

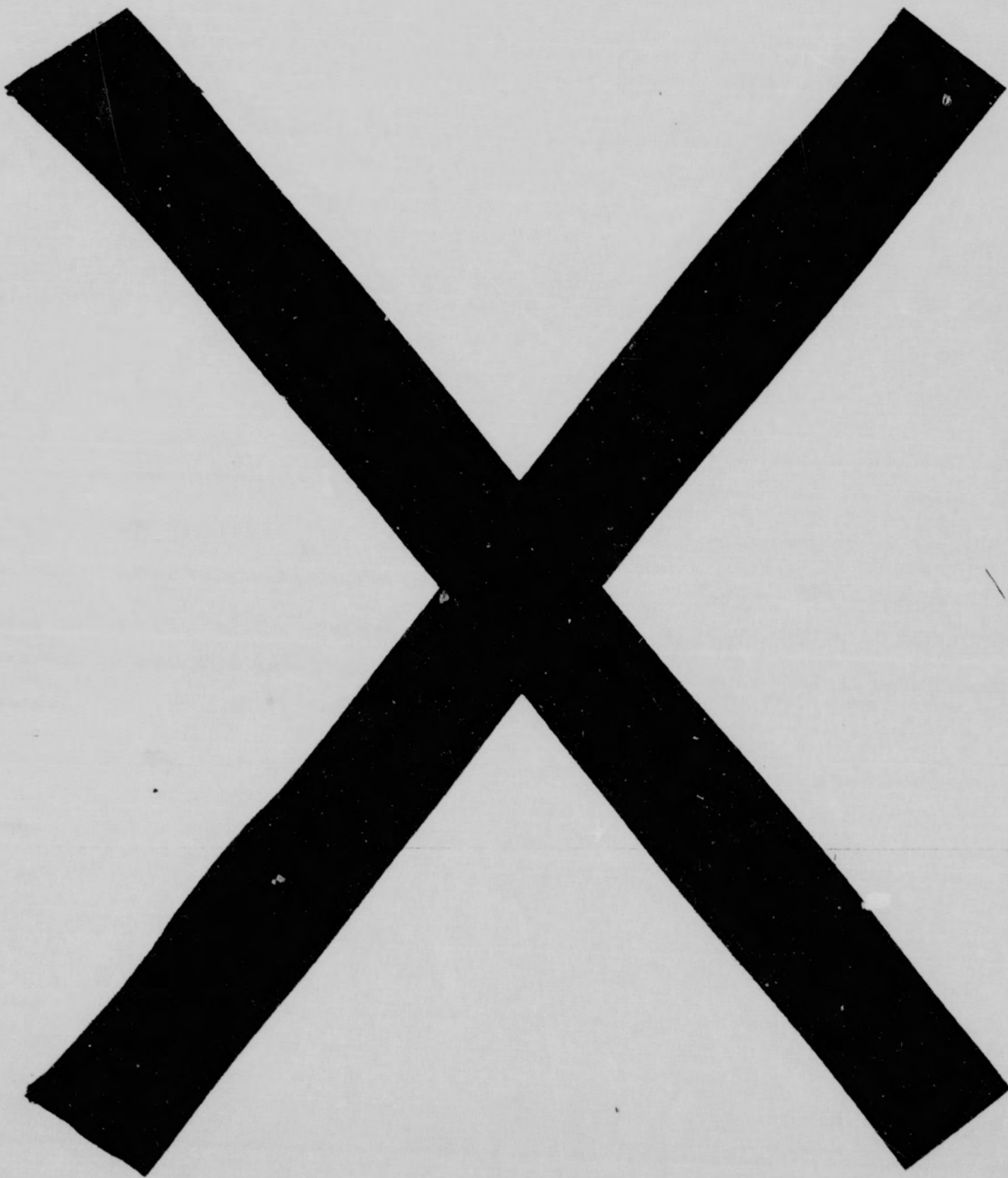
STB

FD-33388

10-25-00

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Office of the Chairman

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

FILE IN DOCKET  
JA-33388

October 25, 2000

Mr. R.W. Godwin  
General Chairman  
Brotherhood of Locomotive Engineers  
810 Abbott Road  
Suite 200  
Buffalo, NY 14220

Dear Mr. Godwin:

Thank you for sending me a copy of your October 9 letter to Mr. James Schultz, Vice President and Chief Safety Officer of CSX Transportation (CSXT). You express concern about the safety of operations in Erie, Pennsylvania, where Norfolk Southern (NS) is constructing a new main line track next to main line tracks of CSXT. In particular, you urge that a means of communication be established between employees of CSXT and NS for operations conducted over these lines.

As before, I will have your letter and any response that I receive made a part of the public docket in the Conrail proceeding. Again, I appreciate your concerns and commitment to a safe and fair implementation of the Board-approved Conrail acquisition.

Sincerely,

*Linda J. Morgan*  
Linda J. Morgan

cc: Mr. James T. Schultz



# General Committee of Adjustment

## Brotherhood of Locomotive Engineers

Consolidated Rail Corporation

810 Abbott Road, Suite 200, Buffalo, New York 14220

R. W. GODWIN, General Chairman  
THOMAS B. VASSIE, Secretary-Treasurer  
Telephone: (716) 827-2653  
FAX: (716) 827-2655

2

October 9, 2000

Mr. James T. Schultz, V.P. & Chief Safety Officer  
CSX Transportation  
500 Water Street, J120  
Jacksonville, FL 32202

FILE IN DOCK 12

Dear Sir:

I am writing concerning the Norfolk Southern Proposed New route Utilizing Existing CSXT (former Conrail) Right of Way in Erie, PA to Eliminate Street Running. In my letter of September 20, 2000, (copy attached) I only wrote about the building of the Norfolk Southern mainline track next to the CSXT tracks, Control Siding, Main Track #2 and Main Track #1. I did not write about the problems after the project was completed and Norfolk Southern trains (traveling at 50 MPH) are operating over their main line track and CSXT are traveling up to 60 MPH on the CSXT main tracks one and two and 30 MPH on the control siding.

What caused me to think of the problems after the new Norfolk Southern Main Track is up and running was a derailment and collision on Conrail in the vicinity we are talking about. A Conrail train derailed and another train going on the other track collided with the derailment. There were injuries. Luckily no one was killed, but locomotives and cars were derailed and severely damaged.

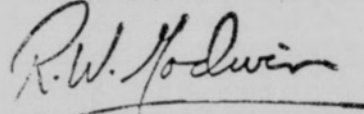
This collision was on Conrail tracks with Conrail trains, Conrail crews working on the same radio channel and under the same Train Dispatcher. It caused millions of dollars of damage and it was a miracle that no one was killed.

Now let's set up a scenario of westbound Norfolk Southern train traveling at 50 MPH has a derailment at MP 87 and a CSXT westbound train was operating at 60 MPH on Track #2, in the vicinity of CP 85 and another CSXT train going eastbound on Track #1, just past CP 89 at 60 MPH. Throw in the fact that CSXT trains cannot talk to the Norfolk Southern train and each train is inside of two miles of each other and traveling at a mile a minute. As sure as God make little green apples, we are going to have a three train pile up with fatalities, injuries and a possible disaster in downtown Erie, PA.

I am not against the Norfolk Southern moving their mainline to get away from the always dangerous road crossings. All I want is a safe work place for my Brothers and Sisters, Locomotive Engineers and Conductors on both Norfolk Southern and CSXT. We need a way to talk to the Norfolk Southern crews in this close high speed corridor from CP 89 to CP 85.

I strongly suggest that we set up a meeting with both Railroads, the FRA, the STB, the State of Pennsylvania, the City of Erie, the B.ofL.E. and the U.T.U. There is a safer way and I think if we sit down with the above representatives, we can find it. Thanking you in advance for your time and effort, and requesting a written reply, I remain

Sincerely yours,



R. W. Godwin  
General Chairman

RWG:rm

c: E. Dubroski, President  
J. McCoy, 1st Vice President  
L. D. Jones, V.P. & Nat'l. Leg. Rep.  
M. W. Fitzgerald, Local Chairman #3  
K. F. LeFauve, Local Chairman #382  
K. Kertesz, PA Leg. Chairman  
R. Downing, Vice President  
James Decker, General Manager  
Brian L. Hontz, Deputy Regional Administrator  
Michael Ziolkowski - FRA  
Jolene Molitoris, FRA Administrator  
Linda Morgan, Chairperson, STB  
Governor Tom Ridge, Pennsylvania  
Mayor - Erie, PA



# General Committee of Adjustment

## Brotherhood of Locomotive Engineers

### Consolidated Rail Corporation

810 Abbott Road, Suite 200, Buffalo, New York 14220

R. W. GODWIN, General Chairman  
THOMAS B. VASSIE, Secretary-Treasurer  
Telephone: (716) 827-2653  
FAX: (716) 827-2655



September 20, 2000

Mr. Michael Ziolkowski - FRA  
Thaddeus J. Dulski - Federal Building  
111 West Huron St. - Room 31  
Buffalo, NY 14202

Dear Sir:

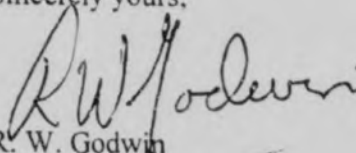
Attached please find a Norfolk Southern map of the Proposed New Route Utilizing Existing Conrail (CSX) Right of Way to Eliminate Street Running. The project starts at CP 89 and goes east to CP 85, approximately five (5) miles. The problem I have is the Norfolk Southern will have BMW gang and heavy equipment within a few feet away from the CSXT Control Siding and three or four yard from main track 2 and the adjacent tracks.

In the spirit of safety, before the project starts I feel a meeting should be set up between CSX, Norfolk Southern, FRA, ELE, BMW and UTU to set up safe work areas for the Norfolk Southern employees, the CSX employees and the public. We need a radio channel to allow Norfolk Southern employees to talk to the CSX Dispatchers and Locomotive Engineers and Conductors on the passing trains.

In this area on the main track one and two between CP 85 and CP 89 the speed is 60 MPH. At that speed, we have to use the best communications between the Norfolk Southern BMW gang and the CSX crews on the trains in a timely fashion to clear the BMW gang and the equipment.

If we all work together we can make this a one hundred percent safe project. Thanking you for your time and effort, I remain

Sincerely yours,



R. W. Godwin  
General Chairman

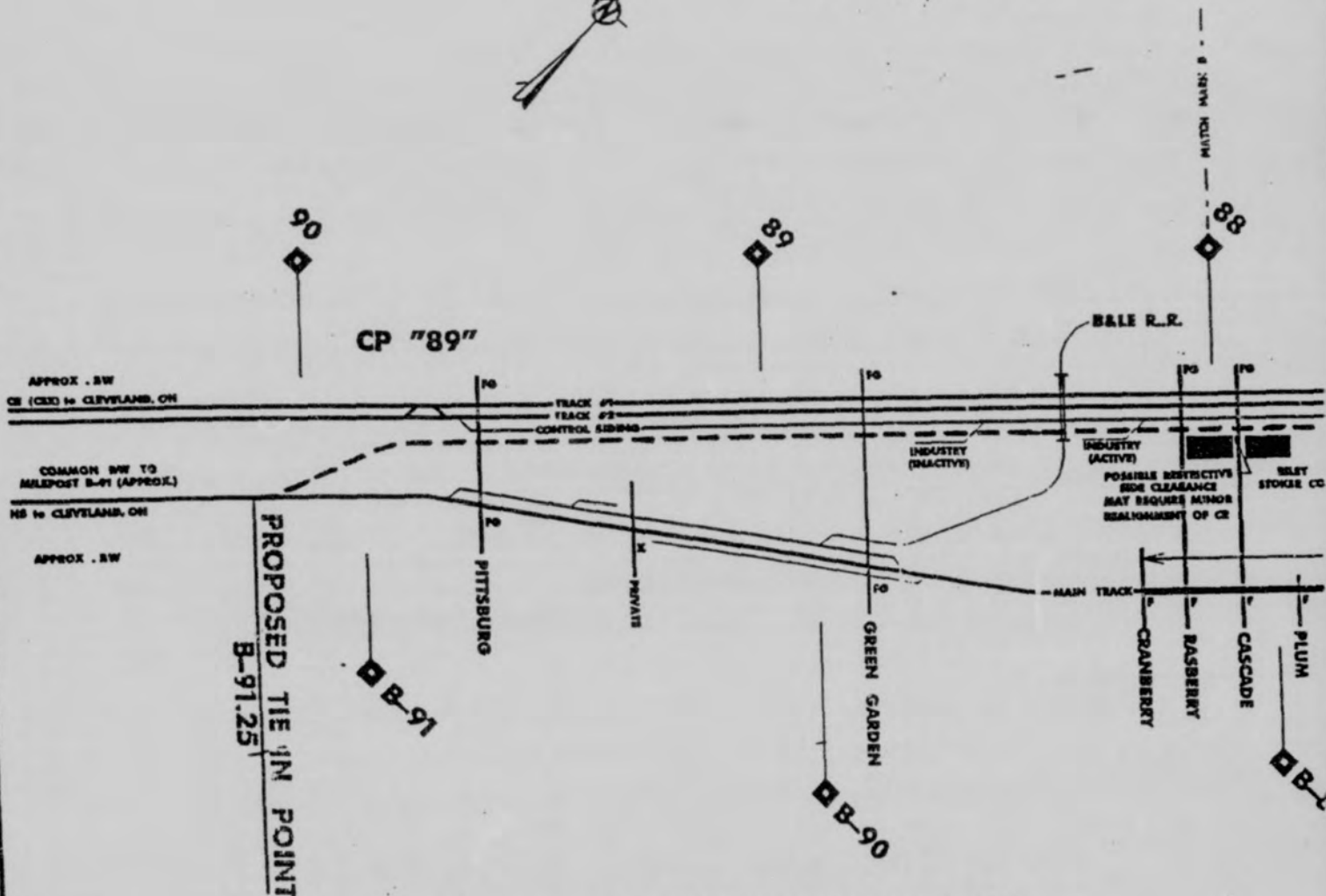
RWG:rm

c: E. Dubroski, President  
J. McCoy, 1st Vice President  
L. D. Jones, V.P. & Nat'l. Leg. Rep.  
M. W. Fitzgerald, Local Chairman #3  
K. F. LeFauve, Local Chairman #382  
Ken Kertesz, BLE PA Leg. Chairman  
James T. Schultz, V.P. & Chief Safety Officer  
R. Downing, Vice President  
James Decker, General Manager  
Brian L. Hontz, Deputy Regional Administrator  
E. Sheehy, Safety Coordinator

# WEST

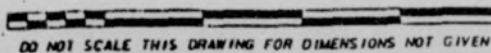
## ERIE, PA

PROPOSED NEW ROUTE - - - -



NOTE: EXACT LOCATION AND CONFIGURATION OF PROPOSED TRACK TO BE DETERMINED BY MUTUAL AGREEMENT AT LATER DATE.

SCALE: NOT TO SCALE



DO NOT SCALE THIS DRAWING FOR DIMENSIONS NOT GIVEN

NOTE: DRAWING BASED ON AVAILABLE INFORMATION  
NO FIELD SURVEY MADE - NOT ALL TRACKS SHOWN

# **NS** NORFOLK SOUTHERN

## NORFOLK SOUTHERN RAILWAY CO.

OWNING COMPANY

OPERATING DIVISION

DESIGN AND CONSTRUCTION - ATLANTA, GA.

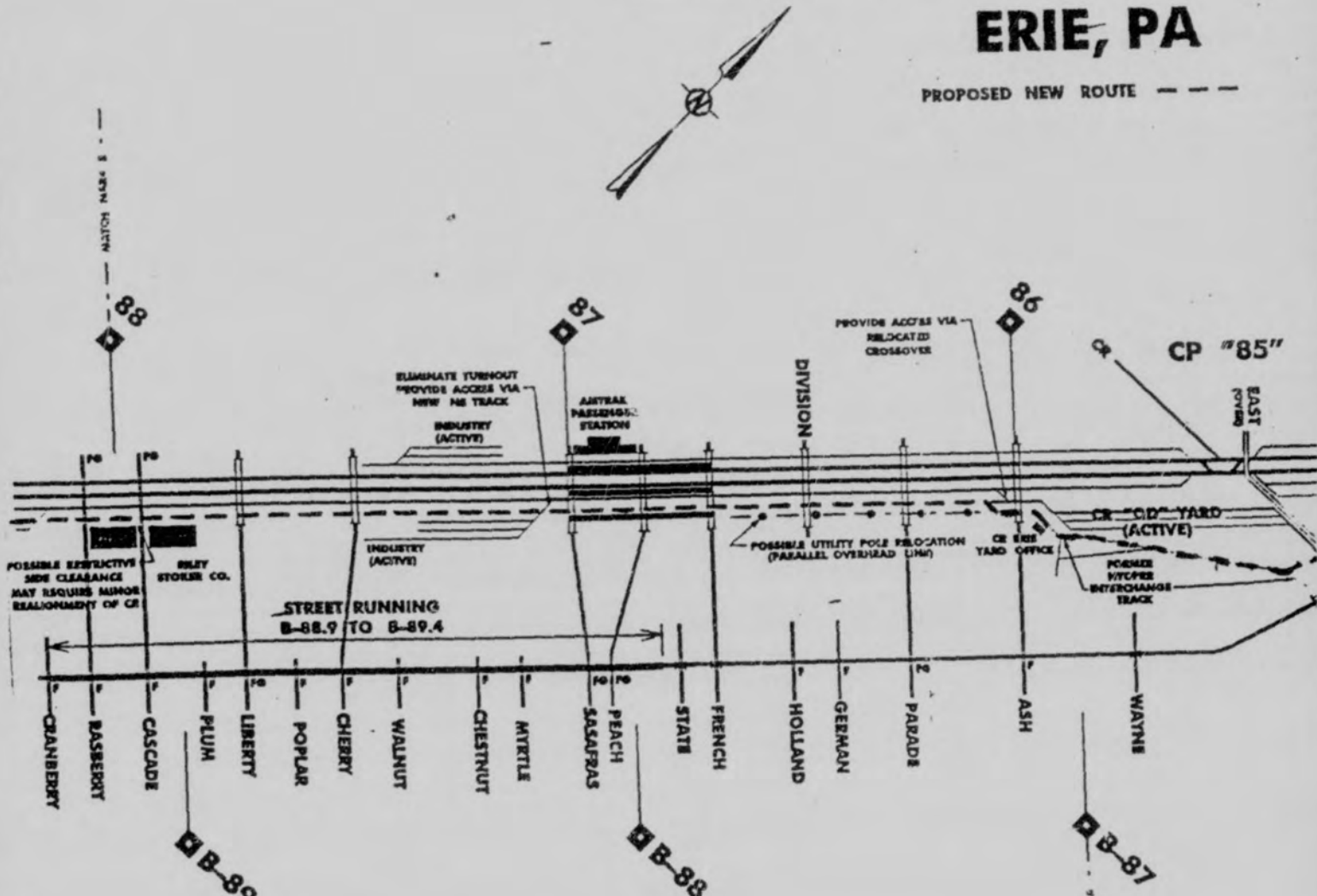
LOCATION		ERIE, PENNSYLVANIA	
TITLE		PROPOSED NEW ROUTE UTILIZING EXISTING CONRAIL (CSX) RIGHT OF WAY TO ELIMINATE STREET RUNNING	
DGN	DAB	VAL	SEC
OWN	DAB	FILE 188-24	
CHK	DATE	OCTOBER 14, 1997	
MAP		WILE POST	B-85 T
DRAWING NUMBER		TA-97-0078	

# EAST

PAGE 2 OF 3

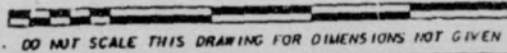
## ERIE, PA

PROPOSED NEW ROUTE - - -



NOTE: EXACT LOCATION AND CONFIGURATION OF PROPOSED TRACK TO BE DETERMINED BY MUTUAL AGREEMENT AT LATER DATE.

SCALE: NOT TO SCALE



DO NOT SCALE THIS DRAWING FOR DIMENSIONS NOT GIVEN

NOTE: DRAWING BASED ON AVAILABLE INFORMATION NO FIELD SURVEY MADE - NOT ALL TRACKS SHOWN

**NORFOLK SOUTHERN**  
NORFOLK SOUTHERN RAILWAY CO.  
OWNING COMPANY

LOCATION		ERIE, PENNSYLVANIA	
TITLE		PROPOSED NEW ROUTE UTILIZING EXISTING CONRAIL (CSX) RIGHT OF WAY TO ELIMINATE STREET RUNNING	
OWN	DAB	VAL	SEC
OWN	DAB	FILE	108-24
CHK	DATE	OCTOBER 10, 1997	
DRAWING NUMBER			TA-97-0078
MILE POST			B-85

OPERATING DIVISION  
ENGINEER - DESIGN AND CONSTRUCTION - ATLANTA, GA.



CHICAGO LINE

WEST	SIDINGS IN FEET	MP	STATION	NOTE
FRONTIER YARD		436.1	STOCK YARD.....	
BELT LINE BR		437.2	CP-437 (X)(D)	6, 15
HOWARD ST. R.T.		0.0	(Belt Line Branch & Frontier Yard) (Niagara Branch) (NS-Howard Street R.T. & Stock Yard)	
BISON R.T.		0.7	SENECA ST. (NS RR & Bison R.T.)	
NS RR		1.3	CP-1 (X)(D) (Avenue R.T., Hamburg St. Yd.) (Ohio St. Yd., River Track)	7
		1.7	CP-DRAW (X)(D) (NS-Edgewater Secondary Trk. NS Bison R.T. and Beach LD) (NS RR, B&P RR, SB RR, & BS RR)	
			LAKE SHORE DS.....[3]	
		2.1	CP-2 (X)(D) (Beach Lead & Ohio St. Yard)	
SENECA YARD		4.4	SENECA YARD.....[3]	
BUFFALO LINE		5.4	CP-5 (X)(D) (NS-Buffalo Line & Seneca Yard)	
NS RR		8.0	BAYVIEW.....	
		8.1	NS RR connects.....	
		10.2	HBD-DED (Bayview).....	
		15.5	CP-15 (X)(D)	
		19.0	DED (Angola).....	
		21.4	ANGOLA.....	
		23.0	CP-23 (X)(D)	
		27.0	IRVING.....	
		28.9	HBD-DED (IRVING).....	

(Continued)

NOTES:

CHICAGO LINE

WEST	SIDINGS IN FEET	MP	STATION	NOTE
		30.8	CP-31 (X)(D)	
		31.4	SILVER CREEK.....	11
		37.0	CP-37 (X)(D)	
	CS 12000			11-12
		40.1	CP-39 (X)(D)	
		40.3	DUNKIRK.....	
No. 39 RT		42.5	CP-42 (X)(D)	8
		42.6	DED (Dunkirk).....	
		47.2	CP-47 (X)(D)	
		49.3	HBD-DED (Brocton).....	
		50.0	CP-49 (X)(D)	
	CS 10500			
		56.2	CP-56 (X)(D)	
		57.5	WESTFIELD.....	11
		58.2	CP-58 (X)(D)	
		65.3	RIPLEY.....	
		68.2	HBD-DED (Ripley).....	
		68.4	NY-PA STATE LINE.....	
		73.0	NORTHEAST.....	
		73.3	CP-73 (X)(D)	
		75.1	DED (Northeast).....	
		79.2	HARBOR CREEK.....	
SCALE TRACK	CS 11300	83.2	CP-83 (X)(D)	11
LAKE LT.		85.6	CP-85 (X)(D)	14
NORTH RT	No. 42 RT	86.9	ERIE.....	8
		88.7	HBD-DED (Erie).....	
		89.7	CP-89 (X)(D)	
PYRAMID LEAD		97.4	GREAT LAKES SERVICE LANE	
		97.5	CP-97 (X)(D)	

NOTES:

STB

FD-33388

10-20-00

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ID-UNIONS





Office of the Chairman

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

FILE IN DOCKET

JA-33388

October 20, 2000

Mr. Clarence Turnquist  
President  
International Longshoremen's Association  
2125 Tryon Road  
Ashtabula, OH 44004

Dear Mr. Turnquist:

Thank you for sending me a copy of your September 13, 2000 letter to Mr. Stephen C. Tobias, Vice Chairman and Chief Operating Officer of Norfolk Southern Corporation (NS). You express frustration with the treatment of the members of your union following the Conrail acquisition transaction, and question the commitment of NS to safety.

As you know, the Surface Transportation Board (Board) imposed Safety Implementation Plans (SIPs) on the Conrail transaction to help ensure the safe implementation of that transaction. NS must continue to comply fully with the terms of its SIP. And, as stated previously, the Board urges management and labor to continue to strive to establish positive relationships and to resolve issues that arise through good-faith negotiations.

As before, I will place your letter and my response in the public docket for the Conrail proceeding.

Sincerely,

*Linda J. Morgan*

Linda J. Morgan

cc: Mr. Stephen C. Tobias  
Vice Chairman and Chief Operating Officer  
Norfolk Southern Corporation



AFFILIATED WITH  
AFL-CIO

# INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL 1913



September 13, 2000

FILE IN DOCKET

Stephen C. Tobias  
Vice Chairman and Chief Operating Officer  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, VA. 23510-2191

Dear Mr. Tobias:

Since the acquisition of Conrail on June 1, 1999, the International Longshoremens's Association, Local 1913, has tried to work with the Carrier (Norfolk Southern) at the Ashtabula Coal Dock, in Ashtabula, Ohio to be the best dock on Lake Erie and to remain viable in handling as much coal as possible. We are consistently advising our members to keep working the way we always have in the past under Conrail that conditions will improve here. I feel and our members feel that fifteen (15) months later they have only gotten worst. I feel that our efforts have gone unheeded and unappreciated by Norfolk Southern (NS).

Since June 1, 1999 there has been drastic problems between labor and Labor relations and Management relations. These problems are the following:

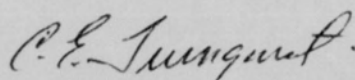
- There have been continued violations of our Collective Bargaining Agreement, claims and grievances which are randomly denied. Over one hundred and twenty (120) grievances have been written since June 1, 1999.
- Excessive man power shortages are a daily problem that affects our member's working safely.
- The Union Committee and our members have been told that Safety is at Supervision's discretion or prerogative.

These topics reflect but a few of the ingredients that have combined to create this great unrest. Considering the above and lack of recognition of our tireless efforts to make NS a viable entity, the Union has no other alternative but to advise all our members that effective immediately ILA 1913 will support the efforts of the UTU and the General Chairman, Mr. Delbert G. Strunk Jr., unanimously and will no longer participate in the Carrier's Safety Committee Programs. Furthermore, ILA Local 1913 will not participate in NS sponsored committees and lastly our local representative will not attend or participate in the Division Superintendent's Meetings.

While ILA Local 1913 is a strong advocate for safety also, as well as service to our customers, the Union can not in good conscience continue to cooperate in joint

functions only to experience blatant abuses of our rights and Collective Bargaining Agreement. I regret to have to make this decision.

Yours truly,



C. E. Turnquist  
President, I.L.A. Local 1913

cc: J. Hixon, Senior Vice President-Employee Relations  
M. MacMahon, Vice President Labor Relations  
A. Licate, Director Labor Relations  
R. Bartles, Division Superintendent  
L. Morgan, Chairman Surface Transportation Board  
B. N. Johnson, Terminal Superintendent

CET:jrl

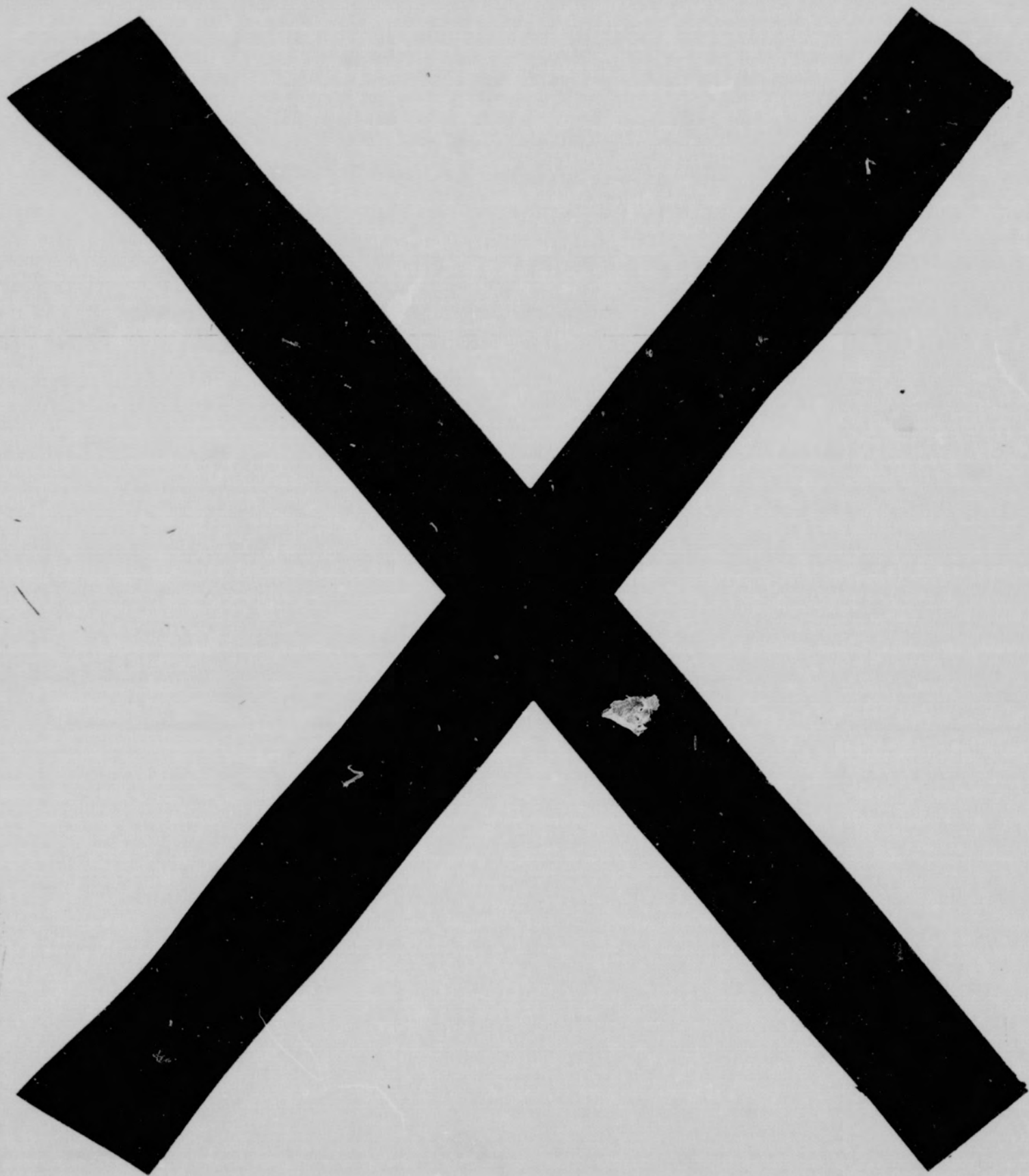
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10-19-00

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ID-UNION





Date  
SURFACE TRANSPORTATION BOARD  
1925 K ST. N.W.  
Washington, D.C. 20423-0001  
ATT: Mel Clemens  
Docket Number 33388



Dear Sir:

It was my understanding that both the CSXT and the NS Railroads were to vest our time back to 1976 (when conrail was formed) for the supplemental pension benefits? The NS did just that, but the CSXT didn't. When we had our meetings with both Railroads present the CSXT and the NS both agreed to the supplemental pension adjustment. Could your office please check into this matter and tell us why the CSXT hasn't done that adjustment?

Thank You

*Albert Keppel*

Name *Albert Keppel*  
Title *Regional manager of M/W*  
Address *1700 west 167th St. Calumet City IL 60409*  
Phone *708-832-2161*  
Fax *708-832-2136*

*R.O.E.*

STB FD

33388

5-26-99

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194614

ZUCKERT SCOUTT & RASENBERGER, L.L.P.  
ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-3509  
Telephone [202] 298-8660 Fax [202] 342-0683



RICHARD A. ALLEN

194614

May 26, 1999

**BY HAND**

ENTERED  
Office of the Secretary

MAY 26 1999

Part of  
Public Record

J

The Honorable Vernon A. Williams  
Secretary, Surface Transportation Board  
Mercury Building, Room 700  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

Re: 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 -- Finance Docket No. 33388

Dear Secretary Williams:

As the Board has been advised, the "Closing Date," or "Day One" or "Split Date," on which CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NSR") will operate, respectively, the "NYC Allocated Assets" and the "PRR Allocated Assets," is scheduled to occur on June 1, 1999. Pursuant to Paragraphs I.C. and I.D. of the Settlement Agreement between the National Industrial Transportation League and the parent corporations of CSXT and NSR, entered into on December 11-12, 1997, and to the order of the Board approving that Settlement Agreement, NSR has authorized me to advise the Board, on NSR's behalf, (i) that NSR has obtained the necessary labor implementing agreements sufficient to effect the "Split" of Conrail on the Closing Date, (ii) that there are in place management information systems designed to manage operations, from and after the Closing Date, on the former Conrail system within the Shared Assets Areas, including necessary car tracking capabilities, and (iii) that NSR has in place management information systems designed to manage operations, from and after the Closing Date, with respect to interchanges between the NSR system, as augmented

ZUCKERT SCOUTT & RASENBERGER, L.L.P.

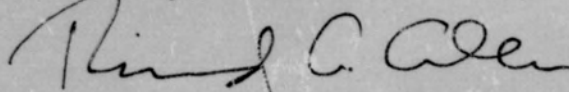
Hon. Vernon A. Williams

May 26, 1999

Page 2

by the Conrail assets to be operated by NSR, and the CSXT system, as augmented by the  
Conrail assets to be operated by CSXT, including necessary car tracking capabilities.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard A. Allen".

Richard A. Allen

Counsel for Norfolk Southern Railway Company

cc: Mr. Ed Emmett  
President, NITL

STB FD

33398

5-26-99

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194611

ENTERED  
Office of the Secretary

DENNIS G. LYONS  
(202) 942-5858

MAY 26 1999

Part of  
Public Record

**ARNOLD & PORTER**

555 TWELFTH STREET, N.W.  
WASHINGTON, D.C. 20004-1206

(202) 942-5000  
FACSIMILE: (202) 942-5999

May 26, 1999  
*via hand delivery*

NEW YORK  
DENVER  
LOS ANGELES  
LONDON



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

Dear Secretary Williams:

As the Board has been advised, the "Closing Date," or "Day One" or "Split Date," on which CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NSR") will operate, respectively, the "NYC Allocated Assets" and the "PRR Allocated Assets," is scheduled to occur on June 1, 1999. Pursuant to paragraphs I.C and I.D of the Settlement Agreement between the National Industrial Transportation League and the parent corporations of CSXT and NSR, entered into on December 11-12, 1997, and to the order of the Board approving that Settlement Agreement, CSXT has authorized me to advise the Board, on CSXT's behalf, (i) that CSXT has obtained the necessary labor implementing agreements sufficient to effect the "Split" of Conrail on the Closing Date, (ii) that there are in place management information systems designed to manage operations, from and after the Closing Date, on the former Conrail system within the Shared Assets Areas, including necessary car tracking capabilities, and (iii) that CSXT has in place management information systems designed to manage operations, from and after the Closing Date, with respect to interchanges between the CSXT system, as augmented by the former Conrail assets to be operated by CSXT, and the Norfolk Southern system, as augmented by the Conrail assets to be operated by NSR, including necessary car tracking capabilities.

Respectfully yours,

Dennis G. Lyons  
*Counsel for CSX Transportation, Inc.*

cc:  
Mr. Ed Emmett  
President, NITL

STB

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33388

5-17-99

J

UNION

Stephen E. Crable  
Chief of Staff  
National Mediation Board  
Washington, D. C. 20005

May 11, 1999  
Subj. Arbitration Request



Dear Mr. Crable:

Please refer to our letter to you dated April 6, 1999, and your response to us dated May 6, 1999.

We requested arbitration because we believe the Implementing Agreement, reached between Conrail (CR), Norfolk Southern (NS), CSX Transportation (CSXT) and the Transportation Communications International Union (TCU), does not satisfy the provisions or the intent of the New York Dock Agreement (NYD), specifically Article I, Section 3.

We are therefore of the opinion that the agreement is improper, even though it was signed by our labor organization, TCU, who was aware of our concerns. TCU knows this agreement is substandard, when compared with other implementing agreements involving Class 1 railroads, but chose to sign it for reasons of which we are unaware.

Apparently the National Mediation Board is bound to accept whatever agreements labor and management arrive at, to the exclusion of the provisions of the NYD, and regardless of other implementing agreements arrived at in similar situations. If this is true, please let us know in your response to this letter.

In any case, we will once again approach the Surface Transportation Board with this issue, because we believe that the Agreement is improper and we don't know how else to resolve the problem.

As the June 1, 1999 "Split Date" is rapidly approaching, we await your prompt reply.

Please respond to:  
George J. Donahue  
258 Pennsylvania Blvd.  
Pittsburgh, Pa. 15228

George J. Donahue

J. Herb Kerekesch

E. C. Kadar



*H. W. Lucking*  
H. W. Lucking

*E. F. Gladish*  
E. F. Gladish

cc: Linda Morgan, Chairperson, STB

Attached are copies of our continuing correspondence with the National Mediation Board's Mr. Crable. Because time is growing short, we are forwarding copies to you, for your information and further handling, if necessary.

cc. Senator Arlen Specter

Senator Rick Santorum

Congressman William Coyne

Congressman James Traficant

Please refer to previous correspondence on this issue.

cc. Anthony Santoro, Jr. TCU/GC

For your information.



(202) 692-5000

**NATIONAL MEDIATION BOARD**  
WASHINGTON, D.C. 20572

May 6, 1999

**Mr. George J. Donahue**  
258 Pennsylvania Blvd.  
Pittsburgh, PA 15228

Dear Mr. Donahue:

This letter will acknowledge your April 6, 1999 letter which was received on April 19, 1999. In the letter, you and four other employees request that the National Mediation Board (NMB) consider the "issues" raised in your letter and the accompanying documents and order arbitration.

In the letter you expressed your dissatisfaction with certain provisions of the implementing agreement reached between Conrail, CSX Transportation and Norfolk Southern. In the accompanying documents, you state that you do not seek a determination that the agreements are improper. It is unclear as to the nature of your arbitration request since an agreement was reached between your organization and the carriers.

The NMB has no statutory authority to grant your request for arbitration. Under New York Dock, the NMB only has authority to select an arbitrator if the parties are unable to agree to a neutral. In this case, the parties reached an agreement thereby eliminating the need for an arbitrator.

Review of the accompanying documents reveals that you have pursued this matter with the Surface Transportation Board which is the proper forum. It is also unclear as to whether you have voiced your concerns to your labor organization.

I regret that we are unable to be of any assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen E. Crable". The signature is fluid and cursive.

**Stephen E. Crable**  
Chief of Staff

Stephen Crable  
Chief of Staff  
National Mediation Board  
Washington, D. C. 20005

April 6, 1999  
Subj. Arbitration Request

We request that the Mediation Board consider the issues raised in this letter and the attached file for arbitration. Since we dispute the current Implementing Agreement, these issues must be resolved prior to the Conrail split date currently scheduled for June 1, 1999. We further request that the arbitration be handled in an efficacious manner.

We are not concerned with the formalities or protocols involved in reaching an implementing agreement, as outlined in Article I, Section 4 of the New York Dock (NYD). We are, however, very concerned with the functionality of such an agreement as it relates to protecting the rights of Conrail employees, as outlined in Article I, Section 3 of the NYD.

The parties involved in the negotiation of the Conrail (CR), Norfolk Southern (NS), CSX Transportation Company (CSXT), Transportation Communications Union (TCU) Implementing Agreement, which is the contract signed November 2, 1998, violated the rights of Conrail's clerical employees by circumventing employee ratification of labor protective issues that had remained unresolved in the Conrail National Agreement (CNA). In the absence of any provisions in the CNA for employee ratified labor protection, we believe that the Implementing Agreement should have been subject to rank and file ratification, since it superseded the CNA in establishing labor protection. Furthermore, one can only conclude that previous industry standards of employee protection, as approved by the STB in recent mergers of class 1 railroads, should be applied in the CR/NS/CSXT/TCU Implementing Agreement, as outlined in Article I, Section 3, of the New York Dock Agreement. When compared with other implementing agreements involving class 1 railroads, such as: UP/SP, BN/ATSF and CN/GTW, the CR/NS/CSXT/TCU Implementing Agreement is far below the industry standard, and here are some of the reasons why:

(1) The severance package of \$72,500 is significantly less than industry standards set in the UP/SP and BN/ATSF contracts.

(2) The 50 mile plus qualifying radius for moving expense is contrary to the conditions of the NYD in Article I, Section 1, Para. E and Article I Section 5. There is nothing in the NYD which permits the use of federal statutes to adjust the mileage radius nor any precedent in the rail industry to justify this change.

(3) Those provisions of the Implementing Agreement, which relate to any adverse or inferior conditions that may occur as the result of a relocation, are insignificant when compared to industry standards established in other recent contracts, with regard to protection for spouses and families.

(4) The time period that passed after employees first saw their job selection list was not sufficiently adequate to allow an individual to make an informed decision. The job descriptions were incomplete at the time the "irrevocable" choice had to be made, and some of the important details that affected certain choices were not completely explained prior to the "rundown" or job selection day. An example is the way the so-called Supplemental Extra List would be used, and how long it would be allowed to exist.

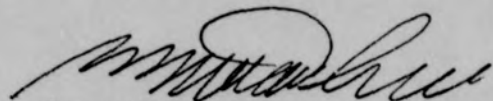
(5) There is nothing in the NYD which deprives an employee of severance allowance if such employee elects not to move over 30 miles from their residence. This was never adequately explained.

(6) NYD Article I, Section 3, provides that an employee may elect to choose the benefits of the NYD over any other agreement. We were not offered this choice during the "rundown" process, nor was there an adequate explanation as to why we weren't offered this choice.

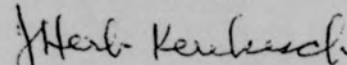
This Implementing Agreement must be brought in line with industry standards established on other class 1 railroads. Also, the recent "rundown", or job selection process, should be redone, making sure that all employees are advised of and understand the ramifications of their "irrevocable" choice. The employees should be given their right to ratify their protection provisions, which previously was denied. The entire Implementing Agreement must be brought up to industry standards and be in compliance with the NYD.

Please send response to: George J. Donahue  
258 Pennsylvania Blvd.  
Pittsburgh, Pa. 15228

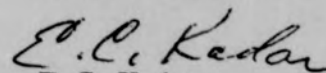
Attach.



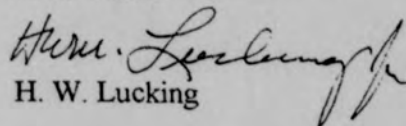
George J. Donahue



J. Herb Kerekesch



E. C. Kadar



H. W. Lucking

E. F. Gladish

STB FD

33398

4-22-99

J

UNION



Office of the Chairman

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

FILE IN DOCKET

FD-33388

April 22, 1999

Mr. R. W. Godwin  
General Chairman  
Brotherhood of Locomotive Engineers  
810 Abbott Road  
Suite 200  
Buffalo, NY 14220

Dear Mr. Godwin:

Thank you for sending me a copy of your most recent letter to Mr. David Ray, Assistant Vice President at Norfolk Southern (NS), regarding the assignment of Conrail locomotive engineers in the Indianapolis area to CSXT and to NS as a result of the Conrail acquisition transaction. As I have done in the past, I will have your letter and any response that I receive from NS made a part of the public docket in the Conrail proceeding.

I appreciate your concerns and commitment to a safe and fair implementation of the Board-approved Conrail acquisition.

Sincerely,

*Linda J. Morgan*  
Linda J. Morgan



# General Committee of Adjustment Brotherhood of Locomotive Engineers Consolidated Rail Corporation

810 Abbott Road, Suite 200, Buffalo, New York 14220

FILE IN DOCKET

R. W. GODWIN, General Chairman  
THOMAS B. VASSIE, Secretary-Treasurer  
Telephone: (716) 827-2653  
FAX: (716) 827-2655

April 1, 1999

RECEIVED  
SURFACE TRANSPORTATION  
BOARD  
APR 5 3 55 PM '99  
OFFICE OF  
CHAIRMAN MORGAN

Mr. David N. Ray, Asst. Vice President  
Norfolk Southern  
Three Commercial Place  
Norfolk, VA 23510-2191

Dear Sir:

I am writing in regard to your letter of February 24, 1999, faxed to this office March 17, 1999, concerning my letter of February 10, 1999.

In Article II, Workforce Allocation Section (A) states:

"Such Locomotive Engineer actively employed, using their CRC seniority (recognizing all levels of prior and system rights) will place themselves at a location thirty (30) days after the notification provided in Article II (B) below and be considered as part of the pool of Locomotive Engineers at that location in the following manner:"

Section II (2) states:

"Where such location is divided by CSXT and NSR, (or, in the case of SAA, by CSXT, NSR and CRC), bulletins will be posted in CRC CAPS Systems at the end of thirty (30) day period advising Locomotive Engineers at that location of the number of Locomotive Engineers to be allocated exclusively to NSR and the number to be allocated exclusively to CSXT (or, in case of the SAA, the number, if any, to be allocated to CRC) such allocation will be made by accepting bids by Certified Mail from Locomotive Engineers at that location. At the expiration of fifteen (15) days, Locomotive Engineers will be assigned on the basis of their Locomotive Engineer's seniority. Service needs of each Carrier left unfilled at the expiration of the bulletin period will be filled by those Locomotive Engineers remaining at the LOCATION."

The Locomotive Engineers at the Indianapolis location, that were forced-assigned to Norfolk Southern made their choice of Indianapolis in Step One process and made CSXT as their choice Carrier in the Step Two process. Unfortunately, they did not have enough seniority as a Locomotive Engineer to get their Step Two process.

The fact, that they did not become successful bidders for their Carrier (CSXT) does not negate this Step One for Location -- Indianapolis, Indiana. Peru, IN, - Muncie, IN and Ft. Wayne, IN is not by any stretch of the imagination within the Location of Indianapolis.

If Norfolk Southern can not provide jobs within the Indianapolis Location, these Locomotive Engineers would become "displaced employees" or "dismissed employees".

Article VIII states:

"An employee whose job is abolished as a result of the transaction or who is displaced by such an employee and becomes unable to secure a position through the normal exercise of seniority under existing Agreements and who is eligible to receive a dismissal allowance, may be offered a position by the Carrier at any Location. Such employee shall be given thirty (30) days notice of such offer and must elect one of the following options prior to the expiration of the notice:

1. To accept the offer;
2. Resign from all service and accept a lump sum payment computed in accordance with New York Dock conditions; or
3. To be furloughed without protection during the furlough.

In the event an employee fails to make such election, he shall be considered to have exercised Option 3."

In regard to the thirty (30) normal highway miles that you say, there is no language. I point out Q&A #21 of Attachment (B), Page 14, which states:

"Q 21 What is the meaning of change in residence?"

A "change in residence" as referred to in Section 5(B) and 6(D) of New York Dock shall only be considered "required" if the reporting point of the employee would be more than thirty (30) normal highway miles, via the most direct route, from the employees point of employment at the time affected, and the normal reporting point is farther from the employee's residence than his former point of employment."

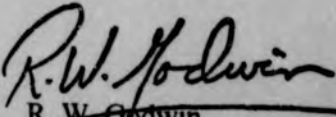
These Brothers and Sisters forced to Norfolk Southern at the Location of Indianapolis, Indiana by the Step Two process were working regularly for Conrail in Indianapolis as Locomotive Engineers. Their jobs were abolished as a result of the splitting-up of Conrail by the Norfolk Southern and CSXT, "The Transaction" and they cannot secure a position at their Step One Location (Indianapolis, Indiana) through normal exercise of seniority.

You can offer them a position at another Location. They, then have thirty (30) days to pick one of the options listed above.

Norfolk Southern does not have the right to force, coerce or intimidate these Brothers or Sisters to go to Peru, Ft. Wayne or Muncie, Indiana without informing them of their rights to New York Dock protection.

I remain

Sincerely yours,

  
R. W. Godwin  
General Chairman

RWG:rm



c: C. V. Monin, President  
E. Dubroski, 1st Vice President  
L. D. Jones, V.P. & Nat'l. Leg. Rep.  
E. W. Rodzwick, Vice President  
P. T. Sorrow, Vice President  
L. W. Sykes, District Chairman  
W. A. Thompson, District Chairman  
T. B. Vassie, Secretary/Treasurer  
J. P. Chappelle, NJ Leg. Chairman  
J. F. Collins, NYS Leg. Chairman  
N. D. Hendrickson, PA Leg. Chairman  
W. T. O'Brien, OH Leg. Chairman  
C. E. Way, IL Leg. Chairman  
G. J. Newman, MA Leg. Chairman  
W. M. Verdeyen, IN Leg. Chairman  
F. E. Parks, Local Chairman #121 - With Post Copy  
H. E. Ring, Local Chairman #597 - With Post Copy  
Linda Morgan, Chairperson STB  
Frank O'Bannon, Governor - Indiana  
Senators and Representatives - Indiana

Post-It® Fax Note	7671	Date	2/17	# of pages	2
To	D. N. Ray	From	KJO		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #		Fax #			

David N. Ray  
 Assistant Vice President  
 Labor Relations  
 (767) 629-2690

February 24, 1999

CRA-BLE

Mr. R. W. Godwin, General Chairman  
 Brotherhood of Locomotive Engineers  
 810 Abbott Road, Suite 200  
 Buffalo, New York 14220

Dear Mr. Godwin:

Reference your letter dated February 10, 1999, concerning the allocation of forces at Indianapolis and eligibility for New York Dock benefits.

During the allocation process, a number of engineers made a "paper move" under Step One to Indianapolis, dramatically increasing the pool of engineers at Indianapolis while reducing the engineer numbers at other (predominantly Norfolk Southern) locations. In an effort to meet the needs of service, Norfolk Southern and CSXT mutually agreed on the number of engineers to be allocated to each Carrier.

Because the number of engineers assigned to Norfolk Southern at Indianapolis exceeded the number of positions advertised, representatives of NS' Labor Relations and Transportation Departments held an information session with employees to answer any questions concerning future employment. At the meeting, the employees were informed that employment opportunities on NS were available at Peru, Ft. Wayne, and Muncie, Indiana, as well as other locations. Many of the employees indicated that these opportunities were a viable and advantageous option.

With regard to the New York Dock benefits contained in the Implementing Agreements, employees allocated to Indianapolis who are required to relocate (as defined in New York Dock) may be entitled to the relocation benefits under New York Dock conditions.

Mr. R. W. Godwin, General Chairman  
February 24, 1999  
Page 2

The Carriers, however, respectfully disagree with your interpretation concerning New York Dock benefits eligibility based on securing a position within a thirty mile radius of the employees' former home terminal. There is no language in the New York Dock conditions supporting such an interpretation. Under New York Dock, an employee must exercise his seniority to the fullest extent necessary in order to obtain an available position.

Norfolk Southern and CSXT will endeavor to make the transition to Day One as informative as possible for our future employees.

Very truly yours,

/s/ David N. Ray

H. R. Emerick

bc: K. J. O'Brien  
H. R. Mobley

JIM:jam K:\HOME\JDMOORE\WP\GODWINDL.WPD

STB FD

33388

4-19-99

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UNION



Office of the Chairman

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

FILE IN DOCKET

FD -  
33388

April 19, 1999

Mr. R. W. Godwin,  
General Chairman  
Brotherhood of Locomotive Engineers  
810 Abbott Road  
Suite 200  
Buffalo, NY 14220

Dear Mr. Godwin:

Thank you for sending me a copy of the letter you sent to Senators Moynihan and Schumer and to Congressman Quinn. You are very concerned about the impact of the Conrail acquisition transaction on safety, and you seek legislation to set up standards that CSX and Norfolk Southern would have to meet before they could split Conrail between them.

I assure you that the Surface Transportation Board (Board) shares your safety concerns regarding the Conrail transaction and remains committed to the safe implementation of that transaction. As you know, at the request of the Federal Railroad Administration (FRA) and various labor organizations, the Board required the applicant carriers to file detailed Safety Integration Plans (SIPs), developed within guidelines established by the FRA, explaining how each step in implementing the proposed acquisition would be performed safely. The Board and FRA also entered into a Memorandum of Understanding (MOU), with the concurrence of the Department of Transportation, regarding the ongoing safety integration process. Under the terms of the MOU, the railroads, in coordination with FRA, will continue to modify and refine the SIPs as the Conrail acquisition transaction moves forward, and FRA will advise the Board of applicants' progress in executing the plans, and may request that the Board take appropriate action regarding the plans. This process will continue until FRA advises the Board that the Conrail acquisition transaction has been safely implemented.

As I have done previously, I will have all of the correspondence, and any responses received from Congress, made a part of the public docket in the Conrail proceeding. I appreciate your concerns and commitment to a safe and fair implementation of the Board-approved Conrail acquisition.

Sincerely,

*Linda J. Morgan*

Linda J. Morgan



# General Committee of Adjustment

## Brotherhood of Locomotive Engineers

Consolidated Rail Corporation

810 Abbott Road, Suite 200, Buffalo, New York 14220

R. W. GODWIN, General Chairman  
THOMAS B. VASSIE, Secretary-Treasurer  
Telephone: (716) 827-2653  
FAX: (716) 827-2655



FILE IN DOCKET

February 19, 1999

This letter sent to:

Senator Daniel Patrick Moynihan  
Senator Charles Schumer  
Representative Jack Quinn

RECEIVED  
SURFACE TRANSPORTATION  
BOARD  
FEB 24 5 24 PM '99  
CHAIRMAN MORGAN

It is obvious that the splitting of Conrail between CSXT and Norfolk Southern is turning to mirror image of the Union Pacific/Southern Pacific.

In nine days of January 1999, four Conrail employees were killed in the line of duty.

Name	Title	Location	Date	Age
Roger H. Bell	Locomotive Engineer	Bryant, OH	01-17-99	57
Raymond A. Correll	Conductor	Bryant, OH	01-17-99	52
L. K. Stromon	Conductor	Alexander, NY	01-22-99	45
Anthony Scarpello	Conductor	Port Newark, NJ	01-14-99	55

Norfolk Southern's earnings dropped 12% in the Third Quarter, \$158 million or 42 cents a share, 12% short of the comparable 1997 of \$179 million or 47 cents a share. They had 1% drop in coal revenue and 8% decline in intermodal revenue.

CSXT revenues declined in its rail subsidiary operating income fell to \$231 million from \$282 million, an 18% drop as revenue declined 1% to 1.201 billion from 1.215 billion. Intermodal revenue slipped 8% to \$161 million and operating profit dropped 42% to \$7 million from \$12 million.

CSXT service performance had the largest decline in train performance, it dropped to 17.8 MPH, a 6% from the last period test. In terminals, their switching area CSX lost ground in 10 of 12 terminals.

On the Conrail line between Buffalo, NY to Albany/Selkirk, NY, that will be under the CSXT, we had a 31 car derailment. A derailment that could have been a major environmental disaster. Twenty (20) cars were filled with haz-mat lading. One car started leaking propane, a flammable and explosive gas. The other haz-mat cars were filled with propane, butane, and styrene monomer, vehicles and automotive parts.

The town /hamlet of Nelliston, NY had their total population evacuated. The New York State Thruway, Interstate 90, was closed down and schools in the area were closed. If one of these rail cars caught fire or exploded, we would have had deaths and an environmental disaster that would take years to correct.

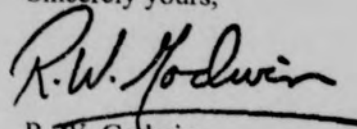
There is a saying that "If we don't learn from history, we will be doomed to re-live it." The things that are happening to CSXT and Norfolk Southern, happened to the Union Pacific/Southern Pacific a few years ago and nobody, including the FRA, STB and the politician paid any attention, until fifteen people died and the State of Texas was in total grid lock. I don't want this to happen to my Brothers and Sisters on Conrail in New York, Ohio and Pennsylvania, Massachusetts, Indiana, Illinois, Maryland or West Virginia.

I request that you introduce legislation that set up guidelines and standards that must be met by CSXT and Norfolk Southern before they can split Conrail up. The standard should include:

1. Safety for employees and the public
  2. Adequate employees to insure a safe operation
  3. Financial stability
  4. On-time performance
  5. Guidelines that will be able to detect the possibility of gridlock
  6. Employee schedules that will enable Locomotive Engineers not to work in fatigued state.
- Insist that the Railroads initiate a Fatigue Program for Operating Employees.

Thanking you for your time and consideration of this very important issue. Believe me, we can have a UP/SP situation in the Northeastern United States. I remain

Sincerely yours,



R. W. Godwin  
General Chairman

RWG:rm

- c:
- C. V. Monin, President
  - E. Dubroski, 1st Vice President
  - L. D. Jones, V.P. & Nat'l. Leg. Rep.
  - E. W. Rodzwick, Vice President
  - L. W. Sykes, District Chairman
  - W. A. Thompson, District Chairman
  - T. B. Vassie, Secretary/Treasurer
  - J. P. Chappelle, NJ Leg. Chairman
  - J. F. Collins, NYS Leg. Chairman
  - N. D. Hendrickson, PA Leg. Chairman
  - W. T. O'Brien, OH Leg. Chairman
  - C. E. Way, IL Leg. Chairman
  - G. J. Newman, MA Leg. Chairman
  - W. M. Verdeyen, IN Leg. Chairman
  - All Local Chairmen - With Post Copy
  - All Senators/Representative - Conrail States
  - Jolene Molitoris, FRA Administrator
  - Linda Morgan, Chairperson, STB
  - D. R. Goode, Pres/Chrm./CEO - NS
  - J. W. Snow, Pres/Chrm./CEO - CSX
  - R. S. Spenski, Vice President - NS
  - K. R. Peifer, Vice President - CSX

STB FD

33398

4-19-99

J

UNION





Office of the Chairman

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

FILE IN DOCKET

FD-33388

April 19, 1999

Mr. Anthony P. Santoro, Jr.  
General Chairman  
Transportation Communications International Union  
309 A Street  
Wilmington, DE 19801

Dear Mr. Santoro:

Thank you for your letter setting forth a number of concerns that you have with the implementation of the acquisition of Conrail by Norfolk Southern (NS) and CSX. You have also sent your letter to Mr. T. T. O'Toole, President and CEO of Conrail, Mr. K. R. Piefer, Vice President - Labor Relations for CSX, and Mr. M. R. MacMahon, Assistant Vice President - Labor Relations for NS.

It is the Board's understanding that your union, the Transportation Communications International Union, has reached an implementing agreement with the carriers for the Conrail acquisition transaction consistent with the New York Dock labor protective conditions imposed as part of the Board's approval of the merger transaction. The Board prefers negotiated solutions, and we hope that you were able to resolve your concerns at your meeting with the carriers on March 9<sup>th</sup>. 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. See Chicago and Northwestern Transp. Co.--Abandonment--Near Dubuque and Oelwein, IA, 3 I.C.C.2d 729 (1987)(Lace Curtain), aff'd sub nom. International Bhd. Of Elec. Workers c. I.C.C., 862 F.2d 330 (D.C. Cir. 1988).

I will have your letter, and any response that I receive from Conrail, NS or CSX, made a part of the public docket in the Conrail proceeding. I appreciate your concerns and commitment to a safe and fair implementation of the Board-approved Conrail acquisitions transaction.

Sincerely,

*Linda J. Morgan*  
Linda J. Morgan



**TRANSPORTATION •  
COMMUNICATIONS  
INTERNATIONAL  
UNION**  
AFL-CIO, CLC

**Anthony P. Santoro, Jr.**  
*General Chairman*  
**Russell C. Oathout**  
*General Secretary-Treasurer/  
Vice General Chairman*  
**Thomas J. Finn**  
**Victor P. Goffredo**  
**Joseph M. Lindsay**  
*Vice General Chairmen*

**Lawrence D. Jones**  
27 Runningbrook Drive  
Lancaster, NY 14086  
**James A. Ponigar**  
595 West Harvey Street  
Struthers, OH 44471  
*Vice General Chairmen*

FILE IN DOCKET

File: 69.0

Subject: Implementing Agreement

March 5, 1999

**BITCH BULLETIN #7  
VIA FACSIMILE**

Mr. T. T. O'Toole, President, CEO – Conrail  
Mr. K. R. Piefer, VP/LR - CSX  
Mr. M. R. MacMahon, AVP/LR - NS  
Mrs. L. Morgan, Chairman - STB

Dear Sirs and Madam:

Due to not receiving any response to our previous Bitch Bulletins, copies attached, we will now address our Bulletins to you.

In Pittsburgh, Pennsylvania, Supplemental Extra Board Clerks are now being assigned to positions with little or no training. Positions have been combined because of the Run Down No-Bids. Please understand our policy "No training – No Discipline".

The Carrier is still not allowing higher rates for overtime. One last example is a CSX Waybiller takes an overtime call on a NS position and is not given the NS rate, which is higher.

Claim count at NCSC ever since phony January 20, 1999 meeting is now 226, and will continue upward.

NS Management now refuses to communicate with local union representatives at the NCSC. What else could they possibly be hiding?

Amazing, but not a surprise!! CSX promoted a Block Operator at LAB Tower. They advertised his position on December 23, 1998 and awarded same to another Operator December 30, 1998. This position was advertised and paper trail stops. The Carrier states hired from another craft (not a Clerk), but still works originally promoted Operator on vacancies at the Tower.

On March 2, 1999, employee H. Vucetic, who was still on a Conrail position, requested a hold-down on a Conrail position effective 3:00 p.m. that day and was denied. He then requested a hold-down on another Conrail position effective 7:00 a.m.,

**TCU System Board No. 86, 309 A Street, Wilmington, DE 19801 (302) 498-0959**

Representing members on • Bangor & Aroostook Railroad Company • Consolidated Rail Corporation • CSX • Delaware & Hudson Railway Company, Inc. • Guilford Rail Division • Indiana Harbor Belt Railroad • Metro-North Commuter Railroad • National Railroad Passenger Corporation (Amtrak) • New Jersey Transit Rail Operation • Pittsburgh, Chartiers & Youghiogheny Railroad Co. • Providence and Worcester Railroad Company • Ro-Mar Transportation Systems, Inc. • Southeastern Pennsylvania Transportation Authority



March 5, 1999  
Page 2

March 3, 1999 and was again denied. Upon arriving for work on March 3, 1999 he was handed the attached letter moving him to his NS position selected in the Run Down. Maybe the Carrier should read the Hold-Down Rule in the Red Agreement Book. It does not change because the employee was moved from Conrail to NS to CSX or to SAA - unlike Elvis, he has not left the building.

Yours truly,

Anthony P. Santoro, Jr.  
General Chairman

Attachments



**TRANSPORTATION •  
COMMUNICATIONS  
INTERNATIONAL  
UNION**  
AFL-CIO, CLC

**Anthony P. Santoro, Jr.**  
*General Chairman*  
**Russell C. Oathout**  
*General Secretary-Treasurer/  
Vice General Chairman*  
**Thomas J. Finn**  
**Victor P. Goffredo**  
**Joseph M. Lindsay**  
*Vice General Chairmen*  
File: 69.0

**Lawrence D. Jones**  
27 Runningbrook Drive  
Lancaster, NY 14086  
**James A. Ponigar**  
595 West Harvey Street  
Scruthers, OH 44471  
*Vice General Chairmen*

Subject: Implementing Agreement

February 24, 1999

**BITCH BULLETIN #1  
VIA FACSIMILE**

Mr. Phil Piserchia, D/LR – NS  
Mr. Robert L. Alman, D/ER – CSX  
Mr. Richard P. Byers, SD/LR – CSX  
Mr. Lawrence J. Finnegan, SD/LR – Conrail  
Mr. C. H. Brocket, IVP – TCU

Dear Sirs:

Listed below is my understanding of what took place at our meeting held on Tuesday, February 24, 1999 at 8:00 a.m. in Philadelphia, PA.

**1. Job Advertisements –**

Since Rundown Day there has only been one Bulletin put out on the property, and that was Bulletin #366 dated February 17, 1999 for Seniority District 9, which included 6 Bid and Bump and 1 PEP Stevedore advertisement. There are other vacancies, such as, Clerk Typist, Steno, Shipper-Receiver, and Messenger Relief that were not included on this Seniority District 9 Bulletin.

You are advised that you are in violation of Conrail Rules 5, 17, 18, and 35, and that the proper grievances are being filed in all Seniority Districts for non-compliance of the Bulletin Rules.

**2. Hold Downs –**

There are currently no Hold Downs being allowed for retirements, deaths, and Hold Down requests between floors. Phil Pischeria stated that he tried to work it out locally, but that did not work. Rich Byers stated that they will advise me of this Hold Down situation, particularly at the NCSC in Pittsburgh, PA.

**TCU System Board No. 86, 309 A Street, Wilmington, DE 19801 (302) 498-0959**

Representing members on • Bangor & Aroostook Railroad Company • Consolidated Rail Corporation • CSX • Delaware & Hudson Railway Company, Inc. • Guilford Rail Division • Indiana Harbor Belt Railroad • Metro-North Commuter Railroad • National Railroad Passenger Corporation (Amtrak) • New Jersey Transit Rail Operation • Pittsburgh, Chartiers & Youghioghenny Railroad Co. • Providence and Worcester Railroad Company • Ro-Mar Transportation Systems, Inc. • Southeastern Pennsylvania Transportation Authority

February 24, 1999

Page 2

### 3. Overtime -

I signed an Overtime Agreement for the NCSC in Pittsburgh, Pennsylvania, effective February 24, 1999, and I stated that from January 11, 1999 until today, February 24, 1999, there were approximately 160 grievances filed for filling overtime contrary to our January 11, 1999 understanding.

Phil Pischeria and Rich Byers stated that they would get together with Larry Finnegan and advise me of the disposition of these claims between January 11, 1999 and February 24, 1999.

### 4. Rates of Pay -

I was advised that people who signed up for a severance will get the higher rate when working higher rated positions, at straight time and overtime, and that I will be advised if the employees on Supplemental Extra Board will receive same. I was again assured that computers will be corrected and that the people will be paid properly at the Center.

### 5. Altoona, PA -

I advised there were 8 vacancies and the vacancies will be growing in March and April. None of these positions have been advertised. None of these positions have been abolished, and no one has informed me to which positions the work of these 8 vacancies were transferred.

I informed everyone of my concerns that it was possible that senior clerks would be on furlough and junior protected clerks would be working at Altoona. I also informed everyone that there are Block Operator positions in Altoona. That Altoona Clerk F. Forlina and Pittsburgh Clerk J. Miller had applied for these positions and were told that they were being filled. I also presented you with a newspaper advertisement for Block Operators in Altoona.

### 6. New York Dock -

I was assured by Larry Finnegan that as of today, February 24, 1999, Mike Cimato had the forms to file for New York Dock Displacement Allowance.

February 24, 1999

Page 3

## 7. Returns to Clerical Craft from Promoted Positions -

Also discussed were the various returns to the Clerical craft from promoted positions. In particular, a promoted employee coming back to a Block Operator position, the junior Block Operator reverting to the Supplemental Extra Board, what would happen to him on Split Day, because as a Block Operator he never was in the Run Down. In the one instance in Cleveland, District 15, is it possible that there is a vacancy caused by the retirement of employee Lacy and this SEB Operator could possibly take that position?

## 8. Run Downs -

I will be contacted by Rich Byers with a date for the Indianapolis Run Down and if a St. Louis Run Down will be necessary.

Other questions were as follows:

When do the employees get the \$11,000.00 moving allowances?

Where will the 2 FGE employees in Dearborn be physically located?

A copy of the Release Form to be signed before receiving separation.

Not discussed was the planned intermodal facility at Bethlehem, PA, and how that will impact our members in North Jersey and Allentown.

Here it is, 1:30 p.m., only one-half hour after the conclusion of the meeting, and I have two new problems. One is, it is my understanding that the NS now plans to take the Chief Clerks from their positions and work them to fill day to day vacancies on the second floor at the NCSC. The NS claims that the people who selected the Chief Clerk jobs and have been trained on the Chief Clerk jobs are not needed until they get to Atlanta. In the meantime, while at the Center they will be used to fill jobs at the Manager's discretion on a daily basis.

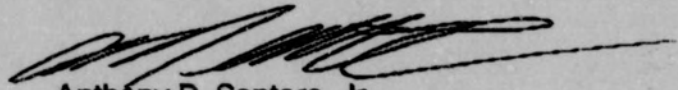
Now, I have been informed that a Mr. Brad Fitzgerald has notified Bruce Poff at the NCSC that no one is to be allowed to be released from their clerical position to assume employment awarded to them in other Conrail crafts, including Yardmaster positions.

February 24, 1999  
Page 4

Maybe Mr. Fitzgerald should be sent to India with the TRIMS system so his nose does not get where it does not belong.

Please provide me with answers to the above as soon as possible. And if any other problems surface, I will certainly keep you apprised.

Yours truly,

A handwritten signature in black ink, appearing to read 'Anthony P. Santoro, Jr.', with a long horizontal flourish extending to the right.

Anthony P. Santoro, Jr.  
General Chairman



**TRANSPORTATION •  
COMMUNICATIONS  
INTERNATIONAL  
UNION**  
AFL-CIO, CLC

**Anthony P. Santoro, Jr.**  
*General Chairman*  
**Russell C. Oathout**  
*General Secretary-Treasurer/  
Vice General Chairman*  
**Thomas J. Finn**  
**Victor P. Goffredo**  
**Joseph M. Lindsay**  
*Vice General Chairmen*  
File: 69.0

**Lawrence D. Jones**  
27 Runningbrook Drive  
Lancaster, NY 14086  
**James A. Ponigar**  
595 West Harvey Street  
Struthers, OH 44471  
*Vice General Chairmen*

Subject: Implementing Agreement

February 25, 1999

**BITCH BULLETIN #2  
VIA FACSIMILE**

Mr. Phil Piserchia, D/LR – NS  
Mr. Robert L. Alman, D/ER – CSX  
Mr. Richard P. Byers, SD/LR – CSX  
Mr. Lawrence J. Finnegan, SD/LR – Conrail  
Mr. C. H. Brockett, IVP – TCU

Dear Sirs:

1. Seniority District 10 had 2 new positions on Run Down (Storehouse, Material Foreman, picked by P. J. Bona and Shipper-Receiver picked by E. Wisnier). Current Storehouse employees were advised on February 23, 1999 by R. Regan that these positions would not be put on. Does this now mean that there will be a new Run Down with 2 more separations?
2. Bulletin Number 367 put out on February 24, 1999 shows 7 positions abolished on various dates more than 3 months ago; shows 4 Stevedore positions no bidders and not readvertised but were on Run Down; shows 2 positions awarded to employees but no advertisement of their current position! Shows PEP job not awarded. Please advise when new Run Down will take place.
3. What is the pay of the employees at the NCSC who are not on SEV slots and not on SEP slots, who picked CSX positions and work NS positions on overtime?

Please advise.

Yours truly,

A handwritten signature in black ink, appearing to read "Anthony P. Santoro, Jr.", written over a horizontal line.

Anthony P. Santoro, Jr.  
General Chairman

**TCU System Board No. 86, 309 A Street, Wilmington, DE 19801 (302) 498-0959**

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File: 69.0

**Lawrence D. Jones**  
27 Runningbrook Drive  
Lancaster, NY 14086  
**James A. Ponigar**  
595 West Harvey Street  
Struthers, OH 44471  
*Vice General Chairmen*

Subject: Implementing Agreement

February 26, 1999

**BITCH BULLETIN #3  
VIA FACSIMILE**

Mr. Phil Piserchia, D/LR – NS  
Mr. Robert L. Alman, D/ER – CSX  
Mr. Richard P. Byers, SD/LR – CSX  
Mr. Lawrence J. Finnegan, SD/LR – Conrail  
Mr. C. H. Brockett, IVP – TCU

Dear Sirs:

- February 17, 1999 to JOBPOST from Marge Collar VIPS applications for Stevedore positions reporting to R. Coggins, Ridgefield, NJ, Deadline day February 23, 1999, Union TCU:
  - ✓ Listed were duties
  - ✓ General Physical Requirements
  - ✓ Miscellaneous Requirements

I personally contacted Mr. Allen Shadler, Conrail, 215-209-5914, and asked him why these clerical positions were in the Voluntary Internal Placement System (VIPS). His response was, after being advertised in the normal TCU bidding process and several No Bid Bulletins, he is given forms to put in VIPS for other crafts and new hires.

There has not been an advertisement for 3 months. I guess if you don't put them up you won't get any bids and that will justify new hires instead of the Bulletin process.

Is this a way to hire and don't put them on until after Split Day so we can get it shoved in further?

- Chief Clerk in Buffalo advises that speaking with Jim Glass and John Martin he was informed that he could advertise a Driver's position of a retiring employee, but could not award it until Glass and Martin reviewed the applicants. Our Rules do not provide for a Glass/Martin screening process.

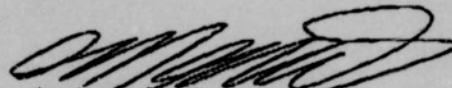
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February 26, 1999  
Page 2

I will keep writing you this Bitch Bulletin until I feel that the pen is no longer mightier than the sword.

Yours truly,

A handwritten signature in black ink, appearing to read "Anthony P. Santoro, Jr.", written in a cursive style.

Anthony P. Santoro, Jr.  
General Chairman



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Vice General Chairman*  
**Thomas J. Finn**  
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**Joseph M. Lindsay**  
*Vice General Chairmen*  
File: 69.0

**Lawrence D. Jones**  
27 Runningbrook Drive  
Lancaster, NY 14086  
**James A. Ponigar**  
595 West Harvey Street  
Struthers, OH 44471  
*Vice General Chairmen*

Subject: Implementing Agreement

March 1, 1999

**BITCH BULLETIN #4  
VIA FACSIMILE**

Mr. Phil Piserchia, D/LR – NS  
Mr. Robert L. Alman, D/ER – CSX  
Mr. Richard P. Byers, SD/LR – CSX  
Mr. Lawrence J. Finnegan, SD/LR – Conrail  
Mr. C. H. Brockett, IVP – TCU

Dear Sirs:

1. Does the fact that you are abolishing positions that were in Harrisburg now mean separations will be offered in that area?
2. Pittsburgh NCSC, in a further reckless effort to illegally terminate Hold Downs the company changed the planned flow and placed Hold Down employee on his selected Run Down position then filled Hold Down position with a SEB Clerk and now are paying overtime to train the SEB Clerk!
3. Ray Shanahan retired effective February 26, 1999 off position #71541. This job works Monday through Friday, 7:00 a.m. to 3:00 p.m. M. Conti is on her selected CSXT position which is the Extra Board. M. Conti requested Hold Down on Position #71541 and was denied because Carrier said this is still a Conrail job and Conti is on her CSXT job. Carrier has now advised Conti that she will begin working job today off the CSXT Extra Board.
4. Shared Assets Management and TCU agreed to use people who elected Conway, Waynesburg, etc., only to assist and/or train. The NS is now using these people as Extra Board employees to fill day to day vacancies.

Yours truly,

Anthony P. Santoro, Jr.  
General Chairman

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**Joseph M. Lindsay**  
*Vice General Chairmen*  
File: 69.0

**Lawrence D. Jones**  
27 Runningbrook Drive  
Lancaster, NY 14086  
**James A. Ponigar**  
595 West Harvey Street  
Struthers, OH 44471  
*Vice General Chairmen*

Subject: Implementing Agreement

March 3, 1999

**BITCH BULLETIN #5  
VIA FACSIMILE**

Mr. Phil Piserchia, D/LR – NS  
Mr. Robert L. Alman, D/ER – CSX  
Mr. Richard P. Byers, SD/LR – CSX  
Mr. James F. Glass, SD/LR – Conrail

Dear Sirs:

1. The Newark State Ledger had an advertisement for Stevedores at a Newark, New Jersey location. If new jobs were, and are, needed, why were they not offered to current Conrail Clerks? Or is it the plan to hire these employees after the Split Date to save from entry rates and protection. This now tells me we need more employees, but this should result in a new Run Down with the honest job count.
2. Because of your blatant disregard for our Rules Agreement, and your failure to advertise vacancies on District 9, Selkirk and Syracuse on March 2, 1999, you expanded to Scope violations by working D&T Cab on vacant unadvertised TCU Messenger positions.
3. Will severance slots now be offered at Altoona and other locations because of job abolishments?
4. All positions abolished last week on PAL Bulletins must be advertised. There are no abolishments between Run Down and Split Date at a PAL location.

You can fantasize all you want about November and December, but none of these positions were abolished on paper until February 24, 1999.

5. **New NS Chief clerk saga** – In an earlier Bulletin we stated Chief Clerks being trained on their position and then being worked on regular day to day vacancies. In an effort to distort the earlier Bulletin, a person released to his chosen Chief Clerk NS position is now put on the day to day vacancies and not trained on his position first.

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March 3, 1999  
Page 2

But this is more than fair, they are getting the CYO rate. Thank you so much.  
All of these problems are as evidenced below, the Conrail Employees fault!



"THE UNION EMPLOYEES HAVE TO ASSUME A LARGE SHARE OF THE BLAME. THEY WORKED TOO HARD AND MADE CONRAIL SO BIG AND TEMPTING TO US."

Yours truly,

Anthony P. Santoro, Jr.  
General Chairman



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Vice General Chairman*  
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**Joseph M. Lindsay**  
*Vice General Chairmen*  
File: 69.0

**Lawrence D. Jones**  
*27 Runningbrook Drive  
Lancaster, NY 14086*  
**James A. Ponigar**  
*195 West Harvey Street  
Struthers, OH 44471  
Vice General Chairmen*

Subject: Implementing Agreement

March 4, 1999

**BITCH BULLETIN #6  
VIA FACSIMILE**

Mr. Phil Piserchia, D/LR – NS  
Mr. Robert L. Alman, D/ER – CSX  
Mr. Richard P. Byers, SD/LR – CSX  
Mr. James F. Glass, SD/LR – Conrail

Dear Sirs:



"WE ARE TIRED OF GETTING HAMMERED".

Conrail Labor Relations mailed proposed sign-in sheet to Seniority District 13, for Conway, Pennsylvania. That sheet showed 42 positions with the 42<sup>nd</sup> position being a Shipper/Receiver. The next day at the District 13 Run Down this position disappeared and a Clerk-Steno was put in its place. If this Shipper/Receiver position will remain after Split Date we need another Run Down, or at least another separation if the job is abolished. There are enough problems with one set of books, please don't try to work with a second set. **Maybe the STB should make another trip behind the woodshed.**

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March 4, 1999

Page 2

Most asked questions from our membership:

- a) How can some jobs be advertised and some not?
- b) If jobs were abolished, why are they being covered?
- c) How can jobs be abolished before Run Down and separations not be offered?

Four positions in Run Down at South Kearny, New Jersey, abolished effective March 2, 1999. Incumbent told don't worry position will be put back for Split Date. In the meantime work will be performed on abolished positions several hours a day instead of 8 hours, probably on overtime.

As of today, there has been no response to any of the items listed in these BITCH BULLETINS from any of the parties to whom this Bulletin is addressed. I can only assume that the NS and CSX want to be listed on the door below.



Yours truly,

Anthony P. Santoro, Jr.  
General Chairman

TCU  
309 A STREET  
WILMINGTON, DE 19801  
(302)498-0959  
Fax: (302)498-0969

# fax

t r a n s m i t t a l

to: L. Morgan, Chairman - STB

fax: 202-565-9015

from: A. P. Santoro, Jr., GC

date: March 5, 1999

re: Implementing Agreement

pages: 15, includes cover sheet

NOTES:





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*General Secretary-Treasurer/  
Vice General Chairman*  
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**James A. Ponigar**  
595 West Harvey Street  
Struthers, OH 44471  
*Vice General Chairmen*

File: 69.0

Subject: Implementing Agreement

March 8, 1999

**BITCH BULLETIN #8  
VIA FACSIMILE**

Mr. T. T. O'Toole, President, CEO - Conrail  
Mr. K. R. Piefer, VP/LR - CSX  
Mr. M. R. MacMahon, AVP/LR - NS  
Mrs. L. Morgan, Chairman - STB

Dear Sirs and Madam:

Hopefully this will be the last bulletin. Friday, I was contacted by the Carriers and we will meet on March 9, 1999, in an effort to correct the situations outlined in previous bulletins.

You will be advised of the outcome of this meeting.

Thank you.

Yours truly,

**Anthony P. Santoro, Jr.**  
General Chairman

**TCU System Board No. 86, 309 A Street, Wilmington, DE 19801 (302) 498-0959**

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TCU  
309 A STREET  
WILMINGTON, DE 19801  
(302)498-0959  
Fax: (302)498-0969

# fax

t r a n s m i t t a l

to: L. Morgan, Chairman - STB

fax: 202-565-9015

from: A. P. Santoro, Jr., GC

date: March 8, 1999

re: Implementing Agreement

pages: 2, includes cover sheet

NOTES:

STB FD

33388

4-19-99

J

BUSINESS

**ARNOLD & PORTER**

555 TWELFTH STREET, N.W.  
WASHINGTON, D.C. 20004-1206

(202) 942-5000  
FACSIMILE: (202) 942-5999

April 19, 1999

DENNIS G. LYONS  
(202) 942-5858

NEW YORK  
DENVER  
LOS ANGELES  
LONDON



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

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 Secretary Williams:

We have received a letter addressed to you from Mr. Leo J. Wasescha,  
Transportation Manager, General Mills, Inc., dated April 15, 1999.

Mr. Wasescha's letter apologizes to the Board that it took his company's mail  
department 12 days to mail the service copies of "General Mills, Inc. Request for  
Declaratory Order to Surface Transportation Board Decision No. 89" to the service list,  
including opposing counsel.

His letter closes by saying: "Mr. Lyons assertions that CSX did not have prior  
notice is false."

It is the case that what appeared to be a rough draft of a petition seeking relief was  
informally furnished by General Mills to CSX at some time before Mr. Wasescha filed  
his pleading with the Board in late March. It is my experience, and I believe the  
experience of all lawyers with a litigation practice, that often in litigation, both in the  
courts and before administrative agencies, litigants asserting a claim for relief will furnish  
the other side with a draft proposed complaint or draft petition in an effort to encourage  
settlement discussions. That was the case here. Sometimes those complaints or petitions  
are not put in final form and filed, even though no arrangements are worked out; on other  
occasions, they are filed with considerable modification. In any event, no formal  
response is made to them until they are properly served, and often companies receiving  
those draft complaints do not commission the major work and expense of preparing a  
response until there is an actual filing and service of the definitive petition. In any event,

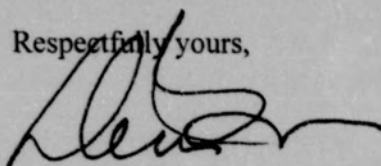
ARNOLD & PORTER

The Hon. Vernon A. Williams  
April 19, 1999  
Page 2

until proper service of the definitive filing is received, serious work on a response is not feasible.

As you know, we made no representation to the Board that CSX had not heard from General Mills or Mr. Wasescha about this matter before he filed his pleading with the Board and his mail department long thereafter served it on the service list. Mr. Wasescha's assertion that I made a false statement to the Board is baseless, and I cannot believe that a member of the bar would have made such an assertion.

Respectfully yours,



Dennis G. Lyons

*Counsel for CSX Corporation  
and CSX Transportation, Inc.*

Enclosures  
*via hand delivery*

cc:

Mr. Leo J. Wasescha  
Transportation Manager  
General Mills, Inc.  
Post Office Box 1113  
Minneapolis, MN 55440

STB

FD

33388

4-19-99

J

BUSINESS



**General Mills, Inc.**  
**General Offices**

Post Office Box 1113  
Minneapolis, Minnesota 55440



4/15/99

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

**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 Secretary Williams,

Reference letter dated April 9<sup>th</sup>, 1999 by Counsel for CSX, Dennis Lyons, requesting additional time for response to General Mills request for clarification of Board's decision in the above matter.

While I apologize for the delay in our mail department sending out subject request, I would like the record be known that I personally hand delivered a copy of the request to the CSX in their corporate office on February 16<sup>th</sup>. My intent was for resolution of this matter without Board intervention. The subject request was not sent to the Board until after General Mills received a reply from the CSX on March 24<sup>th</sup> by phone that the CSX had nothing further to comment on the matter at hand.

Mr. Lyons assertions that CSX did not have prior notice is false.

Sincerely,

Leo J. Wasescha  
Transportation Manager  
General Mills, Inc.

Cc: Dennis G. Lyons  
Counsel for CSX Corporation  
Arnold & Porter  
555 Twelfth Street N.W.  
Washington, D.C. 20004-1206

STB

FD

33388

4-14-99

J

UNION





Office of the Chairman

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

FILE IN DOCKET

FD-33388

April 14, 1999

F. E. Parks  
Local Chairman, Div. 121  
H. E. Ring  
Local Chairman, Div. 597  
Brotherhood of Locomotive Engineers  
32 Oak Center  
Mooresville, IN 46158

Dear Mr. Parks and Mr. Ring:

Thank you for your letter regarding the acquisition and division of Conrail by CSX and Norfolk Southern (NS) and the effect that this transaction may have on you as Local Chairmen of the Brotherhood of Locomotive Engineers on Conrail and on the Conrail employees whom you represent. Specifically, you express concern over the handling of the allocation of Conrail locomotive engineers among the applicant carriers and of those employees' seniority.

The Board carefully examined this proposed transaction, found it to be in the public interest, and imposed the labor protective conditions set forth in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (New York Dock). The New York Dock conditions were imposed to protect employees who may be adversely affected by the acquisition and division of Conrail. These conditions provide lost-income protection for up to 6 years, fringe benefit protection, moving expenses, and protection from losses from home sale, and for arbitration of disputes. These conditions are the most far reaching labor protective conditions that the Federal government imposes on private transactions such as the Conrail acquisition.

As a part of the implementing process, it is the Board's understanding that your union has ratified an implementing agreement with the carriers covering the transaction except for one district on CSX, which currently is in arbitration. 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. See Chicago and Northwestern Transp. Co.--Abandonment--Near Dubuque and Oelwein, IA, 3 I.C.C.2d 729 (1987) (Lace Curtain), *aff'd sub nom. International Bhd. Of Elec. Workers v. I.C.C.*, 862 F.2d 330 (D.C. Cir. 1988).

I appreciate your concerns and assure you that the Board remains committed to a fair and safe implementation of the Conrail transaction under the procedures in place. I am having your letter made a part of the public docket in STB Finance Docket No. 33388.

Sincerely

*Linda J. Morgan*

Linda J. Morgan

# BROTHERHOOD OF LOCOMOTIVE ENGINEERS

## DIVISION 121, INDIANAPOLIS, INDIANA

F. E. Parks, Local Chairman, Div 121  
32 Oak Creek Dr.  
Mooresville, Indiana 46158

FILE IN DOCKET

OFFICE OF  
CHAIRMAN MORGAN

Mar 9 1 04 PM '99

RECEIVED  
SURFACE TRANSPORTATION  
BOARD

March 1, 1999

**Honorable Linda Morgan**  
**Chairman Surface Transportation Board**  
**1925 K. St. Northwest Suite 820**  
**Washington, D. C. 20423**

Dear Madam,

We as the Local Chairmen of Divisions 121 & 597 of The Brotherhood of Locomotive Engineers of the Consolidated Rail Corporation are writing to your department about the 22 Engineers that were forced to sign to the NS Rail Corporation in the allocation process at Indianapolis, Indiana. Here are our concerns for the 22 Engineers that have been forced assigned to the NS Rail Corporation from Indianapolis, Indiana.

- (1.) On November 8, 1998 a snapshot was taken of all the Engineers in Indianapolis, Indiana who were working all of the assignments at this time and that number was 170. At this time Conrail was and still is experiencing a manpower shortage, however the allocation process was put into place to allocate 22 Engineers by force assignment to the NS Rail Corporation. When in fact the NS only asked for 9 Engineers to protect their operation at Indianapolis. It should be noted that the NS has no operation nor have they had an operation in the Indianapolis area so therefore there are no jobs for the 9 or 22 Engineers to bid for. It was our understanding that there were to be jobs available to the original 9 Engineers that the NS requested.
- (2.) The allocation process was by bid only submitted by each employee to the carrier that they chose to work for, of the 170 Engineers only one Engineer bid to the NS Rail Corporation and the remainder chose the CSXT at Indianapolis, Indiana, however the 22 as stated earlier forced assigned to the NS. On Jan. 7, 1999 the N & S held an informative meeting at the Holiday Inn Select at Indianapolis, Indiana (see attached letter) at this meeting the representatives informed all present about job opportunities for all those employees forced assigned which are as follows: 1. Muncie, Indiana 65 miles 2. Peru, Indiana 75 miles 3. Fort Wayne, Indiana 140 miles from Indianapolis. The fact of the matter is that from our perspective is the NS Rail Corporation intended from the very beginning to secure a work force for the 3 mentioned locations, it is also our understanding that this was not the intent of the allocation to force employees to unrealistic locations from their home and create a hardship on them.
- (3.) In February of 1999 Conrail was authorized to begin hiring new employees until May of 1999 as to the number of employees to be hired we are not privilege to this information but the main and most important point is that the new employees will remain with the CSXT in Indianapolis and those senior Engineers who chose CSXT will be forced to remain on the NS Rail Corporation this not only usurps their choice but their seniority too. We are asking that your department consider allowing the 22 Engineers that were force assigned to the NS be allowed to remain at the location of their choice because their seniority as stated earlier is greater that the new employees

March 4, 1999

being hired presently. Finally we would like to point out that all the above mentioned Engineers are qualified employees with Conrail and it would take as least a full year to qualify the new employees as certified Engineers to work out of the Indianapolis terminal

In closing we are all greatly concerned about a safe and qualified work force to meet the needs of the shipper in our up and coming new rail endeavor. Thanking you for your time and attention on this subject.

Respectively yours:

*F E Parks*

F. E. Parks Local Chairman Div. 121

*H E Ring*

H. E. Ring Local Chairman Div. 597

Cc: Godwin  
Sykes  
Thompson  
Monin



Norfolk Southern Corporation  
223 East City Hall Avenue  
Norfolk, Virginia 23510-1728

David N. Ray  
Assistant Vice President  
Labor Relations  
(757) 628-2690

December 30, 1998

CRA-1

Dear Fellow Employee:

As described in Step 4 of the October 9, 1998 letter, a bulletin will be posted shortly listing NS assignments that will be operated on the former CR territory.

As a result of the allocation process described in the October 9, 1998 letter, NS was allocated more T&E employees in the Indianapolis area than originally anticipated.

An information session will be held in Indianapolis on January 7, 1999 at 12:00 p.m. (Noon) at the Holiday Inn Airport (2501 South High School Road) to discuss job opportunities for those Indianapolis employees allocated to Norfolk Southern in and around the Indianapolis area, including outlying point locations. Representatives from NS Transportation and Labor Relations Departments will be there to answer questions you may have concerning work opportunities on Norfolk Southern.

Very truly yours,

David N. Ray

STB

FD

33388

4-13-99

J

UNION



Office of the Chairman

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

FILE IN DOCKET

FD-33388

April 13, 1999

Mr. R.W. Godwin  
General Chairman  
Brotherhood of Locomotive Engineers  
810 Abbott Road  
Suite 200  
Buffalo, NY 14220

Dear Mr. Godwin:

Thank you for sending me copies of your letters to Mr. K.R. Peifer, Vice President - Labor Relations, at CSX Transportation (CSXT), and of your most recent letter to Mr. David Ray, Assistant Vice President at Norfolk Southern (NS). You continue to express concerns over the implementation process for the Conrail acquisition transaction and the impact of that process on locomotive engineers. You seek responses from Messrs. Peifer and Ray over the matters you have raised.

As I have done previously, I will have all of the correspondence, and any responses received from CSXT and NS, made a part of the public docket in the Conrail proceeding. I appreciate your ongoing concerns and commitment to a safe and fair implementation of the Board-approved Conrail acquisition.

Sincerely,

*Linda J. Morgan*  
Linda J. Morgan



# General Committee of Adjustment Brotherhood of Locomotive Engineers

Consolidated Rail Corporation

810 Abbott Road, Suite 200, Buffalo, New York 14220

R. W. GODWIN, General Chairman  
THOMAS B. VASSIE, Secretary-Treasurer  
Telephone: (716) 827-2653  
FAX: (716) 827-2655

2

FILE IN DOCKET

February 12, 1999

Mr. K. R. Peifer, Vice President  
CSX Transportation - Labor Relations  
500 Water Street  
Jacksonville, FL 32202

Dear Sir:

Attached please find a letter from Brother John B. Watts, Jr., a Conrail Locomotive Engineer who bid in the Eastern District of CSXT. His questions are valid. Through Step One to Step Four, by both the Norfolk Southern and CSXT, it seems it was designed and handled by Larry, Curley and Moe.

- ⇒ We have jobs advertised with no Locomotive Engineers at the location. We have Locomotive Engineers at other locations and no jobs advertised or so few jobs that most of the Locomotive Engineers are looking at getting New York Dock on Day One.
- ⇒ We have one railroad taking more Locomotive Engineers at locations where they have no jobs or so few jobs that 10% of their quota of Locomotive Engineers they drafted could handle the business.
- ⇒ The Carriers abolished all the regular freight assignments, ignoring the very big safety factors regular freight assignments bring to the table. Regular assigned Locomotive Engineers know when they are going to work so they have the ability to be rested. This is something that is hit or miss for a pool freight Locomotive Engineer. Regular assigned freight Locomotive Engineers have an almost 100% attendance record, 98.7% will work their jobs, plus be rested and alert.

In regard to the Arbitration for Seniority on the Eastern/Western District, if the Arbitrator rules in favor of prior rights, we will demand that the Step One, Step Two and any other Steps made, be null and void. We will start over again on Step One, Step Two, Step Three, etc.

Requesting an immediate written reply, I remain,

Sincerely yours,

*R.W. Godwin*  
R. W. Godwin  
General Chairman

OFFICE OF  
CHAIRMAN MORGAN

FEB 22 2 51 PM '99

RECEIVED  
SURFACE TRANSPORTATION  
BOARD

RWG:rm



January 26, 1999

John B. Watts Jr.  
1704 Fairway Drive  
Jamison, PA 18929  
215-343-3287

Dear Brother Godwin,

I have been fielding calls from irate members since the CSX bids appeared on the property this past weekend. Needless to say, our worst fears were realized when the actual jobs were published for the first time. I will try to give a brief outline regarding our complaints. I realize that you are being pummeled with complaints from all sides, but I believe our complaints have legitimate validity.

1). Proposed Eastern District Implementing Agreement:

The defined northern limits are "north of Oak Island." The southern limits of the Northern District is "north of Oak Island / Manville." This infringes 20 miles into the Eastern District. There is no mention of this in the Eastern District's proposal. It needs to be there.

Seniority:

The blended merge into 3 year date of hire seniority is now being contested by the CSX General Committee. The member's selection of CSX Eastern District was made on having the initialed agreement in hand. If they would have known that the agreement was being contested, it might have changed the carrier selected. The selections were made on the available information.

2) Step 1 Letter:

In the October 9th letter, anticipated Philadelphia CSX positions numbered 26 engineer's positions. It was broken down into 17 Road, 5 Locals, and 4 extra list positions ( copy enclosed ).

3). Step 3 Letter:

In step 3 there were 24 CSX Philadelphia engineer's positions allotted.

4). Step 4 Letter:

In the actual advertisements there are only 13 positions for CSX Philadelphia engineer's listed. There are 10 Phila. - N. Jersey pools and 3 extra positions advertised. In looking at these positions we find them bogus because in Baltimore 1 Eastern District, and 5 Common pools were advertised. The major question is, "What trains are the 10 Philadelphia pool crews going to operate?" I have been able to identify 2 or 3 trains for the Phila. pools to operate if the Baltimore pools are used to their full potential. Again, if this is the case, the 10 pool positions are grossly

**WORK COPY**

exaggerated, and need to be appropriately adjusted.

The 5 local freight positions on the October 9th letter have disappeared. The WPMO 1 was advertised with Northern District Rights. This assignment doesn't operate within 30 miles of the "Manville" Northern District limits. This assignment was also advertised by Shared Asset in Philadelphia. This assignment operates exclusively within the proposed CSX Eastern District. The 2 assignments listed as Abrams Locals aren't advertised anywhere. If you inquire about them, they are the Lansdale shifters which were allocated to CSX. The Pavonia and Stoney Creek locals are just the product of someone's imagination. So Out of 5 projected local freight assignments there are none.

What I have found is that up to this point, engineers are the only individuals being held accountable to the bid process. We made decisions based on the information available to us, only to find that that information was fraudulent. Granted the prospective jobs in the October 9th letter indicated "anticipated" positions, but 50% less jobs shows poor planning for which CSX is not being held accountable.

What will happen to the 11 engineers who have no position to bid? They were allocated the the Philadelphia area in Step 3

Personally, I bid CSX based on the proposed seniority system, and the anticipated jobs that CSX would be operating. What are my options? I don't feel that I should be bound to the Step 3 process, when the Implementing Agreement, Step 1 and Step 2 processes have proven grossly inaccurate.

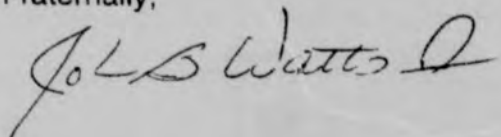
How can our members vote on the Implementing Agreement when the limits of the district have been altered by the Northern Agreement without any mention of it in the Eastern Agreement. What good is voting on the seniority portion of the agreement, when it's going to arbitration?

How can the membership bid assignments under step 4, when I've demonstrated that the proposed positions were greatly exaggerated or nonexistent?

In Cleveland I expressed my concern to you for "putting the cart in front of the horse" in this process. Never did I expect it to implode to this degree. Our membership is asking questions for which, unfortunately, I don't have the answers to. Your guidance and input have never been needed more.

If you can contact me, I can put out a newsletter with current information that is available. Time is running short, and we appear to be the only faction that is bound by deadlines, and the flawed bid process.

Fraternally,



FEB 1 1999

I. T&E CARRIER LOCATIONS

A. Shared Asset Areas becoming exclusively Conrail, governed by the Conrail agreement, and the anticipated assignments at those locations (T&E and Yardmasters). (Those yards at the SAA location allocated to CSXT or NS are also included):

DETROIT

<u>SAA - Conrail Agreement</u>	E	T	YDM
Livernois	6	9	2
Mack Yard	4	7	4
Mound Yard	5	8	
North Yard	9	14	6
River Rouge	11	18	6
Sterling	3	5	
Trenton	1	2	
Extra	7	22	2

<u>NS - NKP Agreement</u>	E	T	YDM
Detroit	11	9	
Detroit - Elkhart	3	3	
Michigan Line	12	11	
NSR (CR Route)	3	4	
Extra	6	5	

SOUTH JERSEY/PHILADELPHIA

<u>SAA - Conrail Agreement</u>	E	T	YDM
Morrisville	Yard 7	10	4
	Local 4	5	
	Extra 3	7	1
Philadelphia (Camden/Frankfort	Yard 24	37	12
Jct./Greenwich/Midvale/	Local 13	18	
Paulsboro/Burlington/Millville)	Extra 18	48	
Stoney Creek	Yard 7	10	4
	Local 1	1	
	Extra 4	8	1

<u>NS - NSR Agreement</u>	E	T	YDM
Philadelphia/Abrams	Yard 4	4	4
	Local 4	5	
	Extra 2	18	1
Morrisville Intermodal	Yard 2	2	

wrong agreement Phila

<u>CSXT - Conrail Agreement</u>	AREA	E	T	YDM
Road	CSX	17	17	
Pavonia Local		1	1	
Stoney Creek Local		1	1	
Morrisville Local		1	1	
Abrams Local		2	2	
Greenwich Yard				4
Extra		4	13	1

NORTH JERSEY

<u>SAA - Conrail Agreement</u>	E	T	YDM
Manville	Local 1	1	
Linden/Metuchen	Yard 11	18	6
	Local 4	4	
	Extra 2	9	
S. Amboy	Yard 3	4	2
	Local 3	3	
	Extra 1	4	
Oak Island/Port Reading/	Yard 48	68	15
Port Newark/Bayonne/	Extra 15	26	
South Kearney			

<u>NS - NSR Agreement</u>	E	T	YDM
N. Jersey - Harrisburg Pool	9	9	
N. Jersey - Allentown Pool	6	6	

<u>NS - NKP Agreement</u>	E	T	YDM
Croton	Yard 3	3	4
	Local 3	3	
	Extra 15	24	

<u>CSXT - B&amp;O Agreement</u>	E	T	YDM
N. Bergen	Road 12	12	
	Yard 11	14	3
S. Kearney	Yard 10	10	5
Morrisville Local * Eastern	1	1	
Manville Local * District	1	1	
Manville Yard			1
Extra	4	22	

CSXT ALBANY SERVICE LANE T&E LOCAL ADVERTISEMENTS

CR DD	CR SD	ON DUTY CITY	JOB NO	JOB DESCRIPTION	REMARKS	BULLETIN INFORMATION
30	MA	MASSENA	WAMA21	LOCAL SWITCHER	EN CO ONLY	ON DUTY 730 PM MON-FRI; REST DAYS SAT-SUN TRS DHCS MASSENA TO BEAUHARNOIS LOC SWIG PRIOR RIGHTS NORTHERN DISTRICT
30	MA	MASSENA	WAUB01	MA10, MA14 TO MP200	BK	ON DUTY 730 AM MON-FRI; REST DAYS SAT-SUN UTIL BRKM MASSENA NY MP120 TO MP200 ASSIST WAMA10 & 14 PRIOR RIGHTS NORTHERN DISTRICT
10	CX	NORTH BERGEN	WPNB41	NB/CROXTON BER CITY	EN CO ONLY	ON DUTY 801 AM MON-FRI; REST DAYS SAT-SUN - QUALIFIED NJT TRS DHCS N. BERGEN, CROXTON, HILLBURN YARD VIA ANY ROUTE. (MAINLINE BERGEN COUNTY) NEWARK BRANCH SEABOARD LEAD DUNDEE SPUR, CARLTON, HILL SPUR PRIOR RIGHTS NORTHERN DISTRICT
10	CX	NORTH BERGEN	WPNB51	NORTH RUNNING TRK	EN CO-BK	ON DUTY 901 AM MON-FRI; REST DAYS SAT-SUN TRS DHCS TO WORK BETWEEN CROXTON & ORANGEBURG NY. VIA PIERNONT. 1ST NRR HAUL PRIOR RIGHTS NORTHERN DISTRICT
10	NJ	MANVILLE	WPKA10	LV TRTN LINE PER AMB	EN CO ONLY	ON DUTY 700 AM MON-SAT; REST DAY SUN TRS DHCS SIX (6) DAY TRENTON LINE, SKILLMAN, PORT READING JCT, LEHIGH LINE, 3 BRIDGES AND NK RARITAN LINE, BROOK TO ALDENE PRIOR RIGHTS NORTHERN DISTRICT
10	KI	KINGSTON	WPKI80	SELKIRK/OAKISLAND	EN CO-BK	ON DUTY 1000 AM MON-FRI; REST DAYS SAT-SUN QUAL RIVER LINE. SELKIRK TO OAKISLAND AND RETURN PRIOR RIGHTS NORTHERN DISTRICT
10	PH	MORRISVILLE	WPKM01	CHELTENHURTN SEPTA	EN CO ONLY	ON DUTY 1000 AM SUN-FRI; REST DAY SAT TRS DHCS CHELTENHAM & RETURN QLF D SEPTA PRIOR RIGHTS NORTHERN DISTRICT
50	CB	WILLOUGHBY	WDPA10	CEI INCLUDE COL NYC	EN CO ONLY	ON DUTY 700 AM MON-SAT; REST DAY SUN WILLOWRGHBY ON TRS CEI SWITCHING LIMITS INCLUDE COLLINWOOD OHIO PRIOR RIGHTS NORTHERN DISTRICT
50	CB	PAINESVILLE	WDPA30	ROAD SWITCHER NYC	EN CO ONLY	ON DUTY 400 AM MON-SAT; REST DAY SUN PAINESVILLE TO ASHTABULA ALSO PAINESVILLE & COLLINWOOD VIA CLEVELAND DIV MAIN LINE PRIOR RIGHTS NORTHERN DISTRICT
50	CB	PAINESVILLE	WDPA50	ROAD SWITCHER NYC	EN CO ONLY	ON DUTY 1559 PM MON-FRI; REST DAYS SAT-SUN TRS BETWEEN PAINESVILLE & ASHTABULA & PAINESVILLE AND COLL INWOOD VIA CLEVELAND DIV MAIN LINE PRIOR RIGHTS NORTHERN DISTRICT

*Mostly operates  
in Eastern  
Dist*

*OPERATES  
Entirely in  
Eastern  
District*

**CSXT T&E EXTRA BOARD ADVERTISEMENTS**  
**ADVERTISEMENTS FOR T&E EMPLOYEES ON THE EASTERN & WESTERN DISTRICT**  
**PRIOR RIGHT TO CONRAIL WESTERN DISTRICT EMPLOYEES**

CR CR DD SD	CRAFT	HOME TERMINAL	DESCRIPTION	NUMBER TURNS	BULLETIN INFORMATION
60 RL	EN	ROSELAKE, IL	YARD ENGINEERS BOARD	1	PROTECT YARD SERVICE
	CO	ROSELAKE, IL	YARD CONDUCTORS BOARD	2	PROTECT YARD SERVICE
	BK	ROSELAKE, IL	YARD BRAKEMEN BOARD	1	PROTECT YARD SERVICE

**PRIOR RIGHT TO CONRAIL EASTERN DISTRICT EMPLOYEES**

10 BA	EN	BALTIMORE, MD	ROAD ENGINEER BOARD	2	PROTECT BALTIMORE/NORTH JERSEY POOL SERVICE
	CO	BALTIMORE, MD CALL IN CSXT TECS	ROAD CONDUCTOR BOARD	2	PROTECT BALTIMORE/NORTH JERSEY POOL SERVICE
10 PH	EN	PHILADELPHIA, PA	ROAD ENGINEER BOARD	3	PROTECT ROAD PHILLY/N JERSEY AND MORRISVILLE
	CO	PHILADELPHIA, PA	ROAD CONDUCTOR BOARD	3	PROTECT ROAD PHILLY/N JERSEY AND MORRISVILLE

*Protects - Northern Dist  
Assignment*

**CSXT BALTIMORE SERVICE LANE T&E POOL ADVERTISEMENTS  
ADVERTISEMENTS FOR T&E EMPLOYEES ON THE EASTERN DISTRICT**

CR CR DD SD	DESCRIPTION	HOME TERMINAL	AWAY TERMINAL	TURNS EN / CO	BULLETIN INFORMATION
10 BE	BENNING, DC CALL IN CSXT TECS	BENNING, DC ADVERTISE MILES	TURNAROUND SERVICE 130	3 E & 3 C	PROTECT TURN SERVICE MORGANTOWN, CHALK POINT ** PRIOR RIGHTS CONRAIL EASTERN DISTRICT **
10 PH	BALTIMORE/NO JERSEY CALL IN CSXT TECS POOL SERVICE	BALTIMORE, MD ADVERTISE MILES	NORTH JERSEY TERM 226 <i>OVERLAPS Phila - NJ POOLS</i>	1E & 1C 6E & 6C	WORK IN CSXT ID POOL PROTECT THRU FRT TO NORTH JERSEY AND RETURN, B&O AGREEMENT, WORK 1ST IN 1ST OUT HOME AND AWAY ** PRIOR RIGHTS CONRAIL EASTERN DISTRICT ** ** COMMON RIGHTS EASTERN DISTRICT **
10 PH	PHILLY/JERSEY POOLS POOL SERVICE	PHIADELPHIA, PA ADVERTISE MILES	NORTH JERSEY TERM 130	10 E & 10 C	PROTECT THRU FREIGHT PHILLY TO NORTH JERSEY CREWS WILL WORK 1ST IN 1ST OUT HOME AND AWAY ** PRIOR RIGHTS CONRAIL EASTERN DISTRICT ** <i>What trains will they operate ?</i>

c:

C. V. Monin, President  
E. Dubroski, 1st Vice President  
L. D. Jones, V.P. & Nat'l. Leg. Rep.  
E. W. Rodzwicz, Vice President  
L. W. Sykes, District Chairman  
W. A. Thompson, District Chairman  
T. B. Vassie, Secretary/Treasurer  
J. P. Chappelle, NJ Leg. Chairman  
J. F. Collins, NYS Leg. Chairman  
N. D. Hendrickson, PA Leg. Chairman  
W. T. O'Brien, OH Leg. Chairman  
C. E. Way, IL Leg. Chairman  
G. J. Newman, MA Leg. Chairman  
W. M. Verdeyen, IN Leg. Chairman  
John B. Watts, Locomotive Engineer  
All Local Chairmen  
Linda Morgan, Chairperson, STB  
Jolene Molitoris, Administrator FRA  
All Senators and Representatives  
R. S. Spenski, Vice President - NS  
J. W. Snow, Chrm./CEO/Pres. - CSX  
D. R. Goode, Pres/Chrm./CEO - NS  
P. Carpenter, President - CSX



# General Committee of Adjustment

## Brotherhood of Locomotive Engineers

### Consolidated Rail Corporation

810 Abbott Road, Suite 200, Buffalo, New York 14220

**R. W. GODWIN**, General Chairman  
**THOMAS B. VASSIE**, Secretary-Treasurer  
Telephone: (716) 827-2653  
FAX: (716) 827-2655



March 9, 1999

RECEIVED  
SURFACE TRANSPORTATION  
BOARD  
MAR 12 4 09 PM '99  
CHAIRMAN HORGAN

Mr. David N. Ray, Asst. Vice President  
Norfolk Southern  
Three Commercial Place  
Norfolk, VA 23510-2191

Dear Sir:

Attached please find a January 29, 1999 letter from B.ofL.E. Local Chairman, F. E. Parks, Division #121 at Indianapolis, IN.

Norfolk Southern increased their allocation of Locomotive Engineers from 9 to 22. This would be kosher if Norfolk Southern provided 22 position for the 22 Locomotive Engineers. The Norfolk Southern only promised positions in a Pool between Muncie, IN and Elkhart, IN with 12 positions, to be shared with Norfolk Southern Locomotive Engineers and a 3 to 5 positions Locomotive Engineers Extra Board. This equals about the original 9 Locomotive Engineer's positions stated earlier by Norfolk Southern.

If you force Conrail Locomotive Engineers to Muncie, IN (65 miles east of Indianapolis), Peru, IN (75 miles north of Indianapolis) or Ft. Wayne, IN (140 Miles north of Indianapolis), those forced Locomotive Engineers have the three options under New York Dock.

- 1) Move and receive moving allowances as stated in the Implementing Agreement;
- 2) Take Home Terminal furlough and forfeit their New York Dock protection; or
- 3) Accept a severance package equal to one year's salary.

From Day One, these 22 Locomotive Engineers will be surplus to Norfolk Southern at Indianapolis, and the CSXT will have a pronounced shortage of Locomotive Engineers

As Brother Parks stated in his letter, "it's the same old story, do more with less, which creates an unsafe environment through fatigue and not enough time off the job". The most important part of my job as General Chairman of the B.ofL.E.-Conrail-G.C.ofA. is to insure none of my members and/or my Brothers and Sisters in other crafts are not put in harms way. I do not want Conrail Locomotive Engineers working fatigued on the Norfolk Southern, CSXT or Shared Asset Areas because one railroad wants the other railroad placed in a position of not having enough experienced, qualified and trained employees.

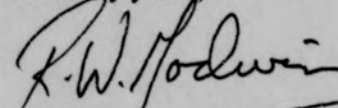
If CSXT, Norfolk Southern or SAA has a surplus of Locomotive Engineers, I feel, in the interest of a safe operation, they offer the surplus Locomotive Engineers to the other Carrier. I have no preference or aversion towards either Norfolk Southern or CSXT. I will continue with that mindset as long as their power plays against one another do not place my Brothers and Sisters in harms way.



Stockpiling Locomotive Engineers, or for that matter, any employees to deprive the other Carrier, causes a serious safety issue. Taking 22 Locomotive Engineers at Indianapolis with no work for these 22 Locomotive Engineer within a thirty mile radius of Indianapolis, is the start of a serious safety issue.

Requesting a meeting in Indianapolis with your people as soon as possible, is necessary to insure a safe operation on Day One and beyond. I remain

Sincerely yours,



R. W. Godwin  
General Chairman

RWG:rm

c: C. V. Monin, President  
E. Dubroski, 1st Vice President  
L. D. Jones, V.P. & Nat'l. Leg. Rep.  
L. W. Sykes, District Chairman  
W. A. Thompson, District Chairman  
T. B. Vassie, Secretary/Treasurer  
J. P. Chappelle, NJ Leg. Chairman  
J. F. Collins, NYS Leg. Chairman  
N. D. Hendrickson, PA Leg. Chairman  
W. T. O'Brien, OH Leg. Chairman  
C. E. Way, IL Leg. Chairman  
G. J. Newman, MA Leg. Chairman  
W. M. Verdeyen, IN Leg. Chairman  
F. E. Parks, Local Chairman #121  
H. E. Ring, Local Chairman #597  
David Brown, II, Supt.-Staff. - NS  
Jolene Molitoris, Administrator FRA  
Linda Morgan, Chairperson, STB  
Dan Coats, Senator IN  
Richard G. Lugar, Senator IN  
Dan Burton, Representative IN  
Steve Buyer, Representative IN  
Julia M. Carson, Representative IN  
Lee H. Hamilton, Representative IN  
John N. Hostettler, Representative IN  
David McIntosh, Representative IN  
Edward A. Pease, Representative IN  
Tim J. Roemer, Representative IN  
Mark. E. Souder, Representative IN  
Peter J. Visclosky, Representative IN

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**  
**DIVISION 121, INDIANAPOLIS, INDIANA.**

January 29, 1999

WORK COPY

R. W. Godwin  
General Chairman  
Brotherhood of Locomotive Engineers  
810 Abbott Rd. Suite 200  
Buffalo, New York 14220

Dear R. W. Godwin:

On January 7, 1999 the N & S railroad held a meeting in Indianapolis, Indiana at the Holiday Inn Select Airport to explain the job opportunities to those employees that were forced to sign from Conrail to the N & S. I attended this meeting as per your request, the meeting began at 12:00 p.m.

First I would like to point out that the N & S only wanted nine engineers for Indianapolis, Indiana (the N & S currently has no presence at Indianapolis nor have they had for quite some time). However it was decided to up the allocation for Indianapolis because the N & S did not get enough employees at Fort Wayne Indiana, therefore the N & S railroad increased their allocation from 9 to 22 at Indianapolis to attempt to fill the void at Fort Wayne, Indiana. So therefore, we are left at Indianapolis with 148 engineers to protect the needs of the service. I would like to point out that we were short of engineers on November 7, 1998 and we are still short of engineers as of this report. We have also lost additional engineers from the 148 that will be addressed later in this report.

The N & S informed the employees present at this meeting (sign in sheet attached) that their closest places of employment would be Muncie, Indiana 65 miles east of Indianapolis, Peru, Indiana 75 miles north of Indianapolis and Fort Wayne, Indiana 140 miles north of Indianapolis with strong emphasis placed on Fort Wayne. We were also informed that pool service would be established between Muncie and Elkhart with the projection of 12 pools (to be shared with the N & S engineers) with a 3 to 5 man extra list but in all likelihood the bulk of the 22 engineers may very well be in Fort Wayne or Peru and in all likelihood they will be placed in the furlough status in a 3 year period (great outlook for these employees, don't you think). What this is going to do is place a hardship on the employees having to relocate and adversely affects these engineers by forcing them from Conrail. I have on numerous occasions requested that 15 of these 22 engineers be returned Conrail/CSXT western roster and each time the N & S has replied 'no'.

Referring back to the earlier part of this report concerning the loss of additional engineers from the 148 that was allocated to the CSXT western roster in Indianapolis, Indiana, that loss equates to 15 due to retirements, yard master positions, management positions and 5 engineers that have bid from Cleveland, Crestline and Columbus, Ohio that will in all probability remain in their locations due to the fact that they can work out of the above mentioned cities without having to move to Indianapolis. So now we are left with 133 engineers from the original 148 so it's the same old story, do more with less, which creates an unsafe, work environment through fatigue and not enough time off the job. Is there no end to this? Has the S. T. B. closed its mind and allowed the all too powerful railroads to dictate them? As we have all said in the past how many deaths will it take to equate to one common sense thought.

● Page 2

January 29, 1999

Hoping this report is sufficient enough to open some minds to the problems that are quite apparent. It is very very familiar to the UP/SP situation that is going on now. For you records I am attaching pertinent letters.

Fraternally yours,

*F E Parks*

F. E. Parks

Alternate District Chair. n A. B. C. D.

c: L. W. Sykes

W. A. Thompson

STB FD

33398

4-8-99

J

BUSINESS

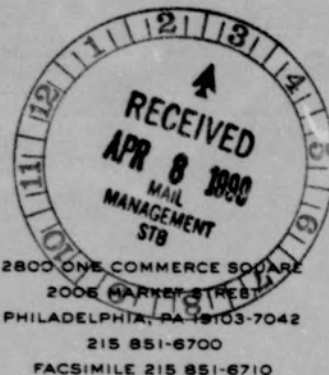
**HARKINS CUNNINGHAM**

ATTORNEYS AT LAW  
SUITE 600

801 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004-2615  
202 973-7600  
FACSIMILE 202 973-7610

WRITER'S DIRECT DIAL

(202) 973-7601



CR-18

April 8, 1999

**BY HAND**

Mr. Vernon A. Williams, Secretary  
Surface Transportation Board  
Office of the Secretary  
Case Control Unit  
1925 K Street, N.W.  
Washington, DC 20423-0001

**Re: 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  
(STB Finance Docket No. 33388)**

Dear Mr. Williams:

This is to notify you and all parties in the above-captioned proceeding that effective at close of business, Friday, March 12, 1999, the address of the undersigned counsel was changed to:

801 Pennsylvania Avenue, N.W., Suite 600  
Washington, DC 20004

Please amend your records to reflect this change.

Very truly yours,

*Paul A. Cunningham*  
Paul A. Cunningham

cc: All Parties of Record  
Hon. Jacob Leventhal

STB

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33398

4-7-99

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UNION



Office of the Chairman

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

FILE IN DOCKET

JN-33388

April 7, 1999

Mr. Clinton J. Miller, III  
General Counsel  
Mr. Daniel R. Elliott, III  
Assistant General Counsel  
United Transportation Union  
14600 Detroit Avenue  
Cleveland, OH 44107

Dear Messrs. Miller and Elliott:

This letter is in response to your petition seeking intensified oversight of the implementation of the Safety Integration Plans (SIPs) filed by applicants in the Conrail Acquisition proceeding, STB Finance Docket No. 33388, due to recent incidences on Conrail. The petition includes a request for consideration of issues related to operating employee fatigue. I wanted to let you know that I have referred your petition to the Federal Railroad Administration (FRA). In view of the ongoing SIP process for the Conrail Acquisition proceeding, which is discussed below, I believe that FRA in the first instance can best address your concerns and take appropriate action to ensure safe implementation of the Conrail Acquisition. A copy of my letter to FRA, referring your petition to that agency, and asking FRA to advise us, pursuant to the SIP process, of any FRA action and of further Board action needed to assure the safe implementation of the Board-approved Conrail Acquisition transaction, is enclosed.

As you know, both FRA and the Board are vested with authority to assure safety in the railroad industry. FRA has authority to issue regulations to promote safety in every area of railroad operations and reduce railroad-related accidents and injuries. 49 U.S.C. 20101 and 20102. The Board is also responsible for promoting a safe rail transportation system. The rail transportation policy provides, in relevant part, that, "[i]n regulating the railroad industry, it is the policy of the United States Government . . . to promote a safe and efficient rail transportation system," 49 U.S.C. 10101(3), [by requiring rail carriers to] "operate transportation facilities and equipment without detriment to the public health and safety . . ." 49 U.S.C. 10101(8). The rail transportation policy applies to all transactions subject to the Board's jurisdiction and gives content to the "consistent with the public interest" standard that the Board uses in determining whether to approve railroad mergers and acquisitions under 49 U.S.C. 11323-11325. See 49 U.S.C. 11324(c).

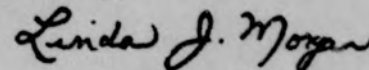
In the Conrail Acquisition proceeding, FRA and the Board recognized the need to work together, using each agency's existing authority, to ensure that the proposed transaction would be safely implemented. At the request of FRA and various rail labor organizations, the Board

required the applicants to file detailed SIPs, developed within guidelines established by FRA, explaining how each step in implementing the proposed acquisition would be performed safely. The Board and FRA also entered into a Memorandum of Understanding (MOU), with the concurrence of the Department of Transportation, regarding the ongoing safety integration process. Under the terms of the MOU, the railroads, in coordination with FRA, will continue to modify and refine the SIPs as the Conrail Acquisition moves forward, and FRA will advise the Board of applicants' progress in executing the plans, and may request that the Board take appropriate action regarding the plans. This process will continue until FRA advises the Board that the Conrail Acquisition transaction has been safely implemented.

In short, as the Conrail Acquisition proceeding shows, safety is a high priority for the Board in the transactions it regulates. Inasmuch as the SIP process established for the Conrail Acquisition calls for the railroads to coordinate with FRA regarding what needs to be addressed in the SIPs to assure that the transaction is safely implemented, I believe that your petition should be referred to FRA initially for consideration under those processes. As indicated, I have asked FRA to advise the Board as to whether the concerns you have raised about the safe implementation of the Board-approved Conrail Acquisition have been fully addressed. After the Board has heard from FRA, the Board will be in a position to determine whether further action on your petition is warranted.

I hope that this information is useful to you. Please do not hesitate to contact me if we can be helpful in the future. A copy of this letter has been placed in the docket of STB Finance Docket No. 33388.

Sincerely,



Linda J. Morgan

Enclosure

cc: Dennis G. Lyons, Esq.  
Paul A. Cunningham, Esq.  
Richard A. Allen, Esq.



STB

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33388

4-7-99

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FEDS



Office of the Chairman

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

FILE IN DOCKET

FA-33388

April 7, 1999

Honorable Jolene M. Molitoris  
Administrator  
Federal Railroad Administration  
400 7<sup>th</sup> Street, S.W.  
Washington, DC 20590

Dear Administrator Molitoris:

The Board recently received a petition from the United Transportation Union (UTU) seeking intensified oversight of the implementation of the Safety Integration Plans (SIPs) filed by applicants in the Conrail Acquisition proceeding, STB Finance Docket No. 33388, due to recent incidences on Conrail. The petition includes a request for consideration of issues related to operating employee fatigue. A copy of the UTU petition is enclosed.

As you know, the process established for the Conrail Acquisition calls for the railroads to coordinate with FRA regarding what needs to be addressed in the SIPs to ensure that the transaction is safely implemented. Given that process and your existing safety enforcement authority, I believe that FRA is the appropriate agency to address initially the concerns raised in UTU's petition. Accordingly, I am referring the UTU petition to you in order to provide FRA the opportunity to address the issues raised in the petition and take any action in the first instance that FRA deems appropriate. A copy of my letter informing UTU of the referral is enclosed.

In this regard, please advise us, pursuant to the SIP process, of your response and of any further Board action needed to assure the safe implementation of the Board-approved Conrail Acquisition. Also, please do not hesitate to contact me if you want to discuss this further or if we can provide you with additional information or assistance. A copy of this letter has been placed in the docket in STB Finance Docket No. 33388.

Sincerely,

*Linda J. Morgan*  
Linda J. Morgan

Enclosures

STB

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33388

4-7-99

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Office of the Chairman

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

FILE IN DOCKET

April 7, 1999

Mr. George Donahue  
258 Pennsylvania Blvd.  
Pittsburgh, PA 15228

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

Dear Mr. Donahue:

This responds to your letter of February 22, 1999, relating your concerns about alleged irregularities in the job selection process and your failure to obtain a "moving package." Clearly, your February 22nd letter was written before you could have received the letter that I wrote you on the same day in response to your prior letter of February 6, 1999. As explained in my previous letter, bringing your concerns to the Board's attention at this time is premature.

The process for resolving those concerns is the one outlined in each of my previous letters to you. Any disputes or controversies with respect to the interpretation, application, or enforcement of implementing agreements under our labor protective conditions are required to be submitted to arbitration if they cannot be resolved voluntarily among you, your elected union representatives, and the railroads involved. The Board can provide assistance in pursuing your arbitral remedies, should you desire to do so, through our Office of Congressional and Public Services. That office may be reached at (202) 565-1592. I have offered you the assistance of that Office on a number of occasions and continue to do so.

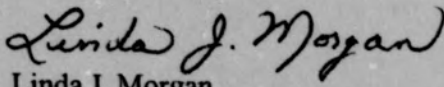
If you elect to go to arbitration and are then dissatisfied with the outcome, you may be able to obtain further relief by appealing to the Board. I must advise you that there is a twenty-day regulatory time limit within which you must petition the Board to review an arbitral decision. Furthermore, as explained in my letter of January 12, 1999, the Board will accept an appeal from the decision of the arbitrator only if it satisfies the requirements of 49 CFR 1115.8 and the "Lace Curtain" standards the Board applies in determining which decisions of arbitrators it will review. Under the Lace Curtain standards, the Board will "limit our review of arbitrators' decisions to recurring or otherwise significant issues of general importance regarding the interpretation of our labor protective conditions." Therefore, the Board does not review "issues of causation, the calculation of benefits, or the resolution of other factual questions" in the absence of "egregious error." See Chicago and Northwestern Transp. Co — Abandonment —

Near Dubuque and Oelwein, IA, 3 ICC 2d 729, 735-36 (1987)(Lace Curtain), aff'd sub nom. International Bhd. of Electrical Workers v. ICC, 862 F. 2d 330 (D.C. Cir. 1988). In addition, under the Lace Curtain standard, if the Board accepts 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."

I hope that the foregoing adequately explains the steps you must take at this point, and I wish you success in resolving your concerns should you decide to pursue them further. However, you must understand that it would be inappropriate and a violation of established procedures for me or the Board to become involved in the implementing process at this stage of these proceedings.

I am having your letter and this response made a part of the public docket for the Conrail acquisition proceeding.

Sincerely,

  
Linda J. Morgan

STB FD

33388

4-6-99

J

UNION



Office of the Chairman

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

April 5, 1999

FILE IN DOCKET

JD-33388

Mr. Bernard L. Chambers  
Member, Local 1518  
R.R. 1 Box 429  
Rockville, IN 47872

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

Dear Mr. Chambers:

This responds to your letter of March 8, 1999, relating your concerns regarding the effect of the negotiated implementing agreements on your own seniority rights, as well as the seniority rights of other similarly situated employees. While I recognize your concerns, as explained below, they do not appear to be matters in which it would be appropriate for the Board to become involved at this time.

As you know, when the Board approved the Conrail acquisition, it imposed "New York Dock" conditions, which provides for protections for workers adversely affected by the transaction, and which provided a process whereby labor and management negotiate an labor implementing agreement. Your concerns relate to the modification of seniority rosters and districts voluntarily negotiated by labor and management representatives as part of the implementing agreement process. With respect to your concerns, the Board becomes involved only where it can be shown that the resulting implementing agreement fails to guarantee employees the minimum rights embodied in the New York Dock protections, and even then, not until the disputing parties have first attempted to resolve their concerns through voluntary negotiation and, if necessary, arbitration. If arbitration is pursued, the Board becomes involved if the arbitral award is appealed to the Board, and then only under a very limited standard of review.

If you wish to explore your options further, please feel free to contact the Board's Office of Congressional and Public Services at (202) 565-1592. I am having your letter and my response made a part of the public docket for the Conrail acquisition proceeding.

Sincerely,

*Linda J. Morgan*  
Linda J. Morgan



R. # 1. Box 429  
Rockville, IN 47872  
March 8, 1999

Honorable Linda Morgan  
Chairman, Surface Trans. Board  
1925 K. St. NW Suite 820  
Washington, D.C. 20423

FILE IN DOCKET

OFFICE OF  
CHAIRMAN MORGAN

MAR 16 2 45 PM '99

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SURFACE TRANSPORTATION  
BOARD

RE: JOB SENIORITY

Dear Ms. Morgan:

I am a Conductor for CONRAIL, hired out May 18, 1960 on the former New York Central Railroad.

I am writing to you because I feel my seniority is being taken from me due to agreements made by the CONRAIL Negotiating Committee in meetings with CXS officials. I have always been under District Seniority and am now the oldest employee at Avon, IN on the East End St. Louis Division, entitling me to hold any position in that division. Under the proposed rules CONRAIL employees will go to "straight" seniority and any CONRAIL employee who hired out prior to my hire date of 5/18/60, can bump me from the job I now hold, regardless of where he previously worked. A Yardman or someone from another division can come to the St. Louis East End Division and hold my job. This is contrary to my belief through all these years, that I would always be assured of my seniority rights on the East End St. Louis Division.

I expressed my concerns with my Local Chairman, C. R. Smither, UTU General Chairman, Mr. Frank Pickell and UTU International President Mr. Charles Little with no satisfaction. I do not understand why CSX would stress "straight seniority" for CONRAIL employees in the above mentioned meetings as present CONRAIL & CSX employee seniority rosters and jobs are separate. Neither do I feel that the negotiating committee kept the brotherhood's best interests in mind when they made this agreement. The brotherhood was not allowed to vote on this decision; it was decided by the committee and the local chairmen. If "the federal law permits railroads to seek modification of pre-merger seniority rosters" I understand not everyone can be satisfied; however, I feel justified to try to keep my seniority as it has been for the last 38+ years.

I am asking your board to investigate this matter and would appreciate any help you can offer to me and others in the same situation as myself. Thank you.

Respectfully,

*Bernard L. Chambers*

Bernard L. Chambers  
CONRAIL Conductor

Enclosures

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: 216-228-5755

December 15, 1998

Mr. Bernard L. Chambers  
Member, Local 1518  
R.R. 1 Box 429  
Rockville, IN 47872

Dear Sir and Brother:

This has reference to your letter of November 22, 1998 regarding your concern of the seniority arrangement in the CSXT (Western) implementing document.

I have reviewed General Chairperson Frank Pickell's December 7, 1998 letter, copy shown furnished to you, wherein he has addressed the concerns you have expressed. His explanation correctly reflects the circumstances under which the General Committees were required to negotiate the seniority arrangements.

It must be recognized that it is the current state of federal law, and not the union, that permits the railroads to seek modification of pre-merger seniority rosters. This almost always places the union in a position where regardless of what type of seniority arrangements are adopted, rarely is everyone satisfied. The General Chairpersons' collective efforts were directed towards reaching a seniority arrangement, to the extent possible, that was fair and equitable under the prevailing circumstances.

I regret that my reply is unfavorable and I trust that you realize that this difficult matter had no clear-cut solution.

Fraternally yours,

Charles L. Little  
International President

cc: F. R. Pickell, GC  
C. R. Smither, LC, Local 1518

General Chairperson

J. L. ARNOLD  
Vice Chairperson



I. E. PHIEBE  
Alternate Vice Chairperson

D. E. MYERS  
Secretary

**GENERAL COMMITTEE OF ADJUSTMENT (C&T)**

Conrail West & South • Norfolk Southern Ry. Co.  
GO-777

6797 NORTH HIGH ST., SUITE 108  
WORTHINGTON, OHIO 43085  
(614) 846-7397  
FAX (614) 846-7641

December 7, 1998

Mr. Charles L. Little, President  
United Transportation Union  
14600 Detroit Ave.  
Cleveland, Ohio 44107

Dear Sir and Brother:

This is to advise that I am in receipt of a copy of correspondence from Local 1518 member B. L. Chambers wherein he raises concerns regarding the seniority arrangement with CSX under the Western District - Implementing Agreement.

First of all, I have had conversations with Brother Chambers and explained the rationale and reason behind the restructuring of Conrail seniority. Basically, I advised that not only CSX, but N.S. as well, informed the Committees at the onset that they would not consider in any fashion, the continuance of the existing former prior-prior and prior right seniority arrangements, to wit; former NYC road, yard or 1958 and 1962 district seniority, former PRR road and/or yard, as well as the former EL sub division(s). Further Penn Central seniority would not be considered.

In essence, we were advised that if, we could not develop or reach a seniority arrangement that was not cumbersome, or an administrative economic problem, then our rosters would be placed below those on CSX and N.S. with our most senior trainman following the most junior CSX or N.S. trainman. We could not live with this drastic alteration of our seniority! When faced with such, we sought maintaining our relative, earliest date of hire seniority as shown on the district and system rosters, with the exclusive right to man all former Conrail assignments throughout the entire Western District, before those trainmen with seniority on CSX or N.S. We were able to convince the Carriers and other Committees on CSX and N.S. that this arrangement would not be an administrative nightmare, nor would such adversely affect the CSX and N.S. trainmen.

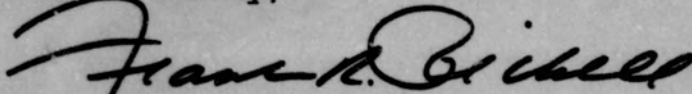
What Brother Chambers must understand is that we protected his seniority to the best extent possible. While the pure date of hire may not be to his liking, it nonetheless far exceeds what we were facing as a result of the Carrier's filings and decision by the Surface Transportation Board.

C. L. Little, Pres. UTU  
December 7, 1998  
Page 2

Hopefully, the above will clarify any thought you may have had about not only my position, but all Conrail U.T.U. Committees as a whole. I am quite confident U.T.U. Vice Presidents, Davis, Earley and Smith will attest to the above statements.

With best regards, I remain,

Fraternally,



Frank R. Pickell  
General Chairman

FRP/ra

c: B. L. Chambers, Member 1518  
C. R. Smither, LC 1518

STB

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33388

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J

PUBLIC



Office of the Chairman

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

FILE IN DOCKET

FD-33388

March 16, 1999

Mr. George Donahue  
258 Pennsylvania Blvd.  
Pittsburgh, PA 15228

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

Dear Mr. Donahue:

This responds to your letter of February 6, 1999.

I am puzzled as to your continuing insistence that you have been deprived of the opportunity to be a part of the implementing process in connection with the NS/CSX/Conrail transaction. Your letters to me appear to reflect that you and the other employees listed in the attachments to your letters have been very much involved in the implementation process.

I understand that there are certain elements of the process and of the implementing agreement with which you do not agree. However, as I have pointed out to you before, the way in which you may appropriately bring these to the Board's attention is by submission of them to arbitration if they cannot be resolved voluntarily among you, your elected union representatives, and the railroads involved.

Contrary to your understanding, any dispute or controversy with respect to the interpretation, application or enforcement of our labor protective conditions is required to be submitted to arbitration. The exception for section 4 to which you refer addresses simply the initial arbitration process for arriving at a negotiated agreement. Here there is such an agreement and, accordingly, that exception is inapplicable.

In your prior letter you called attention to the fact that certain provisions in the implementing agreement about which you are concerned are not as favorable as comparable provisions in other negotiated implementing agreements that have been approved by the Board or its predecessor the Interstate Commerce Commission. Negotiated implementing agreements in other proceedings do not establish a minimum for protection under our conditions. Our approval only establishes that such agreements meet or exceed the minimum requirements of the conditions. The point of negotiating agreements is to obtain protection superior to that which is

mandated as a minimum in our conditions. If such negotiated agreements were then accepted as the minimum protection that is acceptable, it would eliminate all incentive to negotiate.

Please understand that I am not unsympathetic to your concerns and those of your fellow employees. However, I am firmly convinced that they will be best served by following the well-settled process for resolving such concerns.

As with your other letters, a copy of this letter will be made a part of the docket in the proceeding. Also I reiterate the offer contained in my letter of January 12, 1999, to provide assistance in pursuing your arbitral remedies, should you desire to do so, through our Office of Congressional and Public Services. That office may be reached at (202) 565-1592.

Sincerely,

*Linda J. Morgan*  
Linda Morgan

STB FD

33398

2-22-99

J

UNION



Linda Morgan  
Chairperson  
Surface Transportation Board

February 22, 1999

FILE IN DOCKET

Conrail Labor Dispute

I respectfully request that the Surface Transportation Board review this claim prior to the split date of Conrail between Norfolk Southern Railway Company (NS) and CSX Transportation Company (CSXT).

Prior to run-down day on or about November 29, 1998 I asked Mr. Ponigar, Vice General Chairman, Transportation Communications International Union (TCU), in the presence of Mr. Weisbarth, Local Protective Committeeman, what the mileage criteria was to qualify for the moving package. Mr. Ponigar's initial answer was 30 miles. However, after further discussion he decided he was not certain. Mr. Ponigar advised me to ask the question in the selection room on run-down day, December 1, 1998. There I would be able to ask the proper railroad labor representative and the TCU General Chairman at the same time.

See copy of my statement dated January 6, 1999, and related e-mail material, attached, recounting the events which occurred during the selection process on run-down day in Pittsburgh, pa. As evidenced by my statement dated January 6, 1999, their answer or lack thereof, and their statement that I did not qualify for the moving package coupled with their refusal to allow me to elect the provisions of the New York Dock (NYD), indicates both Mr. Piscerchie and Mr. Santoro misrepresented themselves and their respective organizations.

On or about December 3, 1998, I confronted Mr. Yount about the problems which occurred on run-down day and informed him that everyone who took a Waynesburg job subsequent to me were told they would be entitled to a moving package. I asked to have Mr. Byers come to his office to verify our previous conversation. He summoned Mr. Byers to his office. Mr. Byers verified my conversation with him on run-down day.

On December 4, 1998, I requested a meeting with Mr. Poff, General Manager of the Conrail National Customer Service Center (NCSC) and all interested parties (see attached e-mail). I requested this meeting to determine if the discrepancies were due to human error or gross negligence. As evident by the lack of timely response by the carriers representatives and the lack of participation by TCU General Chairman Mr. Santoro to effect this meeting, it is my opinion that these violations were not due to human error.

Also on Friday, December 18, 1998, I was contacted by Mr. Carman Carlo, Material Supervisor, at Conway, Pa., who informed me that the material job that I bid was in error. The Conway job I bid was never advertised on the selection list. The job I bid was in fact a position at Pitcairn, Pa. Had this Conway position been properly advertised during the selection process, it would have reduced the number of buy-out positions by

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SURFACE TRANSPORTATION  
BOARD

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one. This would have effectively altered the selections from the thirteenth senior man to the junior man.

It is my opinion that the following statements are true;

I was improperly awarded a position that did not exist.

I was denied my seniority to select a position of my choosing due to erroneous information.

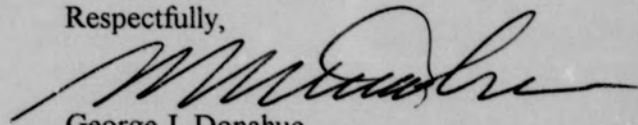
The question concerning the qualifying mileage for the moving package was never answered, and I was refused the moving package.

I was misled by Company and Union officials.

I was denied my rights under the provisions of the New York Dock to elect the provisions of that appendix.

It is my opinion, that I was denied my rights. I respectfully request that the Board review this case and correct my present situation, prior to split date due to this opinion, and the effect it may have on others employees with less seniority.

Respectfully,



George J. Donahue  
258 Pennsylvania Blvd.  
Pittsburgh, Pa. 15228

January 6, 1999

Statement of George J. Donahue, employee no. 227745 regarding the events of Rundown day on December 1, 1998.

On Rundown Day December 1, 1998, I entered the selection room, Carl Yount was the corporate officer at the selection station. Joe Spozanza, a senior clerk was next to me. After a cordial greeting, Mr. Yount pointed out a grade level 7 position that we did not have to protect because a senior clerk had turned it down. Mr. Yount then pointed out two grade level 5 positions at Conway, Pa., both daylight with Saturday and Sunday relief days. While Mr. Spozanza was checking other positions, I asked Mr. Yount about the Waynesburg jobs. Mr. Yount pointed them out and informed me that I could not take a grade level 2 position and protect my EMR. I acknowledged that I was aware of this and that protecting my rate was not necessarily as important to me as the moving package. I asked what the criteria was to qualify for a moving package, explaining that my residence was 53 miles from Waynesburg, Pa. and 30.9 miles from Conway, Pa. Mr. Yount said he was not sure and it was not a question he could answer.

Mr. Yount then introduced me to Mr. Byers (CSXT Labor Relations). I asked Mr. Byers the same question regarding the moving package. Mr. Byers answered that it was a good question, however it was not within his jurisdiction as the Conway jobs belonged to the NS.

Mr. Byers then introduced me to Phil Piscerchie (NS Labor Relations). Mr. Piscerchie and I joined Mr. Anthony Santoro (TCU General Chairman) at a table.

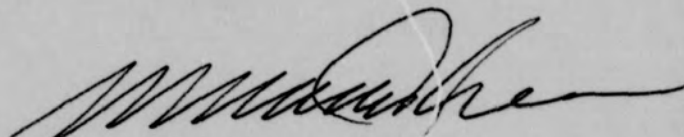
I explained to both men that I had a choice between Two grade level 5 positions at Conway and a grade 2 position at Waynesburg and I had a few questions about the moving package which would influence my choice. I asked them, what is the criteria for mileage to qualify for the moving package. Both men ask me what I meant. I explained that I am 53 miles from Waynesburg and 30.9 miles from Conway.

According to the New York Dock its 30 miles to qualify for the moving package. Therefore, I believe I would qualify at either location and would be able to protect my rate at Conway. At this point I was interrupted and told by Mr. Piscerchie and Mr. Santoro that I did not qualify for the moving package. I asked again what the criteria was for mileage to qualify for the moving package and why didn't I qualify. Both men reiterated that I did not qualify for the moving package and never answered what the criteria was for mileage to qualify.

At this time, I stated that I would like to elect the provisions of the New York Dock (NYD), Article I, section 3, which provides that I may elect between the benefits of the NYD and any other protective agreement (pointing to the copy of the implementing agreement on the desk). Mr. Piscerchie said I could not do that and Mr. Santoro confirmed his answer. I then turned to Article I, Section 3, of the NYD. With the document in hand, I held it on the desk between them, so they could view the document. I asked if they were familiar with Article I, Section 3, of the NYD. Mr. Piscerchie glanced at the page and said yes, but he didn't read it that way. I then moved the document toward Mr. Santoro. While brushing the document aside, he said, don't put that in front of me, I know what it says.

I said let me understand this. You are saying that I cannot elect the provisions of the NYD instead of the implementing agreement and I do not qualify for the moving package. Mr. Piscerchie and Mr. Santoro both said that is correct (without explanation).

I then went back to the selection table with Mr. Yount, Mr. Spozanzo was there and he picked one of the two remaining daylight grade level 5 positions and I selected the remaining grade level 5 position and exited the room.



George J. Donahue  
Employee No. 227745

CONRAIL ELECTRONIC MAIL SYSTEM

PRINTED FOR: George.Donahue

DEPT: CUSTOMER SUPPORT  
PAGE: 1

Date: Monday, 22 February 1999 1:24pm ET  
To: Bruce.Poff  
Cc: George.Donahue  
From: Donald.Weisbarth  
Subject: MEETING REQUEST

Mr. Poff.....  
Can you shed any light on the attached?  
Thank you,  
Don

----- ( Forwarded letter 1 follows ) -----

Date: Monday, 22 February 1999 12:52pm ET  
To: Donald.Weisbarth  
From: George.Donahue  
Subject: MEETING REQUEST

Don,  
Have you heard any thing more about the meeting I requested regarding the selection process. Would you please check on this and advise.

\*END OF PRT.\*      George.Donahue

\*END OF PRT\*

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PAGE: 1

Date: Friday, 29 January 1999 11:37am ET  
To: George.Donahue  
Cc: Bruce.Poff  
From: Donald.Weisbarth  
Subject: MEETING REQUEST

GEORGE.....

BRUCE POFF HAS RECEIVED YOUR STATEMENT REGARDING RUNDOWN AND SUGGESTED THAT YOU STATE HOW YOU FEEL THAT YOU WERE DAMAGED IN THE PROCESS. PLEASE FORWARD THAT INFORMATION TO MR. POFF DIRECTLY WITH COPY TO MYSELF.  
DON WEISBARTH

\*END OF PRT.\* George.Donahue

\*END OF PRT\*

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PAGE: 1

Date: Tuesday, 26 January 1999 1:19pm ET

To: George.Donahue

From: Donald.Weisbarth

Subject: MEETING REQUEST

AS INFO

----- ( Forwarded letter 1 follows ) -----

Date: Monday, 25 January 1999 1:53pm ET

To: Bruce.Poff@CONRAIL

From: Donald.Weisbarth

Subject: MEETING REQUEST

In-Reply-To: The letter of Monday, 25 January 1999 9:22am ET

BRUCE.....

THANKS FOR THE UPDATE. I GUESS THE BALL IS IN MR. DONAHUE'S COURT. I WILL SEE WHERE HE IS WITH HIS "WRITE UP" AND ADVISE.

DON

\*END OF PRT.\* George.Donahue

\*END OF PRT\*

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PAGE: 1

Date: Tuesday, 26 January 1999 1:17pm ET  
To: George.Donahue  
From: Donald.Weisbarth  
Subject: MEETING REQUEST

AS INFO

----- ( Forwarded letter 1 follows ) -----

Date: Monday, 25 January 1999 9:22am ET  
To: Donald.Weisbarth  
Cc: RICHARD.P.O/BYERS, P.G.Piserchia, Shari.Heyob, Michael.Cimato  
From: Bruce.Poff@CONRAIL  
Subject: MEETING REQUEST

Shari sent the response in my absence and she missed one critical point. Byers said if and when Mr. Donahue puts his objection/concern or whatever in writing and the TCU agrees there is a point, he would be willing to arrange a meeting. Have you received Mr. Donahue's document yet?

cc: Carl Yount  
Dave Dufner

----- ( Forwarded letter 1 follows ) -----

Date: Monday, 25 January 1999 7:29am ET  
To: Bruce.Poff  
From: Donald.Weisbarth  
Subject: MEETING REQUEST  
In-Reply-To: The letter of Friday, 22 January 1999 3:02pm ET

JUST WANTED TO KNOW WHERE WE ARE WITH THIS. HAVE THE PARTIES AGREED TO MEET?  
I KNOW BRUCE WAS AGREEABLE BUT I HAVE NOT HEARD IF THE OTHERS AGREED OR NOT>  
PLEASE ADVISE,  
DON

\*END OF PRT.\* George.Donahue

\*END OF PRT\*



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PAGE: 1

Date: Tuesday, 26 January 1999 1:17pm ET  
To: George.Donahue  
From: Donald.Weisbarth  
Subject: MEETING REQUEST

AS INFO

----- ( Forwarded letter 1 follows ) -----

Date: Friday, 22 January 1999 3:02pm ET  
To: Donald.Weisbarth  
From: Bruce.Poff  
Subject: MEETING REQUEST

(This is Shari)

I e-mailed both Richard Byers and Phil Piserchia asking about this meeting quite a while ago - Mr. Byers answered the e-mail but never heard from Mr. Piserchia. If they have gotten back to you agreeing about a meeting, please let me know and we'll set up a time and date. Am I correct you want Bruce to attend also?

----- ( Forwarded letter 2 follows ) -----

Date: Friday, 22 January 1999 2:26pm ET  
To: Bruce.Poff  
From: Donald.Weisbarth  
Subject: MEETING REQUEST

BRUCE.....

HAVE RICHARD BYERS AND PHIL PISERCHIA AGREED TO MEET TO DISCUSS GEO. DONAHUE'S CONCERNS REGARDING THE RUN DOWN PROCEDURES. MR. DONAHUE HAS REQUESTED THAT A MEETING BE ARRANGED AND I DON'T RECALL WHAT THE RESPONSE WAS, OR IF THERE WAS ONE.

PLEASE ADVISE,  
DON WEISBARTH  
DIVISION CHAIRMAN-TCU

\*END OF PRT.\* George.Donahue

\*END OF PRT\*

CONRAIL ELECTRONIC MAIL SYSTEM

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PAGE: 1

Date: Tuesday, 19 January 1999 10:35am ET  
To: J.A.Ponigar  
From: George.Donahue  
Subject: Selections process

I was under the impression this meeting was to determine exactly what happened on run-down day and to remedy the situation if possible. I have prepared a statement with my account of the events of that day, This is what I thought Don and I discussed. You suggested that I should ask the question about the qualifying mileage for the moving package during the run-down process as you were not sure of the answer. Neither Mr. Piscerchie nor Mr. Santoro answered my question. Both told me I did not qualify for the moving package. My pick day was December 1, 1999. On December 2 or 3, 1999, everyone who took a Waynesburg job was told they would get the moving package. Since then it has come to light that he job I bid was incorrect regarding reporting location, relief days and possibly the hours. If a job was left off of this selection list it would have changed the picks from the 13th senior man to the junior man. I hope this is sufficient to set up the meeting. I will give all parties a copy of my statement at the meeting (merely a recount of the days events). Please advise.

----- ( Forwarded letter 1 follows ) -----

Date: Friday, 15 January 1999 5:32pm ET

To: George.Donahue  
Cc: Donald.Weisbarth,  
J.A.Ponigar

From: J.A.Ponigar

Subject: Selections process

In-Reply-To: The letter of Monday, 11 January 1999 10:27am ET

If I am correct, I believe Don had asked you to outline in writing the exact reasons for your complaint. As of this date we have not received same.

Upon receipt of the complaint we will advise.

Sorry for the late response, however, I have been out of town.

\*END OF PRT.\* George.Donahue

\*END OF PRT\*

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PAGE: 1

Date: Monday, 11 January 1999 10:27am ET  
To: J.A.Ponigar  
From: George.Donahue  
Subject: Selections process

Jim, see attached E-Mail concerning violations during the selection process and our attempts to set up a meeting to discuss the problems. The target date for the meeting was the first or second week of January, however Don Wiesbarth is on vacation this week. Would you follow up and get a confirmed date from Mr. Poff, or have one of the other local chairmen handle this matter. Please advise. Also, advise of any time and or procedural constraints which may apply should this matter have to be submitted to the STB for arbitration.

----- ( Forwarded letter 1 follows ) -----

Date: Wednesday, 16 December 1998 10:03am ET  
To: George.Donahue  
From: Donald.Weisbarth  
Subject: Selections process

----- ( Forwarded letter 2 follows ) -----

Date: Wednesday, 16 December 1998 8:45am ET  
To: Donald.Weisbarth, richard\_byers@csx.com, phil\_piserchia@nscorp.com  
From: Bruce.Poff@CONRAIL  
Subject: Selections process

Please advise if you will be available for such a meeting, possibly the first or second week of January.

----- ( Forwarded letter 3 follows ) -----

Date: Friday, 4 December 1998 2:59pm ET  
To: George.Donahue  
Cc: J.A.Ponigar, Donald.Weisbarth, carl\_yount@csx.com  
From: Bruce.Poff@CONRAIL  
Subject: Selections process

We will attempt to set up a meeting, but I cannot assure you that all of the people you requested can be available. I suggest you go through this with your Union Representatives as I understand no violations occurred during the rundown process.

----- ( Forwarded letter 4 follows ) -----

Date: Friday, 4 December 1998 9:02am ET  
To: Bruce.Poff,  
    J.A.Ponigar,  
    Donald.Weisbarth  
From: George.Donahue  
Subject: Selections process

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PAGE: 2

I would like to arrange a meeting with yourself, Jim Ponigar, Don Weisbarth, Carl Yount, Tony Santoro, Phil Piserchie and the CSXT Labor Relations Officer (name unknown). This is in regard to a serious violation which occurred in the conference room during selection process regarding my options and ultimate pick.

George Donahue

\*END OF PRT.\* George.Donahue

\*END OF PRT\*

CONRAIL ELECTRONIC MAIL SYSTEM

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DEPT: CUSTOMER SUPPORT  
PAGE: 1

Date: Friday, 8 January 1999 11:49am ET  
To: Donald.Weisbarth  
From: George.Donahue  
Subject: Selections process

Don, Monday the 11th of January will be the start of the second week of the month. Have we heard any more about a meeting.

George

----- ( Forwarded letter 1 follows ) -----

Date: Wednesday, 16 December 1998 10:03am ET  
To: George.Donahue  
From: Donald.Weisbarth  
Subject: Selections process

----- ( Forwarded letter 2 follows ) -----

Date: Wednesday, 16 December 1998 8:45am ET  
To: Donald.Weisbarth, richard\_byers@csx.com, phil\_piserchia@nscorp.com  
From: Bruce.Poff@CONRAIL  
Subject: Selections process

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----- ( Forwarded letter 3 follows ) -----

Date: Friday, 4 December 1998 2:59pm ET  
To: George.Donahue  
Cc: J.A.Ponigar, Donald.Weisbarth, carl\_yount@csx.com  
From: Bruce.Poff@CONRAIL  
Subject: Selections process

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----- ( Forwarded letter 4 follows ) -----

Date: Friday, 4 December 1998 9:02am ET  
To: Bruce.Poff,  
    J.A.Ponigar,  
    Donald.Weisbarth  
From: George.Donahue  
Subject: Selections process

I would like to arrange a meeting with yourself, Jim Ponigar, Don Weisbarth, Carl Yount, Tony Santoro, Phil Piserchie and the CSXT Labor Relations Officer (name unknown). This is in regard to a serious violation which occurred in the conference room during selection process regarding my options and ultimate

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PAGE: 2

pick.

George Donahue

\*END OF PRT.\* George.Donahue

\*END OF PRT\*

CONRAIL ELECTRONIC MAIL SYSTEM

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PAGE: 1

Date: Tuesday, 29 December 1998 8:00am ET  
To: Donald.Weisbarth  
From: George.Donahue  
Subject: Job Selection Error

Per our conversation on Friday December 18, 1998, regarding the phone call I received from Carman Carlo, Material Supv. at Conway, Pa. As I related to you, Mr. Carman advised that the position I picked was advertised in error as a Conway reporting location. The carrier failed to list a Pitcairn position with Saturday and Sunday relief days. Mr. Carlo also said that the Conway position would have to be changed to Sunday and Monday rest days. Later that day you told me to forget the phone call, that you had talked to Mr. Santoro and they were going to leave the Conway job as is and advertise the Pitcairn job after the split date. This solution is unacceptable. If the rest days on the Conway job are change after the split date, I would have to protect jobs on various tricks and rest days as far west as Toledo Ohio. If the Pitcairn position was on the selection list it would have affected the job selection of myself and every Junior employee. Also if the Pitcairn job were added to the selection list it would reduce the number of buy out positions by one, altering the job selections even further. Please review and advise.

George Donahue

\*END OF PRT.\* George.Donahue

\*END OF PRT\*

CONRAIL ELECTRONIC MAIL SYSTEM

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PAGE: 1

Date: Wednesday, 16 December 1998 10:03am ET  
To: George.Donahue  
From: Donald.Weisbarth  
Subject: Selections process

----- ( Forwarded letter 1 follows ) -----  
Date: Wednesday, 16 December 1998 8:45am ET  
To: Donald.Weisbarth, richard\_byers@csx.com, phil\_piserchia@nscorp.com  
From: Bruce.Poff@CONRAIL  
Subject: Selections process

Please advise if you will be available for such a meeting, possibly the first or second week of January.

----- ( Forwarded letter 2 follows ) -----  
Date: Friday, 4 December 1998 2:59pm ET  
To: George.Donahue  
Cc: J.A.Ponigar, Donald.Weisbarth, carl\_yount@csx.com  
From: Bruce.Poff@CONRAIL  
Subject: Selections process

We will attempt to set up a meeting, but I cannot assure you that all of the people you requested can be available. I suggest you go through this with your Union Representatives as I understand no violations occurred during the rundown process.

----- ( Forwarded letter 3 follows ) -----  
Date: Friday, 4 December 1998 9:02am ET  
To: Bruce.Poff,  
    J.A.Ponigar,  
    Donald.Weisbarth  
From: George.Donahue  
Subject: Selections process

I would like to arrange a meeting with yourself, Jim Ponigar, Don Weisbarth, Carl Yount, Tony Santoro, Phil Piserchie and the CSXT Labor Relations Officer (name unknown). This is in regard to a serious violation which occurred in the conference room during selection process regarding my options and ultimate pick.

George Donahue

\*END OF PRT.\* George.Donahue

\*END OF PRT\*



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PAGE: 1

Date: Tuesday, 15 December 1998 8:05am ET

To: George.Donahue

From: Donald.Weisbarth

Subject: Selections process

In-Reply-To: The letter of Monday, 14 December 1998 1:04pm ET

George.....

I spoke with Bruce Poff on Friday and was advised that he is attempting to assemble as many of the players as possible for a meeting to discuss this issue.

I will keep on it and advise.

Don

\*END OF PRT.\* George.Donahue

\*END OF PRT\*

CONRAIL ELECTRONIC MAIL SYSTEM

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PAGE: 1

Date: Friday, 4 December 1998 2:59pm ET  
To: George.Donahue  
Cc: J.A.Ponigar, Donald.Weisbarth, carl\_yount@csx.com  
From: Bruce.Poff@CONRAIL  
Subject: Selections process

We will attempt to set up a meeting, but I cannot assure you that all of the people you requested can be available. I suggest you go through this with your Union Representatives as I understand no violations occurred during the rundown process.

----- ( Forwarded letter 1 follows ) -----

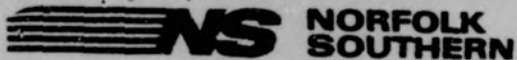
Date: Friday, 4 December 1998 9:02am ET  
To: Bruce.Poff,  
    J.A.Ponigar,  
    Donald.Weisbarth  
From: George.Donahue  
Subject: Selections process

I would like to arrange a meeting with yourself, Jim Ponigar, Don Weisbarth, Carl Yount, Tony Santoro, Phil Piserchie and the CSXT Labor Relations Officer (name unknown). This is in regard to a serious violation which occurred in the conference room during selection process regarding my options and ultimate pick.

George Donahue

\*END OF PRT.\*      George.Donahue

\*END OF PRT\*



Norfolk Southern Corporation  
223 East City Hall Avenue  
Norfolk, Virginia 23510-1728

Philip G. Piserchia  
Director  
Labor Relations  
(757) 823-5316

February 18, 1999

CRA-TCU

Mr. Bruce D. Poff  
General Manager  
15 Summit Park Drive  
Pittsburgh, PA 15275

Dear Mr. Poff:

This refers to your letter with an attached statement from Mr. George J. Donahue, a clerk at the National Customer Service Center who believes that he has been improperly denied relocation benefits. I understand that Mr. Donahue signed up for a position at Conway yard during the clerical run-down in November.

Mr. Donahue misunderstands certain matters concerning the New York Dock conditions (NYD). First, the implementing agreement is not an election separate and apart from NYD; rather it was negotiated under NYD in order to fulfill the parties respective obligations under those conditions. Second, the employee's NYD right to elect between applicable protective conditions is triggered only when he has been determined to be entitled to benefits under NYD. This has not occurred; therefore, there is no basis to make such an election.

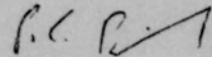
Mr. Donahue's assertion that he is entitled to a relocation package because of a mileage standard in NYD is also incorrect. NYD does not provide an objective time or distance commuting test. Each case is analysed on its own merits. Arbitration under NYD is provided if an employee believes he has been unreasonably denied benefits. The 30.1 mile commute Mr. Donahue describes in his letter is hardly unreasonable.

Mr. Bruce D. Poff  
February 18, 1999  
Page 2

Further, had Mr. Donahue chosen to move to Waynesburg, NS would have declined any request for moving benefits or lump sums. Under NYD an employee is entitled to relocation benefits only when he is required to move his residence as a result of the transaction. Because Mr. Donahue had positions open to him which did not require relocation, NS would have treated his move to Waynesburg as voluntary, and he would therefore have been ineligible for relocation benefits.

In light of the above, I do not see the need for a meeting with Mr. Santoro on this subject. Please feel free to provide a copy of this letter to Mr. Donahue.

Very truly yours,



P. G. Piserchia

cc: R. L. Byers, CSX  
C. Yount, CSX  
R. McCarthy, SAA  
J. L. Glass, CRC  
M. R. MacMahon  
D. W. Dufner

STB FD

33288

2-19-99

J

UNION

FILE IN DOCKET

Linda Morgan  
Chairperson  
Surface Transportation Board

February 6, 1999

Conrail Labor Contract



With all due respect to the Board, your letter dated January 12, 1999 does not adequately explain why the Board will not allow the undersigned to become involved in our labor implementation process at this time.

We did not seek Board determination that the Implementing Agreement between Norfolk Southern Railway Company (NS) and CSX Transportation Company (CSXT) with respect to Consolidated Rail Corporation labor contracts fails to satisfy the provisions of Article I Section 4 of the New York Dock (NYD). To the contrary, in our letter dated November 25, 1998, we acknowledged that the Implementing Agreement did satisfy Article I, Section 4. However, it does not satisfy numerous concerns that we have or the intent of the NYD, and it contradicts Article I Section 3, which states:

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 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 arrangements 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 benefits under such other provisions which he does not so elect; provided further, that the benefits under this Appendix, or any other arrangements, 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 arrangements 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."

Our reference to Article I Section 11 of the NYD as a means of resolving this dispute may have been in error, as Section 11 specifically exempts Section 4 and 12 from this method of resolution. However, we should have made reference to the Federal Appeals Court ruling, that in part upheld the decision of Judge James C. Turk, which states "that the Interstate Commerce Act gave full jurisdiction over merger related job changes to the Surface Transportation Board, because it reviews all aspects of railroad mergers."

To adequately explain the Board's refusal to allow us to become involved in the labor implementation process at this time, the following concerns must be addressed:

The Implementing Agreement (Protection Agreement) should have been part of the Conrail National Agreement (CNA), making it subject to employee ratification. Why were we denied this right?

We feel there was insufficient explanation and inadequate time to read and fully understand an agreement this complicated. Although all parties offered an informational meeting to explain the complexities of the Implementing Agreement, why did the carriers schedule their meetings one day prior to selection day?

While there were numerous other discrepancies, the selection list was incomplete and the job descriptions were vague to the point of nondescript, we feel we were rushed to make irrevocable choices, while new options were being introduced right up until and including day one of the selection process. Doesn't this indicate the Implementing Agreement was incomplete when originally signed by NS, CSXT and TCU?

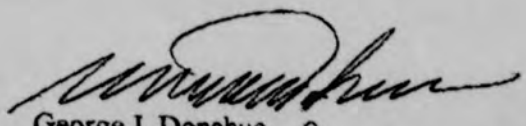
The Board declined to allow the carriers to override the Conrail contracts forcing the parties to negotiate an agreement. Was it the intent of the Board to allow the parties to reach an Implementing Agreement which satisfies the protocol of Article I, Section 4 of the NYD, but fails to satisfy the intent of Article I, Section 3, which is intended to protect the rights of the employees?

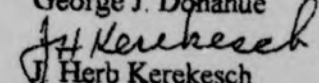
We are not concerned with the formalities or protocol of reaching an Implementing Agreement as outlined in Article I, Section 4, of the NYD. However we are concerned with the functionality of such an agreement as it relates to protecting the rights of Conrail's employees as outlined in Article I, Section 3 of the NYD.

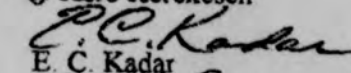
For these reasons and items 2 through 5 of our letter dated November 23, 1998, we respectfully request the Board allow us to become involved in this process as it affects our lives and families.

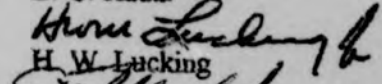
We request the Board revisit this file and make this agreement comparable to previously approved transactions by the STB, thereby fulfilling the intent of Article I, Section 3, of the New York Dock.

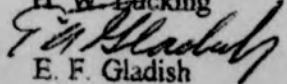
cc: The Terasi Law Firm  
All Pennsylvania Senators  
All Pennsylvania Congressmen  
Association for Union Democracy

  
George J. Donahue

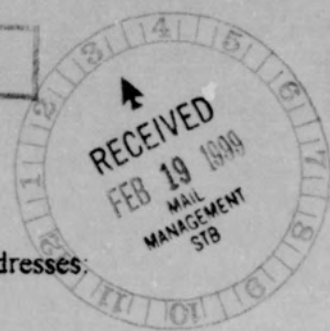
  
Herb Kerekesch

  
E. C. Kadar

  
H. W. Lucking

  
E. F. Gladish

FILE IN DOCKET



February 19, 1999

Linda Morgan  
Surface Transportation Board

Please direct reply to the above message to one or both of the following addresses:

Employees of Conrail  
RIDC Park West  
15 Summit Park Drive  
Pittsburgh, PA

or:

George Donahue  
258 Pennsylvania Blvd.  
Pittsburgh, PA 15228

RECEIVED  
SURFACE TRANSPORTATION  
BOARD  
FEB 22 5 28 PM '99  
OFFICE OF  
CHAIRMAN MORGAN



NAMES OF PETITIONERS

TO: LINDA MORGAN, CHAIRPERSON - SURFACE TRANSPORTATION BOARD  
SUBJECT: CONRAIL LABOR CONTRACT



PRINT

SIGN

P.A. BURCHFIELD

P.A. Burchfield

G. J. CORKERY

G. J. Corkery

G.W. Burkett

Glen W. Burkett

C. J. MILK

C. J. Milk

G.F. Kuzma

G.F. Kuzma

E. RIEDEL

E. Riedel

D.R. BEUK

D. Beuk

J.R. BOBEK

J. Bobek

L.A. DANFRIEO

L. Danfrio

R. W. Gordon

Richard W. Gordon

W. D. HOLLAMAN

W. D. Holloman

L.J. DOONE

L. J. Doone

L. K. HERON

Lynda A. Heron

Chris CATAPPA

Chris Catappa

J.D. COOK

J. D. Cook

## NAMES OF PETITIONERS

TO: LINDA MORGAN, CHAIRPERSON - SURFACE TRANSPORTATION BOARD  
 SUBJECT: CONRAIL LABOR CONTRACT

PRINT

SIGN

ROBERT J. RYAN	Robert J. Ryan
D.R. McMULLEN	D.R. McMullen
DAVID A. KLIMENKO	DA Klmenko
CL GARCIA	Cl Garcia
David Post	Post
PHYLLIS MERHAUT	Phyllis Merhaut
CORNELIUS ROGERS	Cornelius Rogers
Susan A. Birtle	Susan A. Birtle
WILLIAM A. MCKNIGHT	William A. McKnight
Stephanie V. Williams	Stephanie V. Williams
JAY T. FORNWALT, JR.	Jay T. Fornwalt, Jr.
MARK PRANK	Mark Prank
JEROME CARUBIA	Jerome Carubia
PETER R. SPOSITO	Peter R. Sposito
F.L. SIGNORELLI	F.L. Signorelli

NAMES OF PETITIONERS

TO: LINDA MORGAN, CHAIRPERSON - SURFACE TRANSPORTATION BOARD  
SUBJECT: CONRAIL LABOR CONTRACT

PRINT

SIGN

Thom Kalmeyer

Thom Kalmeyer

WAYNE WILLOUGHBY

Wayne Willoughby

Robert Griffith, JR.

Robert Griffith, Jr.

LOUIS NEWMAN

Louis Newman

LAWRENCE J ZIGENEL

Lawrence J. Zigenel

CK. CRAWFORD

CK Crawford

J F SOMMERS

James J Sommers

TERRI I. KATLEN

Terri I. Katlen

Kathy I. Brown

Kathy I. Brown

DEBORAH J. WEBB

Deborah J Webb

MICHAEL J. GIANNOTTA

Michael J Giannotta

Thomas L IGOU

Thomas Lynn Igou

ROBERT H JONES

R H Jones

TUNISIA P. MASON

Tunisia P. Mason

Gregory K. Reilley

Gregory K. Reilley

## NAMES OF PETITIONERS

TO: LINDA MORGAN, CHAIRPERSON - SURFACE TRANSPORTATION BOARD  
 SUBJECT: CONRAIL LABOR CONTRACT

PRINT	SIGN
B. L. KEENEEN	B. L. Keenen
C. Findlay	C Findlay
R. P. MELI	R. Ameli
J. H. QUATMAN	J. H. Quatman
R. M. ESCHNER	R. M. Eschner
V. S. HAMILTON	V. S. Hamilton
M. E. SOMMERS	M. E. Sommers
P. J. NICHOLS	P. J. Nichols
N. E. RENNIE	N. E. Rennie
N. L. SAWYER	N. L. Sawyer
D. L. MAUDRY	D. L. Maudry
J. D. COSENTINO	J. D. Cosentino
E. F. HALL	E. F. Hall
P. L. CABLE	P. L. Cable
D. J. HELLYER	D. J. Hellyer

## NAMES OF PETITIONERS

TO: LINDA MORGAN, CHAIRPERSON - SURFACE TRANSPORTATION BOARD  
 SUBJECT: CONRAIL LABOR CONTRACT

PRINT

SIGN

R W M <sup>c</sup> Adams	R W M <sup>c</sup> ADAMS
K R Fye	K. R. Fye
KATHLEEN LEHANE	Kathleen Lehane
W. L. MAYNARD	W. L. Maynard
WAYNE R LATIMER	Wayne R Latimer
R. L. Blackburn	Robert L Blackburn
R BORRO	R Borro
P E HUMPHREYS	P E Humphreys
C. F. MIGNANELLI	C. F. Mignanelli
J. T. SPERANZA	J. T. Speranza
L. D. BOSAK	L. D. Bosak
L. N. HAUGER	L. N. Hauger
J. W. HEDECKER SR.	J. W. Hedeker Sr.
J. R. FRIEBIS	J. R. Friebis
K. S. HENERY	K. S. Henry

NAMES OF PETITIONERS

TO: LINDA MORGAN, CHAIRPERSON - SURFACE TRANSPORTATION BOARD  
SUBJECT: CONRAIL LABOR CONTRACT

PRINT

SIGN

J. D. CARTER

Jack D. Carter

J. C. ZIMPFER

Jama C. Zimper

N. G. MUHA

Doreen D. Muha

L. R. BUTLER

Linda R. Butler

C. BOGER

C. Boger

G. R. MANCO

G.R. Manco

T. E. OBRINGER

T. E. Obinger

M. J. SALEY

my Saley

G. D. HORSLEY

G. D. Horsley

P. F. QUIGLEY

P.F. Quigley

HM VUCETIC

Hm Vucetic

R. HERRERA

~~RA SERRERA~~

Gen. Babcock

Eugene S. Babcock

James F. Talavico

James F. Talavico

S. P. GREGELY

S.P. Gregely

## NAMES OF PETITIONERS

TO: LINDA MORGAN, CHAIRPERSON - SURFACE TRANSPORTATION BOARD  
 SUBJECT: CONRAIL LABOR CONTRACT

PRINT	SIGN
Debra J Stephens	Debra J Stephens
HOWARD E. HAYES	Howard E. Hayes
ANTHONY R. GERACI	Anthony R. Geraci
CAROLLYNN FRALEY	Carol Lynn Fraley
John B. Kidd	John B. Kidd
DAVID A. NICHOLS	David A. Nichols
Curtis F. Smith	Curtis F. Smith
Gary D. Brown	Gary D. Brown
E. L. EAKINS	E. L. Eakin
DAVID R. STEPHENS	David R. Stephens
EDWARD J GOLETZ	Edward J. Goletz
DONALD R. ROSBAUGH	Donald R. Rosbaugh
THOMAS V. WITHERS	Mary Englehart
GARY ENGLEHART	Mary Englehart
TOM BUCKINGHAM	T. Buckingham

NAMES OF PETITIONERS

TO: LINDA MORGAN, CHAIRPERSON - SURFACE TRANSPORTATION BOARD  
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PRINT	SIGN
JAMES RAE MOON	James Rae Moon
B.A. MITCHELL	B.A. Mitchell
ELIZABETH WILLIAMS	Elizabeth Williams
ROBERT J. KOWNACK	Robert J. Kownack
R. ELLENWOOD	R. Ellenwood
FRANCIS H. NORTHROP	F. H. Northrop
RAYMOND A. STIGLICH	R.A. Stiglich
JULIENNA G. MILLER	Julienna G. Miller
<del>F. J. ...</del>	F. J. ...
J. A. BARABAS	J. A. BARABAS
JUDY SPADGLE	Judy Spadgle
WILLIAM M. LIST	William M. List
RALPH CARROLL <del>Ralph Carroll</del> L.K. Paxton	Ralph Carroll L.K. Paxton
M. J. CIESLAK	M.J. Cieslak



## NAMES OF PETITIONERS

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PRINT	SIGN
<u>N. M. DEAL</u>	<u>N M Deal</u>
<u>B. L. WATSON</u>	<u>B. L. Watson</u>
<u>J. M. BUSH</u>	<u>JM Bush</u>
<u>A. P. DESHAIS</u>	<u>AP Deshais</u>
<u>J. C. SHUSS</u>	<u>J. C. Shuss</u>
<u>Mary McKnight</u>	<u>Mary McKnight</u>
<u>SAMUEL P. WAITE</u>	<u>Samuel P. Waite</u>
<u>DAVID J. NEMES</u>	<u>David J. Nemes</u>
<u>KEVIN J. CHANDLER</u>	<u>Kevin J. Chandler</u>
<u>Eugene F. DAVIDSON</u>	<u>Eugene F Davidson</u>
<u>CANDICE R. ECKHARDT</u>	<u>Candice Eckhardt</u>
<u>JOSEPH WEBER JR</u>	<u>Joseph Weber Jr.</u>
<u>Charles Kelley</u>	<u>Charles Kelley</u>
<u>DONALD H. BUCK</u>	<u>D. H. Buck</u>
<u>HENRY J. WOZETEK</u>	<u>Henry J. Wozetek</u>

NAMES OF PETITIONERS

TO: LINDA MORGAN, CHAIRPERSON - SURFACE TRANSPORTATION BOARD  
SUBJECT: CONRAIL LABOR CONTRACT

PRINT

SIGN

Joseph Magyaros

Joseph E Magyaros

C E McCourt

C E McCourt

Louis Cucciorini

L Cucciorini

S.G. PRICE

Sglin

D.R. BURHAM

DR Burham

JA MARCOCELLI JR

Ja marcell Jr

Madeline V Conti

Madeline V Conti

CF Burgoon

CF Burgoon

R.G. LINCK

R.G. Linck

B.F. AKER

Bmer f Aker

J.T. PHILBIN

J.T. Philbin

David W Clark

David W Clark

S.E. VONSCIO

S.E. Vonscio

Lloyd Parks

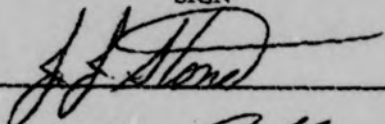
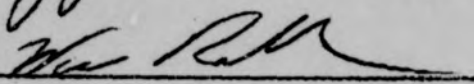
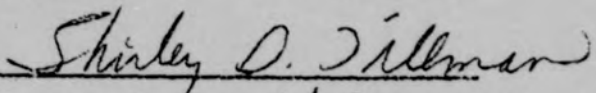
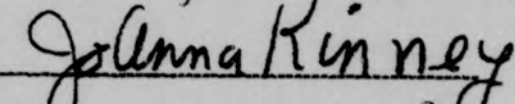
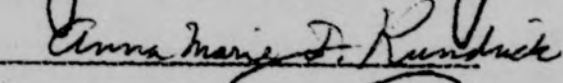
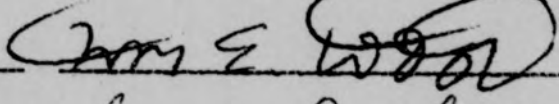
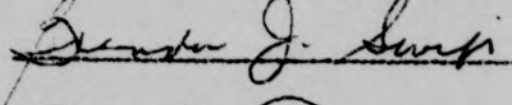
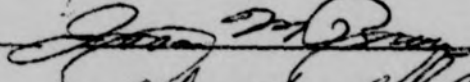
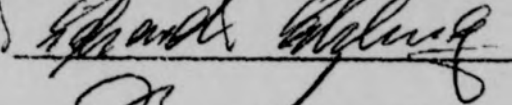
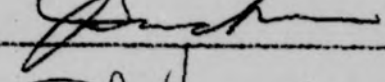
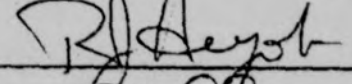
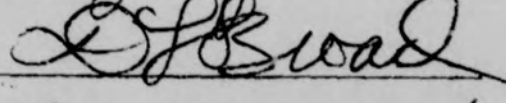
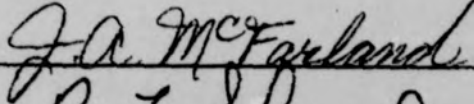
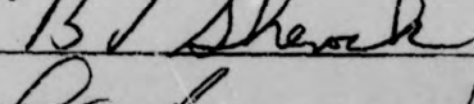
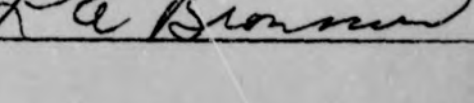
Lloyd PARKS

ML DeAngelis

mL DeAngelis

NAMES OF PETITIONERS

TO: LINDA MORGAN, CHAIRPERSON - SURFACE TRANSPORTATION BOARD  
 SUBJECT: CONRAIL LABOR CONTRACT

PRINT	SIGN
<u>J. J. STONE</u>	<u></u>
<u>W R RADKE</u>	<u></u>
<u>Shirley D. Tillman</u>	<u></u>
<u>JOANNA KINNEY</u>	<u></u>
<u>ANNAMARIE F. KUNDRECK</u>	<u></u>
<u>WM E. WOOD</u>	<u></u>
<u>BRENDA J. SWIFT</u>	<u></u>
<u>Joan M Brown</u>	<u></u>
<u>S. SAHLING</u>	<u></u>
<u>JK Buckner</u>	<u></u>
<u>RJ HEYOB</u>	<u></u>
<u>DL BROAD</u>	<u></u>
<u>J.A. McFarland</u>	<u></u>
<u>B. L. SHEVOCK</u>	<u></u>
<u>L. A. BRANNAN</u>	<u></u>

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SUBJECT: CONRAIL LABOR CONTRACT

PRINT

SIGN

R M Dwoich

R M Dwoich

F G Archual

F. G. Archual

R. L. JONES

Ruby R Jones

B. O. BOWLANDER

B. O. Bowlander

SL SHEL

SL Schell

NL BRENNER

NL Brenner

Y. J. BETTS

Yvonne J Betts

M B QUAGUARUCCI

Mary B. Quaguarucci

K. LEE

Kathryn Lee

J C BOLEK

J C Bolek

C E FROM

C E From

31 HEAD

31 HEAD

A E SILVIA

A E Silvia

M. P. ORSI

Michael P. Orsi

W. E. WALTON

William E Walton

## NAMES OF PETITIONERS

TO: LINDA MORGAN, CHAIRPERSON - SURFACE TRANSPORTATION BOARD  
 SUBJECT: CONRAIL LABOR CONTRACT

PRINT

SIGN

JUDITH BARANOWSKIJ. BaranowskiNORM SNYDERNorm SnyderWILLIAM R. ROWICKWill R. RowickDIANE J. JENSENDiane JensenPAUL LIVADAPaul LivadaRICK BAKERRick BakerSTEPHEN PALKO JRStephen Palko Jr.KEVIN S. BARINOKevin S. BarinoDJ GRAHAMDJ GrahamHC MAYVILLEH.C. MayvilleANDREW T. LETLOWAndrew T. LetlowMARY ANN BRESCHMaryAnn BreschBARBARA KESSLERBarbara KesslerNAPOLEON BOYDNapoleon BoydB L BARCHBl Barch

NAMES OF PETITIONERS

TO: LINDA MORGAN, CHAIRPERSON - SURFACE TRANSPORTATION BOARD  
SUBJECT: CONRAIL LABOR CONTRACT

PRINT

SIGN

Robert J. Lindsay

Robert J. Lindsay

Denise L. Hollow

Denise L. Hollow

LEONARD L. PIEKNIK

L. L. Pieknik

CANDACE L. MORENO

C. L. Moreno

JAMES R. PECORI

James R. Pecori

ARTHUR L. WYSON

Arthur L. Wyson

HENRY T. WRIGHT

Henry T. Wright

WILLIAM L. ROBINSON

William L. Robinson

VANESSA DANIELL

Vanessa Daniel

ROBERT D. RUNYAN

Robert D. Runyan

JOSEPH R. SCOTT

Joseph R. Scott

CHARLOTTE M. BADEE

Charlotte M. Bader

JAMES J. CORNELLY

James J. Cornely

KENNETH L. TRAUGHBER

Kenneth L. Traughber

DAVID L. RENCH

David L. Rensch

## NAMES OF PETITIONERS

TO: LINDA MORGAN, CHAIRPERSON - SURFACE TRANSPORTATION BOARD  
 SUBJECT: CONRAIL LABOR CONTRACT

PRINT

SIGN

<u>THOMAS B McDONALD</u>	<u>Thomas B McDonald</u>
<u>Patricia S. Murphy</u>	<u>Patricia S. Murphy</u>
<u>DOUGLAS A. GORDON</u>	<u>Douglas A Gordon</u>
<u>ROBERT K NICKENS</u>	<u>Robert K Nickens</u>
<u>JOHN T. LAZAROW</u>	<u>John T. Lazarow</u>
<u>JAMES P. RANDALL</u>	<u>James P Randall</u>
<u>REYNOLD L. REED</u>	<u>Reynold L Reed</u>
<u>CHRIS KWIECINSKI</u>	<u>Chris Kwiecinski</u>
<u>FRANK SINDONE</u>	<u>Frank J Sindone</u>
<u>PAUL M KNAUSS</u>	<u>Paul M. Knauss</u>
<u>GEORGE S. THACK</u>	<u>George S Thack</u>
<u>W. J. McLEAN</u>	<u>W. J. McLean</u>
<u>CATHERINE L. TROUTMAN</u>	<u>Catherine L. Troutman</u>
<u>EDWARD J. GARDNER</u>	<u>Edward J Gardner</u>
<u>RICHARD W. WHITE</u>	<u>Richard W White</u>

NAMES OF PETITIONERS

TO: LINDA MORGAN, CHAIRPERSON - SURFACE TRANSPORTATION BOARD  
SUBJECT: CONRAIL LABOR CONTRACT

PRINT

SIGN

PRINT	SIGN
J J. VASEY	<i>J J Vasey</i>
DA Bowlander	<i>DA Bowlander</i>
D.E. Bulla	<i>D E Bulla</i>
R.J. Falvo	<i>R J Falvo</i>
Z.C. Di Marco	<i>Z C Di Marco</i>
J. w. Dymond	<i>J. w. Dymond</i>
CT Miles	<i>Clete Miles</i>
W A Richards	<i>W A Richards</i>
JOE KOSLIK	<i>Joe Koslik</i>
Ron Wood	<i>Ron Wood</i>
BONNIE KOSLIK	<i>Bonnie S Koslik</i>
Reppie Hill	<i>Reppie Hill</i>
KON KASPER	<i>Kon Kasper</i>



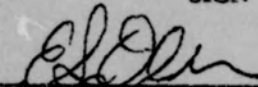
NAMES OF PETITIONERS

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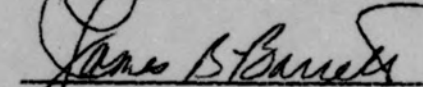
PRINT

SIGN

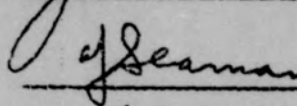
E. S. Olden



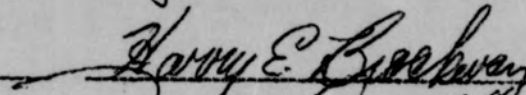
JAMES B. BARRETT



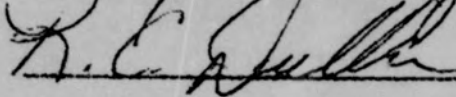
A. J. SEAMAN



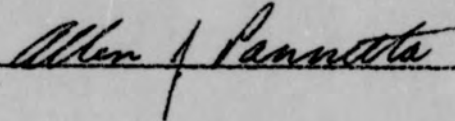
H. E. BROCKWAY



R. C. DULLEN



ALLEN J. PANNETTA



Blank lines for additional signatures, organized into two columns corresponding to the 'PRINT' and 'SIGN' headers.

NAMES OF PETITIONERS

TO: LINDA MORGAN, CHAIRPERSON - SURFACE TRANSPORTATION BOARD  
SUBJECT: CONRAIL LABOR CONTRACT

PRINT

SIGN

J.E. M<sup>CA</sup> CARTY

J.E. M<sup>CA</sup> Carty

A.E. Barrett

Anna E. Barrett

DAVID M. PIERCE

David M. Pierce

JOHN F. FERENCY

John F. Ferency

P.J. HOQUE

PM Helle

D.F. McEACHERN

Donna J. McEachern

Blank lines for additional names and signatures.



NAMES OF PETITIONERS

TO: LINDA MORGAN, CHAIRPERSON - SURFACE TRANSPORTATION BOARD  
SUBJECT: CONRAIL LABOR CONTRACT

PRINT

SIGN

J. E. Myers

J. E. Myers 791071

E. W. Getty

E. W. Getty

R. A. Komacek

R. A. Komacek

B. M. Bell

Barbara M Bell

J. I. PARSON

J. I. Parson

G. L. Piccioni

G. L. Piccioni

L. C. FERRELL

L. C. Ferrell

J. M. GLUSICA

J. M. Glusica

R. A. CHARNOVICH

R. A. Charnovich

P. D. Appleby

P. D. Appleby

L. D. ROBERTS

L. D. Roberts

D. A. DIDDOCK

D. A. Diddock

J. J. FLAHERTY JR.

John J. Flaherty Jr



Office of the Chairman

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

January 12, 1999

Mr. George J. Donahue  
258 Pennsylvania Blvd.  
Pittsburgh, PA 15228

Dear Mr. Donahue:

This responds to your letter of November 25, 1998, on behalf of yourself and numerous other employees of Conrail seeking a Board determination that the implementing agreement between Norfolk Southern Railway Company and CSX Transportation Company with respect to the Consolidated Rail Corporation labor contracts fails to satisfy the provisions of Article I, Section 4 of the New York Dock conditions that we imposed upon our approval of the Conrail acquisition in 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, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998).

As your letter recognizes, Article I, Section 11 of New York Dock provides the means for resolving all disputes of the sort you have sought to bring before the Board.<sup>1</sup>

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<sup>1</sup> As relevant, that section provides:

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 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 railroads, 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.

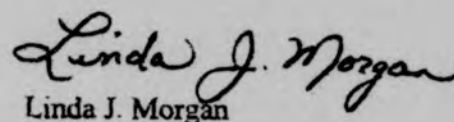
(continued...)

The courts have consistently interpreted the requirement to resort to the arbitration provided in that section prior to bringing the issue before the Board to be mandatory. See, Walsh v. I.C.C., 723 F.2d 570, 573-74 (7<sup>th</sup> Cir. 1983). The Interstate Commerce Commission (ICC), the Board's predecessor agency, with approval of the court thus consistently refused to become involved in resolving disputes or rendering interpretations of the type you seek prior to the matter having gone to arbitration. See also United Transp. Union v. U.S., 905 F.2d 463 at 470 (D. C. Cir. 1990). Thus, it is consistent with almost two decades of consistent precedent and practice that the Board not become involved in the process at this stage of the proceedings.

In this regard, I should note, however, that the Board, at the request of your labor organization, and others, specifically declined to find, as had been requested by Norfolk Southern and CSX, that overriding Conrail's contract provisions was necessary to implement the transaction. Thus, arbitrators will not be compelled by any statement of the Board in this case to override any particular contract provisions. After this 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 determining which decisions of arbitrators it will review. See Chicago and Northwestern Transp. Co.—Abandonment—Near Dubuque and Oelwein, IA, 3 I.C.C.2d 729 (1987) (Lace Curtain), aff'd sub nom. International Bhd. Of Elec. Workers v. ICC, 862 F.2d 330 (D.C. Cir. 1988).

I hope that the foregoing adequately explains my reasons for declining to entertain your request to become involved in the labor implementation process at this stage. The Board, however, can be of assistance to you in pursuing your arbitral remedies, should you decide to do so. If you need further information, please do not hesitate to contact our Office of Congressional and Public Services at (202) 565-1592.

Sincerely,

  
Linda J. Morgan

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

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.

Linda Morgan  
Chairperson  
Surface Transportation Board

November 23, 1998  
Conrail Labor Contract

By its approval of past class I railroad transactions, the Surface Transportation Board (STB) has set precedent as to its interpretation of contracts which satisfy the conditions of the New York Dock (NYD).

The Implementing Agreement between Norfolk Southern Railway Company, Norfolk Southern Corporation (collectively NS), CSX Transportation, Inc. (CSXT), Consolidated Rail Corporation (CRC) and the Transportation Communications International Union (TCU) may satisfy Article I, Section 4 of the NYD, yet it contradicts Article I, Section 3 and does not satisfy a number of other conditions, or the intent of the NYD. Also, it does not protect the employee by applying industry standards set forth in contracts of previous transactions approved by the STB.

(1) The Conrail National Agreement (CNA) was subject to employee ratification per TCU constitution. In as much as the protection agreement should have been part of the CNA, This Implementing Agreement should also be subject to rank and file vote. This is apparent from other agreements previously approved by the STB.

(2) The severance package of \$72,500 is significantly less than industry standards set in the UP-SP and BN-ATSF contracts.

(3) The 50 mile plus qualifying radius for moving expenses is contrary to the conditions of the NYD in Article I, Section 1, Par. E and Article I, Section 5. There is nothing in the NYD which permits the use of federal statutes to adjust the mileage radius nor any precedent in the rail industry to justify this change.

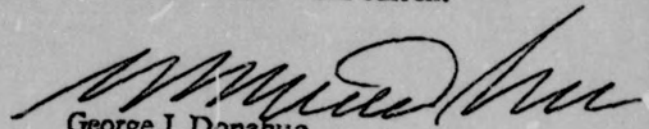
(4) The language, which protects spouses and family in the event of extreme or adverse conditions, that may occur after the move is insignificant compared to industry standards set in past contracts.

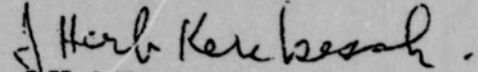
(5) The proposed selection process is inappropriate because, the time allotments from the time the employees see the job selection list is insufficient to discuss with family members prior to making one's selection. Also, the job descriptions are incomplete with regard to various shift and start time.

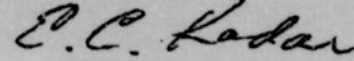
We the undersigned employees dispute this contract (Article I, Section 11, Par. A. This contract is unfair and inequitable. It does not meet the conditions of the NYD and is not comparable to industry standards previously approved by the STB. Any time or procedural restrictions should be set aside as the employees were not privy to the content

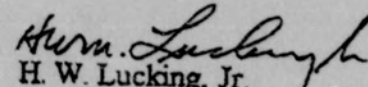
of this contract until Nov. 7, 1998. We request that this dispute be made part of the record and that the STB revisit this contract and related material and make the appropriate adjustments to meet the conditions of the NYD, and bring this contract in line with current class I railroad industry standards.

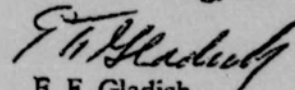
- cc. The Tarasi Law Firm
- All Pennsylvania Senators
- All Pennsylvania Congressmen
- Association for Union Democracy
- ~~Department of Justice Anti-Trust Div.~~
- ~~Department of Labor~~

  
 George J. Donahue

  
 J. Herb Kerekesch

  
 E. C. Kadar

  
 H. W. Lucking, Jr.

  
 E. F. Gladish



STPB

FD

33388

1-27-99

J

BUSINESS



Office of the Chairman

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

FILE IN DOCKET

FD-33388

January 27, 1999

Mr. Daniel B. Walsh  
President/CEO  
The Business Council of New York State, Inc.  
152 Washington Avenue  
Albany, NY 12210

Dear Mr. Walsh:

Thank you for your recent letter regarding the restoration of competitive rail service to points east of the Hudson. You request that the Surface Transportation Board (Board) approve the New York State and New York City petitions to allow rail service competition on the east side of the Hudson River.

By decision served on December 18, 1998, in STB Finance Docket No. 33388 (Decision No. 109), the Board addressed various matters relating to Canadian Pacific Railway Company's trackage/haulage rights over Consolidated Rail Corporation's east-of-the-Hudson line between Albany and Fresh Pond, NY, including the method of compensation. Other matters relating to Housatonic Railroad Company and Providence & Worcester Railroad Company were also addressed.

The Board has received petitions for reconsideration of Decision No. 109. Because the petitions are pending before the Board, it would be inappropriate for me to comment on the merits of the appeals.

I appreciate your interest in this matter and am having your letter made a part of the public docket in STB Finance Docket No. 33388.

Sincerely,

*Linda J. Morgan*  
Linda J. Morgan

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Golub Corporation  
**VICE CHAIRMAN**  
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Texaco Inc.  
**VICE CHAIR/FINANCE**  
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Crain's New York Business  
**PRESIDENT/CEO**  
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Fort William Henry Corporation  
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**Stanley J. Grubel**  
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**Jerry Hayes**  
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Utica National Insurance Group  
**Hector M. Hyacinthe**  
Peckard Frank Organization, Inc.

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Fleet National Bank (NY)

**Harry P. Kamen**  
MetLife

**Bernard J. Kennedy**  
National Fuel Gas Company

**David H. Komarsky**  
Merrill Lynch & Co., Inc.

**Donald R. Led Duke**  
Barry, Bette & Led Duke, Inc.

**Stanford Lipsey**  
The Buffalo News

**John R. Loveland**  
O'Brien & Gere Limited

**John E. Mack**  
Central Hudson Gas & Electric

**Michael D. Marvin**  
Mapinfo Corporation

**F.X. Matt, II**  
F.X. Matt Brewing Company

**William D. Matthews**  
Onida Ltd.

**Eugene R. McGrath**  
Consolidated Edison Inc.

**Brian J. McNeill**  
Anheuser-Busch, Inc.

**Nicholas G. Moore**  
Coopers & Lybrand LLP

**Eric Mower**  
Eric Mower and Associates

**Robert L. Nardelli**  
GE Power Systems

**Heldi A. Nauseou**  
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**Gerhard J. Neumoller**  
Ecology & Environment, Inc.

**David W. Norton**  
Dresser-Rand Company

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Cygnus Management Group, LLC

**Ronald M. Pirtle**  
General Motors Corporation

**James E. Preston**  
Avon Products, Inc.

**Chris Pulley**  
Buck & Pulley, Inc.

**Wesley D. Ratcliff**  
Advanced Technological Solutions, Inc.

**Lewis Rudin**  
Rudin Management Company, Inc.

**Linda S. Sanford**  
IBM Corporation

**Muriel Siebert**  
Muriel Siebert & Company, Inc.

**Robin B. Smith**  
Publishers Clearing House

**Paul S. Speranza, Jr.**  
Wegmans Food Markets, Inc.

**William C. Steere, Jr.**  
Pfizer Inc.

**Wesley W. von Schack**  
New York State Electric & Gas

**Shella W. Wellington**  
Catalyst

**Robert G. Wilners**  
Manufacturers and Traders Trust Company



**DANIEL B. WALSH**  
President/CEO

## The Business Council of New York State, Inc.

December 9, 1998

FILE IN DOCKET

The Honorable Linda J. Morgan  
Chairman Surface Transportation Board  
Attention: STB Finance Docket No. 333888  
Surface Transportation Board  
1925 K Street, NW  
Washington DC 20423-0001

Dear Chairman Morgan:

**RE:** Finance Docket No. 33388 (Sub-No. 69), CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Agreements - Conrail Inc. and Consolidated Rail Corporation.

The Business Council of New York State, Inc. wishes to comment on the above referenced proceeding with regard to the division and acquisition of Conrail, Inc., and the Consolidated Rail Corporation by the CSX Corporation (CSX) and Norfolk Southern Railway Corporation (NS).

The Business Council's membership includes manufacturers and shippers of paper, steel, glass, automobiles, chemicals and a multiplicity of other products. These companies have come to depend upon reliable rail service in and out of New York State and the metro New York marketplace. As you know, reliable and competitive rail transport is essential to the economic viability of our shipping industry and to the continued economic resurgence of the state.

In accordance with the conditions outlined in our October 16, 1997 letter of support for the acquisition and merger of Conrail, The Business Council requests that the federal Surface Transportation Board (STB) approve the New York State and New York City petitions to allow rail service competition on the east side of the Hudson River. Specifically, the state and city have requested that a second railroad be allowed to operate on the line that runs north-south from Albany to New York City

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OFFICE OF  
CHAIRMAN MORGAN

Honorable Linda J. Morgan  
December 9, 1998  
Page 2

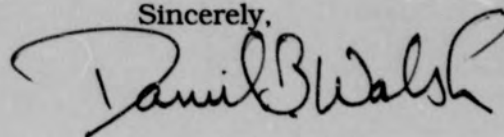
on the east side of the Hudson River. We believe that increased freight capabilities on rail lines east of the Hudson River would restore a modicum of competition that was lost in the financial crisis which led to the formation of Conrail.

On July 23, 1998, the STB approved the joint acquisition of Conrail and designated Canadian Pacific (CP) railway as the second carrier along lines east of the Hudson. In that ruling, the STB also ordered CSX and CP to negotiate an agreement with regard to unrestricted haulage rights or trackage rights on lines east of the Hudson. Unfortunately, the two carriers did not come to an agreement on operating leases.

We continue to believe that competition along lines east of the Hudson will ultimately mean lower rates and upgrades in service for The Business Council's manufacturing and shipping members. In keeping with the original ruling on this matter, we urge the STB to designate Canadian Pacific as the alternative carrier on north-south lines from Albany to New York City on the east side of the Hudson River.

As advocates for thousands of businesses and more than one million employees in New York State, we recognize the responsibility of the STB to address the concerns listed above. Therefore we respectfully request that the STB give our concerns due consideration.

Sincerely,

A handwritten signature in cursive script that reads "Daniel B. Walsh". The signature is written in dark ink and is positioned below the word "Sincerely,".

DBW/kml  
Copy to

STB

FD

33388

9-3-98

J

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**ARNOLD & PORTER**

555 TWELFTH STREET, N.W.  
WASHINGTON, D.C. 20004-1206

(202) 942-5000  
FACSIMILE: (202) 942-5999

September 3, 1998

NEW YORK  
DENVER  
LOS ANGELES  
LONDON

DENNIS G. LYONS  
(202) 942-5858

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SEP 01 1998

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**BY HAND DELIVERY**

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

**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 Secretary Williams:

This letter relates to the "Response of APL Limited to Petition of Applicants CSX Corporation and CSX Transportation, Inc. for Clarification of Decision Nos. 87 and 89," filed September 1, 1998 (APL-28), which was a response to CSX-160.

In APL's response, APL states that if the Board is disposed to grant the CSX Petition, the Board should require that CSX Intermodal, Inc. ("CSXI") become a co-obligor with CSX Transportation, Inc. ("CSXT") to the rail transportation contract in question between Consolidated Rail Corporation and APL. The purpose of this letter is to advise the Board of the position of CSX Corporation and its subsidiaries, including CSXI, on that matter.

CSX Corporation and its subsidiaries, including CSXI, are willing to provide that the Conrail contract will be binding on CSXI, as requested by APL, if the Board were to grant CSX's Petition. Specifically, in that event, CSXI will agree to be bound, jointly and severally with CSXT, to the performance of the Conrail contract (with respect to those origination/destination pairs/routes as may be allocated to CSXT under the processes of Section 2.2(c) of the Transaction Agreement) as fully as CSXT will be bound. This joint and several obligation will include all obligations and undertakings of Conrail in the contract, limited, of course, to those origination/destination pairs/routes as

ARNOLD & PORTER

The Hon. Vernon A. Williams  
September 3, 1998  
Page 2

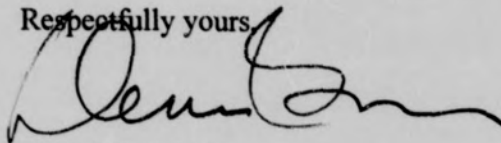
are allocated to CSXT. (CSX assumes that physical reexecution of all the Conrail contracts by CSX and/or NS is not required, since the Board's approval of the Application approves and enforces Section 2.2(c)(i) of the Transaction Agreement, which makes the railroad to which the contract or portion thereof is allocated responsible for its performance. By the undertaking contained herein, CSXI undertakes a joint and several obligation with that of the railroad, CSXT, to APL.)

This undertaking does not affect any of the other undertakings for the benefit of APL set forth in CSX-160 and the accompanying Verified Statement.

We do not undertake to respond otherwise to APL's Response, since that would be a "reply to a reply," not permitted under the Board's rules.

We are providing 25 copies of this letter so that it may be distributed appropriately, and are serving it on the service list by first-class mail or more expeditious means.

Respectfully yours,



Dennis G. Lyons  
*Counsel for CSX Corporation  
and CSX Transportation, Inc.*

cc: All Parties of Record

STB FD

33388

9-1-98

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190922



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# Ohio Rail Development Commission

50 West Broad Street, Suite 1510 • Columbus, Ohio 43215 • (614) 644-0306 phone • (614) 728-4520 fax

August 28, 1998

Mr. Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street, NW  
Washington, DC 20423

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SEP 02 1998

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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

CSX/NS-209, Petition for Reconsideration of Decision No. 89 of Applicants CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company

J

Dear Mr. Williams:

I am writing on behalf of the State of Ohio (State) in response to a recent filing entitled as CSX/NS-209, "Petition for Reconsideration of Decision No. 89 of Applicants CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation, and Norfolk Southern Railway Company" (hereafter, the Petition). In particular, I am writing to express the State's opposition to that portion of the Petition wherein the Applicants<sup>1</sup> request the Board to reconsider and modify the scope of the relief granted to two Ohio-based aggregate and lime producers, Wyandot Dolomite, Inc. (Wyandot) and National Lime & Stone (NL&S). While the Applicants have largely cooperated with the State to promote safe rail transportation in Ohio, and while the Applicants have generally committed to preserving rail competition in Ohio, the State is dismayed and deeply disappointed by the Applicants' efforts to erode the protective relief the Board clearly granted to Wyandot and NL&S. In this respect, the Applicants' Petition is unjustified, contrary to the objectives of the Board, and wholly inconsistent with the interests of Ohioans.

As the record in this proceeding reflects, both Wyandot and NL&S established that each would suffer considerable, permanent injury without the preservation of the single-carrier rail routes that each company enjoys today. There is nothing in the record to establish that the harms to Wyandot or NL&S are merely "transitory," or that such harms will abate over time. For that reason, the State strongly supported Wyandot and NL&S in their respective requests for the imposition of certain trackage rights conditions (extremely modest in scope) that would provide lasting protection to these companies and promote the most efficient transport of aggregates and

<sup>1</sup>"Applicants," for the purposes of this submission, are CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation, and Norfolk Southern Railway Company.

Mr. Vernon A. Williams, Secretary  
August 28, 1998  
Page Two

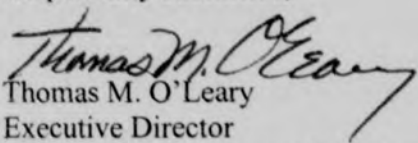
similar commodities in and around the State of Ohio. At the Board's June 4<sup>th</sup> hearing in this proceeding, I made clear that Ohio supported Wyandot and NL&S in their efforts to obtain lasting, permanent relief from the otherwise inevitable harms of the subject transaction. Short-term conditions such as those "proffered" by the Applicants fail to do anything more than delay the harm Wyandot and NL&S will suffer.

I am aware that Wyandot and NL&S are disappointed with the protective conditions the Board ultimately elected to impose in their favor. I can understand their misgivings and skepticism that the "relief" they obtained will prove truly effective. However, the State was pleased to find that the Board elected to grant certain relief over and above what the Applicants would have had the Board grant. Indeed, the State is satisfied that, with respect to the preservation of single-carrier routings, the Board wisely recognized that the harms threatening Wyandot and NL&S are not merely "transitional," and imposed conditions that exceeded the Applicants' intent to provide only short-term relief.

Now the Applicants would have the Board reverse itself and further circumscribe the relief it has extended to Wyandot and NL&S. To the State, the Applicants' efforts here suggest that they expect the Board merely to "rubber stamp" as adequate any protective conditions to which the Applicants are willing to accede, but that the Board should go no further. There is no basis to support Board reconsideration. Further, any such modification designed to narrow the scope of the protective conditions imposed in favor of Wyandot and National would be carried out at the expense of the State of Ohio, its highways, its work force, and the environment.

For all of these reasons, the Board should at the very least preserve the scope of the relief it has already tendered to Wyandot and NL&S, and uphold the plain language of the protective conditions imposed here. I am confident that the Board's protective conditions reflect a refusal to subscribe to the Applicants' Petition, as well as a commitment to prescribe meaningful and lasting protective relief. With respect to the conditions granted in favor of Wyandot and NL&S, the State of Ohio submits that the Board must deny the Applicants' Petition for Reconsideration.

Respectfully submitted,

  
Thomas M. O'Leary  
Executive Director  
Ohio Rail Development Commission

Enclosures: 25 copies

cc: All Parties of Record

STB

FD-33486

8-14-98

J

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AUG 17 1998

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# Congress of the United States

## House of Representatives

Washington, DC 20515

August 14, 1998

CO-CHAIRMAN  
AFRICA TRADE AND  
INVESTMENT CAUCUS  
CO-CHAIRMAN  
CONGRESSIONAL URBAN CAUCUS

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

Dear Secretary Williams:

I am contacting you regarding the former Burlington Northern Santa Fe line in the community of Ballard, in the City of Seattle, Washington. Specifically, I want to inform you of my support for the City of Seattle's position that the petition to revoke Sea Lion Railroad's exempt acquisition authorization filed by the United Transportation Union in F.D. 33486 be denied.

Last year, the City of Seattle negotiated a series of agreements with Sea Lion Railroad, Ballard Terminal Railroad, and Burlington Northern Santa Fe to provide rail service while preserving a key corridor for public use. The Ballard Terminal Railroad is now operational, providing much needed service to the area.

The request for abandonment filed by Sea Lion Railroad is supported by area shippers and the City of Seattle. If the request for abandonment is approved, the City of Seattle will be able to rail bank the line and make it available at no cost for continued trail use. This approach benefits both public and private purposes. The corridor is a popular trail in the Seattle area and will be secured in public ownership. And rail service will be maintained allowing businesses dependent on the line continued service.

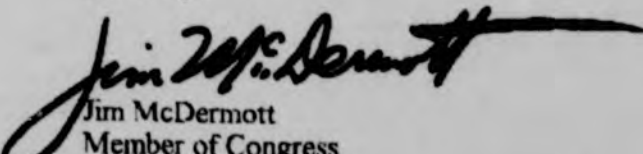
The rail line on which the Ballard Terminal Railroad is operating serves businesses in the Ballard/Interbay/Northend Manufacturing and Industrial Center, one of only two manufacturing and industrial centers in Seattle. It is the home to more than 10,000 jobs in manufacturing, wholesaling, marine, and fishing industries and is vital to Seattle's economy.

If Sea Lion Railroad's request for abandonment is rejected rail service will be disrupted, causing extreme hardship to the shippers and, subsequently, their employees. Ultimately, such a decision could result in the termination of all rail service and consequently the loss of a substantial number of jobs.

I urge you not to revoke Sea Lion Railroad's exempt acquisition authorization filed by United Transportation Union (UTU) in F.D. 33486. If you have any questions regarding this matter, please do not hesitate to contact me or Jennifer Crider of my staff.

Thank you for your consideration and prompt attention to this matter.

Sincerely,

  
Jim McDermott  
Member of Congress



STB

FD-33388

8-13-98

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ID-190521

190524

**ARNOLD & PORTER**

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WASHINGTON, D.C. 20004-1206

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(202) 942-5858

**ENTERED**  
Office of the Secretary

August 13, 1998

AUG 14 1998

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**BY HAND**



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

Re: CSX Corporation/Norfolk Southern Corporation  
-- Control and Operating Leases/Agreement --  
Conrail; Finance Docket No. 33388

J

Dear Mr. Williams:

Applicants CSX and NS are in receipt of the following petitions, which we understand were filed on August 12, 1998.

1. Petition for Reconsideration by the Cities of East Chicago, Indiana; Hammond, Indiana; Gary, Indiana; and Whiting, Indiana (FCC-18);
2. Petition for Clarification of APL Limited (APL-27);
3. Petition for Clarification or Reconsideration of Indiana Power & Light Company (IP&L-15);
4. Petition for Clarification or Reconsideration of The Fertilizer Institute (TFR-8);
5. Petition for Partial Reconsideration of Wisconsin Central Ltd. (WC-19);
6. Petition for Reconsideration/Clarification of Wheeling & Lake Erie Railway Company (WLE-9);
7. Petition for Leave to Intervene of Indiana Rail Road Company (INRD-1);

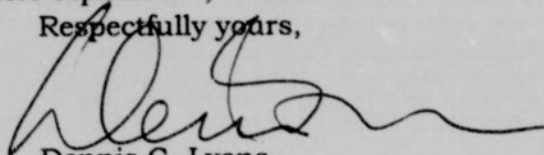
ARNOLD & PORTER

The Hon. Vernon A. Williams  
August 13, 1998  
Page 2

8. Petition for Reconsideration of the Indiana Rail Road Company (INRD-2);
9. Petition for Reconsideration of Stark Development Board, Inc. (SDB-15);
10. Letter/petition for correction and modification of New Jersey Department of Transportation/New Jersey Transit Corporation (undesigned);
11. Petition of Reading Blue Mountain & Northern Railroad Company to Reopen and to Clarify (RBMN-10); and
12. Petition of Representative Jerrold Nadler and others for Reconsideration and other Relief (undesigned).

Pursuant to 49 C.F.R. § 1104.13(a), Applicants CSX and NS will be filing their responses to these petitions on or before September 1, 1998.

Respectfully yours,



Dennis G. Lyons  
Counsel for CSX Corporation  
and CSX Transportation, Inc.

cc: All Parties of Record

STB

FD

33388

8-12-98

J.

CITY



ED 33388

RECORD OF ORDINANCES

BARRETT BROTHERS, PUBLISHERS, MARIETTA, OHIO

Form 6220

Ordinance No. 98-R-8

Passed

7-27

19 98



A RESOLUTION PLACING A MORATORIUM ON ALL RAILROAD IMPROVEMENTS IN THE CITY OF VERMILION UNTIL SUCH TIME THE NORFOLK AND SOUTHERN RAILROAD HAS ADDRESSED THE CITY'S SAFETY CONCERNS AND DECLARING AN EMERGENCY.

WHEREAS, the City of Vermilion has expressed its concern regarding the safety of our citizens in the proposed merger of Conrail and the Norfolk and Southern Railroad,

WHEREAS, the City of Vermilion has met with local, county, state and federal officials to express our safety concerns regarding the merger,

WHEREAS, the City of Vermilion has joined with other cities, villages and townships in Erie County to form the Erie County Coalition Against Unsafe Railroads so that our voice will be heard at the Surface Transportation Board meetings as well as at meetings with the representatives of the railroad

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Vermilion, Counties of Erie and Lorain, State of Ohio

SECTION 1: That the City of Vermilion hereby declares a moratorium on all railroad activities in the City of Vermilion until such time the railroad addresses the City's concern regarding the safety of our citizens in the recent merger of Conrail and Norfolk and Southern Railroad. The City, through this resolution hereby files an administrative appeal with the Surface Transportation Board and requests a hearing so that our safety concerns can be addressed in a public forum.

SECTION 2: The City of Vermilion expresses its concern regarding blocked crossings, slow trains moving throughout the city, the increase in train traffic and the increased hazardous material that will be traveling through our City.

SECTION 3: The Clerk of Council of the City of Vermilion is hereby authorized to serve a certified copy of this resolution to the Surface Transportation Board, the Norfolk and Southern Railroad and all federal, state, and county representatives of the City of Vermilion so that our voice can be heard by the officials. She is directed to send a copy of this resolution to the Erie County Coalition Against Unsafe Railroads through our Erie County Commissioners office. She is also directed to file this resolution as an administrative appeal to the decision of the Surface Transportation Board regarding the merger of Conrail and the Norfolk and Southern Railroad.

SECTION 4: This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Resolution were taken in an open meeting of this Council and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public and in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 5: That this Ordinance is declared to be an emergency for the public peace, health, and safety of the City, wherefore, this Ordinance shall take effect immediately upon its passage and approval of the Mayor, providing it meets the statutory requirements for passage, otherwise, it shall take effect and be enforced from and after the earliest period allowed by law.

PASSED: 7-27 1998

Dan Roth, President of Council

ATTEST: 7-27 1998

Gwen Fisher, Clerk of Council

APPROVED: 7-27 1998

Jimmy L. Davis, Mayor

STB

FD-33388

8-3-98

J

ID-190360

190360

LAW OFFICES

**ZUCKERT, SCOTT & RASENBERGER, L.L.P.**

888 SEVENTEENTH STREET, N.W.  
WASHINGTON, D.C. 20006-3939  
TELEPHONE : (202) 298-8660  
FACSIMILES: (202) 342-0683  
(202) 342-1316

J

ENTRUSTED  
Office of the Secretary

RICHARD A. ALLEN

DIRECT DIAL  
(202) 973-7902

AUG 04 1998

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August 3, 1998



Via Hand Delivery

Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

Re: 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 -- Finance Docket No. 33388

Dear Secretary Williams:

Applicants NS and CSX are in receipt of a Petition of Stay of APL Limited filed on July 31, 1998 pursuant to 49 C.F.R. § 1115.3(f). NS and CSX intend to reply to this petition on or before Monday, August 10, 1998 as provided by 49 C.F.R. § 1115.3(f).

Very truly yours,

Richard A. Allen

Counsel for Norfolk Southern  
Corporation and Norfolk  
Southern Railway Company

cc: All Parties of Record

STB

FC-33388

8-3-98

J

ID-UNION

---

Ira Winthrop

---

07/23/98 08:23:58 AM

---

To: Bettye Uzzle/STB@STB  
cc: Anne Quinlan/STB@STB  
Subject: Conrail Approval

----- Forwarded by Ira Winthrop/STB on 07/23/98 08:23 AM -----  
DQ4train@aol.com on 07/22/98 02:21:17 PM



To: Webmaster  
cc:  
Subject: Conrail Approval  
:



---

To Whom it May Concern;

I would like to take this opportunity to express my concern and anger that the STB fell short in not rejecting the request of NS and CSX that they be given the authority to break collective bargaining agreements. Instead this matter was referred to an arbitrator who will undoubtedly give the carriers carte' blanche to do as they desire.

As representatives of the public interest you have an obligation to see that these mergers are carried out in a fair and legal fashion. These collective bargaining agreements were negotiated in good faith by the carriers and the unions. The carriers are using the STB in an effort to get out from under various agreements that they find to be a burden. This is just not proper.

Perhaps in the future you will take into consideration the effect your decisions will have on employees of these carriers. After all, we are also a part of the public that you claim to represent.

Daniel Q. Jackson  
211 East Tennessee Avenue  
Crewe, Va. 23930-1919  
Brotherhood of Locomotive Engineers Div. 291 Legislative Representative

STB

FD

33388

7-29-98

J

CITY



P.O. Box 1307, Issaquah, WA 98027

Ava Frisinger, Mayor  
 (425) 837-3020 / FAX (425) 837-3029  
 mayor@ci.issaquah.wa.us

July 16, 1998

The Honorable Linda Morgan, Chair  
 Surface Transportation Board  
 1925 K Street NW  
 Washington, D.C. 20423-0001

Subject: King County, WA - East Lake Sammamish Rail-Banking Project  
 Burlington Northern - Santa Fe Railroad Corridor



Dear Ms. Morgan:

The Redmond-Issaquah Railroad Preservation Association (RIRPA) made a presentation before the City of Issaquah Council on July 6, 1998, requesting the Council's support of their effort to acquire the Burlington Northern Santa Fe Railroad (BNSF) right of way between the cities of Redmond and Issaquah. The Issaquah City Council and Administration do not support RIRPA's proposal and do not believe that their Offer of Financial Assistance (OFA) to acquire the railroad corridor for use as a short line railroad is a bonafide offer.

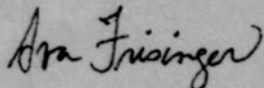
The preservation of the rail corridor, as a rail-banked corridor, will maintain the corridor for our region's future transportation, utility and recreational/regional non-motorized transportation needs. On October 21, 1996, the Issaquah City Council adopted Resolution No. 96-13. The resolution endorses King County's rail-banking program to retain the railroad corridor intact for current and future public transportation uses. In addition, the resolution shows the Council's support for an interim multiple-use trail along the rail corridor between the cities of Issaquah and Redmond and for its proposed connection to the County and State regional trail system.

The Issaquah City Council also encouraged King County to form an advisory committee for the planning and development of the appropriate interim uses for the rail corridor. One of the tasks of the committee would be to seek ways to minimize the impact that the interim use, such as the proposed regional trail, may have on property owners located adjacent to the corridor. Additionally, through this committee, the City sees an opportunity to partner with other agencies and jurisdictions to provide the best project for the rail-banked corridor.

At the July 6<sup>th</sup> Issaquah City Council meeting, RIRPA made assertions that they had several commitments from local businesses to use their short line railroad if it became operational. The City questions these assertions. Burlington Northern (BN) operated a working railroad along this corridor for years with only one customer, Darigold. The customers (e.g. Lakeside Industries, a spa company) that RIRPA suggests may use the railroad short line had the opportunity to use the BN railroad and never did. These companies have consistently relied on truck shipping of their products. Also, Lakeside Industries may have other motives for lending their support of the short line: their interests in land holdings that are bisected by the railroad.

Again, the City feels that RIRPA's Offer of Financial Assistance (OFA) is not a bonafide nor a realistic offer. The City strongly supports the effort to rail-bank this corridor to protect the public's current and future transportation needs. The Eastside area of King County is a rapidly growing area and all effort must be made to protect the public's interest and preserve this railroad corridor.

Sincerely,



Ava Frisinger  
Mayor

AF:cs

Attachments: Two letters dated July 6, 1998 to Leon Kos and to City of Issaquah

cc: R. Sims, KC Executive  
C. Larsen, KC Parks  
G. Duvernoy, The Land Conservancy of Seattle and King County  
J. Aiken, RIRPA  
W. Pickering, RIRPA  
T. McFarland, RIRPA  
S. Bailiff, BNSF



**Redmond-Issaquah Railroad  
Preservation Association (RIRPA)  
A Short Line Railroad**

RECEIVED AT  
7/6/98  
COUNCIL MEETING

477 East Lake Sammamish Parkway S.E.  
Redmond, WA 98053

(Telephone) (425) 868-0373  
(Facsimile) (425) 836-5685  
(E-Mail) JWAiken@email.msn.com

*Richard Luce, President  
Kathy Schroeder, Treasurer*

July 6, 1998

City of Issaquah  
Council Members  
1775 12<sup>th</sup> Avenue N.W.  
Issaquah, WA 98027

**Re: Railroad Right of Way**

Dear Council Members:

The Redmond-Issaquah Railroad Preservation Association (RIRPA) respectfully requests the support of the City of Issaquah in RIRPA's efforts to acquire from Burlington Northern Sante Fe Railroad (BNSF) right of way between Redmond and Issaquah.

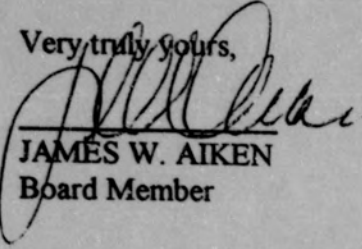
As set forth in the attached letter of July 6, 1998 from RIRPA to Leon Kos, City Manager, RIRPA submits that the interest of the City would be promoted from such an endorsement and that such is not mutually exclusive from the City's desire for bike and pedestrian pathways from Redmond to Issaquah. RIRPA shares the City's interest in promoting trade and commerce, reducing traffic congestion, and preserving a transportation corridor from the City of Issaquah to the north. While RIRPA has heretofore proposed to acquire the whole 12.75 miles of right of way from Redmond to Issaquah, RIRPA can amend its purchase proposal now before the Surface Transportation Board (STB) so as to allow the abandonment of the southerly portion of the right of way (south of Gilman boulevard or south of Front street) remove that portion from both railroad use and the restrictions of the rails to trails laws. RIRPA suggests that the best interest of the City of Issaquah would be promoted by such endorsement and amended application by RIRPA as such would allow unrestricted use by the City of Issaquah of any fee title owned by it, among other alternatives.

As previously mentioned, RIRPA's purchase offer is pending before the STB. RIRPA requests the support of the City prior to the imminent decision by the STB with respect to RIRPA's purchase. In recognition of a short time line, RIRPA requests the following:


- A. That the subject issue be referred to a Council Committee with a report back to the full council for action at its scheduled July 20<sup>th</sup> meeting; and
- B. For a recommendation or directive that RIRPA's representatives have an opportunity to address the committee to which this issue is assigned.

As set forth in the attached letter, RIRPA recognizes that the City Council previously endorsed the rails to trails concept. However, in consideration of the findings of the East Lake Sammamish Parkway Study conducted by King County and the restrictions on land use mandated by rails to trails law, a reassessment of issue is warranted.

Very truly yours,



JAMES W. AIKEN  
Board Member



WINLOCK PICKERING  
Board Member

JWA:cca

**Redmond-Issaquah Railroad  
Preservation Association (RIRPA)  
A Short Line Railroad**

477 East Lake Sammamish Parkway S.E.  
Redmond, WA 98053

---

(Telephone) (425) 868-0373  
(Facsimile) (425) 836-5685  
(E-Mail) JWAiken@email.msn.com

*Richard Luce, President  
Kathy Schroeder, Treasurer*

July 6, 1998

Mr. Leon Kos  
City Manager  
1775 12<sup>th</sup> Avenue N.W.  
Issaquah, WA 98027

Dear Mr. Kos:

The Redmond-Issaquah Railroad Preservation Association (RIRPA) would like to discuss with the City of Issaquah some issues of mutual concern.

As you are undoubtedly aware, the Burlington Northern Santa Fe railroad (BNSF) has filed for abandonment of the rail line between Redmond and Issaquah. RIRPA has made a formal offer to acquire the rail line through a federal process called an Offer of Financial Assistance (OFA). The abandonment/OFA process has been preceding for approximately one year and should be coming to a conclusion in the not too distant future. RIRPA is awaiting the Surface Transportation Board (STB) ruling on RIRPA's "bonafide" status so as to allow negotiations with BNSF for the final acquisition of the line. If RIRPA and BNSF cannot come to terms, then RIRPA will petition the STB to set the terms and conditions of the sale. RIRPA intends to pursue all available avenues to acquire the rail line.

RIRPA seeks the support of the City of Issaquah toward that end. We respectfully submit that the City of Issaquah shares our goals of preserving jobs in the city and surrounding areas, mitigating traffic problems by providing alternatives to large trucks on the city and county streets, and obtaining other benefits which would result from preserving the railroad from Redmond to Issaquah. These goals can be sought and obtained without negatively impacting bike and pedestrian paths.

Mr. Leon Kos  
July 6, 1998  
Page 2.

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It appears that City support of RIRPA's efforts to acquire the railroad could be of benefit to the City in yet another way. It has been brought to our attention that the City intends to build a new City hall and that the hall and its associated parking may encroach on the railroad right of way. As the City may be aware, conversion of the railroad right of way to a trail under the rails to trails scheme does not allow structures or any other uses not compatible with a trail. It appears, therefore, that if BNSF/King County/The Land Conservancy are successful in thwarting RIRPA's efforts in acquiring the rail line that the railroad right of way abutting the intended City hall cannot be made use of by the City.

Heretofore, RIRPA has planned to acquire the entire 12.75 miles of railroad from Redmond to approximately Sunset Street in Issaquah. RIRPA is exploring two alternatives to acquiring the whole 12.75 miles. One alternative is to stop the rail acquisition 200 feet south of the I-90 overpass. The second alternative is to stop the acquisition just north of the Front street grade crossing. Both alternatives would leave the portion of right of way the City needs for its City hall unencumbered by federal railroad preemption laws.

If RIRPA informs the STB of our desire not to acquire the last .5 or .75 miles of the rail line, then the STB can allow a normal abandonment of those portions of the line. Either of RIRPA's alternatives would eliminate one or two of the very busy grade crossings (Gilman Boulevard and Front Street) and would expedite the City's plans for the new City hall. The normal abandonment would allow the City to acquire whatever rights BNSF has in the right of way and the City can acquire whatever other rights it needs through normal processes, including leases, easements or condemnation. While RIRPA has a planned need for the entire 12.75 miles, RIRPA can modify those needs in the interest of accommodating the City with respect to the building of the new City hall.

RIRPA requests that the City consider endorsing acquisition of the rail line through the STB process. We are cognizant of the City earlier endorsing the idea of an abandonment and converting the rails to trails. Much has changed since that endorsement approximately two years ago. We suggest that it is in the City's best interest to entertain one of RIRPA's alternative proposals for a shortened railroad. Again, continuation of rail service and a shortened rail line has much benefit to the City of Issaquah. Additionally, since the City's initial position, the recently concluded King County Lake Sammamish Parkway Study recognizes the availability of the parkway (at modest expense) to accommodate the bike and foot traffic from Redmond to Issaquah obviating the need to acquire at great taxpayer expense the railroad right of way. The Parkway Study evidences the fact that a bike/foot pathway is feasible without termination of rail service. The City's support of RIRPA is not anti-trail.

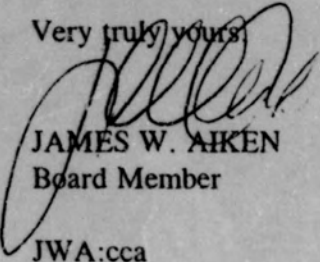
As mentioned earlier, the abandonment process is on a short time line. RIRPA has to immediately inform STB of an intent to acquire something shorter than the full 12.75 miles. With your support, we would be willing to and could forgo the southern portion of the rail line to accommodate all of our interests and needs.

Mr. Leon Kos  
July 6, 1998  
Page 3.

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I respectfully request that you forward this letter through the appropriate channels so that the issue can be considered by the City Council at its earliest opportunity. Representatives of RIRPA are available to discuss the issue further with you or others in the City at your and their convenience. RIRPA looks forward to working with the City for the benefit of all concerned.

Very truly yours,



JAMES W. AIKEN  
Board Member

JWA:cca

CITY OF  
**ISSAQUAH**  
P.O. Box 1307  
Issaquah, WA 98027-1307  
(425) 837-3000 Fax: (425) 837-3009



July 21, 1998

Surface Transportation Board  
1925 K Street, NW  
Washington, D.C. 20423-0001

Subject: AB 6 (Sub. No. 380X) East Lake Sammamish Railroad Corridor  
Burlington Northern - Santa Fe Railroad Corridor, King County, WA

Dear Secretary of the Surface Transportation Board:

The attached ten copies of the letter dated July 16, 1998, plus attachments, to Ms. Linda Morgan, Chair, Surface Transportation Board (STB), from Ava Frisinger, Mayor, were inadvertently omitted when we mailed the original letter to Ms. Morgan. Additionally, the Docket Number: AB 6 (Sub. No. 380X) was also omitted from the correspondence. Please distribute the letter including the attachments to members of the STB. All other parties have been served copies of the correspondence as noted at the end of Ms. Frisinger's letter.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me at (425) 837-3322.

Sincerely,

*Margaret Macleod*

Margaret Macleod  
Interagency Coordinator

MJM/mm  
STB EstLkSmRail1

STB

FD-33388

7-29-98

J

ID-UNION

Ira Winthrop

07/29/98 07:46:08 AM

To: Bettye Uzzle/STB@STB  
cc: Anne Quinlan/STB@STB  
Subject: web comment

## User Feedback Page

All fields marked with  are required

<b>First Name</b>	<input type="radio"/>	Thomas
<b>Middle Initial</b>	<input type="radio"/>	C
<b>Last Name</b>	<input type="radio"/>	Hiser
<b>Company</b>	<input type="radio"/>	BNSF RR - Engineer
<b>Address 1</b>		912 East I
<b>Address 2</b>		McCook, Ne. 69001
<b>Phone Number</b>	<input type="radio"/>	308 345 6445
<b>Fax Number</b>		308 345 1149
<b>E-mail</b>	<input type="radio"/>	hiser@swnebr.net

### Comments

Allowing the carriers of the CSX-NS-Conrail merger to not honor agreements made in collective bargaining is nothing less than atrocious. this ruling is allowed to stand, it will destroy any efforts gained through the bargaining process. 50 people in Congress appear agree. Please change this ASAP.  
Thank you for your time. Type 1

07/24/98 12:23:21 PM





STB

FD-33388

7-23-98

J

ID-UNION



Office of the Chairman

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

FILE IN DOCKET

FD-33388

July 23, 1998

Mr. Herbert S. Rasnake  
Railroad Publication Services  
151 Ellis Street, N.E., Suite 200  
Atlanta, GA 30335-6201

Dear Mr. Rasnake:

I am writing in response to your letter dated June 15, 1998. You indicate that the CSX/NS/CR transaction has already had, and will continue to have, an adverse effect on the work load of the employees of Railroad Publication Services (RPS). You further indicate that the UP/CNW and UP/SP mergers have also had, and that the CN/IC merger, if approved by this agency, will also have, similar adverse effects.

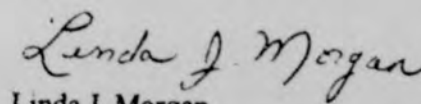
I call your attention to a statement in Brotherhood of Ry., A&SC et al. v. Southern Frt. T. Bur., 366 I.C.C. 390, 391 (1982), a copy of which is attached to your letter: "Section 219 of the Staggers Act narrowed or restricted the antitrust immunity previously enjoyed by rate bureaus and their members for their collective ratemaking activities. Section 219(g) was designed to protect employees who might be adversely affected *as a result of this narrowing of antitrust immunity.*" (Italics added.)

Accepting as true what you have indicated in your letter, employees of RPS are not, and will not be, entitled to the New York Dock labor protection made available by Section 219(g) to the employees of railroad rate bureaus and their tariff publishing affiliates. This is so because you indicate that RPS employees have been, and will continue to be, adversely impacted by the CSX/NS/CR transaction and other similar transactions, and not by the narrowing of antitrust immunity that was the result of Section 219.

The "six year clock" that is referenced in your letter (in the fourth paragraph on page 1) does not change this outcome. No matter when that clock began to run, it would appear that RPS employees are not now being adversely affected by the narrowing of antitrust immunity that was the result of Section 219.

I appreciate your interest in this matter, and will have your letter and my response made a part of the public docket in the STB Finance Docket No. 33388 proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

  
Linda J. Morgan

# Railroad Publication Services

151 Ellis Street, N.E., Suite 200  
Atlanta, Georgia 30335-6201  
Telephone (404) 659-6266

June 15, 1998

RECEIVED  
SURFACE TRANSPORTATION  
BOARD  
JUN 22 1 40 PM '98  
LINDA MORGAN

FILE IN DOCKET

Ms. Linda Morgan, Chairperson  
Surface Transportation Board  
Mercury Bldg., 1925 K Street, N.W. #820  
Washington, DC 20423

Dear Ms. Morgan:

We need your help regarding our employees protective status of the Staggers Rail Act of 1980. We were given protection in 1983 and now the CSXT/NS takeover of CR, the UP takeover of SP and the future CN takeover of IC has already had an adverse effect on our business.

We are employees of Railroad Publication Services. RPS was formed from the takeover of all the nation's rate bureaus and our name was changed from Southern Freight Tariff Bureau (SFTB) to Railroad Publication Services (RPS). We formerly received instructions from Southern Freight Association (SFA), our parent company, which was dissolved. SFTB took over the duties of SFA and all SFA employees were liberally compensated for their years' service. Some were called back to work for SFTB and again were compensated when allowed to take early retirements. Others who were not retirement age were given the opportunity to work toward their necessary years' service, drawing a higher salary than all SFTB employees. They were not required to be union members yet they were a part of SFTB and were paid from the same funds as all SFTB employees.

In 1987 the Traffic Executive Association - Eastern Railroads (TEA) was dissolved and moved from New York to Atlanta, our organization took over those duties. In 1995 the Western Railroad Association (WRA) was dissolved and moved to Atlanta. Several WRA employees were transferred from Chicago to Atlanta. RPS took over the duties of WRA including the tariffs from other dissolved bureaus that had previously been incorporated into WRA's library. Every employee dismissed from each of these bureaus received severance pay. RPS is now the last railroad rate bureau/publishing agency in existence. We perform a service to all Class I railroads who are members of this organization and who pay our salaries. This organization now consists of three entities within one, Railroad Publication Services (the publishing arm), Railroad Support Services (accounting department) and Railroad Data Processing (computer department). Our job functions include the compilation, rate management, publishing and distribution of freight rates proposed by the railroads in the form of Tariff Instructions.

Our union has never been very supportive. When we were fighting for Staggers protection in 1983, one of our union employees paid his own expenses to appear before the ICC in Washington with evidence as to why we were entitled to protection. Our union was upstaged and made to look incompetent by our fellow employee. ICC ruled in our favor and we won Staggers protection. After the ICC ruling, union and management negotiated an implementing agreement that supposedly provided protection for all employees under Section 219 of the Staggers Rail Act. This implementing agreement was created in order to save the railroads money while employees were still working. The six year clock was started on all positions at that time. The work load declined drastically, but during those six years no one was furloughed. Were the railroads and management guilty of collusion? Shouldn't the six year clock have started when an employee was furloughed? (See the highlighted areas of Exhibits A and B attached). We feel that our rights have been violated and the situation was manipulated to suit management. Under the circumstances we have no one we can depend on to help clear up this matter, in other words, we need your help.

Our union claimed that RPS was not a "ratemaking bureau", that we did not set rates. We are a formation of all the nations rate bureaus and we have incurred all remaining agency tariffs from each de jure bureau. We were forced to become union members unwillingly due to a closed shop. Now we are being discriminated against because we are "contract" employees. The union is saying we are sub-contractors for the railroads and our salaries are paid by Railroad Support Services. Our paychecks are issued by RSS (our accounting department) but the funding comes directly from Class I railroads. We pay into Tier I and Tier II Railroad Taxes and are eligible for Railroad Retirement, we pay union dues to the same union as the other railroad clerks, freight handlers, engineers, carmen, etc., and all of our negotiated contracts are the same as for all other railroad employees.

The takeover of CR by the CSXT and NS has already begun to take its toll on our work load. We receive a major part of our revenue from the work we do for CR. Also the takeover of SP by UP has caused a drastic decline in our business along with rail deregulation. In December 1997, 5 people were furloughed with no severance pay, three more in March and in June two more bringing the total to 10. All of these union employees had over 20 years service, most had 30. However, just recently several other non-union employees were furloughed and were awarded as much as 18 months' severance pay and 12 months' insurance benefits. One of the employees is being replaced by a former WRA employee who transferred here in 1995. We are now left with 10 union employees who are fighting for the rights of themselves and those furloughed with nothing.

We were told by STB that Stagers is an "on-going" thing and that we should still be covered. Why should we need another ruling declaring that we are again protected when the former ruling by ICC is a public law. Is it possible for the STB to clear up this controversy?

The former ICC ruled in 366 I.C.C. 390 that:

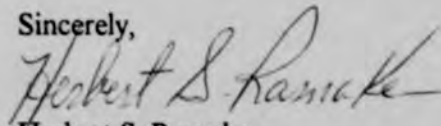
*"Rate bureaus and their affiliated tariff agencies came into existence because Congress permitted railroads to discuss rates collectively. Presumably many of the jobs provided by rate bureaus and their affiliated tariff agency employees came about as a result of this immunity. When Congress recently enacted Section 219 (g), it evidently realized that jobs long believed secure because of antitrust immunity could be adversely affected. It is logical to assume then that Congress wanted to provide protection to employees who carry out ratemaking functions, including those in tariff publishing agencies created and controlled by rate bureaus. Congress dictated that in the event employees who once benefitted as a result of antitrust immunity were adversely affected, they should have protective rights on the level as those established pursuant to 49 U.S.C. 11347."*

The ICC also stated:

*"We, therefore, conclude that SFTB employees are employees of a rate bureau for purposes of section 219(g) of the Stagers Act and that if they are affected by the recent changes made by section 219, such employees are entitled to the employee protective conditions imposed in New York Dock, supra." (See attached Exhibit C)*

We will be glad to provide you with any and all information available if there is any possible way you can help us. Should you have questions, please feel free to contact me at 404-659-6266, extension 219 or 770-461-0256.

Sincerely,



Herbert S. Rasnake

Attachments

EXHIBIT "A"

**Railroad Publication Services**

151 ELLIS STREET, N.E., SUITE 300  
ATLANTA, GEORGIA 30335-6201

R. C. Becker, Chairman  
J. T. Camp, Mgr., Tariff Publications  
J. W. Wilson, Mgr., Administration

Telephone (404) 659-6266  
Telex 54-2158 RPS ATL  
Easylink 62019449  
FAX (404) 584-5571

June 6, 1989  
File JSA-1982

MR. R. C. BECKER:

This pertains to our recent discussion about the 1982 Job Stabilization Agreement with our employees represented by ASD/TCU (formerly BRAC). I have reviewed our files and developed the following information relative to the history of this subject.

Prior to the 1982 Agreement our union employees were covered by the Employees Protective Agreement of February 7, 1965. This was an agreement negotiated on a national basis between unions (including BRAC) and rail carriers represented by the National Railway Labor Conference in the settlement of collective bargaining notices under Section Six of the Railway Labor Act served by the unions in May of 1963. This agreement protected all regularly assigned employees who were in active service as of October 1, 1964. Protected employees were entitled to preservation of employment equivalent to their October 1, 1964 level of compensation until retired, resigned, discharged for cause, or otherwise removed by natural attrition. There were no provisions for extending coverage to employees hired after October 1, 1964. There was also a decline in business clause which provided for a reduction in the number of protected employees under certain circumstances. However, the conditions of this decline in business clause did not relate directly to our operation and it was virtually unworkable on our property.

On April 5, 1979, BRAC served new collective bargaining notices on us seeking to revise numerous work rules, including very liberal extensions in the application of the 1965 protective provisions. We were assisted, and directed, in the handling of these notices by an advisory committee consisting of representatives from the respective labor relations and legal departments of our Administrative Committee Lines, namely the Family Lines System, the Illinois Central Gulf Railroad and the Southern Railway System.

After nearly three (3) years of negotiations BRAC submitted these notices to the National Mediation Board for formal mediation. With representation by the Advisory Committee and outside counsel recommended by the Committee, negotiations finally boiled down to a revision in protective provisions in settlement of the 1979 notices. It was agreed that protective coverage would be extended to all current employees with 5 years service and any other employee after the accumulation of five (5) years continuous service, but with the inclusion of a decline in business formula related to and workable under the conditions prevailing on our property. The resulting agreement, now known as the 1982 Job Stabilization Agreement (1982 JSA), was recommended by our Labor Advisory Committee as well as by independent counsel.

Mr. Becker  
Page 2  
June 7, 1989

Under the terms of the 1982 JSA, including operation of the decline in business formula, we were able to reduce forces by 14 employees during the first 14 months after it became effective. These reductions became the subject of union claims contending that the affected employees represented a "transaction" evoking protection pursuant to the 1980 Staggers Rail Act. We successfully defended these claims before an adjustment board. However, according to our Labor Advisory Committee, actions taken in October and November of 1983 were very likely to be judged as "Staggers transactions". It was recommended that we initiate an action affecting all other contract employees and enter into an implementing agreement initiating the six year protection required under the Staggers Act as soon as possible. This was deemed best in order to minimize carriers' liability. Any subsequent action affecting unprotected contract employees would likely also give rise to Staggers Act protection; thus, the sooner the "six-year clocks" were started, the sooner protective liability would expire. An agreement was reached May 10, 1984, according the six year protection effective October and November of 1983 for those affected on those dates, and effective June 1, 1984 for all other union contract employees.

The protective conditions prescribed by the Staggers Rail Act, the so called "New York Dock Conditions", include provisions to the effect that after the period of protection expires an employee may then be entitled to protection under such other arrangements as may be in effect on the property.

J. W. Wilson

JWW/jf

EXHIBIT "B"

LAW OFFICES

VERNER, LIIPFERT, BERNHARD AND MCPHERSON

CHARTERED

SUITE 1000

1660 L STREET, N.W.

WASHINGTON, D.C. 20036

(202) 452-7400

December 27, 1983

JAMES H. VERNER  
EUGENE T. LIIPFERT  
BERL BERNHARD  
HARRY MCPHERSON  
RONALD B. NATALIE  
MARTIN S. THALER  
WILLIAM C. EVANS  
MICHAEL J. ROBERTS  
JOHN L. RICHARDSON  
MARY J. ANDREWS  
FRITZ R. RAHN  
ALAN WM. WOLFF  
BERNHARDT K. WRUBLE  
STUART F. PIERSON  
MICHAEL F. GOLDMAN  
HOWELL C. BEGLE, JR.

THOMAS J. KELLER  
JOHN A. MERRIGAN  
THOMAS E. ACEY, JR.  
RICHARD L. CYS  
ROBERT L. NELSON  
JOSEPH L. HANSON, III  
ROBERT R. BRINKER  
L. JOHN OSBORN  
RAYMOND S. SZUDLO  
W. CLARK McFADDEN, II  
RICHARD J. MORVILLO  
ROBERT B. DOWIN  
ALAN S. HARR  
R. MICHAEL GADBAY  
JEFFREY S. BERLIN

RUSSELL E. POMMER  
ANN A. H. SIMON  
THOMAS R. HOWELL  
DOUGLAS R. STEENLAND  
MARYANN CLIFFORD  
ELIZABETH A. CAMPBELL  
MICHAEL J. WILHELM  
JAMES F. HIBBY  
KATHLEEN MURPHY RING  
DIANE B. GREENLEE  
ROBYN J. LIPTON  
JEFFREY M. SHYDER

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Illinois Central Gulf Railroad  
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233 North Michigan Avenue  
Chicago, Illinois 60601

Re: Southern Freight Tariff Bureau (BRAC Claims  
Regarding SFTB's Voluntary Severance Program)

Gentlemen:

The carrier members of Southern Freight Association are now faced with a Staggers Act problem that calls for a decision in the immediate future.

You will recall that in September the carriers authorized Southern Freight Tariff Bureau to conduct a voluntary severance program. It was originally expected that as many as 15 SFTB employees would be allowed to take advantage of the program, but employee response to SFTB's offer was so enthusiastic that a total of 24 SFTB employees were allowed to resign voluntarily in September and October. Each received a payment equal to one year's salary, and each relinquished all claims to labor protective benefits, including benefits pursuant to Section 219(g) of the Staggers Rail Act.

\*NOT ADMITTED IN THE DISTRICT OF COLUMBIA  
PRACTICE LIMITED TO FEDERAL MATTERS.

CABLE ADDRESS: VERLIP  
TELEX: 90-4124 VERLIP-WSH

PRIVILEGED AND CONFIDENTIAL --  
ADVICE OF COUNSEL RENDERED  
IN THE COURSE OF PREPARATION  
FOR LITIGATION

William P. Stallsmith, Jr., Esq.  
Edward A. Charron, Esq.  
Howard D. Koontz, Esq.  
December 27, 1983  
Page 2

Following the 24 voluntary resignations, SFTB's management reorganized the Bureau's contract workforce so that the remaining employees would be working in the particular jobs that needed to be performed. This was done through the abolition of 24 jobs in October and November. Some of the abolished positions were vacant as a result of voluntary resignations; others were not. The abolishment of occupied jobs precipitated a series of employee displacements in accordance with the SFTB/BRAC working agreement. As a result of these displacements, a number of contract employees have now filed claims that either expressly or by implication seek New York Dock displacement allowances under authority of Section 219(g). 1/

Copies of these claims and some related documentation prepared by SFTB were provided to me with Lamar Lassetter's letter of December 6, which was also sent to Messrs Bouchard, Christian, and Spenski of the carriers. I should note that a large-scale program of job abolishments, as distinct from voluntary resignations, was not specifically addressed at the September 20 meeting in Atlanta at which counsel and the carriers' labor relations officers considered and recommended approval of SFTB's voluntary severance program. Doug Johnson's September 23 memorandum of that meeting does reflect his understanding that there might be some employee displacements, but that these were expected to cause little or no adverse effect on employees because of the SFTB/BRAC Job Stabilization Agreement ("JSA"). It now appears that because of the continuing decline in page count, several of the displaced employees are not protected under the JSA.

I think we will have great difficulty defending against the new Section 219(g) claims asserted by employees who were dis-

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1/ At least eight claims (those of E. L. Gleaton, D. R. Walker, T. G. Duda, S. F. Manous, P. W. Manous, A. M. Haynie, J. C. Peacock, and Z. H. Williams) seem to present cases of adverse effect that may arguably be related to job abolishments. Claims have also been filed by several other employees who are protected by the SFTB/BRAC Job Stabilization Agreement and therefore do not seem to have been adversely affected. Some employees have also filed claims challenging the voluntary severance program itself on the ground that SFTB should have dealt only with BRAC, or on the ground that full New York Dock benefits should have been offered. Except for the ones filed by employees who have actually suffered a reduction in pay, these groups of claims do not appear to raise any issues that we did not anticipate, and I recommend that we defend these claims in arbitration as planned.



William P. Stallsmith, Jr., Esq.  
Edward A. Charron, Esq.  
Howard D. Koontz, Esq.  
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placed by job abolishments and are not protected under the JSA. The carriers need to decide, rather soon, whether to attempt to defend these claims at all.

The justification for the voluntary severance program, as advanced in September, was that a good case could be made that SFTB's work had declined in 1983 as a result of Section 219 of the Staggers Act, with the result that SFTB was carrying a number of surplus employees (at least 11). We thought it unlikely that we could prevail in the New York Dock arbitration proceedings that would follow the abolishment of 11 or more occupied jobs, so the carriers adopted a proposal to obtain up to 15 (later raised to 24) voluntary resignations and thereby make it possible to resist future Section 219(g) claims that may be filed by employees who will be dismissed or displaced as a result of future "non-Staggers" factors such as boxcar deregulation.

The foregoing justification has no application that I can detect to the cases of SFTB employees who elected not to resign in September and October and who nevertheless were displaced when their jobs were abolished by management or who were rolled from their jobs by more senior employees whose positions had been abolished. These seem to be ordinary Section 219(g) cases, and SFTB's defensive position is just as weak as we thought it would be. These claimants will carry their New York Dock burden by identifying one or more job abolishments (not resignations) as the "transaction" that caused their displacement, and it will be up to SFTB to defend by proving that the identified transaction was not caused by the enactment of Section 219. I do not think it will be sufficient to attribute the transaction to a need to restructure SFTB's workforce following the 24 resignations; there is no clear causal relationship between the voluntary departure of one employee and the abolition of another employee's job, and SFTB can hardly argue that it was taken by surprise when 24 employees resigned. SFTB certainly had the discretion to restructure its workforce to permit it to accomplish its full range of work with the reduced number of employees that remained on board after completion of the voluntary severance program, but I do not see how we can expect to avoid Section 219(g) liability with respect to a general pattern of employee downgrading unless we can explain the underlying decline in SFTB's workload in "non-Staggers" terms. It was our inability to articulate such an explanation that led to approval of the voluntary severance program in the first place.

It seems to me that SFTB was not compelled to abolish any occupied jobs after 24 employees resigned. Instead of doing so, SFTB could have abolished the unoccupied jobs and folded all the occupied jobs together into a new table of organization. This

William P. Stallsmith, Jr., Esq.  
Edward A. Charron, Esq.  
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December 27, 1983  
Page 4

might have resulted in a top-heavy workforce, but no employee would have been adversely affected in a monetary sense, and there would be no Section 219(g) problem. I understand that SFTB's prerogatives under the working agreement are thought to be broad enough to have permitted such action.

We have previously agreed that the first Staggers Act arbitration loss should be avoided at some cost because it will likely diminish our chances of prevailing in subsequent proceedings even if the facts of subsequent cases are better for SFTB (e.g., dismissals properly attributable to boxcar regulation). To avoid arbitration losses on these latest claims, SFTB might decide to bow out of the dispute. Assuming it is possible under the working agreement to do so, SFTB could rescind the job abolishments, restore everything to the status quo ante, and reimburse all on-board employees for any interim wage losses. Then SFTB could reorganize its entire workforce from scratch, creating at least as many slots at each pay grade as are now occupied by employees at that grade. SFTB would realize no short-term economies through this rationalization of its workforce; but any resulting displacements would presumably be the result of employee choices, not management dictate.

This may be the occasion, however, for an even broader strategic decision with regard to Section 219(g). Until now, SFTB's approach has been to litigate each unjustified claim. But the member carriers must consider the likelihood that SFTB's workload will be significantly reduced over the next few years, that SFTB will need to abolish more positions, and that after some point it will no longer be possible to defend successfully against any claims for New York Dock benefits. Because New York Dock salary protection runs for six years from the date of its inception, it may be appropriate for SFTB to "start the clock" on all or part of its contract workforce now, so that SFTB's employees perform at least some work during the six-year period in which their salaries must be paid. This will, of course, eliminate any prospect of avoiding New York Dock liability with regard to future job abolishments or employee displacements. 2/ But it would be a strategic decision that could perhaps be justified in economic terms.

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2/ There are 14 previous claims in the SFTB arbitration pipeline. The facts of those cases are generally favorable to SFTB; the cases are unaffected by the recent developments at SFTB, and I am not suggesting that we consider changing our position with respect to any of them.

William P. Stallsmith, Jr., Esq.  
Edward A. Charron, Esq.  
Howard D. Koontz, Esq.  
December 27, 1983  
Page 5

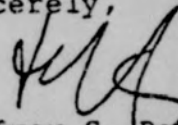
I suggest, therefore, that the carriers have three alternatives:

1. Defend the claims. We can expect to lose on the merits.
2. Rescind the job abolishments and restructure the workforce differently. I assume this can be done as outlined above.
3. Start the clock on all or part of the workforce. There must be numerous ways to do this.

These claims were presented in mid- and late November. Under the working agreement SFTB must respond within 60 days. I submit that it would be best to decide on an overall approach in time for it to be reflected in (or to preempt) SFTB's first response to the claims. This means that progress should be made during the next two weeks, if possible.

With best regards and good wishes for the New Year.

Sincerely,



Jeffrey S. Berlin

cc: Mr. Bates B. Bowers  
Mr. E. M. Bouchard, ICG  
Mr. R. I. Christian, Seaboard  
Mr. R. S. Spenski, Southern Railway

EXHIBIT "C"

5

*Served August 5 1982*

F-9928

INTERSTATE COMMERCE COMMISSION

No 38682F

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP  
CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION  
EMPLOYEES v. SOUTHERN FREIGHT TARIFF BUREAU

No. 38682F

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP  
CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION  
EMPLOYEES v. SOUTHERN FREIGHT TARIFF BUREAU

Decided July 14, 1982

The employees of Southern Freight Tariff Bureau are employees of a rate bureau and are, therefore, entitled to the employee protective conditions contained in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979) if they can show that they are being adversely affected by the amendments to 49 U.S.C. 10706 made by section 219 of the Staggers Rail Act of 1980 (Public Law 96-488, 94 Stat. 1855).

John O'B. Clarke, Jr., and Ernest W. DuBester for complainant.  
Jeffrey S. Behm for defendant.

## DECISION

BY THE COMMISSION

## INTRODUCTION

The Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC), filed a complaint and request for declaratory relief on July 14, 1981, alleging that the Southern Freight Tariff Bureau (SFTB) failed to comply with the employee protection provisions of section 219(g) of the Staggers Rail Act of 1980 when it abolished three employee positions. As pertinent, section 219(g) reads:

The Interstate Commerce Commission shall require rail carrier members of a rate bureau to provide the employees of such rate bureau who are affected by the amendments made by this section with fair arrangements no less protective of the interests of such employees than those established pursuant to Section 11347 of Title 49, United States Code.

Specifically, BRAC desires that the Commission order SFTB to enter into negotiations for an implementing agreement as provided by *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), and imposed upon all rate bureaus in *Western Railroads—Agreement*, 364 I.C.C. 782 (1981). In the *Western* decision the Commission decided that

rate bureau employees adversely affected by implementation of section 219 must be accorded, at a minimum, the level of labor protection set forth in *New York Dock*.

## BACKGROUND

SFTB is a tariff publishing agency affiliated with the Southern Freight Association (SFA), a rate bureau. SFA is a member of the Southeastern Railroads Associated Bureaus. SFA has a standing committee which agrees upon the freight rates; SFTB then compiles all such rates into a tariff which is published by the Association.

Section 219 of the Staggers Act narrowed or restricted the antitrust immunity previously enjoyed by rate bureaus and their members for their collective ratemaking activities. Section 219(g) was designed to protect employees who might be adversely affected as a result of this narrowing of antitrust immunity.

In a letter dated February 23, 1981, BRAC advised the defendant that section 219(g) applied to its employees and that the Commission had established uniform protective conditions in *New York Dock*. By letter dated March 20, 1981, SFTB advised complainant that section 219(g) applies only to employees of rate bureaus, and that it is not a rate bureau engaged in ratemaking activities but a tariff bureau engaged in publishing tariffs for various southern railroads, irrespective of how the rates are determined.

On March 23, 1981, defendant announced that it was abolishing the position of assistant executive clerk and two rate clerk positions. Defendant asserts that this action was the result of the deregulation of TOFC/COFC service by the Commission in Ex Parte No. 230 (Sub-No. 5), *Improvement of TOFC/COFC Regulation*, 46 F.R. 14348 (February 27, 1981). Defendant advised the three affected employees that they had 5 days to exercise their seniority rights. BRAC notified defendant on March 24, 1981, that it had acted improperly and demanded that the abolishment notices be canceled; that appropriate notice be given to BRAC; and that negotiations begin for a possible implementing agreement. On March 25, 1981, defendant responded that its employees are not affected by amendments made pursuant to section 219 of the Staggers Act since it is not a rate bureau.

On March 30, 1981, the Commission issued its decision in *Western Railroads—Agreement*, *supra*. Complainant relies upon this decision as support for its position that SFTB's employees are covered by section 219(g) and that SFTB must enter into negotiations for a possible implementing agreement.

366 I.C.C.

In its complaint, BRAC alleges that as a result of the deregulation of TOFC/COFC service, numerous employees were affected. It asserts that the subsequent exercise of seniority by the three displacements affected over 30 employees. In addition, in its bulletin No. 6870, the defendant announced that it was taking bids on the "temporary position" of rate clerk, which was to last 60 days. BRAC claims that this move affected an additional 10 employees.

On May 27, 1981, BRAC submitted a statement of claim on behalf of eight individuals who, according to BRAC, were forced to assume positions that paid less than their previous positions as a result of the displacements. The defendant responded, on June 3, 1981, that it had not violated any rules since it is not a rate bureau under the Staggers Act. Complainant filed an appeal with SFTB's Tariff Publishing Officer which was rejected.

#### CONTENTIONS OF THE PARTIES

BRAC contends that by enacting section 219(g), Congress intended to protect all employees who perform rate bureau functions. Essentially, BRAC's argument rests on the notion that when Congress speaks of rate bureaus it means those organizations engaged in ratemaking activities, and that the publishing of tariffs is a ratemaking activity. It categorically rejects SFTB's assertion that SFTB is not a rate bureau engaged in ratemaking activities but a tariff bureau engaged in publishing tariffs for various southern railroads and, consequently, SFTB's employees are not entitled to employee protection.

In rebutting SFTB's claim that its employees are not intended to be protected by the Staggers Act, BRAC cites SFA's Articles of Association. Under those Articles, the Standing Rate Committee obtains and studies all reasonably available facts and other information including tariff examinations and rate comparisons relative to rate proposals so as to make a fair and impartial written report thereon. The Association Chairman, elected by the Executive Committee, has jurisdiction over this Standing Rate Committee, and he must also arrange for the compilation, printing, and distribution of tariffs by tariff publishing agencies. The Article reads:

*Tariff Agencies* - The Chairman shall arrange for the compilation, printing, and distribution of tariffs by such tariff publishing agencies as may be necessary or desirable. There may be operated such tariff publishing agencies of the Association as may be authorized by the Executive Committee, the Managers thereof to be appointed and then salaries fixed by the Chairman subject to the approval of this Administration Committee.

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Cor complainant cites this provision as evidence that the functions and operations of the rate committee and tariff publishing agencies "are intertwined." It maintains that publication of tariffs is a rate bureau function, and it believes that the actualities of a rate bureau's functions reinforces its conclusion that section 219(g) embraces tariff bureau employees.

SFTB maintains that two issues are involved here: (1) whether section 219(g) of the Staggers Act has any application to job abolishments resulting from a deregulation action taken by the Commission in an administrative proceeding having no relationship to section 219, and (2) whether section 219(g), which protects rate bureau employees, has any application to persons who are employed by a tariff publishing agency affiliated with a rate bureau, and not by the rate bureau itself.

In discussing what it terms its primary issue, the defendant points out that section 219 addresses the scope of a rate bureau's permissible activities, and subsection (g) addresses the need for labor protective measures for employees who are affected by the limitations imposed on those activities by other provisions of section 219. According to SFTB, Congress enacted section 219(g) as a method of providing labor protection for employees who had engaged in ratemaking activities that are to be restricted by other portions of section 219. To invoke section 219(g), SFTB argues that the employees must show that any adverse effects on them were directly caused by the changes to antitrust immunity for collective ratemaking effected by section 219.

It is SFTB's contention that BRAC has failed to demonstrate any causal relationship because the three jobs were abolished as a direct result of the Commission's TOFC/COFC decision and not as a result of the narrowing of antitrust immunity by section 219. Defendant asserts that BRAC will be unable to do this because the three jobs that were abolished were the direct result of the Commission's TOFC/COFC decision and not as a result of the narrowing of the antitrust exemption accomplished by section 219. SFTB maintains that after the TOFC/COFC decision was rendered, it evaluated its reduced needs and decided to abolish three positions because the number of TOFC/COFC tariffs would be reduced.

#### DISCUSSION AND CONCLUSION

The primary question in this proceeding is whether employees of a tariff publishing agency affiliated with a rate bureau are employees of a rate bureau for purposes of section 219 of the Staggers Act and therefore entitled to labor protection under section 219(g). As discussed below, we

366 I.C.C.

believe that the subject employees are indeed protected under that statute.

In enacting section 219(g), Congress clearly intended to grant a right to a defined group of employees. Rate bureaus serve two functions: ratemaking and publication of those rates. BRAC refers to the two functions as rate bureau functions. We are convinced that Congress intended to include employees of a tariff publishing agency created by, affiliated with, or controlled by a rate bureau such as SFTB.

Rate bureaus came into existence following passage of the Interstate Commerce Act in 1887. Over the years Congress granted rate bureaus certain antitrust immunity provided they adhered to the standards for collective ratemaking as prescribed by law. Because the Commission must approve any agreement of ratemaking conferences, it has discussed in detail the role and functions of the rate bureaus in many cases. See, for example, *Western Traffic Assn.—Agreement*, 276 I.C.C. 183 (1949). These cases indicate that this Commission has consistently viewed rate bureaus as having two functions: preparing rates according to the statutory standards and publishing those rates so as to permit shippers to "comparison shop." For instance, in *Rate Bureau Investigation*, 349 I.C.C. 811, 817 (1975) the Commission declared:

We agree that the rate bureaus perform the important task of providing a forum for the orderly formulation of rates and governing rules for the transportation of almost every conceivable type of commodity moving in commerce. Once formulated, the rates are published by the bureaus in tariffs applicable to all who participate in them.

Also, in *Western Traffic Association, supra*, 190, the Commission noted:

In the long period since the reorganization of the rate conference procedures in conformity with the decisions of the Supreme Court in [cases omitted], the rate bureau and classification committee methods have been considered a necessary part of the process of railroad rate making. An additional duty of those organizations was to publish the tariffs expressing the classifications, rates, and charges of the carriers in order that this might be done by the most economical means available.

These statements make plain our consistent view that the publication of tariffs is a principal function of rate bureaus.

Although the defendant makes every effort to separate its function from that of its affiliate rate bureau, SFA, it is still a creation of, and exists for the purpose of serving, the rate bureau and its railroad members. We note that in the agreement of the Southern Region Railroads under 49 U.S.C. 10706(a) filed April 7, 1981, along with its application in Section 5b Application No. 6, Southern Railroads Agreement, SFTB is identified as an arm of SFA. Moreover, SFTB is to be operated as au-

thorized by the Executive Conference of SFA and the manager of SFTB is appointed and his salary is fixed by the chairman of SFA. Since publication and ratemaking go hand in hand in this instance, it is difficult to segregate the employees of SFA and SFTB, giving one group the benefits of employee protection while denying those benefits to the other.

Rate bureaus and their affiliated publishing tariff agencies came into existence because Congress permitted railroads to discuss rates collectively. Presumably many of the jobs provided by rate bureaus and their affiliated tariff agency employees came about as a result of this immunity. When Congress recently enacted section 219(g), it evidently realized that jobs long believed secure because of antitrust immunity could be adversely affected. It is logical to assume then that Congress wanted to provide protection to employees who carry out ratemaking functions, including those in tariff publishing agencies created and controlled by rate bureaus. Congress dictated that in the event employees who once benefited as a result of antitrust immunity were adversely affected, they should have protective rights on the level as those established pursuant to 49 U.S.C. 11347.

We, therefore, conclude that SFTB employees are employees of a rate bureau for purposes of section 219(g) of the Staggers Act and that if they are affected by the recent changes made by section 219, such employees are entitled to the employee protective conditions imposed in *New York Dock, supra*.

Turning to the question of whether certain employees have been affected by actions taken under section 219, we believe this specific issue should be resolved by arbitration. Since the statute limits protection to recent changes made by section 219, the dispute requires a determination of whether the adverse effects to the employees were directly caused by changes to antitrust immunity for collective ratemaking effected by section 219. This brings the dispute within the categories for which arbitration is the proper remedy. See *Haskell H. Bell v. Western Maryland Railway Company*, 366 I.C.C. 64 (1982).

This action will not significantly affect either the quality of the human environment or energy consumption.

*It is ordered:*

1. The complaint filed by BRAC is dismissed.
2. This decision shall be effective on the date it is served.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Gradison did not participate.

STB

FD-33388

7-22-98

J

ID-~~GOV~~





Office of the Chairman

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

FILE IN DOCKET

FD -  
333 88

July 22, 1998

Mr. Ron Thomas  
Railroad Section Manager  
Intermodal Transportation  
Indiana Department of Transportation  
100 North Senate Avenue  
Room N755  
Indianapolis, IN 46204-2249

Dear Mr. Thomas:

I am writing in response to your letter dated April 22, 1998. The CSX/NS/CR application, which was filed with this agency on June 23, 1997, contained extensive information regarding anticipated environmental impacts in Indiana. See Volume 6B at 134-200. See also Volume 6A at 74-75 (anticipated systemwide truck-to-rail diversions).

A copy of the CSX/NS/CR application, as filed on June 23, 1997, was served, on or about that date, on the Governor of Indiana and the Indiana Department of Transportation. See Volume 1 at 119.

I appreciate your interest in this matter, and will have your letter and my response made a part of the public docket in the STB Finance Docket No. 33388 proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

*Linda J. Morgan*  
Linda J. Morgan



INDIANA DEPARTMENT OF TRANSPORTATION

100 North Senate Avenue

Room N755

Indianapolis, Indiana 46204-2249

(317) 232-5533

FAX: (317) 232-0238

FRANK O'BANNON, Governor  
CURTIS A. WILEY, Commissioner

FILE IN DOCKET

Writer's Direct Line

April 22, 1998

Ms. Linda J. Morgan  
U. S. Department of Transportation  
Surface Transportation Board  
12<sup>th</sup> & Constitution Avenue NW  
Washington, DC 20423

RECEIVED  
SURFACE TRANSPORTATION  
BOARD  
APR 21 5 15 PM '98  
OFFICE OF  
CHAIRMAN MORGAN

Dear Ms. Morgan:

I have enclosed a copy of a newspaper article outlining a public benefit derived from the acquisition of Conrail by CSXT and Norfolk Southern. I am interested in the formula that was used by CSX to develop this type of information.

Did CSX and Norfolk Southern have to furnish the Surface Transportation Board (STB) with this data in their application before the STB? If so please forward a detailed report to my attention. If the information was not required by the STB, then please provide a contact person for CSX that is handling the acquisition before the STB.

Thank you.

Sincerely,

Ron Thomas  
Railroad Section Manager  
Intermodal Transportation

File: STB(1)

P. O. BOX 784  
BLOOMINGTON, IN 47402  
800.276.8588

MAR 12 1998

JOURNAL & COURIER  
LAFAYETTE

Circ: 45,516/48,000  
Partly Non  
Dist M-Sat/Sun  
County TIPPECANOE  
Pop: 130,598

# Railroads tout benefits to state

1095  
By Sean Hao  
Journal and Courier

CSX Corp. and Norfolk Southern Corp. say the \$10 billion acquisition of Conrail could mean fewer trucks on Indiana's roads and less highway maintenance costs.

The two railroad shippers are predicting a reduction of more than 29.6 million truck miles on Indiana highways and savings of more than \$3.5 million annually in highway maintenance costs.

Improved rail traffic efficiency will encourage manufacturers to switch from trucks to railroads, alleviating road congestion, highway spending, CSX and Norfolk Southern said in a joint statement.

Elmo Gonzalez, district director for the Indiana Department of Transportation's Crawfordsville District, said Wednesday it's too early to tell whether the Conrail deal will have the impact CSX and Norfolk Southern predict, though there will be some benefit.

"It's very difficult to tell," he said. "It will improve traffic but to what extent? We don't know."

But while truck traffic may ease, rail traffic through Lafayette is expected to double, as some rail traf-

## Projected savings

Rail companies CSX and Norfolk Southern Corp. estimate that their pending purchase of Conrail could divert trucks traffic and the associated road maintenance costs within three years of the transaction's approval. Here's how those savings would affect Greater Lafayette, according to information compiled for the federal Surface Transportation Board. (Note: Carroll County wasn't included in the survey.)

Counties	Diverted	Diverted	Total	Maintenance
	truck miles	truck miles		
	CSX	NS		
Benton	6,755	N/A	6,755	\$811
Clinton	142,517	N/A	142,517	\$17,102
Fountain	14,899	201,629	216,528	\$25,983
Jasper	216,283	N/A	216,283	\$25,954
Montgomery	15,984	268,773	284,757	\$34,171
Newton	85,670	N/A	85,670	\$10,280
Tippecanoe	153,513	N/A	153,513	\$18,422
Warren	12,674	45,169	57,843	\$6,941
White	132,382	N/A	132,382	\$15,886
Indiana	13,987,126	15,668,053	29,655,179	\$3,558,621

Source: CSX Corp.

fic is diverted from CSX's recently relocated lines to the Norfolk Southern line through town.

If the acquisition of Conrail by the CSX and Norfolk Southern rail-

roads is approved, the number of trains that run on the Norfolk Southern tracks between Lafayette and Tilton, Ill., could nearly double to 41 trains per day from the cur-

rent 23.

But CSX and Norfolk Southern said that within three years of the transaction being approved, more than 1.1 million truckloads of freight per year could be diverted from highways to rails, saving 120 million gallons of diesel fuel annually and reducing levels of toxic air emissions.

Major diversions would occur in the following counties: Lake, LaPorte, Lagrange, St. Joseph and Steuben.

CSX and Norfolk Southern submitted their application to acquire Conrail to the U.S. Surface Transportation Board last June. The board is expected to issue its final decision on the \$10 billion transaction in July.

Richmond, Va.-based CSX provides rail transportation and distribution services over an 18,500 route-mile rail system in 20 states, the District of Columbia and Ontario, Canada.

Norfolk Southern is a Virginia-based holding company, which operates about 14,400 miles of road in 20 states, primarily in the Southeast and Midwest, and the Province of Ontario, Canada.

STB

FD-33388

7-22-98

J

ID-UNION



Office of the Chairman

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

FILE IN DOCKET

FD-33388

July 22, 1998

Mr. Sonny Hall  
International President  
Transport Workers Union of America  
80 West End Avenue  
New York, NY 10023

Dear Mr. Hall:

Thank you for sending me a copies of your June 15, 1998 letters to Congressional representatives regarding the application of CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide the assets of Conrail among the two acquiring railroads. Specifically, you have expressed concern that approval of the transaction by the Surface Transportation Board (Board) will result in the breaking of existing collective bargaining agreements (CBAs) with carrier employees. You have also raised questions about how the negotiation and arbitration process would work.

At the outset, let me stress that the Board does not abrogate or override CBAs. The Board does, of course, review rail consolidation proposals, as it is required to do under the law. And as I have advised Members of Congress regarding the implementation of Board-approved rail consolidations, under current law, the courts have held that, under what is now 49 U.S.C. 11321(a), agency approval of a consolidation transaction confers self-executing immunity from all other laws to the extent necessary to permit implementation of the transaction. In Norfolk & Western R. Co. v. Train Dispatchers, 499 U.S. 117 (1991) (N&W), the United States Supreme Court specifically held that the immunity provided by statute includes the carrier's obligations under a CBA. Moreover, since at least 1936 when the Washington Job Protection Agreement was executed by representatives of virtually all of the railroads and national rail unions, agency-approved rail consolidations have been implemented without resort to bargaining under the Railway Labor Act. Rather, implementing agreements that require changes in CBAs have been negotiated, and, failing negotiation, arbitrators have made modifications to CBA provisions as necessary to permit implementation of an approved transaction. Arbitrators, with their specific expertise in bringing labor and management together, and in addressing the many issues related to the collective bargaining process, are better suited than the Board -- which can review the arbitral decisions -- to make necessity findings in the first instance. Until the mid-1980's, this process worked well and was not to our knowledge viewed as being adverse to the interests of rail labor.

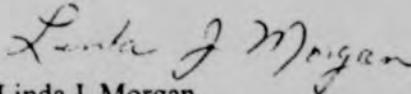
In short, it is well established that the self-executing immunity statute provides for the overriding of CBA provisions as necessary to implement the approved transaction, and such overrides are not due to specific agency actions other than approval of the proposed transaction.

At the Board's June 8, 1998 voting conference on the proposed Conrail control transaction, we considered the interests of employees as we are required to do in concluding that the proposed transaction should be approved with conditions. We also reaffirmed the longstanding principle that the negotiation and arbitration process is the proper way to resolve important issues relating to employee rights that may be affected by the transaction. To ensure this result, we made clear, as requested by rail labor, that the Board's approval of the transaction did not indicate approval or disapproval of any of the involved CBA overrides that the applicants had argued were necessary. If negotiated settlements cannot be reached, then arbitrators, who are not selected by the Board, but rather by the parties with the assistance of the National Mediation Board, will be free to make whatever determinations they deem appropriate with respect to CBA overrides, subject to extremely limited review by the Board under the deferential "Lace Curtain" standards. We also voted to provide the protections of New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), and also as suggested by representatives of rail labor, to direct that the applicant carriers meet with labor representatives and form task forces for the purpose of promoting labor-management dialogue concerning implementation and safety issues. To the maximum extent possible, the Board has urged labor and management to reach voluntary implementing agreements.

The Supreme Court in N&W made clear that all categories of contracts are subject to abrogation to the extent necessary to permit an approved railroad consolidation to be implemented. One such category of contract rights that is frequently abrogated in rail consolidations is the contract rights of stock and bond holders of consolidating railroads, which the Supreme Court had previously held did not survive approval of a consolidation by the agency that modified their terms. Most recently, at the June 8 voting conference on the Conrail control transaction, the Board voted to override anti-assignment provisions of certain shipper transportation contracts to ensure a smooth implementation of the approved transaction and to require modification of provisions of agreements among railroads and between shippers and railroads involving such matters as switching rights and charges to address competitive concerns. Clearly then, both in theory and in practice, rail employee CBAs are not the only contractual provisions that have been overridden as a result of agency approval of a rail consolidation proposal.

I hope you find this information useful, and I emphasize that the Board remains committed to giving full and fair consideration in accordance with the law to rail labor concerns in consolidation proceedings. I am having your letter and my response made a part of the public docket for this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely

  
Linda J. Morgan



# TRANSPORT WORKERS UNION OF AMERICA

80 West End Avenue ■ New York, NY 10023 ■ (212) 873-6000 ■ Fax: (212) 721-1431 ■ <http://twu.org>

FILE IN DOCKET

June 15, 1998

RECEIVED  
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BOARD  
JUN 17 1 23 PM '98  
OFFICE OF  
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International President  
Emeritus

**Sonny Hall**  
International President

**Frank McCann**  
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Vice President

**John J. Kerrigan**  
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- Corina Scott-Mack
- George McDonald
- R.G. (Jeff) Ortengren
- Loren Schlotzhart
- Marsha Spencovitz
- Ed Talley
- Jim Whalen

Honorable Jack Quinn  
United States House of Representatives  
Washington, D.C. 20515-3230

Dear Congressman Quinn:

On behalf of our Officers and thousands of dedicated railroad workers and myself, we thank you for your June 2, 1998 letter to Linda Morgan, Chairwoman of the Surface Transportation Board.

Your advise and request to Chairwoman Morgan that the STB should not approve the takeover of ConRail by C.S.X. and N.S. unless the good faith existing labor agreement between ConRail and their employees is honored by C.S.X. and N.S., is very much appreciated.

The recent STB decision, which approved the merger (takeover) of ConRail by C.S.X. and N.S., left open the question of the existing ConRail Labor agreement and directed that discussions with the related Unions and C.S.X. and N.S. should begin in an effort to reconcile any differences and concerns related to the existing Labor agreements the parties may have. However, it is only a slight deviation from past anti-worker STB decisions. We continue to be concerned by the fact that the STB will independently appoint an arbitrator if the parties can not resolve their concerns relating to any Labor agreement. In addition, as I understand the process, the STB has the power to accept or amend the arbitrator's decisions. While the decision to leave the contract issues open could be helpful, unless the STB under Chairwoman Morgan supports the concept of good faith collective bargaining and the principle that no Federal Government agency should harm or disrespect good faith collective bargaining agreement, in particular between mergers (takeovers) of privately owned and profitable companies, such as ConRail, C.S.X. and N.S., this helpful first step will be a meaningless one.

I would ask that you continue to use your good office and communicate with and track the course taken by the STB and Chairwoman Morgan.

Sincerely,

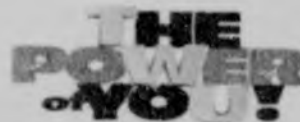
Sonny Hall  
International President

SH:mo

opeiu-153

- c: Chairwoman Morgan, STB
- John Sweeney (w/enc.)
- Ed Wytkind (w/enc.)
- John Czuczman (w/enc.)
- Charlie Money Penny (w/enc.)
- Roger Tauss (w/enc.)
- David Rosen, Esq. (w/enc.)
- Rail Chiefs (w/enc.)

C:\SHRRD\CSX-NS\GOODFAITH.VPD



United, our possibilities are boundless!



# TRANSPORT WORKERS UNION OF AMERICA

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June 15, 1998

**George E. Leitz**  
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Emeritus

**Sonny Hall**  
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**Frank McCann**  
International Executive  
Vice President

**John J. Kerrigan**  
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- George McDonald
- R.G. (Jeff) Orsinger
- Loren Schlotzhart
- Martha Spinowitz
- Ed Talley
- Jim Whalen

Honorable Bob Ney  
United States House of Representatives  
Washington, D.C. 20515-3518

Dear Congressman Ney:

On behalf of our Officers and thousands of dedicated railroad workers and myself, we thank you for your June 2, 1998 letter to Linda Morgan, Chairwoman of the Surface Transportation Board.

Your advise and request to Chairwoman Morgan that the STB should not approve the takeover of ConRail by C.S.X. and N.S. unless the good faith existing labor agreement between ConRail and their employees is honored by C.S.X. and N.S., is very much appreciated.

The recent STB decision, which approved the merger (takeover) of ConRail by C.S.X. and N.S., left open the question of the existing ConRail Labor agreement and directed that discussions with the related Unions and C.S.X. and N.S. should begin in an effort to reconcile any differences and concerns related to the existing Labor agreements the parties may have. However, it is only a slight deviation from past anti-worker STB decisions. We continue to be concerned by the fact that the STB will independently appoint an arbitrator if the parties can not resolve their concerns relating to any Labor agreement. In addition, as I understand the process, the STB has the power to accept or amend the arbitrator's decisions. While the decision to leave the contract issues open could be helpful, unless the STB under Chairwoman Morgan supports the concept of good faith collective bargaining and the principle that no Federal Government agency should harm or disrespect good faith collective bargaining agreement, in particular between mergers (takeovers) of privately owned and profitable companies, such as ConRail, C.S.X. and N.S., this helpful first step will be a meaningless one.

I would ask that you continue to use your good office and communicate with and track the course taken by the STB and Chairwoman Morgan.

Sincerely,

Sonny Hall  
International President

SH:mo

opeiu-153

- c: Chairwoman Morgan, STB
- John Sweeney (w/enc.)
- Ed Wytkind (w/enc.)
- John Czuczman (w/enc.)
- Charlie Moneypenny (w/enc.)
- Roger Tauss (w/enc.)
- David Rosen, Esq. (w/enc.)
- Rail Chiefs (w/enc.)

C:\SH\RRD\CSX-NS\GOODFAIR.WPD



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R.G. (Jeff) Ortengren  
Loren Schlitzenhart  
Martha Spinowitz  
Ed Talley  
Jim Whalen

Honorable Steve LaTourette  
United States House of Representatives  
Washington, D.C. 20515-3519

Dear Congressman LaTourette:

On behalf of our Officers and thousands of dedicated railroad workers and myself, we thank you for your June 2, 1998 letter to Linda Morgan, Chairwoman of the Surface Transportation Board.

Your advise and request to Chairwoman Morgan that the STB should not approve the takeover of ConRail by C.S.X. and N.S. unless the good faith existing labor agreement between ConRail and their employees is honored by C.S.X. and N.S., is very much appreciated.

The recent STB decision, which approved the merger (takeover) of ConRail by C.S.X. and N.S., left open the question of the existing ConRail Labor agreement and directed that discussions with the related Unions and C.S.X. and N.S. should begin in an effort to reconcile any differences and concerns related to the existing Labor agreements the parties may have. However, it is only a slight deviation from past anti-worker STB decisions. We continue to be concerned by the fact that the STB will independently appoint an arbitrator if the parties can not resolve their concerns relating to any Labor agreement. In addition, as I understand the process, the STB has the power to accept or amend the arbitrator's decisions. While the decision to leave the contract issues open could be helpful, unless the STB under Chairwoman Morgan supports the concept of good faith collective bargaining and the principle that no Federal Government agency should harm or disrespect good faith collective bargaining agreement, in particular between mergers (takeovers) of privately owned and profitable companies, such as ConRail, C.S.X. and N.S., this helpful first step will be a meaningless one.

I would ask that you continue to use your good office and communicate with and track the course taken by the STB and Chairwoman Morgan.

Sincerely,

Sonny Hall  
International President

SH:mo

opeiu-153

c: Chairwoman Morgan, STB  
John Sweeney (w/enc.)  
Ed Wytkind (w/enc.)  
John Czuczman (w/enc.)  
Charlie Moneypenny (w/enc.)  
Roger Tauss (w/enc.)  
David Rosen, Esq. (w/enc.)  
Rail Chiefs (w/enc.)

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**THE  
POWER  
of YOU!**

Unified our possibilities are boundless!

004-04-88 THU 11:26

Congress of the United States  
House of Representatives  
Washington, DC 20515

June 2, 1998

The Honorable Linda Morgan  
Chairwoman  
Surface Transportation Board  
1925 K Street, NW  
Washington, D.C. 20423-0001

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1998

Dear Chairwoman Morgan,

INT'L. PRESIDENTS OFFICE

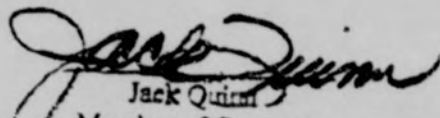
Please include this letter as part of the public record.

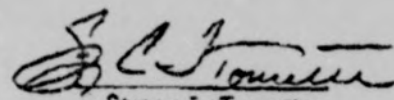
We are writing to express our deep concerns about the way in which the Surface Transportation Board (STB) has exercised its regulatory authority. While the STB has a duty to ensure proposed rail mergers do not violate U.S. antitrust laws, several actions taken by the Board have had the result of ~~viscerating~~ *viscerating* collective bargaining agreements between rail employees and the powerful carriers.

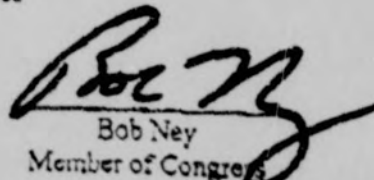
The STB has an obligation to consider the "interests of rail carrier employees" affected by a proposed merger, not to simply comply with the "cram downs" requested by the rail industry. Allowing carefully negotiated collective bargaining agreements to be breached does not fulfill this obligation.

We believe that the employees of an increasingly concentrated industry must not be left to fend for themselves as their employers become more and more powerful. We urge the STB to honor the pre-merger collective bargaining agreements these employees rely on.

Very truly yours,

  
Jack Quinn  
Member of Congress

  
Steven LaTourette  
Member of Congress

  
Bob Ney  
Member of Congress

STB

FD-33388

7-22-98

J

ID-UNION



Office of the Chairman

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

FILE IN DOCKET  
FD-33388

July 22, 1998

Mr. Robert A. Scardelletti  
International President  
Transportation Communications International Union  
3 Research Place  
Rockville, MD 20850

Dear Mr. Scardelletti:

I have received your June 16, 1998 letter regarding the application of CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide the assets of Conrail among the two acquiring railroads. Specifically, you continue to express concern that approval of the transaction by the Surface Transportation Board (Board) will result in the breaking of existing collective bargaining agreements (CBAs) with carrier employees, while other contracts are treated differently, and you express your disappointment that the Board did not vote to give your members the option of taking severance pay rather than having to relocate on the consolidated system.

First, I will address the override of CBAs. At the outset, let me stress that the Board does not abrogate or override CBAs. The Board does, of course, review rail consolidation proposals, as it is required to do under the law. And as I have advised Members of Congress regarding the implementation of Board-approved rail consolidations, under current law, the courts have held that, under what is now 49 U.S.C. 11321(a), agency approval of a consolidation transaction confers self-executing immunity from all other laws to the extent necessary to permit implementation of the transaction. In Norfolk & Western R. Co. v. Train Dispatchers, 499 U.S. 117 (1991) (N&W), the United States Supreme Court specifically held that the immunity provided by statute includes the carrier's obligations under a CBA. Moreover, since at least 1936 when the Washington Job Protection Agreement was executed by representatives of virtually all of the railroads and national rail unions, agency-approved rail consolidations have been implemented without resort to bargaining under the Railway Labor Act. Rather, implementing agreements that require changes in CBAs have been negotiated, and, failing negotiation, arbitrators have made modifications to CBA provisions as necessary to permit implementation of an approved transaction. Arbitrators, with their specific expertise in bringing labor and management together, and in addressing the many issues related to the collective bargaining process, are better suited than the Board -- which can review the arbitral decisions -- to make necessity findings in the first instance. Until the mid-1980's, this process worked well and was not to our knowledge viewed as being adverse to the interests of rail labor.

In short, it is well established that the self-executing immunity statute provides for the overriding of CBA provisions as necessary to implement the approved transaction, and such overrides are not due to specific agency actions other than approval of the proposed transaction.

At the Board's June 8, 1998 voting conference on the proposed Conrail control transaction, we considered the interests of employees, as we are required to do, in concluding that the proposed transaction should be approved with conditions. We also reaffirmed the longstanding principle that the negotiation and arbitration process is the proper way to resolve important issues relating to employee rights that may be affected by the transaction. To ensure this result, we made clear, as requested by rail labor, that the Board's approval of the transaction did not indicate approval or disapproval of any of the involved CBA overrides that the applicants had argued were necessary. If negotiated settlements cannot be reached, then arbitrators, who are not selected by the Board, but rather by the parties with the assistance of the National Mediation Board, will be free to make whatever determinations they deem appropriate with respect to CBA overrides, subject to extremely limited review by the Board under the deferential "Lace Curtain" standards. We also voted to provide the protections of New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), and also as suggested by representatives of rail labor, to direct that the applicant carriers meet with labor representatives and form task forces for the purpose of promoting labor-management dialogue concerning implementation and safety issues. To the maximum extent possible, the Board has urged labor and management to reach voluntary implementing agreements.

As you point out, the Board did not vote to give your members the option of receiving a separation allowance rather than having to relocate on the consolidated system. Rather, because the Board's New York Dock conditions do not provide for such relief unless it is established in an implementing agreement, the Board left the matter to the negotiation and implementation process, as was the case in the recent BNSF and UPSP mergers, in which your union apparently successfully negotiated for that right during the merger implementation process. The Board did, however, make clear that under New York Dock, once an employee has been dismissed, he or she may not be required to report to a work station that requires that employee to move his or her place of residence or else suffer the loss of dismissal payments, because New York Dock prohibits such a result.

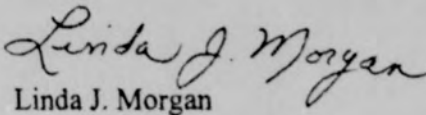
With regard to contracts other than CBAs, the Supreme Court in N&W made clear that all categories of contracts are subject to abrogation to the extent necessary to permit an approved railroad consolidation to be implemented. One such category of contract rights that is frequently abrogated in rail consolidations is the contract rights of stock and bond holders of consolidating railroads, which the Supreme Court had previously held did not survive approval of a consolidation by the agency that modified their terms. Most recently, at the June 8 voting conference on the Conrail control transaction, the Board voted to override anti-assignment and other similar provisions of certain shipper transportation contracts to ensure a smooth implementation of the approved transaction and to require modification of provisions of agreements among railroads and between shippers and railroads involving such matters as

switching rights and charges to address competitive concerns. The Board is able to rule directly on the override issue as to these types of contracts, which are not covered by New York Dock, and which are not amenable to the negotiation and arbitration process that is suitable for labor issues. In any event, the point is that, both in theory and in practice, rail employee CBAs are not the only contractual provisions that have been overridden as a result of agency approval of a rail consolidation proposal.

In summary, consistent with the historical practice, implementing agreements will be established through the negotiation and arbitration process. Any party dissatisfied with an arbitral decision may appeal it to the Board; contrary to the implication in your letter, the Board and its predecessor the Interstate Commerce Commission (ICC) have on various occasions overruled arbitrators who had found in favor of railroads and adversely to employees. At the same time, the Board and the ICC have declined to review arbitral decisions that have been appealed by railroads, and have denied other appeals filed by railroads. I should note in this regard that the Board's practice of removing itself from the collective bargaining process, including its deference in reviewing arbitral decisions, is consistent with the position that has been taken by rail labor for many years.

I understand your strong interest in this matter. I emphasize that the Board remains committed to giving full and fair consideration in accordance with the law to rail labor concerns in consolidation proceedings. I am having your letter and my response made a part of the public docket for this proceeding.

Sincerely

  
Linda J. Morgan



AFL-CIO, CLC

# TRANSPORTATION • COMMUNICATIONS

## INTERNATIONAL UNION

FILE IN DOCKET

**ROBERT A. SCARDELLETTI**  
International President

June 16, 1998

Linda Morgan, Chair  
Surface Transportation Board  
1925 "K" Street, N.W.  
Washington, D.C. 20423-001

Dear Ms. Morgan:

I am writing to express my profound disappointment over your decision on labor issues as conveyed in the voting conference on the breakup of Conrail.

While I appreciate your rejection of CSX's unprecedented request to force employees on dismissed status to transfer, on the whole the decision is totally incompatible with an Administration that cares about working people.

There was absolutely no reason for you to reject our minimal request -- which had been endorsed by the DOT -- that workers have an option to take severance pay instead of being uprooted and forcibly relocated great distances. Our members on Conrail average more than 50 years of age and more than 20 years of service. Their hard work and sacrifices are the untold story behind the Conrail miracle -- how a bankrupt Northeast rail system transformed itself into a \$10 billion thriving enterprise. Conrail executives, most of whom were not even around during Conrail's comeback years, have engorged themselves with golden parachutes ranging from several million dollars to \$23 million for the departing CEO, in all amounting to the staggering sum of more than a billion dollars. Yet your STB says workers should get nothing if they are unwilling to move.

On the issue of collective bargaining agreements, you chose not to reject outright CSX's and Norfolk Southern's preposterous claim that abrogating contracts they don't like will be necessary for the transaction to proceed. The flimsy and contradictory<sup>1</sup> rationales advanced by Applicants clearly fall far short of any

<sup>1</sup> CSX says imposing the Conrail agreement on C&O and B&O territories is "necessary" for the transaction to proceed; Norfolk Southern claims the opposite is true (Conrail agreement out, N&W agreement in.)



CHAIRMAN MORGAN  
JUN 16 1998  
SURFACE TRANSPORTATION BOARD

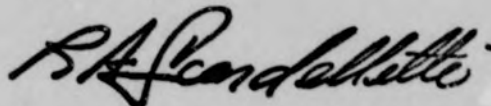
common sense definition of "necessity." I suppose you might believe that the language you adopted on this issue should pacify labor, since it doesn't come out and directly endorse the railroads' arguments. But it's a far cry from outright rejection of the override, which is what a labor-sensitive Board would have done. Indeed, the STB did just that in finding that Applicants' efforts to override the non-assignment provisions in shipper contracts did not meet the necessity test. There is no principled basis for your failure to treat the Applicants' request to override the collective bargaining agreements in the same manner.

The difference in treatment between shipper and labor contracts is unfortunately consistent with the Board's record of hostility to workers. The only arbitration decisions that have been overruled by your agency are those in which arbitrators have rejected carrier requests to override collective bargaining agreements. Sadly, you have failed to take this opportunity to dispel the widespread perception that the STB is anti-union.

I have chosen to write you directly, because I believe that you have a right to know how our union feels about this decision, rather than hear it secondhand from Administration and journalistic sources. Our members are the casualties of this greed-driven dismantling of a healthy corporation. They have given their working lives to Conrail, and now face being thrown out on the street with nothing or being forced to uproot their families against their will. You had the chance to do something to help them. They hoped that a Board appointed by an Administration they think of as friendly to working people would show some compassion for them. They learned a bitter lesson.

The STB is truly one of the most powerful entities in the federal government. It must stop using its power solely in the interests of the economically powerful, and start considering the human costs of its rulings.

Yours truly,



Robert A. Scardelletti  
International President



STB

FD-33388

7-22-98

J

ID-GOV



Office of the Chairman

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

FILE IN DOCKET

July 22, 1998

The Honorable James S. Gilmore, III  
Governor  
Commonwealth of Virginia  
State Capitol  
Richmond, VA 23219

Dear Governor Gilmore:

Thank you for your letter expressing support for the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding remains pending before the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

The Board recently conducted an extensive oral argument on the proposed transaction, hearing from more than 70 witnesses over the course of the 2-day argument held on June 3 and 4, 1998. Following oral argument, the Board held an open voting conference on June 8, 1998, at which we voted to approve the proposed transaction, subject to a number of conditions. The Board currently is preparing a final written decision that implements the vote at the voting conference, which is scheduled for issuance on July 23, 1998.

In voting for approval, the Board found that the transaction, as augmented by numerous settlement agreements among the parties and as further conditioned, would inject competition into the eastern United States in an unprecedented manner. The conditions adopted by the Board, while significant, recognize the operational and competitive integrity of the overall proposal and the importance of promoting and preserving privately-negotiated agreements. In particular, the Board's conditions include 5 years of oversight, along with substantial operational monitoring and reporting to ensure that the transaction is successfully implemented; mitigation of potential adverse impacts on the environment and on safety; recognition of employee interests, including a reaffirmation of the negotiation and arbitration process as the proper way to resolve important issues relating to employee rights; and several conditions that address the vital role of smaller railroads and regional concerns about competition.

I appreciate your interest in this matter, and will have your letter and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

*Linda J. Morgan*  
Linda J. Morgan



FILE IN DOCKET

# COMMONWEALTH of VIRGINIA

Office of the Governor

James S. Gilmore, III  
Governor

June 2, 1998

RECEIVED  
SURFACE TRANSPORTATION  
OFFICE  
CHAIRMAN MORGAN  
JUN 5 3 03 PM '98

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
STB Finance Docket No. 33388  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

RE: 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:

As the Surface Transportation Board prepares to conclude its review of the proposed acquisition of Conrail by CSX and Norfolk Southern, I would like to reiterate the Commonwealth of Virginia's strong support for this pending merger.

CSX and Norfolk Southern (NS) have both earned a well-deserved reputation for providing quality customer service while fostering a strong tradition of community service. As the long-time base of operations for both of these companies, the Commonwealth of Virginia is uniquely qualified to recommend that CSX and NS be allowed to expand their operations. Undoubtedly, NS and CSX will both be responsive to communities throughout the new regions they propose to serve.

The addition of Conrail routes will create two stronger transportation companies, offering Virginia businesses and citizens better access to the northeast markets. Improved routes between Hampton Roads and the Midwest and beyond will assist our ports and we are confident that the enhanced rail configuration in the eastern United States will open new market opportunities for products produced throughout Virginia.

The agreement reached by CSX and NS will bring much more rail competition and better access to areas that our industries have had difficulty in reaching. Seamless railroad access to the Northeast markets will improve freight transit times and this competitive rail package should benefit those in our communities who ship and receive goods both to and from these areas.

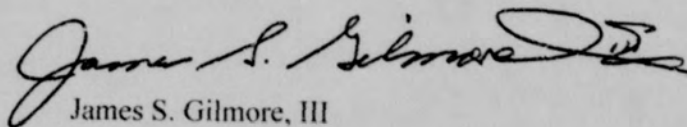
Mr. Vernon A. Williams  
May 27, 1998  
Page Two

NS and CSX are host railroads to our commuter rail service, the Virginia Railway Express (VRE) that began in 1991. CSX, NS, are working with VRE to improve commuter rail service along the Manassas to Washington, D.C. and Fredericksburg to Washington, D.C. corridors. I am confident that, as CSX and NS prepare to interact with additional commuter rail systems, they will continue to honor their commitments to VRE and to Virginia's rail commuters.

Again, on behalf of the Commonwealth of Virginia, I am pleased to strongly recommend the Surface Transportation Board's prompt approval of the proposed acquisition of Conrail by CSX and Norfolk Southern. If you require further details regarding the impact on Virginia of this merger, kindly contact me or my Secretary of Transportation, Shirley J. Ybarra.

With warm regards, I remain,

Very truly yours,



James S. Gilmore, III  
Governor of Virginia

JSGIII/dbb

cc: The Honorable Linda J. Morgan, Chairman ✓  
Surface Transportation Board

The Honorable Gus A. Owen, Vice Chairman  
Surface Transportation Board

STB FD-33388 7-21-98 J ID-COUNTY



Office of the Chairman

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

FILE IN DOCKET

July 21, 1998

Mr. Joseph G. Rampe  
County Executive  
Orange County  
Orange County Government Center  
255 Main Street  
Goshen, NY 10924

Dear Mr. Rampe:

Thank you for your letter regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding remains pending before the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

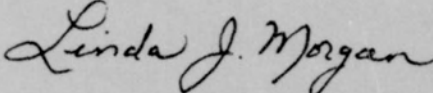
The Board recently conducted an extensive oral argument on the proposed transaction, hearing from more than 70 witnesses over the course of the 2-day argument held on June 3 and 4, 1998. Following oral argument, the Board held an open voting conference on June 8, 1998, at which we voted to approve the proposed transaction, subject to a number of conditions. The Board currently is preparing a final written decision that implements the vote at the voting conference, which is scheduled for issuance on July 23, 1998.

In voting for approval, the Board found that the transaction, as augmented by numerous settlement agreements among the parties and as further conditioned, would inject competition into the eastern United States in an unprecedented manner. The conditions adopted by the Board, while significant, recognize the operational and competitive integrity of the overall proposal and the importance of promoting and preserving privately-negotiated agreements. In particular, the Board's conditions include 5 years of oversight, along with substantial operational monitoring and reporting to ensure that the transaction is successfully implemented; mitigation of potential adverse impacts on the environment and on safety; recognition of employee interests, including a reaffirmation of the negotiation and arbitration process as the proper way to resolve important issues relating to employee rights; and several conditions that address the vital role of smaller railroads and regional concerns about competition.

With respect to the specific concerns raised in your letter, the transaction will have a broad positive economic effect when it is fully in place. It will produce an impressive \$1 billion annually in quantifiable public benefits and numerous other benefits. Among those will be substantial capital investment in rail infrastructure, which will benefit all areas and shippers served by these newly consolidated systems.

I appreciate your interest in this matter. I will have your letter and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

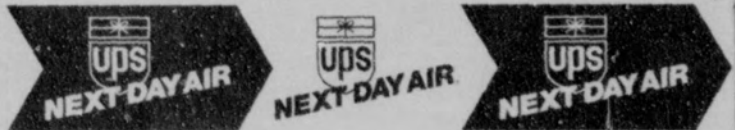
A handwritten signature in cursive script that reads "Linda J. Morgan". The signature is written in dark ink and is positioned above the printed name.

Linda J. Morgan

0526 7671 099

REFERENCE NUMBER		
NAME	TELEPHONE	
COMPANY	914-234-101	
COUNTY EXECUTIVE		
STREET ADDRESS		
355 MAIN STREET		
CITY	STATE	ZIP CODE
ROSELAND	NY	10074
NAME	TELEPHONE	
Honorable Linda Morgan		
COMPANY	Chairman, Surface Transportation Bld.	
STREET ADDRESS		
1925K Street NW		
CITY	STATE	ZIP CODE
Washington	DC	20423

LTR	UPS SHIPPER NUMBER
	67X65
TRACKING NO.	0526 7871 099







JOSEPH G. RAMPE

COUNTY EXECUTIVE

FILE IN DOCKET

CHAIRMAN MORGAN

JUN 2 5 06 PM '98

RECEIVED  
SURFACE TRANSPORTATION

June 1, 1998

Dear Ms. Morgan:

My previous communication to the Surface Transportation Board about the acquisition of Conrail by CSX and Norfolk Southern emphasized the importance of the Conrail system to Orange County's economy and quality of life. These issues are again of concern as the Surface Transportation Board moves toward the final phase of approving this major rail acquisition.

I request that the Surface Transportation Board do whatever is necessary to see that appropriate investments are made by CSX and Norfolk Southern to protect and improve the value of the rail assets in Orange County for both commutation and cargo transportation.

In the short run, these investments should include new signalization facilities and other investments to improve top speed (such as double tracking and sidings) to facilitate better passenger and freight service.

Looking further ahead we see the possibility of Norfolk Southern establishing an intermodal facility at the intersection of I-84 and I-87 to better serve the New England market by rail and truck. While this seems like an appropriate solution in the short run, we believe that a long run solution might involve the reactivation of the Poughkeepsie rail bridge... reinstating a direct rail link from the Midwest to New England.

We are impressed with Norfolk Southern and CSX plans to grow their businesses by providing better rail service in the Northeast. We believe this objective can best be accomplished in southeastern New York by making the kind of investments I have outlined in this letter.

Thank you for your consideration.

Yours truly,

Joseph G. Rampe

Honorable Linda Morgan  
Chairperson, Surface Transportation Board  
1925K Street NW  
Washington, DC 20423

c: Honorable Daniel L. Alfonso, Chairman, Ulster County Legislature  
Honorable William R. Steinhaus, Dutchess County Executive  
Honorable C. Scott Vanderhoef, Rockland County Executive