

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EX PARTE No. 772

ENTERED
Office of Proceedings
January 11, 2023
Part of
Public Record

**OVERSIGHT HEARING PERTAINING TO
UNION PACIFIC RAILROAD COMPANY'S EMBARGOES**

UNIONS' OPPOSITION TO UNION PACIFIC REQUEST FOR PROTECTIVE ORDER

The Brotherhood of Maintenance of Way Employees Division/IBT, Brotherhood of Railroad Signalmen, International Association of Sheet Metal, Air, Rail and Transportation Workers Mechanical Division, International Brotherhood of Boilermakers, National Conference of Firemen and Oilers/32BJ SEIU and the Brotherhood of Locomotive Engineers and Trainmen (Unions) urge the Board to deny the request for protective order filed by Union Pacific ("UP") in this proceeding.

While UP cited the Board's rules regarding circumstances in which the Agency may treat certain information submitted to the Board as "confidential commercial information", UP made no effort to explain why certain information it has been asked to produce should be so designated; UP's two paragraph filing merely cited the Board's rules and made the request. UP did not identify which information it seeks to label as "confidential commercial information" (for example by listing categories of information). The request is so undefined that UP could slap the confidential label on all of the information it produces. And UP offered no purported justification for not permitting public review of any of the information it submits.

UP's request should also be considered in the context of its refusal to comply with the Board's prior request that it produce certain information in advance of the hearing in this matter, its dismissive response to the Chairman's letter noting the failure to comply with that request,

and UP's non-compliance with the Board's initial reporting requirement in Ex Parte No. 770-1. Such behavior should not be rewarded by indulgence. And such behavior is not grounds for any assumption that UP will act reasonably and in good faith in designating information as confidential.

From the hearing in this proceeding, it was apparent that the Board benefited from evidence and comments of industry stakeholders, they will likely provide further assistance to the Board by being able to review and comment on information provided by UP.

Finally, it must be remembered that UP would not have found itself in the position of having to provide this information if it had not defaulted on its responsibilities as a common carrier; to the extent that it is discomfited by disclosure of the information the Board seeks, that is a result of its own relentless pursuit of cost-cutting in support of stock re-purchases and issuance of dividends without regard for the needs of its customers, the interests of its employees and ultimately its obligations as a common carrier.

Respectfully submitted,

/s/Richard S. Edelman

Richard S. Edelman

Mooney, Green, Saindon, Murphy and Welch PC

1920 L Street NW, Suite 400

Washington, D.C. 20036

Tel: (202) 783-0010

Counsel for Brotherhood of Maintenance of Way
Employees Division/IBT, Brotherhood of Railroad
Signalmen, and International Association of Sheet Metal,
Air, Rail and Transportation Workers/Mechanical Division
International Brotherhood of Boilermakers, National
Conference of Firemen and Oilers/32BJ SEIU, and
Brotherhood of Locomotive Engineers and Trainmen

January 11, 2023