be placed under "slow orders" or taken out of service entirely, pending, during, and after maintenance of way operations. These delays and disruptions impair our ability to meet train schedules and impose immediate and substantial costs on the railroad. A 20-mile per hour slow order on a single mile of 60-mile per hour track, for instance, delays each train crew 21 minutes. The delay is substantially magnified when traffic must be detoured to other routes to avoid out-of-service track. The more traffic that is handled over the line, the more disruption that is caused by each maintenance operation. Disruption to traffic on major arteries has a negative ripple effect on train schedules and operations across the system. Moreover, because lines with greater traffic density and faster trains generally require more track maintenance, maintenance of way operations pose the greatest operational interference just where interference is least tolerable. Maintenance of way related disruption can never be eliminated, but it must be controlled if NSR is to compete effectively on its expanded system. To that end, the NSR Operating Plan incorporates a comprehensive plan for coordinating maintenance of way operations on the expanded system. NSR's plan (as described fully in the Declaration of Gary W. Woods and in NSR's accompanying submission) will enable the railroad to maintain its allocated former Conrail properties in accordance with NSR's high maintenance standards, while facilitating efficient management of track time. These operating changes will require specific workforce arrangements that are necessary to support the transportation services on which the public benefits of the Transaction depend.

19. The centerpiece of NSR's proposal in this proceeding is the extension of our "Designated Programmed Gang" ("DPG") operations to the allocated properties. As Mr. Woods explains in more detail, NSR began using DPGs on its former NW system lines in 1992. At that time, I was General Manager - Eastern Region, and I had direct responsibility for train operations on large parts of the former NW system. This position provided me a unique perspective on the benefits of the DPG arrangement for train operations. The work performed by DPGs is the railroad's heaviest and most disruptive work -- projects involving the removal and replacement of track and other major capital improvements to the track structure. Before the railroad began to use DPGs to perform this type of work, we experienced multiple corridor outages at certain times of the year, as the separate rail and timber and surfacing gangs worked on different parts of the system at the same time. The pace of each project was slowed by the constant rebulleting of gangs due to crossing seniority boundaries and the inflexibility of their work times, which often coincided with peak traffic times.

20. The advent of DPG operations improved the situation markedly. We have never attempted to quantify the savings and efficiencies in train operations -- or objectively to measure the improvements in train service -- that are attributable to our use of DPGs. But the results were manifest. Since 1992, we have been able to schedule production work to minimize operational delays, and to avoid multiple corridor outages. And we have been able to operate with large gangs, completing each project more quickly than was possible under non-DPG seniority arrangements. The flexibility has enabled us to improve customer service, both by minimizing maintenance-related operating delays and by scheduling our major capital work to avoid peak traffic times and to coincide with our customers' service needs.

21. We must have the same flexibility in our operation of the allocated properties. The level of competition on the Northern Region -- both from CSXT and from trucks -- requires that we use every minute of track time as efficiently as possible.

22. The competition for track time (that is, the balance between transportation and maintenance of way demands to use the track) is not unique to the Transaction. It has become a matter of industry-wide concern as competition between carriers and advances in technology have required and enabled carriers to operate longer, faster, and more frequent trains. But the challenges presented by implementation of the Conrail Transaction are particularly pronounced, both because the train schedules NSR intends to operate are so demanding, and because the very structure of the Transaction complicates the scheduling of maintenance work. For much of the traffic on the Northern Region, the difference of only a few hours' transit time on a long-haul move will literally render NSR noncompetitive.

23. Moreover, the structure of the Transaction will make NSR particularly vulnerable to maintenance-related disruptions on parts of its system. The Transaction divides the operation of the Conrail properties in a manner that leaves NSR with limited opportunities to avoid maintenance-related train disruptions by rerouting traffic. Because it is operating only part of the Conrail properties, NSR will experience operating constraints that Conrail today does not face. For example, in the past, if there was a derailment or blockage on Conrail's Southern Tier Line, Conrail could reroute most of its traffic to its parallel Water Level Route, located fewer than 50 miles to the north. After the Transaction, however, the Water Level Route will be operated by CSXT in direct competition to NSR's Southern Tier. When the Southern Tier is out of service, NSR will have to reroute traffic more than 150 miles to the south to run it over NSR's new Penn Route.

#### **D. Capital Improvements**

24. NSR will make large investments in equipment, infrastructure, and facilities necessary to fulfill its Operating Plan for its allocated properties. NSR's Operating Plan described more than \$ 500 million of capital improvement and expansion projects that NSR plans to complete in the first three years of its new operations. Since submitting the Operating Plan, we have further refined our capital plan and have identified a number of additional projects that are equally necessary to the planned train operations on our expanded system.

25. NSR Exh. 12 is a list of the planned capital projects that we anticipate will remain to be completed as of January 1, 1999. These projects include installation of new track connections and capacity improvements involving, to varying degrees, each of NSR's new single-line routes. On the Penn Route alone, NSR is planning to complete 17 separate capital improvement projects, involving the installation or upgrading of approximately 80 miles of track.

26. Most of the planned capital projects involve the construction of new track necessary to improve the efficiency and capacity of our new routes. In this category are several major track connection projects located at existing and new junction points on NSR's existing and allocated properties. NSR is building new track connections that will significantly enhance train service by avoiding the slow and/or circuitous connections currently required for through train operations at those locations. Some of these projects -- including the new connections at Sidney, Illinois, Bucyrus, Ohio, and Alexandria, Indiana -- already have been completed or will be completed in advance of Day One (the date on which NSR's expanded operations are to commence, currently projected to be March 1, 1999).

27. Other connection projects will have to be completed as soon as possible after Day One in order to provide the level and quality of service that we have planned. For example, NSR will build a new track connection at Buffalo, which will permit efficient movement between NSR's existing Cleveland-to-Butler mainline and Conrail's Southern Tier Line. A new track connection at Butler, Indiana will connect NSR's Detroit and Huntington Districts with Conrail's Chicago Line, creating the most direct rail route (the Butler Cutoff Route) between Detroit and the Chicago gateway. A new track connection at Ashtabula, Ohio will permit routing of ore traffic from the Ashtabula Dock to the steel mills at Mingo Jct. via NSR's Cleveland line, avoiding the congested Youngstown area and providing faster service. And NSR will build a new connection at Tolono, Illinois to permit efficient handling of the increased traffic between NSR and Illinois Central expected as a result of the Transaction, bypassing congestion in East St. Louis. This new gateway will permit NSR to compete effectively with CSXT for heavy petrochemical traffic flows moving between the Northeast and the Southwest and Gulf Coast.

28. NSR also is undertaking a number of capacity improvement projects, which will enable the railroad to handle the types and volumes of traffic planned for the expanded system. NSR will invest heavily in capacity improvements, such as new and expanded passing sidings, double-track cross-overs and additional yard track to prevent operational "bottlenecks" at locations where the railroad will handle increased traffic volumes.

29. For example, NSR is building signaled crossovers on the 43-mile double-track segment of its allocated Conrail property from Harrisburg to Reading, Pennsylvania, which is a heavily traveled portion of what will be NSR's new Penn Route. The Harrisburg-Reading segment currently consists of paired track, one of which is generally used for eastbound trains and the other

of which generally carries westbound trains. The installation of crossovers will permit NSR to operate trains in both directions on each track, reducing transit times and increasing capacity on the segment.

30. NSR will invest heavily in infrastructure improvements to provide the capacity necessary to support its planned intermodal operations. NSR Exh. 12 identifies several capital projects involving the expansion or construction of intermodal facilities, including a new, \$31 million facility that will be built on NSR's new Penn Route at Rutherford (Harrisburg), Pennsylvania. Each of these projects is necessary to the growth-oriented intermodal service plan that NSR is implementing in connection with the Transaction.

31. NSR also will expand capacity on its allocated lines by expanding clearances to accommodate "double-stack" intermodal containers. For example, NSR plans to enlarge the clearances on the Pattenburg Tunnel, located at the New Jersey-Pennsylvania state line (on the Penn Route) to handle double-stack freight. And NSR will improve clearances on the line between Perryville and Baltimore, Maryland (which can now accommodate only standard double-stack traffic) to handle taller ("high-cube") double-stack containers. Both of these measures will enable us to make more efficient use of train space and track time. When this work is complete, NSR's Penn Route will be a high-capacity corridor, able to handle high-cube double-stack traffic between Chicago and Newark, Philadelphia, and Baltimore.

32. NSR also will be undertaking at least two major line construction projects necessary to mitigate the environmental impacts of the Transaction. NSR's Operating Plan (at 213-14) described our plan to relocate a segment of Conrail's main line through Erie, Pennsylvania in order to lessen the impact of Transaction-related traffic increases. This project will involve the

installation of 5.3 miles of new track, which will eliminate 1.24 miles of NSR line running through the streets of Erie. In addition, after submitting the Application, NSR revised its Operating Plan for the Cleveland area in response to community concerns regarding traffic volumes on trains operating through residential areas. NSR's mitigation proposal, which was imposed as a condition of the Control Order, requires NSR to construct a 42,000-foot track connection to permit NSR to reroute traffic through Cloggsville, Ohio.

33. Many of NSR's planned capital projects are required because NSR will be operating existing rail lines as parts of new single-system routes, adding and shifting traffic densities in the process. To operate successfully, NSR needs to be able to move freight quickly and efficiently over all segments of its new routes. To that end, we have identified -- and are planning to remedy -- the potential "pinch-points" and operational "bottlenecks" by adding new sidings and crossovers.

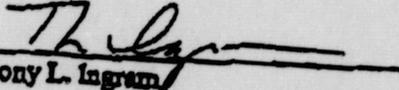
34. Several lines that will form principal segments in NSR's planned corridor operations on the allocated lines were operated as secondary lines by Conrail and will require substantial upgrading to accommodate expected traffic patterns and volumes. NSR plans to invest more than \$31.7 million in capacity and clearance improvements on the Lehigh Line, which will form a key segment of NSR's Penn Route. The Lehigh Line is operated by Conrail as a secondary line to its Trenton Line between Bound Brook, New Jersey and Philadelphia, which is to be allocated to CSXT pursuant to the Transaction. NSR also plans to invest up to \$35 million to upgrade its allocated portion of Conrail's Southern Tier Line. Conrail operated the Southern Tier as a secondary route to its major east-west "Water Level" route, which will be allocated to CSXT. NSR's investment will enable it to handle two-directional time-sensitive freight (especially intermodal traffic) and otherwise to operate the Southern Tier as another major east-west corridor.

35. In total, NSR will install more than 866,900 feet of track, or over 164 miles of new track (in the form of sidings, connections, upgraded track, and yard track) in connection with implementation of the Transaction. The vast share of those projects -- approximately 34 projects, totaling more than 126 miles -- will remain to be completed as of Day One.

36. Timely completion of these improvements is critical. Until these projects are completed, NSR will not be in a position to offer the levels of service and train schedules necessary to achieve our Operating Plan and to realize fully the public benefits of the Transaction.

**VERIFICATION**

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on this 7 day of December, 1998.

  
Tony L. Ingram

ALL STATE LEGAL 800 225 0810 EDS11 RECYCLED



ARBITRATION PURSUANT TO ARTICLE I, SECTION 4  
OF THE NEW YORK DOCK PROTECTIVE CONDITIONS

----- x  
 NORFOLK SOUTHERN RAILWAY COMPANY, :  
 CSX TRANSPORTATION, INC., and :  
 CONSOLIDATED RAIL CORPORATION, :  
 :  
 and : Referee  
 :  
 BROTHERHOOD OF MAINTENANCE OF WAY : William E.  
 EMPLOYES; INTERNATIONAL BROTHERHOOD :  
 OF BOILERMAKERS, IRON SHIP BUILDERS, : Fredenberger, Jr.  
 BLACKSMITHS, FORGERS AND HELPERS; :  
 BROTHERHOOD RAILWAY CARMEN DIVISION :  
 - TRANSPORTATION COMMUNICATIONS :  
 INTERNATIONAL UNION; INTERNATIONAL :  
 BROTHERHOOD OF ELECTRICAL WORKERS; :  
 NATIONAL CONFERENCE OF FIREMEN AND :  
 OILERS; INTERNATIONAL ASSOCIATION :  
 OF MACHINISTS AND AEROSPACE WORKERS; :  
 and SHEET METAL WORKERS' INTERNATIONAL :  
 ASSOCIATION. :  
 ----- x

National Mediation Board  
 1301 K Street, N.W., # 250-East  
 Washington, D.C. 20572  
 Friday, December 18, 1998

REVISED TRANSCRIPT

The above-entitled arbitration came on for hearing  
 at 8:45 a.m. before:

WILLIAM E. FREDENBERGER, JR.

-----  
 BRIGGLE & BOTT, COURT REPORTERS  
 10823 Golf Course Terrace, Mitchellville, MD 20721  
 (301)808-0730

## 1 APPEARANCES:

2

3 On Behalf of the Carrier, Norfolk Southern:

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5 Sidley &amp; Austin

6 1722 Eye Street, NW

7 Washington, D.C. 20006

8

9 On Behalf of the Carrier, CSX Transportation, Inc.:

10 RONALD M. JOHNSON, ESQUIRE

11 Akin, Gump, Strauss, Hauer &amp; Feld, LLP

12 1333 New Hampshire Avenue, N.W., Suite 400

13 Washington, D.C. 20036

14

15 On Behalf of International Brotherhood of Electrical  
16 Workers:

17 MICHAEL S. WOLLY, ESQUIRE

18 Zwerdling, Paul, Leibig, Kahn, Thompson &amp; Wolly

19 1025 Connecticut Avenue, N.W., Suite 712

20 Washington, D.C. 20036

21

22

1 APPEARANCES: [Cont.]

2

3 On Behalf of Brotherhood of Maintenance of Way  
4 Employes:

5 RICHARD S. EDELMAN, ESQUIRE

6 O'Connell, Schwartz & Anderson, P.C.

7 1900 L Street, N.W., Suite 707

8 Washington, D.C. 20036

9 -and-

10 DONALD F. GRIFFIN, ESQUIRE

11 Assistant General Counsel

12 Brotherhood of Maintenance of Way Employes

13 10 G Street, N.E., Suite 460

14 Washington, D.C. 20002

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1 PROCEEDINGS [8:45 a.m.]

2 MR. FREDENBERGER: We were going to do the shop  
3 crafts presentation first this morning? Is that what we had  
4 agreed to?

5 MR. WOLLY: Yes.

6 MR. FREDENBERGER: Mr. Wolly, will you be making  
7 that presentation?

8 MR. WOLLY: Not for everybody.

9 MR. FREDENBERGER: I understand. That's what I  
10 wanted to know. Who will be making their own presentations  
11 and who will you be making the presentation for?

12 MR. WOLLY: As I understand it, we first have a  
13 threshold issue to present to you on jurisdiction which Mr.  
14 Buchanan and myself are going to address. Then we think  
15 that you'll be finished.

16 But in the event you're not --

17 [Laughter.]

18 MR. FREDENBERGER: Yes, in the event I'm not,  
19 let's proceed beyond that.

20 MR. WOLLY: If you decide to hear the issue of the  
21 merits of the transaction that's proposed, Mr. Duncan and  
22 Mr. Buchanan and maybe some of the other shop craft unions

1 who are here are going to address their position on that  
2 transaction. I'm going to address the IBEW's position on  
3 that transaction. And then the Brotherhood of Maintenance  
4 of Way will address their position regarding this  
5 transaction, because they are the representative at the  
6 place from which this work is coming, and the rest of us are  
7 the representatives of the crafts at the location to which  
8 the carrier proposes to transfer the work.

9 MR. BERLIN: Mr. Fredenberg r, not meaning to  
10 derail the locomotive here, but we thought we might speak to  
11 our coordination of work as regards the shops. Then if  
12 someone has a defense to our proposed implementing  
13 agreement, or a defense to an award -- to a determination  
14 that the implementing agreement should be adopted as we  
15 propose, they might advance their defense to it. But it is,  
16 after all, our transaction.

17 MR. WOLLY: I'm sorry, I did not intend to  
18 eliminate the carriers from this. I was telling you from  
19 our side of the table who would be speaking. I would  
20 presume that if you get beyond the jurisdictional issue, the  
21 carriers would explain their proposal before anybody  
22 explains why it may or may not be appropriate and in which

1 respects.

2 MR. BERLIN: I'm not entirely happy yet.

3 MR. WOLLY: I don't think you will be.

4 MR. BERLIN: I understand that there is an  
5 objection to some of the procedure that led us all to be  
6 here today to arbitrate this implementing agreement.

7 MR. FREDENBERGER: I.e., a jurisdictional argument  
8 by one or more of the organizations.

9 MR. BERLIN: A contention by one of more of the  
10 organizations that the process that was followed by some or  
11 all of the other parties was inadequate from the perspective  
12 of the objecting parties. I don't know about jurisdiction.  
13 I do know that they don't like some of the things that they  
14 say occurred or didn't occur.

15 MR. FREDENBERGER: Mr. Wolly used the term  
16 jurisdiction, so I assume -- the way I see it now is,  
17 apparently there will be a jurisdictional argument by the  
18 organizations that we should not proceed further, for  
19 whatever reason I don't know yet because I haven't heard it.  
20 This was in your submission to a degree. I read it but I  
21 haven't completely heard what you had to say about it.

22 Then as I understand it, you want a ruling from

1 me, a bench ruling re jurisdiction or re your argument on  
2 jurisdiction. You can be heard, of course, on that before I  
3 -- if they're asking me to make a ruling, I'll decide  
4 whether or not I will at that time. I want to hear both of  
5 you on the jurisdictional/objection, whatever you call that.

6           Assuming that I do not dismiss, that I don't grant  
7 their motion or sustain their objection, then I would  
8 anticipate that the carriers would move forward with their  
9 shop craft presentation. Is that your understanding of how  
10 we're doing this now?

11           MR. BERLIN: It's my understanding of how Mr.  
12 Wolly proposes we do it.

13           MR. FREDENBERGER: Well, how do you propose to?

14           MR. BERLIN: I don't accept the concept of a  
15 jurisdictional objection as there is no objection to the  
16 August 24th New York Dock notice that was served of which  
17 I'm aware. The service of the notice triggers the process  
18 and leads to arbitration if there is no agreement. Without  
19 meaning to anticipate some of the back of forth that will  
20 undoubtedly go on over the asserted objection, the fact of  
21 it is that one has to understand the transaction in order to  
22 understand the objection, or the basis for rejecting the

1 objection.

2           Now I don't mind Mr. Wolly going first and  
3 expressing his objections to the proceeding in which all of  
4 the shop craft representatives have already been here for  
5 four days, or some of them. But I need to sort of forewarn  
6 everybody that in responding to it I'm going to talk some  
7 about the transaction because that tells us whether his  
8 objection has got any merit.

9           MR. FREDENBERGER: I think you can make whatever  
10 argument you choose in response to their position or  
11 argument. But for purposes of dealing logically with it, I  
12 think we need to move ahead, hear what is to be said, and  
13 hear everyone's position on that.

14           Mr. Wolly, if you would like to proceed.

15           MR. WOLLY: Dcn Buchanan is going to speak first.

16           MR. FREDENBERGER: Mr. Buchanan, please feel free.

17           MR. BUCHANAN: The threshold question for the shop  
18 crafts in this arbitration is the propriety of the carriers'  
19 request for arbitration, considering the absence of the on-  
20 property handling and the lack of information from the  
21 carriers concerning their proposal to transfer the work from  
22 Canton, Ohio to Charlotte roadway shop. The carriers'

1 motion is premature.

2           The shop craft unions entered into negotiations  
3 with both CSX and NS, Conrail on a lot of issues regarding  
4 this transaction. It started in February of this year by  
5 getting together with them to hear what their proposal, what  
6 their plans were. Then in March and April we began more  
7 formal negotiations, and the machinists and the sheet metal  
8 workers met over the summer with them to reach the  
9 agreements.

10           The reason I bring this up is to show that we have  
11 had a lot of meetings with them and we did reach a master  
12 implementing agreement with the parties. And during this  
13 period of time they did not present any written information  
14 about a move, the closure of Canton roadway shop and wanting  
15 to move that work into the place where the shop crafts  
16 represent people. So there was a lot of opportunities to  
17 talk about this.

18           Later, after we'd all reached agreements, master  
19 implementing agreements, they served a notice, scheduled a  
20 joint meeting with all the shop crafts and the BMW to  
21 present their implementing agreement. And that's basically  
22 what they did; they presented it. We discussed it. We

1 asked questions about it. And every time we started  
2 discussing we came to the same point. The carrier said,  
3 well, we don't know the answer to that question, or we've  
4 got to reach agreement with the BMW. We'd talk a little  
5 more; we don't know. We got to reach agreement with the  
6 BMW.

7 So we left that meeting, shop craft workers,  
8 thinking that BMW and they were going to reach agreement,  
9 we would get back together over the Canton issue. That  
10 didn't happen. In fact, in some discussions with the  
11 carrier officers we got the indication that they were going  
12 to file for arbitration. We called them, Dewey Garland  
13 right here beside me called them and talked to them about  
14 it.

15 On November 3rd we sent them a letter asking to  
16 negotiate over the matter. We offered dates of  
17 November 19th and 20th, December 3rd and 4th. We indicated,  
18 obviously if these dates were in conflict we'd talk about  
19 other dates.

20 During that time the process was going and you  
21 were appointed as the arbitrator. You arranged a conference  
22 call between all of us, and I don't know if you recall

1 during that call there was a discussion between myself and  
2 Bob Spenski over the phone and Mike Wolly was involved in  
3 it, in regard to the lack of negotiations and the union's  
4 need for information about the transaction. Here we are  
5 going into arbitration and we don't have any information  
6 about Canton or the seniorities.

7           So during the conference call both sides expressed  
8 an interest in settling the matter, which we are very  
9 interested in reaching an agreement over the matter and  
10 negotiating and implementing agreement. I thought both  
11 sides recognized the need for information and there was an  
12 offer to, yes, we will continue to talk about it and supply  
13 you information.

14           So your conference call was on November 20th. Two  
15 days after that conference call received a letter from --  
16 no, the conference call, I'm sorry, was November 18th. Our  
17 request for the meeting date was November 3rd. So two days  
18 after our conference call, on November 20th, we received a  
19 letter from Norfolk Southern, and I'll just quote a small  
20 part of it.

21           It says, in response to your request for continued  
22 negotiations, the period for negotiations has passed. The

1 issue will now be decided by a neutral referee. We're  
2 confident that so long as the involved parties possess a  
3 common desire to comply with the governing New York Dock  
4 conditions, we can assist the neutral in rendering a timely  
5 and workable implementing agreement.

6 Frankly, I don't know how the unions, as the  
7 carriers have suggested, could assist you or anyone else in  
8 reaching an implementing agreement. We do not have any  
9 information about it. The history of our lack of  
10 bargaining, negotiations, was presented to the National  
11 Mediation Board when they filed their application for  
12 Article IV arbitration.

13 When the mediation board appointment letter was  
14 submitted, given to you, the board made a point throughout  
15 its letter that the National Mediation Board's appointment  
16 letter explained that the action is purely ministerial. I  
17 assume that means administratively, not holy. And the quote  
18 out of the letter from the NMB says, it does not indicate --  
19 talking about the appointment -- any determination with  
20 respect to whether the prerequisites for invoking  
21 arbitration have been satisfied, or whether any other  
22 circumstance might permit or preclude the ultimate

1 arbitration of the dispute in question.

2 We believe it's in the best interest of the  
3 workers and the unions that the arbitrator rule that there  
4 is not the requisite body of evidence or information  
5 sufficient to formulate an implementing agreement, and deny  
6 the carriers' request to impose their suggested implementing  
7 agreement, and establish a period of negotiations. This is  
8 I guess a little unusual request, but we would suggest that  
9 the parties meet face to face at least three times. That  
10 hasn't happened. We've asked for meetings and we have not  
11 been granted a meeting, a negotiating session.

12 The carriers have not met their obligation to  
13 negotiate, simply. In fact, they have declined our request  
14 to meet and negotiate, and this arbitration in regard to the  
15 Canton transfer should be concluded now.

16 MR. FREDENBERGER: Mr. Wolly?

17 MR. WOLLY: As you know, Mr. Arbitrator, there are  
18 six shop organizations here. I represent only one of them,  
19 the IBEW.

20 The IBEW represents the carrier's, the Norfolk  
21 Southern employees who perform the electrical work that's  
22 involved in repairing roadway equipment at Norfolk

1 Southern's Charlotte, North Carolina roadway equipment  
2 repair shop. The IBEW does not represent any of the Conrail  
3 employees who presently work on roadway equipment and whose  
4 work the carriers propose to transfer to Charlotte, nor does  
5 it represent any of the Conrail employees who presently work  
6 on roadway equipment and whose work the carriers propose to  
7 transfer to a CSX facility in Richmond. In addition to  
8 that, it doesn't represent any employees at that particular  
9 CSX facility.

10           So the IBEW's interest in this relates solely to  
11 the Charlotte facility. And it is our position that you  
12 lack jurisdiction to resolve this aspect of the dispute  
13 because before they invoked arbitration -- and it was a  
14 unilateral invocation of arbitration -- the carriers did not  
15 engage in the requisite negotiations with the IBEW. That's  
16 an issue of satisfying the requirements of New York Dock.  
17 New York Dock itself in Article I, Section 4 specifically  
18 provides that the parties should negotiate over an  
19 implementing agreement for a proposed transaction for at  
20 least 30 days. An arbitration may be invoked only after  
21 such negotiations have occurred for at least 30 days, and at  
22 the end of 30 days there is a failure to agree.

1           So that the negotiations have to prove  
2 unsuccessful before the parties are required to try to agree  
3 on the selection of a neutral referee. Then if the parties  
4 can't agree, the mediation board is authorized to appoint a  
5 referee.

6           In this particular case, as Mr. Buchanan  
7 indicated, there was negotiation between the two carriers  
8 and all of the shop unions, not necessarily occurring as  
9 joint negotiations, and those negotiations resulted for the  
10 IBEW in an implementing agreement which is Carrier Exhibit  
11 E-7 here, part of which reads on page 4 of it -- and it's  
12 only a sentence. The following work may be coordinated or  
13 rearranged in whole or in part on NSR and allocated CRC  
14 properties operated by NSR. In item 17 there is, roadway  
15 equipment shop at Canton will be closed and the work from  
16 the allocated lines to be operated by NSR will be  
17 transferred to the NSR roadway shop at Charlotte, North  
18 Carolina.

19           So there was agreement between the IBEW and the  
20 carriers that this transfer could occur. The carriers  
21 served notice as to their proposal of the terms in an  
22 entirely separate New York Dock notice. That's the New York

1 Dock notice that they have put in front of you.

2           They concede that they've held numerous bargaining  
3 sessions with the Brotherhood of Maintenance of Way  
4 Employes, but they only met with the IBEW once. That was  
5 not a mutually arrived at date for negotiation. In fact,  
6 the carrier said, be here at X date because that's when  
7 we're going to deign to talk to you about this. That was  
8 September 24th. There were no negotiations before that.  
9 After this New York Dock notice was served -- and in fact  
10 there were no negotiations after that, before this  
11 arbitration was convened.

12           What happened at that meeting? That meeting was  
13 sort of a broadcast bargaining session. It lasted a mere  
14 three hours insofar as this issue was concerned. The  
15 carriers put their proposal on the table. There was no  
16 bargaining, as is explained in our submission. The IBEW  
17 said, we have a master implementing agreement with you. You  
18 have to go get a master implementing agreement with the  
19 people who are coming here or there's not much for us to  
20 talk about.

21           On the other hand, the carriers didn't say  
22 anything. The meeting basically ended inconclusively at

1 that point and that was it. There were no negotiations.  
2 The carrier didn't come back to the IBEW at any point. The  
3 next thing that happened was a letter was sent to the IBEW  
4 general chairman notifying him of a conference call to  
5 select a neutral referee. The IBEW general chairman was not  
6 present in his office to receive that because he was on  
7 vacation. When he came back, it already was over. I mean,  
8 there was nothing in the way of advance discussion even as  
9 to that.

10 The letter that they sent to the mediation board  
11 says that they and the organizations, plural, had discussed  
12 selecting a neutral referee. But in fact, the IBEW was not  
13 even party to that. And the IBEW went back to the carriers  
14 in writing and said, hey, there were no negotiations here.  
15 There was no impasse insofar as the IBEW was concerned.  
16 It's not too late to correct this situation. Let's bargain  
17 about it.

18 It's the IBEW's position, Mr. Arbitrator, that it  
19 is your obligation to ensure that the bargaining  
20 requirements of Article I, Section 4 that precede New York  
21 Dock arbitration have been satisfied, otherwise arbitration  
22 has not properly been invoked. And if you find that it has

1 not properly been invoked, which we submit is the situation  
2 here, you should stop the process, and you have the  
3 authority to send the parties back to negotiation.

4           Can you do that? We believe you can. As the ICC  
5 and the STB have said on numerous occasions, the arbitrator  
6 is the one to decide the procedural issues and his own  
7 jurisdiction. The NMB's appointment letter to you clearly  
8 states that it is an appointing authority and nothing more.  
9 A response to request for arbitrators without analyzing the  
10 parties' positions. It doesn't scrutinize whether or not  
11 the parties have complied with any pre-arbitration  
12 requirements. It's basically a clearinghouse for the  
13 appointment of arbitrators in this particular setting.

14           Now the carriers say that New York Dock requires  
15 only 30 days to pass before arbitration can be invoked. Now  
16 if that were the case, which we of course don't believe it  
17 is, they could frustrate the New York Dock bargaining  
18 obligation in every instance by simply putting a proposal on  
19 the table and walking away. And we believe that's what they  
20 did here.

21           But that cannot be what New York Dock requires.  
22 For these reasons, we request that you terminate this

1 arbitration as to the transfer of work from Charlotte now,  
2 because the carriers did not satisfy the New York Dock  
3 bargaining obligation in advance of invoking arbitration,  
4 and only after they do may they again invoke arbitration if  
5 no agreement is reached. Only then would it be proper for  
6 you to proceed.

7 MR. FREDENBERGER: There is an exhibit somewhere -  
8 - were you at the end of your argument?

9 MR. WOLLY: Yes.

10 MR. FREDENBERGER: There's an exhibit of a portion  
11 of New York Dock, and it's Article I, Section 4. Does  
12 anybody remember what that exhibit number is?

13 MR. BERLIN: I would suggest we refer to the whole  
14 provision. There was a fragment put in yesterday in the  
15 PMWE presentation.

16 MR. FREDENBERGER: And it was underlined in your  
17 outline in yellow?

18 MR. BERLIN: Yes. For this one I think you want  
19 to --

20 MR. FREDENBERGER: I don't have my set of New York  
21 Dock conditions in front of me, but I would like to look at  
22 Article I, Section 4 as we listen to these arguments.

1 MR. JOHNSON: There is a copy of New York Dock in  
2 Carriers' Exhibits Volume B, Tab 9.

3 MR. BERLIN: And the page in question is -- this  
4 is not a very good copy, but it's page 85 of it.

5 MR. FREDENBERGER: Let me find it. As long as I  
6 can read it.

7 All right, I have Article I, Section 4 of the New  
8 York Dock conditions in front of me. We've heard the  
9 arguments of Mr. Buchanan and Mr. Wolly. I assume the  
10 carrier wishes to be heard on this issue.

11 MR. BERLIN: We would. This is --

12 MR. FREDENBERGER: Carriers, excuse me.

13 MR. BERLIN: Yes, except I think this is a Norfolk  
14 Southern issue.

15 MR. FREDENBERGER: It is? Yes, I understand how  
16 that would be.

17 MR. JOHNSON: That's correct. The IBEW does not  
18 represent any roadway mechanics on CSXT.

19 MR. BERLIN: And to the extent that I believe all  
20 the objections -- I need to know if I'm incorrect here, but  
21 I think this objection in total runs against NSR's  
22 arrangements at the Charlotte shop. But please --

1           MR. BUCHANAN: All of our requests for meetings  
2 that we never received a meeting was with Norfolk Southern.  
3 CSX met with us.

4           MR. BERLIN: Of course, there must be an overall  
5 implementing agreement that also involves CSXT and Conrail  
6 under Section 4 of New York Dock. So the carriers have an  
7 interest, of course, in proceeding with this proceeding.  
8 But the concern of the shop crafts relates to the work being  
9 transferred into a Norfolk Southern Railway facility.  
10 Therefore, I'm being tapped to do the presentation.

11           MR. FREDENBERGER: All right.

12           MR. BERLIN: I need to say a little bit about --

13           MR. JOHNSON: I just have one more thing to say  
14 with respect to CSXT is we do not believe there are any  
15 jurisdictional issues with respect to CSXT's proposal to  
16 have roadway equipment repair work transferred to Richmond  
17 and placed under CSXT's Richmond roadway mechanic agreement.  
18 CSXT has reached implementing agreements with each of the  
19 three involved unions on CSXT and we do not believe that  
20 they have any jurisdictional issues with us regarding CSXT's  
21 proposal, including BMW.

22           We say that with respect to BMW in view of the

1 fact in their Exhibit No. 20, which is their proposed  
2 implementing agreement, they agree to the transfer of  
3 roadway mechanic work to Richmond.

4 I misspoke. We do not have an agreement with the  
5 BMW. We have their proposal. But in their proposal they  
6 agree with us that the roadway mechanic work should be  
7 transferred to Richmond.

8 MR. FREDENBERGER: Are the shop crafts contermining  
9 that there is a jurisdictional issue with respect to CSXT?

10 MR. WOLLY: The IBEW has no employees involved, so  
11 I don't have any argument with CSXT on this matter.

12 MR. FREDENBERGER: Mr. Buchanan?

13 MR. BUCHANAN: No, I spoke with their labor  
14 relations person this morning and we haven't had any problem  
15 negotiating with them. And the proposed implementing  
16 agreement that Joe Duncan presented yesterday, they're  
17 looking at it, and we don't have any problems with the  
18 concept. We understand that this is something that we've  
19 already entered into with them. So with CSXT we don't have  
20 a jurisdictional problem.

21 MR. FREDENBERGER: I'm a little unclear as to what  
22 the BMW has to do with this in terms of the jurisdictional

1 argument. Are you taking a position of any kind, since your  
2 name has been mentioned?

3 MR. GRIFFIN: No, I will remain silent throughout  
4 this part.

5 MR. FREDENBERGER: All right. So it is an  
6 exclusively with NS, or between NS and the organizations who  
7 are being represented here today by Mr. Buchanan and Mr.  
8 Wolly.

9 MR. DUNCAN: And the IAM.

10 MR. FREDENBERGER: And the IAM; I'm sorry.

11 MR. SCHEER: And the boilermakers.

12 MR. FREDENBERGER: All right, this is a matter  
13 that's between NS and the shop crafts. If we've cleared  
14 that up, then I assume NS wishes to be heard on this.

15 MR. BERLIN: Yes, I'd appreciate it. Thanks very  
16 much. Would that I could remain silent, unaccustomed though  
17 I am to doing so.

18 You have to know something about what this  
19 particular aspect of the overall coordination of maintenance  
20 of way that's at issue in this arbitration. As we  
21 established the other there, there are something over 3,000  
22 employees performing maintenance of way work, or available

1 to perform it, on Conrail who will be affected by the  
2 transaction.

3           One aspect of the change in operations that the  
4 carriers are going to carry out is to close, soon after Day  
5 One, the Canton roadway equipment repair shop maintained by  
6 Conrail at Canton, Ohio. The work from that shop will be  
7 transferred to both CSXT and NSR. NSR does the equivalent  
8 work at a roadway shop at Charlotte, North Carolina. On  
9 Conrail, the employees who perform the work in the Canton  
10 shop are all BMW-represented; all of the ones who do this  
11 repair work. On NSR, the employees who do the repair work  
12 at the Charlotte shop are represented by the shop crafts,  
13 not BMW.

14           The carriers propose -- it's NSR's proposal but  
15 it's part of the overall carriers' proposal. The NSR  
16 proposes to establish 56 shop craft positions at Charlotte  
17 and afford the opportunity to 56 employees at Canton to  
18 follow the work to Charlotte. They would perform the work  
19 in Charlotte in the shop crafts. So there is an interest of  
20 the shop crafts in the coordination of work at the receiving  
21 end, but it's BMW's interest at the sending end, if you  
22 will. And there would be an application of the existing NSR

1 shop craft agreements at the receiving end.

2 BMWWE's agreement would not apply to the work at  
3 Charlotte, because it doesn't apply there now. And the  
4 employees, as a consequence of the transfer of work to the  
5 new carriers, NSR -- not as a consequence of a ruling or  
6 action that you would make as referee, but as a consequence  
7 of where the work is going -- the employees would acquire  
8 representation by the union that represents people in those  
9 crafts at Charlotte.

10 The requirement of New York Dock is that there be  
11 an implementing agreement to govern the transaction. The  
12 transaction -- huge "1." One-and-a-half or 2 percent,  
13 about 2 percent or fewer of the employees involved the  
14 transaction are these 56 potential transferees that we're  
15 talking about. But the agreement overall hinges on bringing  
16 this 2 percent along as well, into the arrangement as well,  
17 if we are to proceed with all the aspects of it.

18 It is not possible to have an agreement between  
19 NSR and any or all of the shop crafts about what to do with  
20 the people who will be offered the opportunity to transfer,  
21 without also having BMWWE be a party, because that's how New  
22 York Dock Section 4 works. We can't make an agreement only

1 with our unions at the receiving end and still be able to  
2 send the employees, offer the qualified employees' jobs at  
3 Charlotte without BMW's participation. Otherwise, the 56  
4 people in Canton are still at Canton. We can't simply  
5 transfer them because we have a place for them. We are  
6 here, or the New York Dock Section 4 process is how we  
7 obtain an arrangement to do the transfer along with the  
8 transfer of work.

9           Now in the course of negotiating the implementing  
10 agreements -- that's our Volume E with all the tabs and all  
11 the separate agreements. In the course of negotiating those  
12 agreements with the unions, which culminated in agreements  
13 with all the shop crafts except the still pending issue with  
14 the Transport Workers Union, which is not involved in this  
15 because TWU does not represent any employees on NSR. There  
16 is BRC at Charlotte.

17           But in the course of negotiating those  
18 implementing agreements, we did negotiate with four of the  
19 shop crafts specific provisions substantially the same, and  
20 including the one Mr. Wolly read that's in the IBEW  
21 agreement.

22           Those provisions typically say, this is for

1 example, the boilermakers and blacksmiths provision, one of  
2 the specific -- the paragraph starts, the following work may  
3 be coordinated or rearranged in whole or in part on NSR and  
4 allocated CRC properties operated by NSR, and then this one  
5 lists 16 in this paragraph C. And number 16 is, roadway  
6 equipment shop at Canton will be closed and the work from  
7 the allocated lines to be operated by NSR will be  
8 transferred to the NSR roadway shop at Charlotte, North  
9 Carolina.

10 We have an identical provision with the National  
11 Conference of Firemen and Oilers. I think in fact it is  
12 absolutely identical, so I won't read it. It's the same  
13 words as the boilermakers. We have an absolutely identical  
14 provision with the IBEW, which is the one that Mr. Wolly  
15 read. And we have an absolutely identical provision --  
16 again, roadway equipment shop at Canton will be closed and  
17 the work from the allocated lines to be operated by NSR will  
18 be transferred to the NSR roadway shop at Charlotte, North  
19 Carolina. That's from the Sheet Metal Workers'  
20 International Association agreement, Mr. Buchanan's  
21 organization.

22 So we have with four of the shop crafts specific

1 agreement on the transfer of the work to Charlotte, and we  
2 don't have that in the remaining couple of shop craft  
3 implementing agreements, although we have agreements.

4 We have with the machinists in side letter number  
5 one, dated October 10th, 1998. This is included in Exhibit  
6 E, which is E-15. It's a little less than halfway through.  
7 It's an NSR side letter, and it's the first of several, and  
8 it's titled side letter number one. There's a provision  
9 that says --

10 I'm going to withdraw that. The machinists'  
11 letter does not pertain to this issue. I'll use it later in  
12 my response to Joe Duncan's piece of yesterday, because the  
13 letter in question does not pertain to the shop.

14 So we have the four provisions in four  
15 implementing agreements that specifically contemplate and  
16 authorize the transfer of work. The question is, how do we  
17 arrange with the union at the sending end and the various  
18 unions at the receiving end an agreement for the terms by  
19 which employees will be offered employment and given  
20 employment? And of necessity, how will they be placed on  
21 seniority rosters at the receiving location? That, we  
22 submit, is the nub of the concern that the unions -- some or

1 all of the shop craft unions are raising with regard to the  
2 merits of the proposal on the transfer.

3 But that's what's going on that leads to the  
4 involvement of so many unions on one question.

5 Now the question or what's being hypothesized here  
6 is that somehow NSR could have had additional negotiations  
7 with the shop crafts, notwithstanding that we had no  
8 agreement and were not in a position to have, because we  
9 don't have one, an agreement with BMWWE over the Conrail  
10 transaction. In fact, when BMWWE stopped meeting with us,  
11 which occurred when we invoked arbitration, how could we  
12 have had any negotiations with the unions at the receiving  
13 end?

14 The practical fact of it is that the implementing  
15 agreement is going to have to have everybody on it. All the  
16 parties have to be on the agreement. BMWWE has lots of -- I  
17 mean, a lot of issues, as we all know involved in this,  
18 involving the more than 3,000 people. For whatever reason,  
19 it did not emerge from the negotiations that we assuredly  
20 had with BMWWE that there was a resolution in sight of the  
21 transfer issue to Charlotte.

22 Absent BMWWE's participation, there's nothing more

1 that could have been done in terms of with the shop crafts.  
2 In terms of, did we explain to them what the transfer was  
3 about and what our proposal was, yes, we did. There was a  
4 meeting. It did involve many -- all of the shop crafts.  
5 Yes, we explained what the proposal was. Yes, we were  
6 responsive to questions about what the proposal was.

7           Were we engaged in -- and BMW was in the meeting.  
8 Did that at that first meeting present an opportunity for  
9 reaching an agreement? That would have been unlikely I  
10 suppose. But BMW did not make progress with us toward an  
11 agreement at any later date.

12           Now the shop crafts are advancing the proposition  
13 that this arbitration should be broken down into a series of  
14 proceedings. That, as I understand the position being  
15 taken, first we should have what they call a master  
16 agreement or some overall agreement with the BMW. Then we  
17 should turn to the shop crafts and negotiate with them the  
18 means by which the employees from Canton would be integrated  
19 into the seniority structure at Charlotte.

20           With all respect, that's not how New York Dock  
21 works. New York Dock, Section 4 is very clear that all the  
22 unions will participate. I'm not reading it; I'm referring

1 to it. We have to give notice to all the employees and  
2 their organizations. All the unions, all the parties have  
3 to participate in the implementing agreement. These  
4 principles are absolutely well-established.

5 I suppose if we were leaving the Canton shop open  
6 and operating and not closing it yet and we were going to  
7 close it at some future date or didn't know if we were going  
8 to close it, then we wouldn't need an implementing agreement  
9 as part of this transaction with the shop crafts at  
10 Charlotte to govern what to do when the time came.

11 As this referee knows, there are plenty of  
12 decisions by the ICC, the Surface Transportation Board, and  
13 the courts that make very clear that carriers who have  
14 participated in an authorized transaction may at a later  
15 date work out further ways to realize the economies and  
16 efficiencies of the original authorization and make further  
17 changes to their operations, and have a New York Dock  
18 proceeding. Many New York Dock proceedings have been held  
19 years after the initial approval and after the initial  
20 implementing agreements.

21 So surely, we could do this years from now. But  
22 that's not the plan. The plan is to do this as part of the

1 initial acquisition of operation over Conrail lines and  
2 we're engaged now in the reconfiguration and enhancement of  
3 the shop facilities at the receiving end with the  
4 expectation that very soon after Day One that the Canton  
5 shop will be closed and the employees will be offered their  
6 transfer opportunity.

7           So this is all part of the same transaction. It's  
8 all part of what we've put in our New York Dock notice. The  
9 New York Dock notice defines the jurisdiction of the  
10 subsequent proceeding.

11           Now it was suggested, I think, that the -- forgive  
12 me if the suggestion wasn't made this way. I think what's  
13 being suggested is the appointment of the referee here is  
14 invalid or illegitimate because of a lack of opportunity to  
15 participate in the selection of the referee. If that no  
16 longer is being pressed, I hope someone will say that to me.  
17 But that seems to be your position, certainly as reflected  
18 in correspondence that's in the record. Again, I'm not sure  
19 whether Mr. Buchanan is pursuing the same argument here  
20 today.

21           MR. WOLLY: Let me clarify that for you so that  
22 you don't spend too much time on it. The fact is that our

1 position is we never should have reached the point of having  
2 to select a referee in this matter because of the invalidity  
3 of your invocation of arbitration. What transpired  
4 following the invocation of arbitration was defective, but  
5 we never would have reached that point had the carrier  
6 negotiated in the manner that it's required to do under  
7 Section 4. We're not challenging Mr. Fredenberger's  
8 credentials. We're not challenging the fact that the  
9 mediation board gave him an appointment here.

10 MR. BERLIN: There were arguments made, Mike, that  
11 -- positions were taken in correspondence that the shop  
12 crafts, or some of them, were not afforded an adequate  
13 opportunity to participate in the selection of the referee,  
14 which did not result in the selection of a referee. If  
15 that's an issue, I want to address it. If it's not an  
16 issue, that specific question, then I won't have to deal  
17 with it. But I need to know whether that's still an issue  
18 before us.

19 MR. BUCHANAN: Yes, that is an issue.

20 MR. WOLLY: Yes, it is.

21 MR. BERLIN: All right, the specific issue as I  
22 understand it is that when a phone call was put together in

1 order to -- after the invocation of arbitration in order to  
2 afford the participating parties an opportunity to attempt  
3 to select a referee as contemplated by Section 4 of New York  
4 Dock, some of the shop crafts didn't participate in the  
5 phone call, and one or more of them may contend that they  
6 didn't have an adequate opportunity to do so.

7 In fact, as we said in our prehearing submission  
8 in Part 1 where we addressed this on behalf of all the  
9 carriers, there was a conference call. Some organizations  
10 did not participate. Some did. More than just BMW  
11 participated. Some shop crafts did. During the phone call,  
12 the BMW representative said in essentially these terms,  
13 that BMW would not propose any referee candidate, nor would  
14 it agree to any referees proposed by the other parties.

15 Now it takes all of the parties, all the shop  
16 crafts, BMW, and all the carriers to agree on a referee.  
17 And if there's not agreement, we have to go to the mediation  
18 board for the appointment of a referee. When one of the  
19 parties says it's not going to agree to any referee  
20 suggested by any of the other parties, there is no prospect  
21 that there will be a referee selected by agreement. At that  
22 point, it doesn't matter whether any of the other parties

1 are there or for what reason. Although it was not our  
2 intention to precipitate such an eventuality, that's in fact  
3 what happened in the phone call.

4 Now I don't understand the substance of the  
5 argument that says, I wasn't in the conversation -- for  
6 someone to say, I wasn't in the conversation and therefore  
7 the failure of the other parties to select a referee when  
8 one of the parties refused to agree to any suggestion,  
9 renders the subsequent appointment by the mediation board of  
10 a referee invalid. I simply do not understand that.

11 Would that we could have selected one, we all  
12 favor the selection of referees by agreement and that in  
13 fact has been done in prior arbitration in this proceeding.  
14 But I think that the argument dissolves into the subsequent  
15 process or history of the case. We had to go to the  
16 mediation board. We did. The mediation board appointed  
17 you. Your appointment is effective and it's valid under New  
18 York Dock.

19 Now could we have done anything differently with  
20 the shop crafts without BMW's participation in the  
21 implementing agreement? I don't see how. Could we have  
22 given the shop crafts more information about the

1 transaction? Our position is that we were responsive when  
2 asked. What we're talking about here is bringing people  
3 into the shop at Charlotte. We don't know the identities of  
4 the people who will be placed into particular positions to  
5 be created yet. I don't know quite what it is that the shop  
6 crafts would have in mind.

7           The general tenor, anticipating some of the merits  
8 discussion, the general tenor is that the carriers are  
9 proposing to dovetail. To take the 56 employees who will be  
10 offered positions and accord them seniority recognition in  
11 the appropriate -- we'll create positions in the appropriate  
12 shop crafts at Charlotte, as is the carriers' prerogative to  
13 create positions by craft.

14           We'll offer the positions to individuals from  
15 Canton, and our proposal -- this is the part that now is  
16 before the referee. Our proposal is to dovetail them into  
17 each craft's seniority roster giving recognition to their  
18 repairman's seniority at Canton. Not seniority in other  
19 classifications, but the seniority as repairman which shows  
20 on the Canton roster on Conrail.

21           Some or all of the shop crafts expressed  
22 opposition to that, sometimes going so far as to say that

1 the people at Canton, who have worked as long as they  
2 individually have, should be brought in at the bottom of the  
3 seniority rosters in the crafts at Charlotte. The other  
4 tenor of the objection is that there are qualifications  
5 issues or some other interest that the specific union may  
6 have in determining whether the carrier has picked the right  
7 person, has offered the job to a qualified person or not.

8           So there is a dispute over what to do in  
9 recognition of seniority. Maybe there's a dispute over  
10 **whether** the carrier's entitled to fill jobs the way the  
11 carrier fills jobs. I'm not sure what the opening for any  
12 further negotiation is that was supposed to have occurred  
13 unilaterally with each of the unions, again, not involving  
14 BMW since we have no agreement with BMW.

15           In terms of the sequential nature of the  
16 proceeding that's being suggested. That, obviously, is  
17 untenable in view of the already protracted nature of the  
18 negotiation and arbitration process, the 90-day period  
19 contemplated in Section 4, and the impending Day One  
20 currently scheduled for March 1st.

21           There's no reason why this issue can't be resolved  
22 here. It could have been resolved in negotiations to the

1 same extent, but no more than, all the other issues  
2 involving BMW-represented employees could have been  
3 negotiations. But they weren't settled. Here we are. It's  
4 an issue affecting something under 2 percent of the  
5 employees. They're important. We're providing for them.  
6 BMW will probably -- I assume is going to speak on behalf  
7 of the interests of the employees in regard to the merits of  
8 the shop craft coordination.

9 I should point out that BMW in its proposal  
10 concurs, expresses concurrence in the idea of transferring  
11 employees, offering employees an opportunity to transfer to  
12 Charlotte from Canton, and to be represented by the shop  
13 crafts there. BMW is not asserting in this proceeding a  
14 right to follow along as their representative.

15 NSR and BMW have a difference as to which  
16 employees and on what terms they should be offered  
17 employment at Charlotte. But there's no current dispute as  
18 we understand it over the propriety in the context of the  
19 Conrail transaction about transferring the work and  
20 employees.

21 We don't have the luxury of time to do the rest of  
22 this case, have you hammer out for us, absent an agreement

1 that hasn't been reached, an overall way of dealing with the  
2 other 98 percent of the BMW-represented employees, and then  
3 turn to the integration at this one location and still make  
4 it by March 1st. And in view of the compressed timetable  
5 contemplated in New York Dock, we think this issue is  
6 handleable.

7           There's a simple question of seniority integration  
8 before you. It's no different from seniority integration  
9 issues that have been held in many other cases. We think in  
10 good faith the parties can make their presentations and you  
11 can make the decision.

12           MR. BUCHANAN: The carrier just said that they  
13 could not simply transfer -- I'm speaking of the maintenance  
14 of way employees at Canton, because we have a place for  
15 them, and I agree with that statement. That's what our  
16 issue over the need to negotiate over this matter. That is  
17 the important part of needing to have a reasonable  
18 implementing agreement.

19           You raised the issue of the -- probably out of our  
20 submission over our objections to the way they handled the  
21 notice to the general chairman, that we were going to have a  
22 conference call to select the arbitrator. I think that

1 issue is sort of behind us, because as we establish the  
2 hearing schedule, it did slip five days or seven days or  
3 whatever. So that issue of saying that he's sitting  
4 improperly or that we object to the way it was handled,  
5 we're willing to let that go by.

6 But the issue that worries the shop craft unions  
7 is, is this going to be the accepted means of conducting  
8 business? Are they going to be able to send a fax into a  
9 vacant office the day before the conference call and say,  
10 we're going to have a call and if you're not on the call,  
11 we're going to go to arbitration, we're going to seek  
12 arbitration. I mean, for the sheet metal workers, we do  
13 want a ruling on whether that's sufficient, whether that  
14 notice is acceptable, if that's an acceptable means.

15 But as far as the five-day notice, we recognize  
16 that after that conference call there was a little bit of  
17 time and that's -- but we certainly object to the way the  
18 matter was handled and I think it was totally improper.

19 MR. DUNCAN: I would like to state something on  
20 behalf of the machinists and the other shop crafts. In our  
21 submission, under the position of the organizations we  
22 stated, it is the position of the organizations that the

1 disputes are not ripe for adjudication due to the fact the  
2 organizations attended only one negotiating session, that  
3 one being on September 24th, 1998. After that meeting, the  
4 organizations were never contacted, notified or requested to  
5 attend any additional meetings or negotiations.

6 Then they talk about the notices, and the one that  
7 Mr. Buchanan is real concerned about is identified as  
8 Employees' Exhibit J. I will point out that on the top of  
9 that exhibit it shows that that notice was faxed from the NS  
10 labor relations department on October 29th at 12:57 p.m. to  
11 set up the conference call for the next day at 2:00 p.m. So  
12 not only was Mr. Buchanan, several was out of their office.

13 And the carrier in their submission had stated  
14 that several shop craft organizations participated. The  
15 truth is that the machinists and the carmen were the only  
16 two that had a representative in that conference call.

17 As far as the objections, if you'll remember, Mr.  
18 Fredenberger, is on the date that we had the conference of  
19 setting this arbitration up I was objecting at that time due  
20 to the fact of not a sufficient amount of negotiations, the  
21 mixing of the disputes between the maintenance of way and  
22 the shop crafts. I would like to say that Employees'

1 Exhibit K was a letter dated November 4th from myself which  
2 confirmed the conference call to choose, to allegedly choose  
3 the referee anyway.

4           And I confirmed at the beginning that on the phone  
5 conversation that I stated objections for the record  
6 pertaining to the phone conference, and again reiterated  
7 that we'd only had one meeting. We'd never been contacted  
8 any more for any additional meetings. And went on to state  
9 that basically that there were two or three different  
10 issues, and one of them is the fact that they had an issue  
11 with the maintenance of way, and that was to reach an  
12 implementing agreement like all the other crafts that  
13 they're citing in their agreements. We all reached  
14 agreements. They could not reach it with the maintenance of  
15 way.

16           The Canton and Charlotte, as I stated in that  
17 phone conversation and stated in my letter dated  
18 November 4th, the Canton to Charlotte transaction is  
19 something that's totally separate from the dispute with the  
20 maintenance of way. It's a transaction off of this, and it  
21 really is not ripe for adjudication because we never really  
22 got into negotiations to try to solve that issue. I told

1 the carriers, and even in this letter told them that after  
2 they'd reached or adjudicated or arbitrated an agreement  
3 with the maintenance of way, then contact us at that point  
4 and we will work on a transaction of trying to complete an  
5 agreement for there.

6 Also, I would like to state that they keep talking  
7 about the March 1 date. That may be, as it was discussed  
8 yesterday, may be the date that they want to begin this Day  
9 One of operation. But I can tell you now, they are not  
10 planning on moving the work in Charlotte, North Carolina on  
11 March 1 because they don't have the facilities completed. I  
12 was there two weeks ago, and you've got steel standing up  
13 with mud under it right now in a lot of areas where the shop  
14 is going to be. They are working, but this does not have to  
15 be done, and cannot, I don't think, be done by March 1st.

16 And I agree with the IBEW and the sheet metal  
17 workers that we did not have sufficient negotiations. It  
18 was just basically, here it is, take it, now we're going to  
19 arbitration. And I join them in their protest.

20 MR. BERLIN: Mr. Frederberger, I have something I  
21 need to add into the record.

22 MR. FREDENBERGER: Sure.

1           MR. BERLIN: I did say some. I didn't say  
2 several, Joe. And you were on the call to attempt to select  
3 a referee, so you were able to respond on behalf of your  
4 organization, which we appreciated. I was not on the call.  
5 I wasn't involved in that.

6           But a couple of points.

7           MR. WOLLY: Would you like to wait until I give  
8 the IBEW's conclusion?

9           MR. FREDENBERGER: I'm sorry, I thought that you--

10          MR. BERLIN: I thought you were done. I did not  
11 realize you --

12          MR. WOLLY: No, I wasn't. I wanted to respond to  
13 what you said also. Out of deference and rather than going  
14 back and forth again --

15          MR. FREDENBERGER: Yes, let's try to keep it a  
16 little more organized.

17          MR. BERLIN: Certainly.

18          MR. FREDENBERGER: I shared your view that I  
19 thought they were through, too. But that's a misimpression  
20 on both of our parts. I apologize to Mr. Wolly for that.

21          MR. WOLLY: What Mr. Berlin has done in his  
22 presentation is confirm to you that what we're talking about

1 here this morning is a discrete group of employees, separate  
2 and apart from all of the other controversies that the  
3 carrier is involved in with the Brotherhood of Maintenance  
4 of Way Employes. In fact, the issues that are associated  
5 with this particular transfer raise different concerns on  
6 the part of the BMWE, as you can see from their submission,  
7 and raise separate concerns by these organizations against  
8 one of the carriers and not the other.

9           It is a separate kind of transaction, albeit  
10 within the broad authority that the STB has given the  
11 carriers. And it is the kind of transaction that had there  
12 been triparty negotiations very focused on this particular  
13 issue you likely wouldn't be here today.

14           What they want to do is they want you to put their  
15 convenience ahead of their bargaining obligations under New  
16 York Dock. They may not have the luxury of time simply  
17 because they've created a self-imposed deadline for  
18 themselves. As Mr. Duncan has said, this is not a  
19 transaction that's looking at the same kind of deadline.  
20 They just want to set a deadline. They want you to hie to  
21 their deadline.

22           You don't have to do that. You do have

1 requirements, timing requirements that are set by New York  
2 Dock. But in fact those could have been resolved and gone  
3 through as to this particular transaction involving these  
4 particular people and not become enmeshed in the broad  
5 controversies that you've already spent three days listening  
6 to, such that it's our position that what they have done is  
7 try to take this transaction with a group of employees who  
8 obviously are very important to all of the organizations  
9 sitting here and wash them in with a broad-based  
10 implementing agreement with the BMW on matters that have no  
11 interest to anyone else.

12           So again, we urge you to find that they have not  
13 complied with their bargaining obligations as to this aspect  
14 of what they're trying to do, and consequently you should  
15 remand the parties back to the bargaining table and require  
16 the exhaustion of that process before any arbitration  
17 proceeds.

18           MR. FREDENBERGER: Is this side at this point  
19 through with their arguments on the jurisdictional point?

20           [Nodding affirmatively.]

21           MR. FREDENBERGER: Mr. Berlin?

22           MR. BERLIN: Thank you. I am authorized to say

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1 that the current planning would call for the closure of  
2 Canton and the transfer of work into Charlotte in March.  
3 Not on March 1, not Day One. But that the current plan  
4 would call for that schedule to be met; that is, the  
5 transfer of work would happen in March. It is expected that  
6 Charlotte will be ready to receive work.

7 MR. FREDENBERGER: Sometime in March?

8 MR. BERLIN: That's the anticipation.

9 MR. FREDENBERGER: 1999?

10 MR. BERLIN: That's right. Mr. Wolly is, with all  
11 due respect, some of the shop crafts at least may be  
12 perceiving this aspect of the overall Conrail transaction  
13 without a complete understanding or without reflecting a  
14 complete understanding of what's going on at the sending  
15 end. At Canton now there are just about -- I think it's  
16 approximately but maybe it's exactly 98 employees working,  
17 BMW-represented employees working in the shop. There are  
18 179 people on the shop roster.

19 It is estimated by us that of the people who are  
20 working at Canton, the 98 people, 95 percent of them have  
21 seniority outside the job; BMW seniority on Conrail outside  
22 the shop. When we do the Conrail transaction, when we do

1 Day One and divide up the 3,000-and-some employee workforce  
2 of Conrail, the maintenance of way workers, when we divide  
3 that up we are going to cut through the seniority rankings  
4 that these shop employees have outside the shop.

5 We also, as part of this unitary transaction -- it  
6 doesn't have to all occur on the same day, but it's all one  
7 division -- we are going to separate, if you will, the CSXT-  
8 destined work from the NSR-destined work. All that's going  
9 to happen on or immediately after, as involves the shop, Day  
10 One. And the employees, whether through whatever means of  
11 allocation occurs with regards to maintenance of way  
12 employees, the employees are going to be affected in the  
13 various aspects of their relationship with Conrail.

14 Canton is not near a shared assets area and my  
15 assumption is that the employees involved are unlikely to be  
16 affected by the shared assets, which is where Conrail is  
17 going to continue to operate. There may well be exceptions.  
18 I don't know whether some employees may have seniority in  
19 areas that could conceivably implicate the shared assets.  
20 But as a general matter, what we're talking about are people  
21 who work in an area that's being divided for operational  
22 purposes between CSX and NS, and that's going to occur on

1 Day One.

2 We haven't been able to conceive of a method that  
3 would rationally say, we'll just hold Canton up and we won't  
4 make any disposition for the employees at Canton,  
5 notwithstanding that all the other maintenance of way  
6 opportunities that might affect them are being divided, and  
7 notwithstanding that we know and we told the Surface  
8 Transportation Board, and the Surface Transportation Board  
9 authorized us to do it, to divide up the roadway equipment  
10 repair work.

11 So for anyone to suggest, this is a separate  
12 transaction, or more immediately, to suggest that I've  
13 described, is just mistaken. We are faced with a situation  
14 where we have to negotiate, or failing that -- and we failed  
15 that -- therefore arbitrate an overall implementing  
16 agreement for the employees who do maintenance of way work  
17 for Conrail. That's the job at issue -- and the other  
18 carriers. That's the job at issue here.

19 We did our best in negotiating the shop craft  
20 implementing agreements to allow for, make specific  
21 allowance for the transfer of work from Canton to Charlotte  
22 and we did that with the four agreements I mentioned.

1           There's no way that any of the arrangements here  
2 could be done without BMW's participation. There is no way  
3 that BMW's participation in the arrangements for the  
4 employees here could be deferred until after the  
5 arrangements for the overall division and operation of  
6 Conrail were taken care of by an implementing agreement for  
7 the maintenance of way craft, because this is part of the  
8 maintenance of way craft on Conrail. Section 4 of New York  
9 Dock requires an implementing agreement, and this is the  
10 time to do it.

11           Now, is it conceivable that more energy or more  
12 manpower could have been devoted to this one particular  
13 attribute of this one of the implementing agreements which  
14 is, as you know, Mr. Referee, one of nearly 20 that need to  
15 be reached overall in this transaction and as to which we've  
16 reached all but this one, the TWU, and the pending BLE  
17 ratification. Is it conceivable that somebody could have  
18 found another day and had another meeting to discuss this at  
19 which, I must say, the likelihood that all the unions, given  
20 BMW's approach to the overall transaction, all of them  
21 might have reached an agreement on that day? Is that even  
22 remotely feasible?

1           But even if it is remotely feasible, we didn't  
2 have the people to do it. We did everything we possibly  
3 could. We regret the fact that the shop crafts may feel  
4 that inadequate attention was spent on the one particular  
5 issue. But New York Dock ultimately boils down to the fact  
6 that if negotiations don't produce an agreement within 30  
7 days, the matter may be referred to arbitration. In fact,  
8 the matter was not referred to arbitration until about 60  
9 days after, a little more than 60 days after service of the  
10 New York Dock notice.

11           We well understand now, given the vehemence of the  
12 objection that's been made, that it is asserted that the  
13 shop crafts feel that some greater effort could have been  
14 made in their direction. To the extent that they feel that,  
15 I'm sorry. The transaction worked out, the processes worked  
16 out so that that was not an available option, in view of the  
17 unlikelihood of success on the merits of making that  
18 agreement especially.

19           Here we are. We say the issue is really not a  
20 very hard issue. There is a point of view I'm sure to be  
21 expressed by BMW as well as the shop crafts as to the means  
22 of seniority integration. We have points we want to raise

1 as to the determination of which employees from Canton are  
2 offered positions in Charlotte, a matter as to which we have  
3 considerable concern. The shop crafts may have additional  
4 things to say -- clearly do -- as to how the employees  
5 should be received into the work in Charlotte.

6 But that's the ordinary work for one of these  
7 arbitrations, and we submit that we can do it. We can make  
8 our cases and you can make the decision.

9 MR. WOLLY: Mr. Arbitrator, with all due respect,  
10 I usually would not come back one more time. But what Mr.  
11 Berlin has just said to you is, we're sorry, we didn't have  
12 enough people to do it. Yet, the carrier would put the onus  
13 on the unions, with virtually no advance notice, to show up  
14 at a meeting that it set the timetable for and say, this  
15 satisfied the requirements of New York Dock bargaining.  
16 They say, maybe if there was a better likelihood of success  
17 we would have assigned somebody to talk to you, but you  
18 know, we're busy folks, and this is a big transaction, and  
19 this is 2 percent versus 98 percent, so consequently, let's  
20 bend the rules.

21 Now we don't think that that's an appropriate  
22 approach for the carriers to have taken. Whether or not

1 they independently determined that there was a likelihood of  
2 success, a small likelihood or a large likelihood, is not  
3 what New York Dock says. New York Dock contemplates that  
4 there will be a good faith bargaining effort that goes on.  
5 In fact, had they spent the time, the likelihood of success  
6 may have been much greater.

7 Now he's telling you after the fact, after he's  
8 here in an arbitration, that looking back, you know, it  
9 probably wouldn't have worked out. That's not where you  
10 have to look. You have to look at, where were they then,  
11 and did they satisfy any obligations?

12 I have nothing more on that. I mean, it just --

13 MR. BERLIN: I didn't say that.

14 MR. WOLLY: It's just such a management holier-  
15 than-thou attitude that is very bothersome in this kind of  
16 situation.

17 MR. BERLIN: Now I thought yesterday was the day  
18 when we were going to be called names sequentially by a  
19 union. I didn't think it would come through union's counsel  
20 today. I didn't say that, Mike.

21 What I think is especially important to recognize,  
22 in the first place, all the shop crafts participated in the

1 meeting. Not one didn't make it. Everybody came.  
2 Discussion was had. I didn't say, boy, if we thought you  
3 could make a deal with you we could have gotten more people  
4 in there. I didn't say that.

5 I said there were a lot of things going on,  
6 resources are thin, BMW had a lot being negotiated with us,  
7 particularly as we can see the way negotiations went up to  
8 and including the selection of the referee, the likelihood  
9 of the success on the merits of that is pretty low. It  
10 would have been pretty low in any event.

11 But I think there's something else to be  
12 mentioned. Not one of these organizations attempted to  
13 discuss with us on its schedule this important aspect of the  
14 coordination; not one. And four of them entered into  
15 agreements that specifically contemplated that this transfer  
16 would occur. Obviously, it was left then to the maintenance  
17 of way craft negotiations and/or arbitration to resolve the  
18 terms of it.

19 Nothing prohibits them from picking up the phone  
20 and calling us and saying, look, we understand you're going  
21 to bring some guys down and make them electricians at  
22 Charlotte; let's talk about how to do that. You know, our

1 guys answer the phone. As a matter of fact, in labor  
2 relations we don't even use voice mail. They have  
3 secretaries who answer the phone and labor relations  
4 officers who answer the phone so we're sure of getting calls  
5 and returning them. At least that's what happens to me when  
6 I call them.

7 I think it's critical here for this not to be  
8 postured as -- I think it was a rhetorical attempt by  
9 counsel. I don't think he really means that's the attitude.  
10 Maybe he does. I think that it's being postured as though  
11 the carrier was sort of dispensing to the organizations at  
12 its whim and convenience.

13 Labor relations, as we all know, goes on on a  
14 daily basis and these representatives are dealing with **this**  
15 carrier all the time at many locations, in person and by  
16 telephone. The extended and continuous relationships foster  
17 and permit and thrive on continually interchange about  
18 issues of mutual importance. And even if an issue isn't  
19 recognized as one of mutual importance but it's important to  
20 one party or the other, we expect and we see that that party  
21 will raise the issue with the other because it's important  
22 to them.

1           Sure, there's a lot going on, but nothing  
2 prevented somebody from saying that what I've said about the  
3 electricians, or machinists, or firemen and oilers, or  
4 anybody else. And what we at least so far haven't been  
5 accused of is refusing to talk when asked. What's been said  
6 to us is, you didn't schedule another meeting. You didn't  
7 tell us that you wanted to have another meeting and try to  
8 round up seven or eight parties so that we can get together  
9 and once again go at the same question.

10           You know, if we were dealing with something that  
11 was -- I don't make any apology for this. This was done in  
12 the best way that we thought we could. I can assure you  
13 we'd have responded to any further overtures from any of the  
14 parties. Individual discussions would certainly have been  
15 had. If one union had called and said, I want to talk to  
16 you about the electricians, I want to talk to you about the  
17 machinists, of course we'd have talked with them. But that  
18 didn't happen.

19           MR. WOLLY: Mr. Arbitrator, you have a record. If  
20 it matters to you whether Mr. Berlin said what he said, you  
21 ordered a transcript here, you can read it. You have a  
22 documented record in support of the shop crafts' position.

1 We don't have anything more to say on this.

2 MR. FREDENBERGER: You want a ruling at this time?

3 MR. WOLLY: We would appreciate that.

4 MR. FREDENBERGER: I understand. I have a  
5 question of the parties. I've read a lot -- I'll be quite  
6 frank with you, I've read so much of the material that I'm  
7 beginning to slide through them in my mind's eye and I can't  
8 focus very well any more on any particulars. Correct me if  
9 I'm wrong, but has the -- my impression is the STB has not  
10 spoken authoritatively with respect to this issue as to what  
11 extent in any particular manner negotiations are required as  
12 a jurisdictional predicate to arbitration under Article I,  
13 Section 4?

14 MR. BERLIN: I am aware of no STB or ICC decision  
15 that --

16 MR. FREDENBERGER: Deals with that issue?

17 MR. BERLIN: That vacated, reversed, or otherwise  
18 adversely dealt with an arbitration decision on the  
19 question. I am aware of some arbitration awards, at least  
20 one of which I was involved in that dealt with the questions  
21 of whether adequate negotiation opportunities had occurred,  
22 and I'm not aware in any of those --

1 MR. FREDENBERGER: Do I have any of those in the  
2 record?

3 MR. BERLIN: There is a machinist award on  
4 Conrail on the Monongahela in the record in which Referee --

5 MR. FREDENBERGER: You understand what I'm asking.

6 MR. BERLIN: Yes. There's never been award that  
7 I've seen in which a referee refused, dismissed a  
8 proceeding, refused to proceed with an arbitration that I've  
9 ever read on the ground that one party or another contended  
10 that although the requisite periods had passed that somehow  
11 negotiating opportunities should be afforded again.

12 MR. FREDENBERGER: That's just kind of dodging my  
13 question.

14 MR. BERLIN: I'm not trying to.

15 MR. FREDENBERGER: I know you're not trying to  
16 dodge it. I'm not accusing you of --

17 MR. BERLIN: I only know what I know.

18 MR. WOLLY: I think that Mr. Berlin would agree  
19 with me that you have the authority to rule on this  
20 question. And also that he's not aware and I'm not aware of  
21 an arbitrator that has actually ruled on this question.

22 MR. FREDENBERGER: That's my question.

1           MR. BERLIN: That's not true. I think I know of  
2 arbitrators -- I think there's an award in the record. It's  
3 wherever I have my awards.

4           MR. FREDENBERGER: If there's something in the  
5 record, please --

6           MR. BERLIN: It's Exhibit C-8, the machinists  
7 award, Conrail and Monongahela. The arbitrator is Peterson.

8           MR. FREDENBERGER: Bob Peterson?

9           MR. BERLIN: Yes. There was an issue raised there  
10 about whether adequate negotiation opportunities had  
11 occurred.

12           MR. FREDENBERGER: That's what I'm asking, for  
13 some guidance on this issue. What other arbitrators have  
14 said I think is going to be interesting to me at least.

15           MR. BERLIN: On page 12 he said, you know, each  
16 one is dependent on its own facts. It is apparent that the  
17 parties engaged in or had opportunity of negotiation for  
18 almost twice the period of time prescribed by the New York  
19 Dock conditions before one party, the carrier, declared an  
20 impasse. It being apparent -- I'm sorry.

21           It being apparent that the parties engaged in --  
22 before one party, the carrier, declared an impasse. There

1 is no basis to hold there was a violation of Section 4  
2 requirements of the New York Dock conditions that there be  
3 a 30-day period for negotiation of an implementing agreement  
4 before the declaration of an impasse and resort to  
5 arbitration.

6 MR. FREDENBERGER: That's the kind of thing I'm  
7 interested in.

8 MR. BERLIN: That's the one that I know of. I  
9 actually believe I had an Oregon Short Line case with Herb  
10 Marks some years ago in which the issue was raised, and  
11 either not ruled -- it was certainly not granted. The  
12 arbitration proceeded. I don't know if he put it in his  
13 award and I don't know if I can find the award. But that's  
14 the only other case I've had experience in where it's been  
15 raised.

16 The fact of it is that New York Dock sets out  
17 timetables. We submit the only jurisdictional prerequisite  
18 is the service of the notice. We do agree that a referee  
19 can review a notice and determine whether it sets the  
20 predicate for the subsequent proceeding. Here we have an  
21 uncontested notice. The rest of it is referral to the  
22 calendar.

1           Now we didn't let 30 days go by without doing  
2 anything. Frankly, I submit that if that had occurred and  
3 we had simply done nothing, then New York Dock would say we  
4 can go ahead. But we didn't do that.

5           MR. WOLLY: What that award tells you is that,  
6 one, the arbitrator has to view the satisfaction of the  
7 obligation on the particulars that are presented on a case  
8 by case basis. Two, that in that case situation there was  
9 in fact significant negotiation as compared to what happened  
10 here.

11           And that, three, there has not been a case  
12 presented to an arbitrator that has facts such as this that  
13 has in fact been resolved one way or the other. At least  
14 not an arbitrator who has published an award that is  
15 available to this record.

16           So if you look at the Peterson award that he's  
17 referring to, it actually forms a basis for you to sustain  
18 the shop craft position here as opposed to the carriers'  
19 position.

20           MR. BERLIN: In the first place, it doesn't stand  
21 for that. The three of us are lawyers and we know that when  
22 a referee responds to an argument and says, in that case I

1 assume, an argument that inadequate negotiations had been  
2 had because that's how he seems to describe it, we know that  
3 when a referee says, adequate opportunity was had, there  
4 being more than twice or nearly twice the New York Dock  
5 period, then the carrier was not at fault in declaring an  
6 impasse. We know how that occurs. He's saying, on the  
7 facts, I'm not going to reach that issue.

8 He also said, I'm denying the request. I don't  
9 care whether you don't reach the issue or deny the request,  
10 but I submit to you that it's not a question of  
11 jurisdiction. That our conduct, in any event, was perfectly  
12 compatible with New York Dock and certainly understandable  
13 in the circumstances of this transaction.

14 One last factual matter because I keep getting  
15 prompted. When we had the joint meeting on September 24th,  
16 the shop crafts caucused and they came back after we'd made  
17 our presentation and explained the proposal, and they said  
18 it was a difficult issue and they could not come up with a  
19 unified position and they'd have to work among themselves to  
20 resolve the position. All right.

21 We didn't hear a request to have another meeting  
22 until after we invoked arbitration. And the invocation of

1 arbitration was more than 60 days after the New York Dock  
2 notice.

3 MR. WOLLY: Mr. Arbitrator, might I suggest that  
4 since Mr. Berlin has raised an award in response to your  
5 question, and since you've indicated you may not have had  
6 the opportunity to look at that award, that you recess this  
7 hearing for 15 minutes and look at that exhibit to see if it  
8 gives you any guidance before you rule, and then return.

9 MR. FREDENBERGER: I'm going to do something else.  
10 I'm going to take this ruling under advisement. I'm going  
11 to make it as a ruling prior to reaching -- assuming I rule  
12 in your favor on it, I won't reach the merits. Assuming I  
13 don't, I will reach the merits. But I'm not going to make a  
14 ruling now without a chance to seriously consider everything  
15 that's been argued orally, and the application, if any, of  
16 the award that has been cited.

17 Again, it's an award which may or may not be  
18 persuasive, because I haven't thoroughly reviewed it. I  
19 think it's best to do that because, considering the  
20 economies of time, the press of time, the fact that the shop  
21 crafts are here and they're able to present the arguments on  
22 the merits. Even if I don't reach them, at least we will

1 have a completed record in that respect.

2 So I'm going to defer ruling on that. I promise  
3 you that I will make that ruling and analyze it to see if it  
4 is jurisdictional. Whether jurisdiction or not, I will make  
5 it as a predicate or a condition precedent to reaching the  
6 merits of the shop crafts' case.

7 MR. WOLLY: Could you, just so the record is  
8 clear, could you identify again what exhibit that is?

9 MR. BERLIN: Carriers' Exhibit C-9. No, that's  
10 LaRocco -- C-8, Peterson.

11 MR. WOLLY: Thank you.

12 MR. JOHNSON: Mr. Arbitrator, I would just note  
13 though, I think this ruling or this issue you all have been  
14 debating is more narrow though than just the entire shop  
15 crafts' class since, again, it does not affect CSXT.

16 MR. FREDENBERGER: That may well be. Yes, I  
17 understand this is in reference only to the shop crafts'  
18 dispute with NS and their particular facts surrounding their  
19 negotiations.

20 Can we move to the merits now?

21 MR. BERLIN: Can we have a short break?

22 MR. FREDENBERGER: Yes.

1 [Recess.]

2 MR. FREDENBERGER: We'll be in order. At this  
3 point, the ruling on jurisdiction having been deferred to a  
4 time when the decision will be written, the time has come  
5 for presentation of, or hearing of the shop crafts dispute  
6 on its merits. Mr. Berlin, I understand you're prepared to  
7 move ahead at this time with that issue?

8 MR. BERLIN: Yes, I am. Thank you.

9 I'm speaking for NSR's shop transfer issues here.  
10 The Canton shop, as I indicated earlier today, to be closed  
11 soon after Day One, the work transferred to both CSXT and  
12 NSR. As I mentioned earlier, the employees who work at  
13 Canton are BMW-represented. There are 179 names on the  
14 roster, approximately 98 working as of today at the shop. I  
15 think at the time of our submission we said -- I'm not sure  
16 we gave a number. The figures now are approximately 98  
17 working. Almost all of them have **seniority** on BMW rosters  
18 outside the shop.

19 The carriers envision that at the same time both  
20 CSXT and NSR will bulletin positions at their own shop  
21 facilities for individuals working at Canton. The proposal  
22 that NSR advances, and it's in our aspect of the proposed

1 implementing agreement, Exhibit A-1, is that the employees  
2 who are doing the work at Canton ought to have an  
3 opportunity to follow their work to Charlotte. We're going  
4 to set up 56 positions at Charlotte in the shop crafts and  
5 our proposal is to offer positions to 56 employees at  
6 Canton.

7 I'd like to anticipate an issue. There is a  
8 difference of opinion or a proposal between NSR and BMWE,  
9 which now represents the people, is that BMWE as we  
10 understand it would have us bulletin the positions at  
11 Charlotte to all the people who are on the roster at Canton.  
12 That is to say, the 56 jobs to fill, but that all the  
13 people, approximately 179 on the roster would have an  
14 opportunity to bid on the positions, notwithstanding whether  
15 they're working in the shop at Canton now or elsewhere or on  
16 furlough, haven't worked for a while. Whatever may be their  
17 status, everybody on the roster would have the opportunity  
18 to bid.

19 Our position is an active employee working at the  
20 shop ought to have the opportunity to follow his work, and  
21 that that's the extent of the opportunity that ought to be  
22 offered.

1           The carrier, NSR, in keeping with its accustomed  
2 practice, will make decisions as to the qualifications of  
3 the bidders for the positions at Charlotte according to the  
4 position bid for, depending on which craft it is. Some of  
5 the employees at Canton will have had more experience  
6 working on matters that are on NSR, machinists, others  
7 working in areas that are covered by the electrical workers,  
8 and so forth. Some of the employees will have greater  
9 qualifications in one area than in another, and NSR would  
10 make the determination as to the **adequacy** of the  
11 qualifications of the employee for the position that's been  
12 bulletined at Charlotte.

13           NSR would accept qualified bidders for the  
14 positions in question, move them to Charlotte -- that's a  
15 New York Dock relocation and that's compensated. And our  
16 proposal is to dovetail each of the transferred employees  
17 into the roster for the corresponding craft, or the craft  
18 that controls the work in question for the job that the  
19 employee is placed in.

20           To dovetail that employee into the roster using as  
21 a date the employee's repairman date at Canton. That's the  
22 date that governs the work the employee is now doing at

1 Canton. That may not be the earliest maintenance of way  
2 date or the earliest employment date on Conrail. Somebody  
3 could have gone to Canton from being a track laborer or  
4 something, or a machine operator, or something in another  
5 classification. But we'd use the repairman date.

6 We understand the shop crafts intend to make a  
7 presentation today -- it may differ from one craft -- it  
8 will differ, as we understand it, from one craft to another,  
9 or at least there are a couple of competing points of view  
10 among the shop crafts as to how this seniority integration  
11 should occur. I think everyone agrees there is a seniority  
12 integration to do. There may be a proposal, there will be a  
13 proposal or more than one that dovetailing is not  
14 appropriate.

15 Our understanding also is that BMW's position as  
16 to seniority integration -- and of course, they will not  
17 represent the employees at Charlotte, is also that a  
18 dovetail is the appropriate approach to handling the  
19 seniority. BMW in its implementing agreement proposal,  
20 which is their Exhibit 20, agrees to the transfer of the  
21 work and the employees. Also as I've said, apparently  
22 agrees to a dovetail at Charlotte.

1           We do believe there is a difference between our  
2 proposal and BMW's in terms of which employees at Canton  
3 will have the opportunity to bid on bulletined positions at  
4 Charlotte. We describe our understanding of the BMW  
5 position and commented on it in my letter of December 11th  
6 to Don Griffin which has previously been submitted to you  
7 and taken into the record.

8           I do not wish to belabor the same points that we  
9 made in either our opening presentation and our submission,  
10 and I would like to refer the referee to carriers'  
11 submission Part 2. You don't need to look at it now, I just  
12 want to give you the page references. Carriers' submission  
13 Part 2 beginning at page 57. That's the NSR book. Page 57  
14 is where we start talking about the consolidation of roadway  
15 equipment repair work, and that runs through page 63 and  
16 expresses in more detail than I will do today how we're  
17 going to make the positions available to employees at  
18 Canton, what their choices are.

19           For example, one thing I want to point out is that  
20 employees at Canton who are unable to follow their work to  
21 either Charlotte or CSXT's own shop, which also does figure  
22 in the division of the Canton work, the employees who are

1 left over at Canton, to the extent there are any, are  
2 allocated to NSR under our overall proposal as maintenance  
3 of way employees.

4           The difference that we seem to have with BMWWE on  
5 the terms by which we'll offer Charlotte positions to Canton  
6 employees is that BMWWE would have us offer the positions,  
7 bulletin the positions to all the employees on the roster  
8 affecting Canton. That's 179 employees, even though in the  
9 shop there are only 98 working. I know I'll be corrected if  
10 I misspeak, so I'm being careful, as I always try to be.

11           If it is thus part of the BMWWE proposal that if an  
12 employee who is not working now and on furlough, let us say,  
13 and perhaps has been on furlough for years -- has not worked  
14 for years but is still on the roster, for whatever reason --  
15 or an employee who is on the roster but is not working in  
16 Canton and not working in any position covered by that  
17 roster, but is working on another maintenance of way job  
18 somewhere else on Conrail but still maintaining his Canton  
19 roster position as he would.

20           It's BMWWE's position that all of those employees  
21 in those categories that I just mentioned would have the  
22 opportunity to bid on jobs at Charlotte. There is a

1 consequence to the way BMW's proposal works because we may  
2 not elect to accept one of those other people to Charlotte.  
3 We may conclude he's not qualified for a position, any  
4 position. And I'm going to deal with this later. The way  
5 BMW's proposal works in general, if an employee who is  
6 given an opportunity to bid on position, is unable to obtain  
7 one, he goes into something called a furlough list and he  
8 obtains New York Dock protection.

9           But we'll put it another way and deal with another  
10 aspect of it. If the employee is senior to an employee at  
11 the Canton shop -- say this employee is exercising  
12 maintenance of way seniority somewhere else, we'd be  
13 required to relocate him, a furloughed or an employee  
14 working somewhere else, to Charlotte as part of accepting  
15 his bid, and find ourselves with employees at Canton who are  
16 experienced shop workers who we can't use.

17           It is the effect -- and I'm going to want to  
18 respond when Mr. Griffin explains in more detail what all  
19 this means. It appears that the effect of this, of BMW's  
20 approach is to expand the universe of Canton-related people,  
21 however distantly Canton-related people, from the people who  
22 are working there now to all the people who have rights to

1 work there in some circumstance, and to impose on NSR a  
2 burden of relocation and protection for the extent of the  
3 whole list.

4           Again, I'll want to deal with this in more detail  
5 when I hear exactly what it is that we've said that is not  
6 consistent with BMW's own view with a special reference to  
7 my letter of December 11th, if any.

8           Now I would like at this point to put a bunch of  
9 paper into the record, because this is an issue that wasn't  
10 available to us at the time of the submission. As you know,  
11 we filed our submission, then we received BMW's. BMW  
12 raises the question of whether furloughed employees should  
13 be -- inferentially or implicitly the issue is raised as to  
14 whether furloughed employees ought to be accorded  
15 recognition as part of this New York Dock transfer of work  
16 process.

17           So we did a little research and found several  
18 awards which address the -- I didn't find any of yours. I  
19 don't know if you've ever addressed the issue. If I found  
20 that you had, it would have simplified what I'm doing today.

21           MR. FREDENBERGER: My recollection is that I have,  
22 but I couldn't tell what I did.

1           MR. BERLIN: We'll conduct an immediate search  
2 when we're back at the office. I have some awards I want to  
3 put in that uniformly reject the proposition that employees  
4 on furlough status are affected by a New York Dock  
5 transaction at the time, and therefore, rejected the  
6 proposition that they need to be provided for in a Section 4  
7 implementing agreement providing for transfer opportunities,  
8 or that they could become dismissed or displaced employees  
9 as a result of the transaction.

10           I think in practice we have to distinguish between  
11 somebody who may be unemployed today on a very short term  
12 furlough, perhaps seasonally. I'm not making any suggestion  
13 that people who are on seasonal furlough because a  
14 production gang is cut off now, today, would not be -- have  
15 to be dealt with in the implementing agreement dealing with  
16 a March 1 date. I'm not making that suggestion at all.

17           I'm speaking of people who are on furlough status,  
18 having been there for some time and don't have an immediate  
19 expectation of seasonally returning to work, or in the short  
20 term returning to work. That's an issue I tried to  
21 anticipate briefly in what I said in discussing the  
22 allocation methodology the other day, and I do not wish to

1 raise that as an issue now or suggest that we are attempt to  
2 deny New York Dock status in terms of the implementing  
3 agreement, what it has to cover, to these people who might  
4 go on short term furlough with the gangs cut off, that have  
5 nothing to do with the shop in any event.

6 But as regards the expanded list, there's a point  
7 to be made, because to the extent there are furloughed  
8 people in there, those people would in fact not be affected  
9 by the transaction and ought not to be covered in an  
10 implementing agreement, and could not become dismissed or  
11 displaced. An issue which again we'll focus on more in our  
12 rebuttal when we deal with the similar proposition that BMW  
13 does advance also in its proposal which is that lots of  
14 people who are not working ought to be accorded New York  
15 Dock protection of a particular kind in their proposal.

16 So I have several awards. I'm trying to remember  
17 where -- in Volume C we pick up on the Carriers' Exhibit C  
18 series. The next one would be Exhibit C-24. I did not pre-  
19 mark these. I'll send some around that I've put C-24 on.  
20 This is an award involving United Transportation Union and  
21 Illinois Central, a 1991 award with John LaRocco.

22 The next one I want to circulate is --

1 MR. FREDENBERGER: This is Exhibit C-24?

2 MR. BERLIN: Yes, Carriers' Exhibit C-24.

3 As Carriers' Exhibit C-25 we'd like to introduce  
4 an award involving United Transportation Union and Norfolk &  
5 Western Railway. This is an award by Robert Peterson, 1986.

6 As Exhibit C-26, an award involving the  
7 Brotherhood of Railway Carmen and the Delaware & Hudson  
8 Railway. That's an 1985 award by Robert O'Brien.

9 As C-27, a 1998 award under Oregon Short Line by  
10 John LaRocco.

11 As Exhibit B-20, I'd like to introduce into the  
12 record the decision of the Surface Transportation Board  
13 denying the petition for review of the LaRocco award that we  
14 just introduced as C-27.

15 MR. FREDENBERGER: Give me this number again.

16 MR. BERLIN: For the STB?

17 MR. FREDENBERGER: Yes.

18 MR. BERLIN: B, as in Baker, 20.

19 MR. FREDENBERGER: Got it.

20 MR. BERLIN: No, let's make this B-21. I've got a  
21 pre-marked one as B-20, if you don't mind. So this one we  
22 just circulated that said B-20, we're going to call B-21, if

1 that's all right. Sorry about that. Naturally, the one we  
2 pre-marked and pre-numbered is not going in first. So of  
3 course, we'll get to it later so I'm leaving a hole for it.

4 MR. FREDENBERGER: I can't believe this; just a  
5 comment by the STB in a footnote.

6 MR. BERLIN: Which one?

7 MR. FREDENBERGER: Footnote 2, special boards of  
8 adjustment are units of the National Railroad Adjustment  
9 Board, which mediates minor non-strikeable disputes in the  
10 railroad industry.

11 MR. BERLIN: Mr. Fredenberger, you're a delegate  
12 of the STB here --

13 MR. FREDENBERGER: I'm not saying anything other  
14 than pointing out the language.

15 MR. BERLIN: -- so it must be true.

16 [Laughter.]

17 MR. WOLLY: Although we should take note of the  
18 fact that the party that prevailed in that was Mr. Berlin's  
19 clients so he's the one that took that position.

20 MR. BERLIN: No. You may not charge me with  
21 everything that the STB says in a decision in which I  
22 participated. Although when they adopt all our arguments as

1 in Carmen III, what can a person do?

2 [Laughter.]

3 MR. BERLIN: Well, this is really the extent of  
4 the presentation I wish to make as our opening presentation  
5 on the Canton to Charlotte move. We do understand and are  
6 sympathetic to the fact that there is a difference of view  
7 among the various unions as to the treatment to be accorded  
8 to the employees. We've proposed and believe it's  
9 appropriate to adopt the system of dovetailing as we've  
10 outlined.

11 I think that is the extent really to which the  
12 carriers' opening presentation should extend. Given the  
13 discussion we expect to ensue, we may obviously have further  
14 things to say because the seniority integration issue could  
15 conceivably affect other interests of the carrier, including  
16 the manner in which employees are selected out of the Canton  
17 workforce and taken into positions in Charlotte, or offered  
18 positions in Charlotte.

19 There is, of course, another shop which is the  
20 Lucknow which is near Harrisburg, the Harrisburg rail  
21 welding shop. There BMW represents six employees currently  
22 who provide work in support of the contractor that does the

STB

FD

33388

(Sub 88)

3-4-99

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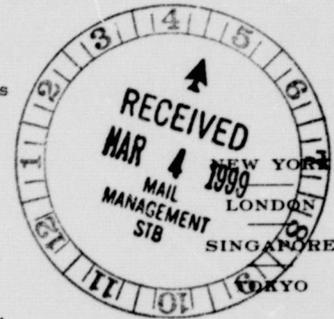
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March 4, 1999

**Hand Delivery**

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Suite 700  
Washington, D.C. 20423

ENTERED  
Office of the Secretary

MAR 05 1999

Part of  
Public Record

Re: Finance Docket No. 33388 (Sub-No. 88)  
CSX Corporation and CSX Transportation, Inc.,  
Norfolk Southern Corporation and Norfolk Southern Railway  
Company—Control and Operating Leases/Agreements—  
Conrail Inc. And Consolidated Rail Corporation  
(Arbitration Review)

Dear Mr. Williams:

I enclose for filing in the above-referenced proceeding the originals and ten copies of the Reply Of Norfolk Southern Railway Company To Petition For Review Of The International Association Of Machinists And Aerospace Workers, and Extracts From Arbitration Record Submitted By Norfolk Southern Railway Company In Support Of Its Reply In Opposition To Petition For Review Of The International Association Of Machinists And Aerospace Workers.

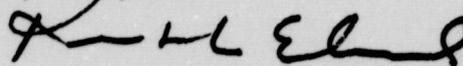
This is an action for review of an arbitration award rendered under Article I, § 4 of the New York Dock conditions. Under the Board's rules, 49 C.F.R. §§ 1115.2(d), 1115.8, the reply to a petition for review is not to exceed 30 pages in length (including exhibits). The text of our reply memorandum is 13 pages in length. However, the accompanying excerpts exceed the page limitation. The excerpts may assist the Board's consideration of the petition for review in this proceeding. Norfolk Southern Railway Company therefore respectfully requests waiver of the Board's rules as necessary to permit filing of the enclosed volume of excerpts.

A diskette containing a copy of the reply memorandum in WordPerfect 6.1 format is also enclosed.

Honorable Vernon A. Williams  
March 4, 1999  
Page 2

Thank you for your attention to this matter.

Very truly yours,



Krista L. Edwards

*Attorney for Norfolk Southern  
Railway Company*

Enclosures

cc: Joseph Guerrieri, Jr.  
Richard S. Edelman  
Donald F. Griffin

193596

**SURFACE TRANSPORTATION BOARD**

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Office of the Secretary

**Finance Docket No. 33388 (Sub-No. 88)**

MAR 05 1999



Part of  
Public Record

**CSX CORPORATION AND CSX TRANSPORTATION, INC.,  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY  
—CONTROL AND OPERATING LEASES/AGREEMENTS—  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION  
(ARBITRATION REVIEW)**

**REPLY OF NORFOLK SOUTHERN RAILWAY COMPANY  
TO PETITION FOR REVIEW OF THE INTERNATIONAL  
ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS**

**ORIGINAL**

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*Counsel for Norfolk Southern Railway  
Company*

Dated: March 4, 1999

The International Association of Machinists and Aerospace Workers ("IAM") has asked the Board to review and set aside an arbitration award rendered January 14, 1999 by neutral referee William E. Fredenberger, Jr. The Fredenberger Award imposed an implementing agreement (the "Arbitrated Implementing Agreement") to govern implementation of the Conrail transaction by the applicant carriers -- Norfolk Southern Railway Company ("NSR"), CSX Transportation, Inc. ("CSXT"), and Consolidated Rail Corporation ("Conrail") (collectively, "the railroads") -- with respect to their employees, including those represented by IAM, engaged in maintenance of way operations. IAM's challenges to the Fredenberger Award have no merit.

#### **STATEMENT OF THE CASE**

The four-part Arbitrated Implementing Agreement provides for the allocation of Conrail's maintenance of way workforce among the railroads' new operations; and it prescribes the arrangements, including applicable labor agreements and realignment of seniority, that will govern maintenance of way operations on each railroad's allocated Conrail properties. The Arbitrated Implementing Agreement governs all aspects of the railroads' maintenance of way operations, including the maintenance, repair, inspection and renewal of rail lines and bridges and structures, maintenance and repair of roadway equipment, and welding of rail.

IAM was a party to the arbitration proceeding, and is subject to parts of the Arbitrated Implementing Agreement, because it represents some of the railroads' employees who will be involved in the restructuring of the railroads' maintenance of way operations. IAM represents forty of the more than 3,000 Conrail employees working (or available to work) in maintenance of way operations on the allocated Conrail properties; approximately 57 of the employees now working in NSR's Charlotte, North Carolina Roadway Equipment Repair Shop; and (as CSXT explains in its

reply to the IAM petition) certain of CSXT's roadway equipment repair employees. All of Conrail's other maintenance of way employees -- and nearly all other employees engaged in maintenance of way operations on NSR and CSXT -- are represented by the Brotherhood of Maintenance of Way Employes ("BMWE").

Union representation on Conrail today reflects the varied arrangements that existed on Conrail's predecessor railroads. Of the forty IAM-represented employees in Conrail's maintenance of way operations, 38 are equipment repairmen who work on lines of the former New York Central Railroad ("NYC") and two are scale inspectors on the former Pennsylvania Railroad ("PRR") lines. The equipment repair employees and scale inspectors on all other parts of Conrail are represented by BMWE.<sup>1</sup>

IAM's limited representation of employees engaged in maintenance of way work gives it a stake in the arbitrated arrangements only as these govern certain limited aspects of the overall restructuring of the railroads' maintenance of way operations. IAM has no interest in the division of Conrail's BMWE-represented workforce or in the arrangements governing line and structures maintenance, repair, and renewal -- the operations in which most maintenance of way employees are engaged. Those arrangements are set forth in an arbitrated agreement among the railroads and BMWE, which is "Attachment 1" to the Fredenberger Award.

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<sup>1</sup> One of the several factual misstatements in IAM's petition is the union's contention (Pet. at 8) that it also has "representation rights" with respect to roadway equipment repairmen on former PRR and Reading Railroad lines, and scale inspectors on Conrail's former NYC lines. Those employees are represented by BMWE, not IAM. BMWE also represents all Conrail employees engaged in the operation of maintenance of way equipment, including (contrary to IAM's contention (Pet. at 9)), employees who operate the "Plasser continuous action tamper" (a machine used in installing track ballast). IAM-represented equipment repairmen maintain, but do not operate, Plasser tampers (under an arrangement that is cancelable at will by Conrail).

The arrangements involving IAM-represented employees are set forth in three agreements, which are appended to the principal BMW implementing agreement. The first (among CSXT, Conrail, IAM, BMW, and the Sheet Metal Workers' International Association ("SMWIA"), designated "Attachment No. 2") governs the coordination of roadway equipment repair on CSXT. The agreement provides, in pertinent part, that the IAM-represented Conrail roadway equipment repairmen on the lines to be operated by CSXT will become employees of CSXT, will be integrated into CSXT's system roadway mechanics roster, and will work under the terms of CSXT's existing labor agreement with BMW, IAM, and SMWIA. The "Attachment No. 2" agreement also provides for the transfer of certain work and employees from Conrail's Canton, Ohio equipment repair shop to CSXT's Richmond, Virginia equipment repair shop.

The second agreement ("Attachment No. 3") provides for the transfer of work and employees from Conrail's Canton shop (where all equipment repair work is done by BMW-represented employees) to NSR's Charlotte, North Carolina equipment repair shop (where employees are represented by six shopcraft unions, including IAM).<sup>2</sup> Under that agreement, some BMW-represented Conrail employees currently working in Conrail's Canton shop will be afforded an opportunity to follow their work to the Charlotte shop, where approximately 33 of them will be classified as machinists and will work under NSR's labor agreement with IAM.

The third agreement ("Attachment No. 4"), among NSR, Conrail, IAM, and BMW, provides that the seven Conrail line-of-road equipment repairmen who currently work on portions

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<sup>2</sup> The unions that represent NSR's Charlotte shop employees are IAM, SMWIA, International Brotherhood of Electrical Workers, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, National Conference of Firemen and Oilers, and Brotherhood Railway Carmen Division of the Transportation Communications International Union (collectively, "the shopcraft unions").

of the Conrail lines to be operated by NSR will become employees of NSR and will work under the labor agreement now in effect between NSR and BMW.

These arrangements are largely unchallenged. With the exception of IAM, none of the shopcraft unions has sought review of any part of the Fredenberger Award or the Arbitrated Implementing Agreement. BMW, which has sought review of other aspects of the Fredenberger Award, takes no issue with the arrangements governing the coordination of roadway equipment repair shop operations.<sup>3</sup> There is no dispute as to how Conrail's handful of IAM-represented equipment repairmen and scale inspectors will be allocated among the railroads. And IAM does not challenge the seniority arrangements and labor agreements that will be applied to the IAM-represented employees who are allocated to CSXT and Conrail.

IAM seeks review of only two aspects of the Fredenberger Award. First, IAM purports to "appeal that portion of the Fredenberger Award" that assertedly "extinguishes the IAM's certification as the exclusive collective bargaining representative of 38 Conrail employees who perform roadway equipment maintenance in the field." Pet. at 2. Second, IAM challenges the manner in which certain BMW-represented Conrail employees will be integrated into the machinists roster at NSR's Charlotte Shop. Neither challenge has merit.<sup>4</sup>

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<sup>3</sup> See Petition Of The Brotherhood Of Maintenance Of Way Employees For Review Of Arbitration Award, filed February 12, 1999, at 6-7 n.5.

<sup>4</sup> IAM improperly submitted a declaration of Joe R. Duncan ("Duncan Decl.") in support of its petition. The Duncan declaration was not a part of the record before the referee and, accordingly, should not be considered in this proceeding.

IAM's petition for review also seeks an order staying the Fredenberger Award pending the Board's decision on the petition for review. On February 22, 1999, the railroads filed a joint reply to the stay request.

## ARGUMENT

The Fredenberger Award, like all arbitration awards rendered under the Board's protective conditions, is subject to "an extremely limited standard of review," based on a "strong presumption of finality." CSX Corp.--Control--Chessie Sys. and Seaboard Coast Line Indus., 4 I.C.C. 2d 641, 648 (1988) ("Carmen I"), reaffirmed after remand, Fin. Dkt. No. 28905 (Sub-No. 22), served Sept. 25, 1998 ("Carmen III"). The Board's established standard of review -- first announced in Chicago & North Western Transp. Co.--Abandonment, 3 I.C.C. 2d 729, 735-36 (1987) ("Lace Curtain"), aff'd, International B'hd of Elec. Workers v. ICC, 862 F.2d 330 (D.C. Cir. 1988) -- accords "substantial deference to the arbitrator's competence and special role in resolving labor disputes." Carmen I, 4 I.C.C. 2d at 648.<sup>5</sup>

Review of arbitration awards is limited to "recurring or otherwise significant issues of general importance regarding the interpretation of [the Board's] protective conditions." Lace Curtain, 3 I.C.C. 2d at 736. An arbitral award that is reviewed under Lace Curtain may be overturned only "when it is shown that the award is irrational or fails to draw its essence from the imposed labor conditions or it exceeds the authority reposed in arbitrators by those conditions." Delaware & Hudson Ry.--Lease and Trackage Rights Exempt.--Springfield Terminal Ry., Fin. Dkt. No. 30965 (Sub-No. 1), served Oct. 4, 1990, slip op. at 16-17, reaffirmed after remand, served Sept. 25, 1998. The referee's resolution of factual disputes -- such as the "necessity" for modifying labor

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<sup>5</sup> See also Indiana R.R.--Lease and Operation Exemption--Norfolk & Western Ry., etc., Fin. Dkt. No. 31464, served July 13, 1990, slip op. at 4 ("Arbitrators possess a special understanding of the complex concerns and practices of rail labor negotiation. Their competence has allowed the Commission to delegate to them the resolution of complicated issues arising under the labor protective conditions"); Fox Valley & Western Ltd.--Exempt. Acq. and Oper.--Certain Lines of Green Bay & Western R.R., et al., Fin. Dkt. No. 32035 (Sub-No. 1), served Dec. 19, 1994, slip op. at 4 ("Under our well established Lace Curtain standard of review, we allow arbitrators substantial latitude to use their expertise in arbitrating disputes concerning these arrangements to carry out the New York Dock conditions.") ("Fox Valley").

agreements -- will stand in the absence of "egregious error." Union Pacific Corp., et al.--Control and Merger--Southern Pacific Transp. Co., et al., Fin. Dkt. No. 32760 (Sub-No. 22), served June 26, 1997, slip op. at 3.

Nothing in IAM's petition would warrant review of the Fredenberger Award under those standards. IAM's petition presents no issue of "general importance" regarding interpretation of the protective conditions. To the contrary, as we show below, the issues presented by IAM's challenge are well settled. There is no reason for the Board to revisit the issues now. See, e.g., Union R.R., et al.--Arbitration Review--United Steelworkers, Fin. Dkt. No. 31363 (Sub-No. 3), served Dec. 17, 1998, slip op. at 7 (declining to review New York Dock Article I, Section 4 award on ground that, inter alia, award presented "no issue of first impression" and "any issues that are likely to recur have already been thoroughly resolved by [the Board] and the courts"), petition for review docketed sub nom. United Steelworkers of America v. United States, No. 98-6517 (3d Cir. Dec. 31, 1998).

Even if the Board were inclined to review the Fredenberger Award, it has every reason to accord deference to the referee's findings. Referee Fredenberger is an experienced railway labor arbitrator and New York Dock referee, and former General Counsel of the National Mediation Board ("NMB"). The case involved multiple parties, proposals, and issues, presenting myriad factual disputes over the necessity and appropriateness of the various proposals for changing pre-transaction workforce arrangements. The Fredenberger Award resolves all disputed issues, makes findings in support of all provisions of the Arbitrated Implementing Agreement, and is based on an extensive record, including a four-day hearing. See Award at 4 (referee explains that his findings are based on consideration of "approximately 300 pages of prehearing submissions or briefs together

with several hundred pages of exhibits and attachments thereto, as well as over 1,000 pages of hearing transcript").<sup>6</sup> The Board should decline to review those findings.

**I. IAM HAS NOT DEMONSTRATED THAT THE BOARD SHOULD REVIEW THE FREDENBERGER AWARD ON THE GROUND THAT THE REFEREE ASSERTEDLY CHANGED EMPLOYEES' UNION REPRESENTATION.**

IAM candidly admits that it is bringing its first challenge "to preserve its status as representative." Pet. at 10. IAM contends that the Fredenberger Award unlawfully "extinguishes" IAM's certification as representative of Conrail roadway equipment repairmen (*id.* at 2) and asks the Board to "set aside" the referee's asserted "ruling that BMW shall represent Conrail roadway equipment maintenance employees currently represented by the IAM" (*id.* at 15). The Board should not entertain this challenge.

Contrary to the impression created by IAM's petition, the representation of the thirty IAM equipment repairmen (and two scale inspectors) who are allocated to CSXT will not change. Nor will the transaction have any effect on the union representation of the IAM-represented equipment repairman who will continue to work on Conrail. The only IAM-represented employees who are expected to find themselves with a new representative as a consequence of the transaction are the seven equipment repairmen who will become employees of NSR and work under a BMW agreement. But the representation of those seven individuals is not an issue to be resolved in this proceeding.

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<sup>6</sup> NSR has submitted a separately bound volume containing excerpts from the record of the arbitration proceeding. Item A is a copy of Part II of the Carriers' Prehearing Submission, in which NSR set forth its proposal for conducting maintenance of way operations on its expanded system. Item B is a copy of the Declaration of Gary W. Woods, NSR's Assistant Vice President Maintenance of Way and Structures. Item C is a copy of the Declaration of Tony L. Ingram, the NSR General Manager who will have charge of train operations on NSR's allocated Conrail properties. Item D is an excerpt of the transcript of the fourth day of the hearing (December 18, 1999).

As the Fredenberger Award acknowledges (at 17), the NMB has exclusive jurisdiction over employee representation under the Railway Labor Act ("RLA").<sup>7</sup> Accordingly, the STB will not review an award to consider its effect on union representation. E.g., Union R.R., slip op. at 8. Indeed, even if a New York Dock referee were to purport to declare representation rights, the declaration would not be a ground for challenging the award under the Board's Lace Curtain standard; such a statement would have "no legal import." Fox Valley, slip op. at 13 n.9.

In this case, referee Fredenberger acted well within his jurisdiction by resolving differences of view between IAM and NSR as to the arrangements that should govern the work of the seven IAM-represented equipment repairmen who were to be allocated to NSR. NSR proposed to place all of its allocated line-of-road equipment repairmen (including those represented by BMW) under the BMW agreement that currently is in effect on NSR's former "NW-Wabash" properties and to establish an integrated equipment repair roster for each of its new operating divisions. NSR demonstrated that this arrangement would promote the objectives of the transaction by enabling NSR to deploy equipment repair forces flexibly in support of its line maintenance operations, without regard to former territorial limitations of Conrail's predecessor railroads. IAM's

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<sup>7</sup> It is settled that an arbitrated implementing agreement cannot dictate the representation of affected employees. E.g., Fox Valley, slip op. at 3; Norfolk Southern Corp.--Control--Norfolk & Western Ry., et al., 4 I.C.C. 2d 1080, 1086-87 (1988) ("New York Dock does not preempt any NMB determination as to representation . . . . To the extent that the award could be construed as suggesting otherwise, that contention is erroneous. This is not to say that ATDA may in fact retain its status. That is, as the panel recognized, for the NMB to determine . . . ."), reaffirmed after remand, Carmen III. It is equally established that pre-transaction union representation need not be preserved under New York Dock -- that is, the referee may make necessary modifications in the terms or application of existing labor agreements, even when the arrangement may have the effect of changing the representation of affected employees. Carmen III, slip op. at 26 n.25; CSX Corp.--Control--Chessie System, Inc. and Seaboard Coast Line Indus. (Arbitration Review), Fin. Dkt. No. 28905 (Sub-No. 27), served Dec. 7, 1995, slip op. at 11-12 ("the issue of which union is to represent WM engineers or receive them as dues-paying members does not involve a right that must be preserved under section 2 of New York Dock"), aff'd sub nom. United Transportation Union v. STB, 108 F.3d 1425 (D.C. Cir. 1997).

proposal, by contrast, would have frustrated NSR's effort to operate the allocated properties as part of the expanded NSR system by limiting the seven IAM-represented employees to working on the NSR-allocated portions of their former seniority territories, which bear no relationship to NSR's planned operating divisions.<sup>8</sup>

IAM did not refute NSR's showing. Instead, it complained that the arrangement would change the representation of the seven Conrail employees. To "preserve its status as representative" -- and with no asserted operational justification or other legitimate basis -- IAM asked the referee to adopt the Conrail/IAM agreement or, in the alternative, the NSR/IAM agreement that is in effect on the former "Nickel Plate" portion of NSR.

On the record before him, the referee properly adopted NSR's proposal. In doing so, the referee did not purport to dictate representation rights or otherwise usurp the jurisdiction of the NMB. Rather, the referee's determination was properly based on operational considerations, which IAM does not challenge. In the passage of the award challenged by IAM, the referee observed (as NSR had explained in the hearing) that, as a consequence of coming to work for NSR on the terms proposed by the railroads, the seven NSR-allocated employees would work in a craft that, on NSR, is exclusively represented by BMW for purposes of the RLA. If IAM has a different understanding, it may pursue this representation issue with the NMB; the STB has no say in the matter.

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<sup>8</sup> NSR showed the necessity and appropriateness of its proposed arrangements for equipment repair forces in Part II of the Carriers' Prehearing Submission (Tab A; see especially pages 21, 29-51), which was supported by, *inter alia*, the Woods Declaration (Tab B; see especially paragraphs 37, 55-83) and the Ingram Declaration (Tab C). IAM did not dispute NSR's evidence and did not offer any evidence in support of its competing proposals.

**II. IAM HAS DEMONSTRATED NO GROUNDS FOR REVIEWING THE SENIORITY ARRANGEMENTS ADOPTED FOR EMPLOYEES TRANSFERRING FROM CONRAIL'S CANTON SHOP TO NSR'S CHARLOTTE SHOP.**

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IAM's second challenge -- to the arrangements governing BMW-represented Conrail employees who transfer to NSR's Charlotte shop -- is baseless. The Arbitrated Implementing Agreement properly provides that employees will be afforded an opportunity to follow their work to Charlotte and that those who do so will have their seniority "dovetailed" on the appropriate craft rosters at Charlotte. IAM seems to challenge those arrangements on procedural and substantive grounds, neither of which has merit.

In the arbitration proceeding, the shopcraft unions challenged the referee's "jurisdiction" to prescribe an implementing agreement governing the Charlotte shop coordination on the ground that the railroads assertedly failed to satisfy their obligations under the Article I, Section 4 procedures. Specifically, the unions complained that the railroads did not afford the unions sufficient time to negotiate before invoking arbitration and that the railroads provided inadequate facsimile notice of the telephone conference in which the parties attempted unsuccessfully to agree on the appointment of a neutral referee. Referee Fredenberger afforded the shopcraft unions a full hearing on their procedural objections (12/18/98 Tr. at 601-61 (Tab D)) and, on the basis of the record, concluded that the railroads satisfied the protective conditions. Award at 19-20.

There is no reason for the Board, on review of the Fredenberger Award, to entertain any challenge (much less accept IAM's proffered declaration) addressed to the conduct and circumstances of the underlying negotiations. IAM does not contend that the referee's findings on those matters constitute "egregious error." Nor does IAM advance any theory that would warrant

requiring the parties -- at this late date and at the request of only one of the unions involved -- to "return to the bargaining table" (Pet. at 17) over issues that have been resolved fully in arbitration. Rather, IAM repeats the same complaints that the shopcraft unions made in the arbitration hearing. Pet. at 6-7, 15-16; Duncan Decl. ¶¶ 10-16. These objections were properly rejected by referee Fredenberger and merit no attention or relief from the Board.<sup>9</sup>

On the merits, IAM has no legitimate objection to the arrangements that will govern the Charlotte shop consolidation. Everyone agrees that the railroads are authorized to close the Canton shop and to transfer the work performed at that facility to NSR's and CSXT's existing repair shops, and everyone agrees that the New York Dock conditions apply to the transaction. And there is almost no dispute about how the conditions should apply to the transaction. No one disputes that Canton shop employees should have the opportunity to follow their work to its new locations; there is no dispute as to which labor agreements should apply to transferred work and employees; and no one objects to the establishment of an integrated workforce and a single set of rosters at the new

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<sup>9</sup> As IAM acknowledges (Pet. at 6), representatives of the railroads and the shopcraft unions met (at the railroads' prompting) on September 24, 1998, for the purpose of commencing negotiations pursuant to the railroads' August 24, 1998 New York Dock notice. After hearing the railroads' negotiating proposal, the shopcraft union representatives informed the railroads that they would not negotiate further until the railroads reached a "master" agreement with BMW. Thereafter, the railroads remained ready and willing to continue negotiations, up to and including the time of the hearing. But the railroads declined to hold up the whole maintenance of way restructuring to engage in separate, sequential New York Dock proceedings or otherwise to defer the arbitration proceeding pending further negotiations. As referee Fredenberger found (Award at 19), acceding to the shopcraft unions' demands concerning the conduct of the negotiations would have subjected the railroads to "unacceptable delay," contrary to the streamlined Article I, Section 4 procedures.

IAM should not be heard to complain (Pet. at 6-7) that the railroads failed to provide adequate notice of a telephone conference call scheduled for the purpose of selecting a neutral referee. IAM's negotiating representative (Mr. Duncan) participated in the conference call, and, in any event, the parties did not agree on a referee in that call or at any other time. The referee properly concluded that the railroads' facsimile notice of the telephone conference did not violate the protective conditions. Award at 20.

locations. And no one, least of all IAM, objects to the fact that approximately 33 of the transferring BMWWE-represented Canton employees will work as machinists under the IAM agreement at Charlotte -- that is, that the Arbitrated Implementing Agreement does not "preserve" BMWWE's representation of those prospective IAM dues-payers. Indeed, other than IAM, none of the unions has challenged any aspect of the arbitrated arrangements governing the Charlotte shop coordination.

IAM's only objection is to the manner in which transferring employees will be merged into NSR's machinist workforce at Charlotte. IAM contends (Pet. at 16) that transferring employees should not be dovetailed into the Charlotte machinist roster because -- regardless of their individual seniority and notwithstanding NSR's confidence in their capabilities -- Canton employees assertedly lack the qualifications and training of Charlotte machinists.<sup>10</sup> The referee considered and properly rejected IAM's contention, finding that any "[p]roblems with qualifications can be resolved by application of training and retraining provisions in existing [agreements]." Award at 21. These findings are entitled to great deference. See Norfolk & Western Ry., New York, Chicago & St. Louis R.R.--Merger, Etc., Fin. Dkt. No. 21510 (Sub-No. 3), served Dec. 18, 1998, slip op. at 5 (under Lace Curtain standard, STB defers to referee's determination regarding manner of integrating seniority). Nothing in IAM's petition would warrant second-guessing the referee's determination or otherwise revisiting issues that have been resolved fully and finally in arbitration.

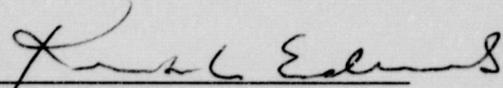
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<sup>10</sup> IAM does not object to the dovetailing of transferring employees onto CSXT's system road-way mechanics roster (which covers CSXT's Richmond, Virginia equipment repair shop). In an ineffective attempt to reconcile this inconsistency, IAM points out (Pet. at 11 n.4) that the employees at CSXT's Richmond shop are represented by IAM, SMWIA, and BMWWE, and IAM states that, "for this reason," the shopcraft unions did not object to the dovetailing of transferring Canton shop employees. IAM's observation only underscores the illegitimacy of IAM's professed concerns about the training and qualifications of the Canton shop employees who will transfer to Charlotte.

**CONCLUSION**

For the foregoing reasons, the Board should deny IAM's petition for review.

Respectfully submitted,



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Dated: March 4, 1999

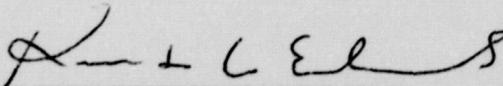
**CERTIFICATE OF SERVICE**

I hereby certify that I have, this 4th day of March, 1999, caused copies of the foregoing Reply Of Norfolk Southern Railway Company To Petition For Review Of The International Association Of Machinists And Aerospace Workers and the accompanying Extracts From Arbitration Record Submitted By Norfolk Southern Railway Company In Support Of Its Reply In Opposition To Petition For Review Of The International Association Of Machinists And Aerospace Workers to be served, by hand, upon the following:

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March 4, 1999

Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423

Re: FD Docket No. 33388 (Sub-No. 88)

Dear Secretary Williams:

Enclosed for filing with the Board are the original and ten copies of the Reply of CSX Transportation, Inc. to International Association of Machinists and Aerospace Workers' Petition for Review. An additional copy is also included to be date-stamped and returned to the waiting messenger.

Thank you for your assistance.

Sincerely yours,

Jonathan Krell

JK/db  
Enclosure

cc: Jeffrey S. Berlin (w/encl.)  
Richard S. Edelman (w/encl.)  
Donald F. Griffin (w/encl.)  
Debra L. Willen (w/encl.)

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 33388 (Sub-No. 88)

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CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK  
SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY  
--CONTROL AND OPERATING LEASE/AGREEMENTS--  
CONRAIL, INC. AND CONSOLIDATED RAIL CORPORATION

(Arbitration Review)

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REPLY OF CSX TRANSPORTATION, INC. TO INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS' PETITION FOR REVIEW

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CSX Transportation, Inc. ("CSXT"), pursuant to 49 C.F.R. § 1115.8, files this Reply to the International Association of Machinists and Aerospace Workers' ("IAM") Petition for Review ("Petition") of Referee Fredenberger's Award, dated January 14, 1999. IAM filed its Petition, together with a request for a stay, on February 12, 1999. The Carriers previously responded to IAM's stay request, showing it to be without merit.

Although IAM asks that the entire award be stayed, IAM only raises two issues, neither of which involves CSXT: (1) whether the referee exceeded his authority by allegedly extinguishing IAM's right to represent Conrail roadway mechanics; and (2) whether the referee erred by adopting Norfolk Southern Railway Company's ("NSR") proposal for the transfer of roadway equipment repair work previously performed at Conrail's Canton shop to NSR's Charlotte roadway equipment shop.<sup>1</sup> Regarding IAM's first issue, there is no merit to IAM's

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<sup>1</sup> IAM does not raise any issues related to Conrail and its operation of the Shared Assets Areas.

claim that the referee exceeded his jurisdiction by extinguishing representation rights. The referee made no such ruling. IAM also has no complaint as to CSXT because all of the Conrail employees allocated to CSXT who are represented by IAM will continue to be represented by IAM under the arbitrated implementing agreement. The second issue involves only NSR and will be addressed in NSR's Reply.

I. BACKGROUND

Roadway equipment mechanics repair and maintain equipment used in maintenance of way operations. This work is performed both in roadway equipment shops and in the field. On Conrail, representation of roadway mechanics is divided between IAM and the Brotherhood of Maintenance of Way Employees ("BMWE"). IAM currently represents about 38 Conrail employees who perform roadway equipment repair work in the field and two Conrail scale inspectors. This representation stems from IAM's representation of machinists on the former New York Central Railroad who repaired and maintained roadway equipment. After the New York Central territory became part of Conrail, IAM continued to represent these employees.<sup>2</sup>

On CSXT, representation of roadway mechanics is divided among IAM, BMWE, and the Sheet Metal Workers International Association ("SMWIA"). In 1993, CSXT, IAM, BMWE and SMWIA entered into a voluntary New York Dock implementing agreement, referred to as the Roadway Mechanics Agreement, CSXT Agreement No. 12-126-92. Relevant excerpts of this Agreement, which was CSXT Exhibit No. 23 in the arbitration proceedings, are attached as Exhibit A. Pursuant to this Agreement, CSXT consolidated all roadway equipment shop repair work on its system at its Richmond, Virginia roadway equipment repair shop. The Roadway

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<sup>2</sup> BMWE represents roadway mechanics who work at the Canton shop and in the field on other parts of Conrail.

Mechanics Agreement also covers roadway mechanic work in the field throughout CSXT's system. The Agreement provides that roadway equipment mechanics work under CSXT's collective bargaining agreement with IAM applicable on the former Chesapeake and Ohio Railway ("C&O"). Notwithstanding the application of the IAM agreement to all CSXT roadway mechanics, under the Roadway Mechanics Agreement, IAM, BMW and SMWIA agreed to maintain their representation of employees as it existed prior to the Agreement. Article X of the Agreement provides that, "[t]he incumbent Roadway Mechanics represented by the IAM&AW, BMW, and SMWIA will continue their present union affiliation and representation status in the coordinated operation unless changed by applicable law." See Exh. A at 12.

CSXT's proposal in the Conrail transaction, contained in Attachment 2 of the imposed implementing agreement (see Exh. B), is to consolidate the repair of roadway equipment work on Conrail lines allocated to CSXT in the same manner as it consolidated roadway equipment repair under the Roadway Mechanics Agreement. That is, shop work related to Conrail lines allocated to CSXT will be consolidated at Richmond and the allocated Conrail roadway mechanics will be dovetailed onto CSXT's system roster for roadway mechanics. In addition, the allocated Conrail roadway mechanics represented by IAM will continue to be represented by IAM and those represented by BMW will continue to be represented by BMW.

In the arbitration proceedings, IAM agreed with CSXT's proposal and urged its adoption by the referee.<sup>3</sup> See Shopcraft Submission at 21, excerpts of which are attached hereto as Exhibit

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<sup>3</sup> In its Petition for Review, IAM mischaracterizes its position before the referee. IAM's Petition states that IAM proposed to the referee that "the IAM-Conrail Agreement would continue to apply; in the alternative, the IAM acceded to CSXT's proposal to apply the CSXT Roadway Mechanics Agreement 12-126-92 on properties allocated to CSXT...." Petition at 10. This is not true. IAM's only position before the referee was that CSXT's proposal to place allocated Conrail roadway mechanics under the Roadway Mechanics Agreement should be adopted. IAM did not propose any alternative arrangement. See Shopcraft Submission at 22.

C. Indeed, IAM had previously agreed to this handling in the voluntarily negotiated October 10, 1998 New York Dock implementing agreement for machinists. As part of that implementing agreement, for the Conrail IAM-represented roadway mechanics, CSXT and IAM entered into an agreement regarding the consolidation of roadway equipment repair on CSXT, which stated as follows:

Roadway equipment shop at Canton will be closed and the work from the allocated lines to be operated by CSXT will be transferred to [CSXT's Richmond shop]. Roadway equipment maintenance and repair work on the allocated [Conrail] lines [to be] operated by CSXT will be coordinated and seniority integrated under the terms contemplated by the January 29, 1993 Agreement [i.e. the Roadway Mechanics Agreement].

See October 10, 1998 implementing agreement, excerpts attached as Exhibit D at "CSXT-IAM&AW" at 2. IAM also agreed that if the other involved unions did not reach an agreement with CSXT and if arbitration was necessary, CSXT and IAM would jointly propose that roadway equipment repair would be placed under the Roadway Mechanics Agreement. See Exh. D (Side Letter 13); Exh. C (Shopcraft Submission at 22).

Thus, by adopting the Carriers' proposed implementing agreement, including Attachment 2, the Fredenberger Award gave IAM exactly what it agreed to and wanted with respect to CSXT.

I. ARGUMENT

Review of arbitration awards under 49 C.F.R. § 1115.8 is limited to "recurring or otherwise significant issues of general importance regarding the interpretation of [the] labor protective conditions;" the Board may "treat summarily" petitions that do not meet that standard. Chicago & N.W. Tptn. Co. – Abandonment, 3 I.C.C.2d 729, 736 (1987), aff'd sub nom, IBEW v. ICC, 862 F.2d 330 (D.C. Cir. 1988) (known as "Lace Curtain"). Review is not available o.a

“factual questions,” save in exceptional cases involving “egregious error.” Id. at 735-36. IAM’s Petition under the above standards states no basis for review of the Fredenberger Award.

As explained, IAM’s Petition actually does not raise any issue relating to CSXT. IAM apparently mentioned CSXT only because of a statement in Referee Fredenberger’s Award that, as a result of the placement of allocated Conrail employees, who are presently represented by IAM, under BMW collective bargaining agreements, IAM would no longer represent those employees. Award at 16. This was an over-generalization by the referee in reference to the dispute involving the seven roadway mechanics who had been allocated to NSR. As to CSXT, the implementing agreement imposed by Referee Fredenberger in his Award provides that current IAM-represented employees allocated to CSXT are placed under an agreement to which IAM is party. There will be no change in representation for allocated equipment repairmen allocated to CSXT.<sup>4</sup> Thus, IAM has no complaint with CSXT.

In any event, there is no basis for review because, contrary to IAM’s contention, the Fredenberger Award did not order the extinction of representation rights. As IAM recognized, the Board does not have jurisdiction over representation matters. Rather, the National Mediation Board (“NMB”) has exclusive jurisdiction over matters of representation. See, e.g., CSX Corp. -- Control -- Chessie System, Inc. and Seaboard Coast Line Indus., Inc., STB Finance Docket No. 28905 (Sub-No. 22) (served Sept. 25, 1998), slip. op. at 28 n.2 (“Carmen III”). Referee Fredenberger, who is not only an experienced New York Dock Referee but also a former General Counsel of the NMB, recognized this limitation on his authority in his Award. Award at 17.

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<sup>4</sup> IAM’s Petition mentions, but raises no issue with respect to, the two scale inspectors who are allocated to CSXT. CSXT clarified during the hearing that, under the Carriers’ proposal, they would continue to be represented by IAM. 12/18/98 Tr. At 691-92 (Exh. E).

The Referee's statement merely reflected his understanding of the consequences of the formerly IAM-represented Conrail employees coming to work for NSR on the terms proposed by the railroads. This statement is, at most, dictum. See Fox Valley & Western Ltd.—Exemption Acquisition and Operation—Certain Lines of Green Bay and Western Railroad Co, Fox River Valley Railroad Corp. and the Ahnapee & Western Railway Co., Finance Docket No. 32035 (Sub-No. 1) (ICC served Dec. 19, 1994), slip op. at 7. (“Even if [Referee] Moore had made a statement concerning representation, that statement would be of no legal import, because it would have gone beyond the power that we have delegated to him.”).

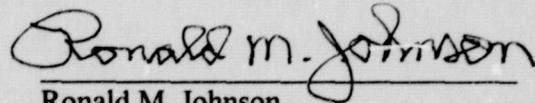
Ironically, it was IAM that interjected the issue of representation into the arbitration proceedings by requesting that Referee Fredenberger impose an implementing agreement that preserved IAM's representation of allocated Conrail employees. See Excerpts of the Transcript of the Arbitration Hearing at 804-05, attached as Exhibit E. However, since the Board does not have jurisdiction over representation matters, a referee has no basis to preserve the representation of employees under Article I, Section 2 of New York Dock. See CSX Corp.--Control--Chessie System, Inc. and Seaboard Coast Line Industries, Inc. (Arbitration Review), Finance Docket No. 28905 (Sub-No. 27), served December 7, 1995, slip op. at 15 (“CSX/Train Operations”), aff'd sub nom UTU v. STB 108 F.3d 1425 (D.C. Cir. 1997) (ICC held that the issue of which union is to represent the engineers does not involve a right that must be preserved under section 2 of New York Dock.).

Accordingly, the Referee did not exceed his jurisdiction by imposing the Carriers' proposed implementing agreement.

II. CONCLUSION

For the foregoing reasons, and those stated in NSR's Reply, IAM's Petition for Review should be denied.

Respectfully submitted,



Ronald M. Johnson  
Amy B. Smith  
AKIN, GUMP, STRAUSS, HAUER  
& FELD, L.L.P.  
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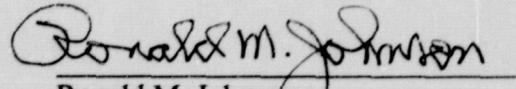
Nicholas S. Yovanovic Esquire  
Assistant General Counsel  
CSX TRANSPORTATION, INC.  
500 Water Street, J150  
Jacksonville, Florida 32202  
(904) 359-1244

Counsel for CSX Transportation, Inc.

Dated: March 4, 1999

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy hereof was furnished this 4<sup>th</sup> day of March 1999, by  
First Class U.S. Mail, postage pre-paid to all parties of records.

  
Ronald M. Johnson





Employee Relations  
500 Water Street - J455  
Jacksonville, FL 32202

March 25, 1993

File: 217812 (ROA)

Mr. R. L. Reynolds, Pres. & Dir. Gen. Chairman  
International Association of Machinists  
and Aerospace Workers, Dist. Lodge No. 19  
111 Park Road  
Paducah, Kentucky 42003

Mr. R. A. Lau, Vice President  
Brotherhood of Maintenance of Way Employees  
Associates Lane  
Charlotte, North Carolina 28217

Mr. R. P. Branson, General Chairman  
Sheet Metal Workers'  
International Association  
2841 Akron Place, S. E.  
Washington, D.C. 20020

Mr. J. A. Coker, General Chairman  
International Association of Machinists  
and Aerospace Workers  
1642 Fairview Road  
Stockbridge, GA 30281

Mr. J. R. Cook, General Chairman  
CSX System Federation  
Brotherhood of Maintenance of Way Employees  
Post Office Box 278  
Manistee, Michigan 49660

Mr. Jed Dodd, General Chairman  
Brotherhood of Maintenance of Way Employees  
1930 Chestnut Street, Suites 607-609  
Philadelphia, Pennsylvania 19103

Mr. R. L. Elmore, General Chairman  
International Association of Machinists  
and Aerospace Workers, District No. 19  
825 Prather Ridge Road  
Bloomfield, Kentucky 40008

Mr. J. D. Knight, General Chairman  
Brotherhood of Maintenance of Way Employees  
7411 Merrill Road  
Jacksonville, Florida 32211

Mr. N. V. Nihoul, General Chairman  
Atlantic Coast Line Federation  
Brotherhood of Maintenance of Way Employees  
4040 Woodcock Drive, Room 167  
Jacksonville, Florida 32207

Mr. J. W. Pugh, General Chairman  
Brotherhood of Maintenance of Way Employees  
Suite 1-A, Charter Federal Building  
2706 Ogden Road, S. W.  
Roanoke, Virginia 24014

Mr. B. L. Watts, General Chairman  
Brotherhood of Maintenance of Way Employees  
General Delivery  
Ina, Illinois 62846

Gentlemen:

This refers to the Implementing Agreement covering the coordination of equipment repair work throughout the CSXT System.

Please find attached fully executed copies of the Implementing Agreement and all side letters/letters of understanding that pertain to your respective properties.

Very truly yours,

George White 472 - 100/ (office)

CSXT Labor Agreement No. 12-126-92

RECEIVED

FEB 01 1993

MEMBER RELATION  
AND COLLECTIVE AGREEMENTS

AGREEMENT BETWEEN

CSX TRANSPORTATION, INC.  
including the RF&P Railway Co.,  
and the B&OCT  
and their employees represented by the

INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS,

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES,

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION

Pursuant to Carrier's Notice of intent to transfer and coordinate Engineering Department (MofW) equipment repair work and Employees to and from the locations as hereinafter described, the Carrier, desirous of implementing an orderly transaction, proposes the following:

Article I - Protection

A. Any Roadway Mechanic who accepts a position initially advertised in the coordinated operation will be certified to receive the protective benefits and conditions provided in the "New York Dock Conditions", New York Dock Ry. - Control - Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (Attachment "A"), if furloughed for any reason during the protective period.

B. Nothing in this Agreement shall be interpreted or applied to provide protective benefits less than those provided for in the New York Dock Conditions appended hereto.

C. Any Mechanic who accepts a position initially advertised in the coordinated operation, will be entitled to the protective benefits contained in the August 1, 1980 EPA Agreement (Attachment "B"), effective upon the date of coordination.

D. All Mechanics (described in A and C above), will be given a "Test Period Average" pursuant to the New York Dock Conditions. Any Mechanic who suffers a loss of earnings will be paid a monthly "displacement allowance" as described in Section 5 of the New York Dock Conditions.

Should any Mechanic be furloughed for any reason (except when furloughed because of conditions beyond the control of the Carrier such as flood, snowstorm, hurricane, tornado, earthquake, fire, strike, etc.), during the protective period (six years following the date of coordination) he may elect to draw either the protective benefits enumerated in the New York Dock Conditions, or draw EPA protective benefits for the applicable protective period enumerated in the EPA Agreement.

E. Any Mechanic entitled to protective benefits as a result of this transaction who is currently drawing protective benefits under another protective agreement, may continue to receive that benefit, and, upon its expiration, draw the protection elected in this coordination for the remainder of the protection period. Additionally, any Mechanic entitled to "Orange Book", or February 7, 1965 protection may elect to receive the protection provided by this coordination, and, upon its expiration, continue his coverage under the provisions of either of those Agreements.

F. Any Roadway Mechanic whose position is abolished as a result of this transaction, and who is offered and refuses a position in the coordinated operation will be ineligible to draw any monthly guarantee or separation allowance from other protective agreements; with the exception of the separation election provided for in Section G of the "Orange Book" Agreement.

G. A furloughed Mechanic will not have his EPA protection period extended; nor will he be recalled to service as a consequence of a System Gang Mechanic or Regional Mechanic working on his former prior and/or prior prior rights territory.

H. A Roadway Mechanic who is designated as a protected Employee as a result of this coordination, and who had been previously furloughed and remains in a furlough status at the time the six year period expires, will not be eligible to draw any EPA protective benefits, except for that which he may already be drawing under Section C of this Article, until such time as he has been recalled to service, works for at least 30 days and is subsequently furloughed.

I. A Roadway Mechanic who is designated as a protected Employee as a result of this coordination, who is furloughed subsequent to the expiration of the six year protective period, will be eligible to draw EPA protective benefits in accordance with the applicable provisions contained in the EPA Agreement, subject to the exceptions contained in this Agreement.

## **Article II - Consolidation of Seniority Districts**

A. Seniority Rosters for all Employees currently working (and those who were working on a permanent position on the date of Carrier's Notice - August 14, 1992) as Engineering Department "Roadway Mechanics" on all former properties of CSXT, Inc., represented by the IAM&AW, BMW, and SMWIA will be consolidated

by dovetailing the existing seniority of the employees as it appears on their respective seniority rosters onto a "Consolidated System Roster", which shall be known as the "CSXT Engineering Department Mechanics Roster" (Attachment "C"). Should more than one Mechanic have the same seniority date, the date last entered service will be used to determine the roster positions; oldest date assuming the superior position. If this procedure still results in a "tie" the oldest employee by date of birth will be given the superior position on the roster.

B. The "Consolidated System Roster" will show: name; identification number; seniority date; date of birth; prior rights; prior prior rights (if any); union affiliation; and a shop/field designation.

C. Mechanics will establish prior rights and retain prior prior rights, if any, for displacement and bidding purposes in the coordinated operation. "Prior rights" is defined as the Mechanic's former home road property (B&O, B&OCT, C&EI, CL, C&O, GA/AWP, L&N, RF&P, SCL, and WM) as designated on the "Consolidated System Roster". "Prior prior" rights is defined as the territories indicated as the "prior district", and the "prior consolidated district", as shown on the January 1, 1992 "Chessie Work Equipment System Seniority Roster"; and applies only to employees who appear on that roster.

D. For the purposes of this Agreement, all former SCL IAM&AW and BMWE represented Mechanics will have prior rights to any field positions advertised on the former Seaboard Coast Line territory.

E. A separate list will be established and maintained for Mechanics who are furloughed or actively employed in another department (with bidding rights pursuant to CSXT Labor Agreement No. 1-229-87) on the date of coordination. Employees on this list will be given preference (based on existing seniority) to fill new positions involving an increase in force or permanent vacancies which occur during or subsequent to this coordination. Mechanics who are awarded positions under this provision will retain prior and/or prior prior rights and will establish seniority on the "Consolidated System Roster" as of the date they return to active service as a Roadway Mechanic in the Engineering Department.

### **Article III - Abolishment/Establishment of Positions**

A. Engineering Department Equipment Repair Work presently performed separately on Carrier's former properties will be coordinated as hereinafter provided and will be performed, except as specifically provided herein, under the IAM&AW and former C&O Railway Company Agreement (Chesapeake District, reprinted June 1, 1969).

## **Article X - Representation**

A. The incumbent Roadway Mechanics represented by the IAM&AW, BMW, and SMWIA will continue their present union affiliation and representation status in the coordinated operation unless changed by applicable law.

B. Any settlement of a claim or grievance with any of the General Chairmen or designated representatives involving a C&O (Chesapeake District) Agreement Rule will not constitute an interpretation binding on the IAM&AW General Chairman of the C&O Committee.

## **Article XI - General Provisions**

A. This Agreement with all attachments referred to herein shall constitute the required agreement as stipulated in Article I, Section 4 of the New York Dock Conditions. This Agreement shall not constitute a precedent or prejudice the position of either the Carrier or the Organization signatory hereto in future similar cases.

B. Dismissed or suspended employees, employees on leave-of-absence account sickness, promotion and other approved absences, who return to service subsequent to the coordination, shall be entitled to whatever rights that they may have had if they had been present at the time of the coordination. Any such person who returns to service may:

1. Exercise displacement rights onto any position on his prior and/or prior prior rights territory occupied by a junior Mechanic; or onto any position occupied by a junior Mechanic provided the junior Employee being displaced does not hold prior and/or prior prior rights to the desired position.

2. The subsequently displaced junior employee referred to in paragraph 1 above, who is displaced as a result of an employee returning to the craft, may elect a separation allowance as described in Article III, C, in lieu of the protection referred to therein.

C. The repair of Motive Power (Locomotive) and Mechanical (Car) Department Equipment, such as Fork Lifts, Mobile Cranes, and other shop machinery and equipment historically maintained and repaired by the Michigan Division Mechanics, will, following the coordination, continue to accrue to Roadway Mechanics, until otherwise agreed upon by the parties.

D. All Employees who have accepted a position in the coordinated operation will be covered by the Master Transfer Agreement (Attachment "F") within 60 days following the effective date of the Coordination.

ANDREWS OFFICE PRODUCTS CAPITOL HEIGHTS, MD (K)

AGREEMENT

BETWEEN

CSX TRANSPORTATION, INC.  
And its Railroad Subsidiaries

and

CONSOLIDATED RAIL CORPORATION

and

their Employees Represented by

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS  
SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION

WHEREAS, CSX Corporation ("CSX"), CSX Transportation, Inc. and its railroad subsidiaries ("CSXT"); and Norfolk Southern Corporation ("NS"), Norfolk Southern Railway Company and its railroad subsidiaries ("NSR"); and Conrail, Inc. ("CRR") and Consolidated Rail Corporation ("CRC") have filed an application with the Surface Transportation Board ("STB") in Finance Docket No. 33388 seeking approval of acquisition of control by CSX and NS of CRR and CRC, and for the division of the use and operation of CRC's assets by NSR and CSXT and the operation of Shared Assets Areas by CRC for the exclusive benefit of CSX and NS ("the transaction");

WHEREAS, in its decision served July 23, 1998 in the proceeding captioned Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail, Inc. and Consolidated Rail Corporation, and related proceedings, the STB has imposed the employee protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 360 I.C.C. 60 (1979) ("New York Dock conditions") (copy attached) on all aspects of the Primary Application; Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc., 354 I.C.C. 653 (1980) on related authorization of trackage rights; Oregon Short Line Railroad - Abandonment - Goshen, 360 I.C.C. 91 (1979), on related abandonment authorizations; and Mendocino Coast Railway.

Inc. - Lease and Operate - California Western Railway, 360 I.C.C. 653 (1980), on the related track leases;

WHEREAS, the railroads gave notice on August 24, 1998, of their intention to consummate the transaction and to coordinate certain maintenance-of-way work, including performing roadway equipment maintenance and repair work pursuant to Article I, Section 4 of the New York Dock conditions and other employee protective conditions.

NOW, THEREFORE, IT IS AGREED:

ARTICLE I

Upon seven (7) days advance written notice by CSXT and CRC, CSXT and CRC may affect this consolidation as set forth below.

ARTICLE II

CSXT will integrate its allocated former CRC roadway equipment mechanics into CSXT's Roadway Mechanic system under CSXT Labor Agreement 12-126-92, as amended, on a basis similar to the method used to integrate those employees who were present at the time of the original roadway equipment consolidation on CSXT. As such, CSXT will advertise all of the roadway mechanic positions on the allocated CRC lines to be operated by CSXT and the CRC allocated roadway shop positions to be established at CSXT's Richmond facility at the same time and follow the general principles of the original CSXT Labor Agreement 12-126-92. Once integrated, the former CRC employees will work under and be governed by the provisions of CSXT Labor Agreement 12-126-92, as amended.

ARTICLE III

This Agreement shall fulfill the requirements of Article I, Section 4, of the New York Dock conditions and all other

- conditions which have been imposed in Decision No. 89 by the STB  
in Finance Docket No. 33388.

ANDREWS OFFICE PRODUCTS CAPITOL HEIGHTS, MD (K)

EMPLOYEES' SUBMISSION

IN THE MATTER OF ARBITRATION

between

**INTERNATIONAL ASSOCIATION OF MACHINISTS (DISTRICT LODGE 19)  
INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP  
BUILDERS, BLACKSMITHS, FORGERS AND HELPERS  
BROTHERHOOD RAILWAY CARMEN DIVISION - TCU  
SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION  
NATIONAL CONFERENCE OF FIREMEN AND OILERS  
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

and

**CSX TRANSPORTATION, INC. and its Railroad Subsidiaries  
CONSOLIDATED RAIL CORPORATION  
NORFOLK SOUTHERN RAILWAY COMPANY and its Railroad Subsidiaries**

pursuant to

Article I, Section 4 of the New York Dock Protective Conditions

before

William M. Fredenberger, Neutral Referee

## QUESTIONS AT ISSUE

- (1) **CHANGE OF EMPLOYEES UNION REPRESENTATION:** Does this Arbitration Panel have the jurisdictional authority to change or modify the representation rights of employees as certified by the National Mediation Board and to require employees represented by one Craft to merge with and be represented by another Craft?
- (2) **FORMER NEW YORK CENTRAL, PENNSYLVANIA AND READING PROPERTY AND PLASSER CONTINUOUS ACTION TAMPER MACHINES ON CRC:** What class and craft of employees shall perform the maintenance and repair work on roadway equipment and machines, including component parts utilized on the former New York Central Property, the scale inspecting on the former Pennsylvania and Reading Properties and the Maintenance, repair and operation of Plasser Continuous Action Tamper Machines on CRC territories allocated to Norfolk Southern and CSX-T?
- (3) **CLOSING OF CANTON SHOP AND TRANSFER OF CSX-T ALLOCATED WORK TO RICHMOND ROADWAY SHOP:** What class and craft of employees shall perform the maintenance, fabrication and repair work on roadway equipment and machines, including component parts in the Richmond Roadway Shop? What Agreement shall apply? What rearrangement and reassignment of forces are appropriate in this particular case?
- (4) **CLOSING OF CANTON SHOP AND TRANSFER OF NS ALLOCATED WORK TO CHARLOTTE ROADWAY SHOP:** What class and craft of employees shall perform the maintenance, fabrication and repair work on roadway equipment and machines, including component parts in the Charlotte Roadway Shop? What Agreement shall apply? What rearrangement and reassignment of forces are appropriate in this particular case?
- (5) **PROPRIETY OF CARRIER PROVIDING NOTICE BY FAX:** Were the Organizations properly served notice and provided sufficient information and time by the Carriers fax letter, dated October 28, 1998 and faxed to some or all Organizations on October 29, 1998.

**QUESTION NO. 3:**

**What class and craft of employees shall perform the maintenance, fabrication and repair work on roadway equipment and machines, including component parts in the CSXT Richmond Roadway Shop? What Agreement shall apply? What rearrangement and reassignment of forces are appropriate in this particular case?**

The Carrier proposes in its notice to offer transfer to (20) former CRC employees from Canton to its Richmond, Virginia Roadway Shop, which actually forces the employees to transfer or waive their New York Dock benefits. Further, that these employees, as well as other CRC Roadway Mechanics who are located on CSX-T 's allocated CRC lines, will be integrated into the CSX-T System Roadway Mechanics roster and perform service under the terms of the CSX-T Roadway Mechanic Agreement.

The Richmond Roadway Shop, where CSX-T plans to transfer its allocated roadway equipment repair and maintenance work upon closing of the Canton Roadway Equipment Shop, has a very unique Agreement in effect. This Agreement between CSX-T, IAM & AW, SMWIA and the BMWWE was signed on January 29, 1993, and is identified as CSX-T Labor Agreement No. 12-126-92. This Agreement, if applied in this proposed transaction, would adequately address the rearrangement and reassignment of forces that are appropriate for this particular transaction.

On October 9, 1998, the IAM & AW executed a Master Implementing Agreement with CSX-T pertaining to the acquisition of CRC, which fulfilled the requirements of Article I, Section 4 of the New York Dock conditions imposed in the Order by the STB in Finance Docket No. 33388.

Article II, Section 2 of the October 9, 1998, Agreements provides:

"Employee awarded field assignments as Roadway Equipment Mechanics on the CSXT lines will have their seniority dates dovetailed on the CSXT System Roadway Mechanics Seniority Roster with a prior right to positions on their seniority district on the allocated Conrail lines operated by CSXT. The roster will designate such prior right as well as a "Field" designation, consistent with the CSXT Roadway Mechanics Agreement. Employees awarded shop assignments at CSXT's Richmond Shop will also be dovetailed on the CSXT System Roadway Mechanics Seniority Roster with their seniority district prior right and "Shop" designation." (Employees Exhibit " A")

Side Letter No. 13 of the October 9, 1998, Agreement provides:

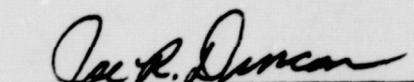
"This will confirm our understanding concerning the closing of the Canton Roadway Equipment Shop and the coordination of field roadway equipment repair and maintenance work. It is the intent of the parties to integrate the former Conrail employees into CSXT's Roadway Mechanic system under CSXT Labor Agreement 12-126-92, as previously amended, on a basis similar to those employees who were present at the time of the original consolidation. As such, it is the desire of the parties to this agreement to advertise all of the Roadway Mechanic positions on the allocated CRC lines and the Conrail allocated Roadway Shop at the same time and follow the general principles of the original agreement. It is also the intent of the parties that once integrated, the former Conrail employees will work under and be governed by the provisions of CSXT Labor Agreement 12-126-92, as previously amended. The parties recognize that the provisions of our separate agreement regarding these initiatives are contingent upon our reaching complimentary agreements with the Brotherhood of Maintenance of Way Employees and the Sheet Metal Workers International Association. In the event we are unable to negotiate such an agreement under the terms of the New York Dock labor protective conditions, it may be necessary to invoke the arbitration provisions of such conditions. If this occurs CSXT will propose that the neutral referee impose without any changes the arrangements provided for in our implementing agreement made this date." (Employees Exhibit "B")

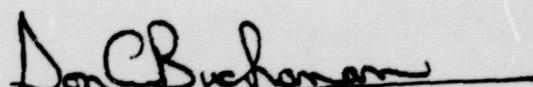
Even though the CSXT Labor Agreement 12-126-92 is unique, it has worked sufficiently for all parties at the Richmond Roadway Equipment Shop and there are no reason to believe that it would not continue to do so. In fact, this is

why the Carrier and the IAM & AW agreed to apply this Agreement when this transaction occurs and if the other involved Organizations did not reach an Agreement and arbitration was necessary, CSXT and the IAM & AW would jointly propose that the neutral impose without any changes, the arrangements provided for in our implementing agreement. Further, the 12-126-92 Agreement and the language contained in the October 9, 1998, Master Implementing Agreement and Side Letter No. 13 fully and appropriately addresses the rearrangement and reassignment of forces in this particular case.

Therefore, based on the foregoing facts, but not limited thereto, the Organizations (IAM & AW and SMWIA) respectfully request that the Neutral answer Question No. 3 by ruling that the maintenance, fabrication and repair work on roadway equipment and machines, including component parts transferred from Canton to Richmond shall be performed by the Class(s) and Craft(s) of employees that are party to the CSXT Labor Agreement 12-126-92, which are IAM & AW, SMWIA and BMW, which will comply with the controlling Carrier and Classification concept. Further, that the Neutral determine the CSXT Labor Agreement 12-126-92, as previously amended, as the applicable Agreement and that the appropriate rearrangement and reassignment of forces in this particular case be conducted in accordance with the CSXT Labor Agreement 12-126-92 and the language contained in the October 9, 1998, Agreement pertaining to same.

Respectfully Submitted,

  
Joe R. Duncan, IAM & AW

  
Don C. Buchanan, SMWIA

US OFFICE PRODUCTS

IMPLEMENTING AGREEMENT

BETWEEN

CSX TRANSPORTATION, INC.  
and its Railroad Subsidiaries

and

NORFOLK SOUTHERN RAILWAY COMPANY  
and its Railroad Subsidiaries

and

CONSOLIDATED RAIL CORPORATION

and

their Employees Represented by

INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS

WHEREAS, Norfolk Southern Corporation ("NS"), Norfolk Southern Railway Company and its railroad subsidiaries ("NSR"); and CSX Corporation ("CSX") and CSX Transportation, Inc. and its railroad subsidiaries ("CSXT"); and Conrail, Inc. ("CRR") and Consolidated Rail Corporation ("CRC") have filed an application with the Surface Transportation Board ("STB") in Finance Docket No. 33388 seeking approval of acquisition of control by NS and CSX of CRR and CRC, and for the division of the use and operation of CRC's assets by NSR and CSXT (the "transaction");

WHEREAS, in its decision served July 23, 1998 in the proceeding captioned Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail, Inc. and Consolidated Rail Corporation, and related proceedings, the STB has imposed the employee protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 360 I.C.C. 60 (1979) ("New York Dock conditions") on all aspects of the Primary Application; Norfolk and Western Railway Company -

EXHIBIT

Carriers' E

## CSXT-JAM&AW

### ARTICLE I

#### Section 1

Upon proper advance written notice by CSXT posted on appropriate bulletin boards, with copies to the General Chairmen signatory hereto, after the effective date of the STB's order approving the control transaction, CSXT may effect the following coordinations or rearrangements of forces, as hereinafter set forth:

- a. Within 30 days of the effective date of the STB's approval of the transaction, the allocated CRC locomotives and cars which are to be operated by CSXT will be integrated into CSXT's existing fleet of locomotives and freight cars and the maintenance and repair work of the integrated fleet will thereafter be performed by CSXT employees at designated CSXT facilities, including the work referred to below, notwithstanding the prior railroad ownership of the equipment. The work referred to in Section 2 below will be subject to a 90-day notice, as required in the Master Transfer Agreement. This is to mean that the maintenance and repair work on the locomotives from the CRC property integrated into the CSXT existing fleet of locomotives will be assigned to a designated location for scheduled maintenance except as provided in the Collective Bargaining Agreement.

- (1) For common locations on the territories of CSXT, shopcraft seniority will be integrated in accordance with the terms and provisions of this Agreement.

(2) The following work may be coordinated or rearranged on CSXT properties operated by CSXT:

- (a) Heavy locomotive work from Selkirk, NY, to Huntington, WV.
- (b) Heavy locomotive work from Juniata Locomotive Works at Altoona, PA, to Huntington, WV.
- (c) Freight car work from Hollidaysburg, PA, to Raceland, KY and to any of CSXT's project shops.
- (d) Roadway equipment shop at Canton will be closed and the work from the allocated lines to be operated by CSXT will be transferred to the CSXT Roadway Equipment Shop at Richmond, VA. Roadway equipment maintenance and repair work on the allocated CRC lines operated by CSXT will be coordinated and seniority integrated under terms contemplated by the January 29, 1993 "Roadway Mechanics Agreement."

b. Conrail employees will not perform any work on NS or CSXT locomotives or equipment except fueling, servicing and such light running repairs as may be necessary to insure the safe and dependable operation of same or to get the locomotive back to the appropriate owner's property.

## Section 2

Future coordinations of work, services or operations, not now contemplated and/or specified in Section 1, in which no employee is required to relocate and the work force is not reduced at the involved locations as a result of the coordination will be implemented under the Master Transfer Agreement between CSXT and the International Association of Machinists and Aerospace Workers ("IAM&AW").

# CSX

TRANSPORTATION

Labor Relations Dept.  
500 Water Street - J-455  
Jacksonville, FL 32202

October 9, 1998

Side Letter No. 13

Mr. R. L. Reynolds  
Pres.-Dir. Gen. Chm., IAM&AW  
111 Park Avenue  
Paducah, KY 42003

Mr. J. A. Coker  
General Chairman, IAM&AW  
1642 Fairview Road  
Stockbridge, GA 30281

Mr. J. R. Cronk  
General Chairman, IAM&AW  
61 Bailey Road  
North Haven, CT 06473

Mr. J. R. Duncan  
General Chairman, IAM&AW  
P. O. Box 220  
Petros, TN 37845

Mr. R. L. Elmore  
Gen. Chm., IAM&AW  
825 Prather Ridge Road  
Bloomfield, KY 40008

Mr. M. A. Hill  
General Chairman, IAM&AW  
38 SENTRY HILL, Lexington Sq.  
Newark, DE 19711

Mr. R. J. McMullen  
General Chairman, IAM&AW  
RR 7, Box 756A  
Altoona, PA 16601

Gentlemen:

This will confirm our understanding concerning the closing of the Canton Roadway Equipment Shop and the coordination of field roadway equipment repair and maintenance work. It is the intent of the parties to integrate the former Conrail employees into CSXT's Roadway Mechanic system under CSXT Labor Agreement 12-126-92, as previously amended, on a basis similar to those employees who were present at the time of the original consolidation. As such, it is the desire of the parties to this agreement to advertise all of the Roadway Mechanic positions on the allocated CRC lines and the Conrail allocated Roadway Shop at the same time and follow the general principles of the original agreement. It is also the intent of the parties that once integrated, the former Conrail employees will work under and be governed by the provisions of CSXT Labor Agreement 12-126-92, as previously amended. The parties recognize that the provisions of our separate agreement regarding these initiatives are contingent upon our reaching complimentary agreements with the Brotherhood of Maintenance of Way Employees and the Sheet Metal Workers' International Association. In the event we are unable to negotiate such an agreement under the terms of the New York Dock labor protective conditions, it may be necessary to invoke the arbitration provisions of such conditions. If this occurs CSXT will propose that the neutral referee impose without any changes the arrangements provided for in our implementing agreement made this date.

AGREED:

R. L. Reynolds  
Pres.-Dir. Gen. Chm.

J. R. Duncan  
General Chairman

J. A. Coker  
General Chairman

J. R. Cronk  
General Chairman

R. L. Elmore  
General Chairman

M. A. Hill  
General Chairman

R. J. McMullen  
General Chairman

Very truly yours,

K. R. Pfeiffer  
K. R. Pfeiffer  
Vice President



ARBITRATION PURSUANT TO ARTICLE I, SECTION 4  
OF THE NEW YORK DOCK PROTECTIVE CONDITIONS

----- X  
 NORFOLK SOUTHERN RAILWAY COMPANY, :  
 CSX TRANSPORTATION, INC., and :  
 CONSOLIDATED RAIL CORPORATION, :  
 :  
 and : Referee  
 :  
 BROTHERHOOD OF MAINTENANCE OF WAY : William E.  
 EMPLOYES; INTERNATIONAL BROTHERHOOD :  
 OF BOILERMAKERS, IRON SHIP BUILDERS, : Fredenberger, Jr.  
 BLACKSMITHS, FORGERS AND HELPERS; :  
 BROTHERHOOD RAILWAY CARMEN DIVISION :  
 - TRANSPORTATION COMMUNICATIONS :  
 INTERNATIONAL UNION; INTERNATIONAL :  
 BROTHERHOOD OF ELECTRICAL WORKERS; :  
 NATIONAL CONFERENCE OF FIREMEN AND :  
 OILERS; INTERNATIONAL ASSOCIATION :  
 OF MACHINISTS AND AEROSPACE WORKERS; :  
 and SHEET METAL WORKERS' INTERNATIONAL :  
 ASSOCIATION. :  
 ----- X

National Mediation Board  
1301 K Street, N.W., # 250-East  
Washington, D.C. 20572  
Friday, December 18, 1998

The above-entitled arbitration came on for hearing  
at 8:45 a.m. before:  
WILLIAM E. FREDENBERGER, JR.

-----  
BRIGGLE & BOTT, COURT REPORTERS  
10823 Golf Course Terrace, Mitchellville, MD 20721  
(301)808-0730

COPY

1 knew the answer, so I volunteered it. It turns out it's  
2 incorrect, and I withdraw it.

3 MR. DUNCAN: The main thing, sir, is that I don't  
4 know what CSX has planned for them. The NS, with the  
5 maintenance of way wanted to take the scale inspectors out  
6 of the bargaining unit. That's the reason that we had this  
7 question here. And we didn't want them taken out of the  
8 bargaining agreement with NS. So now if they've decided  
9 that they're CSX employees, we still want them to remain in  
10 the bargaining unit with the machinists.

11 MR. FREDENBERGER: Does CSX have a statement on  
12 this as to what posture these employees will be in when they  
13 come to CSX? Will they be bargaining unit employees or will  
14 they will be excepted employees?

15 MR. JOHNSON: They will be bargaining unit  
16 employees. They'll be represented by the Brotherhood of  
17 Maintenance of Way Employes.

18 MR. ALLRED: Excuse me, these people will be  
19 represented by the IAM. We have a system with the  
20 machinists and we can bring them into the machinists'  
21 agreement.

22 MR. BERLIN: I reinstate my previous comment.

1 MR. ALLRED: We can talk about it later.

2 MR. DUNCAN: Well, I think that he needs to  
3 understand too, because it's a question that we raised.

4 MR. FREDENBERGER: What I hear now is that these  
5 two employees who are going to CSXT will be bargaining unit  
6 employees in a bargaining unit represented by the  
7 International Association of Machinists and Aerospace  
8 Workers. Am I correct in that statement?

9 MR. ALLRED: Yes.

10 MR. COKER: We're not doing the work that they're  
11 doing now.

12 MR. FREDENBERGER: That may be a different issue.

13 MR. COKER: That's all I want to get clear is that  
14 you're not talking about bringing them in doing scale work.

15 MR. ALLRED: They will doing the work they're  
16 doing now.

17 MR. FREDENBERGER: So I'll add that to my  
18 statement. They will be doing the same work at CSXT as they  
19 are now doing at Conrail.

20 MR. ALLRED: That is correct.

21 MR. DUNCAN: Okay, that settles that issue then.  
22 Okay, thank you.

1 Atlanta. It went from under supervisor craft of some kind  
2 to non-union. But the facts are that these seven people is  
3 going to be continuing working that same territory and  
4 they're not being transferred. The work's not being  
5 transferred.

6 And the alternative that I presented yesterday was  
7 that if you do abrogate the Conrail agreement, then on that  
8 section, if you've got the authority -- which again,  
9 everyone argues that you don't -- but if you've got the  
10 authority to abrogate the Conrail agreement and to impose  
11 something else then I again request that you impose the  
12 Nickel Plate agreement because the Nickel Plate is a solely-  
13 owned railroad of Norfolk Southern. It's the same  
14 ownership, same payroll departments.

15 All the arguments that they had for bulletins and  
16 payrolls and everything else would not apply here because  
17 the Nickel Plate is owned solely by Norfolk Southern. All  
18 the labor relations and everything is done through Norfolk  
19 Southern. I represent the Nickel Plate just like I do the  
20 Norfolk Southern. And if you imposed, which you would have  
21 the authority to do, to put the Nickel Plate agreement into  
22 effect, then those employees, and then expand again to add

1 the portions of Conrail that they're working on today.

2 Today they're working on these portions of Conrail  
3 as traveling mechanics that we're talking about. And if you  
4 impose the Nickel Plate and they go to work the next day,  
5 instead of getting up and going to work under the Conrail  
6 agreement or getting up and going to work under the Wabash  
7 and NW agreement, they just wake up and go to work under the  
8 Nickel Plate agreement and we would maintain the  
9 representation rights.

10 It would make it easier for everyone, and stay  
11 away from the disputes and stuff that may come in the  
12 question of do we have the right? And is this a transfer of  
13 representation? We feel it is. And we feel as though you  
14 do not have the authority to do that.

15 But on the alternative, I still say the Nickel  
16 Plate is a very good alternative. If you just really look  
17 at it, it's an ideal fit. That's all I have to say.

18 MR. BERLIN: I have nothing.

19 MR. FREDENBERGER: Very well. Oh, I'm sorry, Mr.  
20 Griffin?

21 MR. GRIFFIN: Just really one point.

22 Yesterday, the machinists presented an agreement

STB

FD

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(Sub 88)

2-22-99

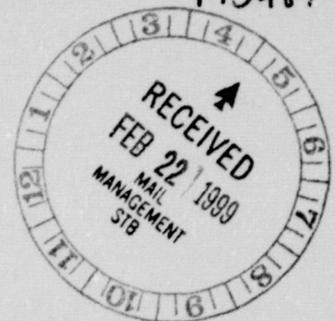
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**SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33388 (Sub-No. 88)



**CSX CORPORATION AND CSX TRANSPORTATION, INC.,  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY  
—CONTROL AND OPERATING LEASES/AGREEMENTS—  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION  
(ARBITRATION REVIEW)**

**JOINT MOTION FOR EXTENSIONS OF TIME**

Norfolk Southern Railway Company ("NSR"), CSX Transportation, Inc. ("CSXT"), and Consolidated Rail Corporation ("Conrail") (collectively, "the railroads") jointly request extensions of the deadlines for replying to the petition for review and petition for stay filed by the Brotherhood of Maintenance of Way Employees ("BMWE") on February 12, 1999, and February 22, 1999, respectively.

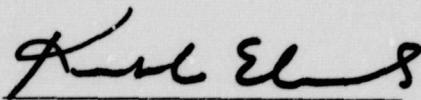
BMWE's February 12, 1999 petition seeks review, pursuant to 49 C.F.R. § 1115.8, of an arbitration award rendered by neutral referee William E. Fredenberger, Jr. on January 14, 1999, under the New York Dock conditions imposed by Decision No. 89. In support of its petition, BMWE submitted a thirty-seven page brief and hundreds of pages of exhibits, including large portions of the underlying arbitration record. BMWE's February 22, 1999 petition for stay incorporates by reference most of the text of BMWE's petition for review and asks the Board to stay the Fredenberger Award pending the Board's consideration of the petition for review.

Pursuant to the Board's rules, 49 C.F.R. § 1104.13(a), replies to a petition for review must be filed within twenty days of the petition, unless a longer time is provided. The Board's rules, 49 C.F.R. § 1115.5(a), allow five days for the filing of replies to stay requests. Under those rules, the railroads would be required to reply to BMW's petition for stay on or before February 29, 1999 and to BMW's petition for review on or before March 4, 1999. In view of various competing demands on their counsel's time, the railroads respectfully request brief extensions, to and including March 12, 1999, of the deadlines for replying to both of BMW's pending petitions.

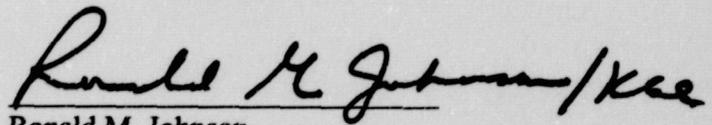
The Board previously enlarged the briefing schedule in this proceeding at BMW's request. By decision served January 29, 1999, the Board granted BMW's motion, to which the railroads consented, to extend the filing deadline for BMW's petition for review by nine days, from February 3, 1999 to February 12, 1999.

Counsel for the railroads have contacted counsel for BMW and are authorized to advise the Board that BMW consents to the requested extensions.

Respectfully submitted,



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Krista L. Edwards  
Alan Gura  
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*Counsel for Consolidated Rail Corporation*

Dated: February 22, 1999

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*Counsel for CSX Transportation, Inc.*

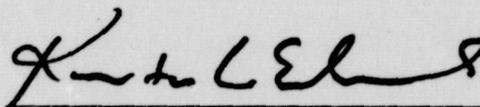
**CERTIFICATE OF SERVICE**

I hereby certify that I have, this 22nd day of February, 1999, caused copies of the foregoing Joint Motion For Extensions Of Time to be served, by hand, upon the following:

Joseph Guerrieri, Jr.  
Debra L. Willen  
Guerrieri, Edmond & Clayman, P.C.  
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Washington, D.C. 20004

Richard S. Edelman  
O'Donnell, Schwartz & Anderson, P.C.  
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Donald F. Griffin  
Brotherhood of Maintenance of Way  
Employes  
10 G Street, N.W., Suite 460  
Washington, D.C. 20002



Krista L. Edwards

STB

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(Sub 88)

2-22-99

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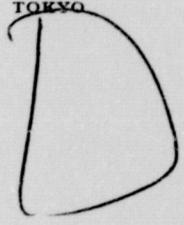
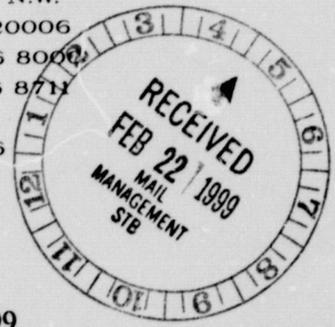
**SIDLEY & AUSTIN**  
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WRITER'S DIRECT NUMBER  
(202) 736-8178

February 22, 1999

**BY HAND**

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Room 715  
Washington, D.C. 20423

ENTERED  
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Re: Finance Docket No. 33388 (Sub-No. 88): CSX Corp. and CSX Transportation, Norfolk Southern Corp. and Norfolk Southern Ry. — Control and Operating Leases/Agreements — Conrail Inc. and Consolidated Rail Corp. (Arbitration Review)

Dear Mr. Williams:

Enclosed for filing in the above-referenced proceeding are the originals and ten copies of the Joint Reply To The Request Of The International Association Of Machinists And Aerospace Workers For A Stay; Joint Motion For Extensions Of Time; and Joint Motion For Leave To File Memorandum Exceeding Page Limitation. A diskette containing a copy of each pleading in WordPerfect 6.1 format also is enclosed.

An extra copy of each pleading is also enclosed for acknowledgment of receipt. Please date-stamp these copies and return them to our messenger.

Very truly yours,

Jeffrey S. Berlin  
Counsel for Norfolk Southern Railway Company

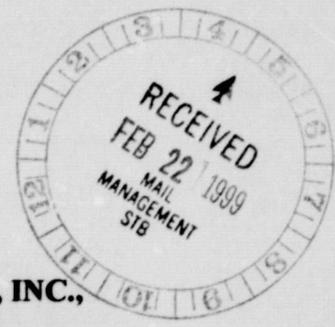
Enclosures

cc: Joseph Guerrieri, Jr.  
Richard S. Edelman  
Donald F. Griffin

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**SURFACE TRANSPORTATION BOARD**

**Finance Docket No. 33388 (Sub-No. 88)**



**CSX CORPORATION AND CSX TRANSPORTATION, INC.,  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY  
—CONTROL AND OPERATING LEASES/AGREEMENTS—  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION  
(ARBITRATION REVIEW)**

**JOINT REPLY TO THE REQUEST OF THE INTERNATIONAL ASSOCIATION  
OF MACHINISTS AND AEROSPACE WORKERS FOR A STAY**

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(215) 209-4922

*Counsel for CSX Transportation, Inc.*

*Counsel for Consolidated Rail Corporation*

Dated: February 22, 1999

The International Association of Machinists and Aerospace Workers ("IAM") has asked the Board to stay an arbitration award that became effective on January 14, 1999, when it was rendered by neutral referee William E. Fredenberger, Jr. under Article I, Section 4 of the New York Dock conditions, which the Board imposed in Decision No. 89. IAM's stay request, tacked on to its petition for review of the award under 49 C.F.R. § 1115.8, has no merit and should be denied.

### **STATEMENT OF THE CASE**

The Fredenberger Award imposed an implementing agreement ("the Arbitrated Implementing Agreement") to govern implementation of the Conrail transaction with respect to the maintenance of way employees of Norfolk Southern Railway Company ("NSR"), CSX Transportation, Inc. ("CSXT"), and Consolidated Rail Corporation ("Conrail") (collectively, "the railroads"). The agreement provides for the allocation of Conrail's maintenance of way workforce, which includes approximately 3,000 available employees, among the railroads' new operations; and it prescribes the arrangements, including applicable labor agreements and realignment of seniority, that will govern the new operations. The Arbitrated Implementing Agreement governs all aspects of the railroads' maintenance of way operations, including the maintenance, repair, inspection and renewal of rail lines and bridges and structures, maintenance and repair of roadway equipment, and welding of rail.

IAM was a party to the arbitration proceeding, and is subject to portions of the Arbitrated Implementing Agreement, because it represents approximately 40 Conrail employees who maintain and repair roadway work equipment on line of road and inspect scales.<sup>1</sup> The Arbitrated

---

<sup>1</sup> IAM represents 38 Conrail equipment repairmen who work on lines of the former New York Central Railroad ("NYC") and two of Conrail's scale inspectors on the former Pennsylvania Railroad ("PRR") lines. IAM says (Pet. at 8) that it also has "representation rights" with respect to equipment repairmen on former PRR and Reading Railroad lines, and scale inspectors on Conrail's former NYC lines, but that is not true. Such employees, along with all other Conrail maintenance of way employees, are represented by the Brotherhood of Maintenance of Way Employees ("BMWE"). Con-  
(continued...)

Implementing Agreement includes three agreements specifically governing implementation of the transaction with respect to those IAM-represented employees. The first (among CSXT, Conrail, IAM, and BMW, designated "Attachment No. 2") provides, in pertinent part, that the IAM-represented Conrail equipment repairmen on the lines to be operated by CSXT (there are 30) will become employees of CSXT and will work under the terms of CSXT's existing labor agreement with BMW, IAM, and the Sheet Metal Workers' International Association. The "Attachment No. 2" agreement also provides for the transfer of certain work and employees from Conrail's Canton, Ohio equipment repair shop to CSXT's Richmond, Virginia equipment repair shop.

The second agreement ("Attachment No. 3") provides for the transfer of work and employees from Conrail's Canton shop (where all equipment repair work is done by BMW-represented employees) to NSR's roadway equipment repair shop at Charlotte, North Carolina. NSR, Conrail, IAM, and BMW are parties to this agreement, along with the five other unions (collectively with IAM, "the shopcraft unions") that represent the employees at NSR's Charlotte shop. Under that agreement, some BMW-represented Conrail employees currently working in Conrail's Canton shop will be afforded an opportunity to follow their work to the Charlotte shop, where approximately 33 of them will be classified as machinists and will work under NSR's labor agreement with IAM.

The third agreement ("Attachment No. 4"), among NSR, Conrail, IAM, and BMW, provides that the seven Conrail line-of-road equipment repairmen who currently work on portions of the Conrail lines to be operated by NSR will become employees of NSR and will work under the

---

<sup>1</sup> (...continued)

trary to IAM's contention (Pet. at 9), BMW also represents the Conrail employees who operate Plaster continuous action tamper machines; IAM-represented equipment repairmen maintain, but do not operate, those machines (under an arrangement that is cancelable at will by Conrail). The railroads and IAM negotiated a separate, voluntary implementing agreement covering IAM-represented employees who repair and maintain locomotives and rail cars.

labor agreement now in effect between NSR and BMW.

As IAM acknowledges, the railroads are preparing to begin their new operations on June 1, 1999. The June 1, 1999 Closing Date ("Day One") was selected in order to ensure a smooth transition in operations. This is an extraordinary undertaking, involving carefully coordinated efforts at all levels and in all departments within each railroad. The railroads have notified their shippers of the June 1, 1999 Closing Date, and are in the process of allocating and assigning thousands of Conrail managers and agreement employees in preparation for the transition. Any interference with our preparations at this juncture would create uncertainty, needlessly complicating the transition in operations and employment, imposing added costs, and potentially delaying the public benefits of the transaction, while producing no corresponding benefit for employees or the public.

#### **ARGUMENT**

IAM bears a heavy burden in asking the Board to stay the Fredenberger Award. A stay is "extraordinary relief," which may be granted only when the moving party shows that (1) there is a "strong likelihood" that it will prevail on the merits; (2) it will suffer "irreparable harm in the absence of a stay"; (3) other interested parties "will not be substantially harmed by a stay"; and (4) "the public interest supports the granting of a stay." Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977) ("Holiday Tours"); CSX Corp.--Control--Chessie Sys. and Seaboard Coast Line Indus., et al. (Arbitration Review), Fin. Dkt. No. 28905 (Sub-No. 27), served Jan. 4, 1996 ("CSX/Train Operations"), slip op. at 3. Applying those standards, the Board has twice rejected requests to stay implementation of the Conrail transaction. Decision No. 91, served August 19, 1998; Decision No. 92, served August 24, 1998. It should do the same now.

**No Likelihood Of Prevailing On The Merits.** The Fredenberger Award is subject to "an extremely limited standard of review" that accords "substantial deference to the arbitrator's

competence and special role in resolving labor disputes." CSX Corp.--Control--Chessie Sys. and Seaboard Coast Line Indus., 4 I.C.C. 2d 641, 648 (1988), reaffirmed after remand, Fin. Dkt. No. 28905 (Sub-No. 22), served Sept. 25, 1998 ("Carmen III"). See Chicago & North Western Transp. Co.--Abandonment, 3 I.C.C. 2d 729, 735-36 (1987) ("Lace Curtain"), aff'd, International B'hd of Elec. Workers v. ICC, 862 F.2d 330 (D.C. Cir. 1988).<sup>2</sup>

Deference is especially appropriate in this case. Referee Fredenberger is an experienced railway labor arbitrator and New York Dock referee, and a former General Counsel of the National Mediation Board ("NMB"). His award resolves all disputed issues and makes findings in support of all provisions of the Arbitrated Implementing Agreement, based on an extensive record, including a four-day hearing. See Award at 4 (explaining that referee's findings are based on consideration of "approximately 300 pages of prehearing submissions or briefs together with several hundred pages of exhibits and attachments thereto, as well as over 1,000 pages of hearing transcript").

IAM challenges the Fredenberger Award on two grounds, neither of which has merit. First, IAM contends that the referee improperly purported to dictate union representation of certain Conrail equipment repairmen. That challenge is based on IAM's desire "to preserve its status as representative of these 38 employees," Pet. at 10, and has no place here. As the Fredenberger Award acknowledges (at 17), the NMB has exclusive jurisdiction over employee representation under the Railway Labor Act.<sup>3</sup> Accordingly, the STB will not review an award to consider its effect on union

---

<sup>2</sup> See also Delaware & Hudson Ry.--Lease and Trackage Rights Exemption--Springfield Terminal Ry., Fin. Dkt. No. 30965 (Sub-No. 1), served Oct. 4, 1990, slip op. at 16-17 (an arbitral award may be overturned only "when it is shown that the award is irrational or fails to draw its essence from the imposed labor conditions or it exceeds the authority reposed in arbitrators by those conditions"), reaffirmed after remand, served Sept. 25, 1998.

<sup>3</sup> It is settled that an arbitrated implementing agreement cannot dictate the representation of affected employees. E.g., Fox Valley & Western Ltd.--Exempt. Acq. & Oper.--Certain Lines of  
(continued...)

representation. E.g., Union R.R., et al.--Arbitration Review--United Steelworkers, Fin. Dkt. No. 31363 (Sub-No. 3), served Dec. 17, 1998, slip op. at 8.

In this case, referee Fredenberger acted well within his jurisdiction by resolving differences of view between IAM and NSR as to which labor agreements should govern the work of seven employees who perform line-of-road equipment repair on certain Conrail lines (originally NYC lines) allocated to NSR. With respect to those lines, IAM asked the referee to adopt the Conrail/IAM agreement or, in the alternative, the NSR/IAM agreement that is in effect on the former "Nickel Plate" portion of NSR. The referee instead adopted NSR's proposal, under which the NSR/BMWE agreement that is in effect on the "NW-Wabash" portion of NSR will apply to all the NSR-allocated lines. In doing so, the referee did not purport to dictate representation or usurp the jurisdiction of the NMB. In the passage of the award challenged by IAM, the referee observed (as NSR had explained in the hearing) that, as a consequence of coming to work for NSR on the terms proposed by the railroads, the seven NSR-allocated employees would work in a craft that, on NSR, is exclusively represented by BMWE for purposes of the RLA. If IAM has a different understanding, it may pursue the matter with the NMB; the STB has no say in the matter.

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<sup>3</sup> (...continued)

Green Bay & Western R.R., et al., Fin. Dkt. No. 32035 (Sub-No. 1), served Dec. 16, 1994, slip op. at 3; Norfolk Southern Corp.--Control--Norfolk & Western Ry., et al., 4 I.C.C. 2d 1080, 1086-87 (1988) ("New York Dock does not preempt any NMB determination as to representation . . . . To the extent that the award could be construed as suggesting otherwise, that contention is erroneous. This is not to say that ATDA may in fact retain its status. That is, as the panel recognized, for the NMB to determine . . . ."), reaffirmed after remand, Carmen III. It is equally established that pre-transaction union representation need not be preserved under New York Dock -- that is, the referee may make necessary modifications in the terms or application of existing labor agreements, even when the arrangement may have the effect of changing the representation of affected employees. Carmen III, slip op. at 26 n.25; CSX Corp.--Control--Chessie System, Inc. and Seaboard Coast Line Indus. (Arbitration Review), Fin. Dkt. No. 28905 (Sub-No. 27), served Dec. 7, 1995, slip op. at 11-12 ("the issue of which union is to represent WM engineers or receive them as dues-paying members does not involve a right that must be preserved under section 2 of New York Dock").

IAM has no quarrel at all with CSXT. CSXT's proposal, with which IAM agreed, places roadway equipment repair work under the existing CSXT/IAM roadway equipment agreement. Referee Fredenberger adopted this proposal. IAM-represented Conrail employees allocated to CSXT will continue to be represented by IAM; there will be no change in representation on CSXT.<sup>4</sup>

There is, equally, no merit to IAM's challenge respecting Conrail employees who transfer to NSR's Charlotte shop. The Arbitrated Implementing Agreement properly provides that employees who follow their work from Canton will have their seniority "dovetailed" on the appropriate craft rosters at Charlotte (on NSR) or on the CSXT system roadway mechanics roster which covers roadway mechanics assigned at Richmond. IAM does not object to the fact that approximately 33 of the transferring Canton employees will work as IAM-represented machinists at Charlotte -- that is, that BMW's representation will not be "preserved" as to those prospective IAM dues-payers. Nor does IAM object to the dovetailing of transferring employees onto CSXT's system roadway mechanics roster. IAM's only objection is to the manner in which transferring employees will be merged into NSR's machinist workforce at Charlotte. IAM contends (Pet. at 16) that transferring employees should be placed at the bottom of the Charlotte machinist roster because, regardless of their Conrail seniority, those employees lack the qualifications and training of Charlotte machinists. The referee considered and rejected that contention, finding that any "[p]roblems with qualifications can be resolved by application of training and retraining provisions in existing [agreements]." Award at 21. There is no likelihood that the Board will second-guess his determination or otherwise require

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<sup>4</sup> As IAM well knows, there has never been an issue with respect to the post-Day One representation of any IAM-represented Conrail employees other than the seven repairmen on the former NYC lines allocated to NSR. As to Conrail's other IAM-represented maintenance of way employees (the 30 repairmen and two scale inspectors allocated to CSXT and the one repairman who will continue to be employed by Conrail), there will be no change in union representation as a result of the Arbitrated Implementing Agreement. Any suggestion to the contrary in the Fredenberger Award is nothing more than an inconsequential misstatement, not a basis for STB review.

a different seniority arrangement. See Norfolk & Western Ry., New York, Chicago & St. Louis R.R. --Merger, Etc., Fin. Dkt. No. 21510 (Sub-No. 3), served Dec. 18, 1998, slip op. at 5 (under Lace Curtain standard, STB defers to referee's determination regarding manner of integrating seniority).<sup>5</sup>

**No Showing Of Irreparable Injury.** IAM has not shown that the employees it represents will suffer any injury, much less "irreparable" injury, if a stay is not granted. To meet its burden, IAM must demonstrate that the "claimed injury will be imminent, certain and great." Delaware & Hudson Ry.--Lease & Trackage Rights--Springfield Terminal Ry., Fin. Dkt. No. 30965 (Sub-No. 4), served Nov. 2, 1995, slip op. at 2 (quoting Wisconsin Gas v. FERC, 758 F.2d 669, 674 (D.C. Cir. 1985)). Economic loss by itself does not meet that standard. As the D.C. Circuit has explained:

The key word in this consideration is *irreparable*. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958) (emphasis in original).

IAM's claim of irreparable harm rests on a single, false contention -- that implementation of the transaction pending review "will result in widespread relocations and displacements that will be impossible to unscramble at a later date." Pet. at 18. In fact, no IAM-represented roadway equipment mechanics will be required to relocate in the initial implementation of the Conrail transaction. Employees now working at Conrail's Canton equipment repair facility and at Conrail's Lucknow (Harrisburg), Pennsylvania rail welding plant, who will be relocated, are currently represented by BMWE, which has not challenged their relocation.

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<sup>5</sup> IAM also complains about the manner in which the railroads handled negotiations and correspondence prior to the arbitration. Referee Fredenberger considered and rejected the same complaints, finding that the railroads had satisfied their obligations under New York Dock. Award at 19-20. IAM does not, in fact, seek review of those findings; nor, of course, does any other union.

In any event, the types of harm that IAM predicts would not be irreparable. New York Dock monetary benefits are available to employees who are required to relocate or are displaced as a result of the transaction.<sup>6</sup>

**Harm To The Railroads.** By contrast, the railroads have no way of recouping the losses that they would sustain if the Board were to grant IAM's request. And -- contrary to IAM's contention -- we would be substantially harmed by a stay in this proceeding. The extent of the harm would depend on the nature, timing and duration of a stay.

Although IAM styles its motion as a request for "a stay of this Award pending the Board's decision in this matter" (Pet. at 19), IAM seems to be asking that the Board postpone Day One for that purpose. *Id.* at 18. IAM casually dismisses the effect of such a remedy, stating that, in view of the June 1, 1999 Closing Date, "[i]t is somewhat ingenuous [sic] for the carriers to suggest that either their or the public interest will be irreparably harmed by any further minor delay occasioned

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<sup>6</sup> See Canadian Pacific Ltd., et al.--Purchase and Trackage Rights--Delaware & Hudson Ry., Fin. Dkt. No. 31700 (Sub-No. 13), served Nov. 6, 1998 ("CP/D&H"), at 3 (no showing that employees would suffer irreparable injury if required to relocate pending judicial review); CSX/Train Operations, slip op. at 5 (fact that a few employees would be discharged, required to relocate, and/or experience minor changes in compensation did not establish irreparable harm because carriers could restore operations if award were overturned and, in the meantime, employees would be eligible for New York Dock monetary benefits); I&M Rail Link, LLC--Acq. & Oper. Exempt.--Certain Lines of Soo Line R.R., Fin. Dkt. No. 33326, served April 4, 1997 ("I&M/Soo"), slip op. at 3-4 (allegation that employees would be displaced and required to relocate did not demonstrate irreparable harm); New England Central R.R.--Acq. & Oper. Exempt., Fin. Dkt. No. 32432, served Dec. 30, 1994, slip op. at 4-5 (job losses would not be irreparable in light of ICC-imposed protective benefits); Wheeling Acquisition Corp.--Acq. & Oper. Exempt.--Lines of Norfolk & Western Ry., Fin. Dkt. No. 31591, served May 7, 1990, slip op. at 3 (employee relocation is "not an extraordinary event in the railroad industry and not one generally recognized under the standards of [Holiday Tours]"); Wilmington Terminal R.R.--Purchase and Lease--CSX Transp., Fin. Dkt. No. 31530, served July 31, 1990, slip op. at 3 ("the possible need for employees to relocate does not establish irreparable harm"); Norfolk Southern Corp.--Control--Norfolk & Western Ry., et al. Fin. Dkt. No. 29430 (Sub-No. 20), served June 10, 1987 ("NS/Power Distribution"), slip op. at 3 (contention that employees would be required to relocate, would lose the asserted "protections" of their labor agreement and would displace other employees did not establish "irreparable harm", union failed to show "why it is not possible for [affected] employees to be adequately compensated under the New York Dock conditions").

by a stay of this Award pending the Board's decision in this matter." *Id.* at 18-19. That is a perfectly absurd position, because there is no conceivable reason why the railroads should be required to postpone Day One and also because the Board already has found that a delay in consummating the transaction, in whole or in part, would be harmful to the railroads. Decision No. 92, slip op. at 2 (noting applicants' "commitment to making every effort to ensure that the division of Conrail's operations are effected smoothly," finding that stay of transfer of station property would "adversely affect the transaction as a whole").

Even if the Arbitrated Implementing Agreement were otherwise kept fully in effect, a stay of the provisions challenged by IAM would delay the realization of efficiencies made possible by the integration of equipment repair operations on the expanded NSR and CSXT systems. For instance, the Arbitrated Implementing Agreement permits the railroads to use equipment repair employees flexibly and efficiently in support of their new operations by integrating the IAM-represented equipment repairmen into each carrier's equipment repair forces. IAM's proposal, by contrast, would restrict the railroads to operating part of their allocated properties under the remnants of seniority arrangements and labor agreements dating back to Conrail's predecessor railroads, which bear no relationship to the expanded systems of CSXT and NSR. Operating under those fragmented arrangements would deprive the railroads of efficiencies made possible by the transaction.<sup>7</sup>

At a minimum, even a brief stay of the Fredenberger Award would interfere with the

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<sup>7</sup> CP/D&H, slip op. at 3 (delay in realizing efficiencies of dispatching coordination pending judicial review "weigh[ed] in favor of denial of stay request"); I&M/Soo, slip op. at 4 ("further delay in consummating the I&M acquisition transaction could cause I&M significant financial harm; could jeopardize financing; could result in a loss of business that may not be recoverable; would cause uncertainty among lenders, employees and shippers and would prevent the realization of the economic benefits from the I&M acquisition transaction"); NS/Power Distribution, slip op. at 3 ("[t]o stay the transfer would delay the coordination and thereby prevent the carriers from realizing" savings in capital and operating costs to be achieved through coordination").

railroads' preparations for Day One. The railroads already have taken steps under the Arbitrated Implementing Agreement to begin the process of identifying all their allocated maintenance of way employees, so that the railroads can establish the payroll records and systems (including verifying payroll advances, deductions, withholding, garnishments, direct deposit instructions, etc.) in final preparation for a smooth transition in operations and employment on Day One. It is in the interest of everyone, including the employees, that this critical work continue uninterrupted.<sup>8</sup>

**Public Interest.** The public interest also strongly favors timely and smooth implementation of the Conrail transaction. The Board found in Decision No. 89 (at 129-34) that the Conrail transaction will generate enormous public benefits in the forms of increased competition, reduction in highway truck traffic, improved service, and greater efficiency and safety; and the Board reiterated those findings in denying an earlier stay request (Decision No. 91, at 2, citations omitted):

[W]e have found that the transaction should result in quantifiable public benefits of close to \$1 billion a year. We have also found that applicants' expanded rail operations will remove over 1 million truck trips a year from our nation's highways and reduce fuel consumption by over 80 million gallons a year. Staying the transaction pending resolution of APL's private objections would be largely disproportionate to the harm from an indefinite delay of even a portion of these public benefits. Accordingly, the petition will be denied.

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<sup>8</sup> As the ICC stated in Fox Valley & Western Ltd.--Exempt., Acq. and Oper.--Certain Lines of Green Bay & Western R.R., et al., Fin. Dkt. No. 32035, served Aug. 26, 1993, slip op. at 3:

The concern of our labor protection conditions is, as the Unions properly note, to assure a smooth transition from GB&W and FRVR operations to FV&W operations. Requiring an orderly process for implementing the arbitration decisions benefits not only the employees of the consolidating carriers but also the shippers who rely on the continuation of service. We believe that such a process is now underway and that staying the process for 30 days would impede rather than facilitate that process.

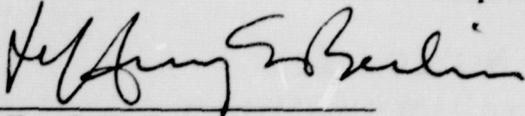
Finally, while the amount of benefits foregone from the delay of consummation may be open to dispute, the Carriers sought the transaction in order to achieve benefits and the Carriers are foregoing those benefits pending consummation. And the public is foregoing the public benefits we cited in approving this transaction.

The reasoning applies with equal force today.<sup>9</sup> At a minimum, the stay IAM seeks would impose added costs and uncertainty on the shipping public, while producing no corresponding public benefit.

**CONCLUSION**

IAM's stay request should be denied.

Respectfully submitted,



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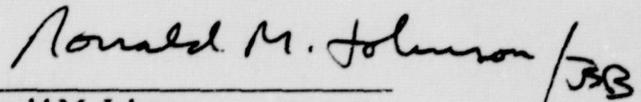
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Dated: February 22, 1999



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<sup>9</sup> See Decision No. 106, served Dec. 7, 1998 (expediting resolution of dispute, stating "public interest in expanded CSX vs. NS competition made possible by the CSX/NS/CR transaction must be protected, and a resolution of this matter must be made well in advance of Day One"). See also CSX/Train Operations, slip op. at 5 (finding that coordination will produce public transportation benefits "strongly militates against a stay"); NW/Power Distribution, slip op. at 3 ("[t]o stay the transfer would delay these economies that have already been shown to be in the public interest").

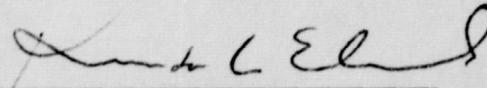
**CERTIFICATE OF SERVICE**

I hereby certify that I have, this 22nd day of February, 1999, caused copies of the foregoing Joint Reply To The Request Of The International Association Of Machinists And Aerospace Workers For A Stay to be served, by hand, upon the following:

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Krista L. Edwards

STB

FD

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(Sub 88)

2-117-99

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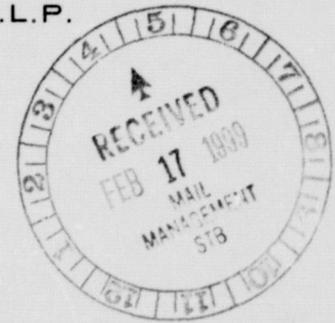
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WRITER'S E-MAIL ADDRESS RMJohnson@akingump.com



February 17, 1999

Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423

ENTERED  
Office of the Secretary

FEB 18 1999

Part of  
Public Record

Re: FD Docket No. 33388 (Sub-No. 88)

Dear Secretary Williams:

Enclosed for filing with the Board are the original and ten copies of the Motion For Extension Of Time. An additional copy is also included to be date-stamped and returned to the waiting messenger.

Thank you for your assistance.

Sincerely yours,

Ronald M. Johnson

RMJ/ajr  
Enclosures

cc: Joseph Guerrieri, Jr. (w/encl.)  
Richard S. Edelman (w/encl.)  
Donald F. Griffin (w/encl.)

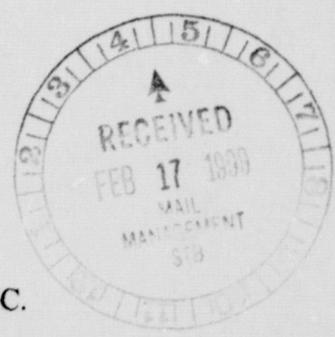
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FEB 18 1999

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SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388 (Sub-No. 88)



CSX CORPORATION AND CSX TRANSPORTATION, INC.  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY  
- CONTROL AND OPERATING LEASES/AGREEMENTS -  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION  
(Arbitration Review)

MOTION FOR EXTENSION OF TIME

Norfolk Southern Railway Company ("NSR"), CSX Transportation, Inc. ("CSXT"), and Consolidated Rail Corporation (hereinafter the "Carriers") request a five-day extension of time to respond to the request by the International Association of Machinists and Aerospace Workers ("IAM") for a stay of the New York Dock decision issued by Referee Fredenberger.

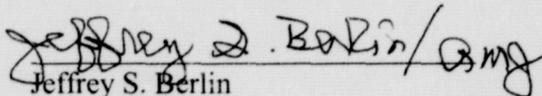
IAM filed a petition for review of the Fredenberger Award, pursuant to 49 C.F.R. § 1115.8, on February 12, 1999. In its petition, IAM included a request that the Board stay the Fredenberger Award until it issues a decision on IAM's petition.

Under the Board's rules, a response to a petition for a stay is due in five calendar days. In this case, the Carriers did not receive the IAM's petition until late in the afternoon of Friday, February 12, 1999. That weekend was President's Day weekend, with Monday being a federal holiday and also a holiday in most of the railroad industry. The Carriers seek an extension of time in order to prepare and coordinate a response to IAM's request for a stay. This modest extension will not harm any party. NSR and CSXT are not proposing to begin operations over their allocated Conrail lines until June 1, 1999 ("Day One"). While the Carriers do not agree that

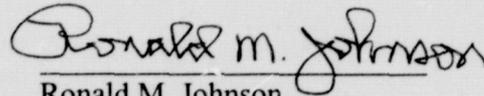
IAM can show any irreparable injury, the fact is that no IAM-represented employee will be affected by the implementing agreement imposed in the Fredenberger Award until Day One.

Counsel for the Carriers have contacted counsel for IAM and are authorized to say that IAM consents to the requested extension of time.

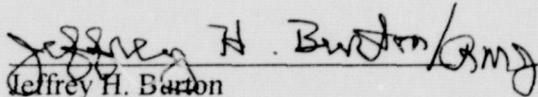
Respectfully submitted,



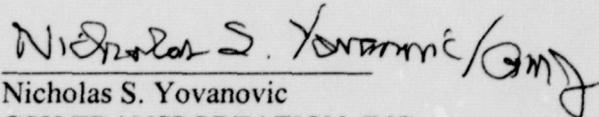
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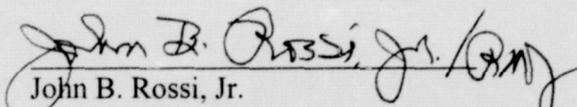
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Railway Company*



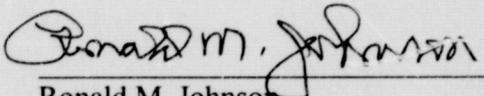
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*Counsel for Consolidated Rail Corporation*

Dated: February 17, 1999

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy hereof was furnished this 17<sup>th</sup> day of February 1999,  
by First Class U.S. Mail, postage pre-paid to all parties of record.

  
\_\_\_\_\_  
Ronald M. Johnson

STB

FD

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(Sub 88)

1-28-99

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NICOLAS M. MANICONE\*

\*NOT ADMITTED IN D.C.

**ENTERED**  
**Office of the Secretary** FACSIMILE: (202) 624-7420

(202) 624-7400

JAN 29 1999

Part of  
Public Record

January 28, 1999



**VIA HAND DELIVERY**

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423-0001

*D*

Re: CSX Corp., et al., Norfolk Southern Corp., et al.  
-- Control and Operating Leases/Agreements --  
Conrail Inc., et al., Finance Docket No. 33388  
(Sub No. 88)

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding, please find an original and 25 copies of the Unopposed Motion Of The International Association Of Machinists And Aerospace Workers For Extension Of Time To File Petition For Review Of Arbitration Award. Also enclosed is a 3.5" diskette containing the text of this filing in WordPerfect 6.0/6.1 format.

I have included an additional copy to be date-stamped and returned with our messenger.

Thank you for your attention to this matter.

Sincerely,

*Debra L. Willen*

Debra L. Willen  
Counsel for the IAM

DLW:mmw

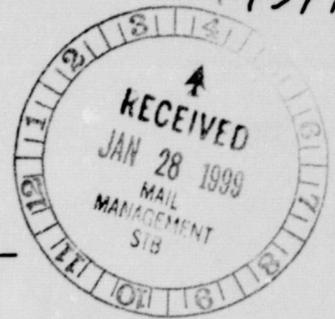
cc: Allison Beck, Esq.  
Mark Filipovic  
Robert L. Reynolds

ENTERED  
Office of the Secretary

JAN 29 1999

Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 33388 (Sub No. 88)

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORTHERN  
SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY  
--CONTROL AND OPERATING LEASES/AGREEMENTS--  
CCNRail, INC. AND CONSOLIDATED RAIL CORPORATION

UNOPPOSED MOTION OF THE INTERNATIONAL  
ASSOCIATION OF MACHINISTS AND AEROSPACE  
WORKERS FOR EXTENSION OF TIME TO FILE  
PETITION FOR REVIEW OF ARBITRATION AWARD

The International Association of Machinists and Aerospace Workers ("IAM") intends to petition for review of an Arbitration Award, dated January 14, 1999, issued by Neutral Referee William E. Fredenberger, Jr., ("Fredenberger Award"), regarding application of the New York Dock provisions imposed by the Surface Transportation Board ("STB" or "Board") in this proceeding. Pursuant to 49 C.F.R. §1115.8, the IAM's petition for review is due to be filed on February 3, 1999. The Brotherhood of Maintenance of Way Employees ("BMWE") also has indicated an intention to petition for review of the Fredenberger Award and has filed an unopposed motion to extend until February 12 the time for filing that petition. By this motion, the IAM respectfully requests that the time for filing its petition likewise be extended until February 12.

Counsel for the IAM has consulted with counsel for CSX Transportation, Inc. and counsel for Norfolk Southern Corp., and they have advised that the carriers do not oppose this motion. In any event, a grant of this motion would cause no prejudice to other parties in view of the fact that the BMW has requested a like extension. Further, the undersigned counsel were not involved in the proceedings before Mr. Fredenberger and need the additional time requested to adequately review the voluminous arbitration record.

For all the foregoing reasons, the IAM respectfully requests that its motion for extension of time be granted and that its time to petition for review of the Fredenberger Award be extended to February 12, 1999.

Respectfully submitted,

*Debra L. Willen*

---

Joseph Guerrieri, Jr.  
Debra L. Willen  
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Counsel for the IAM

Date: January 28, 1999

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the IAM's Motion For Extension Of Time To File Petition For Review Of Arbitration Award were served this 28th day of January, 1999, by first-class mail, postage prepaid, upon the following parties of record in the underlying arbitration proceeding:

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*Debra L. Willen*

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(Sub 88)

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Office of the Secretary

JAN 27 1999

Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388 (Sub No. 88)



CSX Corporation and CSX Transportation, Inc.,  
Norfolk Southern Corp. and Norfolk  
Southern Ry. Co.--Control and Operating  
Leases/Agreements--Conrail Inc.  
and Consolidated Rail Corporation  
Transfer of Railroad Line by Norfolk  
Southern Railway Company to CSX Transportation, Inc.

**UNOPPOSED MOTION OF THE BROTHERHOOD OF MAINTENANCE  
OF WAY EMPLOYES FOR EXTENSION OF TIME TO FILE  
PETITION FOR REVIEW OF ARBITRATION AWARD**

D

The Brotherhood of Maintenance of Way Employees ("BMWE") intends to file a petition for review of the arbitration award issued by William E Fredenberger, Jr. under the *New York Dock* employee protective conditions imposed in the above-referenced proceeding. The award was served on January 14, 1999, and pursuant to 49 C.F.R. §1115.8, the petition for review would be due on February 3, 1999. BMWE now requests an extension of time in which to file the petition to and including February 12, 1999.

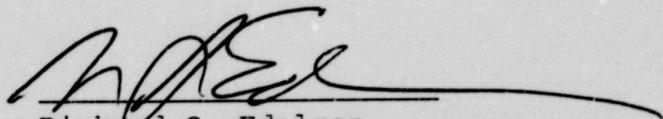
In support of this motion, BMWE states that since issuance of the Fredenberger award, BMWE's counsel, Richard S. Edelman, who will be responsible for the majority of the petition, has

been involved another *New York Dock* arbitration arising from these proceedings in which a hearing was held last Friday, January 22. Furthermore, at the conclusion of that hearing, the arbitrator in that case requested the filing of written rebuttals and summaries of arguments by February 2, 1999, the day before the petition for review by BMWWE would be due. Additionally, during the last two weeks Mr. Edelman has been coping with an illness in his family which precluded his spending time on other matters.

Counsel for BMWWE has conferred with counsel for CSX Transportation, counsel for Norfolk Southern Corp. and counsel for the International Brotherhood of Electrical Workers (the only other attorney participating in the proceedings before Mr. Fredenberger) regarding this motion. Each counsel has advised counsel for BMWWE that their clients did not object to this motion.

For all of the foregoing reasons, BMWWE respectfully requests that its motion for extension of time be granted, and that its time to petition for review be extended to and including February 12, 1999.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'RSE', is written over a horizontal line. The signature is fluid and cursive.

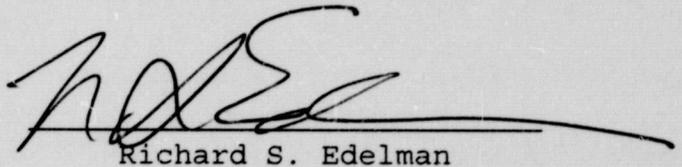
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Dated: January 26, 1999

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served one copy of the foregoing Unopposed Motion of the Brotherhood of Maintenance Of Way Employes for Extension of Time to File Petition for Review of Arbitration Award, by first-class mail, postage prepaid, to the offices of the parties of record in the underlying arbitration (list attached).

Dated at Washington, D.C. this 26<sup>th</sup> day of January, 1999.



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