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Surface Transportation Board  
395 E St SW  
Washington, DC 20423

**RE: Montana Rail Link, Inc.—Petition for Rulemaking—Classification of Carriers  
Docket No. EP 763**

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to provide comments on the Surface Transportation Board's proposal to modify revenue thresholds for the classification of rail carriers. By way of background, TTD consists of 33 affiliate unions, including unions representing freight rail workers who may be impacted by the granting of this petition.<sup>1</sup>

In February, Montana Rail Link (MRL) requested that the Board increase the revenue threshold for Class I carriers to \$900 million in annual operating revenue from the current threshold of \$489,935,956 or more. TTD opposed this petition based on MRL's failure to justify that the increase was necessitated by economic conditions and the future application of certain labor protections. In response, STB has now issued an NPRM to grant MRL's request, and further increase the regulatory threshold broadly, to apply to any carrier whose revenue surpasses \$900 million. TTD continues to oppose both MRL's petition and STB's proposal.

Principally, TTD is concerned with the rule's implications for the application of labor standards. As TTD noted in our initial comments:

*"...the application of these protective arrangements differs depending on the class of the railroad. For example, New York Dock conditions are imposed on consolidation and merger transactions that involve at least one Class I carrier or two Class II carriers. Conversely, they do not apply in the event of such a*

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<sup>1</sup> Attached is a list of TTD's 33 affiliated unions.

*transaction between a Class II and Class III carrier. Therefore, increasing the Class I threshold could prevent MRL employees from benefiting from labor protective conditions that would have applied if it became a Class I that engaged in a transaction with a Class III railroad.”*

In short, the effect of this rule would be to deny employees certain protective conditions that would have otherwise applied. Despite MRL’s continued insistence that STB’s consideration of railroad revenue classification is solely in regards to accounting/reporting regulations, STB quickly contradicts this in its NPRM, writing that “Under 49 CFR part 1201, General Instructions section 1–1(a), rail carriers are grouped into one of three classes for purposes of accounting and reporting. **The classification of rail carriers is also used in a variety of other contexts**, including differentiating the legal standards and procedures that apply to certain transactions subject to Board licensing, e.g., 49 U.S.C. 10902, 11324, 11325, and **prescribing labor protection conditions**, see, e.g., 49 U.S.C. 10903(b)(2), 11326, among others.”<sup>2</sup> We are explicitly concerned about such transactions and labor conditions and their impact on employees. Previously, TTD requested that if MRL were permitted to remain a Class II Carrier, that the Board adopt unique labor protections that would continue to treat MRL as a Class I for purposes of transactions that trigger the protective conditions the Board cites.

In proposing this NPRM and in response to TTD, the Board writes that “...if the threshold is raised, MRL employees would suffer no loss of eligibility for labor protection compared to the status quo; they would continue to qualify for the same level of protection—that available to employees of Class II carriers—as they have for decades. TTD’s comments to date have not persuaded the Board that this continued level of labor protection would be insufficient.” However, our argument was not that status quo conditions would worsen for employees, rather that the perpetuation of the status quo through the maintaining of Class II classification would deny employees coverage that they would otherwise be entitled to upon their employer becoming a Class I railroad.

As STB proposes to raise classification thresholds broadly, we urge the Board to give greater consideration to how these changes may impact the application of protective conditions. Further, while MRL may be the only carrier that finds itself in supposedly unique financial circumstances today, the structure of the railroad industry is subject to change over time, and this NPRM may ultimately deny coverage to the employees of additional carriers with similar finances.

We also believe that both MRL and STB have failed to document the undue burden that Class I status would place on MRL, or a similar carrier. While MRL states that it has provided “detailed examples” of the “substantial nature of the burden”, MRL’s February 14 petition suggests only that MRL would be required to hire a single employee at a cost of \$150,000, a total of 2,116 hours of labor, to complete eight STB-required reports. Beyond this calculation, MRL provides only conjecture that it would incur more hours or costs. For an entity who believes its revenue will soon surpass \$500 million, MRL has provided no information that suggests that this cost would be overly burdensome.

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<sup>2</sup> 85 FR 30680

Finally, it is also unclear why MRL believes that the absence of opposition from any shipper, shipper organization, or governmental entity should have bearing on the validity of issues raised from an employee's perspective. Similarly, MRL claims that TTD's position is somehow insignificant because it does not constitute "broad-based opposition" from labor organizations". We note that TTD represents the large majority of national unions representing freight rail workers. Regardless, neither of these factors should have any bearing in STB's decision-making.

TTD urges the Board to withdraw its NPRM. In lieu of this, the Board should proceed with actions that alleviate only reporting/accounting burdens, instead of permitting the evasion of protective conditions. We appreciate your consideration.

Sincerely,

A handwritten signature in black ink that reads "Larry I. Willis". The signature is written in a cursive, flowing style.

Larry I. Willis  
President



Transportation Trades Department, AFL-CIO  
*A bold voice for transportation workers*

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***TTD MEMBER UNIONS***

Air Line Pilots Association (ALPA)  
Amalgamated Transit Union (ATU)  
American Federation of Government Employees (AFGE)  
American Federation of State, County and Municipal Employees (AFSCME)  
American Federation of Teachers (AFT)  
Association of Flight Attendants-CWA (AFA-CWA)  
American Train Dispatchers Association (ATDA)  
Brotherhood of Railroad Signalmen (BRS)  
Communications Workers of America (CWA)  
International Association of Fire Fighters (IAFF)  
International Association of Machinists and Aerospace Workers (IAM)  
International Brotherhood of Boilermakers, Iron Ship Builders,  
Blacksmiths, Forgers and Helpers (IBB)  
International Brotherhood of Electrical Workers (IBEW)  
International Longshoremen's Association (ILA)  
International Organization of Masters, Mates & Pilots (MM&P)  
International Union of Operating Engineers (IUOE)  
Laborers' International Union of North America (LIUNA)  
Marine Engineers' Beneficial Association (MEBA)  
National Air Traffic Controllers Association (NATCA)  
National Association of Letter Carriers (NALC)  
National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)  
National Federation of Public and Private Employees (NFOPAPE)  
Office and Professional Employees International Union (OPEIU)  
Professional Aviation Safety Specialists (PASS)  
Sailors' Union of the Pacific (SUP)  
Sheet Metal, Air, Rail and Transportation Workers (SMART)  
SMART-Transportation Division  
Transportation Communications Union/ IAM (TCU)  
Transport Workers Union of America (TWU)  
**UNITE HERE!**  
United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)  
United Mine Workers of America (UMWA)  
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service  
Workers International Union (USW)

*These 33 labor organizations are members of and represented by the TTD*

