

STB FD

33388

J

*W. G. J.*

# House Resolution No. 21

FD-33388

(By Mr. Speaker, Mr. Kiss)

Urging the West Virginia congressional delegation to ascertain all pertinent facts relating to the economic disadvantages that could be inflicted on the coal shippers in north central West Virginia by the proposed acquisition of Conrail by CSX Corporation and the subsequent division of Conrail between CSX and Norfolk Southern.

**W**HEREAS, The merger of rail lines by CSX and Norfolk Southern may be desirable in a general sense; and

**W**HEREAS, The well-being of the West Virginia economy, especially the coal industry, has historically been dependent on a cost-effective rail system to transport coal reserves to markets throughout the world; and

**W**HEREAS, The West Virginia coal industry finds itself in a highly competitive global marketplace where the cost of rail delivery can be the deciding factor in winning and losing a coal supply contract; and

**W**HEREAS, Those coal shippers in north central West Virginia that ship on the old B&O rail line, directly employing over 2,000 people and directly creating a total of 12,000 jobs, have annual sales of \$300 million and pay \$12 million in coal severance taxes; and

**W**HEREAS, It is anticipated that the rail line division between CSX and Norfolk Southern will clearly favor some Pittsburgh seam coal producers in southwestern Pennsylvania by providing joint access by both CSX and Norfolk Southern, thus granting those shippers full, unfettered, low cost, direct access to customers of the north central West Virginia producers; and

**W**HEREAS, The north central West Virginia producers on the CSX/B&O line will be relegated to CSX - Norfolk Southern "two line" hauls that are more costly and time consuming; and

**W**HEREAS, This rail line division must be structured to provide a level playing field so the north central West Virginia coal fields can compete fairly with producers in western Pennsylvania; and

**W**HEREAS, This rail line division must be structured to provide a level playing field in the north central West Virginia coal fields as is contemplated in southwestern Pennsylvania; therefore, be it


*Resolved by the House of Delegates:*

That the House urges Senator Robert C. Byrd, Senator Jay Rockefeller, Congressman Nick Rahall, Congressman Alan Mollohan and Congressman Bob Wise to contact the U.S. Department of Transportation, the Surface Transportation Board and other appropriate federal regulatory agencies to ascertain the effect the proposed merger will have on the coal producers in north central West Virginia, and to do all in their power to ensure that a level playing field is available to all coal producers; and, be it

*Further Resolved*, That the Clerk of the West Virginia House of Delegates is hereby directed to forward a copy of this resolution to Senator Robert C. Byrd, Senator Jay Rockefeller, Congressman Nick Rahall, Congressman Alan Mollohan, Congressman Bob Wise, the Secretary of the U. S. Department of Transportation and the members of the Surface Transportation Board.



Robert S. Kiss,  
Speaker of the House



Gregory M. Gray,  
Clerk of the House

STB FD 33388

11/27/02

J

UNIONS





Office of the Chairman

Surface Transportation Board  
Washington, D.C. 20423-0001

FILE IN DOCKET

JD-33388

November 27, 2002

Mr. Dennis Czarnecki  
6024 North Helton Road  
Villa Rica, GA 30180

Dear Mr. Czarnecki:

As I said I would do, I am getting back to you regarding your concerns about the implementation of the Conrail acquisition transaction, and specifically the protections afforded by the New York Dock labor protective conditions imposed by the Surface Transportation Board (Board) in approving the transaction.

After receiving your letter, I asked Mr. Mel Clemens, Director of the Board's Office of Compliance and Enforcement, to follow up with you concerning the reply we received from Mr. David Goode, Chairman, President and CEO of Norfolk Southern Corporation. I understand that Mr. Clemens has written to you and enclosed a copy of the response that we received from him. I hope you found the information helpful.

As I said in my earlier letter, I appreciate your concerns and hope that you are able to resolve them through negotiation. I am having Mr. Goode's response made a part of the public docket for the Conrail acquisition proceeding.

Sincerely,

Linda J. Morgan



**NORFOLK  
SOUTHERN**

Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-2191  
Telephone (757) 629-2610  
Facsimile (757) 629-2306

**David R. Goode**  
Chairman, President and  
Chief Executive Officer

November 11, 2002

**Ms. Linda J. Morgan, Chairman**  
**Surface Transportation Board**  
**1925 K Street, N.W., Suite 780**  
**Washington, DC 20423-0001**

Dear Chairman Morgan:

Further reference is made to your October 28, 2002 letters forwarding correspondence you received from three Norfolk Southern employees regarding their claims for protective benefits under the New York Dock protective conditions.

These employees previously sent identical letters to STB Director Melvin F. Clemens, Jr.; Mr. Clemens forwarded copies of those letters to our Labor Relations Department at that time. For your ready reference, I have attached copies of those letters and Mr. Clemens' response. I have also attached Vice President-Labor Relations Mark R. MacMahon's letters to these employees which explain our reasons for declining their claims.

Norfolk Southern carefully reviews all claims it receives from its employees for the protective benefits of New York Dock as a result of the Conrail transaction. In those instances where NS has determined that employees have been placed in a worse position with respect to compensation as a result of the transaction, those employees are certified as protected employees. However, in situations where there is no evidence to support claims for New York Dock benefits, the claims are appropriately denied. That is the status of the claims on behalf of the three involved individuals.

As you know, New York Dock provides for an arbitration process to resolve disputes such as this. Norfolk Southern is, of course, prepared to submit these disputes to arbitration should the employees or their union desire to do so.

Please let me know if I can provide any additional information.

Very truly yours,

Attachments

RECEIVED  
SURFACE TRANSPORTATION  
BOARD  
2002 NOV 18 P 1:33  
OFFICE OF  
CHAIRMAN MORGAN



**NORFOLK  
SOUTHERN**

Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-2191

Mark R. MacMahon  
Vice President  
Labor Relations

October 18, 2002

CRA-8

Mr. Dennis P. Czarnecki  
6024 North Helton Road  
Villa Rica, GA 30130

Dear Mr. Czarnecki:

This is in response to your letter dated October 7, 2002 to Mr. Melvin F. Clemens Jr., Director, Surface Transportation Board, concerning the denial of your claims for New York Dock (NYD) benefits.

You were employed on Conrail in its National Customer Service Center (NCSC) located in Pittsburgh, Pennsylvania. As a result of the Conrail transaction effective June 1, 1999 (Split Date), the work being performed in the NCSC was divided among Norfolk Southern Railway (NSR), CSX Transportation, Inc. and the remaining Conrail. NSR transferred its portion of the work from the NCSC to its Central Yard Office (CYO) in Atlanta, Georgia, in stages beginning June 1, 1999, and ending in December 1999.

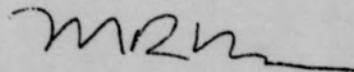
You occupied the position of Customer Service Representative on Conrail with a Wage Grade 10 rate of pay of \$139.55 per day. You remained on the same type position with NSR except that your rate of pay increased from \$139.55 per day to \$141.86 per day as the NSR wage grade rate of pay was higher than the Conrail rate. In October 1999, you transferred with your work to Norfolk Southern's CYO in Atlanta, Georgia. In November 1999, you submitted a claim for a displacement allowance under NYD as a result of the Conrail transaction. You stated on your claim that you were placed in a worse position with respect to compensation because overtime was not available due to the transaction.

Your claim was declined since there had been no showing that you suffered a loss of compensation as a result of the transaction. Your rate of pay actually increased as a result of the transaction, and Carrier records indicate that you have refused and/or missed numerous hours of available overtime offered to you in CYO since your transfer to Atlanta, Georgia.

Norfolk Southern is committed to reviewing each claim for NYD benefits in the normal manner to determine its validity. We have certified numerous employees, both in the clerical craft and other crafts, where those individuals were "displaced" or "dismissed" employees under the terms of the NYD conditions. Naturally, we have also denied claims for benefits where we have found that there has been no showing of any loss of compensation as a direct result of the transaction.

Your labor organization, the Transportation Communications International Union (TCU), has appealed this claim in the usual manner, and it has been discussed several times in conference on the property. Norfolk Southern has made its arguments and position in this case very clear to TCU, and we are prepared to arbitrate this claim should TCU choose to do so. In that event, we will follow the well-established arbitration procedures contained in Section 11 of NYD.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'MRM', followed by a horizontal line.

cc: Melvin F. Clemens, Jr.

## FAX COVER SHEET

### SURFACE TRANSPORTATION BOARD OFFICE OF COMPLIANCE AND ENFORCEMENT

**TO** : Mark MacMahon, Vice President - Labor Relations  
Norfolk Southern Corporation

Tel. No. 757-629-2615  
FAX No. 757-629-2777

**FROM** : Mel Clemens, Director

Tel. No. 202-565-1575  
FAX No. 202-565-9011

**DATE** : 10/16/02

**SUBJECT** : COMPLAINT INVOLVING NEW YORK DOCK CONDITIONS

Attached is a letter received from Dennis Czarnecki, a TCU member, and my reply, who is complaining about NS's denial of New York Dock benefits to which he believes he is entitled. I will appreciate your review of this matter to ensure that the Board-imposed labor protective conditions, which were made a part of the TCU implementing agreement, are being appropriately applied. Thank you for your assistance.

Total number of pages sent including cover sheet 3.





Surface Transportation Board  
Washington, D.C. 20423-0001

October 16, 2002

Office of Compliance and Enforcement

1925 K Street, N.W., Suite 780  
Washington, DC 20423-0001

Mr. Dennis Czarnecki  
6024 North Helton Road  
Villa Rica, Georgia 30180

202-565-1573  
FAX 202-565-9011

Dear Mr. Czarnecki:

This responds to your letter of October 7<sup>th</sup>, setting forth the concerns that you have with the implementation of the acquisition of Conrail by Norfolk Southern (NS). You have indicated that you believe you are entitled to the New York Dock labor protective conditions imposed as part of the Board's approval of the merger transaction, and that you have been denied these protections by NS.

It is the Board's understanding that your union, the Transportation Communications International Union, reached an implementing agreement with the NS for the Conrail acquisition transaction consistent with the New York Dock. The Board prefers negotiated solutions, and we hope that you are able to resolve your concerns with the NS. If not, Article I, Section 11 of the New York Dock conditions requires that disputes with respect to the interpretation, application, or enforcement of such agreements, which cannot be resolved voluntarily, be submitted to arbitration. After such a matter has proceeded through arbitration, the Board will, of course, be available to accept an appeal from the decision of the arbitrator if it satisfies the requirements of 49 C.F.R. 1115.8 and the Lace Curtain standards the Board applies to determine which decisions of arbitrators it will review. Your union is familiar with these standards.

In an effort to try and be of assistance, however, I will make your letter and my response available to NS for their consideration. I appreciate your making me aware of your concerns for a fair implementation of the Board-approved Conrail acquisition transaction.

Sincerely,

Melvin F. Clemens, Jr.  
Director

cc: Mark R. MacMahon, Vice President - Labor Relations  
Norfolk Southern Corporation

Oct. 7<sup>th</sup>, 2002

Melvin F. Clemens Jr.  
Director Office of Compliance and Enforcement  
U.S. Surface Transportation Board  
Washington, DC. 20423-0001



I'm a former Conrail clerk that signed up to go to the Norfolk Southern Railroad in Atlanta to work. The reason I am writing this letter is to ask for your assistance. I qualify for New York Dock as stated in the Implementing Agreement of the Surface Transportation Board with the take over of Conrail. I have been denied by the Norfolk Southern for almost 3 years now on my New York Dock with them saying I don't qualify and my earnings was only due to the Norfolk Southern Acquisition of Conrail.

I have given them six years of my previous earnings (w-2's) to verify that my earnings were high before their acquisition of Conrail. Some months I figure that I should get it and some I don't. I turn in my claim in each month because without knowing a money figure on the New York Dock, I turn in for it each month. They will not give me a figure because if they do then they are admitting that I should get New York Dock. They do not ever show any specific reason or proof that I should not get the New York Dock for that month which I am claiming.

The clerical people from Conrail that stayed in Pittsburgh on the Norfolk Southern are getting their New York Dock. All the clerical people from Conrail that went to the Chessie Railroad in Jacksonville, Fl. Are getting their New York Dock.

For some almost three years now the Norfolk Southern have been denying my New York Dock and the TCU Union has not been able to make any headway on this subject. I don't understand why every former Conrail Clerk that stayed in Pittsburgh that is working for the Norfolk Southern and all the clerks that went to the Chessie Railroad are getting their New York Dock, but all the former Conrail clerks in Atlanta working for the Norfolk Southern are denied.

Any help on this matter would be greatly appreciated.

Respectful Yours,

Dennis Czarnecki  
6024 North Helton Road  
Villa Rica, Ga. 30180

CC:R.A. Scardelletti,TCU  
CC:D.L. Steele,TCU  
CC:M. Yawn,TCU  
CC:J. Steele,TCU

RECEIVED  
SURFACE TRANSPORTATION  
BOARD  
2002 OCT 15 P 12: 2:  
OFFICE OF COMPLIANCE  
AND ENFORCEMENT  
DIRECTOR'S OFFICE



Office of the Chairman

**Surface Transportation Board**  
Washington, D.C. 20423-0001

October 28, 2002

Mr. Dennis Czarnecki  
6024 North Helton Road  
Villa Rica, GA 30180

Dear Mr. Czarnecki:

Thank you for your letter regarding your concerns about the implementation of the Conrail acquisition transaction. Specifically, you believe that you have been placed in a worse position financially than before the transaction, contrary to the protections afforded by the New York Dock labor protective conditions imposed by the Surface Transportation Board (Board) in approving the transaction.

As you probably know, the New York Dock conditions provide procedures for pursuing claims for benefits. Because such disputes may ultimately go to arbitration for resolution under the New York Dock conditions and the arbitration decision may then be appealed to the Board, it would be inappropriate for me to comment on the merits of your dispute.

While I recommend that you continue to work with your union to resolve your dispute, you may pursue relief individually under the New York Dock conditions. In addition, I have forwarded your letter to Mr. David Goode, Chairman, President and CEO of Norfolk Southern Corporation, for his review. I will be back in touch with you when I receive his response.

I appreciate your concerns and hope that you are able to resolve them through negotiation. I am having your letter and my response made a part of the public docket for the Conrail acquisition proceeding.

Sincerely,

Linda J. Morgan





Office of the Chairman

**Surface Transportation Board**  
Washington, D.C. 20423-0001

October 28, 2002

Mr. David R. Goode  
Chairman, President and Chief Executive Officer  
Norfolk Southern Corporation  
3 Commercial Place  
Norfolk, Virginia 23510-2191

Dear Mr. Goode:

Enclosed please find a letter that I received regarding concerns about the implementation of the Conrail acquisition transaction. Specifically, this Norfolk Southern employee believes that he has been placed in a worse position financially than before the transaction, contrary to the protections afforded by the New York Dock labor protective conditions imposed by the Surface Transportation Board (Board) in approving the transaction.

I have recommend that this employee continue to work with his union to resolve this dispute. In addition, I am forwarding the letter to you for review. I look forward to your response. As I have in the past, I will having my letter and your response made a part of the public docket for the Conrail acquisition proceeding.

Sincerely,

*Linda J. Morgan*  
Linda J. Morgan

Enclosure

Oct. 7<sup>th</sup>, 2002

Linda Morgan  
Director Office of Compliance and Enforcement  
U.S. Surface Transportation Board  
Washington, DC. 20423-0001

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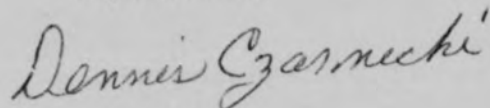
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Any help on this matter would be greatly appreciated.

Respectful Yours,



Dennis Czarnecki  
6024 North Helton Road  
Villa Rica, Ga. 30180

CC:R.A. Scardelletti,TCU  
CC:D.L. Steele,TCU  
CC:M. Yawn,TCU  
CC:J. Steele,TCU

RECEIVED  
SURFACE TRANSPORTATION  
BOARD  
2002 OCT 15 P 12:33  
OFFICE OF  
CHAIRMAN MORGAN



Office of the Chairman

**Surface Transportation Board**  
Washington, D.C. 20423-0001

FILE IN DOCKET

*JB-33388*

November 27, 2002

Mr. John E. Rhoads  
1086 Amberglade Way  
Douglasville, GA 30134

Dear Mr. Rhoads:

As I said I would do, I am getting back to you regarding your concerns about the implementation of the Conrail acquisition transaction, and specifically the protections afforded by the New York Dock labor protective conditions imposed by the Surface Transportation Board (Board) in approving the transaction.

After receiving your letter, I asked Mr. Mel Clemens, Director of the Board's Office of Compliance and Enforcement, to follow up with you concerning the reply we received from Mr. David Goode, Chairman, President and CEO of Norfolk Southern Corporation. I understand that Mr. Clemens has written to you and enclosed a copy of the response that we received from him. I hope you found the information helpful.

As I said in my earlier letter, I appreciate your concerns and hope that you are able to resolve them through negotiation. I am having Mr. Goode's response made a part of the public docket for the Conrail acquisition proceeding.

Sincerely,

*Linda J. Morgan*  
Linda J. Morgan



**NORFOLK  
SOUTHERN**

Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-2191  
Telephone (757) 629-2610  
Facsimile (757) 629-2306

FILE IN DOCKET

David R. Goode  
Chairman, President and  
Chief Executive Officer

November 11, 2002

Ms. Linda J. Morgan, Chairman  
Surface Transportation Board  
1925 K Street, N.W., Suite 780  
Washington, DC 20423-0001

Dear Chairman Morgan:

Further reference is made to your October 28, 2002 letters forwarding correspondence you received from three Norfolk Southern employees regarding their claims for protective benefits under the New York Dock protective conditions.

These employees previously sent identical letters to STB Director Melvin F. Clemens, Jr.; Mr. Clemens forwarded copies of those letters to our Labor Relations Department at that time. For your ready reference, I have attached copies of those letters and Mr. Clemens' response. I have also attached Vice President-Labor Relations Mark R. MacMahon's letters to these employees which explain our reasons for declining their claims.

Norfolk Southern carefully reviews all claims it receives from its employees for the protective benefits of New York Dock as a result of the Conrail transaction. In those instances where NS has determined that employees have been placed in a worse position with respect to compensation as a result of the transaction, those employees are certified as protected employees. However, in situations where there is no evidence to support claims for New York Dock benefits, the claims are appropriately denied. That is the status of the claims on behalf of the three involved individuals.

As you know, New York Dock provides for an arbitration process to resolve disputes such as this. Norfolk Southern is, of course, prepared to submit these disputes to arbitration should the employees or their union desire to do so.

Please let me know if I can provide any additional information.

Very truly yours,

Attachments

RECEIVED  
SURFACE TRANSPORTATION  
BOARD  
2002 NOV 18 P 1:33  
OFFICE OF  
CHAIRMAN MORGAN

Mark R. MacMahon  
Vice President  
Labor Relations

November 4, 2002

CRA-8

Mr. J. E. Rhoads  
1086 Amberglade Way  
Douglasville, GA 30134-6448

Dear Mr. Rhoads:

This is in response to your undated letter to Mr. Melvin F. Clemens Jr., Director, Surface Transportation Board, concerning the denial of your claims for New York Dock (NYD) Benefits.

You were employed on Conrail in its National Customer Service Center (NCSC) located in Pittsburgh, Pennsylvania. As a result of the Conrail transaction effective June 1, 1999 (Split Date), the work being performed in the NCSC was divided among Norfolk Southern Railway (NSR), CSX Transportation, Inc. (CSX) and the remaining Conrail. NSR transferred the work from the NCSC to its Central Yard Operations (CYO) in Atlanta, Georgia, in stages beginning June 1, 1999 and ending in December 1999.

You occupied the position of Car Reporting Clerk on Conrail with a Wage Grade 10 rate of pay of \$139.55 per day. You were able to secure the position of Chief CYO Clerk with NSR with a Wage Grade 12 rate of pay of \$151.62 per day. In December 1999 you transferred with your work to Norfolk Southern's CYO in Atlanta, Georgia. In June 2001, some 18 months later, you submitted a claim for a displacement allowance under NYD as a result of the Conrail transaction. You stated on your claim that you were placed in a worse position with respect to compensation because overtime was not available due to the transaction.

Your claim was declined since there has been no showing that you suffered a loss of compensation as a result of the transaction. Your rate of pay actually increased as a result of the transaction and Carrier records reflect that you have refused and/or missed numerous hours of available overtime offered to you in CYO since your transfer to Atlanta, Georgia.

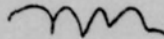
Norfolk Southern is committed to reviewing each claim for the benefits of NYD in the normal manner to determine its validity. We have certified numerous employees, both in the clerical craft and other crafts, where individuals were "displaced" or "dismissed" employees under the terms of the NYD conditions. Naturally we have also denied those claims for benefits where we have found that there has been no showing of any loss of compensation as a direct result of the transaction.



Mr. J. E. Rhoads  
November 4, 2002  
Page 2

Your labor organization, Transportation Communications International Union (TCU), has appealed this claim in the usual manner and it has been discussed several times in conference on the property. Norfolk Southern has made its arguments and position in this case very clear to TCU and we are prepared to arbitrate this claim should TCU choose to initiate such action. In that event, we will follow the well-established arbitration procedures contained in Section 11 of New York Dock.

Very truly yours.

A handwritten signature consisting of a series of connected, wavy lines, resembling a stylized 'M' or 'W'.

cc: Melvin F. Clemens, Jr.

**FAX COVER SHEET**

**SURFACE TRANSPORTATION BOARD  
OFFICE OF COMPLIANCE AND ENFORCEMENT**

**TO** : Mark MacMahon, Vice President - Labor Relations  
Norfolk Southern Corporation

Tel. No. 757-629-2615  
FAX No. 757-629-2777

**RECEIVED**  
OCT 25 2002

**FROM** : Mel Clemens, Director

Tel. No. 202-565-1575  
FAX No. 202-565-9011

**PROTECTIVE BENEFITS**

**DATE** : 10/25/02

**SUBJECT** : COMPLAINT INVOLVING NEW YORK DOCK CONDITIONS

Attached is a letter received from John E. Rhoads, a TCU member, and my reply, who is complaining about NS's denial of New York Dock benefits to which he believes he is entitled. I will appreciate your review of this matter to ensure that the Board-imposed labor protective conditions, which were made a part of the TCU implementing agreement, are being appropriately applied. Thank you for your assistance.

Total number of pages sent including cover sheet 2.

**RECEIVED**  
OCT 25 2002

AVP LABOR RELATIONS  
NORFOLK SOUTHERN CORP.



Surface Transportation Board  
Washington, D.C. 20423-0001

October 25, 2002

Office of Compliance and Enforcement

1925 K Street, N.W., Suite 780

Washington, DC 20423-0001

Mr. John E. Rhoads

1086 Amberglade Way

Douglasville, Georgia 30134

202-565-1573  
FAX 202-565-9011

Dear Mr. Rhoads:

This responds to your letter received October 24<sup>th</sup>, setting forth your concerns about the implementation of Norfolk Southern's (NS) portion of the acquisition of Conrail. You have indicated that you believe you are entitled to the New York Dock labor protective conditions imposed as part of the Board's approval of the merger transaction, and that you have been denied those protections by NS.

It is the Board's understanding that your union, the Transportation Communications International Union, reached an implementing agreement with the NS for the Conrail acquisition transaction consistent with the New York Dock. The Board prefers negotiated solutions, and we hope that you are able to resolve your concerns with the NS. If not, Article I, Section 11 of the New York Dock conditions requires that disputes with respect to the interpretation, application, or enforcement of such agreements, which cannot be resolved voluntarily, be submitted to arbitration. After such a matter has proceeded through arbitration, the Board will, of course, be available to accept an appeal from the decision of the arbitrator if it satisfies the requirements of 49 C.F.R. 1115.8 and the Lace Curtain standards the Board applies to determine which decisions of arbitrators it will review. Your union is familiar with these standards.

In an effort to try and be of assistance, however, I will make your letter and my response available to NS for their consideration. I appreciate your making me aware of your concerns for a fair implementation of the Board-approved Conrail acquisition transaction.

Sincerely,

Melvin F. Clemens, Jr.

Director

cc: Mark R. MacMahon, Vice President - Labor Relations  
Norfolk Southern Corporation



Melvin F. Clemens Jr.,  
Director Office of Compliance and Enforcement  
U.S. Surface Transportation Board  
Washington, DC. 20423-0001



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Any help on this matter would be greatly appreciated.

Respectful Yours,

*John E. Rhoads*  
1086 AMBERGROVE WAY  
DALLASVILLE, GA  
30134

CC: R.A. Scardelletti, TCU  
CC: D.L. Steele, TCU  
CC: M. Yawn, TCU  
CC: J. Steele, TCU

RECEIVED  
SURFACE TRANSPORTATION  
BOARD  
2002 OCT 24 A 11:52  
OFFICE OF COMPLIANCE  
AND ENFORCEMENT  
DIRECTOR'S OFFICE



Office of the Chairman

Surface Transportation Board  
Washington, D.C. 20423-0001

October 28, 2002

Mr. John E. Rhoads  
1086 Amberglade Way  
Douglasville, GA 30134

Dear Mr. Rhoads:

Thank you for your letter regarding your concerns about the implementation of the Conrail acquisition transaction. Specifically, you believe that you have been placed in a worse position financially than before the transaction, contrary to the protections afforded by the New York Dock labor protective conditions imposed by the Surface Transportation Board (Board) in approving the transaction.

As you probably know, the New York Dock conditions provide procedures for pursuing claims for benefits. Because such disputes may ultimately go to arbitration for resolution under the New York Dock conditions and the arbitration decision may then be appealed to the Board, it would be inappropriate for me to comment on the merits of your dispute.

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I appreciate your concerns and hope that you are able to resolve them through negotiation. I am having your letter and my response made a part of the public docket for the Conrail acquisition proceeding.

Sincerely,

Linda J. Morgan



Office of the Chairman

**Surface Transportation Board**  
Washington, D.C. 20423-0001

October 28, 2002

Mr. David R. Goode  
Chairman, President and Chief Executive Officer  
Norfolk Southern Corporation  
3 Commercial Place  
Norfolk, Virginia 23510-2191

Dear Mr. Goode:

Enclosed please find a letter that I received regarding concerns about the implementation of the Conrail acquisition transaction. Specifically, this Norfolk Southern employee believes that he has been placed in a worse position financially than before the transaction, contrary to the protections afforded by the New York Dock labor protective conditions imposed by the Surface Transportation Board (Board) in approving the transaction.

I have recommend that this employee continue to work with his union to resolve this dispute. In addition, I am forwarding the letter to you for review. I look forward to your response. As I have in the past, I will having my letter and your response made a part of the public docket for the Conrail acquisition proceeding.

Sincerely,

Linda J. Morgan

Enclosure

Linda Morgan  
Director Office of Compliance and Enforcement  
U.S. Surface Transportation Board  
Washington, DC. 20423-0001

FILE IN DOCKET

RECEIVED  
SURFACE TRANSPORTATION  
BOARD  
2002 OCT 17 A 11:15  
OFFICE OF  
CHAIRMAN MORGAN

I'm a former Conrail clerk that signed up to go to the Norfolk Southern Railroad in Atlanta to work. The reason I am writing this letter is to ask for your assistance. I qualify for New York Dock as stated in the Implementing Agreement of the Surface Transportation Board with the take over of Conrail. I have been denied by the Norfolk Southern for almost 3 years now on my New York Dock with them saying I don't qualify and my earnings was only due to the Norfolk Southern Acquisition of Conrail.

I have given them six years of my previous earnings (w-2's) to verify that my earnings were high before their acquisition of Conrail. Some months I figure that I should get it and some I don't. I turn in my claim in each month because without knowing a money figure on the New York Dock, I turn in for it each month. They will not give me a figure because if they do than they are admitting that I should get New York Dock. They do not ever show any specific reason or proof that I should not get the New York Dock for that month which I am claiming.

The clerical people from Conrail that stayed in Pittsburgh on the Norfolk Southern are getting their New York Dock. All the clerical people from Conrail that went to the Chessie Railroad in Jacksonville, Fl. Are getting their New York Dock.

For some almost three years now the Norfolk Southern have been denying my New York Dock and the TCU Union has not been able to make any headway on this subject. I don't understand why every former Conrail Clerk that stayed in Pittsburgh that is working for the Norfolk Southern and all the clerks that went to the Chessie Railroad are getting their New York Dock, but all the former Conrail clerks in Atlanta working for the Norfolk Southern are denied.

Any help on this matter would be greatly appreciated.

Respectful Yours,

*John E. Rhoads*  
1086 AMBERGLADE WAY  
DOUGLASVILLE, GA  
30134

CC:R.A. Scardelletti,TCU  
CC:D.L. Steele,TCU  
CC:M. Yawn,TCU  
CC:J. Steele,TCU



Office of the Chairman

**Surface Transportation Board**  
Washington, D.C. 20423-0001

FILE IN DOCKET

20-33388

November 27, 2002

Mr. Henry M. Vucetic  
205 Firethorn Dr.  
Newnan, GA 30265

Dear Mr. Vucetic:

As I said I would do, I am getting back to you regarding your concerns about the implementation of the Conrail acquisition transaction, and specifically the protections afforded by the New York Dock labor protective conditions imposed by the Surface Transportation Board (Board) in approving the transaction.

After receiving your letter, I asked Mr. Mel Clemens, Director of the Board's Office of Compliance and Enforcement, to follow up with you concerning the reply we received from Mr. David Goode, Chairman, President and CEO of Norfolk Southern Corporation. I understand that Mr. Clemens has written to you and enclosed a copy of the response that we received from him. I hope you found the information helpful.

As I said in my earlier letter, I appreciate your concerns and hope that you are able to resolve them through negotiation. I am having Mr. Goode's response made a part of the public docket for the Conrail acquisition proceeding.

Sincerely,

*Linda J. Morgan*  
Linda J. Morgan





Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-2191  
Telephone (757) 629-2610  
Facsimile (757) 629-2306

FILE IN DOCKET

David R. Goode  
Chairman, President and  
Chief Executive Officer

November 11, 2002

Ms. Linda J. Morgan, Chairman  
Surface Transportation Board  
1925 K Street, N.W., Suite 780  
Washington, DC 20423-0001

Dear Chairman Morgan:

Further reference is made to your October 28, 2002 letters forwarding correspondence you received from three Norfolk Southern employees regarding their claims for protective benefits under the New York Dock protective conditions.

These employees previously sent identical letters to STB Director Melvin F. Clemens, Jr.; Mr. Clemens forwarded copies of those letters to our Labor Relations Department at that time. For your ready reference, I have attached copies of those letters and Mr. Clemens' response. I have also attached Vice President-Labor Relations Mark R. MacMahon's letters to these employees which explain our reasons for declining their claims.

Norfolk Southern carefully reviews all claims it receives from its employees for the protective benefits of New York Dock as a result of the Conrail transaction. In those instances where NS has determined that employees have been placed in a worse position with respect to compensation as a result of the transaction, those employees are certified as protected employees. However, in situations where there is no evidence to support claims for New York Dock benefits, the claims are appropriately denied. That is the status of the claims on behalf of the three involved individuals.

As you know, New York Dock provides for an arbitration process to resolve disputes such as this. Norfolk Southern is, of course, prepared to submit these disputes to arbitration should the employees or their union desire to do so.

Please let me know if I can provide any additional information.

Very truly yours,

Attachments

RECEIVED  
SURFACE TRANSPORTATION  
BOARD  
2002 NOV 18 P 1:33  
OFFICE OF  
CHAIRMAN MORGAN

Mark R. MacMahon  
Vice President  
Labor Relations

November 4, 2002

CRA-8

Mr. H. M. Vucetic  
205 Firethorn Drive  
Newnan, GA 30265-2157

Dear Mr. Vucetic:

This is in response to your undated letter to Mr. Melvin F. Clemens Jr., Director, Surface Transportation Board, concerning the denial of your claims for New York Dock (NYD) Benefits.

You were employed on Conrail in its National Customer Service Center (NCSC) located in Pittsburgh, Pennsylvania. As a result of the Conrail transaction effective June 1, 1999 (Split Date), the work being performed in the NCSC was divided among Norfolk Southern Railway (NSR), CSX Transportation, Inc. (CSX) and the remaining Conrail. NSR transferred the work from the NCSC to its Central Yard Operations (CYO) in Atlanta, Georgia, in stages beginning June 1, 1999 and ending in December 1999.

You occupied the position of Customer Service Representative on Conrail with a Wage Grade 10 rate of pay of \$139.55 per day. You remained on the same type of position with NSR except that your rate of pay increased from \$139.55 per day to \$141.86 per day as the NSR wage grade rates of pay were higher than the Conrail rates of pay. In December 1999 you transferred with your work to Norfolk Southern's CYO in Atlanta, Georgia. In January 2000 you submitted a claim for a displacement allowance under NYD as a result of the Conrail transaction. You stated on your claim that you were placed in a worse position with respect to compensation because overtime was not available due to the transaction.

Your claim was declined since there has been no showing that you suffered a loss of compensation as a result of the transaction. Your rate of pay actually increased as a result of the transaction and Carrier records reflect that you have refused and/or missed numerous hours of available overtime offered to you in CYO since your transfer to Atlanta, Georgia.

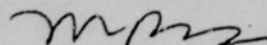
Norfolk Southern is committed to reviewing each claim for the benefits of NYD in the normal manner to determine its validity. We have certified numerous employees, both in the clerical craft and other crafts, where those individuals were "displaced" or "dismissed" employees under

Mr. H. M. Vucetic  
November 4, 2002  
Page 2

the terms of NYD conditions. Naturally, we have also denied those claims for benefits where we have found that there has been no showing of any loss of compensation as a direct result of the transaction.

Your labor organization, the Transportation Communications International Union (TCU), has appealed this claim in the usual manner and it has been discussed several times in conference on the property. Norfolk Southern has made its arguments and position in this case very clear to TCU, and we are prepared to arbitrate this claim should TCU choose to initiate such action. In that event, we will follow the well-established arbitration procedures contained in Section 11 of NYD.

Very truly yours,

A handwritten signature in dark ink, appearing to be 'M. F. Clemens, Jr.', written in a cursive style.

cc: Melvin F. Clemens, Jr.



## FAX COVER SHEET

### SURFACE TRANSPORTATION BOARD OFFICE OF COMPLIANCE AND ENFORCEMENT

**TO** : Mark MacMahon, Vice President - Labor Relations  
Norfolk Southern Corporation

Tel. No. 757-629-2615  
FAX No. 757-629-2777

**FROM** : Mel Clemens, Director

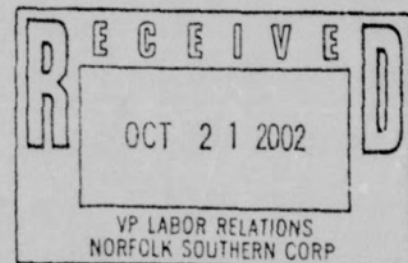
Tel. No. 202-565-1575  
FAX No. 202-565-9011

**DATE** : 10/16/02

**SUBJECT** : COMPLAINT INVOLVING NEW YORK DOCK CONDITIONS

Attached is a letter received from Henry Vucetic, a TCU member, and my reply, who is complaining about NS's denial of New York Dock benefits to which he believes he is entitled. I will appreciate your review of this matter to ensure that the Board-imposed labor protective conditions, which were made a part of the TCU implementing agreement, are being appropriately applied. Thank you for your assistance.

Total number of pages sent including cover sheet 3





**Surface Transportation Board**  
Washington, D.C. 20423-0001

October 21, 2002

*Office of Compliance and Enforcement*

1925 K Street, N.W., Suite 780

Washington, DC 20423-0001

Mr. Henry M. Vucetic

205 Firethorn Drive

Newnan, Georgia 30265

202-565-1573  
FAX 202-565-9011

Dear Mr. Vucetic:

This responds to your letter received today, setting forth your concerns about the implementation of Norfolk Southern's (NS) portion of the acquisition of Conrail. You have indicated that you believe you are entitled to the New York Dock labor protective conditions imposed as part of the Board's approval of the merger transaction, and that you have been denied those protections by NS.

It is the Board's understanding that your union, the Transportation Communications International Union, reached an implementing agreement with the NS for the Conrail acquisition transaction consistent with the New York Dock. The Board prefers negotiated solutions, and we hope that you are able to resolve your concerns with the NS. If not, Article I, Section 11 of the New York Dock conditions requires that disputes with respect to the interpretation, application, or enforcement of such agreements, which cannot be resolved voluntarily, be submitted to arbitration. After such a matter has proceeded through arbitration, the Board will, of course, be available to accept an appeal from the decision of the arbitrator if it satisfies the requirements of 49 C.F.R. 1115.8 and the Lace Curtain standards the Board applies to determine which decisions of arbitrators it will review. Your union is familiar with these standards.

In an effort to try and be of assistance, however, I will make your letter and my response available to NS for their consideration. I appreciate your making me aware of your concerns for a fair implementation of the Board-approved Conrail acquisition transaction.

Sincerely,

Melvin F. Clemens, Jr.  
Director

cc: Mark R. MacMahon, Vice President - Labor Relations  
Norfolk Southern Corporation

Melvin F. Clemens Jr.  
Director of Compliance and Enforcement  
U.S. Surface Transportation Board  
Washington D.C. 20423-0001

RECEIVED  
SURFACE TRANSPORTATION  
BOARD

2002 OCT 21 A 11: 55

Dear Sir;

DEPT. OF COMPLIANCE  
AND ENFORCEMENT  
U.S. SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.

I am writing you as a former employee of Conrail. After the Conrail-Norfolk/CSX merger I chose to work for Norfolk Southern, as a clerk, and relocate to Atlanta, GA. I am contacting you because I need your assistance in a serious matter. As a member of the TCU Union and a former employee of Conrail I qualify for the New York Dock as stated in the Implementing Agreement of the Surface Transportation Board with the take over of the former Conrail. Norfolk Southern has denied me the New York Dock for the past three years. I have repeatedly put in claims for the earnings that I qualify for. I placed my first claim in December of 1999 and was denied. I made claims every month after December 1999 and got no response. Norfolk Southern finally responded to my claims after over a year with another denial in July of 2001. I have placed claims every month after July 2001 and will continue to do so until I retire.

I have turned in four years of my previous earnings (W-2s) to verify that my earnings qualified me for the New York Dock before Norfolk Southern acquired Conrail. As I stated above, I turn my claims in each month without knowing a monetary figure on the New York Dock. The corporate officials will not give me a figure because if they do then they are admitting to my right to receive the New York Dock. They have never provided proof or given me a specific reason as to why I should not receive the New York Dock.

Interestingly enough, the clerical employees from the former Conrail who stayed in Pittsburgh on the Norfolk Southern are receiving their New York Dock. Also, the clerical employees who chose to work for the CSX in Jacksonville, FL are getting their New York Dock.

Since December of 1999 the Norfolk Southern Railroad has been denying me my New York Dock and the TCU Union has been unable to help or make headway on the situation. I don't understand why only former clerical employees of Conrail who now work for Norfolk Southern in Atlanta, GA are not receiving their New York Dock. I want to know why we are being discriminated against.

Any help on this matter would be greatly appreciated.

Sincerely,

*Henry M. Vucetic*

CC: R.A. Scardelletti, TCU  
CC: D.L. Steele, TCU  
CC: M. Yawn, TCU  
CC: J. Steele, TCU



Office of the Chairman

Surface Transportation Board  
Washington, D.C. 20423-0001

October 28, 2002

Mr. Henry M. Vucetic  
205 Firethorn Dr.  
Newnan, GA 30265

Dear Mr. Vucetic:

Thank you for your letter regarding your concerns about the implementation of the Conrail acquisition transaction. Specifically, you believe that you have been placed in a worse position financially than before the transaction, contrary to the protections afforded by the New York Dock labor protective conditions imposed by the Surface Transportation Board (Board) in approving the transaction.

As you probably know, the New York Dock conditions provide procedures for pursuing claims for benefits. Because such disputes may ultimately go to arbitration for resolution under the New York Dock conditions and the arbitration decision may then be appealed to the Board, it would be inappropriate for me to comment on the merits of your dispute.

While I recommend that you continue to work with your union to resolve your dispute, you may pursue relief individually under the New York Dock conditions. In addition, I have forwarded your letter to Mr. David Goode, Chairman, President and CEO of Norfolk Southern Corporation, for his review. I will be back in touch with you when I receive his response.

I appreciate your concerns and hope that you are able to resolve them through negotiation. I am having your letter and my response made a part of the public docket for the Conrail acquisition proceeding.

Sincerely,

Linda J. Morgan



Office of the Chairman

**Surface Transportation Board**  
Washington, D.C. 20423-0001

October 28, 2002

Mr. David R. Goode  
Chairman, President and Chief Executive Officer  
Norfolk Southern Corporation  
3 Commercial Place  
Norfolk, Virginia 23510-2191

Dear Mr. Goode:

Enclosed please find a letter that I received regarding concerns about the implementation of the Conrail acquisition transaction. Specifically, this Norfolk Southern employee believes that he has been placed in a worse position financially than before the transaction, contrary to the protections afforded by the New York Dock labor protective conditions imposed by the Surface Transportation Board (Board) in approving the transaction.

I have recommend that this employee continue to work with his union to resolve this dispute. In addition, I am forwarding the letter to you for review. I look forward to your response. As I have in the past, I will having my letter and your response made a part of the public docket for the Conrail acquisition proceeding.

Sincerely,

*Linda J. Morgan*  
Linda J. Morgan

Enclosure



Linda Morgan  
Director of Compliance and Enforcement  
U.S. Surface Transportation Board  
Washington D.C. 20423-0001

FILE IN DOCKET

OFFICE OF  
CHAIRMAN MORGAN

2002 OCT 21 P 1:38

RECEIVED  
SURFACE TRANSPORTATION  
BOARD

Dear Madam;

I am writing you as a former employee of Conrail. After the Conrail-Norfolk/CSX merger I chose to work for Norfolk Southern, as a clerk, and relocate to Atlanta, GA. I am contacting you because I need your assistance in a serious matter. As a member of the TCU Union and a former employee of Conrail I qualify for the New York Dock as stated in the Implementing Agreement of the Surface Transportation Board with the take over of the former Conrail. Norfolk Southern has denied me the New York Dock for the past three years. I have repeatedly put in claims for the earnings that I qualify for. I placed my first claim in December of 1999 and was denied. I made claims every month after December 1999 and got no response. Norfolk Southern finally responded to my claims after over a year with another denial in July of 2001. I have placed claims every month after July 2001 and will continue to do so until I retire.

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Interestingly enough, the clerical employees from the former Conrail who stayed in Pittsburgh on the Norfolk Southern are receiving their New York Dock. Also, the clerical employees who chose to work for the CSX in Jacksonville, FL are getting their New York Dock.

Since December of 1999 the Norfolk Southern Railroad has been denying me my New York Dock and the TCU Union has been unable to help or make headway on the situation. I don't understand why only former clerical employees of Conrail who now work for Norfolk Southern in Atlanta, GA are not receiving their New York Dock. I want to know why we are being discriminated against.

Any help on this matter would be greatly appreciated.

Sincerely,

*Henry M. Vacetia*

CC:R.A. Scardelletti, TCU  
CC:D.L. Steele, TCU  
CC:M. Yawn, TCU  
CC:J. Steele, TCU

STB

FD-33388

ID-184698

11-13-97

J

184698

# TRANSPORTATION • COMMUNICATIONS INTERNATIONAL UNION



AFL-CIO, CLC

LEGAL DEPARTMENT

ROBERT A. SCARDELLETTI

International President

MITCHELL M. KRAUS

General Counsel

CHRISTOPHER J. TULLY

Assistant General Counsel

November 4, 1987

Mr. Vernon A. Williams, Secretary  
Case Control Branch  
ATTN: STB Finance Docket No. 33388  
Surface Transportation Board  
1925 K Street, NW  
Washington, DC 20423-0001



Re: 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

Dear Mr. Williams:

Please delete the name of Larry R. Pruden, Assistant General Counsel of the Transportation Communications International Union, from the service list in the above-captioned matter. Mr. Pruden is no longer employed by TCU.

Thank you for your attention to this matter.

Very truly yours,

Mitchell M. Kraus  
General Counsel

MMK:fm

CC: The Honorable Jacob Leventhal  
All Parties of Record (per Service List)

180310  
167946



STB

FD

33388

10-23-97

J

BUSINESS

**Public Service**

**Public Service Corporation**

(a subsidiary of WPS resources corporation)

600 North Adams Street

P.O. Box 19002

Green Bay, WI 54307-9002

**October 20, 1997**

**Office of Secretary  
Case Control Unit  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423**



**Finance Docket No. 33388**

**Dear Mr. Secretary:**

I am John Waltman, the Manager-Fossil Fuel for Wisconsin Public Service Corporation. Wisconsin Public Service Corporation is an electric utility which moves traffic in and through the Chicago Switching District.

We are very much concerned about the potential ramifications to us and other industries should CSX Transportation, Inc. (CSXT) obtain ownership and control of Conrail rights and assets as proposed. We are particularly concerned about the effect of CSXT's proposed control and administration of the IHB on the vital neutral switching services that IHB now provides. CSXT will dispatch and manage IHB and, as we understand the CSXT/NS application provides, will utilize IHB largely to accommodate and service CSXT's own line-haul traffic to and from Chicago. We understand that CSX already owns Baltimore & Ohio Terminal Railway Company ("BOCT") and will be the largest shareholder of The Belt Railway Company with about 1/3 ownership.

The Chicago Switching District is both an extremely important and an extremely congested terminal area. Efficient switching services accessible to everyone on an equal basis are vital for the movement of my company's traffic -- not to mention for the handling of the vast amount of other freight that moves through this vital gateway. We believe that CSXT's domination of terminal switching capacity will seriously diminish available rail capacity serving this role. With CSXT seeking to utilize IHB for its own self-serving purposes, we are concerned about the impact on charges assessed other line-haul carriers for intermediate switching service on our traffic. Our prior experience with movements through the Chicago Switching District is that it is costly and often requires far too much time. We are concerned about the future for fair, equitable, and prompt dispatching of trains and switching of customers.

October 20, 1997

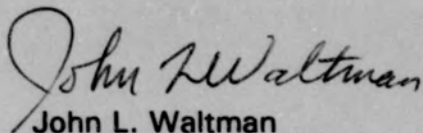
Page 2

We understand that Wisconsin Central Ltd. has proposed acquiring and operating a portion of BOCT trackage known as the Altenheim Subdivision and a portion of Conrail trackage known as the Panhandle Line. We also understand that WCL would invest in improving these routes. We strongly support these sales as a condition to approval of CSX and NS acquisition of Conrail. Each will mitigate the impact of CSX domination of switching and serve to preserve and increase critical rail capacity in the Switching District.

We also believe the Board should seriously consider a condition which would assure that the IHB operations and facilities are dispatched on a fair and neutral basis, preventing the IHB from being operated primarily for the benefit of CSX.

We strongly urge you to take these facts and comments into consideration in your deliberation of this very important issue.

Sincerely,



John L. Waltman  
Manager-Fossil Fuel

smm

corjlw/1061

STB

FD

33388

10-21-97

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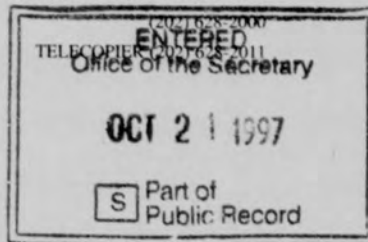
182896

# WEINER, BRODSKY, SIDMAN & KIDER

ATTORNEYS AT LAW

PROFESSIONAL CORPORATION

1350 NEW YORK AVENUE, N.W., SUITE 800  
WASHINGTON, D.C. 20005-4797



October 21, 1997

182 896

H. GERRY ANDERSON\*  
RICHARD J. ANDREANO, JR.  
JAMES A. BRODSKY  
JENNIFER A. COHN  
JO A. DeROCHE  
CYNTHIA L. GILMAN  
KAREN R. GUSTAVSON\*  
DON J. HALPERN  
CHRISTOPHER E. KACZMAREK  
MITCHEL H. KIDER  
SUSAN L. KORYTKOWSKI  
SHERRI L. LEDNER  
MARK H. SIDMAN  
RUGENIA SILVER  
HARVEY E. WEINER  
ROSE MICHELE WEINRYB\*  
JOSEPH F. YENOUSKAS

\*NOT ADMITTED IN D.C.

## BY HAND

Hon. Vernon A. Williams  
Secretary  
Case Control Branch  
ATTN: STB Finance Docket No. 33388  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001



LIRC No. 4

Re: STB Finance Docket No. 33388 (Sub No. 64), CSX Corp. and CSX Transp., Inc., Norfolk Southern Corp. and Norfolk Southern Ry. Co., -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corp.

Dear Secretary Williams:

Louisville & Indiana Railroad Company ("LIRC") files this letter to notify the Surface Transportation Board (the "Board") that it has been actively negotiating three agreements with CSX Transportation, Inc. ("CSXT") that will address LIRC's concerns about the application filed in this proceeding by CSXT, CSX Corporation, Norfolk Southern Corporation and Norfolk Southern Railway Company. LIRC and CSXT have executed two of these agreements and have reached an understanding concerning the substance of the third such agreement. LIRC anticipates that the third agreement soon will be executed. In the event that this agreement is not forthcoming, LIRC reserves the right to participate further in this proceeding.

In accordance with Decision No. 6 by the Board, enclosed for filing in this proceeding are an original and 25 copies of this filing and a 3.5-inch disk containing this filing formatted in Word Perfect. This filing and the accompanying disk are designated as LIRC No. 4, in compliance with 49 C.F.R. § 1180.4(a)(2).



WEINER, BRODSKY, SIDMAN & KIDER, P.C.

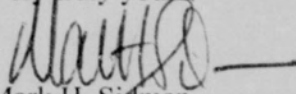
Hon. Vernon A. Williams

-2-

October 21, 1997

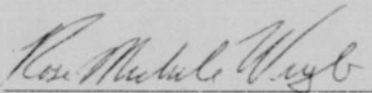
Please acknowledge this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Very truly yours,

  
Mark H. Sidman

### **CERTIFICATE OF SERVICE**

I hereby certify that on October 21, 1997, a copy of the foregoing filing of Louisville & Indiana Railroad Company was served by first-class mail, postage pre-paid, on the parties of record in this proceeding, as listed in Decision No. 21, dated August 19, 1997, and as modified by Decision No. 43, dated October 7, 1997.

  
\_\_\_\_\_  
Rose-Michele Weinryb, Esq.

STB

FD

33388

10-21-97

J

182897

**WEINER, BRODSKY, SIDMAN & KIDER**  
ATTORNEYS AT LAW

PROFESSIONAL CORPORATION

1350 NEW YORK AVENUE, N.W., SUITE 800  
WASHINGTON, D.C. 20005-4797  
(202) 628-2000  
TELECOPIER (202) 628-2011

182897

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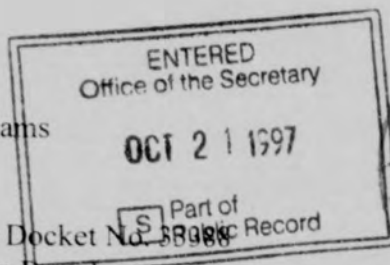
H. GERRY ANDERSON\*  
RICHARD J. ANDREANO, JR.  
JAMES A. BRODSKY  
JENNIFER A. COHN  
JO A. DeROGHE  
CYNTHIA L. GILMAN  
KAREN R. GUSTAVSON\*  
DON J. HALPERN  
CHRISTOPHER E. KACZMAREK  
MITCHEL H. KIDER  
SUSAN L. KORYTKOWSKI  
SHERRI L. LEDNER  
MARK H. SIDMAN  
RUGENIA SILVER  
HARVEY E. WEINER  
ROSE-MICHELE WEINRYB\*  
JOSEPH F. YENOUSKAS

October 21, 1997

\*NOT ADMITTED IN D.C.

**BY HAND**

Hon. Vernon A. Williams  
Secretary  
Case Control Branch  
ATTN: STB Finance Docket No. 33388  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001



**NYAR No. 2**

Re: STB Finance Docket No. 33388, CSX Corp. and CSX Transp., Inc.,  
Norfolk Southern Corp. and Norfolk Southern Ry. Co. -- Control and  
Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corp.

Dear Secretary Williams:

New York & Atlantic Railway ("NYAR"), a party of record in the above-referenced proceeding, has been served with a copy of an intervention petition by Honorable Jerrold Nadler, Honorable Christopher Shays, Honorable Charles Rangel, Honorable Ben Gilman, Honorable Barbara Kennelly, Honorable Nancy Johnson, Honorable Charles Schumer, Honorable Rosa DeLauro, Honorable Michael Forbes, Honorable Sam Gejdenson, Honorable Nita Lowey, Honorable Major Owens, Honorable Thomas Manton, Honorable Maurice Hinchey, Honorable Ed Towns, Honorable Carolyn B. Maloney, Honorable Nydia M. Velazquez, Honorable Floyd Flake, Honorable Gary Ackerman, Honorable Eliot L. Engel, Honorable Louise M. Slaughter, Honorable John Lafalce, Honorable Michael McNulty, and Honorable James Maloney (the "Intervention Petition").

The Intervention Petition requests, among other things, that the Surface Transportation Board (the "Board") condition its approval of the application filed in Finance Docket No. 33388 by CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company on the inclusion of rail assets over which NYAR possesses exclusive freight operating rights. By this letter, NYAR advises the Board that NYAR will file a

WEINER, BRODSKY, SIDMAN & KIDER, P.C.

Hon. Vernon A. Williams

-2-

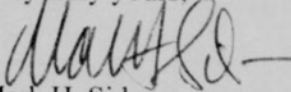
October 21, 1997

response in opposition to the Intervention Petition by December 15, 1997, in accordance with the procedural schedule adopted by the Board in this proceeding.

In accordance with Decision No. 6 by the Board, enclosed for filing in this proceeding are an original and 25 copies of this filing and a 3.5-inch disk containing this filing formatted in Word Perfect. This filing and the accompanying disk are designated as NYAR No. 2, in compliance with 49 C.F.R. § 1180.4(a)(2).

Please acknowledge this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Very truly yours,

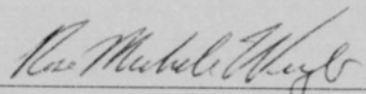


Mark H. Sidman



### **CERTIFICATE OF SERVICE**

I hereby certify that on October 21, 1997, a copy of the foregoing filing of New York & Atlantic Railway was served by first-class mail, postage pre-paid, on the parties of record in this proceeding, as listed in Decision No. 21, dated August 19, 1997, and as modified by Decision No. 43, dated October 7, 1997.

  
\_\_\_\_\_  
Rose-Michele Weinryb, Esq.

STB

• FID-33388

ID-FRADOT

• 9-19-97

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Office of the Chairman

**Surface Transportation Board**  
Washington, D.C. 20423-0001

September 19, 1997

**The Honorable Jolene M. Molitoris**  
**Administrator**  
**Federal Railroad Administration**  
**U.S. Department of Transportation**  
**400 7<sup>th</sup> Street, SW**  
**Washington, DC 20590**

**Re: Finance Docket No. 33388 -- CSX and Norfolk Southern -- Control and Acquisition -- Conrail: Agency Coordination**

**Dear Madam Administrator:**

This letter is a follow-up to the August meeting initiated by your staff with the Surface Transportation Board's (Board) staff from the Section of Environmental Analysis (SEA) to discuss Federal Railroad Administration (FRA) participation in the Conrail acquisition proceeding pending before the Board. At the August meeting, your staff reviewed the FRA's already publicized planned safety review activities concerning the CSX, Norfolk Southern, and Conrail railroads. The environmental staff appreciated the opportunity to discuss those activities with your staff. In this regard, this letter is to reiterate the procedural schedule, as discussed at the August meeting, that will govern the participation by all the parties in this proceeding.

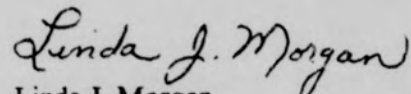
As you know, following the receipt of public comments, the Board adopted a procedural schedule for this proceeding on May 30, 1997, which provides for a final decision on the proposed acquisition to be issued on June 8, 1998. Under the schedule, all evidence in opposition and other comments on the merits of the proposed transaction must be filed by October 21, 1997. Thus, your evidence on the merits will be due on that date.

In addition, SEA plans to issue its Draft Environmental Impact Statement (DEIS) in mid-November 1997. You also may participate in that phase of the proceeding by filing environmental comments during the 45-day time period established for public review and comment on the DEIS. Following the expiration of the 45-day public review and comment period, SEA will conduct further analysis and assess the public comments so that it can issue its Final Environmental Impact Statement by early April 1998. This timetable will ensure that the Board has a full environmental record and analysis in sufficient time to decide this case and impose conditions as appropriate.

In this regard, an August 21<sup>st</sup> Department of Transportation Press Release indicates that the FRA will provide comments to the Board in February 1998. However, as I have noted, all parties must submit their final, complete evidentiary submissions on the merits of the transaction by October 21, 1997, to ensure a fair opportunity for parties to review and respond to each such evidentiary submission. Similarly, if the FRA's comments are limited to the environmental review phase of this case, in order to have time to consider the FRA's latest safety views and completed analysis in the EIS process, SEA would need the FRA's formal, final environmental comments no later than the due date for comments on the DEIS, which under the existing schedule would be in early January 1998.

If you or your staff have any questions on the process by which the FRA can submit its environmental views in the Conrail acquisition proceeding, please contact Elaine Kaiser, Chief of SEA, at (202) 565-1538. Ms. Kaiser will be glad to assist in any way she can. Because this is a proceeding to be decided on the public record, I am having this letter placed in the public docket for this case, as I do for all correspondence relating to proceedings pending before the Board.

Sincerely,

  
Linda J. Morgan

STB

FD-33388

ID-LAW

8-20-97

J

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ARU-10

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JAMES L. HIGHSAW  
1970 - 1992

August 20, 1997

The Honorable Jacob Leventhal  
Presiding Administrative Law Judge  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: STB Finance Docket No. 33388



Dear Judge Leventhal:

As was indicated by Applicants' notice for a discovery conference regarding their objections to interrogatories propounded by the Allied Rail Unions ("ARU"), (CSX/NS-38 in response to ARU -7), the ARU disputes the validity of Applicants' objections. The parties have discussed this matter by telephone and have not been able to resolve their differences, so a discovery conference is necessary. This letter is respectfully submitted as a response to Applicants' objections and in support of the ARU interrogatory discovery requests.

**BACKGROUND**

The proposed CSX/NS acquisition of control/division of Conrail follows on the heels of a series of railroad industry consolidations over the last fifteen years which have greatly reduced the number of major rail carriers. Included among those consolidations are the 1980 control transaction that created CSXT and the 1982 transaction that created the current NS system. The impact of these transactions on railroad workers was far greater than transactions prior to 1980 because the transactions not only reduced the number of employees and consolidated work, they were utilized to change collectively bargained rights of those employees who continued working. For the first time, ICC approval of a control or merger transaction was successfully utilized to force changes in collective bargaining agreements ("CBAs") and/or to immunize such changes, implemented by the carriers involved, from challenge under the Railway Labor Act ("RLA"), 45 U.S.C. §151 et seq., and from strikes. Both the CSX and NS transactions led to such carrier actions; in each case the carriers argued that changes in employee collective bargaining rights or rights under existing collective bargaining agreements

were permitted by the ICC approvals of the transactions.<sup>1</sup> In those cases and subsequent cases, the carriers have argued that their actions were reasonably contemplated by the merger/control transactions approved by the ICC.<sup>2</sup> They have also argued<sup>3</sup> that the abrogation of employee rights was permitted under the 49 U.S.C. §11341(a) [now Section 11321(a)] immunity from other laws afforded to those involved in approved merger and control transactions, or by the selection of forces/assignment of employees implementing arrangement process under Article I Section 4 of the *New York Dock* employee protective conditions. (*New York Dock Ry.--Control--Brooklyn Eastern District Terminal*, 360 ICC 60 (1979)) (Attachment B) *aff'd sub nom. New York Dock Ry. v. U.S.*, 609 F.2d 83 (2d Cir. 1979)

The rail unions have contested the actions of these carriers and decisions of the ICC charging that the carrier actions violated the RLA, that the carrier actions were not supported by the Interstate Commerce Act and that their actions were prohibited by the employee protective conditions including Art. I. Section 2 of the *New York Dock* conditions which requires that pre-transaction rates of pay, rules, working conditions and other rights, privileges and benefits under existing agreements be preserved. 360 ICC at 84. In 1991, on review of a D.C. Circuit decision reversing the *Carmen I* decision, the Supreme Court held that the Section 11341(a) immunity could insulate a carrier from compliance with the RLA with respect to a transaction related change<sup>4</sup>, but the Court expressly refused to rule on whether Article I Section 2 acted as a separate restriction on carrier actions. 491 US at 126 n.2, 127, 134. The cases were remanded to the ICC which never acted on them; nor has the STB acted on them. As is noted above, during the pendency of the litigation on the *Carmen I* decision, the ICC issued a second decision in

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<sup>1</sup> See e.g. *CSX Corp.--Control--Chessie System, Inc. and Seaboard Coast Line Industries, Inc.*, 4 ICC 2d 641, 645-46 (1988) ("*Carmen I*"); *CSX Corp. Control--Chessie System, Inc. and Seaboard Coast Line Industries, Inc.*, 6 ICC 2d 715, 717 (1990) ("*Carmen II*").

<sup>2</sup> See e.g. *Carmen I*, 4 ICC 2d at 650; *Carmen II*, 6 ICC 2d at 727; *CSX Corp.--Control--Chessie System, Inc.*, F.D. No. 28905 (Sub-No. 27) (Served December 7, 1995), "*O'Brien Review Decision*" (Attachment A) at 8-10.

<sup>3</sup> See e.g. *Carmen II*, 6 ICC 2d at 720-722; *O'Brien Review Decision* at 3 n.7 and 12-15.

<sup>4</sup> *Norfolk and Western Ry. Co. v. American Train Dispatchers' Ass'n*, 499 U.S. 117, 129-132 (1991) ("*Carmen/Dispatchers*").

those cases<sup>5</sup> upholding the ability of carriers to abrogate existing collective bargaining and collective bargaining agreement rights, but under the *New York Dock Art. I §4* implementing arrangement process, although that decision was utterly devoid of citation to actual precedent in support of the ICC's decision. That decision was appealed but it too was remanded to the ICC which responded to the remand in the same manner that it responded to the remand order relating to the first decision; no action has yet been taken on either remand order.

In the meantime, the ICC issued a decision in another case holding that an arbitrator acting under Art. I §4 of the protective conditions could override existing agreements.<sup>6</sup> The case was appealed to the Court of Appeals for the D.C. Circuit which held that Art. I §2 could not have been meant to freeze every word of every agreement and that carriers could not use ICC authorization to modify agreements "willy-nilly".<sup>7</sup> The Court stated that carriers could not change or ignore CBAs merely to transfer wealth from rail workers to the railroad and that for a change to be permitted, there must be a showing of necessity related to the attainment of some transportation benefit to the public that would not be available if the CBA was "left in place." 987 F. 2d at 815. That case was remanded to the ICC where it too still languishes.

The D.C. Circuit recently reviewed an ICC decision concerning arguments by CSXT that it could abrogate existing CBA rights by virtue of ICC approval of the 1980 CSX control transaction.<sup>8</sup> Although the Court affirmed the ICC's decision,<sup>9</sup> it reiterated a number of the key holdings in the *Executives'* case, noted that no rates of pay, rules or working conditions (but only "rights, privileges and benefits") were at issue in that case (108 F.3d at 1430 n.4), that contract provisions "treading upon rights, privileges, or benefits in a CBA 'are

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<sup>5</sup> *Carmen II*, 6 ICC 2d 715.

<sup>6</sup> *Delaware & Hudson Ry. Co.--Lease and Trackage Rights Exemption, Springfield Terminal Ry. Co.*, F.D. No. 30965 (Sub-No. 1) (Served October 4, 1990) (*Springfield Terminal*) at 17-19.

<sup>7</sup> *Railway Labor Exec.s Ass'n v. U.S.*, 987 F.2d 806, 815 (D.C. Cir. 1993), (*"Executives"*).

<sup>8</sup> *O'Brien Review Decision*, (Attachment A).

<sup>9</sup> *United Transp. Union v. STB*, 108 F.3d 1425 (D.C. Cir. 1997).

immutable'" (*id.* at 1429), but that the unions in that case had not made a showing as to losses of particular rights, privileges or benefits (*id.* at 1430). The Court specifically stated that Article I §2 of the *New York Dock* conditions requires that rates of pay, rules and working conditions be preserved (*id.* at 1429) and that to the extent the changes in CBA terms are permitted, there must be a requisite showing of necessity (*id.* at 1431).

The STB, in a recent decision on review of a *New York Dock* Art. I Section 4 arbitrator, affirmed the arbitrator's decision against a challenge based on an asserted violation of Art. I §2.<sup>13</sup> However, the STB noted that in *Executives'* "the Court admonished the ICC to refrain from approving [CBA] modifications that are not necessary for realization of the public benefits of the consolidation, but are merely devices to transfer wealth from employees to their employer." *Id.* at 6. The Board further noted that its earlier approval of the concept of uniform CBAs for the post-transaction carrier and refusal of a union proposal to allow cherry picking to devise such CBAs "was not intended and may not be cited to abrogate [the union's] absolute right to the preservation of pre-consolidation rights, privileges or benefits under" CBAs pursuant to *New York Dock* Art. I §2. However, the Board noted that the Union in that case had not cited any loss of CBA rights other than as to a Hospital Association benefit which was required to be preserved. *Id.* at 6, 8.

Thus after a decade of litigation there appear to be some answers as to the ability of carriers to escape compliance with CBA terms except for the most extreme cases: it appears that certain terms may be modified or eliminated when necessary to the realization of transportation benefits for the public when the CBA would be a bar to those public benefits (but not merely to cut carrier costs); and that abrogation of such terms is not permissible when they involve rates of pay, rules, working conditions or other rights, privileges, or benefits under existing CBAs.

#### THE CURRENT TRANSACTION AND THE ARU DISCOVERY REQUESTS

The Transaction before the STB involves the joint acquisition of control of Conrail by CSX and NS and a division of its lines between the operating subsidiaries of CSX and NS. In

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<sup>13</sup> *Union Pacific Corp. et al.--Control and Merger--Southern Pacific Transp. Co. et al.*, F.D. No. 32760 (Sub-No. 22) (Served June 26, 1997). (Attachment C)



support of their Application, CSX and NS have submitted proposed Operating Plans (Volumes 3A and 3B respectively) which outline planned operations of the divided and shared Conrail territories by CSX and NS. These plans are not binding on the Applicants, but they constitute Applicants' descriptions of their potential operations in order for the Board to assess whether the Transaction is in the public interest under 49 U.S.C. §§11323 and 11324. The Operating Plans contain detailed explanations of all aspects of their potential operations which assertedly demonstrate that the public will benefit from these transactions and that the terms of the transaction are fair to shareholders of the various railroads. The Operating Plans repeatedly make reference to planned changes in operations that will result in financial savings. These changes involve planned changes in existing CBAs and seniority districts of employees of the Applicants. See e.g. Vol. 3A Appendix A (at 485-519) and Vol. 3B Appendix A (at 354-398).

Because the Applicants' asserted public interest justifications for the Transaction depend heavily on changes in existing CBAs and seniority districts, the ARU interrogatories focus heavily on Applicants' stated plans as well as their unstated plans in this regard. Additionally, the ARU interrogatories also focus on matters that relate to the legal issues raised in the cases cited above, and general public interest issues under Section 11324.

It must also be noted that in this case, Applicants have agreed to pay \$115 per share for Conrail stock that was selling for \$76 per share last fall. In order to cover their acquisition costs including this huge acquisition premium, Applicants plan to obtain significant savings from operational changes that necessarily will affect employees represented by the ARU unions; these savings will be extracted by changes that will flow from abrogation of the CBA rights of Applicants' employees. See e.g. Vol. 3A at 300, 307, 309, 312, 487, 490-96; Vol. 3B at 324, 326, 337-340, 368-374. See also Vol. 1 at 124-127. The ARU interrogatories therefore are also directed at the changes which are alleged to provide financial savings.

#### APPLICABLE STANDARDS FOR STB REVIEW

Under 49 U.S.C. §11324, the STB must consider whether the proposed transaction is "consistent with the public interest" (49 U.S.C. §11324(c)). The employees of the Applicants and other railroad workers are clearly part of the public whose interests must be considered. In addition to the general public interest



assessment that must be made by the STB, there is an express mandate that the STB consider several factors relating to particular transportation industry issues such as adequacy of transportation, financial effects of the transaction on the carriers involved and other carriers, competitive impacts and effects on railroad workers. 49 U.S.C. §11324(b). Thus the statute directs the STB to give paramount consideration to a handful of issues one of which is "the interest of rail carrier employees affected by the proposed transaction". 49 U.S.C. §11324(b)(4). This requirement exists separate and apart from the mandate for imposition of employee protective conditions if the Transaction is approved. 49 U.S.C. §11326.

In addition to the express commands of the statute, the Supreme Court held that the ICC (the STB's predecessor) had the authority to impose conditions on approval of a transaction which would operate to ameliorate the effects of the transaction on railroad workers. *United States v. Lowden*, 308 U.S. 225, 238 (1939). Indeed, the Court noted that consolidations often have adverse consequences for workers and subject railroad labor relations to "serious stress" (*id.* at 233) and described "just and reasonable treatment of railroad employees" as "an essential aid to the maintenance of service uninterrupted by labor disputes" and as "promoting efficiency which suffers through the loss of employee morale when the demands of justice are ignored" (*id.* at 235-36). Thus it is clear that ICC had, and the STB has, authority to impose conditions on approval of a transaction to protect the interests of rail workers independent of the statutory directive for specific levels of certain types of employee protective arrangements.<sup>11</sup> See also *Railway Labor Exec.s Ass'n v. U.S.* 339 U.S. 142 (1950); *New York Dock Ry. v. U.S.* 609 F. 2d at 92--the ICC had "the discretion to require a greater degree of employee protection than that required as the statutory minimum".

The Supreme Court also held that ICC was required to consider the policies and directives expressed in other laws when considering approval of a transaction within its jurisdiction. *McLean Trucking Co. v. U.S.* 321 U.S. 67, 86-87 (1944). The Court subsequently held that in deciding on a proposed transaction, the ICC was required to consider the policies and directives of the labor laws, to accommodate those policies and to draw its orders

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<sup>11</sup> Since Sections 11323 and 11324 remain essentially unchanged from prior Sections 11343 and 11344 and earlier Section 5 with respect to matters at issue here, it is clear that the STB has the same authority and at least the same statutory obligations as did the ICC.

narrowly to limit the effect of its decisions on the labor laws. *Burlington Truck Lines v. U.S.*, 371 U.S. 156, 172-73 ((1962)). Thus the STB's analysis of the proposed Transaction in this case must give due regard for the policies and mandates of the RLA. To the extent that Applicants' plans raise RLA issues, those issues must be considered by the Board in deciding whether to approve the Transaction and to impose conditions on the carrying-out of the Transaction if it is approved; the ARU interrogatories are also addressed to those concerns.

#### SCOPE OF DISCOVERY IN THIS PROCEEDING

Under 49 CFR §1114.21 parties may obtain discovery of any non-privileged matter which is relevant to the subject matter of a proceeding; moreover, any information that appears "reasonably calculated to lead to the discovery of admissible evidence" is subject to discovery even if the information sought itself may not be admissible as evidence. This scope of discovery is similar to that set forth in Federal Rule of Civil Procedure 26(b) which has been described as insuring a broad scope of discovery. Wright, Miller & Marcus, *Federal Practice and Procedure: Civil* 2d §2007 (1994). See also *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)-- the phrase relevant to the subject matter in the pending actions "has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case".

#### ALLIED RAIL UNIONS' RESPONSE TO APPLICANTS' SPECIFIC OBJECTIONS

The ARU will now address the specific objections that Applicants' have stated with respect to certain of the interrogatories propounded by the ARU.

##### Interrogatory No. 9

The ARU submits that information regarding Applicants' plans to contract-out work that is currently performed by ARU represented employees is relevant to this proceeding and certainly seeks information that is reasonably calculated to the discovery of admissible evidence. Such information concerns potential actions of the Applicants that might reduce the amount of work available to members of the ARU unions, and the potential ability of the Applicants to use an approval of the Transaction as a basis for claiming an ability to override existing contractual limitations on contracting-out.

Additionally, the requested information is relevant to the Board's assessment of the effect of the Transaction on railroad workers under Section 11323(b)(4) and on the Board's consideration of the impact of an approval on RLA mandates and policies given the plans of the Applicants. *McLean Trucking, supra.*; *Burlington Truck Lines, supra.*

The requested information is also relevant to a potential ARU request for conditions on approval of the Transaction under which Applicants would be restricted in their ability to contract-out work. Among other things the ARU seeks to ascertain the position that the Applicants will take on requests for a conditions concerning the contracting-out of work and the bases for such position in order to address their position in connection with their request for conditions.

The request is not unduly burdensome as ARU has sought only information regarding plans to contract out work, if no plans exist the Applicants can respond accordingly, if such plans do exist they can be stated; and ARU does not seek information related to individual employees, only information as to planned contracting-out the type of work done by members of the ARU Unions.

Interrogatory No. 11

As in prior control/merger applications, Applicants have attempted to argue that the public will benefit from the Transaction, and that vigorous competition between them will keep rates down. Like the applicants in prior case who have repeatedly cited experience following recent mergers as supporting such claims, Applicants here have said that their prior experience shows that they have competed vigorously since the CSX and NS consolidations. See e.g. Application Vol. 1 at 13, 307, 315, 594. Interrogatory No. 11 is designed to test whether actual data truly shows that the public receives the benefits of operational savings and that such savings are reflected in post-transaction rates by seeking information as to carrier labor and fuel costs. Comparison of these costs to changes in rates may demonstrate that rate experience does not prove the Applicants' point; if there is a significant disparity between rate experience and cost reductions it would appear that any real reductions in rates or moderation in rates would flow from reductions in costs and that full savings have not been passed on to the public but have been retained by the carriers.

The ARU disputes the Applicants' claim that it would be unduly burdensome for them to supply this information since the ARU believes that the information is compiled annually by the Association of American Railroads from data provided to it by individual railroads including the Applicants.

Interrogatory No.s 18-21, 78-79, 110

These interrogatories address Applicants' plans for a significant amount of track and signal construction and upgrade work in connection with the Transaction; and Applicants' stated intention to contract-out track and signal construction and upgrade work, and to do so despite their plans to abolish the jobs of maintenance of way workers and signalmen. These interrogatories seek information that may potentially be used in connection with requests for conditions requiring that Applicants use union members to do this work. These interrogatories also seek an explanation from Applicants if they are unwilling to use union members for this work, and if they are unwilling to forego use of contractors while any pre-June 1997 employees are furloughed. These discovery requests are plainly relevant to the Board's consideration of the Transaction under Section 11324(b)(4) and to requests for conditions that may be made by the ARU under the Board's authority to impose conditions on approval of the Transaction in addition to the *New York Dock* conditions. Among other things, the ARU seeks to ascertain the position that the Applicants will take on requests for a conditions concerning the contracting-out of work and the bases for such position in order to address their position in connection with their request for conditions.

The claim that this is a matter to be raised in *New York Dock* proceedings is without force since the ARU can request conditions in addition to the *New York Dock* conditions. Furthermore, Applicants have described this subject as a matter for only discretionary negotiations under *New York Dock* and they do not appear to concede that it could be imposed by a *New York Dock* arbitrator.

Interrogatory No. 22

This interrogatory seeks information that may potentially be used in connection with requests for conditions requiring that Applicants not increase their use of contractors. This interrogatory also seeks an explanation from Applicants if they are unwilling to commit to refrain from increasing their use of contractors. This discovery request is plainly relevant to the



Board's consideration of the Transaction under Section 11324(b)(4) and to requests for conditions that may be made by the ARU under the Board's authority to impose conditions on approval of the Transaction in addition to the *New York Dock* conditions. Among other things, the ARU seeks to ascertain the position that the Applicants will take on requests for a conditions concerning the contracting-out of work and the bases for such position.

Additionally, the requested information is relevant to the Board's assessment of the effect of the Transaction on railroad workers under Section 11323(b)(4) and on the Board's consideration of the impact of an approval on RLA mandates and policies given the plans of the Applicants. *McLean Trucking, supra.*; and *Burlington Truck Lines, supra.*

The claim that this is a matter to be raised in *New York Dock* proceedings is without force since the ARU may request conditions in addition to the *New York Dock* conditions. Furthermore, Applicants have described this subject as a matter only for discretionary negotiations under *New York Dock*, and they do not appear to concede that it could be imposed by a *New York Dock* arbitrator.

Interrogatory No. 43

Under Section 11324(b)(4) the STB must consider the impact of the Transaction on rail carrier employees. Applicants have asserted that projected increases in traffic over their lines will result in employment increases for engineers. *E.g.* Vol. 1 at 590. It necessarily follows that projected decreases of traffic on other carriers is likely to result in employment decreases for engineers. It therefore follows that Interrogatory No. 43 is relevant to the Board's consideration of the interests of railroad workers who will be affected by the Transaction. Applicants have noted that in recent years, employees of non-applicant railroads have not been eligible for employee protections imposed in railroad control proceedings. However, this interrogatory is not designed to establish eligibility for employee protections, but to elicit information by which the STB can assess the impact of the transaction on workers other than those who are employed by the Applicants and who will probably not be receiving employee protection benefits under this case.

Applicants claim that they do not have the requested information. However, the ARU notes that Applicants have provided estimates of the amount of traffic to be diverted from

other railroads and they have also provided estimates as to the projected increases in positions in crafts on the Applicant railroads. By the same methodology they should be able to provide estimates of the possible reductions in employment on other railroads due to traffic losses.

Interrogatories No.s 48-50

These interrogatories ask CSX and NS to identify savings that they believe were obtained by several prior consolidations and coordinations of work that were related to the CSX control and NS merger transactions, and to explain how they believe that the public benefitted from those consolidations and coordinations. These interrogatories are plainly relevant to CSX and NS assertions that the Transaction is in the public interest, that the public will somehow benefit from the operating savings that are described in the Operating Plans and particularly the assertions that the agreement and seniority district changes that are described in the Operating Plans and Appendix A to each plan are actually in the public interest. Indeed, each Appendix A repeatedly makes unsubstantiated, self-serving claims that the public will benefit from the planned changes. Having made these assertions, Applicants can not now object to efforts to probe the bases for their claims.

Applicants also note that the STB has denied two prior requests that carriers report on savings realized by consolidations and they assert that the ARU cannot obtain the requested information because the Board has previously rejected a reporting requirement. This is a rather peculiar contention. The ARU is not aware of any authority that suggests that a party may not present to an administrative agency an argument that has been rejected in another case. Indeed, evidence pertinent to the ARU argument on this point might be key to inducing the agency to change its mind on the subject.

Interrogatory No. 94

This interrogatory seeks information relating to CSX's assertion that it will move some of the Conrail rail welding work to what is referred to as a CSX facility in Russell, KY. The Brotherhood of Maintenance of Way Employees is aware that CSX has used a welding plant in Russell to do some of its welding work and that this facility is somehow affiliated with CSX. This facility is not an organized (union) facility, CSX apparently claims that the Russell facility is not a railroad operation. And BMWWE believes that the facility makes no contributions on



behalf of its employees under the Railroad Retirement Act or the Railroad Unemployment Insurance Act. Given CSX' description of this facility and its stated plans to transfer work of BMW represented workers to the Russell facility, the ARU submits that it is entirely appropriate for the ARU to seek information about this facility and its relationship to CSX. Moreover, the ARU submits that the statements in the Application that rail welding work will be transferred to the CSX facility in Russell are inherently misleading since CSX does not acknowledge that the Russell facility is a part of CSXT or subject to the RLA, RRRA or RRUIA. Discovery regarding the Russell facility is therefore relevant to obtaining accurate information regarding CSX' plans and the effect of those plans on BMW members.

Additionally, the requested information is relevant to the Board's assessment of the effect of the Transaction on railroad workers under Section 11323(b)(4) and on the Board's consideration of the impact of an approval on RLA mandates and policies. *McLean Trucking, supra.*; *Burlington Truck Lines, supra.*

The requested information is also relevant to a potential ARU request for a condition on approval of the Transaction under which Applicants would be prohibited from transferring rail welding work previously done on Conrail to the Russell facility. The ARU also seeks to ascertain the position that the Applicants will take on a request for such a condition.

Interrogatories No.s 137-141

These interrogatories seek information pertaining to actions and commitments of Conrail which suggest that it is already under some form of control by CSX and NS even at the operational level. It is of course illegal for NS and CSX to control Conrail prior to approval of such control by the STB. 49 U.S.C. §§11323 and 11324. This interrogatory therefore seeks information relevant to this proceeding which concerns their attempt to gain approval for their acquisition of control over Conrail.

Applicants have complained that there is no basis for "interjecting [the improper control] issue into this proceeding or for seeking discovery in aid of such a claim", and have asserted that this discovery is "outside the guidelines for discovery in this proceeding". However, the alleged improper control directly concerns this proceeding. It is certainly relevant to the Board's consideration of the Application if CSX and NS have already obtained control of Conrail without

regulatory approval. Certainly the Applicants have not cited any authority for the suggestion that the ARU could not obtain discovery in connection with its petition for a determination that they are already in control of Conrail. Moreover, Applicants objected to the ARU initial discovery requests as premature and did not respond informally as agreed prior to the filing of the ARU petition asserting improper CSX/NS control of Conrail. Additionally, it must be noted that the CSX/NS Application contains numerous representations as to plans of CSX and NS and commitments to abide by the statute, so an initial violation of the statute would certainly be relevant to the Board's consideration of the other representations and commitments made by CSX and NS.

*Interrogatory No. 137*

Applicants have also asserted that this interrogatory is unduly burdensome and improper because it seeks to probe business decisions made by Conrail. This objection is without force since business decisions made by Conrail at the express or implicit direction of CSX and NS are clearly relevant to this proceeding.

Applicants also object on the basis that they believe that terms used in the interrogatories are vague and ambiguous. To the extent that the interrogatory asks for comparison with Conrail actions in the past and Applicants are mystified by the meaning of "past" in this context, The ARU is willing to define the "past" as the 5 year period preceding September of 1996. The ARU is willing to define the hiring of sheet metal workers when "needed" in this context as meaning situations in which all sheet metal workers on the roster are working and there is sheet metal work to be done in addition to that being performed by the employees on the roster.

*Interrogatory No. 138*

Applicants also object to this interrogatory on the basis that it is allegedly duplicative of a prior discovery request which they claim was served prematurely and which has been informally answered. First there is no basis for the claim that the earlier discovery requests were premature. Second, Applicants have not informally answered the interrogatories previously served on them. By letter dated August 1 and August 15, Conrail and CSX have, respectively, responded informally to ARU's informal July 17 document requests. CSX and Conrail responded that no written agreements exist that are responsive to the document requests. That answer is not necessarily responsive

to Interrogatory No. 138. Moreover, a formal response to Interrogatory No. 138 is especially important here since the Applicants' informal response (1) does not include oral understandings and (2) appears to conflict with the testimony of a Conrail official (a Mr. Ouslander) in hearings conducted by Senator Arlen Specter that capital improvements on Conrail would have to be approved by CSX and NS and that there is an agreement as to what improvements that Conrail would be allowed to make.


*Interrogatories No.s 139 and 140*

Applicants also object to these discovery requests on the basis that responding to inquiries regarding the all actions involving a reduction in the level of service generally is too burdensome. In this regard the ARU is willing to clarify this inquiry so as to exclude reduction in service generally and to focus only on reductions in train service, and reduction in track, signal and equipment maintenance from December 1, 1996 levels, all of which involve work performed by employees represented by the ARU unions.

*Interrogatory No. 141*

Applicants object that this interrogatory seeks test period average and test period hours information for individual employees. The ARU disputes the Applicants claim that the cited Wisconsin Central decision would bar discovery of the sort that they describe, but that is not the purpose of this inquiry. The ARU does not seek information about individual employees but rather gross numbers concerning straight time and overtime hours by craft in order to ascertain whether there has been a reduction in the work assigned to Conrail employees. Such information would be relevant to the question of whether CSX and NS have improperly exerted control over Conrail.

Respectfully submitted,



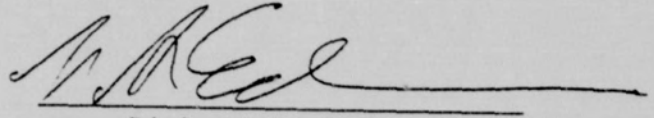
William G. Mahoney  
Richard S. Edelman  
L. Pat Wynns

Attorneys for Allied Rail  
Unions

**CERTIFICATE OF SERVICE**

I hereby certify that service of the foregoing letter to The Honorable Jacob Leventhal was made by facsimile transmission (without attachments) to all parties on the restricted service list and by hand delivery to Applicants.

Dated at Washington, D.C. this 20<sup>th</sup> day of August, 1997.

A handwritten signature in dark ink, appearing to read 'R. Edelman', is written over a horizontal line.

Richard S. Edelman



# **ATTACHMENT A**

This decision will be printed in the bound volumes of the ICC printed reports at a later date.

INTERSTATE COMMERCE COMMISSION

DECISION

SERVICE DATE

DEC 7 1995

Finance Docket No. 28905 (Sub-No. 27)

CSX CORPORATION--CONTROL--CHESSIE SYSTEM, INC.  
AND  
SEABOARD COAST LINE INDUSTRIES, INC., ET AL.  
(Arbitration Review)

Decided: November 22, 1995

The Commission finds that employment changes proposed by the petitioning railroad may be effected pursuant to arbitration under the agency's standard New York Dock conditions for protecting employees adversely affected by agency-approved consolidations

BY THE COMMISSION:

We uphold the findings of fact and conclusions of law in the award of Arbitrator Robert M. O'Brien concerning the implementing agreements proposed by CSX Transportation, Inc. ("CSXT") to effect that carrier's coordination of operations in a new operating district. Because the proposed implementing agreements are necessary to effect the proposed transaction and would not override any "rights, privileges and benefits" that must be preserved under our New York Dock labor protection conditions, we conclude that those agreements satisfy the requirements of our labor protection conditions. The agreements should therefore be adopted.

BACKGROUND

CSXT in its present form was created by a series of transactions approved by this agency. In our 1980 decision in Finance Docket No. 28905 (Sub-No. 1) et al.,<sup>1</sup> we allowed CSX Corporation, a noncarrier holding company, to control as subsidiary corporations the Chessie System, Inc. ("Chessie"), Seaboard Coast Line Industries, Inc. ("SCLI"), and, indirectly through stock ownership, the Richmond, Fredericksburg & Potomac Railroad Company ("RF&P Railroad").<sup>2</sup> The railroads controlled by Chessie included the Chesapeake & Ohio Railway Company ("C&O"), the Baltimore & Ohio Railroad Company ("B&O"), and the Western Maryland Railway Company ("WM"). The railroads controlled by SCLI included the Seaboard Coast Line Railroad (Seaboard), the Louisville and Nashville Railroad Company (L&N), the Clinchfield Railroad, and several smaller carriers.

In a subsequent series of decisions, we approved the consolidation of the railroad corporate entities controlled by

<sup>1</sup> CSX Corp.--Control--Chessie System, Inc. and Seaboard Coast Line Industries, Inc., 363 I.C.C. 521 (1980) (CSXT--Control--Chessie and Seaboard).

<sup>2</sup> At that time, RF&P Railroad was controlled (65.9%) by the Richmond-Washington Company, which, in turn, was owned by Chessie (40%) and SCLI (40%).



CSX Corporation into its subsidiary CSXT.<sup>1</sup> The last steps in this process involved the RF&P Railroad. In 1991, CSXT spun off RF&P Railroad's non-rail assets and created the Richmond, Fredericksburg & Potomac Railway Company ("RF&P Railway") to acquire and to operate RF&P Railroad's rail assets. CSXT invoked our class exemption for corporate families to obtain approval for the acquisition and control.<sup>2</sup> In 1992, CSXT again invoked our corporate family class exemption to operate RF&P Railway directly and to assume all of its rights and obligations.<sup>3</sup>

The decisions creating present-day CSXT were approved subject to our standard labor protection conditions. These conditions were adopted in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (New York Dock) to implement our mandate to provide such protection under 49 U.S.C. 11347. Under New York Dock, labor changes that are related to Commission-approved transactions are established by implementing agreements negotiated before the changes occur. If the parties cannot reach an implementing agreement, the issues are resolved by arbitration. Arbitration awards may be appealed to the Commission under our Lace Curtain standard of review.<sup>4</sup>

<sup>1</sup> In CSXT--Control--Chessie and Seaboard, the Commission authorized the CSX Corporation ("CSX") to acquire control of the 6 subsidiary rail carriers of Chessie and the 10 subsidiary rail carriers (the so-called "Family Lines") of SCL, through the merger of Chessie and SCL into CSX. Two years later, in Seaboard Coast Line R.R.--Merger Exemption--Louisville & N. R.R., Finance Docket No. 30053 (ICC served Nov. 8, 1982), the Seaboard and the L&N (both of which were subsidiaries of SCL in 1980) merged to form the Seaboard System, Inc. Subsequently, in Baltimore & O. R.R. and Chesapeake & O. Ry.--Merger Exemption, Finance Docket No. 31033 (ICC served May 22, 1987), the B&O merged into the C&O. Later that year, C&O merged into the recently created CSXT. See Chesapeake & O. R.R. and CSX Transp. Inc.--Merger Exemption, Finance Docket No. 31106 (ICC served Sept. 18, 1987).

<sup>2</sup> See the notice of exemption in CSX Corporation, et al.--Corporate Family Transaction Exemption--Richmond, Fredericksburg and Potomac Railroad Company, Finance Docket No. 31954 (ICC served Oct. 31, 1991).

<sup>3</sup> CSX Transportation, Inc.--Operation Exemption--Richmond, Fredericksburg and Potomac Railway Company, Finance Docket No. 32020 (ICC served Apr. 15, 1992).

<sup>4</sup> Under 49 CFR 1115.8, the standard for review is provided in Chicago & North Western Tptn. Co.--Abandonment, 3 I.C.C.2d 729 (1987), popularly known as the "Lace Curtain" case. Under the Lace Curtain standard, the Commission does not review "issues of causation, the calculation of benefits, or the resolution of other factual questions" in the absence of "egregious error." Id. at 735-736. In Delaware and Hudson Railway Company--Lease and Trackage Rights Exemption--Springfield Terminal Railway Company, Finance Docket No. 30965 (Sub-No. 1) et al. (ICC served Oct. 4, 1990) at 16-17, remanded on other grounds in Railway Labor Executives' Ass'n v. United States, 987 F.2d 806 (D.C. Cir. 1993), we elaborated on the Lace Curtain standard as follows:

Once having accepted a case for review, we may only overturn an arbitral award 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. [Citations omitted.]

This agency (and an arbitrator acting under New York Dock) is authorized to override provisions of collective bargaining agreements that prevent realization of the public benefits of a transaction.<sup>1</sup> Those contesting proposals that we exercise our authority to override collective bargaining agreements argue that: (1) New York Dock requires the preservation of pre-transaction bargaining agreements; or (2) the changes may not be made because they are not (perhaps due to the passage of time) related to, or necessary for effectuating the purposes of, the proposed transaction. Under New York Dock, employees affected when a collective bargaining agreement is overridden must be compensated pursuant to the formula established therein, which provides comprehensive displacement and termination benefits for up to 6 years.

This proceeding has arisen because of CSXT's efforts to make operational changes that are allegedly related to, and necessary to realize the operational benefits from, certain mergers that helped to create the present-day CSXT. On January 10, 1994, CSXT served a notice on the United Transportation Union (UTU) and the Brotherhood of Locomotive Engineers (BLE) (jointly, "the unions") of its intention to invoke the authority of New York Dock to make operational changes and related employee assignments in order to effectuate the public benefits of the transactions.

Briefly, CSXT is proposing to coordinate train operations in a portion of its system, its new "Eastern B&O Consolidated District" (the "Eastern District"), by transferring work, abolishing and creating positions, and merging seniority rosters. All engineers and trainmen working in the new district would be placed under CSXT's collective bargaining agreements with UTU and BLE covering the former B&O lines. The notice reveals a net loss of 5 positions (47 abolished minus 42 established). CSXT made minor alterations and proposed further details as to the implementation of these coordinations in draft implementing agreements (one for each union) transmitted to the unions on February 25, 1994. In the Appendix to this decision, we have reproduced the major operational changes that were proposed in Article I of CSXT's draft implementing agreements.<sup>2</sup>

The unions refused to participate in the negotiation of an implementing agreement, objecting that: (1) the changes may not be made under New York Dock because they violate existing collective bargaining agreements; (2) CSXT improperly related the changes to the whole group of Commission decisions<sup>3</sup> rather than specified individual decisions; and (3) the changes cannot be related to any of the transactions approved in the decisions because the decisions are too old. CSXT then invoked arbitration under New York Dock. Unable to negotiate, the parties selected Robert M. O'Brien as the arbitrator. An arbitration hearing was

Where modification is necessary, we may act under either section 11347 or section 11341(a). CSX Corp.--Control--Chessie and Seaboard C.L.I., 4 I.C.C.2d 641 (1988), modified 6 I.C.C.2d 715 (1990); Brandywine Valley R. Co.--Pur.--CSX Transp., Inc., 5 I.C.C.2d 764 (1989); Railway Labor Executives' Ass'n v. United States, 987 F.2d 806 (D.C. Cir. 1993) (RLEA); Norfolk & Western v. American Train Dispatchers, 499 U.S. 117 (1991); and American Train Dispatchers Association v. I.C.C., 26 F.3d 1157 (D.C. Cir. 1994) (ATDA).

<sup>1</sup> The notices and letters of transmittal to the unions appear in attachments 1 and 2 of volume I of the Appendix to CSXT's petition filed June 9, 1995. The specific changes announced for each union were the same.

<sup>2</sup> See note 1, supra, for a statement of the decisions.

Held on March 28, 1995. Arbitrator O'Brien issued his award on April 24, 1995.

The Arbitrator's findings of fact and law favored CSXT. He found that the operational changes were subject to New York Dock because they "directly related to and flowed from" the merger authorizations by which CSXT was created. (Award at 9.) The Arbitrator rejected the unions' arguments that: (1) the changes were not subject to New York Dock because they were not related to specific decisions imposing New York Dock protection (but, rather, a whole group of decisions); and (2) the changes cannot be related to any of the transactions approved in the decisions because the decisions are stale. The Arbitrator also held that, acting under our precedent, he had "the authority under both Section 11341(a) and 11347 to modify existing collective bargaining agreements" when they frustrate attainment of the public benefits of transactions approved by this agency. (Award at 14.) Concerning such benefits, the Arbitrator found that CSXT had in fact shown that the changes were necessary to attain the public transportation benefits of the transactions. (Award at 16-18.)

Although his findings of fact and law favored CSXT, the Arbitrator stopped short of adopting the implementing agreements proposed by CSXT. He cited Article I, section 2 of New York Dock, which provides in pertinent part,

The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of a railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes.

Arbitrator O'Brien noted that, in RLIA, the court ruled that section 11347 of the Interstate Commerce Act (49 U.S.C. 11347) mandates that rights, privileges and benefits afforded employees under existing collective bargaining agreements must be preserved.<sup>11</sup> The court remanded the case to the Commission to define "rights, privileges and benefits." As the Arbitrator noted, we have not yet rendered a ruling in that proceeding. Because we have not yet ruled on the court's remand, the Arbitrator declined to rule on the issue. The Arbitrator left it to the Commission to determine whether the changes proposed by CSXT would be contrary to any such "rights, privileges and benefits." (Award at 21-22.)

On June 9, 1995, CSXT and the unions filed petitions for review of the Arbitrator's award. On June 29, 1995, CSXT and the unions filed replies. On July 28, 1995, CSXT filed a petition for leave to file a reply to the reply filed on June 29, 1995, by the unions. By decision served August 22, 1995, we granted CSXT's petition and allowed the unions to file a reply to the substantive arguments raised therein. The unions filed a reply on September 6, 1995.

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<sup>11</sup> The court noted, RLIA at 813-814, that section 11347 incorporates the protections afforded under the Rail Passenger Service Act of 1970 (Amtrak Act), 45 U.S.C. 565, which provides, inter alia, that "rights, privileges and benefits" afforded employees under existing collective bargaining agreements be preserved.

ARGUMENTS OF THE PARTIES

The parties raise four main issues: (1) whether we should hear the appeal under our Lace Curtain standard; (2) whether the operational changes proposed by CSXT are linked to, or caused by, a prior approved transaction subject to New York Dock, i.e., whether they were properly before the Arbitrator; (3) whether the changes would improperly reopen prior implementing agreements by contravening provisions in them that allegedly require that such changes be accomplished through bargaining under the RLA; and (4) whether the changes are the type of changes that may justify our overriding collective bargaining agreements or, alternately, involve "rights, privileges and benefits" that must be preserved under section 2 of New York Dock.

1. Whether the appeal should be heard

In its reply filed June 29, 1995, CSXT argues that the Arbitrator's findings of fact should not be reviewed under our deferential Lace Curtain standard of review (see n. 6, supra), under which we do not review arbitrators' findings as to issues of causation, the calculation of benefits, or the resolution of other factual questions. In this category of unreviewable issues, according to CSXT, are the Arbitrator's findings that (1) the operational changes proposed by CSXT grow out of the prior control and merger transactions and that (2) CSXT demonstrated a need to modify collective bargaining agreements to realize the benefits of the merger.

In their June 29, 1995 reply to CSXT, the unions argue that the Arbitrator's award is fully reviewable under our Lace Curtain standard on the grounds that the Arbitrator made egregious errors of fact and law.

2. Whether the changes proposed are linked to or caused by a prior approved transaction

In their petition for review filed June 9, 1995, the unions argue that the Arbitrator lacked jurisdiction under New York Dock to consider the changes sought by CSXT pursuant to our authority to approve operational changes that are necessary to effectuate mergers. That is so, according to the unions, because the changes cannot be linked to, or were not caused by, any of the merger transactions cited by CSXT. The unions maintain that the changes sought here are due to pre-1980 control proceedings not cited by the carrier and involving the property at issue. According to the unions, the changes cannot be linked to the 1980 decision that put Chessie and SCLI under common control because they do not involve SCLI property."

In its reply, CSXT advances various arguments to show that the labor changes proposed by CSXT grow out of the prior control and merger transactions. CSXT cites various decisions where this agency or arbitrators acting under its authority assertedly allowed changes under New York Dock. Responding to the unions' argument that, because the changes do not involve SCLI property, they cannot be linked to Finance Docket No. 28905 (Sub-No. 27),

The unions sometimes discuss this issue of linkage or causation in terms of whether "the consolidation of seniority rosters and seniority districts" (reply filed June 29, 1995 at 6) or an attempt to realize "efficiencies" (petition filed June 9, 1995 at 19) can be considered to be "transactions" under New York Dock. Although the unions' choice of words sometimes differs, the underlying issue is the same-- whether CSXT is attempting to implement a transaction or transactions that are subject to New York Dock.



CSXT notes that the changes involve property of the RF&P, the last carrier to come under the complete control of CSXT. CSXT responds to the unions' argument that our 1980 decision in Finance Docket No. 28905 (Sub-No. 27) cannot be the source of the changes allegedly because it is too old by (1) pointing to decisions where we have assertedly held that causality is not diminished by time and (2) arguing that CSXT was not able to integrate the operations of its subsidiaries until the subsidiaries were actually merged into CSXT, a lengthy process that was not concluded until 1992.

### 3. RLA bargaining requirement in prior decisions

In their petition for review, the unions argue that the merger transactions have already been covered by implementing arrangements and that the coordination sought here would improperly reopen these prior agreements.<sup>11</sup> The unions maintain that the prior implementing agreements require that the changes proposed here be accomplished through bargaining under the Railway Labor Act (RLA) rather than arbitrations under New York Dock.<sup>12</sup>

In its reply, CSXT responds that the language in question is old boilerplate language going back as far as 1959 that provides merely that matters touched upon in implementing agreements can be changed pursuant to transactions that do not require our approval without going through New York Dock procedures. CSXT cites five implementing agreements where representatives of labor allegedly did not argue that the language required bargaining under the RLA to implement transactions requiring Commission approval. The carrier also argues that it cannot credibly be found to have agreed to a one-sided bargain that would have permanently waived its ability to accomplish future coordinations through the New York Dock procedures. Finally, CSXT argues that it had no authority to waive its statutory right to have these issues governed by Commission procedures under section 11347 and New York Dock rather than RLA procedures.

### 4. Ability to override prior agreements

Both parties tacitly assume that CSXT's changes would in fact contravene collective bargaining agreements. As in prior cases where our authority under New York Dock was at issue, neither party systematically discusses how the collective bargaining agreements would bar the changes sought by management in the absence of action by this agency. Instead, the parties restrict their argument to whether we may compel the changes under New York Dock. The Arbitrator did not resolve this issue.

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<sup>11</sup> The prior agreements alleged by the unions to bar the instant coordination due to language requiring modification pursuant to RLA procedures are: (1) the two 1983 coordination agreements between (a) the B&O and WM and BLE and (b) B&O and WM and UTU, both of which involved lesser included territory (see Exn. 9 to the unions' Appendix of Exhibits); and (2) the two 1992 coordination agreements between (a) CSXT, RF&P, and UTU (see Exn. 10 to the unions' Appendix of Exhibits) and (b) CSXT, RF&P, and BLE (see Exn. 11 to the unions' Appendix of Exhibits), both of which involved lesser included territory.

<sup>12</sup> The language in question typically provides that "This agreement ... shall remain in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended." See, e.g., the 1979 implementing agreement reached between the B&O, WM, and several unions, in CSXT's petition filed June 9, 1995, Appendix volume II, exhibit 16, page 8.

In its petition for review filed June 9, 1995, CSXT asks us to decide the issue that the Arbitrator declined to decide, i.e., whether the changes proposed by CSXT would fail to preserve the "rights, privileges and benefits" of existing collective bargaining agreements. Briefly, CSXT argues that the changes do not alter prior rights, privileges, or benefits because: (1) the pay, benefits, and other "key terms" of the prior agreements will not change; (2) all employees will continue to be covered by collective bargaining agreements (the B/O agreements); and (3) our labor protection obligations have never been interpreted as giving employees of a merged carrier like CSXT the "right" or "privilege" of working only on the lines of their former employers.

The unions argue that, under RLEA, the changes must be necessary to secure the public benefits of the merger and that the changes at issue fail this test. CSXT responds that its changes will effectuate the cited transactions by merging operations on lines where train operations are allegedly being conducted as though they continued to belong to separate railroads. The unions dispute CSXT's statement (that operations in the proposed district are being conducted as though they continued to belong to separate railroads) on the grounds that operations in the district have in fact been merged, except for the consolidation of seniority districts.<sup>11</sup>

CSXT argues that the changes meet the standard imposed in RLEA for changing prior practices that interfere with attainment of the public benefits of the transaction. CSXT argues that: (1) the changes will improve operational efficiency; (2) this improvement is a public benefit under RLEA; and (3) the cost savings from this improvement satisfy RLEA by not creating merely a transfer of wealth from labor to CSXT.<sup>12</sup> Concerning this last point, CSXT contrasts the operational changes proposed here with changes in pay and pension benefits (not proposed here) and other changes that, according to CSXT, can directly transfer wealth from labor to carriers. CSXT accuses the unions of interpreting RLEA as disallowing any changes to collective bargaining agreements, not just changes that are designed to transfer wealth from labor to carriers.

The parties dispute the broader implications of section 2 of New York Dock. CSXT views the "rights, privileges and benefits" language of section 2 as merely creating a savings clause that preserves the collective bargaining agreement provisions that are not required to be modified in order to effectuate Commission-authorized transactions. The unions respond that RLEA precludes CSXT's argument.

The unions dispute CSXT's position that the changes are not important enough to constitute changes in "rights, privileges and benefits." In particular, the unions argue that changes in the location where employees work must be considered in any evaluation of whether "rights, privileges and benefits" are changed and that we may not consider only pay and benefits. The unions also argue that union representation is a right that must be preserved.

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<sup>11</sup> See Appendices A and B of the unions' reply filed June 29, 1995.

<sup>12</sup> The parties sometimes argue in terms of whether the changes "flow solely from modification to labor agreements" or use similar terms. When they do this, they seem to be disputing whether we would be contravening RLEA by mandating changes that are designed less to secure the public benefits of transactions than to transfer wealth from labor to the carrier.



The parties dispute the relevance of section 11341(a). The unions question the Arbitrator's premise that modifications of collective bargaining agreements may be ordered pursuant to 49 U.S.C. 11341(a), on the grounds that section 11341(a) does not apply to transactions that are approved under our section 10505 exemption authority.<sup>14</sup> In response, CSXT argues that, first, the Arbitrator did not rely exclusively on section 11341(a) but also relied on section 11347, and, second, that the Arbitrator related the changes to Finance Docket No. 28905 (the common control proceeding), which was not approved via an exemption under section 10505.

#### DISCUSSION

As noted, the parties raise four main issues. The threshold issue is whether we may hear the appeal on its merits.

1. Whether the appeal should be heard. We will hear the appeal. Under our Lace Curtain standard of review, we do not review issues of causation, the calculation of benefits, or the resolution of other factual questions in the absence of egregious error. Here, the Commission must decide the issue of whether the changes involve "rights, privileges and benefits" that must be preserved under section 2 of New York Dock because the arbitrator deferred resolution of it to us. The Arbitrator's decision on the issue of whether the proposed changes are linked to a prior transaction is a factual issue. That decision should not be set aside except for egregious error. The third issue raised on appeal, whether the railroad has bound itself to follow RLA procedures in undertaking the changes at issue here, involves factual determinations by the arbitrator which merit our deference. However, because it goes beyond mere factual questions, it warrants our review under the Lace Curtain standards.

2. Whether the changes proposed are linked to or caused by a prior approved transaction. The parties dispute whether the labor changes proposed by CSXT are linked to, or caused by, a prior approved transaction subject to New York Dock, i.e., whether they were properly before the Arbitrator. We find that the changes were properly before the Arbitrator under New York Dock.

The Arbitrator's finding on linkage is a factual finding as to causation, and, as such, is entitled to deference under our Lace Curtain standard of review. Such findings are reversed only upon a showing of egregious error.

The Arbitrator's finding of linkage was not egregious error. The purpose of the changes is to ensure that CSXT ceases to operate as a collection of separate railroads and fully enjoys the operational economies of being a unified system.<sup>15</sup> The

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<sup>14</sup> We have asserted two statutory grounds for modification of collective bargaining agreements: section 11347, the statutory basis of New York Dock; and section 11341(a).

<sup>15</sup> The unions dispute CSXT's statement, that operations in the proposed district are being conducted as though they continued to belong to separate railroads, on the grounds that operations in the district have in fact been merged, except for the consolidation of seniority districts. See the statements of UTW General Chairmen Robert J. Will and John T. Reed, attached to the unions' reply filed June 29, 1995. We find, however, that operations in the proposed district have not been merged, based on the statement of CSXT's Director of Employee Relations Michael D. Rogers, attached to CSXT's response filed July 28, 1995.

opportunity to make these changes was created by an entire series of decisions. These began with the 1961 and 1967 decisions that brought the B&O, C&O, and WM under common control and ended with the 1992 decision that formally merged the RP&P into the CSXT system.<sup>14</sup> All of these decisions played a role in creating the opportunity for CSXT to coordinate operations in the proposed Eastern District by use of a single pool of employees. This opportunity cannot be attributed solely to any individual decision in this series of decisions.

The relevant inquiry is whether the action at issue is linked to prior Commission action in which we imposed New York Dock conditions. As long as the actions at issue are rooted in transactions subject to New York Dock, it does not matter whether these conditions were imposed in one transaction or several. The conditions do not vary from case to case. The only question is whether they are applicable. The unions do not dispute that they are. Neither logic nor precedent supports the unions' contention that the basis for a carrier's action must be found in a single, Commission-approved transaction, rather than in a series of them.

The unions' position is based on an assumption that CSXT had a duty to implement whatever New York Dock-related coordinations involving C&O, B&O, and WM track when these carriers first came under common control or soon thereafter. If CSXT had been under such a duty, the instant coordination arguably could have been criticized as too late to be accomplished under New York Dock.

But we have never imposed a deadline on making merger-related operational changes. In fact, in CSX Corporation--Control--Chessie System, Inc., and Seaboard Coast Line Industries, 8 I.C.C.2d 715, 724 n. 14 (1992), we held that causality is not diminished with the passage of time:

Causality, however, is not per se diminished by a lengthy delay in exercising authority previously granted. This is not analogous to laches. There could be any number of reasons why an entity formed as a result of a Commission-approved transaction might wish to postpone a coordination which could have been undertaken earlier.

We have been given no reason to depart from this holding here. CSXT merged its operations gradually, delaying many changes until the corporate entities were merged. This approach does not appear to be unreasonable on its face, and no showing has been made that it is unreasonable. Nor has any showing been made that CSXT's gradual merger of its operations prejudiced the rights of employees under New York Dock. If anything, the gradual nature of the merger would have been more likely to benefit employees by providing for a smoother integration of personnel into the merged system.

The unions note that the order of Presidential Emergency Board 219 increasing the basic mileage of train and engine service employees influenced the benefits of the coordination. See the statements of Don M. Menefee and John T. Reed, attached to the unions' Appendix of Exhibits filed with its petition on June 9, 1995. Without the merger decisions, however, there could have been no coordination at all, notwithstanding Presidential

<sup>14</sup> The Arbitrator's failure to include the pre-1980 transactions as grounds for his jurisdiction did not affect his jurisdiction because this agency, like courts operating under modern rules of pleading and practice, may uphold its jurisdiction for any valid legal reason, regardless of whether that reason is pleaded or argued.

Emergency Board 219. Without Presidential Emergency Board 219, the new district would most likely have been smaller (due to a smaller range of crew travel), but some coordination would still have been possible. The connection between the merger decisions and the coordination was not severed by the action of the Emergency Board. A reasonably direct causal connection remains between our decisions and the coordination. Our standard of "reasonably direct connection" was applied in: (1) Burlington Northern, Inc.--Control and Merger--St. Louis-San Francisco Railway Company (Petition for Review of Arbitral Award), Finance Docket No. 28583 (Sub-No. 24) (ICC served June 23, 1986); and (2) Maine Central Railroad Company--Lease (Arbitration Review), Finance Docket No. 29720 (Sub-No. 1A) (ICC served Dec. 8, 1988), aff'd Brotherhood of Maintenance of Way Emp. v. I.C.C., 920 F.2d 40 (D.C. Cir. 1990). Thus, the Arbitrator did not commit egregious error by finding a connection.

3. RLA bargaining requirements in prior agreements. The parties dispute whether the coordination sought by CSXT would contravene provisions in prior implementing agreements that allegedly require that subsequent coordinations be accomplished through bargaining under the RLA.

We uphold the Arbitrator's decision that these provisions impose no such requirement. The intent of the provisions requiring RLA bargaining was not to bar this type of coordination under New York Dock. The lack of intent was manifested in two ways: (1) differences in the territories involved; and (2) past dealings.

(a) Territorial differences. The Arbitrator found that the changes proposed by CSXT here do not involve the same territory or property involved in the prior agreements.<sup>15</sup> We have no

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<sup>15</sup> In making this finding, the Arbitrator distinguished an earlier arbitration award where Arbitrator Harris found to the contrary (Award at 19):

The Unions cite a 1994 award rendered by Neutral Robert O. Harris in a case between the UTU and CSXT (involving Carrier's notice to coordinate work performed on the C&O and the Louisville and Nashville Railroad Company) in support of its contention. Arbitrator Harris found that because of an earlier implementing agreement involving the same properties, CSXT was precluded from asking for de novo arbitration to coordinate property subject to an implementing agreement which, by its express terms, may only be changed pursuant to the RLA. The Carrier has appealed the Harris award to the ICC.

It appears that Arbitrator Harris concluded that an implementing agreement may not be changed in a second coordination of the same properties except in accordance with the terms of the implementing agreement. However, CSXT and or its predecessors agreed to implementing agreements involving the WM and the RF&P. Evidently, there were no implementing agreements involving the B&O and the C&O. Since over 80% of the territory the Carrier now proposes to coordinate involves former B&O and C&O property the Carrier is not now seeking coordination of "the same properties" which were subject to earlier implementing agreements, in this Arbitrator's judgment.

reason to question this finding, much less to find it egregiously wrong."

Nor do we find egregious error in the Arbitrator's premise that the prior agreements were not intended to cover future coordinations involving different track and territories. While it can be argued that CSXT bound itself to RLA procedures as a condition for changing the coordinations involving the lesser included track at issue in the prior agreements, the carrier cannot reasonably be found to have intended these agreements as perpetually waiving New York Dock procedures for future coordinations involving territories of substantially greater extent and differing scope. Such a waiver would have barred the carrier from any future New York Dock coordination between the track involved in the prior agreements and the remainder of the CSXT system, thereby creating an "island" of unintegrated operations in its system. We cannot plausibly find that the carrier intended to use the minor and routine 1983 and 1992 agreements to bind itself to such a significant restriction, at least in the absence of specific language in those agreements or other credible evidence of such intent.

(b) Past dealings. The Arbitrator also implied that past dealings show that the RLA requirement was not intended to bar the instant coordination.<sup>11</sup> Under general contract law, the intent of parties to an agreement can be ascertained from a course of dealing or usage of the trade. Custom and usage, as reflected in the arbitration agreements cited by CSXT, contravenes the contention that RLA procedures are required for subsequent coordination efforts under New York Dock.<sup>12</sup> The

<sup>11</sup> The Arbitrator's finding that different territory was involved was not egregiously wrong. An inspection of the track involved in the prior agreements (see the agreements and diagrams cited in note 11, above) indicates that much of the track and the scope of the coordination differs:

1. The WM trackage involved in the two 1983 agreements coordinating operations on the WM and the B&O only partially overlaps the WM trackage at issue here. Part of the WM trackage involved in the 1983 agreements seems to have been abandoned.
2. The B&O track involved in the 1992 agreements coordinating operations on the RF&P and the B&O ran from Potomac Yard to Baltimore and Philadelphia and from Potomac Yard west to Brunswick and east again to Baltimore, a small subsegment of the B&O track involved here. Unlike the agreements at issue here, the 1992 agreements did not involve C&D track.

<sup>12</sup> The Arbitrator stated (Award at 20):

It is also noteworthy that CSXT and its predecessors have negotiated several implementing agreements containing language similar to that involved in the Harris award. Many of those properties were subsequently coordinated without resort to the RLA. Rather, they were coordinated in accordance with ICC procedures.

<sup>13</sup> The agreements are discussed on pages 29-30 of CSXT's reply filed June 29, 1995 and appear in exhibits 36, 38, 39, 40, 41, 42, and 43. In each of the five implementing agreements cited by CSXT, the union did not object to the expansion of the coordination of operations under New York Dock, notwithstanding the presence of similar language referring to the RLA in the prior implementing agreements establishing the coordinations that

(continued...)



awards cited by CSXT, going back over 10 years, show that neither party had any reason to view this language as restricting CSXT's ability to invoke New York Dock to implement future operational changes, an ability that CSXT would not have readily given up. This usage history is consistent with CSXT's position that the language is boilerplate language that provides merely that matters touched upon in implementing agreements can be changed pursuant to transactions that do not require our approval without going through New York Dock procedures.

Because we are upholding the Arbitrator's finding that the intent of the language requiring RLA procedures was not to bar future coordinations under New York Dock, we do not have to reach CSXT's argument that carriers have no authority to waive their statutory right to have such issues governed by Commission procedures under section 11347 and New York Dock rather than RLA procedures.

4. Ability to override prior agreements. It is well settled that we have the authority to modify collective bargaining agreements when modification is necessary to obtain the benefits of a transaction that we have approved in the public interest. See the cases cited in note 7, supra. At issue here are the limits of that authority. In particular, the issue is whether the changes sought by CSXT comport with the court's decision in RIEA.

The court in RIEA did not intend to make every change an impermissible change in rights, privileges, or benefits. As the court stated (987 F.2d at 814), "Unless, however, every word of every CBA were thought to establish a right, privilege, or benefit for labor-- an obviously absurd position--§ 565 [of the Rail Passenger Service Act, 45 U.S.C. 565] (and hence § 11347) does seem to contemplate that the ICC may modify a CBA." [Citation omitted.] Nor did the court hold that changes in work location or the switching of employees from work under one collective bargaining agreement to another involved impermissible changes in rights, privileges, or benefits.

To determine which changes are permissible, the court in RIEA established the following standard (987 F.2d at 814-815):

... it is clear that the Commission may not modify a CBA willy-nilly: § 11347 requires that the Commission provide a "fair arrangement." The Commission itself has stated that it may modify a collective bargaining agreement under § 11347 only as "necessary" to effectuate a covered transaction. [Citation omitted.] ... We look therefore to the purpose for which the ICC has been given this authority [to approve consolidations]. That purpose is presumably to secure to the public some transportation benefit that would not be available if the CBA were left in place, not merely to transfer wealth from employees to their employer. . . .

In other words, the court's standard is whether the change is (a) necessary to effect a public benefit of the transaction or (b) merely a transfer of wealth from employees to their employer.

This standard has been met here. The Arbitrator did not commit error (much less egregious error) in finding that the

... (continued) ...  
were expanded. The unions do not dispute CSXT's position that they did not raise the RLA language as an objection to subsequent expansion.



changes sought by CSXT would improve efficiency," a factual finding entitled to deference under our Ice Curtain standard. CSXT has supported its claims that merging the separate seniority rosters into one will produce real efficiency benefits: see volume III of the Appendix of Exhibits to the Petition of CSXT, Tab B at 8-12. Improvements in efficiency reduce a carrier's costs of service. This is a public transportation benefit because it results in reduced rates for shippers and ultimately consumers. The savings realized by CSXT can be expected to be passed on to the public because of the presence of competition. Where the transportation market for particular commodities is not competitive, regulation is available to ensure that cost decreases are reflected in rate decreases. Moreover, increased efficiency and lower costs would enable CSXT to increase traffic and revenue by enabling that carrier to lower its rates for the service it provides or to provide better service for the same rates. While the railroad thereby benefits from these lower costs, so does the public.

The changes sought by CSXT do not appear to be a device merely to transfer wealth from employees to the railroad. Indeed, there does not appear to be a significant diminution of the wealth of the employees. The extent of unionization will not change. The reduction in labor costs will occur through more efficient use of employees and equipment, not by any reduction in current hourly wages and benefits.<sup>21</sup> In order to use employees more efficiently, CSXT will require some employees to work different territories and report to different staging areas. Some employees may have to move. Moving expenses are a benefit under our New York Dock compensation formula.

The one adverse effect on employees from the proposed consolidation of seniority districts apparent from the record is that some employees may have to travel to protect their seniority rights. A specific instance cited was that terminal reporting points for engineers working out of Cumberland, MD, would be 100 miles away. No reduction in wages or change in working conditions would exist, except the minor changes noted. Employees subject to these changes would be compensated under New York Dock. For that reason, the criteria of RIEA have been met.

In considering whether the actions taken by CSXT comport with RIEA, we need to consider the court's decision in ATDA, which adopted the RIEA standard, adding (26 F.3d at 1164, emphasis supplied):

In other words, the benefit cannot arise from the CBA modification itself; considered independently of the CBA, the transaction must yield enhanced efficiency, greater safety, or some other gain.

The Arbitrator found that the consolidation of the seniority districts would lead to lower costs, hence resulting in transportation benefits. But the unions have asserted that these benefits arise merely from the modification of the CBA, thereby contravening the court's holding in ATDA.

We disagree. On page 16 of his decision, Arbitrator O'Brien states:

<sup>21</sup> See note 16, above.

<sup>22</sup> Certain WM employees may experience minor changes in compensation due to minor differences between the B&O and WM collective bargaining agreements. But the differences apply only to small numbers of employees and in atypical situations. Any changes in compensation would be compensable under New York Dock.

CSXT has convinced this arbitrator that it is necessary to change the seniority districts of the train and engine service affected by its proposal in the territory of the erstwhile C&O, B&O, WM and RF&P to be coordinated is to be run as a distinct and unified rail freight operation. Here the Carrier required to continue operating this territory as four separate railroads each with its own work force and seniority districts the operating efficiencies contemplated by the coordination would be illusory. (Emphasis added.)

Here, the "transaction" is not, as labor contends, the modification of the collective bargaining agreements but rather the mergers of four previously separate railroads into a single entity. The merging of the seniority districts does not have its genesis in the modification of the collective bargaining agreements. As long as the C&O, B&O, WM and RF&P remained separate railroads, the employees of each must of necessity have worked independently of each other. Approval of the merger was the action that permitted these four groups of employees to be melded into one. Once the merger had taken place, the consolidation of the employees--and the modification of the collective bargaining agreements--became necessary if the efficiencies of the single work force, made possible by the merger, were to be realized.

We must also determine whether the CBA provisions to be changed--(1) "scope" provisions governing "ownership" of work;" and (2) seniority provisions--are "rights, privileges, and benefits" that must be preserved. The D.C. Circuit Court remanded RRA to permit the Commission to define the meaning and scope of the phrase "rights, privileges, and benefits" in section 405 of the Amtrak Act as incorporated into 49 U.S.C. 11347. 937 F.2d at 814.

The history of the phrase "rights, privileges, and benefits" indicates that it has traditionally meant what it implies--the incidents of employment, ancillary emoluments or fringe benefits--as opposed to the more central aspects of the work itself--pay, rules and working conditions. The genesis of section 405 of the Amtrak Act was the Urban Mass Transit Act of 1962 (UMTA), which authorized federal financial assistance to state and local governments for the improvement of urban mass transit systems. Section 11(c) of that Act (now codified as 49 U.S.C. 5103(b)) required the Secretary of Labor to certify as "fair and equitable" arrangements to protect affected employees. The first requirement of section 11(c) for a "fair and equitable" arrangement was "the preservation of rights, privileges, and benefits under existing collective bargaining agreements or otherwise."

Since no UMTA financing could be completed without the Secretary of Labor's section 11(c) certification, a model protective agreement was developed to permit rapid and dependable processing of applications. The current regulations of the Department of Labor provide that the Secretary will certify pursuant to section 11(c) if the parties adopt the Model Agreement. 29 CFR 215.6. Paragraph 10 of the Model Agreement sets forth the type of rights, privileges, and benefits that are "preserved" (emphasis added):

(10) No employee receiving a dismissal or displacement allowance shall be deprived during his protection period, of any rights, privileges, or benefits

<sup>11</sup> See ATA, 26 F.3d at 1160-61 for discussion of scope provisions.

attaching to his employment, including without limitation, group life insurance, hospitalization and medical care, free transportation for himself and his family, sick leave, continued status and participation under any disability or retirement program, and such other employee benefits as Railroad Retirement, Social Security, Workmen's Compensation, and unemployment compensation, as well as any other benefits to which he may be entitled under the same conditions so long as such benefits continue to be accorded to other employees of the bargaining unit, inactive service or furloughed as the case may be.

We believe that this is compelling evidence that the term "rights, privileges, and benefits" means the "so-called incidents of employment, or fringe benefits," Southern Ry. Co.--Control--Central of Georgia Ry. Co., 317 I.C.C. 557, 556 (1962), and does not include scope or seniority provisions.

In any event, the particular provisions at issue here do not come within "rights, privileges, or benefits" because they have consistently been modified in the past in connection with consolidations. This may well be due to the fact that almost all consolidations require scope and seniority changes in order to effectuate the purpose of the transaction. Railway Labor Act bargaining over these aspects of a consolidation would frustrate the transactions. The ATDA court looked to past conduct in consolidations when it ruled that scope rules were not among those provisions protected as "rights, privileges, and benefits," 26 F.3d at 1160. The court relied, in part, on CSX Corporation--Control--Chessie System, Inc., and Seaboard Coast Line Industries, Inc., 6 I.C.C.2d 715, 716, 742 (1990) (Carmen II), and its recitation of the power of arbitrators under the Washington Job Protection Agreement of 1936 and pre-1976 labor conditions.

Seniority provisions have also been historically modified with regularity by arbitrators in connection with consolidations. See Carmen II, 6 I.C.C.2d at 721, 736-737, 742, and 746 n.22. Thus, both scope rules and seniority provisions have historically been changed without RLA bargaining and, accordingly, are not eligible for protection as "rights, privileges, and benefits."

The unions argue that section 2 of New York Dock gives employees a right to retain their existing union representation. The coordination will require WM engineers, currently represented by UTU, to work under the agreement that BLE negotiated with the B&O rather than their current agreement. The effect of our transactions on selection of union membership is under the jurisdiction of the National Mediation Board acting under the Railway Labor Act. Fox Valley & Western Ltd.--Exemption Acquisition and Operation--Certain Lines of Green Bay and Western Railroad Company, Fox River Valley Railroad Corporation, and the Ann Arbor & Western Railway Company, Finance Docket No. 32035 (Sub-No. 1) (ICC served Dec. 19, 1994), slip op. at 7. Therefore, we find that 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.

As noted, the parties dispute whether section 2 of New York Dock is merely a savings clause that preserves the collective bargaining agreement provisions that are not required to be modified in order to effectuate Commission-authorized transactions. We need not resolve that issue here. The decisions upholding our authority to change collective bargaining agreements are not premised on section 2 being merely a savings clause.

The unions have not even alleged that the consolidation of agreements in any way impairs the ability of CSXT employees to bargain collectively with the railroad. Nor are the rights, benefits, and privileges granted by past negotiations impaired. CSXT is proposing action that is made possible by transactions that we have authorized. Employees affected by those transactions are entitled to the benefit of New York Dock conditions, which have been imposed here.

#### CONCLUSIONS

We conclude that the implementing agreements proposed by CSXT satisfy the requirements of our labor protection conditions and should be adopted. The coordination proposed by CSXT is linked to transactions subject to New York Dock and was thus properly before the Arbitrator. By pursuing arbitration under New York Dock, CSXT did not contravene language in prior implementing agreements requiring that future changes must be made under the RLA because those agreements were not intended to apply to the changes sought here. Finally, we find that the changes may be made even if they are inconsistent with existing collective bargaining agreements and that our authority to require these changes is consistent with the requirement of section 2 of New York Dock that "rights, privileges and benefits" of existing collective bargaining agreements be preserved.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

#### It is ordered:

1. The findings of fact and conclusions of law in the Arbitrator's award are upheld, as supplemented in this decision, and the implementing agreements proposed by CSXT are adopted.
2. This proceeding is discontinued.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

(SEAL)

Vernon A. Williams  
Secretary



APPENDIX  
CSXT's Statement of Changes Under Section 4 of New York Dock<sup>1</sup>

Article I

A. Effective upon ten (10) days advance notice, all train operations and the associated work forces of the former WM, RF&P, and a portion of the former C&O, will be transferred, consolidated and merged into the train operations and associated work force on the former Baltimore and Ohio in the territory hereinafter described:

Philadelphia, Pa. - Cumberland, Md. (former B&O)  
Cherry Run, Md. - Baltimore, Md. (former WM)  
Hagerstown, Md. - Lurgan, Pa. (former WM)  
Baltimore, Md. - Potomac Yard, Va. (former B&O)  
Brunswick, Md. - Potomac Yard, Va. (former B&O)  
Potomac Yard, Va. - Richmond, Va. (former RF&P)  
Charlottesville, Va. - Richmond, Va. (former C&O)  
Brunswick, Md. - Winchester, Va. (former B&O)  
Cumberland, Md. - Brooklyn Jct. W. Va. (former B&O)  
Grafton, W. Va. - Muddlety, W. Va. (former B&O)  
Benwood, W. Va. - Huntington W. Va. (former B&O)  
Tygart Jct. W. Va. - Berghoo, W. Va. (former B&O and WM)

Which areas comprise the territory shown on the sketch designated as Attachment "A."

NOTE: All branches and industrial tracks intersecting the above listed lines and all pre-existing territorial rights of the involved districts are included in the coordinated territory.

B. The following initial operational changes will be placed into effect upon implementation of the Consolidation:

1. Charlottesville, Va. will be closed as a supply point and terminal for other than outlying point assignments, transferring all other work to Richmond, Va. Charlottesville will thereafter be an outlying point for the Richmond supply point. The Piedmont-Washington Subdivision will be added to the working limits of the Richmond-Potomac Yard Pool.

2. Hanover, Pa. will be closed as a supply point and terminal for other than outlying point assignments, transferring all other work to Baltimore, Maryland. The territory between Baltimore and Hanover will be added to the working limits of the Baltimore-Brunswick Pool. Hanover will thereafter be an outlying point for the Baltimore supply point.

3. Hagerstown, Md. will be closed as a supply point and terminal for other than outlying point assignments, transferring the protection of service to and from Harrisburg to a through freight pool out of Cumberland (operating through Hagerstown). The territory between Cherry run and Hanover will be added to the working limits of the Baltimore-Brunswick pool. Hagerstown will thereafter be an outlying point for the Brunswick supply pool.

4. The protection of certain service west of Cumberland will be transferred to Brunswick by adding the territory west of Cumberland on the Mountain Subdivision and former WM lines

<sup>1</sup> Source: Pages 1-3 of CSXT's proposed implementing agreement with UTU transmitted to the unions on Feb. 25, 1994, reproduced in Attachment 1 of volume I of the Appendix of Exhibits to CSXT's petition filed June 9, 1995. The same provisions appear in CSXT's proposed implementing agreement with BGE in Attachment 2.



intersecting the Mountain Subdivision to the working limits of the Brunswick-Cumberland Pool with Brunswick remaining the home terminal and Cumberland the away from home terminal.

5. The working limits of the Henry Pool will be combined with the working limits of the Cumberland-Grafton Pool. Cumberland will remain as the home terminal. Grafton will remain as the away from home terminal.

6. Elkins, W. Va. will be closed as a supply point and terminal for other than outlying point assignments, transferring the protection of service between Tygart Junction and Bergoo to the supply point of Grafton by adding that territory to the working limits of the Grafton-Cowan Pool. Laurel Bank will be added as an away from home terminal for that pool. Elkins and Laurel Bank will thereafter be an outlying point for the Cumberland supply point.

NOTE: Notwithstanding any other provisions of this Agreement, to foster an efficient and economic environment for the retention and growth of business on this marginal line, when service is needed on the Tygart-Bergoo line, qualified employees in the Grafton-Cowan Pool will be called ahead of unqualified employees. When there are no qualified employees available in the pool, the Carrier may call qualified extra employees ahead of unqualified pool employees.

C. Employees may be required to perform service throughout the coordinated territory in accordance with the B&O schedule agreement in the same manner as though such coordinated territory was included within their original seniority district.

# **ATTACHMENT B**

FINANCE DOCKET NO. 28250

NEW YORK DOCK RAILWAY—CONTROL—BROOKLYN  
EASTERN DISTRICT TERMINAL

Decided February 9, 1979

The proceeding is reopened and, on further consideration, the employee protective conditions imposed in our prior decision and order in this proceeding are modified. The imposition of employee protective conditions appropriate in certain rail transactions for which approval is sought under 49 U.S.C. 11343 *et seq.* [formerly sections 5(2) and 5(3) of the Interstate Commerce Act] is discussed. These transactions include all rail transactions covered in those sections except trackage rights and lease situations.

*Stuart H. Johnson, Jr.*, and *Walter M. King* for applicants New York Dock Railway and Brooklyn Eastern District Terminal.

*John S. Shannon, Donald M. Tolmie, and William G. Wooldridge* for intervenor Norfolk and Western Railway Company.

*John O'B. Clarke and William G. Mahoney* for intervenor Railway Labor Executives' Association.

*Harold A. Ross* for intervenor Brotherhood of Locomotive Engineers.

DECISION OF THE COMMISSION ON FURTHER  
CONSIDERATION

BY THE COMMISSION:

Pursuant to a petition for administrative review filed October 18, 1977, and supplemented May 22, 1978, by the Railway Labor Executives' Association (RLEA), we issued a decision dated July 17, 1978, finding that the entitled proceeding involves a matter of general transportation importance and reopening the proceeding for further consideration of the appropriate level of employee protection to be imposed when approval for certain rail transactions is sought under 49 U.S.C. 11343, *et seq.* [formerly sections 5(2) and 5(3) of the Interstate Commerce Act].<sup>1</sup>

<sup>1</sup>This decision embraces Finance Docket No. 28294, New York Dock Railway—Securities.

<sup>2</sup>By decision of November 13, 1978, we extended the deadline for our final decision in this proceeding to February 12, 1979. This action was taken pursuant to 49 U.S.C. 10327(j) [formerly section 1709(d) of the act].

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## PROCEDURAL HISTORY

By initial decision dated May 13, 1977, the Administrative Law Judge recommended that control of Brooklyn Eastern District Terminal (BEDT) of New York, NY, by New York Dock Railway (Dock), also of New York, NY, be approved subject to certain conditions including ones imposed for the protection of employees. More specifically, the Administrative Law Judge imposed the "New Orleans" labor protective conditions<sup>1</sup> set forth in appendix II of *Southern Ry. Co.—Control—Central of Georgia Ry. Co.*, 317 I.C.C. 557, 588 (1962), augmented by the Appendix C-I conditions of the National Railroad Passenger Corporation Agreement (Appendix C-I) with some modifications. Exceptions were filed by the Minority Shareholders of BEDT and Phelps Dodge Products Corporation, individually, and intervenors RLEA and The Brotherhood of Railway and Airline Clerks (BRAC), jointly. Applicant Dock replied.

Inasmuch as Dock's tender offer was to expire on September 30, 1977, the Commission, Division 3, issued an emergency order on September 26, 1977, affirming the initial decision in all respects except as to the appropriate labor protection conditions to be imposed. In that decision the employee protective conditions recommended by the Administrative Law Judge were modified so as to substitute the Appendix C-I conditions (referred to in that order as the "Amtrak Conditions"). The division noted that a subsequent report would be issued in the proceeding which would contain a detailed discussion of the issues raised on exceptions and that said report would become a part of the September 26 order by reference. Pursuant to a petition filed by RLEA, division 3 issued a supplemental order on September 29, 1977, which modified the prior order by allowing the parties to consummate the transaction authorized but prohibiting them from taking any action that would affect employee rights until the Commission could act on a petition to be filed by RLEA seeking discretionary review of the labor protective conditions imposed in the September 26 order. On October 18, 1977, RLEA filed the described petition under rule 98(e) of the Commission's General Rules of Practice, 49 CFR 100.98(e), seeking a determination that the question of appropriate employee protective provisions involves a matter of general transportation importance and that the case should be reopened for further consideration. Dock replied on November 25, 1977.

<sup>1</sup>The Commission initially promulgated the "New Orleans" conditions in *New Orleans Union Passenger Terminal Case*, 242 I.C.C. 271 (1952), 360 I.C.C.



opposing the relief sought in the petition. In a "Notice to the Parties" dated March 2, 1978, the parties were notified that action on the above petition and reply would be held in abeyance pending the issuance of the full report of Division 3 in this proceeding, upon which issuance the petition and reply could be supplemented to address more fully the issues discussed in the report. The decision of the Commission, Division 3, Acting as an Appellate Division, dated April 11, 1978, was published at 354 I.C.C. 399 (1978). In this decision the basis for the findings made in the emergency order of September 26, 1977, as supplemented by order of September 29, 1977, were detailed; however, the labor protective conditions were modified by combining a version of sections 4 and 5 of the Washington Job Protection Agreement (WJPA) with the provisions of Appendix C-1, with inapplicable references eliminated. See appendix III of *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 354 I.C.C. 399 (1978). Certain arrangements were made for the equitable application of the conditions in this proceeding as strict adherence to the provisions of article 1, section 4 were impossible because the parties had already been authorized to consummate the transaction, albeit without affecting employee rights, by the order of September 29, 1977. As authorized by the "Notice to the Parties" dated March 2, 1978, RLEA filed its supplemental petition on May 22, 1978, reiterating that the appropriate labor protective conditions to be imposed in cases of this type is a matter of general transportation importance. Dock filed its supplemental reply on May 19, 1978. By decision dated July 17, 1978, the Commission granted RLEA's petition and reopened the proceeding for further consideration of appropriate employee protective conditions.<sup>4</sup>

In addition to the pleadings, as supplemented, of RLEA and Dock, several other statements have been filed in this proceeding. More specifically, in a "Notice to the Parties" in Finance Docket No. 28643 (Sub-No. 1), *Norfolk and Western Railway Company—Acquire Branch Track—Detroit, Toledo, and Ironton Railroad Company*, dated July 24, 1978, it was stated that the labor protective conditions finally adopted in the *New York Dock* proceeding would be imposed in that proceeding. Therefore, the employee organization opposing that proceeding, the Brotherhood of Locomotive Engineers (BLE), was authorized to submit its views concerning appropriate employee protective conditions here. Parties both to this proceeding and to the *Norfolk and Western*

<sup>4</sup>By decision of September 8, 1978, Division 3, Acting as an Appellate Division, modified its prior decision of April 11, 1978 in certain respects none of which are relevant to the issues involved here.

proceeding were authorized to file its comments on S jointly, and Norfolk and Western Railway Company, RLEA, individually, res filed September 26, 1978.

F

Embraced in the res requests that we reopen hearing<sup>5</sup> to develop add to enable this Commission U.S.C. 11347 [formerly Act].<sup>6</sup> We note that the to supplement the record employee protective conditions pleadings and appendix substantive enhancement further delay in disposition

<sup>5</sup>In a decision dated August 30, 1978, to consolidate this proceeding with *Union Pacific Railroad Company—Amman in Bingham and Bonneville Western Railway Company—Track*, records therein for the purpose of employee protective conditions.

<sup>6</sup>The Interstate Commerce Act substantive change as subtitle IV of the act is now codified at 49 U.S.C. read as follows.

When a rail carrier is involved 11344 and 11345 or section 11346, the carrier to provide a fair arrangement are affected by the transaction as and the terms established under arrangement may be made by the. The arrangement and the order affected rail carrier will not be in transaction during the 4 years toll (or if an employee was employed became effective, for that lesser

For purposes of reference, section

As a condition of its approval, involving a carrier or carriers by shall require a fair and equitable affected. In its order of approval that during the period of four years (footnote 6 continued on next page)



proceeding were authorized to respond to BLE's comments. BLE filed its comments on September 11, 1978, and Dock and BEDT, jointly, and Norfolk and Western Railway Company (NW) and RLEA, individually, responded to these comments in pleadings all filed September 26, 1978.

#### PRELIMINARY MATTERS

Embraced in the respective pleadings of BLE and RLEA are requests that we reopen this proceeding and hold an evidentiary hearing<sup>6</sup> to develop additional factual support assertedly necessary to enable this Commission to comply with the requirements of 49 U.S.C. 11347 [formerly section 5(2)(f) of the Interstate Commerce Act].<sup>7</sup> We note that the parties have been given ample opportunity to supplement the record in this proceeding as to appropriate employee protective conditions, and, in light of the detailed pleadings and appendixes so filed, an oral hearing would result in no substantive enhancement of the record. For this reason, and to avoid further delay in disposition of this matter, we will deny the requests.

In a decision dated August 30, 1978, the Commission denied a petition in which RLEA sought to consolidate this proceeding with AB-36 (Sub-No. 2), *Oregon Short Line Railroad and the Union Pacific Railroad Company—Abandonment Portion Goshen Branch Between Firth and Armon in Bingham and Bonneville Counties, Idaho*, and Finance Docket No. 29387, *Norfolk and Western Railway Company—Trackage Rights—Burlington Northern, Inc.*, and to reopen the records therein for the purpose of receiving additional submissions from the parties on proposed employee protective conditions.

The Interstate Commerce Act (act) was recently revised, codified, and enacted without substantive change as subtitle IV of Title 49, United States Code, "Transportation" section 5(2)(f) of the act is now codified at 49 U.S.C. 11347 and has been revised without substantive change to read as follows:

When a rail carrier is involved in a transaction for which approval is sought under sections 11344 and 11345 or section 11346 of this title, the Interstate Commerce Commission shall require the carrier to provide a fair arrangement at least as protective of the interests of employees who are affected by the transaction as the terms imposed under this section before February 5, 1976, and the terms established under section 565 of title 45. Notwithstanding this subtitle, the arrangement may be made by the rail carrier and the authorized representative of its employees. The arrangement and the order approving the transaction must require that the employees of the affected rail carrier will not be in a worse position related to their employment as a result of the transaction during the 4 years following the effective date of the final action of the Commission (or if an employee was employed for a lesser period of time by the carrier before the action became effective, for that lesser period).

For purposes of reference, section 5(2)(f) of the act reads as follows:

As a condition of its approval, under this paragraph (2) or paragraph (3), of any transaction involving a carrier or carriers by railroad subject to the provisions of this part, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not

(footnote 6 continued on next page)

## THE EVIDENCE

RLEA and BLE challenge the labor protective conditions previously developed in this proceeding. These conditions were found to be appropriate for imposition in certain cases involving coordination of separate rail carrier facilities and seniority rosters and similar situations requiring Commission approval under 49 U.S.C. 11343 *et seq.* [formerly sections 5(2) and 5(3) of the act].

Generally, RLEA offers a two-pronged objection to the conditions. First, it asserts that the conditions are in violation of that portion of section 5(2)(f) of the act which requires that conditions be imposed that are "no less protective of the interests of employees than those heretofore imposed pursuant to this subdivision and those established pursuant to section 405 of the Rail Passenger Service Act\*\*\*." See 49 U.S.C. 11347 for current language. Second, RLEA argues that by allegedly imposing the minimum level of protection without examining each provision, the Commission abused its discretion and failed to require a fair and equitable arrangement.

Specifically, as to its first charge, RLEA states that by not including the full protections of sections 4 and 5 of WJPA, which protections were previously imposed in cases of this type, the Commission failed to meet the minimum level of protection mandated by the statute. RLEA complains that though the Commission assertedly did include the protection of those sections, essential portions thereof were omitted. RLEA points to three segments in article I of the conditions previously imposed which RLEA feels cuts back on the rights afforded under sections 4 and 5 of WJPA. The first of these is the final sentence in article I, section 4, which reads: "At the completion (of) the ninety (90) day notice period, (the) railroad may proceed with the transaction." RLEA argues that this sentence would allow consummation of a transaction

(footnote 6 continued)

result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Such arrangement shall contain provisions no less protective of the interests of employees than those heretofore imposed pursuant to this subdivision and those established pursuant to section 405 of the Rail Passenger Service Act (49 U.S.C. 365). Notwithstanding any other provisions of this Act, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

360 I.C.C.

prior to agreement between consummation is contrary to RLEA states that the term section 1, must be redefined transaction which requires related actions made pursuant change is necessary to insure section 4 (which provision contemplates a transaction\* as they were in sections 4 when the carrier contemplates to delete the ban in a the arbitration provisions violative of our policy in modifications sought by RLEA appendix I to this decision employee protective conditions

As to the second general RLEA argues that the addition without individual examination in the imposition of certain attention to article I, section 1, rephrased as it has been in drafters, to require forfeiture provisions.\* RLEA also objects requires an employee to knowledge of options. RLEA incentives for retraining, method of calculating the allowances under article I such as those in Norfolk

\*In section 2(a) of WJPA, the term carriers whereby they unify, consolidated facilities or any of the operations or facilities."

\*RLEA cites the opinion and award Penn Central Transportation Company of Appendix C-1 requires an election all the benefits and obligations of Appen agreement. RLEA then quotes pp. was placed in evidence in Congress No. 825-71, in support of its content rights of employees under other

360 I.C.C.

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prior to agreement between the railroad and its employees which consummation is contrary to sections 4 and 5 of WJPA. Second, RLEA states that the term "transaction" as defined in article I, section 1, must be redefined so as to encompass not only the initial transaction which requires Commission approval but also future related actions made pursuant to that approval. Assertedly, this change is necessary to insure that the notice provisions of article I, section 4 (which provisions are set in motion "when a railroad contemplates a transaction\*\*\*") are triggered in the same situations as they were in sections 4 and 5 of WJPA, those situations being when the carrier contemplated a coordination.<sup>7</sup> Finally, RLEA seeks to delete the ban in article I, section 4, on negotiations while the arbitration provisions are being invoked. RLEA feels this is violative of our policy in support of negotiated changes. The modifications sought by RLEA in these matters can be found in appendix I to this decision which sets forth RLEA's proposed employee protective conditions in full.

As to the second general challenge to the proposed conditions, RLEA argues that the adoption of the Appendix C-1 conditions, without individual examination of each provision therein, resulted in the imposition of certain inequitable conditions. RLEA directs attention to article I, section 3, which section it contends must be rephrased as it has been interpreted, contrary to the intent of its drafters, to require forfeiture of all other existing protective provisions.<sup>8</sup> RLEA also objects to article I, section 7, as it allegedly requires an employee to make an irreversible choice without knowledge of options. RLEA seeks modification of article II to add incentives for retraining of employees and modification of the method of calculating the employees' displacement or dismissal allowances under article I, sections 5 and 6, so as to avoid problems such as those in *Norfolk & Western R. Co. v. Nemitz*, 404 U.S. 37

<sup>7</sup>In section 2(a) of WJPA, the term "coordination" is defined as a "joint action by two or more carriers whereby they unify, consolidate, merge, or pool in whole or in part their separate railroad facilities or any of the operations or services previously performed by them through such separate facilities."

<sup>8</sup>RLEA cites the opinion and award of the arbitrator (H. M. Weston, Referee) in *Arbitration of Penn Central Transportation Company and BRAC* (1972), which found that (1) article I, section 3 of Appendix C-1 requires an election of either all the benefits and obligations of Appendix C-1 or all the benefits and obligations of the preexisting agreement and (2) the election to take the benefits and obligations of Appendix C-1 obviates any future application of the preexisting agreement. RLEA then quotes pp. 8-9 of the affidavit of the Secretary of Labor Hodgson, which was placed in evidence in *Congress of Railway Unions, et al. v. J. D. Hodgson, et al.*, civil action No. 825-71, in support of its contention that the intent of article I, section 3 is to preserve the rights of employees under other protective arrangements.



(1971).<sup>9</sup> RLEA also finds fault with article I, section 11 and wants it rephrased to clarify the proper decisionmaking process of the arbitration panel and the proper burden of proof. Finally, RLEA requests more equitable relocation provisions than those contained in article I, section 9.

As noted above, RLEA presents alternative provisions which it feels are fair and equitable and these are set forth in appendix I to this decision. We note, however, that despite RLEA's criticism, some of the proposed revisions do not differ in the areas of expressed concern from the provisions we developed in the prior decision in this proceeding. For example, RLEA would modify article II to suggest incentives for retraining of employees. Yet, the proposed conditions also contain numerous modifications other than those enumerated above for which no explanation is offered.

BLE contends that the conditions imposed fail to (1) recognize the particular seniority problems applicable to engineers and firemen, (2) provide a means to reach an equitable agreement on the rearrangement of work forces, and (3) adequately protect the earnings of operating employees. Generally, BLE seeks attrition-type protection; but, acknowledging our past refusal to impose such conditions, it directs comments to the specific provisions imposed. Like RLEA, BLE would redefine the term "transaction" in article I, section 1(a), so that it would be as broad as the term "coordination" in sections 4 and 5 of WJPA. Next, it submits that the "protective period," as defined in article I, section 1(d), has been improperly limited with respect to displaced employees. It argues that section 6(a) of WJPA provides that every displaced employee, regardless of the length of service, is entitled to protection for 5 years and that the instant conditions would limit the displacement allowance protection to the length of the employee's prior service if less than 6 years. Next, BLE seeks to add a specific definition in article I, section 1, of the phrase "change of residence," similar to the definition of that phrase proposed by RLEA in appendix I to this decision.

Also, BLE agrees with RLEA that (1) article I, section 3, must be modified so as to assure that an employee will not forfeit his protections under another protective agreement as a condition of accepting any benefit of Appendix C-1, and (2) the last sentence of article I, section 4, should be deleted as it would allegedly permit a railroad to proceed with the transaction at the end of the 90-day

<sup>9</sup>The problem in that case arose from a protective condition limiting the allowances solely to the amount paid employees for seasonal work. Accordingly, this resulted in deflated average monthly compensation. RLEA proposes to avoid such potential problems by computing the average monthly compensation utilizing only months in which the employee performed compensated service more than 50 percent of the time.

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Additional comments are objections to article traditional concepts of di not adequate for operating grounds that the carrier sh knowledgeable of options the grounds that the me should read as set forth in section 11, on the ground may involve more than or the grounds that sector employee from loss arising be included.<sup>10</sup>

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Stressing the limited New Dock argues that this pro Commission to determine conditions to be imposed in light of our decision t argues that section 5(2)(f) require the imposition of *Pac. R. Co.—Merger—T* proposition that Congress when it amended section and that the "New Orleans joint reply to BLE's comment following specific objection specialized and limited counter any need to accommodate a territory attrition-type conditions *R. Co.—Abandonment—* their contention that Co the labor organizations' i

<sup>10</sup>Article I, section 12(a)(ii) of protection. Since we intended to be inadvertent.

notice period and prior to completion of arbitration. BLE would further delete article I, section 4(d) and section 11(d), on the basis that requiring the parties to bear the involved expenses equally makes it prohibitive for an individual or small labor representative to arbitrate a dispute.

Additional comments of BLE are summarized as follows. There are objections to article I, sections 5 and 6, on the grounds that traditional concepts of displacement and dismissal allowances are not adequate for operating employees; to article I, section 7, on the grounds that the carrier should be compelled to make the employees knowledgeable of options prior to election; to article I, section 9, on the grounds that the moving expenses now are inequitable and should read as set forth in appendix II to this decision; to article I, section 11, on the grounds that it fails to recognize that the dispute may involve more than one railroad; and to article I, section 12, on the grounds that section 11(a)(2) of WJPA, which protects an employee from loss arising out of a contract to purchase, should also be included.<sup>10</sup>

As noted in the procedural history set forth above, Dock, individually and jointly with BEDT, and NW, individually, filed replies to the labor organizations' proposed modifications.

Stressing the limited and local operations of the involved carriers, Dock argues that this proceeding is not an appropriate forum for the Commission to determine the level of employee protective conditions to be imposed in all usual proceedings of this type; but, in light of our decision to consider the matter further, it generally argues that section 5(2)(f) of the act (now 49 U.S.C. 11347) does not require the imposition of Appendix C-1 conditions. It cites *Missouri Pac. R. Co.—Merger—T&P and C&EI*, 348 I.C.C. 414 (1976) for the proposition that Congress did not intend a significant policy change when it amended section 5(2)(f) of the act (now 49 U.S.C. 11347) and that the "New Orleans" conditions are appropriate here. In their joint reply to BLE's comments, Dock and BEDT (carriers) offer the following specific objections. The carriers again point to the specialized and limited nature of their waterfront operations to counter any need for modifications in the conditions to accommodate a territorial seniority system. They also oppose attrition-type conditions and cite our decision in *Oregon Short Line R. Co.—Abandonment—Goshen*, 354 I.C.C. 584 (1978), to support their contention that Congress did not intend such conditions. As to the labor organizations' complaints concerning the manner article I,

<sup>10</sup>Article I, section 12(a)(ii) of the Appendix C-1 conditions also provides for this type of protection. Since we intended to incorporate those conditions, the omission of that paragraph was inadvertent.



section 4, incorporates sections 4 and 5 of WJPA; the carriers state that the principles of those sections (i.e., notice, opportunity to negotiate, and the right to arbitrate) have been properly and sufficiently adopted. They fear that deletion of the authority to consummate after the 90-day period would enable a union to block a transaction already found by the Commission to be in the public interest. They also allege that *Southern Ry. Co.—Control—Central of Georgia Ry. Co.*, 331 I.C.C. 151 (1967), did not require an agreement prior to consummation, but merely arbitration.<sup>11</sup>

The carriers' objections to the various other modifications proposed follow. As to article I, section 1, they oppose redefinition of the term "transaction," stating that it is not necessary; oppose insertion of the term "change of residence," stating that the facts do not warrant it; and support our prior definition of "protective period" to the extent it limits protection to the length of previous service. As to article I, section 3, the carriers do not feel rephrasing is necessary, though they do not elaborate on the concerns expressed by the organizations. BLE's suggestions to delete article I, section 4(d) and section 11(d) are attacked as being in violation of the equitable principle that each party bear its own expenses in arbitration. The carriers submit that any deviation from the long-established principles of article I, sections 5 and 6, is not warranted here. They feel article I, section 7 is sufficient and that it is the duty of the organizations to advise their members of the various options. Since this proceeding does not involve potential residence changes, the carriers oppose modifications of article I, section 9 and section 12, which involve moving expenses and losses from home removal, respectively. Next, they question BLE's criticism of the traditional arbitration provisions set forth in article I, section 11. Finally, the carriers discuss the appropriate length of the "protective period." They allege that section 5(2)(f) expressly limits the term to 4 years or less from the effective date of the order of the Commission approving the transaction and that we cannot ignore this plain language.

In its pleadings, NW generally opposes the adoption of any conditions requiring agreement before implementation of a transaction. NW adopts by reference the comments of the

We do not agree with this conclusion. It was in that decision that the Commission clarified that sections 4 and 5 of WJPA were indispensable prerequisites to a valid order of approval. That case also recognized that, had those provisions been adhered to by the parties, a precumsumation agreement would have resulted; however, as explained in that decision, consummation had already been accomplished without compliance with those sections. For this reason, it was impossible to require a precumsumation agreement; but equitable compliance with sections 4 and 5 was mandated.

360 I.C.C.

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360 I.C.C.

Association of American Railroads (AAR) filed in AB-36 (Sub-No. 2), *Oregon Short Line*, *supra*, which basically reflects the view that Appendix C-1 exceeds the statutory minimum required by section 5(2)(f) of the act (now 49 U.S.C. 11347).

#### DISCUSSION AND CONCLUSIONS

We are concerned here with the level of labor protective conditions required by 49 U.S.C. 11347 [formerly section 5(2)(f) of the act] in transactions involving rail carriers for which approval is sought under 49 U.S.C. 11343 *et seq.* [formerly sections 5(2) and 5(3) of the act] with the exception of trackage rights and lease proceedings.<sup>12</sup> Despite the carriers' protestations, we feel that this is an appropriate proceeding in which to make such a determination. While each labor protective provision may not be invoked in the situation arising from the transaction approved here (i.e., provisions regarding moving expenses, et cetera), there is ample evidence of record upon which to base a determination of the appropriate conditions to be applied in the usual case.

The statute (49 U.S.C. 11347) requires that, as a condition to approving certain proceedings, the Commission must provide for a fair arrangement to protect employees. This arrangement, at a minimum, must contain provisions at least as protective as (1) the terms imposed under the section prior to February 5, 1976, and (2) the terms established under section 565 of title 49. In our prior decision in this proceeding we concluded that imposition of a version of the protections of sections 4 and 5 of WJPA in combination with the Appendix C-1 conditions was required by the act. See *New York Dock*, *supra* at 411, 412. For the reasons discussed in that decision we reaffirm our general conclusions as to this minimum level of protection.<sup>13</sup> However, the parties raise several matters which warrant further discussion and, in some instances, modifications of our prior findings so that the conditions imposed are commensurate with our statutory obligation. The

<sup>12</sup> Appropriate labor protective conditions for imposition (a) in trackage rights proceedings have been developed in Finance Docket No. 28387, *Norfolk and Western Railway Company—Trackage Rights—Burlington Northern, Inc.*, and (b) in lease proceedings have been formulated in Finance Docket No. 28256, *Mendocino Coast Railway, Inc.—Lease and Operate—California Western Railroad*.

<sup>13</sup> Therefore, contrary to the carriers' arguments, we remain of the view that the appendix C-1 conditions, which conditions were developed pursuant to section 405 of RPSA, are required by the statute. This does not conflict with what we said in *Missouri Pac. R. Co.—Merger—T&P and CAE*, *supra*. While we stated in that case that Congress did not intend to have the Commission significantly change its policy in the employee protection area, this was meant to indicate that Congress did not intend a change requiring imposition of attrition conditions. See *Oregon Short Line*, *supra* at 589.



discussion below will be twofold. First, we will address the arguments that the conditions previously imposed do not meet the minimum requirements of the statute as they do not incorporate the full protections of sections 4 and 5 of WJPA. Next, we will analyze the conditions previously imposed in order to assure that they not only meet the statutory minimum but also constitute a fair arrangement.

The labor organization intervenors correctly point out that though we stated we were imposing a version of the protections of sections 4 and 5 of WJPA (as modified to require compulsory arbitration), the conditions actually imposed are not as protective as those sections in several respects. First, the final sentence of article I, section 4, would conceivably permit consummation of a transaction prior to agreement or decision of the referee if the deadlines prescribed therein could for some reason not be met. Though Dock argues that article I, section 4 sufficiently encompasses the pertinent sections of WJPA, we cannot overlook the significance of the shortcoming attacked by the organizations. Therefore, to insure that the requirement of a preconsummation agreement as contained in sections 4 and 5 of WJPA be incorporated, we will modify article I, section 4, by deleting the final sentence and substituting in lieu thereof the language proposed by RLEA in article I, section 4(b), of appendix I, which language is appropriate for that purpose.

The labor organizations also request that the definition of the term "transaction" in article I, section 1(a), be modified to encompass the same situations as the complementary term "coordination" does in WJPA. These terms are the triggering mechanisms of article I, section 4 and sections 4 and 5 of WJPA, respectively. Since article I, section 4 here is intended to incorporate the full protections of sections 4 and 5 of WJPA, the term "transaction" should be redefined to set the notice, negotiation, and arbitration provisions in motion in the same situations as does the term "coordination." We also note that the broad definition is necessary in the types of transactions for which approval is required under 49 U.S.C. 11343 *et seq.*, because the event actually affecting the employees might occur at a later date than the initial transaction, yet still pursuant to our approval (consolidation of employee rosters, et cetera). In all these situations, employees should be given notice and the right to negotiation and arbitration; therefore, we will modify the term "transaction" so that it will apply to any action taken pursuant to a Commission authorization upon which these conditions are imposed. Also, in order to clarify exactly when article I, section 4, is triggered, it is necessary to rephrase that section in several minor

negotiation following however, that subsequent the matter for arbitration with our long-established will not allow the pro of the parties.

We note here the structured plan with arbitration, and decide the necessary agree reasonable period so transaction. The parties the various stages imposition in the usual becomes apparent that met, we will then comply article I, section 4.

Next, we will consider the Appendix C-1 condition inequitable provision condition is, therefore length the increased I conditions, as we developed pursuant equitable arrangement *Oregon Short Line R* 84-86 (1977). We have conditions generally "fair arrangement" section 5(2)(f) of the from the application conditions to differ which they were original problems concerning have been raised by here for us to clarify constitute a fair arrangement transactions involving under 49 U.S.C. 113-act], with the exception are being considered discuss the provision

360 I.C.C.

negotiation following a 30-day period will be deleted. We point out, however, that subsequent to the set period either party may submit the matter for arbitration; therefore, the deletion, while in accord with our long-established policy supporting negotiated agreements, will not allow the process to be prolonged contrary to the interests of the parties.

We note here that article I, section 4, embodies a highly structured plan with specified time limits for notice, negotiation, arbitration, and decision. This is so, to assure that the parties reach the necessary agreement prior to consummation but within a reasonable period so as not to delay unduly consummation of the transaction. The parties offer no objection to the time limits set for the various stages and we feel that they are reasonable for imposition in the usual case. If, in future proceedings, however, it becomes apparent that these deadlines are not susceptible of being met, we will then consider modification of the time deadlines of article I, section 4.

Next, we will consider the petitioner's argument that by adopting the Appendix C-1 conditions *in toto*, we have incorporated certain inequitable provisions and that individual examination of each condition is, therefore, necessary. In the past we have discussed at length the increased level of protection afforded by the Appendix C-1 conditions, as well as the fact that those conditions were developed pursuant to a statutory mandate requiring "fair and equitable arrangements to protect the interests of employees." See *Oregon Short Line R. Co.—Abandonment—Goshen*, 354 I.C.C. 76, 84-86 (1977). We have not changed this view that the Appendix C-1 conditions generally conform to the requirement for imposition of a "fair arrangement" as mandated by 49 U.S.C. 11347 [formerly section 5(2)(f) of the act]. However, some confusion has resulted from the application of the specific language of the Appendix C-1 conditions to different types of transactions other than those for which they were originally developed. Moreover, certain additional problems concerning various interpretations of these conditions have been raised by the parties. Therefore, we feel it is necessary here for us to clarify and modify the conditions to insure that they constitute a fair arrangement suitable for imposition in the usual transactions involving rail carriers for which approval is sought under 49 U.S.C. 11343 *et seq.* [formerly sections 5(2) and 5(3) of the act], with the exception of trackage rights and lease situations which are being considered elsewhere. In this regard, we will generally discuss the provisions in light of the various comments of the

parties. Except as discussed and modified herein, we find that the conditions previously imposed satisfy the statutory requirements of 49 U.S.C. 11347 [formerly section 5(2)(f) of the act.] We will not discuss at any length the various modifications we made above to insure that the conditions incorporate the full protections of sections 4 and 5 of WJPA.

First, we will discuss the various criticisms of article I, section 1. The term "protective period" is the subject of some dispute. Dock argues that the period set in our definition should be shortened as the statute explicitly limits the term to 4 years or less from the effective date of the order of the Commission approving the transaction, while BLE asserts that the period set should be modified as WJPA provides 5 years of protection for displaced employees even if he/she has been employed for a lesser period. We do not agree with either argument. First, as to the 4-year limit espoused by Dock, we point to the decision of the U.S. Supreme Court in *Railway Labor Executives' Association v. United States*, 339 U.S. 142 (1950), where it was stated that section 5(2)(f) of the act is a statutory minimum and that we are not required to limit employee protection to 4 years from the effective date of the order, but can provide for a longer period. As to the modifications suggested by BLE, we point out that section 6(a) of WJPA does not provide a 5-year across-the-board protective period. While an employee continued in service might receive up to that length of protection, dismissed employees receive significantly less (see section 7 of WJPA). The up to 6-year protective period depending on length of service provided by Appendix C-1 is the same for both types of employees and in several ways is more protective of all employees than the provisions of WJPA. Therefore, since the Appendix C-1 protective period is generally more beneficial and equitable than the period allocated under WJPA, we will not modify our prior decision in this respect.

Next, both RLEA and BLE suggest the addition of the term "change of residence" to the definitions. This term is utilized in several of the provisions yet we do not feel that establishing a strict definition is advisable. The facts surrounding different proceedings will vary significantly. For example, in some areas of the country employees generally travel much greater distances from home to work than in other areas; therefore, different computations may be warranted. We feel the possible variations prevent the equitable imposition of a set definition, and determine that negotiation and/or

360 I.C.C.

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360 I.C.C.



arbitration between the parties will be the best mode for resolving this matter.

Article I, section 2, appears acceptable to all parties. RLEA does propose an additional sentence dealing with the effectiveness of subcontracting agreements subsequent to a transaction; however, the section, as now written, preserves all existing agreements and, therefore, the suggested language is redundant and unnecessary.

Both RLEA and BLE express concern over the interpretation of article I, section 3 as it is now written. We agree that a fair and equitable arrangement usually should not require a complete forfeiture of other existing labor protective conditions. Because the section as now written has been interpreted in such a manner, we feel it is necessary to rephrase the conditions so as to preclude the possibility of such a reading. Our study of the provision suggested by RLEA indicates that it preserves existing protections yet with the required prohibitions against duplication of benefits (see the first proviso) and against pyramiding (see the latter portion of the final proviso). We will adopt the proposed provision as we feel it is an appropriate clarification of the intent of that section.

We have discussed the major employee objections to article I, section 4, and provided for some modifications thereof. BLE also requests the deletion of section 4(d) [as well as a similar provision in article I, section 11(d)] which section provides that the salary and expenses of the referee shall be borne equally by the parties while all other expenses shall be paid by the party incurring them. BLE argues that these sections render the costs of arbitration prohibitive for small organizations and individuals. Contrary to these unsubstantiated charges, we feel that such a provision is the only fair and equitable manner in which to approach the question of costs. Such a condition helps to promote good faith utilization of the available procedures, and we will not depart from this traditional approach.

Article I, sections 5 and 6 cover displacement and dismissal allowances respectively. Generally, the sections delineate at what point and for how long an employee is eligible for the allowances, the method of computing the amounts of the allowances, and certain situations when the allowances shall be reduced or shall cease prior to the expiration of the protective period. BLE avers that the sections are inadequate for operating employees, since they have territorial rather than plant-type seniority. However, no explanation of just how the present, traditional approach is insufficient is offered, nor does BLE offer a proposal for modification. As

explained before, RLEA proposes certain modifications to the method of computing the average monthly compensation. The record here does not support such a provision. The problem cited by RLEA arose from the specific facts of a particular case. The evolution of article I, sections 5 and 6, is set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 354 I.C.C. 76, 80-85 (1977). Our discussion there outlines the increase in protections afforded by the various revisions, including the Appendix C-1 conditions. In the absence of any evidence to the contrary, we reaffirm that these sections are fair and equitable for imposition in the usual case.

Because of our redefinition of the term "transaction" to encompass actions taken pursuant to our authorization but after the initial changes, we will modify article I, section 9, to delete that language which would automatically remove changes in residence which are made subsequent to the initial change from the purview of that section. The final phrase, "which grow out of the normal exercise of seniority rights," is unnecessary and will also be omitted. This modification will insure that the protections of the provision will be available to any employee who is required to move his place of residence within his protective period, as a result of action taken pursuant to our authorization.

We feel that the method for arbitration of disputes provided for in article I, section 11, sets forth a fair and equitable manner for the parties to settle disputes and controversies with respect to the interpretation, application, or enforcement of specific provisions. As to BLE's argument that the provision is insufficient in situations involving two railroads, we point out that generally a dispute will arise between employees and a single railroad. There are no facts here to indicate that this proceeding is other than the usual case and therefore no modification is warranted. In the event, however, that future proceedings involve more complex situations, we will then consider alternative provisions for application therein.

Both BLE and RLEA point out that, though article I, section 12, allegedly incorporated all the losses from home removal provisions of Appendix C-1, the paragraph therein covering losses arising from a contract to purchase was inadvertently omitted. We agree that this paragraph should have been included and will accordingly modify that provision. We will also make certain changes in paragraph (b) of that condition. This is done for the same reasons we modified article I, section 9, as explained previously. The modification will assure that the protections afforded by sections 9 and 12 will be available in the same instances.

360 I.C.C.

Other modifications will be rephrased section 5(2)(f) (n V" proposed in I concerns matter parties themselves.

In conclusion, numerous modifications of article I, section 5(2)(f) that, except as because they are inadvisable because negotiation and/or has long been out their own arrangements, yet minimum, I proceedings. Part specific cases are within the framework here. We feel that forth in appendix meeting the minimum section 5(2)(f) of proceeding as we arising under 49 U.S.C. of the act), excluded, are being considered have been made.

Because Dock a transaction, we mean literal application here. In essence, carriers from their control transaction carriers from taking relief is not detrimental modification of that taken pursuant to result of the continuing conditions.

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Other modifications we find appropriate are as follows. Article V will be rephrased to reflect the recent redrafting and codification of section 5(2)(f) (now 49 U.S.C. 11347). Finally, we note that "Article V" proposed in RLEA's provisions will not be included because it concerns matters more appropriate for settlement between the parties themselves than for strict determination here.

In conclusion, we note that we have considered all of the numerous modifications proposed (including additional modifications of those sections discussed above, as well as changes in article 1, sections 7, 8, and 10, and articles II and IV). We find that, except as noted, said changes are either (1) unnecessary because they are redundant or consist of mere rewording or (2) inadvisable because they involve matters which are best left to negotiation and/or arbitration between the parties. We stress that it has long been Commission policy to encourage the parties to work out their own arrangement and here we are only establishing a fair, yet minimum, level of protection to be applied in certain proceedings. Particular problems arising from the varying facts of specific cases are best handled by the individual parties involved within the framework of negotiation and arbitration provided for here. We feel that the level of protection developed here and set forth in appendix III to this decision represents a fair arrangement meeting the minimum requirements of 49 U.S.C. 11347 [formerly section 5(2)(f) of the act], and appropriate for imposition in this proceeding as well as other proceedings involving rail carriers arising under 49 U.S.C. 11343 *et seq.* [formerly section 5(2) and 5(3) of the act], excluding trackage rights and lease proceedings which are being considered elsewhere. Certain other minor modifications have been made which do not necessitate detailed explanation.

Because Dock and BEDT have already consummated their control transaction, we must provide for an equitable rather than strictly literal application of the employee protective provisions developed here. In essence, this equitable application will only relieve the carriers from their duty to notify, negotiate, and arbitrate as to the control transaction already accomplished. Since we prohibited the carriers from taking any action which would affect employees, such relief is not detrimental to the interests of employees. Due to our modification of the term "transaction," any future related action taken pursuant to our approval (i.e., consolidation of rosters as a result of the control) will require full and literal compliance with the conditions.

360 I.C.C.



*It is ordered:*

(1) The conditions for the protection of employees set forth in our prior decision in this proceeding at 354 I.C.C. 399 (1978), are modified in the manner set forth in appendix III to this decision for the reasons stated above.

(2) Subject to these modified conditions, the prohibition in our order of September 29, 1977, against the parties taking any action which would affect employees' rights, is removed.

(3) Except as modified here and by our decision of September 8, 1978, the decision and order of April 11, 1978, shall remain in full force and effect.

(4) This decision shall be effective 30 days from the date it is served.

By the Commission. Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Vice Chairman Brown absent and not participating. Commissioner Gresham concurring in the result.

H. G. HOMME, JR.,  
Secretary.

(SEAL)

## APPENDIX I

The labor protective provisions suggested by RLEA are as follows:

The scope and purpose of this appendix is to provide for fair and equitable arrangements to protect the interests of employees of railroads affected by actions taken pursuant to authorizations or approvals of this Commission to which this appendix has been imposed. Therefore, fluctuations and changes in volume or character of employment brought about solely by other causes are not within the purview of this appendix.

## ARTICLE I

## 1. Definitions.—

(a) "Transaction" means any action taken pursuant to authorizations of this Commission to which these provisions have been imposed.

(b) "Displaced employee" means an employee of a railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.

(c) "Dismissed employee" means an employee of a railroad who, as a result of a transaction is deprived of employment with a railroad because of the abolition of his position or the loss thereof as the result of a transaction.

(d) "Protective period" means the period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom; provided, however, that the protective period for benefits under section 6 of this article for any particular employee shall not continue for a longer period following 360 I.C.C.

the date he was displaced was in the employ of a rail. For purposes of this appendix, in accordance with the provisions of the Agreement of May 1936.

(e) "Change in place of residence" means a change in place of residence located either (A) outside the area of the railroad's operation and farther from his residence than 30 normal high speed railroads.

2. The rates of pay, and other rights, privileges, and benefits of a railroad's employees shall be determined by the collective bargaining agreements or collective bargaining agreements dealing with subcontracting the time of a transaction agreement between the railroad and work performed on such matters, or by reasonable disputes concerning such existing collective bargaining agreements.

3. Nothing in this appendix shall be construed to eliminate any existing job security provisions, however, that if an employee is displaced or dismissed under this appendix and some other job security arrangement, he shall elect between the such other arrangement and the provisions which he so elects under the provisions which under this appendix, or any other conditions, responsibilities provided further, that after the employee is displaced or dismissed, he shall be entitled to protection under the protective period under this appendix.

4. (a) Each railroad shall provide facilities, or equipment as required, for the displacement of any employee displaced or dismissed under (90) days' written notice of displacement or dismissal, bulletin boards convenient to the employee, registered mail notice of displacement or dismissal shall contain a full list of the employees in each class affected by the transaction.

At the request of any party, the Commission shall be selected within 60 days of the date of the negotiations for the purpose of determining the terms and conditions of the protective period.

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the date he was displaced or dismissed than the period during which such employee was in the employ of a railroad prior to the date of his displacement or his dismissal. For purposes of this appendix, an employee's length of service shall be determined in accordance with the provision of section 7(b) of the Washington Job Protection Agreement of May 1936.

(c) "Change in place of residence" means transfer to a work location which is located either (A) outside a radius of 30 miles of the employee's former work location and farther from his residence than was his former work location or (B) is located more than 30 normal highway route miles from his residence and also farther from his residence than was his former work location.

2. The rates of pay, rules, working conditions, and all collective bargaining and other rights, privileges, and benefits (including continuation of pension rights and benefits) of a railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes. The various agreements dealing with subcontracting, scope rules, and classification of work rules in effect at the time of a transaction, shall continue in effect unless and until changed by agreement between the railroads and labor organizations involved in such transaction, and work performed on such properties shall not be subcontracted except as may be expressly, or by reasonable necessary implication, permitted by said agreements. Disputes concerning subcontracting of work shall be disposed of on the basis of existing collective bargaining agreements between the parties.

3. Nothing in this appendix shall be construed as depriving any employer of any rights or benefits or eliminating any obligations which such employee may have under any existing job security or other protective conditions or arrangements; *provided*, however, that if an employee otherwise is eligible for protection under both this appendix and some other job security or other protective conditions or arrangements, he shall elect between the benefits under this appendix and similar benefits under such other arrangement and, for so long as he continues to receive such benefits under the provisions which he so elects, he shall not be entitled to the same type of benefit under the provisions which he does not so elect; *provided further*, that the benefits under this appendix, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits; and, *provided further*, that after expiration of the period for which such employee is entitled to protection under the arrangement which he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of his protective period under that arrangement.

4. (a) Each railroad contemplating a change or changes in its operations, services, facilities, or equipment as a result of a transaction which may cause the dismissal or displacement of any employees, or rearrangement of forces, shall give at least ninety (90) days' written notice of such intended change or changes by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending registered mail notice to the representative of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes to be effected by such transaction, including an estimate of the number of employees of each class affected by the intended changes.

At the request of any party interested in such intended change or changes, a place shall be selected within five (5) days from the date of receipt of notice to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix, and these negotiations shall commence  
360 I.C.C.

immediately thereafter. Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the change or changes shall be made on the basis of an agreement or decision under section 4. If at the end of thirty (30) days there is a failure to agree, either party to the dispute may submit it for adjustment in accordance with the following procedures:

(1) Within five (5) days from the request for arbitration, the parties shall select a neutral referee and in the event they are unable to agree within said five (5) days upon the selection of said referee, then the National Mediation Board shall immediately appoint a referee.

(2) No later than twenty (20) days after a referee has been designated a hearing on the dispute shall commence.

(3) The decision of the referee shall be final, binding, and conclusive and shall be rendered within thirty (30) days from the commencement of the hearing of the dispute.

(4) The salary and expenses of the referee shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

(b) If a notice of intended changes is served pursuant to this section 4, no change in operations, services, facilities, or equipment shall occur until after an agreement is reached or the decision of a referee has been rendered.

#### 5. Displacement allowances:—

(a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position, which does not require a change in his place of residence, producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.

Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed compensated service more than fifty (50%) percentum of each such months immediately preceding the date of his displacement as a result of the transaction (thereby producing average monthly compensation and average monthly time paid for in the test period); provided, however, that the "total compensation" and the "total time for which he was paid" shall be adjusted to reflect on an annual basis the reduction, if any, which would have occurred during the test period had a Public Law amending the Hours of Service Act of 1907, enacted subsequent thereto, been in effect throughout the test period; and provided further, that such allowance shall also be adjusted to reflect subsequent general wage increases.

If a displaced employee's compensation in his retained position in any month is less in any month in which he performs work than the aforesaid average compensation (adjusted to reflect subsequent general wage increases) to which he would have been entitled, he shall be paid the difference, less compensation for time lost on account of his voluntary absences to the extent that he is not available for service equivalent to

360 I.C.C.

his average monthly time works in any month in excess of the test period he shall be add pay of the retained position.

(b) If a displaced employee is unable to obtain a position available to him which he is entitled under the agreement to compensation exceeding that which he would have received thereafter be treated for the purpose of this appendix to decline.

(c) The displacement allowance shall be paid for the period in the event of the dismissal for justifiable cause.

#### 6. Dismissal allowances:—

(a) A dismissed employee shall be paid for the date he is deprived of an equivalent to one-twelfth of his employment in which percentum for each such month as a result of a transaction.

Such employee, or his representative, shall be paid on the basis of the reduction, if any, which would have occurred during the test period had a Public Law subsequent thereto, been in effect throughout the test period.

(b) The dismissal allowance shall be paid while he is unable to obtain a position, which does not require a change in his place of residence, producing compensation equal to or exceeding the compensation he received in the position from which he was displaced.

(c) The dismissal allowance shall be reduced to the extent that the employee, any benefits or compensation received in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.

(d) The dismissal allowance shall be paid for the period in the event of the dismissal for justifiable cause under existing agreements, rules and practices, to which he would have been entitled, he shall be paid the difference, less compensation for time lost on account of his voluntary absences to the extent that he is not available for service equivalent to

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result in a dismissal or shall provide for the selection accepted as appropriate for employees made necessary by agreement or decision under the following procedures:

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his average monthly time during the test period, but if in his retained position he works in any month in excess of the aforesaid average monthly time paid for during the test period he shall be additionally compensated for such excess time at the rate of pay of the retained position.

(b) If a displaced employee fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for justifiable cause.

#### 6. Dismissal allowances.—

(a) A dismissed employee shall be paid a monthly dismissal allowance, from the date he is deprived of employment and continuing during his protective period, equivalent to one-twelfth of the compensation received by him in the last 12 months of his employment in which he performed compensated service more than fifty (50%) percentum for each such month prior to the date he is first deprived of employment as a result of a transaction. Such allowance shall be adjusted to reflect subsequent general wage increases; such allowance shall also be adjusted to reflect on an annual basis the reduction, if any, which would have occurred during the applicable test period had a Public Law amending the Hours of Service Act of 1907, enacted subsequent thereto, been in effect throughout the test period.

(b) The dismissal allowance of any dismissed employee who returns to service with a railroad shall cease while he is so reemployed. During the time of such reemployment, he shall be entitled to protection in accordance with the provisions of section 5.

(c) The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and railroad shall agree upon a procedure by which the railroad shall be currently informed of the earnings of such employees in employment other than with a railroad, and the benefits received.

(d) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure to return to service after being notified in accordance with the working agreement, or failure without good cause to accept a regular, bulletined, comparable position which does not require a change in his place of residence, for which he is qualified and eligible with the railroad from which he was dismissed after appropriate notification, if his return does not infringe upon the employment rights of other employees under a working agreement.

7. Separation allowance.—A dismissed employee entitled to protection under this appendix, may, at his option, within thirty (30) days of his dismissal or of an arbitration award establishing that he is a dismissed employee, resign and (in lieu of all other benefits and protections provided in this appendix) accept at that time a lump sum payment computed in accordance with section 9 of the Washington Job Protection Agreement of May 1936. Until such lump sum payment is received, the dismissed employee shall receive a dismissal allowance in accordance with section 6 of this appendix.

360 I.C.C.

8. *Fringe benefits*.—No employee of a railroad who is affected by a transaction shall be deprived of benefits attached to his previous employment, such as free transportation, hospitalization, pensions, relief, et cetera, under the same conditions and so long as such benefits continue to be accorded to other employees of the railroad, in active service or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

9. *Moving expenses*.—Any employee retained in the service of a railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of a transaction, and is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects, for the traveling expenses of himself and members of his family, including living expenses for himself and his family, and for his own actual wage loss, not to exceed 10 working days. The exact extent of the responsibility of the railroad during the time necessary for such transfer and for a reasonable time thereafter, and the ways and means of transportation shall be agreed upon in advance by the railroad and the affected employee or his representatives; provided, however, that changes in place of residence which are not a result of a transaction, which are made subsequent to the initial change and which grow out of the normal exercise of seniority rights, shall not be considered to be within the purview of this section, provided further, that the railroad shall, to the same extent as provided above, assume the expenses, et cetera, for any employee furloughed within three (3) years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbursement shall be paid under the provisions of this section unless such claim is presented to the railroad within 90 days after the date on which the expenses were incurred.

10. Should a railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under this appendix, this appendix will apply retroactively to such employee as of the date when he is so affected.

#### 11. *Arbitration of disputes*.—

(a) In the event a railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix, except sections 4 and 12 of this article I, within 30 days after the dispute arises, it may be referred by either party to an arbitration committee. Upon notice in writing served by one party on the other of intent by that party to refer a dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the committee and the members thus chosen shall select a neutral member who shall serve as chairman. If any party fails to select its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or the highest officer designated by the railroad, as the case may be, shall be deemed the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. Should the members be unable to agree unanimously upon the appointment of the neutral member within 10 days, the parties shall then within an additional 10 days endeavor to agree unanimously to a method by which a neutral member shall be appointed, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days the neutral member whose designation will be binding upon the parties.

(b) In the event a dispute entitled to a representative will be entitled to appoint labor organization representative shall be made by the new

(c) The decision, by majority section), of the arbitration be rendered within 45 days concluded and the record

(d) The salaries and expenses parties to the proceeding a them.

(e) In the event of any affected by a transaction, specify the pertinent facts railroad's burden to prove it. The claiming employee shall transaction had an effect it affected the employee.

#### 12. *Losses from home*

(a) The following conditions instances to any employee who restored to service after being required to change the point therefore required to move

(i) If the employee owns a home, he shall, at his option, estate commissions, loan plus less than its fair value. In the determined as of a date sufficient unaffected thereby. The railroad purchase the home at such a person.

(ii) The employee may elect section and to receive, in lieu ordinarily paid for and assurance residence is located. Such a licensed realtor (not to exceed and any prepayment penalty

(iii) If the employee is unable protect him against loss to his home and in addition shall contract.

(iv) If the employee holds home, the railroad shall protect of said lease.

(b) Changes in place of residence are made subsequent to the ir



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of the normal exercise of seniority rights, shall not be considered to be within the purview of this section.

(c) No claim for loss shall be paid under the provisions of this section unless such claim is presented to the railroad within 1 year after the date the employee is required to move.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, the loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employees, or their representatives, and the railroad. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected in the following manner: One to be selected by the representatives of the employees and one by the railroad, and these two, if unable to agree within 30 days upon a valuation, shall endeavor by agreement within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the National Mediation Board to designate within 10 days a third appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

#### ARTICLE II

1. Any employee whose employment is terminated or who is furloughed as a result of a transaction shall, if he so requests, be granted priority of employment or reemployment to fill a position comparable to that which he held when his employment was terminated or he was furloughed, even though in a different craft or class, on any railroad involved in the transaction which he is, or by training or retraining physically and mentally can become, qualified, not, however, in contravention of collective bargaining agreements relating thereto.

2. In the event such training or retraining is requested by such employee, the railroad shall provide for such training or retraining at no cost to the employee.

3. If such a terminated or furloughed employee who had made a request under sections 1 or 2 of this article II fails without good cause within 10 calendar days after actual receipt of notice to accept an offer of a position comparable to that which he held when his employment was terminated or he was furloughed, which does not require a change in residence, and for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such 10-day period, forfeit all rights and benefits under this appendix.

#### ARTICLE III

Employees of a railroad whose position is not within the scope of a collective bargaining agreement shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under these terms and conditions.

In the event any dispute or controversy arises between the railroad and an employee whose employment is not within the scope of a collective bargaining agreement with respect to the interpretation, application or enforcement of any provision hereof which cannot be settled by the parties within 30 days after the dispute arises, either party may refer the dispute to this Commission for resolution.

360 I.C.C.

1. It is the intent of the less than the benefits Commerce Act, and to be now required as a minimum doing, changes in words under sections 5(2)(f) and to transactions as defined not the intent of this appendix to provide this appendix are to be construed in favor of this than those established pursuant to section 405

2. In the event any provision is unenforceable under applicable law, it shall not be affected, and such Commission for modification

1. The protections and benefits of an employee who is affected by a transaction shall be imposed regardless of whether the employee is an applicant before this Commission.

2. The carrier, or the owner, who employed an employee shall be responsible for the actual payment of all benefits provided to the employee pursuant to the provisions of this appendix otherwise by the carrier.

3. The carriers who were not substantially benefited from the payment of benefits to affected employees shall be responsible for the actual amounts paid to the employee, and upon failure to agree, the Commission shall impose such a transaction.

The labor protective provisions imposed here is as follows:

Moving expenses—Any employee who is restored to service after being laid off shall be required to change the position within 30 days after the date of the layoff.

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#### ARTICLE IV

1. It is the intent of this appendix to provide employee protections which are not less than the benefits established pursuant to section 5(2)(f) of the Interstate Commerce Act, and to section 405 of the Rail Passenger Service Act, and which are now required as a minimum by section 5(2)(f) of the Interstate Commerce Act. In so doing, changes in wording and organization from arrangements earlier developed under sections 5(2)(f) and 405 have been necessary to make such benefits applicable to transactions as defined in article I of this appendix. In making such changes, it is not the intent of this appendix to diminish such benefits. Moreover, it is the intent of this appendix to provide protections which are fair and equitable. Thus, the terms of this appendix are to be interpreted in a fair and equitable manner, and are to be construed in favor of this intent to provide employee protections and benefits no less than those established pursuant to section 5(2)(f) of the Interstate Commerce Act and pursuant to section 405 of the Rail Passenger Service Act.

2. In the event any provision of this appendix is held to be invalid or otherwise unenforceable under applicable law, the remaining provisions of this appendix shall not be affected, and such unenforceable provision shall be resubmitted to this Commission for modification or other appropriate actions.

#### ARTICLE V

1. The protections and benefits of this appendix shall be applicable to any railroad employee who is affected by the transaction to which these provisions have been imposed regardless of whether such employee is employed by a railroad who was an applicant before this Commission in the proceeding in which these provisions were imposed.

2. The carrier, or the owners thereof in the event of the dissolution of said carrier, who employed an employee who is affected by the transaction shall be responsible for the actual payment of all allowances, expenses, and costs provided to such affected employee pursuant to the provisions of this appendix unless expressly provided for otherwise by the carriers and the representative of such employee, or by the provisions of this appendix.

3. The carriers who were applicants before this Commission, or who derived a substantial benefit from the transaction, shall bear the ultimate responsibility for the payment of benefits to affected employees, and shall reimburse any other carrier who provides benefits under this appendix as a result of the transactions covered herein for the actual amounts paid to affected employees. The formula for the sharing of ultimate responsibility shall be agreed to by the carriers bearing the ultimate responsibility, and upon failure to agree, the carriers may seek the aid of this Commission to resolve such disagreement upon the basis of percentage of benefit derived from the transaction.

#### APPENDIX II

The labor protective provision covering moving expenses suggested by BLE for imposition here is as follows:

*Moving expenses.*—Any employee retained in service by the railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of a transaction, and is

360 I.C.C.

required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects, for the traveling expenses of himself and members of his family, including living expenses for himself and his family, and for his own actual wage loss during the time necessary for such move, and for a reasonable time thereafter not to exceed 5 working days. The extent of the responsibility of the railroad under this provision and the ways and means of transportation shall be agreed upon in advance by the railroad and the affected employee or his representatives; *provided, however*, that changes in place of residence which are not a result of a transaction, which are made subsequent to the initial change and which grow out of the normal exercise of seniority rights, shall not be considered to be within the purview of this section; *provided further*, that the railroad shall, to the same extent as provided above, assume the expenses, et cetera, for any employee furloughed within three (3) years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbursement shall be paid under the provisions of this section unless such claim is presented to the railroad within 90 days after the date on which the expenses were incurred.

## APPENDIX III

Labor protective conditions to be imposed in railroad transactions pursuant to 49 U.S.C. 11343 *et seq.* [formerly sections 5(2) and 5(3) of the Interstate Commerce Act], except for trackage rights and lease proposals which are being considered elsewhere, are as follows:

1. *Definitions.*—(a) "Transaction" means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed.

(b) "Displaced employee" means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.

(c) "Dismissed employee" means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction.

(d) "Protective period" means the period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom, *provided, however*, that the protective period for any particular employee shall not continue for a longer period following the date he was displaced or dismissed than the period during which such employee was in the employ of the railroad prior to the date of his displacement or his dismissal. For purposes of this appendix, an employee's length of service shall be determined in accordance with the provisions of section 7(b) of the Washington Job Protection Agreement of May 1936.

2. The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes.

3. Nothing in this appendix shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employee may have under

360 I.C.C.

any existing job security or that if an employee otherwise has some other job security or arrangement and, for so long as the provisions which he so elects under the provisions which are under this appendix, or any conditions, responsibilities, *provided further*, that after entitled to protection under entitled to protection under protective period under the

4. *Notice and agreement or* which is subject to these conditions any employees, or rearrangement notice of such intended transactions to the interested employees, the representatives of such interest, adequate statement of the including an estimate of the intended changes. Prior to such manner.

Within five (5) days from the railroad or representatives or hold negotiations for the purpose of the terms and conditions of the immediately thereafter and which may result in a dismissal, shall provide for the settlement accepted as appropriate for the employees made necessary by agreement or decision under failure to agree, either party shall with the following procedure:

(1) Within five (5) days from the neutral referee and in the event of the selection of said referee, appoint a referee.

(2) No later than twenty (20) days the dispute shall commence.

(3) The decision of the referee shall be rendered within thirty (30) days of the dispute.

(4) The salary and expenses of the proceeding; all other expenses

(b) No change in operations or an agreement is reached or 360 I.C.C.



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360 I.C.C.

any existing job security or other protective conditions or arrangements; *provided*, that if an employee otherwise is eligible for protection under both this appendix and some other job security or other protective conditions or arrangements, he shall elect between the benefits under this appendix and similar benefits under such other arrangement and, for so long as he continues to receive such benefits under the provisions which he so elects, he shall not be entitled to the same type of benefit under the provisions which he does not so elect; *provided further*, that the benefits under this appendix, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits; and, *provided further*, that after expiration of the period for which such employee is entitled to protection under the arrangement which he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of this protective period under that arrangement.

4. *Notice and agreement or decision.*—(a) Each railroad contemplating a transaction which is subject to these conditions and may cause the dismissal or displacement of any employees, or rearrangement of forces, shall give at least ninety (90) days written notice of such intended transaction by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending registered mail notice to the representatives of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes to be affected by such transaction, including an estimate of the number of employees of each class affected by the intended changes. Prior to consummation the parties shall negotiate in the following manner.

Within five (5) days from the date of receipt of notice, at the request of either the railroad or representatives of such interested employees, a place shall be selected to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix, and these negotiations shall commence immediately thereafter and continue for at least thirty (30) days. Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this section 4. If at the end of thirty (30) days there is a failure to agree, either party to the dispute may submit it for adjustment in accordance with the following procedures:

(1) Within five (5) days from the request for arbitration the parties shall select a neutral referee and in the event they are unable to agree within said five (5) days upon the selection of said referee then the National Mediation Board shall immediately appoint a referee.

(2) No later than twenty (20) days after a referee has been designated a hearing on the dispute shall commence.

(3) The decision of the referee shall be final, binding and conclusive and shall be rendered within thirty (30) days from the commencement of the hearing of the dispute.

(4) The salary and expenses of the referee shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

(b) No change in operations, services, facilities, or equipment shall occur until after an agreement is reached or the decision of a referee has been rendered.  
360 I.C.C.

5. *Displacement allowances.*—(a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.

Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of the transaction (thereby producing average monthly compensation and average monthly time paid for in the test period), and *provided further*, that such allowance shall also be adjusted to reflect subsequent general wage increases.

If a displaced employee's compensation in his retained position in any month is less than in any month in which he performs work than the aforesaid average compensation (adjusted to reflect subsequent general wage increases) to which he would have been entitled, he shall be paid the difference, less compensation for time lost on account of his voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but if in his retained position he works in any month in excess of the aforesaid average monthly time paid for during the test period he shall be additionally compensated for such excess time at the rate of pay of the retained position.

(b) If a displaced employee fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for justifiable cause.

6. *Dismissal allowances.*—(a) A dismissed employee shall be paid a monthly dismissal allowance, from the date he is deprived of employment and continuing during his protective period, equivalent to one-twelfth of the compensation received by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the transaction. Such allowance shall also be adjusted to reflect subsequent general wage increases.

(b) The dismissal allowance of any dismissed employee who returns to service with the railroad shall cease while he is so reemployed. During the time of such reemployment, he shall be entitled to protection in accordance with the provisions of section 5.

(c) The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the railroad shall agree upon a procedure by which the railroad shall be currently informed of the earnings of such employee in employment other than with the railroad, and the benefits received.

360 I.C.C.

(d) The dismissal : period in the event justifiable cause under notified in accordance accept a comparable residence for which a return does not infringe working agreement.

7. *Separation allowance.*—appendix, may, at his other benefits and precomputed in accordance of May 1936.

8. *Fringe benefits.*—shall be deprived, due employment, such as under the same conditions other employees of the extent that such benefits corporate action or 1

9. *Moving expenses.*—is later restored to service who is required to change and who within his protective period be reimbursed for all of the traveling expenses for himself and his family days, the exact extent for such transfer and transportation to be as or his representatives are not a result of the this section; *provided* above, assume the expenses years after changing his move his place of residence reimbursement shall be presented to railroad incurred.

10. Should the railroad with the purpose or effect would have become an employee.

11. *Arbitration of disputes.*—authorized representative interpretation, applicable sections 4 and 12 of 1 referred by either party one party on the other arbitration committee committee and the m

360 I.C.C.



displaced employee's displacement and seniority rights under existing agreements, producing compensation equal to the position from which he was displaced. He shall be paid a monthly displacement allowance equal to the average monthly compensation received by him while he was displaced.

The displacement allowance shall be determined by dividing the employee's average monthly compensation by the employee and the total time in which he performed services as a result of the transaction. The average monthly time paid for and average monthly time paid for allowance shall also be adjusted to

the position in any month is less than the aforesaid average compensation (as to which he would have been entitled for time lost on account of displacement for service equivalent to that available for service equivalent to that but if in his retained position he had received the average monthly time paid for during the displacement and for such excess time at the rate of

seniority rights to secure another position in his place of residence, to which he carries a rate of pay and seniority which he elects to retain, he shall be entitled to occupy the position he

or to the expiration of the protective period, or his resignation, death, retirement, or

employee shall be paid a monthly displacement allowance equal to the average monthly compensation received by him while he was displaced. Such allowance shall be paid in addition to any subsequent general wage increases.

employee who returns to service with the railroad. During the time of such displacement, the employee shall be paid in accordance with the provisions of

employee who is otherwise employed shall be paid a monthly displacement allowance equal to the average monthly compensation received by him while he was displaced. Such allowance shall be paid in addition to any subsequent general wage increases.

360 I.C.C.

(d) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure to return to service after being notified in accordance with the working agreement, failure without good cause to accept a comparable position which does not require a change in his place of residence for which he is qualified and eligible after appropriate notification, if his return does not infringe upon the employment rights of other employees under a working agreement.

7. *Separation allowance.*—A dismissed employee entitled to protection under this appendix, may, at his option within 7 days of his dismissal, resign and (in lieu of all other benefits and protections provided in this appendix) accept a lump sum payment computed in accordance with section 9 of the Washington Job Protection Agreement of May 1936.

8. *Fringe benefits.*—No employee of the railroad who is affected by a transaction shall be deprived, during his protection period, of benefits attached to his previous employment, such as free transportation, hospitalization, pensions, reliefs, et cetera, under the same conditions and so long as such benefits continue to be accorded to other employees of the railroad, in active or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

9. *Moving expenses.*—Any employee retained in the service of the railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of the transaction, and who within his protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects for the traveling expenses of himself and members of his family, including living expenses for himself and his family and for his own actual wage loss, not to exceed 3 working days, the exact extent of the responsibility of the railroad during the time necessary for such transfer and for reasonable time thereafter and the ways and means of transportation to be agreed upon in advance by the railroad and the affected employee or his representatives; provided, however, that changes in place of residence which are not a result of the transaction, shall not be considered to be within the purview of this section; provided further, that the railroad shall, to the same extent provided above, assume the expenses, et cetera, for any employee furloughed with three (3) years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbursement shall be paid under the provision of this section unless such claim is presented to railroad within 90 days after the date on which the expenses were incurred.

10. Should the railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under this appendix, this appendix will apply to such employee.

11. *Arbitration of disputes.*—(a) In the event the railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix, except sections 4 and 12 of this article I, within 20 days after the dispute arises, it may be referred by either party to an arbitration committee. Upon notice in writing served by one party on the other of intent by that party to refer a dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the committee and the members thus chosen shall select a neutral member who shall

360 I.C.C.

serve as chairman. If any party fails to select its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or the highest officer designated by the railroad, as the case may be, shall be deemed the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. Should the members be unable to agree upon the appointment of the neutral member within 10 days, the parties shall then within an additional 10 days endeavor to agree to a method by which a neutral member shall be appointed, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days the neutral member whose designation will be binding upon the parties.

(b) In the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event the railroad will be entitled to appoint additional representatives so as to equal the number of labor organization representatives.

(c) The decision, by majority vote, of the arbitration committee shall be final, binding, and conclusive and shall be rendered within 45 days after the hearing of the dispute or controversy has been concluded and the record closed.

(d) The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

(e) In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee.

12. *Losses from home removal.*—(a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the railroad (or who is later restored to service after being entitled to receive a dismissal allowance) who is required to change the point of his employment within his protective period as a result of the transaction and is therefore required to move his place of residence:

(i) If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the railroad for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the date of the transaction so as to be unaffected thereby. The railroad shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person.

(ii) If the employee is under a contract to purchase his home, the railroad shall protect him against loss to the extent of the fair value of equity he may have in the home and in addition shall relieve him from any further obligation under his contract.

(iii) If the employee holds an unexpired lease of a dwelling occupied by him as his home, the railroad shall protect him from all loss and cost in securing the cancellation of said lease.

(b) Changes in place of residence which are not the result of a transaction shall not be considered to be within the purview of this section.

(c) No claim for loss shall be paid under the provisions of this section unless such claim is presented to the railroad within 1 year after the date the employee is required to move.

(d) Should a contract in its sale, the loss of a lease, or any other through joint conference railroad. In the event referred by either party following manner, or by the railroad, and endeavor by agreement agree to a method agreement, either party 10 days a third appointment of a majority final and conclusive including the expenses of the proceedings. All including the compensation

1. Any employee who he so requests, be granted comparable to that of a furloughed, even though training or retraining contravention of collective

2. In the event such railroad shall provide

3. If such a term in section 1 or 2 of the accept an offer of a furloughed for which training, he shall, effort and benefits under 1

Subject to this application by a transaction, of the whole or in part) or the definition of commerce Act, as it provides facilities, facilities of which railroad shall be suspended when employment with carriers shall establish enterprises for receiving carriers and railroad location for receipt of the benefits of this

360 I.C.C.

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member of the arbitration committee chairman of the involved labor by the railroad, as the case may be. Committee shall then function and its though all parties had selected their agree upon the appointment of the all then within an additional 10 days (trial) member shall be appointed, and, est the National Mediation Board to those designation will be binding, upon

in one labor organization, each will be committee, in which event the railroad natives so as to equal the number of

arbitration committee shall be final, within 45 days after the hearing of the and the record closed.

member shall be borne equally by the es shall be paid by the party incurring

her or not a particular employee was gation to identify the transaction and in relied upon. It shall then be the an a transaction affected the employee. all conditions shall apply to the ar employee who is retained in the red service after being entitled to to change the point of his employment ransaction and is therefore required to

a locality from which he is required to the railroad for any loss suffered in each case the fair value of the home in sufficiently prior to the date of the The railroad shall in each instance be at such fair value before it is sold by the

purchase his home, the railroad shall fair value of equity he may have in the y further obligation under his contract, se of a dwelling occupied by him as his iss and cost in securing the cancellation

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360 I.C.C.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee, or their representatives and the railroad. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected in the following manner. One to be selected by the representatives of the employees and one by the railroad, and these two, if unable to agree within 30 days upon a valuation, shall endeavor by agreement within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the National Mediation Board to designate within 10 days a third appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

#### ARTICLE II

1. Any employee who is terminated or furloughed as a result of a transaction shall, if he so requests, be granted priority of employment or reemployment to fill a position comparable to that which he held when his employment was terminated or he was furloughed, even though in a different craft or class, on the railroad which he is, or by training or retraining physically and mentally can become, qualified, not, however, in contravention of collective bargaining agreements relating thereto.

2. In the event such training or retraining is requested by such employee, the railroad shall provide for such training or retraining at no cost to the employee.

3. If such a terminated or furloughed employee who had made a request under section 1 or 2 of the article II fails without good cause within 10 calendar days to accept an offer of a position comparable to that which he held when terminated or furloughed for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such 10-day period, forfeit all rights and benefits under this appendix.

#### ARTICLE III

Subject to this appendix, as if employees of railroad, shall be employees, if affected by a transaction, of separately incorporated terminal companies which are owned (in whole or in part) or used by railroad and employees of any other enterprises within the definition of common carrier by railroad in section 1(3) of part I of the Interstate Commerce Act, as amended, in which railroad has an interest, to which railroad provides facilities, or with which railroad contracts for use of facilities, or the facilities of which railroad otherwise uses; except that the provisions of this appendix shall be suspended with respect to each such employee until and unless he applies for employment with each owning carrier and each using carrier; provided that said carriers shall establish one convenient central location for each terminal or other enterprises for receipt of one such application which will be effective as to all said carriers and railroad shall notify such employees of this requirement and of the location for receipt of the application. Such employees shall not be entitled to any of the benefits of this appendix in the case of failure, without good cause, to accept

360 I.C.C.

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SURFACE  
TRANSPORTATION  
BOARD



DOCKET  
NUMBER  
FD 33388

" CSX-NS-CONRAIL "

RAILROAD CONTROL TRANSACTION

SUBJECT- CONRAIL'S EXCESS PENSION FUNDS

TO:

MEMBER OF SURFACE TRANSPORTATION BOARD

DATE:

July 30, 1997

I would like to introduce myself. My name is Charles Noble age 58 and I am currently employed by Conrail as a Signal Maintainer in the Altoona area.

I hired with the Pennsylvania Railroad in February of 1960 and have continued to work for Penn Central and Conrail except for 2 years in which I fulfilled my military obligation. That's a total of 37 years including my military time. I am an agreement employee and a current member of Conrail Supplemental Pension Plan. My concern on the proposed acquisition of Conrail by CSX and Norfolk Southern is what is going to happen to Conrail's **\$504 million dollar over funded Supplemental Pension Plan?**

It is my understanding that the "CSX" pension plan is underfunded by 300 million dollars. Chairman Mr. Levan suggest that if we mix apples with apples the combined fund of Conrail and "CSX" will be still 100 million dollars overfunded.

Agreement people getting no benefit until retirement — these are the people that have paid into the pension in way of payroll deduction. Non-agreement people are reaping benefit **NOW** from the overfunded plan.

In a letter from Corp. Secretary James McGelhan records indicate my contribution in the form of payroll deductions total approximately \$2,300.00 over the past 36 years. Non-agreement employees make no contribution to the plan in payroll deductions.

There currently are a relatively small number of Conrail agreement employees who participate in the Conrail Supplemental Pension Plan on a grandfathered basis because they had participated as agreement employees in the Supplemental Pension Plan of predecessor railroads.

As a result of non-agreement contributions and other monies and wise investments by fund manager these assets have continued to grow and exceed pension commitments by \$504 million dollars.

An overfunded pension plan means that the trustee's have failed to increase benefits as the fund assets have increased.

Conrail's Board of Directors over the past few years have 3 times selected special participants - Non-agreement employees - to enjoy benefits of these excess funds in the way of voluntary retirements and voluntary separation programs.

We the agreement employees of the predecessor railroads have made the sacrifices and endured 2 reorganization s Penn Central and



Conrail and numerous unsettling railroad economic times. Why should Conrail agreement plan members be denied their share of these excess funds because the "CSX Corporation was financially irresponsible to the tune of 300 million dollars in the management of their pension fund.

Norfolk Southern in their battle to derail the Conrail & CSX merger made the following statement in a notice sent to the Employee Shareholders: "Norfolk Southern and Conrail both can boast fully funded, healthy pension funds, ensuring peace of mind for both employees and retirees. CSX, on the other hand, has been listed as one of the "Top 50 Companies with the Largest Underfunded Pension Liability." Why let CSX reap the benefit of the protective surplus your hard work has built up?

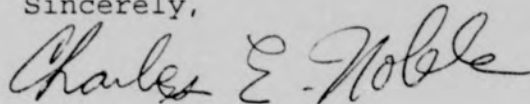
I hope Norfolk Southern is sincere and committed to using this pension surplus for the employee's that have worked hard to create this surplus over the past 30 some years.

As future fiduciaries of all or part of that surplus, please give consideration to original agreement Supplemental Pension Plan Members of the predecessor railroad (pre-Penn Central) in the way of voluntary retirement, voluntary separation or increased benefits.

In closing I would like to add that these Conrail agreement employees with knowledge, skill, dedication and hard work has helped make Conrail the premiere carrier of the northeast as the recent stock bidding has indicated.

I would like to thank you for your time and this opportunity to express my concern.

Sincerely,



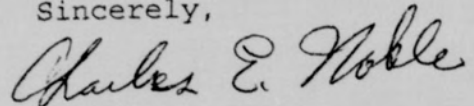
Charles E. Noble  
1306 Hamilton Avenue  
Tyrone, PA 16686  
(814) 684-0259

July 30, 1997

Please before this joint application is approved by the Surface

Transportation Board, get a solid commitment from the carriers on using some of these excess Supplement Pension Monies for the few union people who have made pay roll deduction to the Supplemental Pension Plan over the past 30 some years. Do not let the carrier loot the retirement express - **\$504 million excess.**

Sincerely,

A handwritten signature in cursive script that reads "Charles E. Noble". The signature is written in dark ink and is positioned above the typed name and address.

Charles E. Noble  
1306 Hamilton Avenue  
Tyrone, PA 16686  
(814) 684-0259

CONRAIL



February 27, 1997

Section 101(e)(2) Notice  
Room N5644  
Division of Reports, PWBA  
U. S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

This constitutes advance notification, as required under Section 101(e) of the Employee Retirement Income Security Act of 1974, as amended, of the transfer of excess pension assets to pay qualified retiree health liabilities. The appropriate information is as follows:

1. Employer Identification:

Consolidated Rail Corporation  
2001 Market Street-18B  
P. O. Box 41418  
Philadelphia, PA 19101-1418

EIN: 23-1989084

2. Plan Identification:

Supplemental Pension Plan of Consolidated Rail Corporation

EIN: 23-1989084  
Plan Number: 001

3. The transfer for the tax year beginning May 1, 1996 (the "1996 tax year") will be made on or before April 30, 1997.

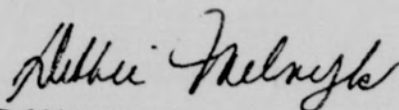
PROTECTED ASSETS 1179  
CURRENT LIABILITIES 675

504  
MILLION  
EXCESS

4. The estimated amount to be transferred for the 1996 tax year: \$ 6 million.
5. Projected assets held by the Supplemental Pension Plan prior to the transfer for the 1996 tax year: \$1,185 million  
Projected assets held by the Supplemental Pension Plan after the transfer for the 1996 tax year: \$1,179 million
6. Projected current liabilities under the Supplemental Pension Plan at the time of the transfer for the 1996 tax year: \$ 675 million

If you have any questions regarding the above information, please call me at (215) 209-2693.

Sincerely,



Debbie Melnyk  
Director-Compensation & Benefits Services



December 11, 1996

Dear Conrail Shareholder:

### **NOW IS THE TIME TO ACT!**

As you know, at Conrail's December 23rd Special Meeting, you will have the opportunity to vote **AGAINST** the proposal to "opt out" of the Pennsylvania Fair Value Statute and the proposal to adjourn the Special Meeting if Conrail does not have enough votes to carry its proposals. I want to take this opportunity to stress the importance of your vote. This is a crucial time for Conrail. It may be your only opportunity to ensure that Norfolk Southern's superior \$110 all-cash, all-shares offer — with prompt payment through use of a voting trust — will remain available to you.

I urge all Conrail shareholders to vote **AGAINST** the amendment proposal and **AGAINST** the adjournment proposal. Please either:

- sign, date and return the enclosed **GOLD** proxy card today;
- or, if you are an ESOP Participant,
- mark the enclosed GREEN instruction card **AGAINST**, and sign, date and return it today.

### **IMPORTANT INFORMATION FOR ESOP PARTICIPANTS**

If you are an ESOP Participant, it is especially important that you mark your GREEN instruction card **AGAINST**, because each ESOP share that is allocated to your account represents a significantly greater voting interest — by our calculation, as much as seven votes. This is because your instructions to the Trustee also direct the voting of unallocated and unvoted ESOP shares, as well as shares held in the Employee Benefits Trust. Therefore, it is very important that you vote and be heard. **REMEMBER, THE ESOP TRUSTEE IS REQUIRED BY LAW TO KEEP YOUR VOTE CONFIDENTIAL.**

Why should you instruct the ESOP Trustee to vote **AGAINST** the "opt out" proposal? Here are six reasons:

- There is substantially more overlap with a CSX/Conrail system than there is with a Norfolk Southern/Conrail system. A merger between CSX and Conrail would eliminate competitive service in 64 cities, including Philadelphia, Baltimore, Youngstown and Pittsburgh. Conrail's Hollidaysburg and Altoona shops are within 70 miles of CSX's facilities at Cumberland, MD. Redundancies like these could add up to lost jobs.
- Our managers are valuable to us and are treated as such. We have avoided massive layoffs and involuntary separations. Since the formation of Norfolk Southern in June 1982, we have matched people to needs through attrition, voluntary separation and early retirements.

- Norfolk Southern and Conrail both can boast fully funded, healthy pension funds, ensuring peace of mind for both employees and retirees. CSX, on the other hand, has been listed as one of the "Top 50 Companies with the Largest Underfunded Pension Liability."<sup>1</sup> Why let CSX reap the benefit of the protective surplus your hard work has built up?
- Norfolk Southern is committed to maintaining a major operating presence in Philadelphia as we have done in Roanoke, Virginia and Atlanta, Georgia — major operating centers for Norfolk Southern's two predecessor railroads. Norfolk Southern also has made public plans for a multimodal rail-highway facility at the dormant Philadelphia Navy base.
- Norfolk Southern's \$110 all-cash offer for Conrail shares is the superior offer. CSX's proposal for the remaining Conrail stock is currently valued at approximately \$92 per share (based on a CSX closing stock price on December 10 of \$46<sup>3</sup>/<sub>8</sub>). Unlike the Norfolk Southern offer, the second-step stock portion of the CSX offer is contingent on Surface Transportation Board approval. The earliest CSX expects to receive any such approval is early 1998. This means you have no assurance if and when CSX will acquire the remaining 75% of Conrail stock.
- You should know that a number of senior Conrail executives have been selling Conrail shares recently, not only pursuant to the first CSX offer but also on the open market. Ask yourself if this indicates a lack of confidence in the value and chances of completion of CSX's proposed deal.

Many of you have worked with Norfolk Southern people for many years and are familiar with our values and beliefs. You know us. Together, we can form an even better railroad — a process that you can help. Say "NO" to the CSX/Conrail merger by voting today. Instruct the ESOP Trustee to vote your shares **AGAINST** Conrail's amendment proposal and adjournment proposal.

Your vote is important to us. If you have already sent a Trustee instruction card in response to the Conrail solicitation, you may revoke it and vote **AGAINST** the proposal by signing and dating the enclosed green instruction card and mailing it in the enclosed postage paid return envelope to the Trustee. **It's the latest dated instruction card that counts.** Remember — the Trustee is required by law to keep your vote confidential. **Why let others decide your destiny when you can cast a vote for your future?**

Norfolk Southern and Conrail both can boast fully funded, healthy pension funds, ensuring peace of mind for both employees and retirees. CSX, on the other hand, has been listed as one of the "Top 50 Companies with the Largest Underfunded Pension Liability."<sup>1</sup> Why let CSX reap the benefit of the protective surplus your hard work has built up?

<sup>1</sup> Pension Benefits Guaranty Corporation:  
News Release 96-19, December 6, 1995.

March 14, 1997

Dear Mr. Goode:

This letter is in reference to the Norfolk Southern Newspaper ad in regard to Conrail's over funded and "CSX" under funded Pensions Plans.

Why let "CSX" reap the benefit of the protective surplus your hard work has built up?

As future fiduciaries of all or part of that surplus, please give consideration to original agreement Supplemental Pension Plan Members of the predecessor railroad (Pre-Penn Central) in the way of voluntary retirement, voluntary separation or increased benefits.

Conrail has used excess pension funds (3) three over the last few years for voluntary retirement and voluntary separation of non-agreement people. Agreement members (pre-Penn Central) have been ignored in the past.

These agreement employees with their knowledge, skill, dedication and hard work has helped make Conrail the premiere carrier of the northeast as the recent stock bidding war has indicated.

These members have helped Norfolk Southern to say "NO" to the CSX/Conrail merger. Norfolk Southern made the offer and the Conrail employees responded favorably. The language used in the working world is "pay back is a bitch" and are you ready to "put your money where your mouth is".

I hope Norfolk Southern is sincere and committed to using this pension surplus for the employee's that have worked hard to create this surplus over the past 30 some years.

A reply at your earliest convenience is requested. Please reply to the address listed below. Thank you for your time.

Sincerely,

Charles E. Noble  
1306 Hamilton Avenue  
Tyrone, PA 16686  
(814) 684-0259



**NORFOLK  
SOUTHERN**

Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-2191

**Paul N. Austin**  
Vice President Personnel  
(804) 629-2696

April 1, 1997

Mr. Charles E. Noble  
1306 Hamilton Avenue  
Tyrone, PA 16686

Dear Mr. Noble:

Mr. Goode has asked me to respond to your letter of March 14 concerning Conrail or predecessor pension plans.

We now have only publicly available information on the status of any plan or surplus, but we will certainly have your most articulate communication in mind as we go forward with implementation of the transaction.

Thank you for your support.

Sincerely,

*Paul Austin*



June 30, 1997

Dear Mr. Goode:

Now that the joint application has been filed with the Surface Transportation Board did Norfolk Southern keep my communication surplus pension monies in mind as you went forward with the application?

I hope Norfolk Southern is sincere and committed to using this pension surplus for the employee's that have worked hard to create this surplus over the past 30 some years.

A new course, a new destiny and a new future must be based on a policy of uncompromising compliance with the highest moral and ethical standards.

A committed work force is one that must have confidence in Norfolk Southern Management to make it a success. Moral and ethical obligations is good corporate citizenship and is basic to achieving quality in Norfolk Southern's operations.

Has Norfolk Southern made any commitment to using these protective surplus's for agreement (pre-Penn Central) Supplemental Pension Plan Members in the application filed with the Surface Transportation Board.

Please reply to the address listed below.

Thank you,

*Charles E. Noble*

Charle E. Noble  
Conrail Signal Maintainer  
1306 Hamilton Avenue  
Tyrone, PA 16686  
(814) 684-0259



**NORFOLK  
SOUTHERN**

Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-2191  
757 629-2650  
757 629-2345 FAX

**Henry C. Wolf**  
Executive Vice President  
Finance

July 18, 1997

Mr. Charles E. Noble  
1306 Hamilton Avenue  
Tyrone, PA 16686

Dear Mr. Noble:

This is in response to your June 30, 1997 letter to Mr. Goode inquiring about the excess assets in Conrail's Supplemental Pension Plan (the "Conrail Pension Plan"). Your letters suggest that you were a participant in the Plan for Supplemental Pensions of Penn Central Transportation Company (the "Penn Central Plan"). On September 15, 1977, this plan was merged with the Supplemental Pension Plan.

The part of the filing Norfolk Southern, CSX and Conrail made with the Surface Transportation Board ("STB") relating to excess pension plan assets provides as follows:

CSX, NSC and CRC agree to take any actions permitted by law that are necessary or appropriate to determine the amount of excess assets in CRC benefit plans and to allow allocation to CSX and NSC or their respective Affiliates in proportion to their respective Percentage; provided that no such transfer shall reduce the assets remaining in any CRC defined benefit plans to a level that is less than 100% of the Liabilities for benefits on a termination basis as reasonably calculated by Price Waterhouse employing usual and customary methodology and assumptions. . . CSX, NSC and CRC shall reach an agreement as to the transfer of accrued benefits and related assets with respect to employees that are transferred.

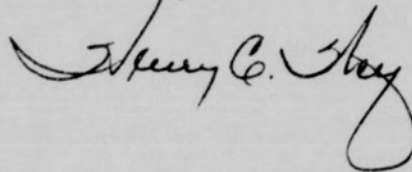
The filing does not discuss allocation of excess assets in the Conrail Pension Plan to provide additional benefits to any specific group of employees, including former Penn Central Plan participants. As the STB filing shows, and as the law requires, all parties to the filing intend that participants in the Conrail Pension Plan receive all benefits to which they are currently entitled under that plan.

Mr. Charles E. Noble  
July 16, 1997  
Page 2

The STB filing also states, however, that Norfolk Southern must make any decisions about the excess pension assets in concert with CSX. We have not yet reached an agreement regarding these assets. The Internal Revenue Code and ERISA, however, contain many restrictions on the use of pension plan assets. Please be assured that any use of these assets will be in accordance with these laws.

Please let us know if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Henry C. Gray". The signature is written in dark ink and is positioned below the word "Sincerely,".

SENATOR ARLEN SPECTER

Witness List  
Harrisburg Conrail Merger Hearing  
April 7, 1997

Panel I

Christopher P. Jenkins, V.P. Chemicals Marketing, CSX  
Arthur R. Ouslander, Assistant V.P. Federal Affairs, Conrail  
Donald W. Seale, V.P. Merchandise Marketing, Norfolk Southern

Panel II

John Antonetti, Chairman, Local 1869, International Association of Machinists  
Gene Imler, Chairman, Division 74, Brotherhood of Locomotive Engineers  
Aloysius "Al" McElwee, Chairman, Local 830, United Transportation Union  
Paris Wilfong, Chairman, Local 2269, International Brotherhood of Electrical Workers

Panel III

Stephan Fisk, Senior Manager, Business Development, Delaware and Hudson Railway  
Charles E. Noble, Signal Maintainer, Conrail  
C. Alan Walker, President and CEO, Bradford Coal Co.



✓  
April 10, 1996

TO: Special Audit Group

This is to inform you of non-compliance of Ethical Conduct of Conrail's Board of Directors.

This is the **THIRD** time that the Board of Directors has selected special participants to enjoy extra benefits not afforded to all supplemental pension plan members. The people who operate this plan are called "**Fiduciaries**". They have a duty to act prudently and in the interest of all plan members.

This conduct falls outside of Conrail's Compliance Policy Guidelines. The Voluntary Retirement/Separation Program have demonstrated that the Board of Directors are acting only in **the interest of some (not all) plan participants**. The purpose of a supplemental pension plan is not to increase the cash flow of the corporation with over funded pension money. This unethical conduct is unacceptable.

With a 596 million dollar excess all plan members are not benefiting from wise investments. As an employee, I have made financial contributions in the way of payroll deduction's into the fund. I can understand your concern for your financial responsibility to the corporation - **BUT PLEASE UNDERSTAND MY CONCERN FOR MY FINANCIAL INDEPENDENCE IN MY COMING RETIREMENT YEARS.**

Conrail policy require employees to conduct company business at the highest level of integrity. Ethical and moral conduct seems to be <sup>A</sup>missing attribute in today's business and political world.

Please give this letter some serious consideration.

Thank you,

*Charles E. Noble*

Charles E. Noble  
1306 Hamilton Avenue  
Tyrone, PA 16686

NOTE: Employed as Signal Maintainer  
Altoona, PA  
Employee No. 205961

CONRAIL



SCOTT K. WASSERKRUG  
VOLUME GENERAL COUNSEL  
CONRAIL LAW DEPARTMENT  
(215) 209-4997  
(215) 209-4819 (FAX)

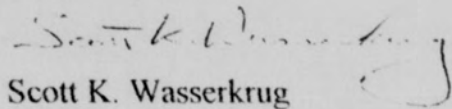
April 24, 1996

Mr. Charles E. Noble  
1306 Hamilton Avenue  
Tyrone, PA 16686

Dear Mr. Noble:

We are in receipt of your April 10, 1996 letter to Conrail's Special Audit Group advising that Conrail's Voluntary Retirement/Separation programs are unethical. Please be advised that Conrail's Board of Directors acted within their authority in amending the Conrail Pension Plan to provide for these programs.

Very truly yours,

  
Scott K. Wasserkrug

SKW:lh

✓  
May 1, 1996

Charles E. Noble  
1306 Hamilton Avenue  
Tyrone, Pa. 16686  
(814) 684-0259

Kathleen Foley Feldstein  
Ethics Committee - Chair

Dear Kathleen,

Please read the attached letters, to the Special Audit Group and the reply from Conrails Law Department.

My letter clearly relates to ethical and moral conduct and makes no reference to any illegal activity. A reply from the law department seems inappropriate. I guess ethical standards is a subject we tend to shy away from and always applies to someone else. One sometimes looks on the legal aspect of an action and not at the ramifications of an unethical act. To quote from the summary of Conrails Compliance Policy Guidelines -

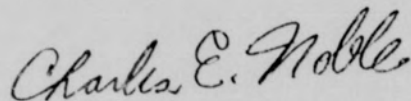
Thus, choosing the quick fix or taking a "shortcut" around these laws and **STANDARDS OF CONDUCT** would be counter productive, as it could subject Conrail and **you personally** to substantial penalties and interfere with corporate and **personal goals**.

As my letter stated I have made financial contributions in the way of payroll deductions into the supplemental pension fund. My inability to share in the overfunded portion is counter productive and interferes with my personal goal of financial security at retirement.

As the trustee of the pension fund, have you acted in my best interest? An overfund pension plan means the trustees have failed to increase benefits as the fund assets have increased. My funds have contributed to the overfunding portion. I feel that I should be able to share in the portion. I am not asking for any more or any less than my share of the overfunded pie that my monies have helped bake.

Thank you for your time.

Sincerely,

A handwritten signature in cursive script that reads "Charles E. Noble".

Charles E. Noble  
Employed as Signal Maintainer  
Altoona, Pa.  
Employee # 205961



STB

FD-33388

ID-FEDSARMY

8-19-97

J



DEPARTMENT OF THE ARMY  
PITTSBURGH DISTRICT, CORPS OF ENGINEERS  
WILLIAM S. MOORHEAD FEDERAL BUILDING  
1000 LIBERTY AVENUE  
PITTSBURGH, PA 15222-4186

REPLY TO  
ATTENTION OF:

August 15, 1997



Operations and Readiness Division  
Regulatory Branch  
199701318

Mr. Thomas J. Litwiler  
Oppenheimer, Wolff & Donnelly  
Two Prudential Plaza, 45th Floor  
180 North Stetson Avenue  
Chicago, Illinois 60601-6710

Dear Mr. Litwiler:

I refer to your July 16, 1997 letter, received in this office on July 22, 1997 regarding Wheeling & Lake Erie Railway Company's proposed abandonment of a portion of line known as the Massillon Branch extending from milepost 22.05 at Run Junction near Navarre to milepost 16.40 near Massillon, a distance of 5.65 miles in Stark County, Ohio (Docket No. AB-227, Sub-No. 10X).

This office has no objection to the proposed project and a Department of the Army Permit is not required.

You may begin the work after you have received any required State and local permits.

If you have any questions, please contact Linda Malsch at (412) 395-7157.

Sincerely,

SIGNED

Albert H. Rogalla  
Chief, Regulatory Branch

Copy Furnished:

✓ Surface Transportation Board  
Section of Environmental Analysis  
1925 K Street, NW, Room 504  
Washington, DC 20423-0001

STB

FD-33388

ID-PUBLIC

8-19-97

J

8/16/97

Surface Transportation Board:

As a resident of Rocky River, OH,  
I am protesting the proposed  
increase of rail traffic through  
the Western suburbs of Cleveland.

This is a horrible plan +  
would ruin our area by  
noise pollution, increased  
chances for collisions, + delay of  
emergency vehicles.

Please do not allow this  
to happen!

Sincerely,  
Mrs. Carl N. Koch  
20142 Western Ave.  
Rocky River, OH 44116





FD 33388



25 Westwind Dr  
#46

Cambridge, Eh.

44012

Surface Trans. Bn.  
1425 K St. NW  
Washington, D.C.



Gentlemen:

I am appalled & astonished  
that you would even consider in-  
creasing the number of freight trains  
crossing our area. We have a huge  
lake just a mile north & many, many  
highways.

This proposal increase would  
jeopardize access for emergency ve-  
hicles (the RR divides most towns  
along its route), increase chances  
of vehicles for collision, disturb the  
peace & endanger our health from  
exposure to dust & noise pollution.

Please reconsider. This serves  
only greedy businessmen.

Sincerely,

Richard Moles / Carolyn Moles (Mrs RD)



Surface Transportation Board  
1925 K St NW  
Wash. DC 20423  
FD33388

8/15/97

After 25 years, I recently moved back to Bay Village with my husband and four children. Despite extremely high taxes, we determined Bay Village to be most suitable to our needs after living in the Philadelphia area. We certainly would not have chosen this area if we had known of your plan to increase train traffic there.

Re #FD33388

Schwartz

32273 Plumbrock Ct

Arvon Lake OH 44012

Aug 15 1997



Dear Sir or Madam

We are writing to protest strongly the plan by Norfolk-Southern to increase rail traffic through the County we reside in, Lorain County, and the surrounding Counties.

The proposed increased rail traffic will be very disruptive to our lives. We hope you can do everything possible to help ~~the~~ <sup>us</sup> fight the plan. ~~on the~~ Your efforts will be greatly appreciated.

Sincerely

Mr & Mrs Richard K. Schwartz



1569 Westwood Ave, Value it would cause,  
Lakewood, Ohio  
44107

Dear Sir or Madam,

I just want you  
to know that I object to  
the proposed plan to triple  
the amount of trains going  
through my City of Lakewood.

I object to the  
Pollution, the delays, noise,  
and the decrease in property

That has nothing to do  
with the amount of injuries  
& deaths it would cause.  
I can guarantee you that  
the amounts of deaths & injuries  
will more than triple because  
of the frustration factor.

I want you to refuse  
this plan.

Thank you,

Chris Schade

Federal Docket #  
FD 33388



August 14, 1997

Re: F.D. 33388  
Secretary of the Surface Transportation Board  
1925 K Street N.W.  
Washington, D.C. 20423



FD33388

Dear Sir or Madam:

After reading the enclosed article, it is with great concern that I submit this letter to the Secretary of the Surface Transportation Board.

As a resident of Rocky River, Ohio, I wish to express my concerns regarding the devastating impact that will result, if the Conrail/Norfolk Southern merger, with the proposed subsequent dramatic increase in freight traffic through the western suburbs of Cleveland, is approved by your Board. Already, the residents of the communities listed in the attached article, as well as others in the cities of Lorain, Vermilion, etc. bordering Lake Erie, have to deal with the noise, inconvenience of blocked tracks preventing travel to and from the south and north portions of the cities, hazardous waste spill worries, noise and air pollution, and the obvious serious interference with the police, emergency-rescue squads, and the fire department vehicles answering emergency calls because the track crossings are blocked. Our school-aged children already have the hazard of walking over these busy rail crossings to attend school, and the thought of all these children dealing with more danger caused by the increased freight traffic is extremely frightening.

If it was possible for your Board to visit the communities west of Cleveland to see first hand the impact the proposed increase in freight traffic (from 14 to 38 trains per day) will create, the Board could then appreciate the legitimate concerns. These tracks do not run on the outskirts of these communities, but instead run right through the center of the residential districts. As the article states, the city of Lakewood alone has 27 crossings. The increase in freight traffic could virtually tie up these cities' ability to protect its citizens, as well as prevent the citizens from having the ability to freely travel within their own city limits. Why should these communities and their citizens have to suffer to accommodate an increased profit for the rail companies. Already it is impossible some nights to sleep due to the noise created by the already too heavily traveled tracks, now we are told the matter could get dramatically worse.

First reports that the tracks would no longer be used for the transportation of freight, but would be turned over for the Cleveland Rapid Transit Authority (RTA) for commuter trains were heralded. Now the communities read that these plans have fallen through, and the already unbearable freight traffic will be almost tripled. Who is to say that once the increased number of freight cars start roaring through our communities the freight traffic will not be quadrupled, or worse.

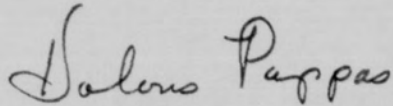
Page 2.  
F.D. 33388

It does not seem right that the communities' mayors or other representatives were not given an opportunity to attend the meetings which approved the ruination of our cities. It will be the citizens who bear the personal economic loss due to a reduction in their property value, as well as having the otherwise tranquility of our cities further diminished by the rail companies.

We trust that the Surface Transportation Board will hear our legitimate concerns and complaints and will spare us from the greed that NS-CSX have displayed by their lack of concern for what their plans will do to these communities.

Thank you for your time, concerns and consideration in this extremely important matter!

Sincerely,

A handwritten signature in cursive script that reads "Dolores Pappas". The signature is written in dark ink and is positioned above the typed name and address.

Dolores Pappas  
111 Cliffside Commons  
Rocky River, Ohio 44116

## City preparing to fight railroad expansion through Lakewood

The time from rumor to fact was less than two weeks, from the time this city and others along the railroad tracks learned the intentions of the Norfolk Southern railway to triple train traffic through Lakewood.

On July 28, Mayor Madeline Cain appointed a task force to meet with Norfolk Southern Corporation to discuss rumors surrounding the railroad's plans for its tracks running through Lakewood.

The following day, Lakewood officials met with NS lobbyist Patrick McCune, who informed them that NS had jointly filed with CSX Corporation a plan for approval with the U.S. Surface Transportation Board, dividing the assets and control of Conrail between NS and CSX and seeking approval of an NS proposal to triple the number of freight trains through Lakewood.

Earlier plans for NS to allow RTA to operate commuter trains over the same tracks had been abandoned.

Lakewood subsequently contacted the STB in Washington to confirm the STB's schedule for approving the railroad's operating plan.

Lakewood then contacted its west-shore neighbors, including cities of Rocky River, Bay Village and Avon Lake, and Cudell Improvement Development Corp., a nonprofit community development corporation on Cleveland's west side.

On August 5, Lakewood was the first to file a "Notice of Intent to

Participate" with the federal agency.

A 350-day schedule for reviewing the NS-CSX proposal has been established, with a decision expected in June of 1988.

August 6, Lakewood, Bay Village, Rocky River officials, along with Congressman Dennis Kucinich, met with McCune to further discuss the railroads' plans, and agreed to work together in fighting the proposed increase in rail traffic.

A statement of adverse impact was filed with Kucinich on August 7, citing many detrimental effects should rail traffic increase:

Police and fire forces could not respond to fires, crime and natural disasters in a timely fashion;

Increase in rail traffic would interfere with the ability of Lakewood Hospital to respond to emergencies; **(A.LAKE, B.VIL, R.RIVER)**

Coordinated responses between Lakewood and other communities would be hampered;

There would be a greater risk of hazardous materials' spills;

School children would be endangered;

Economic growth would suffer;

There would be increases in noise and air pollution, restrictions of traffic movement and backups of traffic on residential streets. Residential areas would be isolated from the business community;

Property values would be adversely affected.

### Volunteers for activism

Speaking of railroad crossings and trains, everyone by now has heard of the proposed plans of the Norfolk Southern Railroad to increase the number of freight trains daily on this line from 14 to 38, almost tripling the total number of daily freight trains through the local suburbs.

Congressman Dennis Kucinich is opposed to this as are the local mayors. Lakewood has 27 crossings. Rocky River has four, but as one examines the city, the Fire Department and Police Department are on the southern side of the city, across the tracks. The response time to the northern section of the city could be increased if the number of freight trains were tripled.

A Rocky River resident and her husband, Ann Petrus Baker and David Baker, of Elmwood Road, have decided to protest the proposed plans of Norfolk Southern.

Ann contacted the congressman's office and received the mailing address for letters of protest to the Secretary of the Surface Transportation Board. She discovered that the general public could not testify in June 1998 before the Surface Transportation Board because the deadline to register to speak had passed. The public did not know of the plans until it was too late. The board will accept letters from residents until the June 1998 hearing.

The Bakers are seeking volunteers who would help with this campaign, both letter-writing and helping to inform the public. They feel an organized community effort may help to persuade the Surface Transportation Secretary of the dangers to local communities. Ann cited some dangers: potential hazardous cargo spills, coal dust and its effects on children in the respiratory system, and the polarization of the city and the safety forces.

The letters MUST include the letters F.D. (federal document) and the number 33388 BOTH on the ENVELOPE and on the LETTER inside. Send your letter to: Secretary of the Surface Transportation Board, 1925 K Street, N.W., Washington, D.C., 20423. Ann was told the letters will be read. The letters must reach the board prior to June 1998.

If you want to volunteer to help this cause, contact the Bakers at 331-4280.

8/15/97

Surface Transportation Board  
1925 K Street NW  
Washington, D. C., 20423



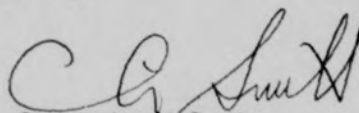
RE: Federal Docket #FD33388

To Whom it May Concern;

I am writing to voice my outrage at the disregard being shown by the Norfolk-Southern railway system for the health, safety and economic impact that will be compromised by increased rail traffic through my community of Rocky River, Ohio. It certainly seem that the Surface Transportation Board is doing everything in its power to facilitate the whims and urges of those it is meant to oversee, namely Norfolk-Southern.

No one would expect the railway company to get too concerned with whatever havoc they wreak, for there would be a definite financial advantage for their decision. However, I would expect the STB to champion the concerns of us lowly chattel. Granted, this situation is nuisance to your deistic importance, however I feel you should deign to intercede to stop the actions of your friends/adversary/country ciub pals that will have a terrible effect on my community.

I challenge you to descend from your throne and come to my community so that you may see for yourself what is at stake and not to rely on the tainted pabulum spewed forth by this "good neighbor" of ours. I may be wrong in this assumption, but as a government agency, you are responsible for the good of all involved. Please feel free to respond to this taxpayer/employer at the address below. Have a good day.



Christopher K. Smith

18519 High Parkway  
Rocky River, OH 44116-2830



August 15, 1997



Surface Transportation Board  
1925 K Street NW  
Washington, D.C. 20423

Re: Federal Docket Number FD33388

As residents of Bay Village, OH, we are most alarmed by the plans of the Norfolk-Southern Railroad to send up to 36 trains a day through our community. The tracks define the southern border of Bay Village with only 4 crossings over a 6 mile boundary. One is an overpass but it is located at the far eastern edge of the city. With that many trains going through we will be constantly trapped at crossings on our way to almost anywhere. Shopping, most jobs, and most important, medical facilities are all south of us. Less important but still a concern is our property values. Who is going to want to purchase a house in Bay Village where emergency vehicles may be regularly delayed for many life saving minutes? Or where the noise level is greatly elevated by the constant sound of train whistles and track racket.

We strongly urge the Board to reject this proposal and not allow this situation to occur. Bay Village has always been a community that took pride in being a quiet, peaceful and safe place to live and raise families. Please let us keep it that way.

Sincerely,

John and Marcia Poffenberger  
30322 Crestview Drive  
Bay Village, OH 44140

8/15/97

Surface Transportation Board

Re: Federal Docket #FD33388



Friends:

I resided in Lakewood OH from 10/70 to 6/96. So, I have put in my share of time waiting for the Norfolk-Southern trains to move through whatever Lakewood street I happened to be walking or driving on.

These trains as the schedule stands now are an almost intolerable danger and nuisance. They go through what are essentially family, child-raising neighborhoods carrying through these neighborhoods their massive engines and boxcars with all the potential for danger and accident they have. Not only potential but many times, there are accidents, deaths -- and always, their impossible-to-deal-with presence and disruption. All you can do is get out of their way and wait and wait and wait, often.

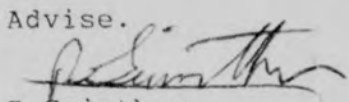
Now they want to -- you want to -- allow them to increase all this by three times -- you may as well tell the cities involved to shut down. Can you even imagine what this additional disruption will be like?

This is yet another <sup>piece</sup> of corporate arrogance at its worst-- we're all familiar with the way <sup>big</sup> corporations have been acting over the last ten years or so -- ~~it's~~ top management <sup>comes first,</sup> especially, and no one else.

I don't know what your position is in this matter -- if you have the authority to say "No", to Norfolk-Southern, please do so for the sake and safety of the tens of thousands of people involved.

By the way, in 7/96 I moved out of Lakewood but only a couple of blocks east past W. 117th St. on Detroit Ave. The tracks continue in this also family neighborhood through to approx. W. 98 St. -- check your maps. The trains are even closer here, <sup>to me,</sup> and besides tracks to wait at and bump over, I now hear the manic train whistles about every 90 minutes or so. You want to -- Norfolk-Southern wants to -- make all this 3x worse????

Advise.

  
R Guinther  
11500 Detroit Ave #517  
Cleveland OH 44102

(Please pardon the typing - best I could do.)

STB

FD-33388

ID-LAW

8-18-97

J

CHARLES L. LITTLE  
International President

BYRON A. BOYD, JR.  
Assistant President

ROGER D. GRIFFETH  
General Secretary and Treasurer

# **united transportation union**



14600 DETROIT AVENUE  
CLEVELAND, OHIO 44107-4250  
PHONE: 216-228-9400  
FAX: 216-228-0937

## **LEGAL DEPARTMENT**

CLINTON J. MILLER, III  
General Counsel

• KEVIN C. BRODAR  
Associate General Counsel

• ROBERT L. McCARTY  
Associate General Counsel

• DANIEL R. ELLIOTT, III  
Assistant General Counsel

August 12, 1997

### **Via Facsimile**

Drew A. Harker, Esquire  
Arnold & Porter  
555 12th Street, NW  
Washington, DC 20004-1202

David A. Coburn  
Steptoe & Johnson  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036

Gerald P. Norton, Esquire  
Harkins Cunningham  
1300 Nineteenth Street, NW  
Washington, DC 20036

John V. Edwards, Esquire  
Zuckert, Scoutt & Rasenberger, LLP  
888 Seventeenth Street, NW  
Washington, DC 20006-3939

Re: *STB Finance Docket No. 33388 -- CSX Corp. and CSX  
Transportation, Inc., Norfolk Southern Corp. and Norfolk Southern  
Railway Co. -- Control and Operating Leases/Agreements --  
Conrail Inc. and Consolidated Rail Corp.*

Gentlemen:

In accordance with the discovery guidelines in this case, this is to advise you that I plan to participate in the deposition of Messrs. Spenski and Peifer on September 2, 1997, Mr. Mohan on September 5, 1997, Mr. Snow on September 18, 1997 and Mr. Orrison on September 11, 1997.

Sincerely,

Daniel R. Elliott  
Assistant General Counsel

cc: Clinton J. Miller, III, General Counsel  
Restricted Service List





CHARLES L. LITTLE  
International President

BYRON A. BOYD, JR.  
Assistant President

ROGER D. GRIFFETH  
General Secretary and Treasurer

# **united transportation union**



14600 DETROIT AVENUE  
CLEVELAND, OHIO 44107-4250  
PHONE: 216-228-9400  
FAX: 216-228-0937

## **LEGAL DEPARTMENT**

CLINTON J. MILLER, III  
General Counsel

• KEVIN C. BRODAR  
Associate General Counsel

• ROBERT L. McCARTY  
Associate General Counsel

• DANIEL R. ELLIOTT, III  
Assistant General Counsel

August 11, 1997

Dennis G. Lyons, Esquire  
Drew A. Harker, Esquire  
Jodi B. Danis, Esquire  
Christopher P. Datz, Esquire  
Arnold & Porter  
555 12th Street, N.W.  
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1330 Connecticut Avenue, N.W.  
Washington, DC 20036-1795

Richard A. Allen, Esquire  
John V. Edwards, Esquire  
Patricia Bruce, Esquire  
Zuckert, Scoutt & Rasenberger, LLP  
888 7th Street, N.W.  
Washington, DC 20005-3939

Paul A. Cunningham, Esquire  
Gerald P. Norton, Esquire  
Harkins Cunningham, Esquire  
1300 19th Street, N.W., Ste. 600  
Washington, DC 20036

Re: *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*

Dear Counsel:

In accordance with Paragraph 15 of the Discovery Guidelines issued by the Surface Transportation Board on June 26, 1997, this letter is to request service to me of all responses to discovery by any party in this proceeding.

Sincerely,

Daniel R. Elliott, III  
Assistant General Counsel

cc: Restricted Service List

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**FINANCE DOCKET NO. 33388**

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

**UNITED TRANSPORTATION UNION'S FIRST SET OF  
INTERROGATORIES TO APPLICANTS**

Pursuant to 49 C.F.R. § 1114.26, the United Transportation Union ("UTU"), by its counsel, hereby serves its First Set of Interrogatories on Applicants CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation, Norfolk Southern Railway Co., Conrail, Inc., and Consolidated Rail Corporation.

**INSTRUCTIONS AND DEFINITIONS**

1. In accordance with the Order of the Surface Transportation Board ("STB") served on June 27, 1997, answers to these interrogatories are due within fifteen days of service of the interrogatories. Answer should be served on: Daniel R. Elliott, III, Esquire, United Transportation Union, 14600 Detroit Avenue, Cleveland, Ohio 44107, counsel for the UTU.
2. In answering each interrogatory, state whether the information furnished is within the personal knowledge of the person answering and, if not, identify each person who has personal knowledge of the information given in each such answer.
3. In answering each interrogatory, identify each person who assisted or



participated in preparing and/or supplying any of the information given in answer to or relied upon in preparing each such answer.

4. In answering each interrogatory, identify by date, sender, recipient, location and custodian, each document relied upon or which forms a basis for the answer given or which corroborates the answer given or the substance of what is given in each such answer.

5. These interrogatories are continuing in nature and responses should be supplemented promptly if more information becomes available.

6. As used herein, the term "the Applicants" means CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation, Norfolk Southern Railway Co., Conrail, Inc., Consolidated Rail Corporation, and their wholly-owned subsidiaries.

7. As used herein, the term "CSX" refers collectively to CSX Corporation, CSX Transportation, Inc., and their subsidiaries; the term "NS" refers collectively to Norfolk Southern Corp., Norfolk Southern Railway Co., and their subsidiaries; and the term "Conrail" refers collectively to Conrail, Inc. and Consolidated Rail Corporation.

8. As used herein, the term "identify" when used in reference to a person includes a request for full identification of (a) name; (b) business and home addresses and telephone numbers; and (c) title, occupation, and employer.

9. As used herein, the term "identify" when used with reference to a document or writing includes a request for full identification of: (a) the date the document was dated or otherwise prepared; (b) the name, business and home addresses, and title of the author(s); addressee(s), and recipient(s); (c) the type of document; and (d) the general subject matter of the document.

10. The following rules of construction apply to these interrogatories: (a) the singular includes the plural and the plural includes the singular; (b) the masculine gender includes the feminine and neuter genders and the neuter gender includes the masculine and feminine genders (c) "and" includes "or" and "or" includes "and"; and (d) "all" includes "each" and "each" includes "all".

11. To the extent that you answer any interrogatory by exercising the option to produce business records under 49 C.F.R. § 1114.26(b), segregate and identify such business records according to the interrogatory to which the records are responsive.

12. As used herein, the term "communication" means the transmittal of information in the form of facts, ideas, inquiries or otherwise.

13. As used therein, the term "document" or "documents" means any written, recorded or graphic matter, whether produced, reproduced, or stored on paper, cards, tapes, film, electronic, facsimile, computer storage devices, or any other media. The term includes, but is not limited to , originals, copies (with or without notes or changes thereon), and drafts. The term includes but is not limited to: papers, books, letters, photographs, objects, tangible things, correspondence, telegrams, cables, telex messages, telecopies, faxes, memoranda, newsletters, notes, notations, work papers, transcripts, minutes, reports and recordings or telephone or other conversations, reports and recordings of interviews, other meetings, affidavits, statements, speeches, summaries, opinions reports, studies, analyses, evaluations, contracts, journals, statistical records, desk calendars, appointment books, diaries, phone logs, lists, tabulations, summaries, sound records, computer printouts, data processing input and output, microfilm, all other records kept by electronic, photographic, or mechanical means,



and anything similar to any of the foregoing, however denominated.

14. As used herein the term "person" means any natural person or any business, legal or governmental entity or association.

15. As used herein, the term "concerning" means relating to, referring to, describing, evidencing or constituting.

16. Please specify the paragraph and subparagraph of those interrogatories pursuant to which each answer is provided and each document is produced.

17. If any document is withheld on the ground that it is privileged or otherwise not discoverable,

(1) identify the document and;

(2) state the basis for the claim that the document is privileged or otherwise not discoverable.

### **INTERROGATORIES**

1. Identify each of the officers, employees or other representatives of the Applicants who are presently scheduled for deposition who can explain fully the effect of the proposed merger on employees represented by the UTU, including, but not limited to, anticipated or potential separations, relocations, redeployments, transfers, assignments to other duties, attrition, and severance arrangements. If none of the witnesses presently scheduled for deposition have such knowledge or information, identify an officer, employee, or other representative of the Applicants who does have such knowledge or information.

2. Identify each of the officers, employees or other representative of the Applicants who are presently scheduled for deposition who can explain fully the projected

seniority, agreement and territory changes necessary under the operating plan, as set forth in Appendix A for the Shared Assets areas. If none of the witnesses presently scheduled for deposition have such knowledge or information, identify an officer, employee, or other representative of the Applicants who does have such knowledge or information.

3. Identify each of the officers, employees or other representative of the Applicants who are presently scheduled for deposition who can explain fully the bases for determining the estimated labor protection costs set forth in the Summary of Benefits Exhibits which appear in Appendices A and B to the Application. If none of the witnesses presently scheduled for deposition have such knowledge or information, identify an officer, employee, or other representative of the applicants who does have such knowledge or information.

4. Identify all documents which support or reflect calculations made to determine labor protection costs set forth in the NS and CSX Summary of Benefits Exhibits.

5. With respect to the trainmen and yardmaster jobs which the Applicants' Labor Impact Exhibit indicates will be abolished:

(a) identify each of the jobs slated to be abolished by Applicant (NS, CSX, or Conrail); and

(b) indicate whether any of the work previously performed by the individuals holding these jobs will be assigned to another position and if so, identify that position.

6. With respect to the trainmen and yardmaster jobs which the Applicants' Labor Impact Exhibit indicates will be transferred:

(a) identify each of the jobs slated to be transferred by Applicant (NS,

CSX, or Conrail); and

(b) identify the collective-bargaining agreement which will apply to each transferred position.

7. With respect to the NS and CSX Summary of Benefits Exhibits, list the anticipated costs for trainmen and yardmasters for the following: (a) moving expenses; (b) displacement allowances; (c) dismissal allowances; and (d) separation allowances.

8. State whether the Applicants intend to claim authority under 49 U.S.C. § 11321 to override any of the provisions of any existing collective-bargaining agreement, job stabilization or protective agreement, and implementing agreement which covers employees represented by UTU. If so, identify any such agreement(s) and the relevant provision(s).

9. In the Projected Seniority Agreement and Territory Change Required for the Operating Plan (Vol. 3A, App. A, p.486), the Applicants stated that "this requires that the expanded CSX be able to have its employees operate over CSX and former Conrail track without regard to their former seniority."

a. Describe the "efficiencies" to be "realized" by having CSX employees operate over CSX and former Conrail track without regard to their former seniority.

10. Describe how "the existing collective-bargaining agreement and crew districts would preclude the integrated and improved operations envisioned by the Operating Plan."

(*Id.*)

11. Describe how the integration of the northern portions of CSX with CSX's allocated share of Conrail "by creating three new seniority districts" (*id.* at 487) will "realize the benefits and efficiencies of the Operating Plan." (*Id.* at 485).

12. Explain why, "[w]hen NS's haulage on the Cleveland-Elkhart-Chicago line for CSX is terminated in whole or in part, former Conrail employees engaged in that service as needed will be required to follow the work to CSX." (*Id.* at 488).

13. Describe the "efficiencies" and "benefits" to be "realized" by having "the train and engine service employees be under the same collective-bargaining agreements within each of the three districts."

14. Describe more specifically the "efficiency" and "benefits" to be "realized" by "[m]odification of collective-bargaining agreements. . . to achieve the efficient utilization of the expanded locomotive, caboose, and shoving platform fleets." (*Id.* at 489).

15. Describe the "benefits" and "efficiencies" to be "realized" by having "[s]uch equipment which is qualified under any collective-bargaining agreement. . . be deemed qualified throughout the expanded CSX system." (*Id.*).

16. Describe the "benefits" and "efficiencies" to be "realized" by having a "uniform rule for qualifying employees to operate on new territory" on "the expanded CSX system". (*Id.*)

17. Describe the "efficiencies" and "benefits" to be "realized" by making certain changes in crew runs within each of the three new seniority districts." (*Id.*).

a. Identify these "certain changes in crew runs."

18. Describe the "efficiencies" and "benefits" to be "realized" by "[rearranging] and [consolidating] certain existing CSX and Conrail yardmaster seniority districts." (*Id.* at 506).

19. Describe the "efficiencies" and "benefits" to be "realized" by applying the "CSX (former B&O) Yardmasters' Agreement to all yardmasters working on each of the new



seniority districts." (*Id.* at 507).

20. Describe the "efficiencies" and "benefits" to be "realized" by having "a uniform rule for qualifying yardmaster employees to supervise new territory." (*Id.*)

21. Explain how "[a]ll of these changes. . . promote the synergy of the combined system." (*Id.* at 508).

22. Describe the "efficiency" and "benefits" to be "realized" by the following:

a. "[i]ntegrating terminal operations and employees at common point location." (Vol. 3B, Appendix A-NS at p. 356).

b. Adjustment of "[t]erminal location. . .after the transaction so as to match the work force with the new traffic flows created by the addition of the Conrail routes to the NS system." (*Id.*)

c. Coordination of "seniority districts for train and engine crews operating on existing Conrail routes. . .into the appropriate NS seniority districts." (*Id.* at 357).

d. "Combining crew districts" on existing NS and Conrail seniority districts. (*Id.*)

e. Having "the employees work under common collective-bargaining agreements." (*Id.* at 358).

23. Describe the "efficiency" and "benefits" to be "realized" by the following:

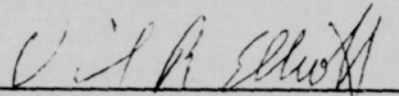
a. The "combination of runs between the North Jersey SAA and, variously, Hagerstown, Manassas, Harrisburg, and Allentown, according to traffic demand. . . under NS/NSR collective-bargaining agreement." (*Id.* at 359).

b. Placing the Central Region Hub Network under NS (NW) labor

agreements. (*Id.*)

24. Describe the "productivity and operating efficiency" to be realized by handling "the yardmaster ranks on the expanded NS System" under "the terms of the NS collective-bargaining agreements and practices that will be in place on the property following the Transaction." (*Id.* at 360).

Respectfully submitted,



Daniel R. Elliott, III  
Assistant General Counsel  
United Transportation Union  
14600 Detroit Avenue  
Cleveland, Ohio 44107  
(216) 228-9400  
FAX (216) 228-0937

**CERTIFICATE OF SERVICE**

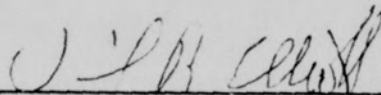
This is to certify that a copy of the forgoing United Transportation Union's First Set of Interrogatories has been served this 12th day of August, 1997 via facsimile upon the following and first-class, postage pre-paid upon the restricted service list.

John V. Edwards  
Patricia E. Bruce  
888 17th Street, NW, Suite 600  
Washington, DC 20006  
Facsimile No.: (202) 342-1608

Drew A. Harker  
Christopher P. Datz  
Susan B. Cassidy  
Arnold & Porter  
555 12th Street, NW  
Washington, DC 20004  
Facsimile No.: (202) 942-5999

David H. Coburn  
Steptoe & Johnson  
1330 Connecticut Avenue, NW  
Washington, DC 20036  
Facsimile No.: (202) 429-3902

Gerald P. Norton  
Harkins Cunningham  
1300 19th Street, NW, Ste. 600  
Washington, DC 20036  
Facsimile No.: (202) 973-7610

  
\_\_\_\_\_  
Daniel R. Elliott, III

STB

FD-33388

ID-GOV

8-15-97

J





OFFICE OF THE SECRETARY OF STATE

Chicago, Illinois 60601

George H. Ryan  
Secretary of State

August 12, 1997



Mr. Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street NW  
Washington, DC 20423-0001

Dear Mr. Williams:

I am writing to you to express my support for the proposed acquisition of Conrail by Norfolk Southern and CSX.

As an elected official and Kankakee, Illinois native, I am particularly interested in the potential effects of the proposed acquisition on the Kankakee region. I am convinced that approval of the Norfolk Southern and CSX acquisition will improve rail traffic and economic conditions in the region, and will provide needed investment locally as new interchange connections would be constructed in Kankakee, Sidney, and Tolono, Illinois. The acquisition would also promote healthy competition amongst the nation's rail carriers and result in more efficient shipping for businesses nationwide.

I ask you to please support this proposal as it will clearly be beneficial to the citizens of Illinois and the Kankakee area. Thank you in advance for your consideration.

Sincerely,

*George H. Ryan*

GEORGE H. RYAN  
Secretary of State

GHR/mpr

STB

FD-33388

ID-BUSINESS

8-15-97

J



## HARBOR MARINE

13950 BRIDGE - BOLLES HARBOR  
MONROE, MICHIGAN 48161

COMPLETE MARINE SERVICE

PHONE: 313 241-2833

FAX: 313 241-1723

July 30, 1997

Vernon A. Williams, Secretary  
Surface Transportation Board  
12th and Constitution Avenue, N.W.  
Washington, D.C. 20423



RE: Acquisition of Conrail by CSX and Norfolk Southern

Dear Secretary Williams:

The joint acquisition of Conrail by CSX and Norfolk Southern is good for Michigan, and I am writing to express my strong support for this agreement.

CSX already serves as a critical link delivering raw materials to Michigan industries which supply finished products to the rest of the nation and the world. Automotive, agricultural, metals, minerals, chemicals and furniture are among the major commodities which rely on dependable rail transportation to and from Michigan. The joint CSX - NS acquisition will enhance the ability of Michigan job providers to have better rail service options at competitive rates.

The Michigan economy will be strengthened by the competition of two strong, balanced and highly regarded railroads. I urge the Surface Transportation Board to approve the joint acquisition of Conrail assets by CSX and Norfolk Southern.

Sincerely,

Charles Harrington  
President



Peter L. Cann  
Executive Director

**Madison County  
Industrial Development Agency**

Suite 1, Canastota Business Center  
Madison Boulevard  
Canastota, New York 13032

Telephone  
(315) 697-9817  
FAX  
(315) 697-8169

July 25, 1997



Vernon A. William, Secretary  
Surface Transportation Board  
12th and Constitution Avenue, N.W.  
Washington, DC 20423

RE: CSX and Norfolk Southern Control-Conrail  
STB Finance Docket No. 33388

Dear Secretary Williams:

I wish to express my support for the planned control of Conrail by CSX Corporation and Norfolk Southern Corporation as proposed in the above referenced docket.

New York State's manufacturing business and agricultural interests will benefit from improved rail transportation, and I believe this transaction will provide our key industries with vital new transportation options and increased market reach with faster service and potentially lower costs.

In addition to improving rail access to key midwestern and western markets, New York State would now also benefit from greatly improved service to markets in the south, southeast, and along the Gulf Coast via a single-line for the first time in history. The resultant elimination of delays means lowered shipping costs and faster transit times, which will create important new opportunities for New York business and industry.

In addition, the prospect of single-line rail service to nearly all the major East Coast and Gulf Coast ports is vitally important to the many New York businesses engaged in importing or exporting and will greatly enhance the global competitiveness of this large sector of our economy.

Faster, less costly and more reliable rail service is a much needed advantage for the economic development and job growth of our region and the entire state of New York.

I urge the Surface Transportation Board to approve the control application as proposed.

Sincerely,



STB

FD-33388

ID-PUBLIC

8-15-97

J

August 11, 1997

TO: Office of Secretary  
Case Control Unit  
FD 333888  
Service Transportation Board  
1925 K Street NW  
Washington D.C.  
Att: Elaine Kaiser



333 88

FROM: Leslie W. Cirino  
944 Wagar Road  
Rocky River, OH 44116-1208

Dear Ms. Kaiser,

I am writing this letter to express my deep concerns about the proposed increase in railroad traffic through my neighborhood by the Norfolk Southern Corporation. As you are probably already aware, the Norfolk Southern Corporation wants to increase traffic three to four times its present rate. This would have devastating effects on our heavily populated residential community.

Theses trains would bring to our community intolerable levels of noise and pollution especially if the trains would be allowed to carry coal and hazardous waste, as has been proposed. In addition our community's fire and police departments efforts would be crippled by increase in railroad traffic. At present time there is only one underpass available for these departments that is located on the eastern portion of our community.

I hope the Service Transportation Board will closely review this proposal. My vote is NO. The Norfolk and Southern Corporation does not have the best interests of the community at heart and it is the job of the government to protect its citizens from big interest companies only looking to increase their bottom line. Norfolk and Southern Corporation needs to find an alternative route that would not so severely hamper, disrupt and endanger the lives of thousands of people living in the path of their proposal.

Very truly yours,

Leslie W. Cirino

STB

FD-33388

ID-CITIES

8-15-97

J



## Village of East Rochester

### Town of East Rochester

120 WEST COMMERCIAL STREET  
EAST ROCHESTER, NEW YORK 14445  
716-586-3553 • Fax 716-586-4792

Mayor – Peter D. Quinzi



July 30, 1997

Vernon A. Williams, Secretary  
Surface Transportation Board  
12<sup>th</sup> and Constitution Avenue, N.W.  
Washington, D.C. 20423

Re: CSX and Norfolk Southern Control-Conrail  
STB finance Docket No. 33388

Dear Secretary Williams:

Please accept this as our expression support for the planned control of Conrail by CSX Corporation and Norfolk Southern Corporation as proposed in the captioned.

If this transaction is consummated as was announced in the joint press release issued April 8, 1997 faster, less costly and more reliable rail service may be come available to serve our region and State. The effect of this will be to foster economic development and well being.

Yours truly,

Robert Hanks  
Village Administrator

#### BOARD OF TRUSTEES

Anthony F. Pullano  
John J. Alfieri  
Frederick Ricci  
Juanita Ryan

EAST ROCHESTER, NEW YORK . . . "the greatest little town in the world"

#### ADMINISTRATOR/ATTORNEY

Robert P. Hanks

#### CLERK - TREASURER

Raymond J. Parrotta







GERALD D. JENNINGS  
MAYOR

CITY OF ALBANY  
STATE OF NEW YORK  
OFFICE OF THE MAYOR  
12207



August 11, 1997

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
12th and Constitution Avenue, N.W.  
Washington, D. C. 20423

RE: CSX and Norfolk Southern Control-Conrail  
STB Finance Docket No. 33388

Dear Secretary Williams:

I am writing to you to express my strong support for the planned acquisition of Conrail by CSX Corporation and Norfolk Southern Corporation as proposed in the above referenced docket.

The joint acquisition of Conrail Inc. by CSX Corp. and Norfolk Southern Corp. means balanced competition in the eastern United States between two major railroads of roughly equal size and scope. For the City of Albany, the enhanced freight rail system of CSX Transportation Inc. (CSXT) will offer its shippers a wide range of new benefits and services. As a result, they will be able to take advantage of new efficiencies, markets and opportunities created by the acquisition.

New York State's manufacturing, business and agricultural interests require the best possible rail transportation. I believe this transaction will meet that requirement providing our key industries with new transportation options and increased market reach, leading to faster, more reliable service.

Conrail has had a major presence in Albany. We are pleased that CSX envisions a continued significant role for our community as part of its expanded rail network. The acquisition will add significantly to the economic development of the Albany area. Approximately \$17 million in improvements are scheduled for Albany's Selkirk Yard and nearby areas.

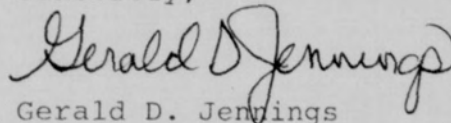
Mr. Vernon A. Williams  
August 11, 1997  
Page 2

If the acquisition is approved, Albany will become a new "service lane" headquarters for the CSXT system, where operations crew management, engineering, maintenance and service planning will be controlled at the regional level.

Faster, more reliable and potentially less costly rail service is a much-needed advantage that is necessary for the economic development and job growth of the Albany area and the entire State of New York.

I urge the Surface Transportation Board to approve the acquisition of Conrail by CSX and Norfolk Southern as proposed.

Sincerely,

A handwritten signature in cursive script, reading "Gerald D. Jennings".

Gerald D. Jennings

cc: J. W. Snow, Chairman  
CSX Corporation  
P. O. Box 85629  
Richmond, VA 23285-5629

*The Chamber*

ALBANY-COLONIE  
REGIONAL  
CHAMBER OF  
COMMERCE

*The Albany-Colonie Regional Chamber of Commerce is a volunteer-based business organization which focuses on enhancing the business climate and quality of life in the region for the benefit of its members and the community at large.*



July 17, 1997

Vernon A. Williams, Secretary  
Surface Transportation Board  
12th and Constitution Avenue, N.W.  
Washington, D.C. 20423

RE: CSX and Norfolk Southern Control-Conrail  
STB Finance Docket No. 33388

Dear Secretary Williams:

I wish to express my strong support for the planned control of Conrail by CSX Corporation and Norfolk Southern Corporation as proposed in the above-referenced docket.

New York State's manufacturing, business and agricultural interests need the best possible rail transportation, and I believe this transaction will provide our key industries with vital new transportation options and increased market reach with faster service and potentially lower costs.

In addition to improving rail access to key midwestern and western markets, New York State would now also benefit from greatly improved service to markets in the south, southeast and along the Gulf Coast via a single-line for the first time in history. The resultant elimination of delays means lowered shipping costs and faster transit times, which will create important new opportunities for New York business and industry.

In addition, the prospect of single-line rail service to nearly all the major East Coast and Gulf Coast ports is vitally important to the many New York businesses engaged in importing or exporting, and will greatly enhance the global competitiveness of this large sector of our economy.

Fast, less costly and more reliable rail service will be a much-needed advantage for the economic development and job growth of our region and the entire state of New York.

I urge the Surface Transportation Board to approve the control application as proposed.

Sincerely,

*Madeline B. Dolan*

Madeline B. Dolan  
Executive Vice President  
Albany-Colonie Regional Chamber of Commerce



*Serving Albany County & the Capital Region*

540 Broadway • Albany, NY 12207-2706 • 518/434-1214 • FAX 434-1339





July 20, 1997



Vernon A. Williams, Secretary  
Surface Transportation Board  
12th and Constitution Avenue, NW  
Washington, DC 20423

RE: CSX and Norfolk Southern Control - Conrail  
STB Finance Docket No. 33388

Dear Secretary Williams:

On behalf of the Fredonia Chamber of Commerce, I would like to express our strong support for the planned control of Conrail by CSX Corporation and Norfolk Southern Corporation in the above referenced docket.

New York State's manufacturing, business and agricultural interests desperately need the best possible rail transportation options and increased market reach, along with faster service and potentially lower costs.

This docket would not only allow us to improve rail access to key western and midwestern markets, it would also provide New York State the enormous benefits generated from greatly improved service to markets in the south, southeast and along the gulf coast via a single-line for the first time in history. New opportunities for local businesses will flourish from the elimination of delays, lower shipping costs, and faster transit times resulting from this planned control.

In addition, the prospect of single-line rail service to nearly all the major East Coast and Gulf Coast ports is vitally important to the many New York businesses engaged in importing or exporting, and will greatly enhance the global competitiveness of this large sector of our economy.

Faster, less costly and more reliable rail service will greatly enhance the competitive edge that our region and all of New York state needs for economic development and job growth.

The Fredonia Chamber of Commerce, as the "voice" for local business, strongly urges the Surface Transportation Board to approve the control application as proposed.

Sincerely,

Sham D. Bahgat, CPA  
President





## *Monroe County Legislature*

**MAX K. STREIBEL**  
LEGISLATOR - 7th DISTRICT

July 15, 1997

**COMMITTEES:**

Planning & Economic  
Development - Chair  
Ways and Means - Vice Chair

Vernon A. Williams  
Secretary, Surface Transportation Board  
12<sup>th</sup> and Constitution Avenue, NW  
Washington, DC 20423

RE: CSX and Norfolk Southern Control-Conrail  
STB Finance Docket No. 33388

Dear Secretary Williams:

I would like to express my strong support for the planned control of Conrail by CSX Corporation and Norfolk Southern Corporation as proposed in the above referenced docket.

New York State's manufacturing business and agricultural interests need the best possible rail transportation and I believe this transaction will provide our key industries with vital new transportation options and increased market reach with faster services and potentially lower costs.

In addition to improving rail access to key midwestern and western markets, New York State would now also benefit from greatly improved service to markets in the south, southeast and along the Gulf Coast via a single-line for the first time in history. The resultant elimination of delays means lower shipping costs and faster transit times, which will create important new opportunities for New York business and industry.

It is important for this acquisition to maintain balanced competition and improve services to customers. Open access to other railroads, enjoyed today, must be continued to be available if this acquisition is to be approved.

Faster, less costly and more reliable rail service is a much needed advantage for the economic development and job growth of our region and New York State.

I urge the Surface Transportation Board to approve the control application as proposed.

Sincerely,

Max K. Streibel  
Legislator - District 7



STB

FD-33388

ID-CITIES

8-14-97

J

**FEDERAL ENERGY REGULATORY COMMISSION**  
WASHINGTON, D.C. 20426

August 14, 1997

Vernon A. Williams  
Office of the Secretary  
Surface Transportation Board  
1925 K Street N.W.  
Washington, D.C. 20423-0001

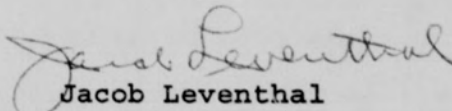


**Re: Finance Docket No. 33388**

Dear Secretary Williams:

Attached is the request of the City of Cleveland, Ohio to file as a Party of Record in this proceeding. This appears to be the original request which evidently was addressed to me by error. I received this request via fax on August 8, 1997.

I am forwarding it to you for appropriate action.

  
**Jacob Leventhal**  
**Administrative Law Judge**



# City of Cleveland

## Office of the Council

*Jay Westbrook*

Councilman, 18th Ward • President of Council

*Committees: Finance, vice-chairman • Public Service • Rules, chairman*

August 8, 1997

Administrative Law Judge Jacob Leventhal  
Federal Energy Regulatory Commission  
888 First St., N.E., #11F  
Washington, DC 20426  
sent via U.S. Mail and fax to 202-219-3289

RE: Surface Transportation Board  
Docket No. 33388

Dear Judge Leventhal:

Only yesterday I found out about the request by CSX railroad to abandon certain freight railroad lines and increase traffic on other railroad lines in the city of Cleveland. Unfortunately, I also found out that yesterday was the deadline to file as a Party of Record (POR) in this case.

This issue is of vital importance to the businesses and residents of the ward I represent. It would seem that it would be a mistake for the city of Cleveland to not be a POR in this case. I have checked, and it appears that no one in the City was aware of this process. I also believe that there are other adjacent cities as well who did not have an opportunity to request to be a POR. In addition, there are several citizens groups and business associations which would also want to file if they had been aware of this proposal by CSX.

I am appealing to you to allow more parties to file as PORs. It would be a great service to the public in Cleveland as well as other cities if you could allow this.

Thank you for your consideration for the people of Cleveland.

Sincerely,

Jay Westbrook  
Councilman, Ward 18  
President of Council



STB

FD-33388

ID-BUSINESS

8-13-97

J



# Philippi-Barbour County Chamber of Commerce

P.O. Box 5000  
Philippi, West Virginia 26416  
(304) 457-1958



Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N. W.  
Washington, D. C. 20423-0001

33388

Dear Mr. Williams:

This will support the June 1, 1997 letter written by the City of Philippi, West Virginia, opposing the proposed monopoly of shipping rights by CSX in Barbour County.

We endorse the recommendation that the proposed merger require that Barbour County Shippers be served by a Class I carrier with single-haul access.

Yours truly,

Donald A. Smith  
Executive Director  
For the Chamber

August 8, 1997



## THE AMERICAN SHORT LINE RAILROAD ASSOCIATION

Alice C. Saylor  
Vice President & General Counsel

1120 G Street, N.W., Suite 520  
Washington, D.C. 20005-3889  
(202) 628-4500  
Fax: (202) 628-6430

July 24, 1997

Office of the Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423

**Re: STB 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**

### NOTICE OF INTENT TO PARTICIPATE

Dear Sir:

Please place the following on the official service list being compiled for this proceeding, as a party of interest:

Alice C. Saylor  
Vice President & General Counsel  
The American Short Line Railroad Association  
1120 G Street, N.W.; Suite 520  
Washington, D.C. 20005

RECEIVED  
SURFACE TRANSPORTATION  
BOARD

JUL 23 11 59 AM '97

OFFICE OF SECRETARY

Sincerely,

A handwritten signature in cursive script that reads "Alice C. Saylor".  
Alice C. Saylor

STB

FD-33388

ID-CITIES

8-13-97

J

# Village of Bement

143 W. Wilson  
Bement, Illinois 61813  
Telephone & Fax 217/678-4741

"Home of the Bryant House"  
The Illinois State Memorial  
where Lincoln and Douglas  
planned their great debates.

August 6, 1997

Mr. Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street NW  
Washington, DC 20423-0001



RE: CSX Corporation and CSX Transportation, Inc.  
Norfolk Southern Corp. & Norfolk Southern Railway Co.  
Control & Operating Leases/Agreements  
Conrail Inc. & Consolidated Rail Corporation  
STD Docket No. 33388

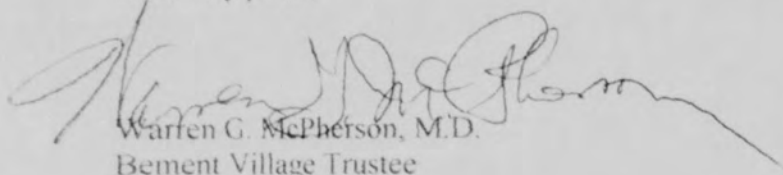
Dear Mr. Williams:

I write today to express my personal support for the proposed acquisition of Conrail by the Norfolk Southern Railway and CSX.

As a member of the Board of Trustees of the Village of Bement, I am particularly concerned with the merger as it will tend to improve traffic issues. Bement is located at the confluence of the Chicago and Detroit tracks of the Norfolk Southern when they merge to go to the yards in Decatur and then on to St. Louis and Kansas City. Many engineers, firemen and district supervisors have lived here and the progress of the Norfolk Southern (formerly Wabash) is vital to our community. As a stockholder of the Bement Grain Company and the State Bank of Bement, I also have a vested interest in how goods, particularly grain, moves through our area.

Please support this acquisition knowing that it will result in tremendous benefits for my community and our region.

Sincerely yours,

  
Warren G. McPherson, M.D.  
Bement Village Trustee

STB

FD-33388

ID-BUSINESS

8-8-97

J



Board of Directors:  
Andreas E. Aepli, Director  
Massachusetts  
Principal, A&L Associates  
Cambridge

The Hon. Doug Alexander, Director, Georgia  
Councilman-At-Large, Atlanta City Council  
Atlanta

David Alan Aschauer, Director  
Maine  
Campbell Professor of Economics  
 Bates College, Lewiston

Atty. William G. Brody, Esq.  
General Counsel and Director  
Rhode Island  
Former Chief Counsel  
to the Governor  
Providence

Phyllis Burke, Director  
Rhode Island  
President, Canadian Connection  
Providence

Michael O.B. Cherry, Director  
Chairman, Finance Committee  
Principal, SCCOT Financial  
Providence

Wayne Davis, Director  
Maine  
Chairman, TrainRiders Northeast  
Portland

William Dell Orfano, Director  
New Hampshire  
President, Bio Development Corp.  
Bedford

Richard M. Flynn, Chairman  
Northeast Corridor Initiative  
Director, New York  
Former Chairman,  
New York Power Authority  
New York City

The Hon. J. Joseph Garrahy,  
Vice Chairman  
Director, Rhode Island  
Governor, RI, 1978-1986  
Providence

The Hon. George Katsakiores  
Director, New Hampshire  
Chairman Emeritus,  
Committee on Transportation  
House of Representatives  
Concord

Lee F. Jackson, Director, Europe  
Executive Director  
European Bank for Reconstruction  
& Development, London  
Died in the Service of his Country  
April 3, 1996, at Dubrovnik

Charles M. McCollam Jr.,  
Director, Connecticut  
Chief of Staff,  
Governors Grasso & O'Neill  
Danbury

James W. "Bill" McFarland  
Director, Alabama  
President, Ward McFarland Inc.  
Tuscaloosa

The Hon. Robert Pullman  
Director, New Hampshire  
Former Representative,  
NH House of Representatives  
Derry

James P. RePass  
President & CEO  
Director, Massachusetts  
Principal, RePass & Lyons Inc.  
Boston

The Hon. John Robert Smith, Chairman  
Director, Southern States  
Mayor, Meridian, MS  
Co-Chair, the Crescent Corridor Coalition  
Chair, National Forum  
for the Future of Passenger Rail

Leonard F. Tria Jr., Director and President,  
The Southeast Corridors Initiative  
Vice President, HDR Engineering  
Tampa

Dan Varin  
Director, Rhode Island  
Former Chief of Planning  
State of Rhode Island  
Providence

# The National Corridors Initiative

NCI Inc.

One Citizens Plaza, Seventh Floor, Providence, RI 02903

Voice: 617-269-5478 Fax: 617-269-3943

Internet: [www.ipt.com/aboard/nci/nci.htm](http://www.ipt.com/aboard/nci/nci.htm)

e-mail address [jprepass@aol.com](mailto:jprepass@aol.com)

Lincoln D. Chafee  
Executive Director

The Hon. John Robert Smith  
Chairman

James P. RePass  
President & CEO

August 6, 1997

To: The Surface Transportation Board  
1925 K Street NW, Suite 700  
Washington, DC 20423

Attention: Vernon Williams, Secretary

Re: Notice of Intent to Participate  
Proposed Conrail Acquisition  
Docket ~~33220~~ 33388

Dear sir:

Pleased accept this communication as the National Corridors Initiative "Notice of Intent to Participate" in the above-referenced matter.

We have enclosed 25 copies of this notice as per your instructions.

Sincerely,

James P. RePass  
President & CEO  
The National Corridors Initiative Inc.

enclosure



STB

FD-33388

ID-BUSINESS

8-1-97

J

# Port Richmond Community Council Incorporated

Port Richmond Sesquicentennial 1847 - 1997  
District of Richmond Incorporated February 27, 1847

July 31, 1997

Honorable Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street, NW  
Room 700  
Washington DC 20423



FD-33388

Dear Mr. Williams,

This is a joint comment statement made by the Port Richmond Community Council, the Richmond Fishtown Kensington Riverfront Community Development Corporation and the Port Richmond Business Association concerning the impact that the proposed dissolution of the Consolidated Rail Corporation will have upon our community.

## The Land Area of Consolidated Rail Corporation Operations

The land area of the Consolidated Rail Corporation operations is along the Delaware River waterfront. The southern boundary is Cumberland Street, the northern boundary is Allegheny Avenue and the entire area is east of Interstate 95 (Delaware Expressway). The size of this land tract is approximately 225 acres. Please see enclosed map for reference points of reference of this land area.

## The History of the Port Richmond Riverfront

The settlement of the area began on March 21, 1728, when William Ball purchased a 676 acre tract of land that included most of Port Richmond. Port Richmond remained a small rural and agricultural community into the nineteenth century. A revolution in the transportation industry transformed the community and shaped its future destiny.

In 1837, the Philadelphia and Reading Railroad selected Port Richmond as its Delaware River terminal for its anthracite coal mining operations. On January 17, 1842, the railroad completed construction of six large coal wharves that stretched from Cumberland Street to Cambria Street along the Port Richmond riverfront.

Port Richmond experienced a large population increase with the construction and completion of the Port Richmond Terminal. Many skilled English artisans, unskilled Irish laborers and German farmers settled in Port Richmond during the decade of 1840 to take advantage of the new employment opportunities offered by the Philadelphia and Reading Railroad. The settlement of these immigrants transformed Port Richmond from a rural and agricultural community into an urban and industrial neighborhood. New and relocated businesses opened operations in the area of the Port Richmond Terminal to utilize the transportation services offered by the Philadelphia and Reading Railroad.

# Port Richmond Community Council Incorporated

Port Richmond Sesquicentennial 1847 - 1997

District of Richmond Incorporated February 27, 1847

For the remainder of the nineteenth century, the Philadelphia and Reading Railroad rapidly expanded its operations. The Philadelphia and Reading Railroad built the most extensive freight terminal in the entire United States. The Port Richmond Terminal became a 225 acre complex containing over 85 miles in railroad track with a capacity for 5,600 freight cars. Equipped with piers, wharves, grain elevators, docks, warehouses, power houses and office buildings, the Port Richmond Terminal supplied a complete line of transportation services to businesses and merchants.

During this time period, Port Richmond became one of the busiest commercial ports along the Atlantic Coast of the United States. Ships from all over the world stopped at the Port Richmond Terminal to load up with anthracite and bituminous coal, iron, iron ore, cotton, grain, livestock, lumber and manufactured goods. The superior facilities of the Philadelphia and Reading Railroad made the Port Richmond Terminal the largest coal shipping depot in the entire world.

However, during the course of the twentieth century, a number of adverse developments caused the decline and eventually the end of the Reading Railroad. The interstate trucking industry started in the years after World War I. The construction of the interstate highway system commenced after World War II and provided the needed infrastructure for the trucking industry to compete more effectively with the railroad industry.

Manufacturing in Port Richmond and throughout the entire northeastern United States started to decline in the aftermath of World War I but most especially after World War II. Businesses began to move to suburban locations to flee from increasing taxes and restrictive zoning regulations. In some instances, businesses moved to the southern United States to escape from labor unions with their demands for higher hourly wages, generous benefit packages and restrictive work rules.

Stiff competition and regulation of the railroad industry also played a key role in hampering the Reading Railroad from competing effectively. The numbers of railroads that serviced the northeastern United States was in excess of the number needed to service the declining number of businesses within that area. The Interstate Commerce Commission regulated the ways that the railroad conducted its business and mandated the rates that railroad could charge shippers for the services they rendered.

Coal, which was the largest volume bulk commodity shipped through the Port Richmond Terminal, began to fall out of use in the period after World War I. Environmental regulations favored the development and use of oil, gas and nuclear energy as cleaner burning and more environmentally sound fuels than coal itself.

All these factors and developments contributed to the decline of the Reading Railroad and most especially its Port Richmond Terminal until the Reading Railroad was forced to file for bankruptcy in 1971. The final blow to the mammoth Port Richmond Terminal came with the greatest and most spectacular fire in the history of Port Richmond.

# Port Richmond Community Council Incorporated

Port Richmond Sesquicentennial 1847 - 1997

District of Richmond Incorporated February 27, 1847

A riverfront fire on October 30, 1974, effectively put the Port Richmond Terminal out of business forever. The firestorm caused irreparable damage to four of the eight massive piers and riverside warehouses operated by the Reading Railroad. In 1976, the United States Congress created the Consolidated Rail Corporation from the Reading Railroad and the remains of five other bankrupt northeastern United States railroads. Since its inception, the Consolidated Railroad Corporation significantly downsized its Port Richmond Terminal operation and does not provide any warehousing and shipping services of any kind.

Over the past fifty years, the decline in commercial and industrial activity along the Port Richmond riverfront has been substantial and irreversible. During World War II, various enterprises operating within the Port Richmond riverfront provided employment for 6,000 workers. In 1972, the Port Richmond riverfront accounted for a total employment of about 1,400 jobs. Presently there are fewer than 100 jobs within the area of the Port Richmond riverfront.

## Present Status of the Consolidated Railroad Operations in Port Richmond

The Consolidated Rail Corporation operates a right of way maintenance facility that strictly performs railroad track improvement and repair at the former site of the Port Richmond Terminal. The railroad provides freight service primarily to the Tioga Marine Terminal and to two companies that operate storage tank facilities, National Molasses Company and GATX. The feeder line that transports traffic into the former site of the Port Richmond Terminal is primarily a single track with an occasional double track siding. There is no rail line and rail service that extends south of Lehigh Avenue.

Consolidated Rail Corporation has leased much of its property to business tenants. These businesses are primarily in the recycling business. These operations employ few workers and provide little in the way of tax revenue. The physical countenance of these businesses is rather unsightly and contributes to an overall appearance of blight and decay along the Port Richmond riverfront.

## Proposed Reuses of the Consolidated Railroad Property

The Port Richmond Community Council, the Richmond Fishtown and Kensington Riverfront Community Development Corporation and the Port Richmond Business Association propose using the Consolidated Railroad Corporation property south of Lehigh Avenue as an industrial park. This is a logical extension of the Riverside Industrial Park that presently exists on the 2200 block of Richmond Street.

There are a number of businesses that presently operate in Port Richmond. These businesses operate in a variety of industries and employ many local residents. The business community is very loyal to this area in which they operate and wish to remain in Port Richmond. However, in order to remain competitive and within their respective industries, these businesses are in dire need of new facilities located away from residential areas and closer to major transportation routes.



# Port Richmond Community Council Incorporated

Port Richmond Sesquicentennial 1847 - 1997  
District of Richmond Incorporated February 27, 1847

The expansion of the Riverside Industrial Park in Port Richmond has the potential of attracting additional manufacturing and warehousing businesses to this area. This area of Port Richmond will offer excellent transportation logistics, superb access to markets located throughout the Eastern Coast of the United States and a good work force that resides within its immediate vicinity.

The City of Philadelphia and the Commonwealth of Pennsylvania may provide a partnership to make this area a larger and more viable industrial park. The City of Philadelphia and the Commonwealth of Pennsylvania may offer packages that will provide business prospects incentives to relocate within the area of the expanded Riverside Industrial Park. The Commonwealth of Pennsylvania offers the Port Enterprise Zone and State Enterprise Zone programs which may be utilized to provide tax credits packages to retain and expand the business community within the Riverside Industrial Park. The Philadelphia Industrial Development Corporation may market this area to prospective businesses who need to locate, relocate or expand their operations.

The Port Richmond Community Council, the Richmond Fishtown Kensington Riverfront Development Corporation and the Port Richmond Business Association advocate the reuse of the Consolidate Railroad Corporation property located north of Lehigh Avenue for mixed use development. There are many possibilities for commercial, recreational and retail development for this area of the Port Richmond riverfront. The new development would be a substantial improvement over its present existing use. With broad development possibilities, ultimately, community involvement and participation in the planning and design process will determine what types of development are needed and wanted.

There is the necessity for the construction of a major roadway through this area of the Port Richmond riverfront to improve access and promote development. The extension of Delaware Avenue from Cumberland Street through Allegheny Avenue would be an ideal roadway project. The Delaware Avenue extension would provide businesses in the Riverside Industrial Park in Port Richmond with an access roadway and a superior transportation route. The Delaware Avenue extension would also provide an alternate traffic route to Interstate 95 that will enable Interstate 95 traffic to bypass the residential area of Port Richmond entirely. It would also be the key to providing the necessary access to promote redevelopment along the Port Richmond riverfront.

## Impact of the Consolidated Railroad Dissolution upon Port Richmond

The dissolution of the Consolidated Railroad Corporation will have a very negative impact upon the Delaware Valley region. The loss of 2,500 jobs will be a significant economic blow. The loss of a major corporate headquarters operation located in the City of Philadelphia is a serious setback to the prestige of the city and its national standing. There is a chronic need to reverse the adverse impact of the dissolution of the Consolidated Railroad Corporation. The best means is for the new owner of the former Port Richmond Terminal, Norfolk Southern, to open this 225 acre tract of land to commercial and industrial redevelopment to offset this job and tax revenue loss.

# **Port Richmond Community Council Incorporated**

**Port Richmond Sesquicentennial 1847 - 1997**

**District of Richmond Incorporated February 27, 1847**

The Port Richmond riverfront, as presently used and operated, constitutes a wasting asset. It is an inappropriate use of riverfront land at a time when cities such as Baltimore and Cleveland have redeveloped their respective waterfronts to generate jobs and tax revenue through proper planning and redevelopment.

The Port Richmond Community Council, the Richmond Fishtown Kensington Riverfront Community Development Corporation and the Port Richmond Business Association firmly believe that our community should decide the course of action for the planning and redevelopment of the Port Richmond riverfront. There are several logical and valid reasons that this request be given full and proper consideration.

The railroad industry is no longer a vital means of shipping and transporting goods to and from the remaining industries that presently operate in Port Richmond. There already exists adequate rail service in the area of Port Richmond north of Castor Avenue. Given the initial proposals and plans by the Port Richmond Community Council to revitalize industry in that area, Norfolk Southern should concentrate its efforts in working with the Port Richmond Community Council to improve rail service as part of a marketing campaign to attract new business prospects to locate and relocate their operations into area of Port Richmond.

The economic benefits of proper mixed use development will generate over time, a substantial number of new jobs and tax revenue to offset the dissolution of the Consolidated Railroad Corporation. This is an ideal time for the mandated cleanup of any contaminated areas of the railroad property to prepare the way for its redevelopment. This is an ideal opportunity to mandate improvements such as the construction of bulkheads to prevent any flooding along low lying areas of the Port Richmond waterfront.

Norfolk Southern will be the new owner and operator of the former site of the Port Richmond Terminal. There is no prospect of recreating the glory days when the Port Richmond Terminal was one of the largest shipping port complexes along the entire Eastern United States. Now is an ideal time for the planning and redevelopment of this vast wasting asset into an economically viable mixed use land area along the Port Richmond riverfront that will create jobs and generate tax revenue.

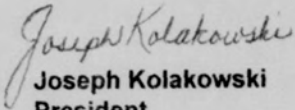
We respectfully request a hearing from the Surface Transportation Board in order to show in full detail the present status of the Port Richmond Terminal and our initial plans for its redevelopment. We respectfully request the presence of Norfolk and Southern at such a hearing to determine their intentions for any development, maintenance and operation of the former Port Richmond Terminal.

This is the only opportunity that our communities will have to stress their united position concerning the future of the Port Richmond riverfront. As surely as the Port Richmond riverfront shaped the history of our community, it has the potential to recreate and redefine the future of our community through proper planning and redevelopment.

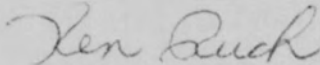
# Port Richmond Community Council Incorporated

Port Richmond Sesquicentennial 1847 - 1997  
District of Richmond Incorporated February 27, 1847

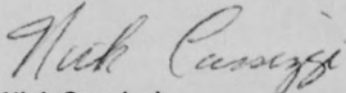
Sincerely Yours,



Joseph Kolakowski  
President  
Port Richmond Community Council  
2977 E. Thompson Street  
Philadelphia PA 19134



Ken Ruch  
Executive Director  
Richmond Fishtown Kensington Riverfront Community Development Corporation  
2022 E. Allegheny Avenue  
Philadelphia PA 19134



Nick Cassizzi  
President  
Port Richmond Business Association  
2915 E. Thompson Street  
Philadelphia PA 19134

## Current Map



Numbers on map correspond to the series of photographs contained in this package.

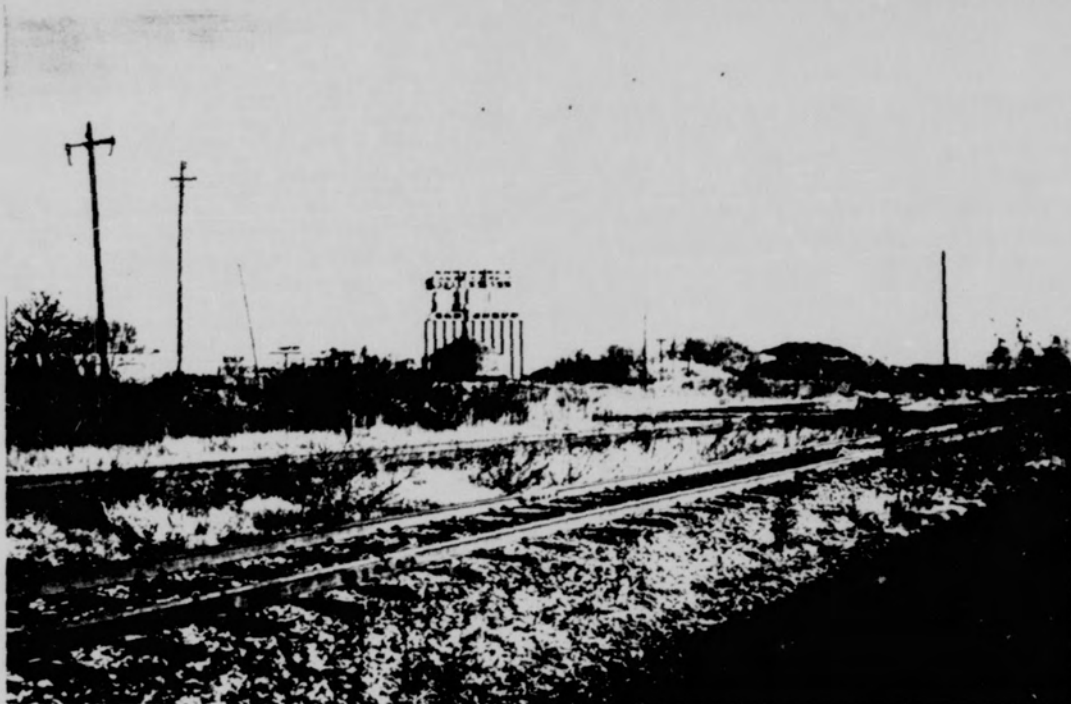
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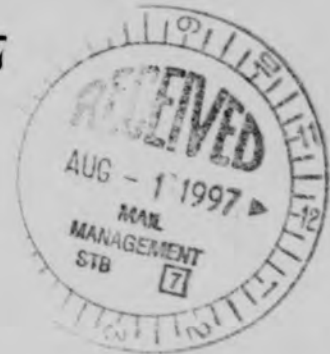


# Port Richmond Community Council Incorporated

Port Richmond Sesquicentennial 1847 - 1997  
District of Richmond Incorporated February 27, 1847

July 31, 1997

Honorable Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street, NW  
Room 700  
Washington DC 20423



FD-33388

Dear Mr. Williams,

This is a joint comment statement made by the Port Richmond Community Council, the Richmond Fishtown Kensington Riverfront Community Development Corporation and the Port Richmond Business Association concerning the impact that the proposed dissolution of the Consolidated Rail Corporation will have upon our community.

## The Land Area of Consolidated Rail Corporation Operations

The land area of the Consolidated Rail Corporation operations is along the Delaware River waterfront. The southern boundary is Cumberland Street, the northern boundary is Allegheny Avenue and the entire area is east of Interstate 95 (Delaware Expressway). The size of this land tract is approximately 225 acres. Please see enclosed map for reference points of reference of this land area.

## The History of the Port Richmond Riverfront

The settlement of the area began on March 21, 1728, when William Ball purchased a 676 acre tract of land that included most of Port Richmond. Port Richmond remained a small rural and agricultural community into the nineteenth century. A revolution in the transportation industry transformed the community and shaped its future destiny.

In 1837, the Philadelphia and Reading Railroad selected Port Richmond as its Delaware River terminal for its anthracite coal mining operations. On January 17, 1842, the railroad completed construction of six large coal wharves that stretched from Cumberland Street to Cambria Street along the Port Richmond riverfront.

Port Richmond experienced a large population increase with the construction and completion of the Port Richmond Terminal. Many skilled English artisans, unskilled Irish laborers and German farmers settled in Port Richmond during the decade of 1840 to take advantage of the new employment opportunities offered by the Philadelphia and Reading Railroad. The settlement of these immigrants transformed Port Richmond from a rural and agricultural community into an urban and industrial neighborhood. New and relocated businesses opened operations in the area of the Port Richmond Terminal to utilize the transportation services offered by the Philadelphia and Reading Railroad.



# **Port Richmond Community Council Incorporated**

**Port Richmond Sesquicentennial 1847 - 1997**

**District of Richmond Incorporated February 27, 1847**

For the remainder of the nineteenth century, the Philadelphia and Reading Railroad rapidly expanded its operations. The Philadelphia and Reading Railroad built the most extensive freight terminal in the entire United States. The Port Richmond Terminal became a 225 acre complex containing over 85 miles in railroad track with a capacity for 5,600 freight cars. Equipped with piers, wharves, grain elevators, docks, warehouses, power houses and office buildings, the Port Richmond Terminal supplied a complete line of transportation services to businesses and merchants.

During this time period, Port Richmond became one of the busiest commercial ports along the Atlantic Coast of the United States. Ships from all over the world stopped at the Port Richmond Terminal to load up with anthracite and bituminous coal, iron, iron ore, cotton, grain, livestock, lumber and manufactured goods. The superior facilities of the Philadelphia and Reading Railroad made the Port Richmond Terminal the largest coal shipping depot in the entire world.

However, during the course of the twentieth century, a number of adverse developments caused the decline and eventually the end of the Reading Railroad. The interstate trucking industry started in the years after World War I. The construction of the interstate highway system commenced after World War II and provided the needed infrastructure for the trucking industry to compete more effectively with the railroad industry.

Manufacturing in Port Richmond and throughout the entire northeastern United States started to decline in the aftermath of World War I but most especially after World War II. Businesses began to move to suburban locations to flee from increasing taxes and restrictive zoning regulations. In some instances, businesses moved to the Southern United States to escape from labor unions with their demands for higher hourly wages, generous benefit packages and restrictive work rules.

Stiff competition and regulation of the railroad industry also played a key role in hampering the Reading Railroad from competing effectively. The numbers of railroads that serviced the northeastern United States was in excess of the number needed to service the declining number of businesses within that area. The Interstate Commerce Commission regulated the ways that the railroad conducted its business and mandated the rates that railroad could charge shippers for the services they rendered.

Coal, which was the largest volume bulk commodity shipped through the Port Richmond Terminal, began to fall out of use in the period after World War I. Environmental regulations favored the development and use of oil, gas and nuclear energy as cleaner burning and more environmentally sound fuels than coal itself.

All these factors and developments contributed to the decline of the Reading Railroad and most especially its Port Richmond Terminal until the Reading Railroad was forced to file for bankruptcy in 1971. The final blow to the mammoth Port Richmond Terminal came with the greatest and most spectacular fire in the history of Port Richmond.

# Port Richmond Community Council Incorporated

Port Richmond Sesquicentennial 1847 - 1997

District of Richmond Incorporated February 27, 1847

A riverfront fire on October 30, 1974, effectively put the Port Richmond Terminal out of business forever. The firestorm caused irreparable damage to four of the eight massive piers and riverside warehouses operated by the Reading Railroad. In 1976, the United States Congress created the Consolidated Rail Corporation from the Reading Railroad and the remains of five other bankrupt northeastern United States railroads. Since its inception, the Consolidated Railroad Corporation significantly downsized its Port Richmond Terminal operation and does not provide any warehousing and shipping services of any kind.

Over the past fifty years, the decline in commercial and industrial activity along the Port Richmond riverfront has been substantial and irreversible. During World War II, various enterprises operating within the Port Richmond riverfront provided employment for 6,000 workers. In 1972, the Port Richmond riverfront accounted for a total employment of about 1,400 jobs. Presently there are fewer than 100 jobs within the area of the Port Richmond riverfront.

## Present Status of the Consolidated Railroad Operations in Port Richmond

The Consolidated Rail Corporation operates a right of way maintenance facility that strictly performs railroad track improvement and repair at the former site of the Port Richmond Terminal. The railroad provides freight service primarily to the Tioga Marine Terminal and to two companies that operate storage tank facilities, National Molasses Company and GATX. The feeder line that transports traffic into the former site of the Port Richmond Terminal is primarily a single track with an occasional double track siding. There is no rail line and rail service that extends south of Lehigh Avenue.

Consolidated Rail Corporation has leased much of its property to business tenants. These businesses are primarily in the recycling business. These operations employ few workers and provide little in the way of tax revenue. The physical countenance of these businesses is rather unsightly and contributes to an overall appearance of blight and decay along the Port Richmond riverfront.

## Proposed Reuses of the Consolidated Railroad Property

The Port Richmond Community Council, the Richmond Fishtown and Kensington Riverfront Community Development Corporation and the Port Richmond Business Association propose using the Consolidated Railroad Corporation property south of Lehigh Avenue as an industrial park. This is a logical extension of the Riverside Industrial Park that presently exists on the 2200 block of Richmond Street.

There are a number of businesses that presently operate in Port Richmond. These businesses operate in a variety of industries and employ many local residents. The business community is very loyal to this area in which they operate and wish to remain in Port Richmond. However, in order to remain competitive and within their respective industries, these businesses are in dire need of new facilities located away from residential areas and closer to major transportation routes.

# Port Richmond Community Council Incorporated

Port Richmond Sesquicentennial 1847 - 1997

District of Richmond Incorporated February 27, 1847

The expansion of the Riverside Industrial Park in Port Richmond has the potential of attracting additional manufacturing and warehousing businesses to this area. This area of Port Richmond will offer excellent transportation logistics, superb access to markets located throughout the Eastern Coast of the United States and a good work force that resides within its immediate vicinity.

The City of Philadelphia and the Commonwealth of Pennsylvania may provide a partnership to make this area a larger and more viable industrial park. The City of Philadelphia and the Commonwealth of Pennsylvania may offer packages that will provide business prospects incentives to relocate within the area of the expanded Riverside Industrial Park. The Commonwealth of Pennsylvania offers the Port Enterprise Zone and State Enterprise Zone programs which may be utilized to provide tax credits packages to retain and expand the business community within the Riverside Industrial Park. The Philadelphia Industrial Development Corporation may market this area to prospective businesses who need to locate, relocate or expand their operations.

The Port Richmond Community Council, the Richmond Fishtown Kensington Riverfront Development Corporation and the Port Richmond Business Association advocate the reuse of the Consolidate Railroad Corporation property located north of Lehigh Avenue for mixed use development. There are many possibilities for commercial, recreational and retail development for this area of the Port Richmond riverfront. The new development would be a substantial improvement over its present existing use. With broad development possibilities, ultimately, community involvement and participation in the planning and design process will determine what types of development are needed and wanted.

There is the necessity for the construction of a major roadway through this area of the Port Richmond riverfront to improve access and promote development. The extension of Delaware Avenue from Cumberland Street through Allegheny Avenue would be an ideal roadway project. The Delaware Avenue extension would provide businesses in the Riverside Industrial Park in Port Richmond with an access roadway and a superior transportation route. The Delaware Avenue extension would also provide an alternate traffic route to Interstate 95 that will enable Interstate 95 traffic to bypass the residential area of Port Richmond entirely. It would also be the key to providing the necessary access to promote redevelopment along the Port Richmond riverfront.

## Impact of the Consolidated Railroad Dissolution upon Port Richmond

The dissolution of the Consolidated Railroad Corporation will have a very negative impact upon the Delaware Valley region. The loss of 2,500 jobs will be a significant economic blow. The loss of a major corporate headquarters operation located in the City of Philadelphia is a serious setback to the prestige of the city and its national standing. There is a chronic need to reverse the adverse impact of the dissolution of the Consolidated Railroad Corporation. The best means is for the new owner of the former Port Richmond Terminal, Norfolk Southern, to open this 225 acre tract of land to commercial and industrial redevelopment to offset this job and tax revenue loss.



# **Port Richmond Community Council Incorporated**

**Port Richmond Sesquicentennial 1847 - 1997**

**District of Richmond Incorporated February 27, 1847**

The Port Richmond riverfront, as presently used and operated, constitutes a wasting asset. It is an inappropriate use of riverfront land at a time when cities such as Baltimore and Cleveland have redeveloped their respective waterfronts to generate jobs and tax revenue through proper planning and redevelopment.

The Port Richmond Community Council, the Richmond Fishtown Kensington Riverfront Community Development Corporation and the Port Richmond Business Association firmly believe that our community should decide the course of action for the planning and redevelopment of the Port Richmond riverfront. There are several logical and valid reasons that this request be given full and proper consideration.

The railroad industry is no longer a vital means of shipping and transporting goods to and from the remaining industries that presently operate in Port Richmond. There already exists adequate rail service in the area of Port Richmond north of Castor Avenue. Given the initial proposals and plans by the Port Richmond Community Council to revitalize industry in that area, Norfolk Southern should concentrate its efforts in working with the Port Richmond Community Council to improve rail service as part of a marketing campaign to attract new business prospects to locate and relocate their operations into area of Port Richmond.

The economic benefits of proper mixed use development will generate over time, a substantial number of new jobs and tax revenue to offset the dissolution of the Consolidated Railroad Corporation. This is an ideal time for the mandated cleanup of any contaminated areas of the railroad property to prepare the way for its redevelopment. This is an ideal opportunity to mandate improvements such as the construction of bulkheads to prevent any flooding along low lying areas of the Port Richmond waterfront.

Norfolk Southern will be the new owner and operator of the former site of the Port Richmond Terminal. There is no prospect of recreating the glory days when the Port Richmond Terminal was one of the largest shipping port complexes along the entire Eastern United States. Now is an ideal time for the planning and redevelopment of this vast wasting asset into an economically viable mixed use land area along the Port Richmond riverfront that will create jobs and generate tax revenue.

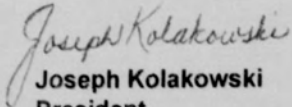
We respectfully request a hearing from the Surface Transportation Board in order to show in full detail the present status of the Port Richmond Terminal and our initial plans for its redevelopment. We respectfully request the presence of Norfolk and Southern at such a hearing to determine their intentions for any development, maintenance and operation of the former Port Richmond Terminal.

This is the only opportunity that our communities will have to stress their united position concerning the future of the Port Richmond riverfront. As surely as the Port Richmond riverfront shaped the history of our community, it has the potential to recreate and redefine the future of our community through proper planning and redevelopment.

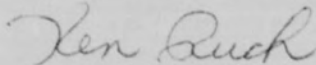
# Port Richmond Community Council Incorporated

Port Richmond Sesquicentennial 1847 - 1997  
District of Richmond Incorporated February 27, 1847

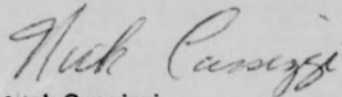
Sincerely Yours,



Joseph Kolakowski  
President  
Port Richmond Community Council  
2977 E. Thompson Street  
Philadelphia PA 19134



Ken Ruch  
Executive Director  
Richmond Fishtown Kensington Riverfront Community Development Corporation  
2022 E. Allegheny Avenue  
Philadelphia PA 19134



Nick Cassizzi  
President  
Port Richmond Business Association  
2915 E. Thompson Street  
Philadelphia PA 19134



## Current Map



Numbers on map correspond to the series of photographs contained in this package.

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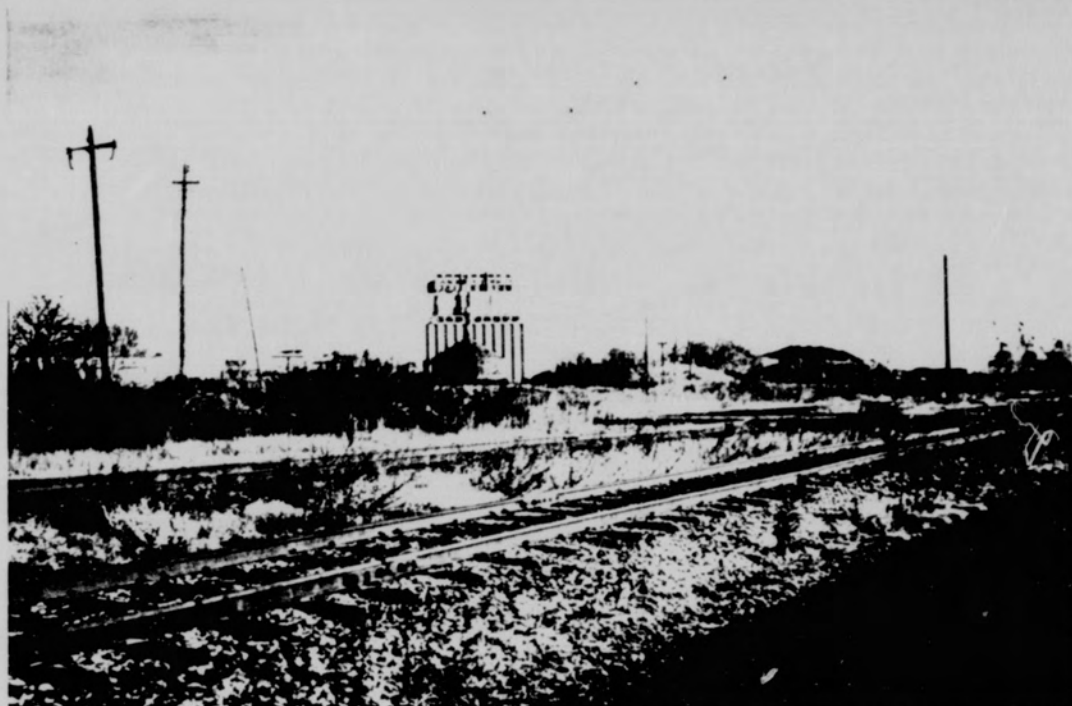
(1) View east from Richmond Street and  
Cambria Street





(2) View east towards the Delaware River  
along the line of Cambria Street





(3) View north towards Allegheny Avenue  
along the line of Cambria Street



(4) View north towards the Delaware River





(5) View of proximity to Interstate 95

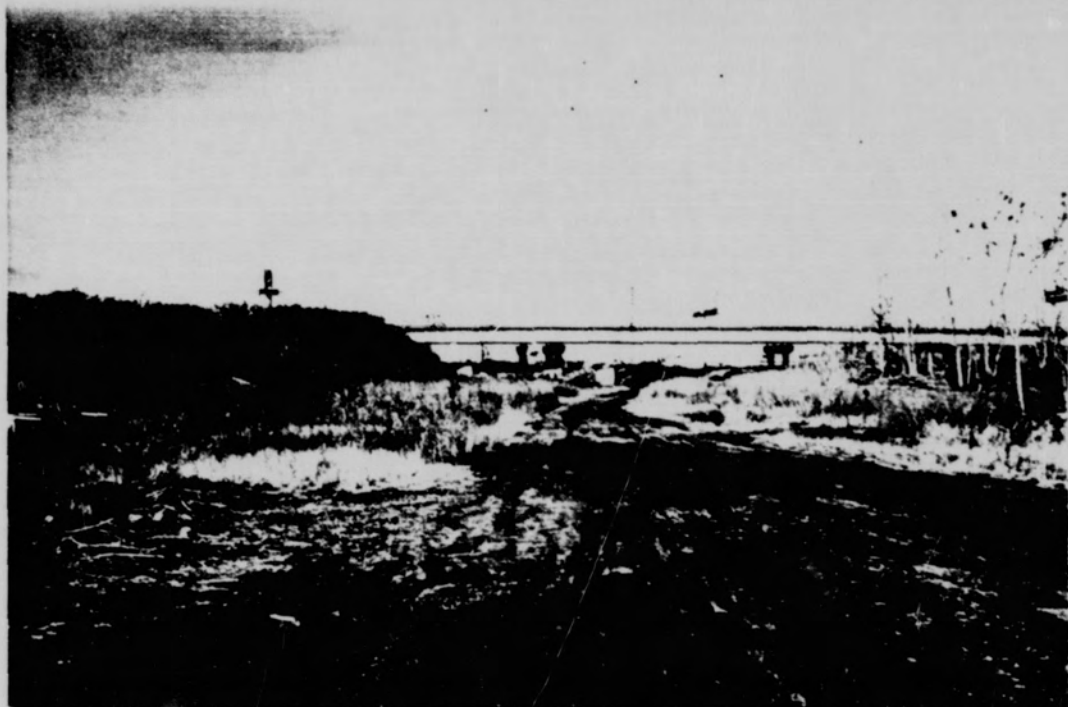


(6) View south towards Center City  
Philadelphia



(7) View of recycling operation near the  
Delaware River waterfront





(8) View of Interstate 95



(9) View of recycling operation along the  
Delaware River waterfront





(10) View towards the northwest near the  
of Cumberland Street



(11) View southwest from the line of  
Cumberland Street towards Center City  
Philadelphia



(12) View south from the line of Cumberland  
Street towards Center City Philadelphia





(13) View north from the line of Lehigh  
Avenue



(14) View northeast from the line of  
Lehigh Avenue





(15) View of Port Richmond Riverside  
Industrial Park from Cumberland Street



(16) View of Beach Street south to Center  
City Philadelphia



(17) View east to Delaware River





(18) View north to area along the Delaware  
River waterfront



(19) View west to Port Richmond Riverside  
Industrial Park





(20) View south to Center City Philadelphia

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FD-33388

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July 29, 1997



Mr. Vernon A. Williams, Secretary  
Surface Transportation Board  
12th and Constitution Avenue, N.W.  
Washington, D.C. 20423

**RE: Acquisition of Conrail by CSX and Norfolk Southern**

Dear Secretary Williams,

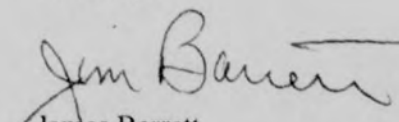
I am writing to express support for the agreement between CSX Corporation and Norfolk Southern Corporation on the acquisition of Conrail assets. We believe the agreement will result in significant benefits for the national transportation system and for job providers here in our state.

Michigan is known worldwide as a provider of transportation products, but we are also a major user of transportation services. Michigan industries, including automotive, agriculture, metals, minerals, chemicals, furniture and food products, need efficient, reliable carriers to bring in raw materials and to take their products to domestic and international markets. The CSX-NS agreement will give our state three Class I railroads and result in more and better rail service options at competitive prices. What's more, shippers will be able to take advantage of direct, single-line service to any major market east of the Mississippi River.

We are confident that other benefits will be realized as well. Moving more freight by rail will reduce highway congestion, wear and tear on our roadways, and air pollution. In addition, both CSX and Norfolk Southern intend to make strategic investments to improve infrastructure and service. These improvements will enable both companies to offer Michigan customers new, more competitive services.

For all of these reasons, the Michigan Chamber of Commerce urges the Surface Transportation Board to approve the joint application of CSX and Norfolk Southern.

Sincerely,

  
James Barrett  
President & CEO

cc: Michigan Chamber of Commerce Executive Committee

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8-1-97

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MULTINATIONAL PARTNERSHIP)

July 31, 1997

## VIA FACSIMILE AND FIRST-CLASS MAIL

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



Re: CSX Corp. Norfolk Southern Corp. -- Control and Operating  
Leases/Agreements -- Conrail Finance Docket No. 33388

Dear Secretary Williams:

At yesterday's discovery conference, Judge Leventhal accepted for purposes of the discovery process Applicants' revised designations of certain of their responses (CR-4, CSX-11, and NS-9, as revised orally) to our interrogatories (ACE, et al.-2, -3, and -4) as "confidential" or "highly confidential" under Decision No. 1 in this proceeding. Judge Leventhal also indicated that the Board could make its own determination of the appropriateness of such claims later when it had the parties' evidence before it. American Electric Power, Atlantic City Electric Company, Delmarva Power & Light Company, and The Ohio Valley Coal Company respectfully disagree with Judge Leventhal's determination to accept Applicants' revised designations rather than treat the responses as public, but given the Board's deferential standard applicable to most discovery disputes (see Decision No. 6 at 7), and the possibility that we may be able to present our case without relying on the responses themselves, we do not wish to burden the Board with an appeal now of a matter that may not require its resolution later. At the same time, the Board's deferential standard, which is designed to discourage appeals of discovery rulings, should not prejudice American Electric Power, et al. at the evidentiary stage if a ruling is necessary. Accordingly, this is to advise



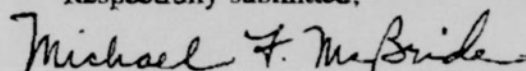
Mr. Vernon A. Williams

July 31, 1997

Page 2

the Board that we are not filing an appeal of Judge Leventhal's ruling on Applicants' revised designations, but reserve the right to challenge those designations if and when the matter is before the Board on the merits.

Respectfully submitted,



Michael F. McBride

Attorney for American Electric Power.

Atlantic City Electric Company.

Delmarva Power & Light Company, and

The Ohio Valley Coal Company

cc: Restricted Service List  
The Honorable Jacob Leventhal

STB

FD-33388

ID-BUSINESS

7-31-97

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**UNITED  
TECHNOLOGIES  
CARRIER**

**Carrier Corporation**

Government Relations & Public Affairs

P.O. Box 4808  
Carrier Parkway  
Syracuse, New York 13221

Matthew J. Chadderdon  
Vice President

July 23, 1997

Vernon A. Williams, Secretary  
Surface Transportation Board  
12<sup>th</sup> and Constitution Avenue, N.W.  
Washington, D.C. 20423

RE: CSX and Norfolk Southern Control-Conrail  
STB Finance Docket No. 33388



Dear Secretary Williams:

I am writing on behalf of Carrier Corporation, a United Technologies company. We manufacture the world's leading heating and air conditioning products.

I wish to express my strong support for the planned control of Conrail by CSX Corporation and Norfolk Southern Corporation as proposed in the docket referenced above.

Although Carrier is not currently a heavy user of rail freight transportation, we are strongly in favor of the faster, less costly and more reliable rail service this merger will bring to our region and the entire state of New York.

We believe that this merger presents us and all New York State manufacturers with vital new transportation options that have great potential for increasing our market reach with faster service and potentially lower costs, particularly to Southeastern US markets and to major East and Gulf Coast seaports.

This will bring much-needed improvement to the economic development and job growth of the Central New York region.

I urge the Surface Transportation Board to approve the control application as proposed.

Sincerely,

Matthew Chadderdon  
Vice President of Government Relations and Public Affairs