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March 29, 2024
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EX PARTE No. 770 (Sub. No. 1)

URGENT ISSUES IN FREIGHT RAIL SERVICE

**UNIONS' REPLY TO
UNION PACIFIC RAILROAD'S UNREDACTED SECOND INTERIM UPDATE
REGARDING EMPLOYMENT, HIRING AND RETENTION**

The Brotherhood of Locomotive Engineers and Trainmen, Brotherhood of Maintenance of Way Employees Division/IBT; Brotherhood of Railroad Signalmen; International Association Of Boilermakers; International Association Of Machinists And Aerospace Workers District #19; International Association of Sheet Metal, Air, Rail and Transportation Workers Mechanical Division; and National Conference of Firemen and Oilers, 32BJ/SEIU ("Unions") have reviewed the unredacted Second Interim Update of Union Pacific Railroad Co. ("UP") regarding employment data and staffing plans submitted in this docket after the Board denied UP's preemptory motion for a protective order. The Unions submit that the unredacted document shows that the motion for a protective order was utterly without merit, and that the Board should keep this in mind in the future when UP seeks to shield information from public disclosure.

One item UP redacted was projected workforce levels for July 1, 2024 and December 31, 2024. UP summarily asserted that that information was proprietary and confidential in that disclosing it could reveal its planned allocations of resources and ability to compete for candidates to fill positions. But the reported information was just projected gross numbers of employees across the entire UP system. There was no information there about staffing plans or hiring plans in specific regions or at specific locations. Furthermore, given the monthly

employment reports that UP is required to file independent of the Order in this docket, it would be relatively easy for someone to infer UP's plans from looking at trends in the monthly reports. Plus, if UP is actually planning on hiring, it would have to advertise available positions so that the information would be public knowledge. And plans to reduce staffing become public when railroads issue furlough notices (*see e.g.* UP's furloughs of shopcraft workers, UP's furloughs of maintenance of way employees, and BNSF's furloughs of shopcraft workers). Indeed, UP and other railroads often announce plans to reduce staffing, and sometimes to increase staffing, in calls with financial analysts that are publicly available. Finally in this regard, the Unions note that the disclosed information in the unredacted filing is in round numbers for reporting categories L300, L400 and L600, and the numbers are exactly the same for July 1 and December 31; and UP stated that the numbers will vary based on attrition, volume needs, traffic mix and changes in work performed. So, the information disclosed subject to that broad caveat suggests that the reported numbers do not represent actual plans, but general expectations at best, offered to facially comply with the Board's Order. The Unions submit that the unredacted information as to hiring plans is not actually confidential or proprietary in any meaningful sense of those words, and it discloses virtually nothing about UP's business plans, other than that it does not intend to increase or decrease staffing over the course of the year, but that the actual numbers may change for a variety of reasons.

The second redaction was of a statement that certain employees who had been working in Customer Care & Support had been moved to other departments while still performing customer care work and given additional decision-making power. No specifics were given as to numbers of employees, locations of employees, or departments receiving new employees. The statement

was so bland and general as to reveal almost nothing; and it could not qualify confidential or proprietary.

The third redaction concerned hiring incentives for Train, Engine and Yard service employees, hiring bonuses for TE&Y employees in North Platte, a program compensating current employees for referral of applicants, and a new and improved “on-boarding” process. Once again, for any of these programs to be effective, they would have to be public knowledge because prospective employees could not respond to the incentives if they were not public. Furthermore, the employee referral program was actually touted by UP’s CEO in the Presidential Emergency Board 250 proceedings. And the Unions fail to see how an anodyne general statement that the on-boarding process had been streamlined with added text and chatbot help options qualifies as confidential or proprietary.

The fourth redaction concerned agreements with the Operating crafts to allow some employees to reduce their workload from fulltime while retaining fulltime status and benefits, thereby facilitating returns to fulltime status compared to the time involved in recalling furloughed employees. Since the information concerns agreements negotiated with the Operating crafts, there was no basis for UP to claim the information was confidential or proprietary; especially since unions often publicize agreements on their websites, and the availability of the program would have to be known to the workforce for it to be effective.

The final redaction was of a sentence regarding levels of employee participation in a stock purchase plan; both numbers of employees and percentage of employees participating. Oddly, the specifics of the program were actually disclosed, only the level of participation was redacted. There is no sense to the position that the details of an employee stock purchase plan are

not confidential or propriety, but the gross number of participants, and percentage of participation company-wide are confidential or proprietary.

In their opposition to UP's motion for a protective order the Unions stated that UP had not explained how or why the Board's Order would require disclosure of confidential, highly confidential, and/or "confidential commercial information" generally, or why the specific types of information UP anticipated submitting would constitute confidential, highly confidential, and/or "confidential commercial information". It is now apparent that UP could provide no such explanation, at least as to the Second Interim Report, because the information withheld was plainly not confidential, highly confidential, and/or confidential commercial information. Indeed, the Unions submit that the redactions were not at all justified, and that UP's motion was not only without merit, it was made in bad faith. The Unions urge the Board to keep this experience in mind when UP next seeks to shield information sought by the Board from public disclosure.¹

¹ The Unions also reiterate that UP's attempt to shield the workforce information required by the Board from public disclosure was particularly inappropriate given that UP blamed its service failures and denials of service to shippers that caused the Board to open the UP embargoes proceeding (Ex Parte 772) in large part on a shortage of train and engine service workers; its inability to adequately maintain its Winnemucca line and properly service Foster Poultry Farms that resulted in two directed service orders for Foster Farms came after UP had reduced its Signal and maintenance of way forces on that line; UP's Eric Gehringer had to submit a heavily lawyered "clarifying statement" in the UP embargoes case, explaining that his statements that seemed to describe a multi-year planning process for hiring and retention of train and engine service employees were not describing an actual multi-year planning process for hiring and retention of train and engine service employees; and the Jim Vena era at UP began with furloughs of scores of shopcraft workers and hundreds of maintenance of way employees. Those actions and events underscore the public interest in disclosure of the workforce employment information sought by the Board; and the magnitude of that public interest dwarfs UP's general and unexplained, and now clearly unsubstantiated, claims that the information was confidential or proprietary.

Respectfully submitted,

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March 28, 2024

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