312946

ENTERED
Office of Chief Counsel
November 18, 2026
Part of
Public Record

ARU- 8
BLET-7

BEFORE THE
UNITED STATES SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

—CONTROL—

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

COMMENTS OF THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION/IBT; BROTHERHOOD OF RAILROAD SIGNALMEN; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS DISTRICT #19; TRANSPORTATION COMMUNICATIONS UNION/IAM, TRANSPORT WORKERS UNION OF AMERICA AND THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

I. INTRODUCTION AND SUMMARY

The unions participating in this proceeding as the Allied Rail Unions ("ARU"): Brotherhood of Maintenance of Way Employes Division/IBT ("BMWED"); Brotherhood of Railroad Signalmen ("BRS"); International Association of Machinists and Aerospace Workers District #19 ("IAM District #19"); Transportation Communications Union/IAM ("TCU/IAM"); and Transport Workers Union of America ("TWU"); and the Brotherhood of Locomotive Engineers and Trainmen ("BLET") (collectively "ARU/BLET") submit these Comments in

response to the Application of Union Pacific Corporation ("UPC") and Union Pacific Railroad Company ("UP") (referred to herein as "UP") and Norfolk Southern Corporation ("NSC") and Norfolk Southern Railway Company ("NSR") (referred to herein as "NSR"), for approval of a transaction by which UP would acquire control of NSR and merge the two carriers ("Transaction").

These Comments are supported by the declarations of officers of the unions including those of BMWED President Tony Cardwell as well as those of other BMWED officers (Addendum A to these comments); BRS President Michael Baldwin whose declaration includes statements from BRS members, and BRS Union Pacific Committee General Chairman Aaron Carter (Addendum B); IAM District #19 President Reece Murtagh as well as statements of District #19 officers (Addendum C); TCU/IAM President Matthew Hollis, which includes statements of TCU/IAM members (Addendum D); TWU Railroad Director John Feltz (Addendum E); and BLET President Mark Wallace (Addendum F). ARU/BLET also rely on a statement and graphs prepared by Labor Economist Thomas R. Roth (Addendum G), materials from STB Docket No. E.P. 775 (Addendum H), decisions, awards and notices in *New York Dock* cases (*New York Dock Ry. -Control- Brooklyn Eastern District Terminal*, 360 I.C.C. 60 (1979) (Addendum I); Transportation Law Journal Articles-William G. Mahoney (Addendum J); and redacted Transcripts of Depositions of Applicants' representatives Macqui Parkerson, John Turner, and Grant Janke along with Applicant responses to ARU/BLET discovery requests (Addendum K).

ARU/BLET oppose Board approval of the Transaction because of the adverse impacts on workers that are not fully mitigated by statutory employee protections, or Applicants' stated

commitment regarding jobs for employees working as of the time the Transaction is consummated (though not necessarily in their craft or anywhere near where they reside). Additionally, ARU/BLET submit that the Transaction is not consistent with the public interest as required by the statute (49 U.S.C. §§11433-11344) and the "new" merger rules applicable to post-2001 mergers of Class I railroads (*Major Consolidation Procedures,* Ex Parte No. 582, 2001 WL 64894 (June 7, 2001)). The proposed merger will only exacerbate the extreme concentration in the industry and increase the market dominance already extant for the current Class I's, which, in turn, renders the remaining carriers less responsive to the demands of their customers, the interests of their employees, and even the orders and directives of the Board.

The post -1990s development of duopolies has already had a corrosive effect on service and reliability, employment, and effects on communities. The deregulatory policies of the Staggers Act and the ICCTA were premised on competition as disciplining factor on railroad conduct, but the current level of concentration has already undermined that premise; and elimination of NSR as a separate carrier, with creation of a transcontinental carrier will further undercut the assumptions upon which deregulation was premised. A UP/NS merger will, on its own, worsen the effects of concentration of industry market power. And, regardless of anyone's protestations to the contrary, it is certain that approval of the proposed Transaction will lead to a second transcontinental merger, further increasing the market power of the railroads and further diminishing what limited effect competition has in disciplining railroads for poor service. This potential impact was envisioned in the new merger rules which promulgated stricter standards for Class I mergers. *Major Consolidation Procedures* at *2-3, 5.

Despite filing multiple iterations of their Application, with supplements and corrections,

Applicants have failed to make the public interest showing required by the statute and the new merger rules. Accordingly, the Application should be rejected.

However, if the Board is inclined to approve the merger in some form, ARU/BLET seek ameliorative conditions. Some conditions are statutory (*i.e*. the *New York Dock* conditions), others are contemplated by the *Major Consolidation Procedures* (*i.e.* the so-called "Cramdown Agreement", *id*. at 22 and n.31). Others are necessary because of the nature of this transaction, positions taken by Applicants, and the history of the industry since 2000. ARU/BLET seek: 1) imposition of the statutorily required *New York Dock* conditions, 2) a sunsetting of the ability of the Applicants to invoke the merger and the *New York Dock* conditions to change collective bargaining agreements ("CBA") outside Railway Labor Act processes-- either 6 years (the maximum duration of *New York Dock* benefits) or the duration of any post-approval oversight period, 3) a declaration that employees whose jobs are abolished as a result of the merger are "dismissed employees" under the *New York Dock* conditions and entitled to "dismissal allowances", and do not forfeit the right to those benefits if they decline a job that would require them to relocate from their residences, 4) imposition of the so-called "Cramdown agreement", 5) a true guarantee of continued employment for workers in their crafts and that does not require a change in their places of residence, 6) application of the *New York Dock* protections for employees affected by post-merger line sales and leases, 7) application of the *New York Dock* protections to employees of the Terminal Railroad of St. Louis and Conrail Shared Assets.

ARU/BLET oppose any responsive applications or requests for conditions that would result in divestitures, sales, or leases of UP or NS lines to Class II or III railroads, or provide Class II or III railroads with trackage rights, haulage rights or reciprocal switching access over

UP or NS lines, or other Class II or III railroad access to UP or NS lines. If the Board determines that it cannot approve the proposed merger under the standards of the Act and the new merger rules without divestitures, sales, leases or trackage rights, haulage access or reciprocal switching access for Class II or III railroads, the Board should reject the Application. Problematic aspects of the merger should not be mitigated by reducing rail employment and union representation, and by undermining standard industry collective bargaining agreements which result from such divestitures, sales, leases to Class II or III railroads and trackage rights, haulage access or reciprocal switching access for Class II or III railroads.

II. BACKGROUND, HOW WE GOT HERE

A. Deregulation and Consolidation

In 1980, at the time of passage of the Staggers Act and beginning of deregulation, there were nearly 40 Class I railroads. The premises of deregulation were that competition, rather than regulation, would function to ensure the adequacy, effectiveness and fairness of rail transportation; market forces would afford protection to shippers, and competition would discipline the railroads. *See E.g*. the National Rail Transportation Policies (49 U.S.C. §10101-policies (1), (2), (4), (5), (7), (13).

In the 1980s, empowered by deregulation and an I.C.C. committed to the project, Class I railroads began to shed lines, abandoning unprofitable lines and selling so-called "marginally profitable" lines, generally branch and feeder lines, to newly formed short line and regional railroads, with the Class I railroads retaining long haul traffic. Under ICC decisions from that time, lines were sold without employee protections, and employees on the new entities were generally unrepresented. The ICC spurred a rapid sell-off of low density branch and feeder lines

to new short line railroads by holding that those new entities could acquire lines under former Section 10901, which, by its own terms only applied to rail carriers providing transportation, not new non-carrier entities; the ICC ruled it that it was pertinent that the new entities would become carriers after the agency permitted them to acquire the lines (in 1995, in the ICCTA, Section 10901 was amended to conform to the interpretation applied by the ICC by including non-carriers in its coverage). Transportation Law Journal, William G, Mahoney, *The Future of Railroad-Labor Management Relations as an Industry of Five, or Three or Two Mega-Railroads Enter the Next Millenium,* (included in Addendum J) at 352. The ICC also held that acquisitions of rail lines by newly formed subsidiaries or affiliates of carriers could acquire lines from Class I railroads without imposition of statutorily required employee protections that would have been required if the acquisitions were made by the parent companies or affiliates (thus the beginning of the GWI conglomerate of supposedly independent entities), or if the Class I's chose to abandon the lines. *Id*. These creative exemptions from employee protection obligations, even statutorily mandated protections, changed the economics of sales of light density branch and feeder lines, by reducing labor costs. This spurred more sales. The Class I's benefited from being relieved of their obligations to provide common carrier service on the light density lines, but they retained the long haul traffic once the short lines met their main lines. *Id.* at 351-353. The short lines gained by being able to operate railroads cheaply because they had lower labor costs. Shippers on those lines benefited (at least until they had to reckon with the contractual paper and steel barriers and inability of some shortlines to revinvest in the new railroads) by continuing to have service and still being able to use the national rail network. But the workers suffered. Employment was reduced (the shortlines employed 71% fewer workers per mile than the Class

I's) and those who continued employment were paid about 15% below Class I rates of pay. *Id.* at 352-353 and n. 63 and n. 64 (Addendum J).

At the same time, as it was busy deregulating the railroads, the ICC assumed a role of regulator of labor. The Commission decided that it could override collective bargaining agreements as it saw fit to facilitate approved transactions. In *Maine Central R.R.- Exemption from 49 USC 11342 and 11343* (September 16, 1985), the ICC held that its order, not the RLA or the Washington Agreement (or Washington Job Protection Agreement) governed employee-management relations in connection with an approved transaction. Mahoney, *The Future of Railroad-Labor Management Relations as an Industry of Five, or Three or Two Mega-Railroads Enter the Next Millenium* at 353. A decade of litigation followed that culminated in the ICC's "*Carmen*" decisions, discussed below. *Id*. at 353-354. The Agency even took on the new responsibility of reviewing *New York Dock* arbitration awards for consistency with ICC polices and mandates. Transportation Law Journal, William G. Mahoney, *The Interstate Commerce Commission/Surface Transportation Board as Regulator of Labor's Rights and Deregulator of Railroads' Obligations: The Contrived Collision of the Interstate Commerce Act with the Railway Labor Act* (included in Addendum J) at 279-282. The Commission even overturned arbitration awards that followed prior precedent in holding that a carrier seeking to use an approved transaction to override a CBA must show a causal nexus between the planned change and the approved transaction; instead, the mere existence of the transaction became grounds for a CBA override. *Id.* at 294, 301.

At the same time, Class I railroads began to merge, and the number and size of the mergers accelerated into and through the 1990s, until by 2001 there were just 7 Class I railroads.

As the Board considered each merger application in the 1990s, industry stakeholders urged the ICC and then STB to consider the impact that one approved merger would have in inducing another. The agency repeatedly responded that it was only considering the merger application pending at the time. But each merger did spawn another and when the dust settled, the result was duopolies in the East and West and 3 carriers operating north-south in the center of the Country. So, a statutory regime that was designed to aid a numerous and disparate group of a Class I railroads by loosening regulation, with the assumption that competition would substitute to protect industry stakeholders, resulted in a rail transportation system with a handful of mega-carriers relatively immune from competition. That outcome was the impetus for the new merger rules promulgated in *Major Consolidation Procedures*- setting a higher bar for future Class I mergers, and requiring that a merger application not only preserve but also enhance competition in ways that strengthen and sustain the rail network as a whole". *Major Consolidation Procedures* 2001 WL 64894 at *20.

B. Impacts Of Deregulation And Consolidation On Railroads, Shippers And Workers

Unsurprisingly, the sell-off of low density branch and feeder lines, and the consolidation of the industry and relative market dominance of the new mega-carriers was very good for the railroads-- profits increased, and then increased exponentially in the 2000s, once the mergers were fully implemented, merger expenses were absorbed and market power was exploited. Shippers benefitted significantly from the new regime as rates plummeted in the 1980s and 1990s; but rates began to increase as the railroads took advantage of their new market dominance. Rail employment was decimated and wages were stagnant for decades as railroad profits escalated.

These results and trends are shown in the statement and supporting charts of Labor Economist Thomas R. Roth (Addendum G to these Comments). Mr. Roth explains that since deregulation, profits of Class I railroads have increased an incredible 2,547% in real dollars from $913.5 million in 1979 to $24.2 billion in 2025. Between 2001 and 2025 profits increased 783%. In constant dollars (profits adjusted for inflation), profits increased 46% between 1979 and 2001 (22 years); following the mergers, real profits increased **415%** over the 24 years between 2001 and 2025. Mr. Roth further shows that shippers initially did very well following deregulation. Between 1979 and 2001 real prices fell by 41%. Once the railroads had absorbed the costs of the mergers and completed integrations, they began to take advantage of their new market power and rail prices (shipper rates) began to increase -in constant dollars (measured as revenue per carload originated) increased 37% or 1.3% per year. This compares to increased Class I profits of 415% over the same period (following the mega-mergers). Nonetheless all told, rail prices in constant dollars are still down 20% since the Staggers Act.

But as profits skyrocketed, and shipping rates declined (even while rising in recent years), rail workers experienced dramatic cuts in employment and comparatively stagnant wages. Since deregulation, Class I employment decreased by 356,111 jobs - a 75% decline**.** Mr. Roth notes that most of the carnage occurred in the first 22 years following the Staggers Act and through the mega-mergers. But even after the conclusion of the consolidations of the 1980s and 1990s, over the past 24 years, an additional 44,000 jobs have been eliminated, a 27% reduction since 2001. The remaining rail workers have seen little gain in incomes during this period of escalating carrier profits. Over the past 24 years, real wages increased 20% - less than a scant .8% (8 tenths of one percent) per year, a period in which Class I profits increased by 415%. The

experience of Class I railroads, shippers and rail workers is graphically illustrated on Attachment 2 to Mr. Roth's statement ((Addendum G).

C. Current State Of The Industry-Exploitation Of Duopoly Power By The Class I Railroads And Its Consequences For Service And Growth

As the power of the duopolies was exploited, service suffered- simply because very lightly regulated entities who have essentially no competition, are relatively immune to customer complaints and demands.

The industry experienced a well-documented breakdown in service in 2022 that led to the Board initiating its *Urgent Issues in Freight Rail Service* proceedings (Ex Parte 770). The railroads asserted that all of the problems were pandemic related. But they failed to acknowledge that they took advantage of the situation to furlough as many workers as they thought they possibly could, as if the cut in demand would be continuing, and then were surprised when workers declined recall after being treated shabbily and the railroads were unable to meet the resumed demands for service. Certainly, the pandemic posed challenges and demand for rail service dropped, but entities that were truly concerned about their customers and employees would have been more circumspect in their furloughs and planned for handling restoration of demand; instead the railroads cut as many jobs as possible with little regard for the eventual needs of their customers because their customers had little to no competitive options, the railroads knew that there was little risk of their customers shifting to other methods of transportation.

UP exemplifies this attitude. Union Pacific's scant regard for the needs of its customers by failing to be prepared for fluctuations in demand was dramatically illustrated by the stunning number of embargoes issued by UP in 2022, which led to the Board's proceedings in *Oversight*

Pertaining To Union Pacific Railroad Company Embargoes, Ex Parte No. 772 (UP issued 886 embargoes as between January and October of 2022, compared to 27 in all of 2017, and140 in all of 2018). UP had its excuses for the astronomical increase in embargoes. But at the end of the day, it was apparent that in trying to cut employment and service as much as possible to decrease its operating ratio, UP had no cushion, no ability to respond to unexpected but not extreme increases in demand because it was staffed and operating within a narrow band of assumptions as to traffic. A carrier that had to be attentive to the needs of its customers, that feared a potential loss of customers, could not afford to cut cavalierly with little regard for the consequences if it cut too deep.

During the same period, UP blithely reduced service to Sanimax USA based on the carrier's algorithm for shipper needs, even though the nature of that customer's business necessarily required more frequent service. *Sanimax USA LLC v. Union Pacific Railroad Co*., NOR42171. And Foster Poultry Farms sought and was granted multiple emergency service orders because the unreliability of UP service threatened to cause Foster Farms to euthanize millions of chickens; in that proceeding, BRS showed that UP had let the line used to serve Foster Farms deteriorate so much that sand covered the tracks and manual dispatching was required. *Foster Poultry Farms -Ex Parte Petition For Emergency Service Order*, F.D. 36609. The impunity that lack of competition has allowed for UP is also illustrated by the remarks of top UP executives (Jim Vena, Kenny Rocker, Jennifer Haman) to financial analysts in 2024 in which those corporate officers were adamant that while more carloads were desirable, UP would hold to its expected profit margins and would turn away customers who could be served at a profit, but not at the target profit rates. The UP officers said they would increase profits by gaining

"efficiencies", including by further reductions in employment in order to achieve the lowest operating ratio in the business; but UP was maintaining "price discipline", and a shipper would have to meet Union Pacific's [profit] margin to be on the system. The Union Pacific officers could not be more clear-- they are not interested in growing the business if serving prospective new shipper (or keeping an existing one) cannot be done at the required profit margin, even if the shipper may be served profitably, but not maximally profitably. The Union Pacific officers could be so cavalier about the needs of its customers because of UP's domination of the market for rail service for customers who have no real alternative options. The remarks of UP executives in the call with financial analysts are described in more detail, with a link to access the recording, in the Unions Comments in Ex Parte No. 775 at 12-13 (in Addendum H).

The arrogance demonstrated by top officers of UP toward actual and potential customers to whom it owes a statutory common carrier obligation foreshadowed the sense of impunity exhibited by Mr. Vena at the conclusion of his remarks at the "SWARS" in threatening customers who might oppose the proposed Transaction with retaliatory rate hikes. That arrogance and disrespect for the Board and industry stakeholders is further illustrated by UP's conduct in this proceeding (*e.g.* Applicants designation of the administratively required Employee impact exhibit (necessary for compliance with 49 U.S.C. §11324(b) and (c)) as Highly Confidential, a designation rejected by the Board in Decision No. 28, and their meritless effort to shield the Vena threats at the SAWRS conference from public viewing. UP's own impunity in dealing with the Board and other stakeholders is also demonstrated by its improper efforts to withhold information from the public in Ex Parte No. 770 (Sub No. 1) *Urgent Issues in Freight Rail Service—Railroad Reporting,* in which UP sought to shield required reporting of

employment data from public view by filing its report under seal while belatedly seeking a protective order, a maneuver rejected by Board in its decision of March 13, 2024 (after UP produced a public version of the report, the Unions noted that there was no possible basis for the information in the report to have been classified as confidential. Unions' filing in Ex Parte No. 770-1, March 18, 2024). And subsequently, in Ex Parte No. 772, *Oversight Hearing Pertaining to Union Pacific Railroad Company's Embargoes*, the Board chastised UP for its "repeated failures to comply with Board orders and requests for information", that the Board considered to be verging "on the contumacious", and which could not be "viewed as acceptable conduct by a railroad subject to the Board's statutory authority". STB Decision April 16, 2024. This conduct toward the Board and industry stakeholders flows from, and really is only possible because of, the lack of constraints on the Class I's as a result of the light regulatory touch of the Board under the Staggers act and the duopoly status attained by the mergers permitted in the 1990s.

The market dominance of the Class I's and their consequent lack of interest in increasing the amount of traffic they handle caused the Board to hold hearings on growth in the rail industry. *Growth in the Rail Industry*, Ex Parte No. 775. In providing notice of hearings on the subject, the Board noted that over the preceding ten years, not only had carload volumes not grown, they had decreased. Ex Parte No. 775 Notice, decided July 9, 2024. At those hearings, industry analysts showed that while rail volumes had decreased, demand for transportation had increased, with transportation generally gaining volume while rail carloads decreased. Loop Capital found that: "the four major railroads hauled 7% fewer loads last year [2023] than they did in 2003. Over that same 20-year period, US GDP grew by 50%, Industrial Production by 13%, and for-hire Truck Tonnage, as measured by the American Trucking Associations, was 43%

higher". Oliver Wyman, a consultant relied on by Applicants in their Application, reported that "rail is the only freight transportation mode that has lost overall net tons since 2017. Rail moved eight percent fewer total net tons between 2017 and 2023, while truck increased net tons moved by three percent". These reports, as well as Comments of various rail unions which related the lack of growth to the reduction in the number of people who provide and support rail service, as well as the policy pronouncement of UP officers that shippers who don't meet the margin can't be on the system are included in Addendum H to these Comments. Also in Addendum H are UP's unenthusiastic and scant filings in response to the STB's Notice; UP's filings paid lip service to the concept of increasing volumes while showing no serious plan to actually increase carloads and capture increased demand for transportation. The initiation of the Ex Parte No. 775 proceeding, the analyst showings that railroads carried less freight over a period where other modes increased volume confirmed that the Class I's are largely unconcerned about increasing volume because their customers are essentially captive to the duopolistic structure of the industry and, as Loop Capital explained, finance interests that drive railroad decision-making today prefer lower volumes that produce higher profit margins.

III. IMPACT OF THE PROPOSED TRANSACTION ON WORKERS, SAFETY AND SERVICE

A. Applicants' Projections For Future Employment

Applicants have submitted an Employee Impact Statement that, as amended, projects net growth in employment of 1171 craft positions by the end of the third year after consummation of the merger. While that might seem significant in the abstract, it is not significant in the context of the size of the current craft workforces of UP and NS which were reported to total over 41,000 employees. Applicants appear to be projecting a mere 3% increase over the pre-Application

workforce, while touting a plan to dramatically increase volumes. And the projected 3% growth must be viewed in the context of anticipated employment attrition rates of 8% per year. John Turner Verified Statement ("VS") ¶ 264, Macqui Parkerson ¶9. Additionally, Applicants have not clarified the basis for the projection of 1171 additional craft jobs. Is the projection based on assumptions under the so-called "optimized plan", or assumptions under the "growth plan"? It is unclear whether the projection is premised on the more optimistic of the forecasts for increased volumes after the merger, or a more conservative assumption about volumes. When counsel for ARU/BLET sought to ascertain whether the projected increase of 1171 jobs was above the pre-application headcount of 41,000 positions, or the post- 8% per year attrition, UP's Vice President for Labor Relations and UP's Service Assurance Plan witness could not give definitive answers, or say whether positions vacated by resignations and retirements would be backfilled. Turner Deposition Transcript ("Tr.") at 300-304, Parkerson Tr. at 30-33 (both in Addendum K). A recent direct interrogatory on this question elicited a non-response response from NSR. NSR Responses to ARU/BLET Second Interrogatories, No. 1. Addendum K. UP's answer was that the projected increase was based on some sort of vague blending of the optimized plan and the growth plan, including some assumptions of predicted increase volumes of traffic. UP Responses to ARU/BLET Second Interrogatories, No. 1. Addendum K.

Applicants' projections for gains in craft employment should also be considered in the context of similar projections by CPKC in its application. CPKC projected an increase of about 750 craft jobs in the United States by year 3. Had CPKC attained that increase in employment it would have been a significantly higher percentage increase in its workforce than is projected for the much larger combined UP/NS. And, in fact, CPKC employment initially decreased after the

merger; today it is only marginally above the pre-merger total, about 30 additional positions. CPKC's own filings with this agency show that for the largest categories of craft employees (engineering -L300, mechanical-L400, Operating -L600) CPKC employment was 4339 on January 1, 2024 (CPKC's first report as a merged entity), 4365 on January 1, 2025, 4424 on January 1, 2026, and 4372 in the most recent report (September 2026); in short 33 more employees today than at consummation of the merger (less than a 1% increase). *See* Baldwin Declaration ¶9, Wallace Declaration ¶10.

Accordingly, while Applicants project employment growth on paper, there is great deal of uncertainty and much reason for skepticism.

B. Adequacy Of The Post-Consummation Workforce

While Applicants claim (Turner VS ¶267) that they will be adequately staffed for a smooth integration and to handle the projected post-merger increase in volume, they do not appear to be planning to increase staffing to effect the integration and the capital projects they say they will undertake to accommodate the increased volume; and if they actually attain the increase in traffic that they project in their Application, they will not have enough employees to do the work, even if they do increase the workforce by 3% after attrition. Indeed neither Mr. Turner nor cost/benefit witness Grant Janke could even admit that more infrastructure and more traffic require additional Maintenance of Way or Signal work, nor could they explain how the merged carrier would be able to perform the inspection, maintenance and repair work necessitated by the extra infrastructure and volume. Turner Tr. at 309-311, Janke Tr. 234-236, Addendum K. Likewise, UP Labor Relations V.P. Parkerson could not provide an explanation. Parkerson Tr. at 35-39, Addendum K. Rather bizarrely, NSR responded to ARU/BLET's recent

interrogatory concerning these questions by objecting to the assumption that more infrastructure and more traffic requires more infrastructure inspection, maintenance, and repair. NSR responses to ARU/BLET Second Interrogatories, Nos. 2 and 3 (ARU/BLET Addendum K). UP could not bring itself to acknowledge that more infrastructure and more traffic requires more infrastructure inspection, maintenance, and repair, asserting that the need for maintenance and repair is based on a variety of factors, and stating that the merged carrier would comply with FRA requirements. UP responses to ARU/BLET Second Interrogatories, Nos. 2 and 3, ARU/BLET Addendum K. UP just evaded the prosaic point that, regardless of overall conditions, more infrastructure and more traffic requires more of whatever inspection, maintenance and repair that a carrier is doing, and that whatever FRA requires, if there is more track, more of it is required.

Applicants state that they will invest $1.1 billion to add and extend sidings and increase yard capacity (Janke VS ¶12), but they project no increase in the cohort of Signalmen, who inspect, maintain and repair the signal system and crossings, and a negligible increase in the cohort of maintenance of way employees, who inspect, maintain and repair the track, right-of way and bridges. As is explained by BRS President Michael Baldwin (Declaration ¶¶5-6, 8, Addendum B), and BMWED President Tony Cardwell (Declaration ¶¶10-13, 14, Addendum A), additional infrastructure and increased traffic over the rails requires more inspection, maintenance and repair and therefore additional Signalmen and Maintenance of Way employees. President Cardwell observed that “applicants describe approximately 42,000 miles of track and more than 15,000 bridges on Union Pacific, together with approximately 28,000 miles of track and more than 9,500 bridges on Norfolk Southern. The combined system would therefore include approximately 70,000 miles of track and more than 24,500 bridges”. President Cardwell

noted that:

> applicants reason that combining the two existing networks would not itself increase the infrastructure assigned to the combined Engineering Department and therefore expect the existing combined MOW equipment inventory to be sufficient. That reasoning does not resolve the maintenance demands of the proposed operation. The Board must also account for the infrastructure additions contemplated by the operating plan and the increased traffic the applicants expect to carry. Additional track requires maintenance, and additional traffic affects both infrastructure wear and the time available to perform that maintenance. In my judgment, the applicants cannot establish the adequacy of future maintenance resources merely by combining the inventories of the two existing railroads.

Cardwell Declaration ¶¶10 and 13. And President Baldwin states (Declaration ¶¶5-6), "It is fundamental and indeed immutable that more trackage, sidings, and crossings require more Signal and grade crossing inspection, maintenance and repair. It is also basic physics that increased traffic over infrastructure increases wear on the infrastructure, also requiring more Signal inspection, maintenance and repair", and:

> As President of the Union that represents Railroad Signalmen, and as a former Signalman, I can attest that Applicants cannot properly and effectively perform necessary Signal and crossing inspection, maintenance and repair work on more infrastructure that will carry more traffic with the same size Signal workforce as they have today; and that they cannot ensure that an increased amount of infrastructure can safely and reliably handle the projected increased volumes of traffic with the same size Signal workforce as they currently have.

That Applicants say they will increase the infrastructure but do not intend to increase the number of employees who work on the infrastructure is reason to question the credibility of their assertion of plans to increase the infrastructure and their ability to adequately maintain a larger system with large volumes of traffic.

There are similar concerns about whether Applicants will be adequately staffed to handle the existing levels of traffic on the combined network, much less the projected increase in volumes. As explained by BLET President Mark Wallace (Declaration ¶¶3-6)-- Applicants plan

to reorganize traffic flows, introduce through-trains across the existing UP-NS boundaries, reduce interchange and switching work, and change crew districts and terminal limits. Under the "Optimized Plan" trains replace existing operations, thereby significantly impacting operating employees, Applicants estimate that, in net, the *Optimized Plan* will eliminate approximately 30 daily through-freight crew starts and 4,700 daily train miles. Applicants further project additional service in their *Growth Plan*-- seven intermodal train pairs, operating seven days a week, to attract and accommodate supposed, projected demand. For manifest traffic, Applicants identify nine new core trains, including four pairs, across the legacy UP-NS networks, plus eleven net new trains within the existing footprint of either railroad. Applicants also anticipate additional districts, interdivisional services, and negotiated crew-responsibility areas as integration proceeds, but do not elaborate. They also state that consolidation will require changes to train crew districts and terminal limits to align the workforce with the proposed operating patterns; but they do not provide details as to the planned changes to districts, bases and terminal limits, including changes to assignments and numbers of employees who will have to change reporting points. The planned changes would mean different reporting points and possible significant relocations and distant terminal points requiring more overnight stays and long through trains would require new intermediate crew change/reporting points. It will also mean changes in seniority districts and CBAs that may disrupt the lives of employees, their families and their communities. According to the Applicants' Craft Employee Impact Report, 928 train service jobs will be abolished and a highly unlikely 1698 new operating crew positions created for a net gain of 770 operating crew employees. Wallace Declaration ¶¶3-7; ARU/BLET refer the Board to President Wallace's Declaration for more details about the problems presented with reorganizing

train movements and the inadequacy of Applicants' staffing plans for their intended joint operations. The projected increase in train crews is not commensurate with the traffic Applicants propose to handle, and the gap will have to be absorbed by engineers who are already being worked short. Applicants' crew projections assume the existing workforce is properly sized for today's traffic. It is not. Operating crews workforce augmented by 770 new positions will not be adequate to handle traffic projected by the Growth model. Wallace Declaration ¶¶7-8.

Furthermore, as is explained by union officers and members, Applicants are currently short-staffed. In particular, UP, the apparent post-merger lead, has so reduced its workforce and stretched it way too thin, that it is trying to compel its employees to work too often and too long.

BLET's experience on UP today demonstrates the problem. Across UP's system, engineers protect work through 11/4 work/rest boards established under negotiated agreements and implementation plans. UP has routinely failed to staff the boards at levels sufficient to protect their own work and has covered the shortfall by cross-protecting and supplementing from other boards. Between 01/01/2026 and 11/06/2026, the BLET General Committees on Union Pacific documented approximately 15,577 instances of cross-protection or supplementation on 179 boards across 5 General Committee territories. Wallace Declaration ¶¶11-12, 14.

BLET's experience with NS is no different. There is already substantial pressure on existing NS engineers. NS has imposed an 8% cap on employee requests for time off regardless of compensated/uncompensated, medical days/sick days, etc. In fact, the 8% threshold includes scheduled weekly vacations. In many locations, the inclusion of scheduled weekly vacation meets or exceeds the 8% threshold meaning no other lay offs are approved. Manpower needs are also aggravated due to "stacking" of off-days (NS' 6&2 rotating off-day schedule). Stacking is

when multiple off-day groups bunch up together due to long layovers at the Away-from-home-terminal (AFHT), tours in excess of 12 hours resulting in limbo time extending statutory rest periods, etc. Stacking can have a domino effect thus placing greater strain on manpower resulting in a fatigued engineer at the controls of a train. NS is currently at an 8% attrition rate for Transportation employees and is only hiring at a 6% rate. At some locations, NS has as high as a 90% attrition rate of those new hires. NS often states that they are hiring as fast as they can, but that the pools of eligible candidates are shallow. Currently, NS is offering monetary incentives for T&E employees to: step-up to other assignments on the weekends, sell back scheduled weekly vacations, defer retirement, and is even actively recruiting retirees to return to active service. Wallace Declaration ¶¶13-14. ARU/BLET refer the Board to President Wallace's Declaration for more details about the current insufficiency of Applicants' staffing for the Operating crafts.

IAM District #19 reports that the two carriers are also currently insufficiently staffed with Machinists. On UP, workers are being required to work 8 hours of overtime every week to cover for the shortfall in staffing. Declaration of IAM District #19 President Reece Murtagh ¶¶8-9, Addendum C. Attached to President Murtagh's Declaration are statements from IAM Local Lodge officers. Marco Melendez, Local Chairman of Machinists Local 478 in the Chicago area, states that "Excessive overtime is wearing our members down and raises serious questions about employee fatigue and workplace safety." He notes that employees who refuse mandatory overtime risk being charged with rule violations and facing disciplinary consequences so they must choose between dangerous fatigue and severe discipline. Chris Paulsen, is the Local Chairman at Machinists Local Lodge #180 in North Platte, Nebraska. When he started working

for Union Pacific in 2005, there were 410 Machinists at North Platte, there are now 176 Machinists; the shop has the authority to hire 23 more Machinists, but UP is apparently unable to fill those positions. On August 12, 2026, the shop started forcing every Machinist to work an extra 4 hours of overtime weekly. Since October 12, 2026, that has been increased to 8 hours of forced overtime per Machinist every week. Local Chairman Paulsen notes that "a couple of years ago Union Pacific was furloughing massive amounts of employees, [and] now we are forcing the remaining employees that were not furloughed to work 48 hours a week." Ryan Butler, Local Chairman at IAM Local Lodge #1333, wrote that for "nearly three years, our entire shop has been required to work an additional eight hours of overtime per employee each week." The facility he represents was closed in 2019, but then the Carrier came to "recogniz[e] the continued necessity of our facility and the importance of its strategic location, [and] the railroad began recalling employees." Maintaining 8 hours of forced overtime per week for each employee for three years is unsustainable and Local Chairman Butler notes that this example illustrates the Carrier's inability to manage the existing workload and staff itself sufficiently for current operations. He says, "We are concerned that another merger could introduce additional production demands, operational changes, and staffing pressures without adequately addressing the existing challenges." *See* IAM Local Chairman statements, Addendum C. ARU/BLET also notes that when the ratio of UP locomotive mechanics to locomotives is compared to the ratios of CSXT, NSR and BNSF, using UP's STB R-1 Schedule 710 report (2025) and the STB employment report for category L-400 (Mechanical)(5/1/26), UP is dramatically off the norm. The ratio for UP is .55 (3826 mechanics to 6964 locomotives), for CSXT the ratio is .76 (2590 mechanics for 3520 locomotives), for NSR it is .84 (2713 mechanics for 3210 locomotives) and

for BNSF it is .80 (5323 mechanics for 6688 locomotives).

BRS has also documented the short staffing at UP and the extremes UP is going to make the current workforce do the work that should be done by a larger workforce. President Baldwin notes that in recent years, UP has reduced its Signal workforce, increased the responsibilities of the remaining workers, cut back the size of construction gangs and eliminated Signal relief positions; all as part of its cost-cutting business plan. Baldwin Declaration ¶7, Addendum B. In order to attempt to keep up with necessary work, the Carrier has resorted to expanding Signal territories creating pressure on Signalmen to work fast to perform required inspections and maintenance, denying Signalmen their right to use accrued vacation because the Carrier does not have enough workers to cover when an employee uses accrued leave, and threatening Signalmen if they do not accept at least 33% of non-mandatory callouts on their off days. Baldwin Declaration ¶7. These problems are expanded upon by BRS Union Pacific General Chairman Aaron Carter (in Addendum B). General Chairman Carter states:

> "[t]he number of BRS-represented employees on Union Pacific declined from approximately 2,215 in 2018 to slightly more than 1,600 in 2026. That represents a reduction of approximately 615 employees, or nearly 28%, in eight years. During these same years, Union Pacific has added crossings, switches, sidings, second main tracks, Positive Train Control equipment, and other signal infrastructure that must be inspected, tested, maintained, and repaired. The geographical boundaries of a Signal Maintainer's territory may not have changed, but the amount and complexity of equipment within those boundaries have increased. The result is fewer employees responsible for maintaining more equipment.
> * * * *
> One of the clearest examples is Union Pacific's continued use of Electronic Technician Inspectors, or ETIs, to cover vacant Signal Maintainer territories. ETIs have their own assigned inspection and testing responsibilities. When the Carrier directs them to cover maintenance territories, those employees must suspend or rearrange their regular duties to perform work that would otherwise be performed by a Signal Maintainer.
> * * * *
> The lack of adequate relief coverage has created similar problems. All but a few Relief Maintainer positions remain. Union Pacific increasingly relies on employees assigned to

> other territories to cover vacations, vacancies, and other absences…. When employees are absent, their work is frequently distributed among the remaining workforce, increasing the responsibilities of employees who already have assigned territories and duties.
> * * * *
> The same staffing deficiencies exist in signal construction. Union Pacific has repeatedly requested that employees assigned to one type of construction work perform duties associated with other construction assignments because sufficient manpower was unavailable. The Carrier has also attempted to require Signal Maintainers to work planned construction projects because sufficient construction gang manpower was unavailable.
> * * * *
> The Carrier's reliance on outside contractors provides further evidence of these staffing deficiencies. As recently as November 5, 2026, Union Pacific recognized that certain work belonged to BRS-represented employees and stopped a contractor from performing it, only to bring the contractor back because the Carrier did not have sufficient qualified employees available to complete the work. This is a recent example of the Carrier acknowledging that the work should be performed by its own signal employees while lacking the workforce necessary to do so.
>
> Over the past two years, I have also entered into agreements allowing outside contractors to perform certain work because Union Pacific did not have adequate staffing to complete it with its own employees. These arrangements were made in response to existing manpower shortages, not because the work was unnecessary or because the Carrier no longer required qualified signal employees.
> * * * *
> This is particularly concerning because the proposed merger includes construction and expansion of railroad facilities. Additional sidings, yard tracks, switches, and related infrastructure will require qualified signal employees during construction. Once completed, these installations will create permanent inspection, testing, maintenance, and emergency response obligations.
> * * * *
> These are problems occurring on Union Pacific's existing railroad. Additional signal installations and expanded operations will create more equipment requiring attention, more opportunities for equipment failures, and additional demands on the same classifications of employees already struggling to keep up with their assigned responsibilities.

See also the statements of BRS members employed by UP and the statement of a BRS member employed by NSR attached to President Baldwin's Declaration.

C. Concerns About Employees Being Leveraged To Relocate Under Threat Of Loss *New York Dock* Benefits

Applicants' staffing strategy, as well as calculated savings, appear to rely heavily on plans to abolish jobs at certain locations and establish new jobs at different locations. Sometimes Applicants refer to "transferring" jobs from one location to another. As is discussed below, Applicants apparently intend to take the position that employees who decline to relocate, will lose their eligibility for *New York Dock* benefits; they intend to leverage these workers into moving under threat of loss of dismissal allowances if they decline, or into relinquishing their rights to dismissal allowances. As is explained below, this is an incorrect reading of the *New York Dock* conditions, and the Board should preemptively declare it to be incorrect. In this part of the ARU/BLET comments, the unions will provide the Board with information about the potential impact of Applicants' strategy on the real workers who will be actually affected- not just the headcounts that appear on charts and work papers. This concern is especially significant in this case, where Applicants propose a transcontinental merger with employees potentially required to relocate hundreds of miles to over a thousand miles if they want to keep working.

The impact of Applicants' plan will fall heavily on TCU/IAM represented employees currently working at NSR's headquarters in Atlanta. Applicants say they will "transfer" the work of 187 Clerical employees in Atlanta to UP's headquarters in Omaha. Turner VS ¶275. As is explained below, it is the work that is transferred, not employees; and the word "transfer" does not appear in the *New York Dock* conditions. What Applicants would be doing is abolishing jobs in Atlanta (an action that entitles affected employees to dismissal allowances- *New York Dock* conditions Article I Section 1(c)), and creating new jobs bulletined in Omaha. As Mr. Turner and Ms. Parkerson conceded, with some hedging, the way positions are eliminated in the rail industry

is by abolishing positions, and positions are created by bulletins or bids. Turner Tr, at 286-289, Parkerson Tr. at 57-59 (Addendum K). But Applicants have been unwilling to say in materials on the record in this proceeding whether they would take the position that NSR employees in Atlanta who decline to bid on jobs in Omaha and relocate there will be treated as ineligible for New York Dock dismissal benefits even though their jobs in Atlanta were abolished. *See e.g*. UP Response to ARU First Interrogatories No. 5(b); Parkerson Tr. at 77-78:21, NSR Response to ARU/BLET Second Interrogatory No. 6, UP Response to ARU/BLET Second Interrogatory No. 6 (Addendum K).

The toll this action would take on TCU/IAM represented employees in Atlanta is described by TCU/IAM President Matthew Hollis in his Declaration (Addendum D). President Hollis states (Declaration ¶¶5-6) that:

> Applicants say that they will essentially cease all clerk work at NS's headquarters in Atlanta and transfer the work performed by those employees to positions at what would be the merged carrier's headquarters in Omaha, NE, a distance of about 1000 miles....Given these plans and the geographic distances between Atlanta and Omaha our members are concerned about job losses and compelled relocations. Many of our members have worked at NS' Atlanta offices for years, they have families in Atlanta, spouses who have their own jobs in Atlanta, children in schools in Atlanta, other relatives in Atlanta and connections to communities, organizations and religious institutions in Atlanta.

President Hollis further explains that Applicants will take the position that employees whose jobs are abolished in Atlanta will be obligated to accept a position in Omaha in order to retain their right to *New York Dock* dismissal benefits. He states in "August of 2026 UP Labor Relations VP Macqui Parkerson explicitly told me that the carriers would take the position that if an employee refused to relocate from Atlanta to Omaha, they would no longer be eligible for New York Dock dismissal benefits". Hollis Declaration ¶7.

Provided with President Hollis's Declaration (in Addendum D) are the declarations and statements of TCU/IAM members describing their tenure with NSR at Atlanta, the positions they hold, the work they perform, and the strong connections they have in Atlanta that would make moving to Omaha difficult or impossible. For example:

> Neiman J. Dunams, Sr. uprooted his life once because of Hurricane Katrina. In the more than 20 years since the hurricane, he has built a life and a railroad career in Atlanta. He wrote "This move should not have to happen in order for me to continue employment!"
>
> Wauquita Jewsome has 25 years of seniority working in Atlanta and asks "Why would a company want to uproot employees who have obligations and ties to their family and community?"
>
> Shanice Willis is a CMC Crew Dispatcher who has spent 9½ years working for Norfolk Southern in Atlanta and is a single mother who relies on the support of her parents for financial and childcare support that would be lost by forcing her to move to Omaha. She says that "remaining in my current state is essential to maintaining stability for both myself and my children. I want to keep working. My inability to move should not be treated as a voluntary decision to leave employment or used to deny protections that might otherwise apply."
>
> Michelle Stewart has been working for Norfolk Southern for almost 19 years in Atlanta in Crew Management as a Support Chief Caller. She worries about how a forced move to Omaha would interfere with her relationship with her fiancé, maintaining the continuity of her medical care, her relationship with her adult son and the community of friends she has built in Atlanta. She says "I have dedicated a significant portion of my working life to this company" and "it is important to recognize that employees are more than positions on an organizational chart; we have homes, financial responsibilities, families, relationships, and lives that are established in the communities where we currently work."
>
> Yvette Bell has 15 years of service in Integrated Data Solutions in Atlanta and worries about employees like "myself who are unable or unwilling to relocate due to personal, family, financial, or medical circumstances."
>
> Rhonda Lewis has dedicated 20 years of her career to Norfolk Southern as a Crew Dispatcher in Atlanta. She describes hardships on her family from being forced to relocate to Omaha including the impact this move would have on her husband (who is older than her), and what it would mean for her elderly mother and brother-in-law – who both depend on her for support and care. She says "relocating would mean having to find appropriate living arrangements for them, establish new medical providers, transfer their

> care, and ensure that their needs continue to be met. These are not simple adjustments; they are major life changes that could place an enormous burden on my entire family."
>
> Tiffany Allen has worked for Norfolk Southern for 15 years. She has family obligations in Atlanta including taking care of her aging father, her sister, and her nieces/nephews while her sister recovers from cancer. She loves her job and would want to keep working for NS in Atlanta, but she cannot move to Omaha and maintain her family responsibilities.
>
> Kevin Thomas is a Crew Caller in Atlanta who has worked for Norfolk Southern for almost 4 years. He has 15-, 12-, and 8-year-old daughters and he has managed to work out a joint custody arrangement. He says "Moving across state lines and upending this arrangement with a potential court custody fight would be emotionally difficult and financially impossible."
>
> A TCU Member with 21 years of seniority for NS in Atlanta is the only living parent and sole caregiver for an adult child with special needs who has both a medical and mental disability that makes it very challenging to navigate daily activities independently. This member's medical and social support network for their son is based in Atlanta and they fear the impact moving to another state would have on his ability to live and thrive. They wrote "I pray that there is some way that I keep the job I love and have been dedicated to while not relocating."
>
> A Norfolk Southern Customer Logistics Specialist in Atlanta worries about their elderly mother who they support. They wrote "I am concerned about the protections and consideration available to employees who, due to family responsibilities, financial circumstances, and established lives in their current communities, cannot reasonably relocate."
>
> A Norfolk Southern Crew Dispatcher in Atlanta wrote that "If my position is transferred, relocating would not be a realistic option due to my family caregiving responsibilities for my 4-year-old granddaughter."

See the Hollis Declaration for complete statements.

Members of IAM District #19 are also concerned about the possibility that they might be leveraged into uprooting their families to maintain employment or right to *New York Dock* benefits. President Murtagh states:

> According to the Applicants Craft Employee Impact Report, 81 locomotive mechanic jobs will be abolished, 400 created and 117 transferred (the difference between transferred and abolished then created is not explained). Given these plans and the

> geographic distances between shops that Applicants say will be affected by the merger, our members are concerned about job losses and compelled relocations. This is on top of the reduction of 1,123 Machinists since 2016, the 45 Machinists who are currently furloughed, and the lack of hiring for attrition during this 10-year period."
>
> * * * *
>
> Based on the Employee Impact Report, there would be at least 117 locomotive mechanics and possibly another 81 mechanics who may experience job abolishments and dismissals and be confronted with Applicant arguments that they must accept a transfer or a newly created position that requires them to relocate. The majority of Machinists have over 15 years of seniority. Closing down shops or forcing Machinists to relocate could devastate families and destroy railroad communities that depend on good railroad jobs.

Murtagh Declaration ¶¶7-8, Addendum C. IAM District #19 Local representatives amplified these concerns. Local Chairman Melendez states that members at his shop are worried that they "may be forced to relocate to another state, leave their craft, and accept a different position that may pay less than their current job." Local Chairman Butler states: "Some employees now travel several hundred miles each week to return home and spend time with their families. Others have relocated themselves and their families significant distances simply to retain their railroad employment. These are not minor inconveniences. They represent substantial disruptions to family life, financial stability, and the ability of employees to maintain meaningful connections with their communities."

The potential for leveraged relocations is also a concern of BLET. President Wallace notes that:

> According to the Applicants' Craft Employee Impact Report, 928 train service jobs will be abolished (there is no differentiation among engineers, conductors, yardmen, etc.) through the *Optimized Plan*, and a supposed but highly unlikely creation of 1698 operating crew positions through the *Growth Plan*, for a net gain of 770 operating crew employees. But, the projected net gain does not mean existing jobs or assignments remain intact; it depends on growth offsetting the anticipated reductions and history tells us mergers usually result in the opposite.

He further notes that:

> …while Applicants do not identify a single train crew position transferred in their Craft Employee Impact Report, the absence of train crew positions in the "transferred" column is not a commitment that no train service employee will have to relocate. Applicants expressly contemplate relocation where necessary to align employees with the work, and their labor plan states that they will seek implementing agreements where relocation goes beyond existing agreements' terms, practices, and interpretations."

Like the other Union Presidents, President Wallace observes that:

> While Applicants acknowledge that the New York Dock employee protections will apply to adversely affected employees, we understand that they will take the position that employees whose jobs are abolished at one location will be obligated to accept a transfer to another location, even one far away in order to retain their right to New York Dock dismissal benefits. Based on the Employee Impact Report, there would be at least 928 operating crew employees who are projected to experience job abolishments and dismissals and be confronted with Applicant arguments that they must accept a transfer or a newly created position that requires them to relocate. As is explained in our Comments, we contend that such arguments are contrary to the New York Dock conditions and the Board should declare them to be wrong under New York Dock and the statute.

See Wallace Declaration ¶¶7-9. And *see also* Declaration of TWU Railroad Director Feltz (¶6)- "67 Carmen jobs will be abolished, 251 created and 16 transferred…. Given these plans and the geographic distances between shops that Applicants say will be affected by the merger, our members are concerned about job losses and compelled relocations".

D. Abuse of New York Dock Section 4 Notices To Change Agreements Outside The Railway Labor Act, Decades After Merger Consummation and Integration

An extremely worrisome aspect to Applicants' plan is their intention to use the *New York Dock* implementing agreement process to change collective bargaining agreements outside Railway Labor Act, not merely years, but decades, after the merger has been consummated and workforces integrated. While Applicants stated an intent to effect certain changes within the first three years after consummation, they also left open using the implementing agreement process to

change agreements rather than negotiate under the Railway Labor Act beyond that three year period. Turner VS ¶263, Turner Tr. at 294-295; Parkerson Tr. at 61-63, 69-70.

The type of abuse that can occur is explained by President Wallace in describing such a gambit by CPKC. Wallace Declaration ¶¶ 15-16. He explains that, on February 19, 2025, CPKC invoked Article I, Section 4 of the *New York Dock* conditions imposed in the ICC's June 4, 1993, approval of KCS's acquisition of common control of MidSouth. **Nearly thirty-two years after that approval,** CPKC sought to consolidate KCS and MidSouth operations and engineer workforces in a Shreveport Hub Operating District and replace the separate agreements governing those operations with the MidSouth collective bargaining agreement, rather than through the RLA over the BLET's objection. CPKC did the same things with the MidSouth and TexMex. BLET challenged CPKC's ability to change collective bargaining agreements through the implementing agreement process but Arbitrator Michael D. Phillips upheld CPKC's reliance on the 1993 approval, concluding that the passage of time did not bar a consolidation related to the original transaction. He also held that the Anti-Cramdown Agreement did not apply because the underlying 1993 transaction was classified as "significant," rather than "major," and approved application of the MidSouth agreement to employees previously covered by the KCS agreement.

Thus, a decades-old control approval supplied the basis for compulsory changes to collectively bargained terms long after the transaction was consummated, and despite the fact that the subsequent CP-KCS merger was a major transaction that plainly led to CPKC's actions decades after the MidSouth merger. President Wallace notes that the CPKC-MidSouth experience demonstrates why the Board should establish a definite endpoint for merger-based

changes to agreements if the UP-NS merger is approved. Wallace Declaration ⁋⁋15-16. Addendum F.

Copies of the Phillips Awards, a recent similar notice by CSXT, and other related materials are at Addendum I to these Comments.

E. Terminal Railroad Of St Louis and Conrail Shared Assets

Direct employees of UP and NSR will not be the only workers affected by the proposed merger. As is explained by BRS President Baldwin (Declaration ¶12) and TWU Railroad Director Feltz (¶11), currently the Terminal Railroad of St Louis is jointly owned by UP-43%, BNSF-14.25%, NSR- 14.25%, CSX-14.25%, and CN-14.25%. Conrail Shared Assets is currently owned by NSR-58% and CSXT-42%. Terminal Railroad has 63 employees, 19 of them Signalmen; Conrail Shared Assets generally has between 500 and 600 employees, 54-65 Signalmen.

If the transaction is approved, the merged carrier will have control of the Terminal Railroad and of Conrail Shared Assets as a result of the merger. Employees of those railroads would therefore be affected by the transaction.

IV. ARGUMENT

A. The Board Should Reject The Application As Not Consistent With The Public Interest

ARU/BLET respectfully submit that the Board should refuse to approve the Transaction under 49 U.S.C. 11324(b) and (c) because it would be inconsistent with the public interest to approve the proposed merger that would clearly be un remediably anti-competitive, further exacerbate concentration in the industry, enhance the already corrosive market power of the Class I railroads as a group and the proposed merged carrier in particular; and because of the

negative impacts the Transaction would have on carrier employees.

1. The Proposed Merger Is Irremediably Anti-Competitive, Will Result In Unacceptable Market Dominance For The Merged Carrier And Will Negatively Impact Service

In the new merger rules promulgated in *Major Consolidation Procedures,* the Board recognized in retrospect that its decision permitting one major merger after another had created a highly concentrated industry such that more stringent standards should be applied to future mergers of Class I railroads. And it did so noting that future Class I mergers would bring about a final state of the industry, and, in particular, a transcontinental merger such as proposed by Applicants. The Application and evidence gathered during these proceeding reveal that Applicants have not satisfied, and cannot satisfy either the standards of the statute or the new merger rules.

The proposed merger would put over 50% of the nation's rail traffic in the hands of one railroad, and that railroad would vastly exceed its competitors in market share and reach. Simply put, the Transaction is facially anti-competitive. Furthermore, if approved, the merger would likely spur a responsive merger of Class I's creating another transcontinental railroad- the result would be moving from an already problematic situation of duopolies east and west of the Mississippi to national duopolies. Although Applicants' competitors currently disclaim interest in a responsive merger the history of the mergers of the 1980s and 1990s shows that a responsive transcontinental merger is likely of the Transaction is approved. In the 1990s, industry stakeholders, including Rail Labor, urged the ICC and STB to consider the potential follow-on effects of approving a Class I merger- that it would spur a responsive merger. The agency ignored those pleas, repeatedly saying that it was reviewing only the individual mergers that had been placed before it. And the consequences were just as industry stakeholders predicted. The

promulgation of the new merger rules was somewhat of a recognition that the agency had put blinders on in not considering the after-effects of a merger of Class I railroads. The Board should not make the same mistake in this proceeding. If the Transaction is approved the Country will surely find itself with two overwhelmingly dominant transcontinental carriers. The time to grapple with that outcome is now, not after approval of the Transaction. The Transaction should not only be rejected because it is irredeemably anti-competitive standing alone, but also because the ultimate result of approval will be an unprecedented concentration of market power in two corporations that will not be restrained by market forces or the current regulatory regime.

The Board should also recognize that, as described above, the deregulatory structure of the Staggers Act and the ICCTA was predicated on competition as a control on behavior that had previously been closely regulated, but the ICC and STB then allowed mergers that resulted in duopolies that severely reduced competition. Approvals of the mega-mergers in the 1990s effectively undermined the premises of deregulation—that competition and market forces would replace the hand of government as a controlling factor in the conduct of business in the rail industry. Approval of this Transaction will put the final nail in the coffin for the controlling post-1980 deregulatory regime. Indeed, after that the most effective way of restraining dominant national duopolies would be by government action of the sort undertaken in World War I and considered in the Transportation Act of 1920.

ARU/BLET also urge the Board to consider that approval of the Transaction is not just problematic in terms of its impact on prices for shippers and ultimately their customers, the American public, who will ultimately be on the receiving end of higher prices. Industry concentration and lack of competition has also led to degradation of quality of service both as to

responsiveness to customers and the condition of railroad infrastructure and equipment. This was shown in the 2022 service meltdowns and UP embargoes discussed above. Duopolistic railroads do not have to be responsive to customers because the customers effectively have nowhere else to go; the railroads do not have to be responsive to them. Again, this was shown with particularity in the Foster Farms and Sanimax cases, both involving UP. In response UP might argue that those problems are behind it and they have not recurred. But, of course, that would ignore the fact that not only are the railroads not operating at capacity, they are carrying less freight than before the service meltdowns. As noted above, Oliver Wyman, reported that "rail is the only freight transportation mode that has lost overall net tons since 2017. Rail moved eight percent fewer total net tons between 2017 and 2023, while truck increased net tons moved by three percent". *See* Addendum H. The lack of repetition of service meltdowns is a rather low bar to clear. And the ability to provide minimally acceptable service when the system is running at less than capacity and below levels from nine years ago does not show that Applicants will be able to handle the increase in volume they project, nor does it undercut evidence that the Class I's consider themselves immune from service demands and complaints because they are duopolies.

Part of the problem with such industry concentration is shown by the dramatic reductions in Class I work forces – about 30% for all Class I's since 2015. *See* Thomas Roth Statement and graphs at Addendum G. It is rail workers who ultimately provide the service to shippers. Rail workers move and dispatch the trains, maintain the tracks, right of way and signal, system, maintain the equipment and interact with customers. As demonstrated by unions in Ex Parte No., 770, Ex Parte 770-1, Ex Parte No. 772, and Ex Parte No. 775, the service crises and ongoing

service problems have been directly related to the precipitous reductions in the personnel who provide and support the service in the single-minded pursuit of lower Operating Ratios. And it was not just unions that made this connection. Loop Capital identified the influence of finance interests in promoting ever lower Operating Ratios over growth. *See* Loop Capital Presentations in Addendum H.

In a classical economic model, the railroads could compete on service– including quality of their infrastructure, reliability of their equipment, and adequacy of the operating forces including availability of reserve employees. But the current reality is that they don't. Staffing ratios are relatively the same for all Class I's. For example, measures of maintenance of way and signal employees per track mile, and locomotive mechanics per locomotive reported by the Class I's to the STB are relatively similar and particularly similar when one compares CSXT to NSR and UP to BNSF (except that UP is markedly lower with respect to mechanics per locomotive). This chart is drawn from the R-1 reports of the Class I's and their employment reports to the Board.

MOW/Signal employees per track mile - all Class I's 5/1/26

	Miles of Track (R-1 Sched 702)	MOW/Signal STB L300 8/1/25	L300/ Track Miles
BNSF	22925	8332	.36
CSXT	14670	4987	.34
NS	14594	4526	.31
UP	26275	7713	.29

Mechanical employees per locomotive- 5/1/26

	Locomotives (R-1 Sched 710)	Mechanical STB L400	Employees per locomotive
BNSF	6688	5323	.80
CSXT	3520	2590	.76
NS	3210	2713	.84
UP	6964	3826	.55

The refusal, and lack of perceived need, to compete on quality of service represented by staffing cuts is also shown by the domino effect of furloughs. Recent experience has shown that after one carrier moves to reduce its Operating Ratio by cutting staffing, the other carriers follow suit.

So, separate and apart from the impact on pricing that will result from further consolidation of the industry, the Board should recognize that consolidation has already negatively impacted service, and further consolidation will further negatively impact service- another reason that the Transaction is not consistent with the public interest.

2. The Purported Benefits Of The Transaction Are Illusory And Certainly Do Not Outweigh Its Negative Effects

A principal justification offered by Applicants for approval of the Transaction is the assertion that the public will benefit from their projected diversion of traffic from trucks to the merged carrier. That is, at best, speculation. Applicants have provided no real evidence that actually supports their claim. And there is reason to be skeptical of their contention given the history of the failure, and, apparent lack of desire, of the Class I railroads to capture traffic from trucks, illustrated most recently by the results of the CPKC merger. As the Board noted in Decision No.

21 in this proceeding (at 25, n. 29):

> The Board notes that there is history of prior major mergers that have fallen short of truck-to-rail conversion projections on past applicants' timelines. For example, in the most recent Class I merger, Canadian Pacific—Kansas City Southern, the applicants forecasted converting 64,000 trucks per year from highway to rail. See Canadian Pac. Ry.—Control—Kan. City S., FD 36500 et al., slip op. at 21 (STB served Mar. 15, 2023). Three years after consummation, that goal has not yet been realized. See CPKC's Jan. 2026 Traffic Diversion Submission 6, Canadian Pac. Ry.—Control—Kan. City S. (Gen. Oversight), FD 36500 (Sub-No. 6) (filed Jan. 15, 2026). Applicants here project substantially more diversions—2.1 million truck-to-rail conversions. (See Rev. Appl. 1-14.)

There is additional reason to question Applicants claims given the recent history of the Class I's carrying less traffic while trucking and other modes gained volume, as documented by Loop Capital and Oliver Wyman in Ex Parte No. 775 (Addendum H). Additionally, it must be recognized that the decline in rail volume in comparison to the increase in trucking volume is not just the product of an unfortunate set of circumstances, the result of mistakes by the railroads, or a consequence of forces beyond their control. As explained by Loop Capital, the lack of growth, and actual decline in volumes, is a product of pressure from financial interests that demand ever lower Operating Ratios and higher profit margins. And this is illustrated by the comments of Vena, Rocker and Haman to financial analysts, insisting that for shippers to be on the network, they must accept rates that would satisfy UP's target profit margin. Simply put, given UP insistence on its target profit margin, the Board should not accept Applicants' blithe assertion that they will divert traffic from trucks, which generally operate at lower profit margins than the Class I's.

Accordingly, not only have Applicants failed to show that the Transaction is consistent with the public interest, which on its own, requires rejection of the Application, Applicants' contention that the purported benefit of diversion of traffic from trucks outweighs any anti-

competitive effects of the merger is unsubstantiated and contradicted by UP's own business plans and behavior in recent years.

B. If The Board Approves the Transaction, It Should Make Approval Subject To A Number Of Conditions Sought By ARU/BLET

ARU/BLET submit that, based on the record before the Board, the Application must be rejected under Section 11324 of the Act. However, if the Board nonetheless approves the Transaction, it should condition such approval on the conditions discussed below.

1. The *New York Dock* Employee Protective Conditions Must Be Imposed On Any Approval Of The Transaction

Imposition of the *New York Dock* conditions is required by statute. 49 U.S.C. §11326. Applicants do not dispute that requirement and recognize that the conditions would be imposed on approval of the Application. And there can be no dispute that an approval of the Transaction must be subject to the *New York Dock* conditions.

2. Applicants' Ability To Use The *New York Dock* Implementing Agreement Process To Modify Collective Bargaining Agreements Outside The Railway Labor Act Must Be Limited In Duration

A major concern of ARU/BLET is the potential that the merged carrier would invoke the *New York Dock* implementing agreement process (*New York Dock* Article I §4) to modify agreements negotiated under the Railway Labor Act ("RLA"), years, and even decades, after they have consummated the approved merger.

Years of litigation before the courts, including the Supreme Court, and before the ICC and STB, established that a carrier implementing an approved transaction may invoke the Section 4 implementing agreement process to select and assign forces in integrating previously separate workforces, and relatedly obtain changes in collective bargaining agreements only when

necessary to permit the approved consolidation, but otherwise the RLA controls. The Commission and Board summarized the outcome of that litigation in their decisions in *CSX-Corp -Control Chessie System, Inc. and Seaboard Coastline Ind. and Norfolk Southern Corp- Control- Norfolk and Western Ry.*, 6 ICC 2d 715 (May 21, 1990) ("*Carmen II*") and *CSX-Corp -Control Chessie System, Inc. and Seaboard Coastline Ind. and Norfolk Southern Corp- Control- Norfolk and Western Ry.,* 3 STB 701 (September 25, 1998) *("Carmen III*"), in which the agency said it had balanced the interests of the carriers in implementing approved transactions, with retention of the RLA's status as the statute that actually governs industry labor relations, and which mandates maintenance of the status quo in rates of pay, rules and working conditions pending completion of RLA bargaining processes. After acknowledging that its prior decisions had been insufficiently respectful of the RLA and Congress' intent in adopting that legislation, the Commission said it was acting to "restore th[e] balance" between the two statutes. The Board said:

> We reject both labor's view that CBAs cannot be modified in any respect without resort to RLA procedures and management's view (albeit based upon ab interpretation of our own pronouncements) that CBAs are overridden if inconvenient to implementation of a merger. Contract rights do not disappear, but must be respected or "preserved".

6 ICC 2d at 752. The Commission then said that the balance it sought was consistent with practice under the Washington Agreement of 1936 (before the ICC tilted the balance too far toward broad carrier ability to modify CBAs through implementing agreements). It concluded by saying that "We assume that any changes to CBAs will be limited to those necessary to permit the approved consolidation and will not undermine labor's right to rely on the RLA for those subjects traditionally covered by that statute". *Id*. at 752-753. The ICC observed that its decision was consistent with the Supreme Court's teaching in *Pittsburgh & Lake Erie R.R. v. RLEA,* 491

U.S. 490 (1989)-- that the courts and the agency had an obligation to avoid conflicts between the two statutes, and that there was an obligation to "harmonize" the statutes. *Id.* at 753. In *Carmen III,* the Board affirmed and adopted the ICC's *Carmen II* decision, stating that "The ICC did not attempt to define what changes should be considered to be necessary [for overriding a CBA] but stated in Carmen II that CBAs and the RLA should not be overridden simply to facilitate a transaction, but should be required to yield only when and to the extent necessary to permit the approved transaction to proceed". 3 STB 701, 1998 WL 661418 (STB) (September 25, 1998) at *7.

But beyond the question of the basic ability of carriers to invoke the Board's authority and Section 4 implementing agreement processes to modify CBAs as necessary to permit an approved transaction to proceed, is the question of how long after consummation carriers should be able to use the *New York Dock* process to circumvent their obligations under the RLA. In 1995, the ICC held that there is no limit as to when a carrier can invoke Section 4 processes to change CBAs. In *CSX-Corp. – Control –Chessie System, Inc. and Seaboard Coast Line Industries*, Finance Docket 28905 (Sub No. 27), Served December 7. 1995 ("*O'Brien Review Decision*", (Addendum I)) the ICC upheld an award by arbitrator Robert O'Brien in which he accepted CSXT's invocation of Section 4 processes to change existing CBA's 12 years after the Board had approved the Chessie-Seaboard merger that created CSXT (in actuality CSXT was consolidating territories that were combined in the 1963 Chessie (B&O-C&O) merger- *see O'Brien Review Decision* at 3, finding that CSXT sought to create a new "Eastern B&O Consolidated District"). The ICC rejected the unions' arguments that CSXT should not be allowed to use *New York Dock* processes to change CBAs 12 years after the CSXT merger (and

almost 30 years after the Chessie merger), but, rather, should adhere to the RLA in seeking to amend agreements so long after consummation of the merger. The Commission stated: "we have never imposed a deadline on making merger-related operational changes" and that "causality is not diminished with the passage of time". *Id*. at 9.

ARU/BLET respectfully submit that the Board should overrule that decision. It was disrespectful of the RLA and Congress's decision to require that rail industry agreements be negotiated and modified under that statute, inconsistent with this agency's decisions in *Carmen II* and *Carmen* III, and, frankly, ludicrous, and apparently driven by policy considerations at odds with the law. The absurdity of the rule that the ability to use *New York Dock* Section 4 processes to override CBAs is infinite in duration is demonstrated by recent use of those processes to purportedly implement decades old mergers by CPKC and CSXT.

As is explained by BLET President Wallace (Declaration ¶15, Addendum F), "on February 19, 2025, CPKC invoked Article I, Section 4 of the *New York Dock* conditions imposed in the ICC's June 4, 1993, approval of KCS's acquisition of common control of MidSouth. Nearly thirty-two years after that approval, CPKC sought to consolidate KCS and MidSouth operations and engineer workforces in a Shreveport Hub Operating District and replace the separate agreements governing those operations with the MidSouth collective bargaining agreement, over the BLET's objection. CPKC sought to do the same with MidSouth and the TxMex. BLET opposed those efforts. In two awards, Arbitrator Michael D. Phillips upheld reliance on the 1993 approvals, concluding that the passage of time did not bar a consolidation related to the original transaction". Copies of the Phillips Awards are included in Addendum I. While Arbitrator Phillips stated that he was adhering to ICC precedent (KCS Award at 14,

TexMex Award at 10), the Board is not obligated to perpetuate such irrational precedent that yields such illogical results. Further evidence of abuse of *New York Dock* Section 4 processes is provided by CSXT's September 2026 invocation of those processes to override SMART TD agreements by citing the 1980 CSXT merger (F.D. 28905- the same transaction as cited in the O'Brien Award) and the 1998 CSXT-NS-Conrail transaction (F.D. 33388). *See* Addendum I (Wall letter and CSXT Coordination Notice). CSXT was trying to circumvent the RLA to supposedly implement transactions that occurred 46 years and 28 years ago. It is time for the Board to put an end to these shenanigans.

Not only is the infinite use of Section 4 processes to change CBAs absurd on its face and abusive of both the RLA and ICCTA, it is inconsistent with the decision in *Carmen II,* where the agency said it was balancing the prerogatives granted carriers by approval of Section 11323 transactions and Congress's intent that the RLA generally govern industry labor relations; that Section 4 changes to CBAs "will be limited to those necessary to permit the approved consolidation and will not undermine labor's right to rely on the RLA for those subjects traditionally covered by that statute" (*Carmen II,* 6 ICC 2d at 752-753), and in *Carmen III* where the Board said "the RLA should not be overridden simply to facilitate a transaction, but should be required to yield only when and to the extent necessary to permit the approved transaction to proceed". 1998 WL 661418 at *7. The notion that 12, 28, 32, or 46 years after approval and consummation of a transaction it is necessary to override a CBA in order to permit the transaction to go forward is farcical and should be rejected as fundamentally inconsistent with the decisions in *Carmen II* and *Carmen III*. CPKC and CSXT had the ability to negotiate changes in CBAs over multiple rounds of RLA bargaining during the decades after they

consummated the approved transaction, their belated invocations of the transactions were merely efforts to avoid their obligations under the labor law.

Additionally, the stated reasoning in *Carmen II* for the use of the *New York Dock* implementing agreement process to override CBA provisions was to allow the carriers to integrate previously separate workforces, which, the Commission concluded, required related changes in CBAs to effect those integrations. Once the workforces have been integrated, certainly long after integration, the stated reasoning for CBA changes through implementing agreements evaporates.

It should also be recognized that the dismissal and displacement benefits available to adversely affected employees under the *New York Dock* conditions come to an end; the maximum number of years that an employee can collect dismissal or displacement allowances is 6 years. There is no reason that a carrier's ability to use employee protection conditions to change the agreements covering affected employees should be longer than the maximum duration of employee protection benefits.

ARU/BLET also note that to the extent that Applicants assert their ability to invoke *New York Dock* implementing agreement processes forever, such an assertion is at odds with their own position regarding conditions for the benefit of rail shippers. As the Board found in Decision No. 21, Applicants' principal basis for arguing that they have satisfied the "enhance competition" requirement of the new merger rules is their adoption of Committed Gateway Pricing ("CGP"). *See* Decision No. 21 at 9-10. But Applicants are adamant that the CGP must "sunset", that it should end when the period for the Board's oversight ends. Novak VS ⁋⁋ 45-48; *see also* Parkerson Tr. at 64-67, Turner Tr. at 296-299 (Addendum K). It is fundamentally

inconsistent for Applicants to argue that their principal concession to the enhancement of competition requirement in order to gain Board approval of the Transaction should end when the oversight period ends, but their ability to use a right to override CBAs acquired by virtue of a Board decision approving the Transaction should go on forever.

Applicants may argue that the Board should not address this issue at this time, that it should defer to the *New York Dock* arbitration process and allow the issue to be adjudicated in the first instance in arbitration and then deal with the issue on a petition for review. Such an argument should be rejected. As is apparent from the Phillips Awards, arbitrators are following ICC precedent. Only a decision by this Board will change things; and there is no reason to wait years for the Board to rectify the problem. Nor should employees have to deal with carrier CBA overrides subject to appeal, suffer the non-RLA CBA changes years or decades after consummation of the merger and then try to retroactively undo what should never have been done in the first place, when the Board can clarify the situation if/when it authorizes the Transaction.

With respect to an appropriate duration for the merged carrier to invoke *New York Dock* Article I Section 4 implementing agreement processes to change CBAs, the ability to do so should come to an end at a reasonable time after consummation of the underlying transaction or transactions; either 6 years after consummation (consistent with the maximum duration of *New York Dock* benefits), or the duration of Board oversight. Specifically, the Board should declare that, as a condition of any approval of the Transaction:

> The post-merger/common control carrier will not serve any notice under Article I Section 4 of the *New York Dock* conditions that would involve any change in a collective bargaining agreement of a signatory union more than 6 years after consummation of an approved merger/control transaction, or the duration of a post-merger oversight period. If

> the post-merger/control carrier seeks to make changes to any collective bargaining agreement after the period of 6 years after the STB's approval of the merger/control transaction, or after the end of the oversight period, it will do so only in accordance with the Railway Labor Act.

As is described above, deregulation of the railroads was paradoxically accompanied by new ICC regulation of rail workers. William G. Mahoney, *The Interstate Commerce Commission/Surface Transportation Board as Regulator of Labor's Rights and Deregulator of Railroads' Obligations: The Contrived Collision of the Interstate Commerce Act with the Railway Labor Act* (included in Addendum J) at 279-282. The STB should cut back on its regulation of labor in this post-deregulation era, and stop putting its thumb on the scale for the benefit of the Class I railroads (who are no longer in the economic straits they were in the 1980s) with respect to rates of pay, rules and working conditions, and should allow the natural interplay of labor- management relations to proceed as intended under the RLA years after an approved transaction has been consummated and implemented with the separate workforces integrated. The Board should declare that the ability to utilize New York Dock processes to change CBAs ends a reasonable time after consummation of the approved transaction- as urged by ARU/BLET.

3. The Board Should Declare That An Employee Whose Job Is Abolished But Who Is Offered The Ability to Transfer To A Newly Created Position A Significant Distance From Their Home Does Not Forfeit Their Rights To Dismissal Benefits If They Decline A Position That Would Require Them To Change Their Place of Residence

As Applicants acknowledge, the proposed merger is unprecedented in that it would create a truly transcontinental railroad. Unlike mergers in the 1980s which were regional, or mergers in the 1990s which involved the eastern and western halves of the Country, this merger would be nationwide. In their discussion of their planned implementation of the Transaction, Operating

Plan, and Service Assurance Plan, Applicants have described their intent to change where positions for hundreds are located. Their Employee Impact Report describes plans to abolish and create thousands of jobs and to "transfer" hundreds of jobs.

As described above, Applicants plan to eliminate virtually all clerical jobs at NSR's headquarters in Atlanta and to create new clerical jobs in Omaha. Applicants describe this as "transferring" jobs from Atlanta to Omaha, which they acknowledge they cannot do under current NSR and UP collective bargaining agreements. Parkerson VS ¶11, Parkerson Tr. at 54-59, 73-76; Turner VS ¶¶262-263, Turner Tr. at 288-290. Similarly, Applicants plan to eliminate locomotive mechanic and carmen jobs at shops/yards/mechanical facilities in the middle of the country and "transfer" the work to other shops/yards/mechanical facilities that may be hundreds of miles from where the jobs were eliminated. Applicants claim that they will accomplish these transfers through the *New York Dock* Section 4 process, although the term "transfer" is not used anywhere in the *New York Dock* conditions. Furthermore, although they hedged about it, Applicants' Service Assurance Plan Declarant John Turner (Deposition Transcript at 286-291, Addendum K) and UP Labor Relations Vice President Parkerson (Deposition Transcript at 57-59, Addendum K) recognized that the way jobs are eliminated in the railroad industry is by abolishment notices. Under Article I Section 1(c) of the *New York Dock* conditions, "'Dismissed employee' means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because abolition of his position…." As is also described above, for the operating crafts, Applicants do not show positions "transferred" but list jobs abolished and jobs created. Wallace Declaration ¶¶7-8.

Plainly, employees whose jobs are abolished are adversely affected by the transaction and are dismissed employees by virtue of abolition of their positions (*New York Dock* Article I Section 1(c)) and thus are entitled to dismissal allowances. *New York Dock* Article I Section 6. And Article I Section 6(d) of the conditions provides that dismissal allowance benefits will, for a variety of reasons, cease, including due to an employee's "failure without good cause to accept a comparable position *which does not a change in his place of residence* for which he is qualified and eligible…" (Emphasis added). But Applicants have refused to say, or have been vague about, whether employees whose jobs are abolished will be deemed dismissed employees and entitled to dismissal benefits if they decline newly created positions that require them to relocate to obtain those positions. UP Answers to ARU First Interrogatories, No. 5(b), Turner Tr. at 290-293, Parkerson Tr. at 77-78:21 (Addendum K). However, as noted above, and as stated in the Declaration of TCU/IAM President Matt Hollis (Addendum D ¶7), UP Labor Relations Vice President Parkerson told President Hollis that TCU/IAM members in Atlanta who declined to bid to newly created jobs in Omaha would not be treated as dismissed employees entitled to dismissal benefits. The 187 Clerical craft employees in Atlanta would thus be put in the position of uprooting their lives and their families and relocating about a thousand miles away to Omaha or losing their entitlement to dismissal benefits as employees whose jobs were abolished, if they refuse to relocate. This would not be the first time that a carrier has taken that position, and arbitrators have accepted their arguments, even though they conflict with the wording and purpose of the conditions. *See e.g.* Award of Arbitrator Fredenberger (IAM and B&)/L&N), Addendum I at 8, *citing* the ICC's decision in the *CSXT Control* case, F.D. 28905.

It appears interpretation of the *New York Dock* conditions as treating employees whose jobs are abolished as not eligible for dismissal benefits if they decline to relocate for a position that would require a change of residence derives from decisions of the ICC (*id.*) and the Board in the *CSX-NS-Control of Conrail* decision, F.D. 33388 (July 20, 1998), in which the Board rejected a request that it hold that employees could refuse to relocate and retain the right to dismissal benefits. In the Fredenberger Award, although the arbitrator said the union's position had been rejected by the ICC, review of the Commission's decision he cited reveals no actual discussion or rationale; rather the Commission just did not grant a condition sought by the union. In the *CSX-NS-Control of Conrail* decision, the Board stated, [without citing any facts, history or precedent] (Decision at 331):

> TCU and DOT have not demonstrated that the basic protections of New York Dock should be altered so that an employee does not have to accept a job that requires him or her to move, or else forfeit the monetary payments. A basic part of the bargain embodied in the Washington Job Protection Agreement upon which the New York Dock conditions are based is that rail carriers are permitted to move employees around in order to achieve the benefits of a merger transaction in return for up to 6 years of income protection and various other benefits, such as retraining and moving allowances. Such displacements do result in hardships for employees whenever they are required to move their place of residence, whether the move is a relatively short one or a longer one. In either case, however, New York Dock compensates the employee for the cost of the move and provides for up to 6 years of income protection. Labor's proposal would alter the New York Dock conditions to provide that monetary allowances are paid to employees who are offered continued employment, but refuse to take advantage of it, a result not envisioned under the New York Dock conditions

ARU/BLET ask the Board to reconsider and reject this interpretation of the *New York Dock* conditions and to bring the application of the conditions in line with the language and purpose of the conditions. As noted above, the conditions define an employee whose job has been abolished as a dismissed employee, they provide that a dismissed employee is entitled to

dismissal benefits, and that dismissal benefits will cease due to death, resignation, retirement, dismissal for cause or refusal of a comparable position that does not require a change in place of residence. Under the plain language of the conditions, when employee's job is abolished, as Applicants intend for Clerk craft positions in Atlanta, that employee is a dismissed employee entitled to dismissal benefit, and declining a job in Omaha (a thousand miles away) does not cut off the dismissed employee's eligibility for dismissal benefits. Furthermore, the fact that the merged carrier has "transferred" the work of the employee to a distant location does not change the right to dismissal benefits. Again, the words transfer or transferred do not appear in the *New York Dock* conditions; in particular *New York Dock* Article I Section 6 does not refer to transfers of jobs, and it does not provide for cessation of benefits if an employee declines a "transfer" for a comparable job when taking that job requires relocation. Furthermore, the Washington Agreement, from which all employee protections were derived, does not refer to transfers or cutoff of benefits if an employee declines a transfer to a different work location; like the *New York Dock* conditions, it only provides that benefits will cease if the employee declines a comparable job that does not require a change in residence. Washington Agreement ¶7(g).

Furthermore, ARU/BLET submit that the Board in the quoted passage of the *CSX-NS-Control of Conrail* decision, misunderstood or mischaracterized the bargain in the Washington Agreement. The bargain was that where a collective bargaining agreement would otherwise prohibit the performance of <u>work</u> at a location not covered by the agreement (since agreement "Scope Rules" define and limit the performance of work and seniority rules limit who can perform work), <u>work</u> can be moved to locations not covered by the agreement pursuant to an

implementing agreement. Not that employees can be required to relocate to continue to perform the work that has been moved.

The Commission recognized this in *Southern Ry. Co.—Control—Central of GA Ry. Co*., 331 ICC 151 (1967). The Commission noted that the Washington Agreement essentially replaced a statutory "job freeze", where no jobs could be eliminated, and that, in return for that concession by the unions, the carriers agreed to provision of coordination benefits (in *New York Dock*- dismissal and displacement benefits). *Id*. at 154. The Commission noted that without an implementing agreement, work could not be transferred from one railroad to another, that the Washington Agreement superseded such restrictions, and that "the Washington Agreement permits work to be transferred from one railroad to another, but only after service of a 90-day notice, as provided in Section 4 of that agreement, an in negotiation of an implementing agreement", and that if displacement of employees and rearrangement of workforces was carried out in accordance with an implementing agreement, the employees would be affected by the job abolishments, and the dismissals, furloughs and work reassignments under the implementing agreement. *Id*. at 165-166. The Commission further noted that the carrier desired consolidations of work could occur only through the Washington Agreement, and that when "consolidations are effectuated in accordance with the provisions of sections 4 and 5 of the Washington Agreement [negotiation or arbitration of an implementing agreement], the basic an substantive rights of all of the employees involved would be adequately protected", including "the right of an employee to exercise his option to receive a lump-sum separation allowance" that is "guaranteed to him by the Washington Agreement". *Id*. at 166. Under section 9 of the Washington Agreement, "An employee eligible to receive a coordination allowance under section 7 [of the Washington

Agreement which includes employees whose positions are abolished (section 7(c)] may at his option at the time of coordination resign and (in lieu of all other benefits and protections provide in this agreement) accept in a lump sum a separation allowance…". In the *New York Dock* conditions (Article I §7), lump sum separation allowances paid under the Washington Agreement section 9, are available to "A dismissed employee entitled to protections under this appendix".

In *Carmen II,* the Commission approvingly cited decisions of a renowned Washington Agreement referee, Merton Bernstein, in which he described "the resolution achieved in 1936 [in the Washington Agreement] as overcoming [CBA] rules barriers in "permit[ting] such transfers of work under specified conditions- including notices of intended coordination, negotiated implementing arrangements, guarantees for employees whose earnings or employment are adversely affected and other benefits". 6 ICC 2d at 734-735. The Commission further cited Referree Bernstein as describing the Washington Agreement as *"the key which unlocks the rules preventing transfer and consolidation of work. Id*. at 735, italics in original, underlining added. The Commission also referred to another award of Referee Bernstein in which he said "'[T]he Washington agreement provides for compensation payments and the major means of employee protection in return for which carriers are enabled to put into effect coordinations otherwise barred by rules agreements***" Id at 735 n. 11. The Commission then discussed its prior decision in *Southern Ry-Control– Central of Georgia, supra*. in which it described the Washington Agreement as "permit[ting] consolidations to be accomplished, while accommodating the dictates of the Railway Labor Act, and then quoted the passages of the *Southern Ry-Control– Central of Georgia, supra*. decision that are described and quoted above, which explain that the Washington Agreement is a "superseding contract" that allows for the

transfer of work otherwise prohibited by existing CBAs. 6 ICC 2d at 735-736. The Commission also referred to the bargain in the Washington Agreement, later adopted in the 1940 Transportation Act,--implementing agreements allowing transfers of work in return for protective benefits – as a substitute for the concept of a job freeze. *Id.* at 739. In *Carmen III*, the Board reiterated and adopted the holdings of the Commission in *Carmen II*.

Given this review of the seminal decisions in *Southern Ry-Control– Central of Georgia, Carmen II*, and *Carmen III,* the Board should recognize that the *CSX-NS-Control of Conrail* decision got it wrong in holding (without citation to facts, history or precedent) that the bargain in the Washington Agreement and the *New York Dock* conditions was "that rail carriers are permitted to move employees around in order to achieve the benefits of a merger transaction in return for up to 6 years of income protection and various other benefits, such as retraining and moving allowances". As is made clear in *Southern Ry-Control– Central of Georgia, Carmen II* and *Carmen III,* the bargain was that a merged carrier could transfer work when that was prohibited by CBAs, and in return, employees adversely affected by the transfer of work, by having their jobs abolished, are entitled to protective benefits. The bargain was not that the employees would have to relocate to continue to perform transferred work under threat of loss of benefits, but that the work could be transferred and affected employees have the right to receive dismissal allowances, which they forfeit only if they decline comparable jobs that do not require a change in their place of residence. The result of the Board's decision in *CSX-NS-Control of Conrail* is to largely negate the protective benefits for adversely affected employees because the many difficulties and burdens involved in long distance relocations that are described in the statements of TCU/IAM members provided with the

Hollis Declaration (Addendum D). The employees, whose jobs in Atlanta would be abolished by the merged carrier as an advantage to the carrier of approval of the merger, would be deprived of the dismissal benefits that they would be entitled to because the abolishments if those employees found it excessively burdensome to move over a thousand miles from their homes and communities. In that situation the merged carrier would not be deprived of its end of the bargain because it could transfer work when the applicable CBAs would otherwise prevent it from doing so. The Board should not deprive the affected employees of their end of the bargain-if their jobs are abolished they are entitled to dismissal benefits (or a separation allowance).

ARU/BLET note that while they have focused on the plight of Clerk craft employees in Atlanta because their circumstances are so extreme, the same considerations apply for Machinists and Carmen who whose jobs in shops and yards will be abolished with the work transferred to shops and yards hundreds of miles away (Murtagh Declaration and Local Chairman statements at Addendum C), and the Operating employees represented by BLET who would experience abolishments of hundreds of jobs and creation of hundreds of jobs in connection with establishment of new train movements over vastly different and larger territories than exist today (Wallace Declaration at Addendum F).

Applicants may argue that the Board should not weigh in on this issue at this time and should allow the issue to go to arbitration first. ARU/BLET submit that the Board should reject that approach because 1) current arbitral and Board precedent is premised on Commission and Board decisions that erred in their description of the Washington Agreement/*New York Dock* bargain that can only be corrected by a Board decision, and employees need to know what the rules actually are before they have to make the momentous decision to relocate hundreds or a

thousand miles or forego benefits for which they are eligible because they decide they cannot make that move, and 2) the parties should not be arbitrating the issue and possibly seeking review in retrospect with the likelihood of an extremely difficult remedy if the position of the unions is sustained.

ARU/BLET's proposed condition is that

> Any employee whose job is abolished at their assigned work location or territory, is a "dismissed employee" as defined under Article I, Section 1 (c) of the "*New York Dock*" employee protective conditions, and any employee whose job is abolished in connection with a consolidation of work in accordance with the "*New York Dock*" conditions or a *New York Dock* implementing agreement or arbitration, or whose position is "transferred" to a location not in their pre-merger seniority territory as a result of a *New York Dock* arbitration is a dismissed employee, and will not lose or forfeit their right to a dismissal allowance if they decline to accept a position in another craft or class, or a position that would require a change in their place of residence.[1]

4. The Board Should Impose The Cramdown Agreement As A Condition of Any Approval Of The Transaction, And Declare That All Subsequent Coordinations Are Subject To That Agreement

ARU/BLET request that the so-called Cramdown agreement ("Revised Standards for Preemption of Collective Bargaining Agreements for Transactions Initiated Pursuant to Section 11323 of the Interstate Commerce Act") be imposed as a condition of any approval of the Transaction, just as was done in the CPKC transaction. The Cramdown Agreement was the product of negotiations over part of the conflict over the use of the *New York Dock* conditions to change CBAs (while the duration of carrier ability to use the conditions to override CBAs was not addressed). Applicants have represented that they understand that they are bound to the Cramdown agreement and intend to adhere to it (Turner VS ‖261, Parkerson VS ‖4), but the

[1] ARU/BLET recognize that a relocation that might require a change in residence will differ depending on where employees live. They suggest either a 50 miles rule, or a rule based on local commuting areas or Metropolitan Statistical Areas.

Board should impose it as condition of any approval of the Transaction so there is no question as to whether it is binding, and to ensure that it is readily enforceable. ARU/BLET also note that imposition of the Cramdown Agreement as a condition of approval of mergers of Class I railroads was contemplated in the Board's new merger rules. *Major Consolidation Procedures,* 2001 WL 64894 at *22. ARU/BLET further submit that the Board should go one step further. Carriers should not be able to argue that they can avoid the Cramdown Agreement by claiming to implement long ago completed mergers. ARU/BLET respectfully urge the Board to impose the following condition on any approval of the Transaction.

> Condition; The so-called "Cramdown Agreement" will apply to the UP-NS merger/control transaction. Any notice served by the carrier(s) under Article I Section 4 of the *New York Dock* conditions imposed as part of the STB's approval of the merger/control transaction will be subject to and covered by the Cramdown Agreement. To prevent evasion, should apply to any Section 4 notice not just this Transaction

5. The Board Should Impose A True Right Of Employees To Finish Their Careers With the Post-Merger Carrier If They So Choose

Applicants have touted their commitment to jobs for life or duration of employee careers. But review of the commitment and the statements and deposition of Macqui Parkerson, it is apparent that there are some significant restrictive elements to that commitment. In particular, the commitment is only to "a job", not a job in the employee's craft or skill set, and not a job at or near where they currently work. Turner VS ‖260, 264,265; Turner Tr. at 279-282; Parkerson Tr. at 91-94. And if an employee declines a job because it is not in their craft, or it would require them to uproot their family, the commitment ends. Viewed in the context of an admitted 8% per year attrition rate among the two workforces, the commitment looks less like a positive accommodation of employees, and more a way to advertise a plan give the appearance of offering something significant to the workforces, while: 1) limiting Applicants' obligations under

the plan, 2) identifying a pool of workers who can backfill positions as other employees retire or quit, and 3) limiting liability under the *New York Dock* conditions. Accordingly, if the Board decides to accept the jobs for life/jobs for career commitment, it should modify that commitment as follows:

> Any person employed by UP or NSR as of July 28, 2025 shall be guaranteed a job in their craft or class under the applicable collective bargaining agreement between the signatory union representing them and UP or NSR for their working lifetime with the combined entity, if they desire to continue employment with the combined entity. Such employees will not be subject to involuntary furlough. As a condition of the lifetime employment guarantee, employees must remain fit for duty, maintain necessary qualifications, meet performance and conduct standards applicable to all employees, and accept available work opportunities in their craft or class under the applicable collective bargaining that do not require a change in their place of residence.

6. Imposition Of New York Dock Conditions On Post-Cconsummation Line Sales and Leases

Applicants claim that they have no intention to sell or lease rail lines after consummation of the merger. But plans change. Importantly, plans may change if the Board imposes conditions on approval of the merger that decrease the potential revenues to be gained after the merger, or if the anticipated diversion of traffic from trucks does not come to fruition. In either event, Applicants may seek to pay off their debt by selling or leasing lines. Because sales or leases for those or similar reasons would be related to the approved transaction, the Board should impose the *Wilmington Terminal* variant of the *New York Dock* conditions on any sale or lease of UP or NSR lines after an approval of the transaction. Since Applicants disclaim any intent to sell or lease any of their lines, they should not have a serious objection to such a condition.

> Condition: For any post-merger/control sales or leases of rail lines, and sales or leases of yards or terminals or portions thereof, between the merged/commonly controlled UP/NS and: 1) any Class II or Class III carrier, 2) any entity that will become a Class II or Class III carrier as a result of such a sale or lease, or 3) any entity that controls or will control an entity that will become a Class II or Class III carrier as a result of such a sale or lease,

including all transactions governed by 49 U.S.C. §§10901, 10902, and 10906, the employee protective conditions under 49 U.S.C. Section 11326(a), known as the "*New York Dock*" conditions, *"Wilmington Terminal"* variant, shall apply. All employees affected by such transactions will be entitled to the protections and benefits provided by such conditions. The protections established in Section 10902 for transactions involving Class II carriers and the Section 10902 prohibition against employee protections in transactions involving Class III carriers are superseded by this paragraph.

7. The *New York Dock* Conditions Imposed On Any Approval Of The Transaction Should be Applied For Employees of the Terminal RR of St Louis and Conrail Shared Assets

Currently the Terminal Railroad of St Louis is jointly owned by UP-43%, BNSF-14.25%, NSR- 14.25%, CSX-14.25%, and CN-14.25%. Conrail Shared Assets is currently owned by NSR-58% and CSXT-42%. If the transaction is approved, the merged carrier will have control of the Terminal Railroad and of Conrail Shared Assets as a result of the merger. Baldwin Declaration ¶12.

The ARU/BLET submit that employees of those railroads would therefore be affected by the transaction, so the *New York Dock* employee protections that would be imposed as a condition of an approval of the Transaction must apply to employees of the Terminal Railroad and of Conrail Shared Assets. While ARU/BLET believe that should necessarily be the case, the unions ask the Board to make an express finding to that effect, to preemptively assure that there will be no dispute as to that question, and to remove any uncertainty affected employees may have.

ARU/BLET realize that UP has an understanding with CN that, if the transaction is approved, CN would acquire NSR's shares in the Terminal Railroad. Given that the arrangement flows directly from the merger, the change in ownership would still be a result of the merger, so the *New York Dock* employee protections should still cover employees of the Terminal Railroad.

ARU/BLET submit that the *New York Dock* employee protections that would be imposed as a condition of an approval of the Transaction must apply to employees of the Terminal Railroad and of Conrail Shared Assets.

III. APPLICATIONS AND REQUESTS FOR CONDITIONS THAT WOULD INVOLVE DIVESTITURES OF UP OR NSR LINES, LINE SALES, OR LEASES TO CLASS II OR III RAILROADS OR TRACKAGE RIGHTS, HAULAGE, RECIPROCAL SWITCHING OR OTHER ACCESS RIGHTS TO CLASS II OR III RAILROADS OVER UP OR NSR LINES SHOULD BE REJECTED

ARU/BLET oppose all responsive applications that seek divestitures, sales or leases of UP or NSR lines to regional or short line railroads, as well as requests for conditions that seek divestitures, sales, leases, trackage rights, and haulage and reciprocal switching arrangements that involve acquisitions of property or access rights for regional or shortline railroads as methods to attempt to mitigate the anti-competitive effects/increased concentration of the industry that would ensue if the Transaction is approved. A result of such divestitures/sales/leases, or access rights as concessions or conditions would be to move Class I lines that are under standard national CBAs and put them under control of railroads whose employees are unrepresented, or whose employees are covered by agreements that are below national standards, or to allow employees who are not covered by agreements to perform work otherwise contractually reserved to employees covered by national standard agreements. Additionally, various access arrangements would diminish the rights and interests of operating craft employees and would not necessarily resolve any of the problems advocates claim that they would solve. Wallace Declaration ¶¶21-33. If the Board is concerned about the likely impact of the Transaction on competition and service, it should not try to remedy those problems by

negatively impacting rail workers, instead, the Board should simply reject the Application and deny the merger.

As is described in the beginning of these Comments, many of today's regional and short line railroads were created in the 1980s and early 1990s when the ICC allowed Class I railroads to spinoff what they called "marginally profitable", light density branch and feeder lines. The ICC responded to the difficult economic circumstances of the Class I railroads and concerns of shippers on those branch and feeder lines about continued service by the Class I's through new interpretations of the Act (ignoring its plain language in some instances). The ICC facilitated the line sales and thereby relieved the Class I's their common carrier service obligations on the light density lines by authorizing sales to Class II or III railroads, which allowed continued service to shippers on the conveyed lines. The Class I's were thus relieved of the service obligations and labor costs for lower density lines, but they retained the long haul traffic. The Class II and III railroads were able to provide service at lower expense because of reduced labor costs through reductions in employment and the undercutting of standard industry CBAs, with wages and benefits that rendered the lines more economically viable for the short lines and regionals. *See* William G. Mahoney articles, Addendum J. In short, a problem of the Class I's and some shippers was resolved by diminishing the employment, pay, benefits and rules on the conveyed lines. And, as shown by Labor Economist Tom Roth, in the wake of deregulation, line spinoffs and then the mega-mergers, over the following decades 1) the Class I's experienced exponential growth in profits, 2) shippers experienced significant cuts in rates, though rates increased again after the 2010s but are still 20% below 1980 rates in real dollars, and 3) rail labor suffered dramatic cuts in employment and did not share in the growth in industry profits as rates of pay

increased only minimally. In particular, the cascade of spinoffs of branch and feeder lines resulted in a cohort of carriers operating on former Class I lines where the employees were either unrepresented or under substandard agreements, where employment per track mile was significantly below employment per track mile on the Class I's, and wage rates were 15% below Class I rates. William G, Mahoney, *The Future of Railroad-Labor Management Relations as an Industry of Five, or Three or Two Mega-Railroads Enter the Next Millenium,* (included in Addendum J) at 351-354.

This shift of income from workers to Class II and III railroads remains today. As is explained by BRS President Baldwin (Declaration ¶13, Addendum B), BLET President Wallace ((Declaration ¶28, Addendum F) and BMWED General Chairman Brian Thompson (Declaration ¶8, 11, Addendum A), employees on many Class II and Class III railroads do not have union representation because of reduced revenues and reduced numbers of employees, which makes it relatively more difficult and costly to organize employees on those lines, and to negotiate and administer agreements for those employees. And even when employees of such railroads have representation, the agreements covering those employees continue to be below the standards of agreements applicable on Class I railroads because of the lower profit margins on largely captive feeder railroads. *Id.* Allowing a Class II or Class III carrier to acquire lines of UP or NS, or to perform work over the merged carrier's tracks, would shift work performed by employees under national standard agreements to employees covered by less protective agreements, or no collective bargaining agreement, while leaving the merged carrier in control of the underlying infrastructure, commercial relationships, and long-haul traffic. Cost savings achieved by bypassing employee rights and protections are not preservation of, or enhancements to

competition. And remedies for market concentration caused by the merger should not be developed by again diminishing rights of the workers and shifting income from workers to railroads and shippers. Any such proposed remedies for the anti-competitive effects of the proposed merger should therefore not be authorized or made conditions of approval of the Transaction. To the extent that the Commission perceived a need to act in a way to "aid" or "save" distressed railroads and worried shippers in the 1990s, there is no such need today. The Class I's are doing quite well. While shipper rates have increased, they are still well below 1980 levels; and although they do have service concerns, those should be addressed by not increasing railroad market dominance or by harming rail workers, but by creating more stringent service standards and enforcing those standards. Accordingly, the Board should reject divestitures, sales, and leases of UP or NSR lines to Class II or III railroads, or trackage rights, haulage or reciprocal switching arrangements for Class II or III railroads as remedies for anticipated problems that would be caused by the proposed merger. If the STB decides that the Transaction cannot be approved because of the effects it will have on competition, service, and the market dominance of the merged carrier, the Board should not try to mitigate those problems by authorizing divestitures, sales, leases and access to Class II and III railroads that will diminish the pay, rules and benefits of rail workers; the merger should not be "saved" by making the workers again "pay" for it.

Furthermore, as is explained by BLET President Mark Wallace (Declaration ¶¶21-25, 29-31), divestitures, line sales and leases, and trackage rights, haulage arrangements and reciprocal switching involving Class II or III railroads would create safety and operational problems. Such operations would require coordination of movement authority, dispatching, physical-

characteristics qualifications, operating rules, radio channels, train-control requirements where applicable, emergency response, and supervision. A competition remedy should not create additional operating interfaces and expose existing crews to new conflicts while the merged carrier retains dispatching control, and the underlying capacity constraints remain unresolved. An arrangement that actually contemplates crews operating on another carrier's territory requires a safety plan that addresses applicable qualifications, physical characteristics, operating rules, radio channels, dispatching authority, yard procedures, train-control requirements where applicable, emergency response, and supervision. Where crews remain on their own properties, the handoff still requires unambiguous movement authority, track occupancy coordination, car information, and acceptance protocols. The issue is whether the specific operation has been planned, staffed, and qualified safely. Extra handling may also increase employees' exposure to coupling and uncoupling, switching movements, and work around moving equipment. Operational targets must not be implemented through pressure to rush switching, disregard securement or inspection requirements, or perform unfamiliar work without appropriate preparation.

As further explained by President Wallace, it is not at all clear that various forms of alternative access to the lines of the merged carrier would actually solve the problems responsive applicants and commenters would hope they would resolve. New access rights that may be imposed by the Board do not eliminate physical interchange limitations or change the controlling railroad's management of traffic and they will not resolve the problems of those who complain of loss of competition. The value of trackage rights, haulage arrangements and reciprocal switching depends on an alternate carrier's willingness and ability to quote commercially usable

service, the incumbent's performance of the local movement, and adequate resources at the interchange. And a lower alternate line-haul rate is not necessarily a lower delivered transportation cost. An access remedy is illusory if its economic value can be eroded through switching fees, restrictive free time, inconsistent billing, or service terms that force the customer to maintain a larger railcar inventory. Wallace Declaration ¶¶26-33.

A proposed trackage rights, haulage or reciprocal switching arrangement does not create additional track, yard capacity, locomotives, or qualified crews. A switching commitment must be supported by qualified crews, locomotives, relief coverage, supervision, and funded maintenance. If the existing problem is an insufficient number of crews or locomotives, adding a commercial handoff without providing those resources does not solve it. The Board should not credit an access commitment or promise whose implementation depends on routinely stretching existing assignments or assuming unlimited employee availability. An extra switching movement may occupy a main track or scarce lead, delay other trains, and add classification and handling. Added switching may consume a scarce lead or occupy a main track needed by other trains. A remedy can improve one customer's theoretical access while delaying other customers or undermining terminal fluidity. From review of Applicants' infrastructure plans and Service Assurance Plan, it does not appear that Applicants' post-merger plans leave sufficient train and yard capacity for competing movements. The Board should carefully review the analysis of BLET, the union that represents the rail workers who actually move trains, regarding the potential operating and safety problems that can ensue as a result of line transfers or new forms of access. With respect to proposals for reciprocal switching concessions or conditions, it must be recognized that where the merged carrier retains the customer's only physical connection,

reciprocal switching leaves that carrier responsible for the indispensable first or last movement. An alternate line-haul carrier cannot, merely by quoting a rate, ensure timely spotting, pulling, classification, release, or delivery of the cars. A remedy may change the commercial seller of transportation while leaving the operational bottleneck in the same hands. The merged carrier may also retain control over yard access, dispatching, switching windows, interchange tracks, and the sequence in which traffic is handled. Merely authorizing a reciprocal switch does not mean that an alternative carrier can compete in actual transit time, reliability, frequency, and total cost, not simply that the alternative can technically accept a car. Wallace Declaration ¶¶31-33.

The Board should reject any concession by Applicants, or request of any party, for a Class II or Class III railroad, including any subsidiary, affiliate, or agent of a Class I carrier, to gain trackage or haulage rights or participate in a forced switch over the tracks of the merged Class I railroad or otherwise be authorized by Board order to operate over those tracks. And Applicants should not be allowed to circumvent this condition by relabeling an arrangement as haulage, terminal access, trackage rights, or another form of access where the arrangement would authorize the prohibited Class II or Class III operations.

Again, ARU/BLET do not concede that divestitures, line sales, alternative forms of access or similar conditions can cure the problems with the Transaction. But if Applicants seek to save the Application by such concessions, or if other parties seek such arrangements as conditions of an otherwise unacceptable merger, the Board should not approve the merger on the assumption that such remedies will be effective. And the market concentration problems that would flow from approval of the merger should not be mitigated by reducing the rights and

wages and benefits of railroad workers. ARU/BLET therefore urge the Board to reject reliance on divestitures, trackage rights, haulage arrangements and reciprocal switching as a substitute for preserving effective competition and safe and reliable service.

CONCLUSION

For the foregoing reasons, ARU/BLET respectfully submit that the Board should reject the Application and deny approval of the proposed Transaction. If the Board nonetheless approves the Transaction, it should make such approval subject to the conditions requested by ARU/BLET; and it should deny any divestitures, line sales, or leases from the merged carrier to Class II or III railroads as purportedly ameliorative conditions, as well as any trackage rights, haulage or reciprocal switching or other access arrangements for Class II or III railroads over the lines of the merged carrier

Respectfully submitted,

s/ Joshua D. McInerney
Joshua D. McInerney, Esq.
WENTZ, MCINERNEY, PEIFER
& PETROFF, LLC
14 E. Gay Street, FL 4
Columbus, Ohio 43215
Phone: (614) 756-5566
jmcinerney@lawforlabor.com

Counsel for Brotherhood of Locomotive Engineers and Trainmen

/s/ *Richard S. Edelman*
Richard S. Edelman
Aaron S. Edelman
MOONEY, GREEN, SAINDON, MURPHY
& WELCH, P.C.
1620 Eye Street NW, Suite 700
Washington, DC 20006
(202) 783-0010
Redelman@mooneygreen.com
Aedelman@mooneygreen.com

Counsel for the Allied Rail Unions

November 18, 2026

CERTIFICATE OF SERVICE

I hereby certify that I have caused copies of the foregoing Comments Of the ARU and BLET to be served to representatives of all Parties of Record as of the date of this filing, and to Administrative Law Judge Jenifer Soulikias by email using the addresses on the service list for this proceeding.

/s/Richard S. Edelman
Date: November 17, 2026 Richard S. Edelman

INDEX TO ARU/BLET ADDENDA

A Declarations of BMWED President Tony Cardwell and BMWED Officers

B Declarations of BRS President Michael Baldwin, General Chairman Aaron Carter and BRS member statements

C Declaration of IAM District #19 President Reece Murtagh and Local Chairman Statements

D Declaration of TCU/IAM President Matt Hollis and TCU member Declarations and Statements

E Declaration of TWU Railroad Director John Feltz

F Declaration of BLET President Mark Wallace

G Statement and Graphs of Labor Economist Thomas R. Roth

H Decision and Materials from STB proceeding Ex Parte No. 775

I Decisions Awards and Notices in *New York Dock* cases

J Transportation Law Journal articles by William G. Mahoney

K Transcripts of Depositions and UP and NSR responses to ARU/BLET discovery requests

ARU/BLET

Addendum A

Declarations of BMWED President Cardwell and BMWED Officers

BEFORE THE
UNITED STATES SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

CONTROL

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

DECLARATION OF TONY CARDWELL

I, Tony Cardwell, declare under penalty of perjury that the following is true and correct.

1. My name is Tony Cardwell. I am President of the Brotherhood of Maintenance of Way Employes Division of the International Brotherhood of Teamsters (BMWED-IBT). BMWED-IBT is the representative, for collective bargaining under the Railway Labor Act of railroad employees working in the Maintenance of Way and Structures class or craft, including Maintenance of Way employees employed by the Union Pacific Railroad ("UP") and Maintenance of Way employees employed by the Norfolk Southern Railway ("NSR"), other Class I railroads, Amtrak, major commuter railroads as well as some regional and short line railroads. Maintenance of Way railroad employees build, inspect, maintain, and repair the infrastructure over which this country's freight moves.

2. BMWED has been participating in the STB's proceedings in this Finance Docket with several other rail unions, filing jointly as the Allied Rail Unions ("ARU"). I am submitting this Declaration to the Board in support of ARU's Comments in response to the Application by which

UP and its affiliates seek authorization to control and merge with NSR and its affiliates. BMWED and the other ARU unions oppose Board approval of the proposed transaction. Alternatively, if the Board nonetheless decides to approve the transaction, BMWED and the other ARU unions request that certain conditions be imposed on such approval. BMWED and the other ARU unions also oppose responsive applications and requests for conditions sought by other parties (or concessions by Applicants) that would convey property of UP or NSR to Class II or Class III railroads, or provide Class II or Class III railroads operating rights over UP or NS lines.

3. BMWED's full position is set forth in the ARU's Comments. In this Declaration I will respond to certain evidence and arguments presented by the Applicants as they relate to members of the BMWED.

4. I oppose the proposed Union Pacific and Norfolk Southern merger because I believe it would concentrate too much control over America's railroad network while exposing employees, customers, and communities to consequences that the applicants' financial projections do not adequately address.

5. Our members' interest in this proceeding begins with their livelihoods, but it extends to the condition and future of the railroad itself. Their work makes dependable freight transportation possible. Manufacturers waiting for materials, farmers trying to reach markets, and businesses delivering finished products all depend on infrastructure maintained by people whose work is rarely visible until something goes wrong. When a maintenance position disappears, the consequences cannot be measured solely by the payroll expense the railroad avoids.

6. The revised application identifies a combined workforce of 8,854 employees in its track-maintenance category. These Maintenance of Way employees bring years of accumulated knowledge about the property, its recurring problems, and the work necessary to keep it in service.

Their experience cannot be replaced simply by assigning responsibility for a larger territory to someone else. The Board should consider what the railroad stands to lose when that experience leaves and the position behind it disappears. (Volume 1, p. 539, Table 1.)

7. The applicants project approximately $130.8 million in net annual agreement personnel savings. That figure covers agreement employees across crafts, not solely BMWED-represented employees. It nevertheless establishes that reducing labor expense is a substantial part of the financial case for this transaction. The application describes personnel savings as avoided salaries and benefits. For the people I represent, those salaries pay mortgages, support children, and make a railroad career worth pursuing. They also compensate employees for work the railroad depends on. (Volume 1, pp. 513-514.)

8. Railroads should improve their operations, and I do not contend that every assignment must remain unchanged. But an expense reduction does not establish that the same work can be performed adequately with fewer resources. The Board must examine what would be removed from the operation, where the responsibility would go, and whether the employees remaining would have the means to carry it.

9. For Maintenance of Way employees, consolidation is expressly contemplated. The applicants' labor witness explains that they will likely seek implementing agreements permitting consolidation of maintenance forces within limited geographic boundaries at or around interchange locations. The statement then asserts that Maintenance of Way functions would otherwise remain largely unchanged during the first three years following approval. That is a qualified description of an initial integration period, not a long-term commitment to the maintenance workforce. (Volume 1, pp. 542-544.)

10. The scale of the responsibility makes that distinction serious. The applicants describe approximately 42,000 miles of track and more than 15,000 bridges on Union Pacific, together with approximately 28,000 miles of track and more than 9,500 bridges on Norfolk Southern. The combined system would therefore include approximately 70,000 miles of track and more than 24,500 bridges. Changing the ownership would not eliminate the maintenance obligations associated with any of that property. (Volume 2, p. 811.)

11. Against that responsibility, the engineering plan identifies six additional craft employees for vegetation management and up to 30 insourced craft positions for wood-tie recovery. These proposals would bring specific work in-house. They do not establish that local maintenance forces would be strengthened to support the additional business the applicants promise to attract. I find it difficult to reconcile the scale of those growth claims with such limited identified additions to the Maintenance of Way operation, particularly when the applicants also reserve the ability to consolidate maintenance forces. (Volume 2, pp. 814-815; Volume 1, p. 543.)

12. I support having railroad employees perform this work and BMWED represented members have performed this type of work for decades. However, employees assigned to recover scrap ties or operate vegetation-management equipment do not necessarily replace the capacity lost when a local maintenance assignment is abolished or consolidated. The Board needs to know where employees would be assigned, what responsibilities they would carry, and how the proposed forces would meet the needs of the property. A few additions to specialized operations cannot answer those questions for an entire combined network.

13. The applicants reason that combining the two existing networks would not itself increase the infrastructure assigned to the combined Engineering Department and therefore expect the existing combined MOW equipment inventory to be sufficient. That reasoning does not resolve

the maintenance demands of the proposed operation. The Board must also account for the infrastructure additions contemplated by the operating plan and the increased traffic the applicants expect to carry. Additional track requires maintenance, and additional traffic affects both infrastructure wear and the time available to perform that maintenance. In my judgment, the applicants cannot establish the adequacy of future maintenance resources merely by combining the inventories of the two existing railroads. (Volume 2, p. 811.)

14. Our members need time on the track to inspect, repair, and renew it. Additional traffic can make that time harder to obtain. If the applicants intend to move more business over the same infrastructure, they must account for the maintenance demands of that operation. Employees should not be left to make the plan work by carrying greater responsibilities while competing for fewer opportunities to perform necessary work.

15. The three-year qualification leaves another concern unanswered. Our members are being asked to accept a permanent change in the industry based on a description of maintenance operations that extends only through the initial integration period. They are building careers that last decades. The infrastructure will require attention long after integration is complete. They deserve to know whether the applicants intend to invest in that responsibility or pursue further consolidation once the first three years have passed.

16. The employment commitment does not resolve these concerns. The revised application offers current craft employees an opportunity to continue their careers "in some capacity," subject to conditions that include accepting available work opportunities. An employee can retain an opportunity to work for the railroad while losing the ability to continue working where that employee has established a home. (Volume 1, pp. 543-544.)

17. A Maintenance of Way employee may have spent years using seniority to obtain an assignment that permits a workable family life. A spouse may have employment the household cannot afford to lose. Children may be established in school, or an aging parent may depend on the employee for care. Relocation can force that family to choose whose employment to sacrifice, whether to sell a home, and how to meet obligations that cannot move with the assignment.

18. The Board should not treat those consequences as resolved merely because a position is available somewhere on the combined railroad. The location and conditions of the work determine whether an employee can realistically accept it. A community losing an assignment also loses something that an employment offer elsewhere does not restore.

19. The applicants explain that they expect to achieve position reductions through attrition or relocation and identify an approximately 8 percent annual attrition rate for craft employees. Attrition may avoid an immediate dismissal, but it does not establish that a position is unnecessary. When an employee retires and the position disappears, the remaining employees may still have the same territory and responsibilities. A younger worker loses an opportunity to enter the craft, and the community loses a job that helped sustain it. (Volume 1, pp. 540-542.)

20. I am also concerned about what would happen to our members if the combined carrier later sold or leased lines to another operator. The applicants assert that no line divestitures are contemplated. That describes their present proposal; it does not establish an enforceable prohibition against future transfers. Our members' careers and contractual rights should not depend on whether a decision to transfer their work is announced before approval or made afterward. (Volume 1, p. 540.)

21. A sale or lease can leave the railroad operating and the maintenance work necessary while placing that work with an employer that does not assume the same collective bargaining

obligations. Employees could face the loss of their existing assignments or the prospect of performing comparable work under different wages, benefits, seniority arrangements, and working rules. The public may continue to see trains operating over the same track without seeing what the change has cost the people responsible for maintaining it.

22. I am concerned that such transfers could become a means of circumventing the agreements our members negotiated. Those agreements represent years of bargaining over the conditions under which employees commit their working lives to the railroad. If work can be transferred to another operator without preserving those obligations, employees could lose the benefit of their agreements even though the work itself continues. An assurance of continued employment with the combined carrier does not adequately answer what happens when the carrier transfers the line on which that employment depends.

23. Nor should the Board assume that every subsequent transaction would independently provide protections equivalent to those imposed in this merger. The protections available in a later sale or lease can depend on the legal authority used and the acquiring carrier's status. Employees should not have to discover, after their work has been transferred, that the protections they understood would accompany this merger are disputed or unavailable.

24. If the Board approves this transaction, I ask it to impose explicit, enforceable conditions extending New York Dock protections to employees adversely affected by subsequent sales, leases, or transfers of the combined carrier's lines or operations. Those conditions should place responsibility on the applicants and their successors, require preservation of collective bargaining obligations, and prevent the applicants from avoiding their commitments by transferring the affected work to another operator. Employees should not be forced to establish

their entitlement to protection only after their work has been transferred and their livelihoods disrupted.

25. I also oppose attempts to resolve the competitive problems created by this merger through sales, leases, or grants of operating rights to Class II or Class III carriers that would diminish employees' negotiated wages, benefits, seniority, or working rules. The Board should not approve a transaction on terms that address the applicants' competitive problems by transferring the cost to railroad employees. If the merger cannot satisfy the public-interest standard without sacrificing those employees' livelihoods and contractual rights, it should be denied.

26. The revised application projects a net increase of 1,229 craft jobs attributable to the transaction by the end of the third year. I acknowledge that projection, which combines anticipated additions with reductions associated with operating efficiencies. It covers crafts across the combined railroad. It does not establish whether a particular maintenance territory would have enough employees, nor should it obscure the effects of consolidation at individual locations. (Volume 1, pp. 540-542.)

27. The proposed reductions in maintenance resources deserve the same scrutiny. The operating plan projects $40.3 million in annual engineering vehicle savings, including operating and depreciation savings. It describes comparing engineering employees to engineering vehicles as a measure of fleet efficiency and applying a fleet-reduction initiative to Norfolk Southern. (Volume 2, pp. 815-816.)

28. Our members need vehicles to reach work locations and carry tools, equipment, and materials. Distance, geography, and response time matter. A vehicle that appears underutilized in a systemwide comparison may provide necessary capacity in a particular territory. The financial

value assigned to its removal does not establish that employees can perform their responsibilities adequately without it.

29. These decisions also have consequences for the American economy. The applicants estimate that diverting approximately 2.1 million truckloads to rail would generate approximately $3.504 billion in annual shipper savings. Those are projected benefits dependent on attracting and handling traffic as expected. They are not a guarantee of lower bills for existing rail customers or a guarantee that communities affected by consolidation would share in the gains. (Volume 1, p. 515.)

30. If that growth occurs, the railroad must have the maintenance capacity to support it. If it does not occur on the projected schedule, I am concerned that employees and maintenance resources could face additional pressure to deliver the financial results expected from the transaction. The Board should examine both possibilities before accepting projected growth as sufficient justification for definite changes to the workforce and operating structure.

31. Railroad customers have little control over these maintenance decisions, but their businesses depend on the results. A manufacturer cannot direct a railroad to assign another maintenance gang. A farmer cannot restore a position eliminated from a territory. When service deteriorates, customers must absorb the effects while waiting for the railroad to act. Concentrating more of the network under one company's control increases the reach of those decisions.

32. The Board should also consider what approval could set in motion across the rail industry. I do not present another merger as inevitable. I am concerned, however, that this transaction could increase pressure for competing carriers to consolidate in response. The consequences of this proceeding could therefore extend beyond Union Pacific and Norfolk

Southern, affecting the choices available to employees, shippers, and communities throughout the country.

33. Our members have a direct interest in a successful railroad. Their careers depend on attracting business, serving customers, and keeping the property in condition to carry that business. I want a rail industry that grows through investment in its ability to perform. If the applicants anticipate substantial new traffic, that expectation should be reflected in preparations to maintain and operate the railroad that would carry it.

34. I urge that the Board madnate enforceable protections for our members' employment, agreements, and working conditions. But even satisfactory employee protections would not settle the public-interest question. Compensation for a displaced employee does not maintain track or preserve a community's maintenance presence. The Board must determine whether the resulting railroad would have the resources and obligations necessary to serve the country over the long term.

35. The applicants have assigned dollar values to the labor and resources they expect to save. I ask the Board to give equal attention to the work those resources make possible. The people performing that work should not be expected to absorb the difference between an ambitious financial projection and the practical demands of maintaining the railroad. Nor should rail customers suffer from the consequences of a reduced maintenance of way workforce which would negatively impact safety and reliability of service just because the applicants seek to balance some of their expenditures with savings by cutting labor costs.

36. Our members will still be responsible for inspecting the property, making repairs, and responding when conditions require attention after this proceeding ends. Their families will live with the employment decisions made during integration. American businesses will depend on the

service the combined railroad provides. In my judgment, the revised application does not provide sufficient assurance that those interests will be protected, and I urge the Board to deny the proposed merger.

I declare under penalty of perjury that the foregoing is true and correct.

11-11-2026

Date



Tony Cardwell

BEFORE THE
UNITED STATES SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

CONTROL

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

DECLARATION OF BRIAN RUMLER

I, Brian Rumler, declare under penalty of perjury that the following is true and correct.

1. My name is Brian Rumler. I serve as General Chairman of the Unified System Division (USD) of the Brotherhood of Maintenance of Way Employes Division of the International Brotherhood of Teamsters (BMWED). I hired into the track department in 1998 and have 28 years of seniority. I worked primarily as a machine operator until my election to a full-time union officer position in 2010. I am from southern Minnesota on the former Chicago & North Western territory.

2. The members we represent live in all 23 states in which Union Pacific operates. We also represent members who reside in Florida, Georgia, and Alaska. My responsibilities include the day-to-day administration of the Union Pacific, Chicago & North Western, and Southern Pacific agreements, as well as portions of the Missouri Pacific agreement. Each governs work now performed on Union Pacific.

3. I oppose Union Pacific's proposed acquisition of Norfolk Southern. In administering our agreements, I deal with what happens when management's plans reach the employees expected

to carry them out. A change in where work is performed becomes a question about which member can hold the assignment, which seniority applies, and how the employee will get to the reporting point. Those questions determine whether a member can continue earning a living under circumstances the household can manage.

4. Union Pacific already operates with employees working under several agreements inherited from predecessor railroads. I administer those agreements every day. Common ownership has not made their provisions interchangeable. A member's rights depend on the agreement and seniority roster that apply to the work. When management proposes to move an assignment, we have to examine what that means under the governing agreement and for the people who have earned rights under it.

5. I came from the former Chicago & North Western territory. My own seniority began there in 1998. For a railroad employee, the name of a predecessor railroad can still identify something with immediate value, including the roster on which the employee has built a career. The Board should understand that history when it considers another acquisition. Bringing two railroads under one owner does not, by itself, answer how the employees' accumulated rights will be treated.

6. A Maintenance of Way (MOW) gang is a work group of maintenance of way employees. The employees in a gang perform maintenance work together, and each member holds his or her place in the gang under the agreement and seniority roster that apply to the work.

7. As a machine operator, I learned what an assignment requires from the employee who holds it. The machine has to be operated by someone who knows the equipment and the work. That person also has to reach the reporting point and arrange a life around the assignment. When management decides to move a machine or reorganize a gang, the employee must determine

whether to follow the work, bid elsewhere, or exercise whatever other rights the agreement provides. The equipment can be reassigned by a management decision. The member has a household to account for before making that choice.

8. Members use seniority to make those choices over many years. An employee may accept extensive travel early in a career while working toward an assignment with a more manageable schedule or reporting location. That opportunity depends on the jobs that remain available when the member has enough seniority to hold one. If an assignment disappears, the employee loses an opportunity that may have shaped years of bidding decisions. A younger member farther down the roster also loses something to work toward.

9. The applicants' labor witness anticipates that the carriers will likely seek implementing agreements allowing consolidation of maintenance forces within limited geographic boundaries at or around interchange locations. The witness expects Maintenance of Way functions otherwise to remain largely unchanged during the first three years following approval. From my standpoint, the significance depends on which assignments fall within those boundaries and which employees hold rights to them. A geographically limited change can still affect members on more than one roster. (Revised Application, Volume 1, pp. 542 to 544.)

10. If UP proposes to combine forces or transfer work, we will have to address the applicable agreements and the rights of the affected employees through the implementing process. I have an obligation to the member whose work would move and to the member already holding an assignment at the receiving location. Both may have spent years making decisions in reliance on their agreement. Negotiating how to carry out a consolidation does not remove the loss a member experiences when an established assignment is gone.

11. The applicants describe an opportunity for current craft employees to continue their careers in some capacity, subject to conditions that include accepting available work opportunities. In my position, I have to ask what "available" means for the particular member. Is the work on a roster where that employee can exercise seniority? Where does it report? What travel and expenses will the assignment require? Until those questions are answered, a general employment assurance gives the member very little basis for deciding what will happen to the next paycheck. (Revised Application, Volume 1, pp. 543 to 544.)

12. The geographic reach of our membership makes those questions especially significant. Our members live throughout UP's operating territory, and some live beyond it. A person can be willing to travel for railroad work and still have limits on how far, how often, and at what cost. A spouse's employment, responsibility for children, or care for a parent may determine whether an assignment is possible. I have to represent employees whose circumstances differ even when they hold the same classification and qualifications.

13. The location of work also matters to the employees who remain. If a member exercises seniority after losing an assignment, another employee may be displaced. That employee then has to find work under the rights available farther down the roster. By the time the process is complete, the person facing the greatest disruption may be someone whose assignment management never initially selected for consolidation. That is why I look beyond the number of positions directly identified in a proposal.

14. These agreements also govern the work opportunities that allow members to maintain their earnings and build experience. In handling disputes over assignments or contracting out, I am enforcing rights that have value throughout a career. Members expect the railroad to honor those commitments when business conditions change. I am concerned that the drive to reorganize work

across a much larger system will create pressure to weaken provisions employees have relied on for years.

15. The applicants' description of largely unchanged Maintenance of Way functions is qualified by the first three years following approval. I have members with decades left to work and others approaching retirement. Both have an interest in what follows that period. A permanent acquisition gives management authority over the combined operation for far longer than the initial integration. The Board should weigh what that means for employees whose decisions about homes, assignments, and retirement extend well beyond three years. (Revised Application, Volume 1, pp. 542 to 544.)

16. My responsibility is to the employees working under the agreements I administer. They have already spent their careers on a railroad assembled from earlier acquisitions. They know that management can operate a large system while employees continue to depend on distinct seniority rosters and negotiated rules. The Board should give those employees' experience weight before authorizing another expansion that could change where their work is performed and what assignments remain available to them.

17. I urge the Board to deny Union Pacific's proposed acquisition of Norfolk Southern. The employees I represent have earned their seniority and secured their agreement rights through years of work and collective bargaining. In my judgment, the applicants' projected benefits do not justify exposing those members to further consolidation, displacement, and disruption of their working lives. On behalf of the Union Pacific Maintenance of Way employees represented by the USD, I ask the Board to reject this merger.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 11/12/2026

Signature 

Brian Rumler
General Chairman
Unified System Division
Brotherhood of Maintenance of Way Employes Division
of the International Brotherhood of Teamsters

BEFORE THE
UNITED STATES SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

CONTROL

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

DECLARATION OF BRIAN THOMPSON

I, Brian Thompson, declare under penalty of perjury that the following is true and correct.

1. My name is Brian Thompson. I serve as General Chairman of the Allied Federation of the Brotherhood of Maintenance of Way Employes Division of the International Brotherhood of Teamsters (BMWED). I began my railroad career with CSX in February 2000 and have worked every position in the track and welding departments. I have almost 27 years of railroad industry experience. I became a Vice Chairman in 2014 and General Chairman in January 2025. I reside in Valparaiso, Indiana, and our system headquarters is in Hendersonville, Tennessee.

2. Allied represents approximately 7,000 members in 30 states. We cover 20 property agreements across 15 railroads, including four Class I railroads and short-line carriers. Fifteen officers work directly with the members we represent. Our responsibilities include representing CSX employees and a large portion of the Union Pacific Maintenance of Way employees working under the Missouri Pacific agreement.

3. I oppose Union Pacific's proposed acquisition of Norfolk Southern. My concerns include what could happen to our members if the combined carrier later sells or leases portions of its railroad to other operators. I represent employees on both Class I and short-line railroads, and I have experience negotiating new agreements with short-line carriers. That work gives me reason to look beyond whether trains will continue running over a line after its ownership or operator changes.

4. When we negotiate an agreement with a short-line railroad, we have to address the terms under which employees will perform the work. Wages, benefits, classifications, seniority, overtime, travel, and the scope of bargaining-unit work all matter to the people taking those assignments. Members need to know what they can earn, how they will be scheduled, and what rights they will have if management changes their jobs. The fact that the railroad needs their skills does not settle those terms.

5. A line can continue carrying freight while the employment available to the people maintaining it changes substantially. An employee who worked that territory for years may face a choice between seeking another assignment on the Class I railroad and pursuing employment with the new operator. Before making that choice, the member needs to know what work is available at each employer and what agreement will govern it. The household still has bills to pay while those questions are being resolved.

6. Members working under the Missouri Pacific agreement have earned rights through their service on Union Pacific and through years of collective bargaining. Those rights have value when a member bids a job, exercises seniority, or challenges an assignment of work to a contractor. If the territory where that member works is transferred to another operator, I am concerned about whether the member will be able to keep working there under comparable terms. Continued

railroad operations on the same track would provide little comfort to someone who could no longer earn the same living maintaining it.

7. The revised application asserts that no line divestitures are contemplated. I recognize that statement as the applicants' description of their present plans. My concern is with decisions the combined carrier could make after approval as it reorganizes the network and determines which lines it wants to operate itself. Our members' careers will extend beyond the initial integration. The Board should consider the possibility that a later sale or lease could transfer their work and expose them to another change in employer or assignment. (Revised Application, Volume 1, p. 540.)

8. My experience with short-line negotiations also leads me to question how quickly employees could expect to have those issues settled. A new agreement requires the parties to resolve provisions that will govern the property for years. Each provision has consequences. An employee deciding whether to remain near home and work for a new operator needs answers before committing to that job. Negotiations take place while members are trying to make those decisions and keep an income coming into the household.

9. Consider a member with years of seniority who holds a regular assignment on a territory selected for transfer. That member may be able to exercise rights elsewhere on UP, but the available position could require extensive travel or relocation. Working for the new operator might allow the member to stay near home, depending on the jobs and terms it offers. Either choice could require the member to give up something earned over a long career. These are the questions I would have to help our members answer if a transfer occurs.

10. A transfer of a line to another operator could also require us to organize the property again. If the work goes to an operator whose Maintenance of Way employees are unrepresented,

BMWED may have to organize those employees, establish representation, and negotiate a first agreement. We cannot assume that the representation and agreement protections our members have on UP will carry over with the track to a different employer. Employees could be doing the same work at the same locations while having to establish representation and bargain for wages and rules that they previously worked under. I am concerned about how much they could lose during that process and how long it could take to secure an agreement.

11. In my experience representing Maintenance of Way employees and negotiating agreements on short lines, employees on unrepresented properties generally earn lower wages, receive fewer benefits, and work under less favorable rules than the employees I represent under Class I agreements. Representation gives employees a say in those terms and a way to enforce what they negotiate. But the economics of the line matter. A former Class I branch that carries relatively little traffic brings in less revenue and may have only a small Maintenance of Way workforce. On a property like that, it's harder to negotiate the wages, benefits, and work rules we've secured on UP. A member working under the Missouri Pacific agreement today could take a job with the new operator, report to the same location, and do the same work for less pay, with fewer benefits and less say over which assignment their seniority allows them to hold.

12. I oppose a resolution of this proceeding that would leave employees paying for changes intended to address the transaction's effects on competition. If a proposed sale, lease, or grant of operating rights would put our members' wages, benefits, seniority, or working rules at risk, those consequences belong in the Board's assessment. If a proposed remedy depends on another carrier doing the same Maintenance of Way work at lower wages or under weaker rules, I ask the Board to consider who would pay for that remedy. Our members would bear that cost every payday.

13. The applicants' employment commitment offers current craft employees an opportunity to continue their careers in some capacity, subject to conditions that include accepting available work opportunities. That assurance does not give me enough information to advise a member whose work could move to another location or employer. I need to know where the member could work, what seniority would apply, and what accepting the assignment would require of the family. Those questions become especially significant if the carrier later transfers the line where the member has built a career. (Revised Application, Volume 1, pp. 543 to 544.)

14. My responsibilities also extend to CSX employees and members on other railroads. If the merger changes traffic patterns and business moves between carriers, I will have to represent employees whose work is affected at both ends of that change. An assignment gained at one property does not necessarily provide an opportunity for the member who loses work at another. The employee still has to qualify for the job, hold the necessary rights, and be able to reach the place where the work is performed.

15. Allied's officers administer agreements across many railroads, and I am responsible for supporting their work on behalf of our members. We see how much effort it takes to secure an agreement and enforce it after negotiations end. I ask the Board to give that experience weight when it considers assurances about future employment. Our members need to be able to rely on their agreements through the working years ahead, including when management decides that another company should operate a portion of the railroad.

16. I urge the Board to deny Union Pacific's proposed acquisition of Norfolk Southern. In my judgment, the employment consequences of this transaction extend beyond the assignments the applicants currently identify for integration. They include the risk that later transfers of lines or operations could force employees to choose between following work far from home and seeking work under different terms with another carrier. On behalf of the Maintenance of Way employees Allied represents, I ask the Board to reject this merger.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 11/13/2026

Signature 

Brian Thompson
General Chairman
Allied Federation
Brotherhood of Maintenance of Way Employes Division
of the International Brotherhood of Teamsters

BEFORE THE
UNITED STATES SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

CONTROL

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

DECLARATION OF GALEN E. OWEN

1. My name is Galen E. Owen. I serve as West Region Vice President of the Brotherhood of Maintenance of Way Employes Division of the International Brotherhood of Teamsters (BMWED). I reside in Trenton, Missouri. Of my 26 years in the railroad industry, I spent the first 10 working on Union Pacific tracks and the next 16 representing railroad employees as a BMWED union official.

2. I represent Maintenance of Way employees at Union Pacific (UP), BNSF Railway, Canadian National (CN), Canadian Pacific Kansas City (CPKC), Amtrak, and numerous short-line and terminal railroads, including the Belt Railway Company of Chicago (BRC). My jurisdiction includes Illinois, Tennessee, Alabama, and the states to the west, except Montana, North Dakota, and South Dakota.

3. I oppose Union Pacific's proposed acquisition of Norfolk Southern (NS). My first concern is for the people who already work for UP. They have spent their careers maintaining the railroad that management now proposes to extend across the country. They have a right to ask

what that expansion will mean for the jobs they hold today. Will their gang still report at the same location? If management combines two maintenance forces, what work will remain available to them under their agreement, and where will they stand when it comes time to bid? Those questions matter just as much to someone who works for the acquiring railroad as they do to someone whose railroad is being acquired.

4. I worked on UP long enough to understand what it means to build seniority. A member may spend years working away from home before earning enough seniority to hold a regular assignment nearby. For that family, the difference is whether someone who has spent much of the week on the road can finally count on being home for supper. An offer of continued employment somewhere on a larger railroad tells that family very little about whether they can keep the arrangement they spent years working toward.

5. There is a reason to raise this now. The applicants' labor witness anticipates that the carriers will likely seek implementing agreements to consolidate maintenance forces within limited geographic boundaries at or around interchange locations. The witness expects Maintenance of Way functions otherwise to remain largely unchanged during the first three years following approval. An interchange may occupy a small part of a system map and still be the place where a member reports every morning. The application identifies the authority management expects to seek. Our members would have to negotiate what happens to their assignments after the Board has already approved the transaction. (Revised Application, Volume 1, pp. 542 to 544.)

6. My responsibilities also extend to members on railroads that will have to compete with the combined carrier. The applicants describe a railroad of more than 50,000 route miles across 43 states. They identify more than 88,000 county-to-county lanes where they could offer single-line service. I understand the appeal to a shipper of dealing with one carrier for the whole trip. What

concerns me is how much authority over the movement of freight would pass to one company. Today, UP and NS must deal with each other over where and how they exchange cars. Under common ownership, one management would decide where to assemble its trains and which yards its traffic could pass through without stopping. Those choices reach well beyond its own payroll. (Revised Application, Volume 1, pp. 37 to 38, 47. Volume 2, pp. 710 to 711.)

7. The applicants commit to keeping gateways open and propose a Committed Gateway Pricing program that would last through the merger oversight period unless the Board extends it. I ask the Board to consider what those commitments accomplish for a railroad and its employees when the gateway stays open but the combined carrier changes where it handles its freight. Chicago gives us a way to examine that question against an operating decision the applicants have already described. (Revised Application, Volume 1, pp. 90 to 94. Volume 2, pp. 710 to 711.)

8. I represent BMWED members at the Belt Railway Company of Chicago (BRC). All six Class I railroad systems hold interests in the BRC. NS and CSX each hold 25 percent. BNSF and CN each hold 16.67 percent. UP and CPKC each hold 8.33 percent. Approval would bring UP's and NS's interests under one owner, giving that owner approximately one-third of the BRC. It would be the largest stake held by any one railroad system. The other four owners would retain approximately two-thirds between them. (Revised Application, Volume 1, p. 159.)

9. UP would also acquire NS's indirect interest in the Indiana Harbor Belt Railroad (IHB). Consolidated Rail Corporation owns 50.99 percent of the IHB, CPKC owns 49 percent, and director shares account for the remaining 0.01 percent. NS holds its interest through the Conrail companies it owns with CSX. The application identifies NS and CSX as holding 58 percent and 42 percent, respectively, of CRR Holdings. It also identifies NS, CSX, and CPKC representatives on the IHB board. In Chicago, then, the same company directing traffic over the combined UP and

NS lines would hold the largest stake in the BRC and have an indirect interest in the IHB. I ask the Board to examine what voice those interests would give UP in decisions at each terminal, including decisions about investment. (Revised Application, Volume 1, pp. 161 to 165.)

10. What concerns me most is a decision UP could make without taking a vote at either terminal. Certain trains now go to the BRC's Clearing Yard so cars can be grouped there for the next part of their trip. The applicants plan to group cars at locations outside Chicago, including in Iowa and Wisconsin and at Elkhart, Corning, and Conway. Across the changes in their operating plan, they expect demand for intermediate switching at the BRC to fall by approximately 210 cars a day. That is a BRC-wide estimate. Clearing is one place where the plan identifies how the work would move. (Revised Application, Volume 2, pp. 710 to 711, ¶¶ 206, 209.)

11. Our Maintenance of Way members at the BRC maintain the track and switches over which those cars move. The applicants' estimate concerns switching performed by another craft. It gives me no basis to predict a specific number of Maintenance of Way jobs lost. It does give me reason to be concerned about the next time a position on a yard gang comes open or a stretch of yard track comes due for renewal. How much work management expects that yard to handle bears directly on the case for filling the position or doing the project. A job can disappear when a member retires and the railroad decides that nobody will take that member's place.

12. The applicants expect the BRC and the IHB to continue handling local and interchange traffic. They contend that the changes will free capacity at both terminals to serve other railroads and that interchange with other carriers in Chicago will continue as it does today. I hope other carriers bring them that business. But in the same passage where the applicants quantify the switching demand they expect the BRC to lose, they identify no commitment for replacement traffic. They give no comparable car figure for the IHB. I ask the Board to examine the traffic and

employment outlook at each terminal separately. A BMWED member at either railroad deserves to know more about the future of the work there than the fact that the terminal will remain open. (Revised Application, Volume 2, p. 711, ¶¶ 208 to 209.)

13. Chicago bears on a larger question about competition. UP could gain more influence over where freight is handled even where other railroads retain ownership rights and shippers retain access to an interchange. Elsewhere in my region, I represent BNSF, CN, and CPKC members whose livelihoods also depend on their railroads winning and keeping freight. When two carriers combine, I still have an obligation to the member on the railroad that loses the business. That member's seniority stays on one railroad even when the work goes to another.

14. The Board's rules require the applicants to address whether other Class I railroads are likely to seek mergers in response and what the cumulative effect could be on the industry and the public. The applicants rely in part on Berkshire Hathaway's stated lack of interest in acquiring another Class I railroad. They also consider a possible combination of BNSF and CSX and argue that the public could benefit from two stronger transcontinental railroads. I take Berkshire's position as it was given. I also think the Board has to consider the competitive pressure its own decision could create. Once one carrier can sell single-line service across the country on this scale, the circumstances facing the remaining carriers will have changed. (Revised Application, Volume 1, pp. 94 to 97.)

15. From a labor standpoint, that prospect deserves more attention than it receives in the application. Today, if UP decides to cut back on a maintenance program, NS has its own officers who must answer for the condition of their railroad and can make a different decision. Common ownership puts both budgets under the same ultimate authority. The same is true when management decides how much work to contract out, whether to fill vacancies, and what terms it

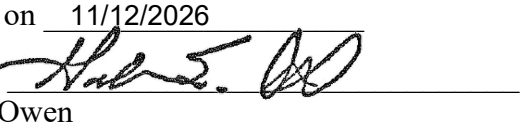
will seek at the bargaining table. Our members have spent decades negotiating agreements with individual carriers. I am concerned about how much more difficult it becomes to defend those agreements as authority over more of the country's railroad work passes into fewer hands.

16. The applicants contend that the benefits they project could not be achieved through measures short of a merger. I would like the Board to press them on that point using their own Chicago plan. Which delays require common ownership to correct? Where could UP and NS improve service today by coordinating schedules or agreeing on how to group cars before delivering them to one another? A shipper has a legitimate interest in a faster trip through Chicago. Our members have an equally legitimate interest in knowing why delivering that service requires a permanent change in who controls their work. (Revised Application, Volume 1, p. 93. Volume 2, pp. 710 to 711.)

17. I ask the Board to deny the application. If it approves the merger, I ask it to require the applicants to identify where they intend to combine maintenance forces, which assignments they expect to move or abolish, and how employees can enforce protections when their work is transferred. I also ask the Board to require separate reporting for the BRC and the IHB on merger-related changes in traffic, Maintenance of Way employment, and maintenance spending, with enforceable relief for employees who lose work as a result. A UP employee whose reporting point changes and a BRC employee whose assignment disappears may both be living with the consequences of the same routing decision. Each should have a way to establish what happened and obtain relief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 11/12/2026

Signature 

Galen E. Owen
West Region Vice President
Brotherhood of Maintenance of Way Employes Division
of the International Brotherhood of Teamsters

BEFORE THE
UNITED STATES SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

CONTROL

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

DECLARATION OF JOHNNY LONG

I, Johnny Long, declare under penalty of perjury that the following is true and correct.

1. My name is Johnny Long. I serve as General Chairman of the American Rail System Federation (ARSF) of the Brotherhood of Maintenance of Way Employes Division of the International Brotherhood of Teamsters (BMWED). ARSF represents nearly 3,000 Maintenance of Way employees on Norfolk Southern. I also represent a group of Union Pacific employees working on the Alton & Southern Railway (A&S), as well as Maintenance of Way employees at the Terminal Railroad Association of St. Louis (TRRA). I submit this declaration in opposition to Union Pacific's proposed acquisition of Norfolk Southern.

2. I am responsible for the day-to-day administration of the collective bargaining agreements covering the employees we represent. On Norfolk Southern, these employees currently work under two controlling agreements, one covering the former Norfolk & Western/Wabash territory in the North and the other covering the Southern territory in the South. My responsibilities include enforcing those agreements and representing employees in disputes over assignments,

seniority, contracting out, and other working conditions. I carry out those same responsibilities under the agreements covering our members working on A&S and TRRA.

3. When a position is abolished or work moves, I have to determine how the change affects the employees involved and enforce their contractual rights. An employee may have to exercise seniority against another member, bid on a traveling assignment, or accept work farther from home. The members affected look to our office for answers about what they can hold and how to protect their earnings. My responsibilities extend to employees at several operations whose work the applicants propose to reorganize.

4. Our members inspect, repair, and maintain the track, bridges, switches, drainage systems, and other infrastructure necessary to move trains. They respond to emergencies, work in severe weather, and spend extended periods away from their families. They take pride in keeping the railroad operating. They also know when a gang is short of people, when vacancies are left unfilled, and when work is being carried forward because the available forces cannot get to it.

5. I am concerned about the condition in which Norfolk Southern's maintenance workforce would enter this merger. Our members have been asking the carrier to increase staffing and invest in its own forces for years. Those concerns preceded this application. They should be considered when the Board evaluates whether the applicants' proposed operation will have enough employees to maintain the railroad and support the business they expect to attract.

6. In 2022, ARSF surveyed its Norfolk Southern membership to identify the issues having the greatest effect on employees. We personally delivered the results to then-Chief Executive Officer Alan Shaw and discussed them with him. Among the five priorities identified by members were reducing the use of contractors and increasing manpower. Those concerns remain central to our representation of NS employees.

7. The request to reduce contracting and the request to hire more employees were closely related. Members wanted Norfolk Southern to invest in the people whose careers depended on maintaining its property. They wanted opportunities to perform the work, learn additional skills, and move into assignments as more senior employees retired. When the carrier leaves a bargaining-unit position vacant while assigning work to an outside contractor, our members have reason to question the future of their own jobs.

8. We also see staffing concerns during the administration of the agreements. Positions go unawarded during bid cycles, leaving us to address questions about who will cover the work and what assignments remain available to members. An advertised vacancy provides little help to a crew until a qualified employee is assigned to fill it. For the employees already on the territory, the need to inspect the track and make repairs continues while the position remains open.

9. Day-to-day track conditions will affect how successfully the carriers can shift traffic during integration. A route selected to carry additional trains must be maintained while those trains are moving. A track condition requiring a speed restriction can slow their progress. A repair requiring a track to be taken out of service can reduce the capacity available to move them. At a junction or on an approach to a busy yard, those restrictions can cause trains to wait and contribute to congestion beyond the immediate work location. Our members need sufficient time, equipment, and people to complete the repairs and restore that capacity.

10. I am concerned that the proposed changes in traffic will place additional demands on maintenance forces while making it harder to obtain time on the track. More trains using the same route can narrow the periods available for maintenance. If work is delayed, a restriction may have to remain in place longer, adding to the congestion the carriers are trying to relieve. In my judgment, the Board should expect service difficulties during integration and examine whether the

applicants have provided enough maintenance capacity to address them. The ability to move traffic as planned will depend in part on how quickly our members can respond when conditions on the property interrupt that plan.

11. St. Louis is a specific example of why those questions matter to the members I represent. The operating plan proposes transferring intermediate manifest switching from NS's Luther Yard to A&S's Gateway Yard. Luther would continue as an intermodal terminal and local manifest serving yard. The applicants also propose building eastbound blocks at A&S instead of transferring that traffic to TRRA for blocking. They expect to offset some additional work at A&S by assembling blocks in North Little Rock and Bellevue that can travel farther through the combined network without additional classification. These changes would redistribute work among operations where I represent Maintenance of Way employees. (Revised Application, Volume 2, p. 712, ¶¶ 210 to 212.)

12. Those projections concern the handling of railcars. Their significance for our members is the maintenance required to support the resulting operation. If Gateway Yard takes on additional activity, the employees maintaining its track and switches will need the resources and access to do that work. At Luther and TRRA, changes in activity could affect future decisions about maintenance assignments and investment. A transfer of switching work does not establish a particular number of Maintenance of Way jobs gained or lost. It does require the applicants to explain how the forces at each location would support the work that remains or arrives.

13. The applicants contend that interchange with other carriers in St. Louis would continue as it does today. They also assert that TRRA would not be significantly affected, would continue performing local and interchange work, and would gain capacity to serve other railroads. I ask the Board to examine that assessment from the standpoint of the employees who maintain TRRA's

property. Available capacity becomes useful business when another railroad uses it. Our members deserve a clear account of the work expected to leave, the business expected to remain, and the maintenance resources needed under the proposed operation. (Revised Application, Volume 2, pp. 712 to 713, ¶¶ 214 to 215.)

14. TRRA's importance extends beyond UP and NS. The revised application explains that all six Class I railroads can use TRRA to interchange traffic in St. Louis. It also commits the applicants to relinquishing sufficient ownership interests and governance rights to prevent the combined company from acquiring control of TRRA. I recognize that commitment. The Board must also examine how the applicants' decisions about routing and yard activity would affect TRRA's business and the employees maintaining it. A change in ownership rights alone cannot answer those operating questions. (Revised Application, Volume 1, pp. 30 to 31, 77.)

15. I am concerned that the merger would weaken competition among Class I railroads by bringing Norfolk Southern's decisions about service, investment, and interchange under Union Pacific's control. Today, NS can pursue business with other Class I connections based on its own interests. After the acquisition, the same corporate owner would decide how to handle traffic across both networks and whether to route it over its own lines or through another carrier. St. Louis shows why the Board should examine the consequences for connecting railroads and the service alternatives available to customers. Our members have a stake in railroads that win business through dependable service and invest in the workforce necessary to provide it.

16. Our members have raised the staffing issue directly. ARSF received a petition signed by nearly 1,000 Norfolk Southern Maintenance of Way employees asking the carrier to increase manpower across the system. That is a substantial response from a workforce of nearly 3,000 represented employees. These are people who know the work because they perform it. Their

request deserves attention when management asks the Board to accept its assessment of the workforce needed for the proposed combined operation.

17. The petition also reflects what members are trying to protect in their working lives. A short crew can mean additional overtime, a larger area to cover, or more time away from home. Members want to complete the work properly and have enough qualified people alongside them to do it. They also want to know when they will be able to get home. Their families make arrangements around those schedules and bear the consequences when work repeatedly keeps them away longer than expected.

18. The revised application gives these existing concerns additional significance. The applicants' labor witness anticipates that the carriers will likely seek implementing agreements permitting consolidation of maintenance forces within limited geographic boundaries at or around interchange locations. Maintenance of Way functions would otherwise remain largely unchanged during the first three years following approval. I am concerned about what consolidation would mean for forces whose staffing our members are already asking the carrier to increase. Before accepting an anticipated efficiency, the Board should examine where the work would go and whether the employees assigned to it could meet the resulting demands. (Revised Application, Volume 1, pp. 542 to 544.)

19. Administering the agreements also requires me to consider employees beyond the assignment selected for consolidation. If a senior employee loses a position and exercises displacement rights, another member may have to move. That process can continue through a roster. The final employee affected may work some distance from the location where management made its initial change. An implementing agreement would address how a proposed consolidation

is carried out. The consequences for the members involved would extend into their daily lives long after the terms were settled.

20. The applicants' employment commitment offers current craft employees an opportunity to continue their railroad careers in some capacity, subject to conditions that include accepting available work opportunities. In representing our members, I have to look at the actual assignment. I need to know where it reports, which seniority rights apply, and what travel it requires. An employee who has earned a regular assignment near home can face a substantial loss even if another position is available elsewhere. (Revised Application, Volume 1, pp. 543 to 544.)

21. The operating plan identifies six additional craft employees for vegetation management and up to 30 insourced craft positions for wood-tie recovery. I support assigning work to our members. Those particular additions, however, leave unanswered the concerns NS employees have raised about the staffing of the forces that inspect and maintain their territories. They also leave unanswered how maintenance forces would support the changed operation at places such as St. Louis. The Board should ask how the proposed forces would support additional traffic and redistributed work while meeting the maintenance needs already before them. (Revised Application, Volume 2, pp. 814 to 815.)

22. I urge the Board to deny Union Pacific's proposed acquisition of Norfolk Southern. In my judgment, the applicants' projected benefits do not justify the risks this transaction would impose on our members, the service their work supports, and competition among Class I railroads. The Board should give full weight to the consequences of consolidating maintenance forces while changing traffic patterns across the combined system. Our members at NS, A&S, and TRRA would have to maintain the property under the resulting operation, and their families would live with its employment decisions. On behalf of the employees ARSF represents, I ask the Board to reject this merger.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 11/12/2026

Signature J.B. Long

Johnny Long
General Chairman
American Rail System Federation
Brotherhood of Maintenance of Way Employes Division
of the International Brotherhood of Teamsters

BEFORE THE
UNITED STATES SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

CONTROL

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

DECLARATION OF REESE SAULTER

I, Reese Saulter, declare under penalty of perjury that the following is true and correct.

1. My name is Reese Saulter. I serve as Southern Region Vice President of the Brotherhood of Maintenance of Way Employes Division of the International Brotherhood of Teamsters (BMWED). I hired out with CSX Transportation in Atlanta, Georgia, in 2008. I have worked as a track laborer, machine operator, track inspector, and foreman on both production and headquarters gangs. I have served in union officer and appointed positions since 2017.

2. As Southern Region Vice President, I represent Union Pacific (UP) Maintenance of Way employees who work under the Missouri Pacific (MPR) agreement and Norfolk Southern (NS) Maintenance of Way employees who work under the Southern (SOU) agreement. My territory extends along the Eastern Seaboard and throughout the South, and includes Nebraska, Ohio, Kansas, Missouri, Indiana, Illinois, Michigan, West Virginia, Texas, Louisiana, and New Mexico. If UP and NS seek to combine maintenance forces in the South, I have a responsibility to the members working under both agreements.

3. I oppose Union Pacific's proposed acquisition of Norfolk Southern. My concern begins with the rights our members have secured through years of collective bargaining. A member who spends years on the road and finally has enough seniority to hold a headquarters job close to home has earned that opportunity under an agreement with the railroad. If the two carriers combine their forces and that assignment disappears, the member can keep drawing a railroad paycheck and still lose much of what those years of service earned.

4. I have worked both kinds of assignments. On a production gang, a member can plan on being away and make arrangements at home around the gang's schedule. A headquarters job can give that same member a regular place to report and a chance to be home after the shift. A job a member was glad to take at twenty-five may be one that member can no longer manage while raising children or caring for a parent. Bidding and seniority rules let employees choose the assignment that fits their lives.

5. The applicants' labor witness anticipates that the carriers will likely seek implementing agreements permitting them to consolidate maintenance forces within limited geographic boundaries at or around interchange locations. The witness expects Maintenance of Way functions otherwise to remain largely unchanged during the first three years following approval. I ask the Board to consider what that exception means for employees who work at those locations. An area that looks small on a map of two national railroads can include the headquarters where a member has reported for years. (Revised Application, Volume 1, pp. 542 to 544.)

6. Memphis and New Orleans are two Southern gateways the applicants identify in describing where they expect to improve service. Their labor witness also anticipates seeking agreements to combine maintenance forces around certain interchange locations. I want the applicants to tell our members whether they have either gateway in mind. If they do, which work

now performed by UP employees under the MPR agreement or by NS employees under the SOU agreement would move? Where would the employees report, and who would be entitled to bid on the work? Those answers matter to the member whose work might move and to the member whose gang might be expected to take it on. (Revised Application, Volume 1, p. 13 and pp. 542 to 544.)

7. The effect of abolishing one assignment can reach well beyond the employee who holds it. A senior member who loses a headquarters position may have the right to displace a junior member from another position. The junior member then has to find out what work remains available farther down the roster. By the time those moves are finished, the employee facing the longest trip or the loss of work may be someone whose own assignment the carriers never proposed to abolish. I want the Board to account for that employee, too.

8. The applicants describe continued employment in terms that depend on employees accepting available work opportunities. Before a member can judge an offer, that member needs to know the reporting point, the schedule, what seniority will apply, and which agreement governs travel and expenses. Consider a parent who shares custody and has earned a job that allows that parent to be home on the agreed days. An offer to work away all week could force that member to choose between keeping a railroad income and keeping a commitment to a child. Calling the assignment available tells the Board very little about whether the employee can take it. (Revised Application, Volume 1, pp. 542 to 544.)

9. I also ask the Board to consider what happens to the work itself. As a track inspector, I learned the value of seeing the same territory over time. An inspector who knows where water collected after the last heavy rain knows where to look when it rains again. As a foreman, I needed people who could tell me what they had seen at a location and what repairs the gang had already

made there. If a change in headquarters causes experienced members to bid away or leave the railroad, the crew taking over that territory has to build that knowledge again.

10. The members I represent on UP and NS have each secured rights through years of bargaining with their respective carriers. Take a machine operator who has enough seniority to hold a job close to home. If the carriers propose to transfer that work to a combined gang, can the operator follow it? How will the operator's seniority count when the job is awarded? The member on the receiving gang may have spent years working toward that same assignment under a different agreement. If the Board approves the merger and the carriers pursue consolidation, we will have to address the rights of both employees in negotiating an implementing agreement.

11. By the time a member has to decide whether to bid or exercise displacement rights, that member needs to know where the job reports, which roster governs the assignment, and what accepting it will mean for the next job the member can hold. As a representative of employees under both agreements, I will have to be able to explain those terms to the people who will work under them. Even with those terms settled, a family may still have to decide whether it can afford a move or another week apart.

12. The applicants' labor witness describes what management expects for most Maintenance of Way functions during the first three years. A member with ten or fifteen years left before retirement is looking farther ahead. That member may be deciding today whether to buy a home near headquarters or keep building seniority on a particular roster. I ask the Board to weigh that uncertainty when it considers the applicants' employment assurances. (Revised Application, Volume 1, pp. 542 to 544.)

13. My first railroad job was with CSX, and my responsibilities today extend to members whose employers are outside this transaction. The applicants expect single-line service through the

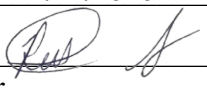
Southern gateways to change how freight moves. If traffic shifts from a competing railroad and that carrier responds by leaving a vacancy unfilled, its Maintenance of Way employees will still be responsible for the territory assigned to them. I ask the Board to consider those employees, too. Their work could change because of a routing decision made by a railroad they do not work for. (Revised Application, Volume 1, pp. 13, 37 to 38.)

14. I have worked on a production gang and as a headquarters foreman. I know the difference it makes to a family when a member can finally hold a job close enough to come home after the shift. The applicants anticipate seeking agreements to combine maintenance forces around interchange locations. They also point to opportunities for employees to keep working. For the UP and NS members I represent, the question is where that work will be and whether the seniority they have earned will allow them to hold it. On those points, the revised application gives our members little assurance. (Revised Application, Volume 1, pp. 542 to 544.)

15. In my judgment, the benefits the applicants project do not justify putting our members' livelihoods and the rights they have secured through years of bargaining at risk. On behalf of the Maintenance of Way employees I represent, I urge the Board to deny Union Pacific's proposed acquisition of Norfolk Southern.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 11/12/2026

Signature 

Reese Saulter
Southern Region Vice President
Brotherhood of Maintenance of Way Employes Division
of the International Brotherhood of Teamsters

ARU/BLET

Addendum B

Declarations of BRS President Baldwin and General Chairman Carter and Statements of BRS Members

BEFORE THE
UNITED STATES SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

—CONTROL—

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

DECLARATION OF MICHAEL S. BALDWIN

I, Michael S. Baldwin, declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the following is true and correct.

1. I am President of the Brotherhood of Railroad Signalmen ("BRS"). BRS is the representative, for collective bargaining under the Railway Labor Act of railroad employees working in the Signalman class or craft, including Signalman employed by the Union Pacific Railroad ("UP") and Signalmen employed by the Norfolk Southern Railway ("NSR"). Among other things, Signalman represented by the BRS are responsible for installing, maintaining, and repairing railroad signal systems and equipment, and highway-rail crossing warning systems and equipment, on the lines of UP, NSR, other Class I railroads, Amtrak, major commuter railroads as well as some regional and short line railroads.

2. Before becoming an officer of the BRS, I was a Signalmen for CSXT for 12 years. Working as a Signalman I was responsible for Signal System installation, maintenance, regulatory testing, in-service testing on new/upgraded signal systems, training of new signal

employees.

3. BRS has been participating in the STB's proceedings in this Finance Docket with several other rail unions, filing jointly as the Allied Rail Unions ("ARU"). I am submitting this Declaration to the Board in support of ARU's Comments in response to the Application by which UP and its affiliates seek authorization to control and merge with NSR and its affiliates. BRS and the other ARU unions oppose Board approval of the proposed transaction. Alternatively, if the Board nonetheless decides to approve the transaction, BRS and the other ARU unions request that certain conditions be imposed on such approval. BRS and the other ARU unions also oppose responsive applications and requests for conditions sought by other parties (or concessions by Applicants) that would convey property of UP or NSR to Class II or Class III railroads, or provide Class II or Class III railroads operating rights over UP or NS lines.

4. BRS's full position is set forth in the ARU's Comments. In this Declaration I will respond to certain evidence and arguments presented by the Applicants as they relate to members of the BRS.

5. Applicants represent that they will build new sidings, extend existing sidings, add new double-tracking, and increase capacity of yards and terminals. Applicants also project increased traffic volumes over the infrastructure of the combined carrier. It is fundamental and indeed immutable that more trackage, sidings, and crossings require more Signal and grade crossing inspection, maintenance and repair. It is also basic physics that increased traffic over infrastructure increases wear on the infrastructure, also requiring more Signal inspection, maintenance and repair. However, according to Applicants' Employee Impact Report, they project no net change in Signal forces.

6. In their Service Assurance Plan, Applicants have represented to the Board that they

will be able to ensure safe and reliable operations over the merged railroad with no net increase in Signalmen. As President of the Union that represents Railroad Signalmen, and as a former Signalman, I can attest that Applicants cannot properly and effectively perform necessary Signal and crossing inspection, maintenance and repair work on more infrastructure that will carry more traffic with the same size Signal workforce as they have today; and that they cannot ensure that an increased amount of infrastructure can safely and reliably handle the projected increased volumes of traffic with the same size Signal workforce as they currently have.

7. The plan to maintain a Signal workforce no larger than Applicants' current workforces would be problematic if they currently had enough Signalmen. But they do not, keeping the same size Signal workforce when there will be more infrastructure and more volume is especially concerning. In particular, UP has been short on the number of Signalmen to inspect, repair and maintain its current infrastructure. In recent years, UP has reduced its Signal workforce, increased the responsibilities of the remaining workers, cut back the size of construction gangs and eliminated Signal relief positions; all as part of its cost-cutting business plan. In order to attempt to keep up with necessary work, the Carrier has resorted to expanding Signal territories creating pressure on Signalmen to work fast to perform required inspections and maintenance, denying Signalmen their right to use accrued vacation because the Carrier does not have enough workers to cover when an employee uses accrued leave, and threatening Signalmen if they do not accept at least 33% of non-mandatory callouts on their off days. This is all documented in more detail in the Declaration of the General Chairman of BRS's Union Pacific General Committee, Aaron Carter, as well as by statements of a number of working Signalmen that are attached to my Declaration.

8. I understand that when questioned about their ability to maintain a larger system with

more traffic with an essentially static workforce, representatives of the Applicants have suggested that unspecified new technology will help. I can attest that there is no current technology for Signal and crossing inspection, maintenance and repair that would enable Applicants to safely and reliably move the projected significantly more traffic over the larger infrastructure they have described with no more Signalmen than they currently have.

9. BRS opposes the proposed transaction for a variety of reasons. Among other things history shows mergers result in reduced employment, and we are highly skeptical of the Applicants projections of growth in employment. Even when carriers have projected increases in employment, reality has not matched the projections. For example, CPKC projected that post-merger it would have net 750+ additional U.S. jobs. But in the years after the merger, CPKC did not increase its employment to numbers anywhere near the projections in the application. CPKC's own filings with this agency show that for the largest categories of craft employees (engineering -L300, mechanical-L400, Operating -L600) CPKC employment was 4339 on January 1, 2024 (CPKC's first report as a merged entity), 4365 on January 1, 2025, 4424 on January 1, 2026 and 4372 in the most recent report (September 2026); in short 33 more employees today than at consummation of the merger (less than a 1% increase). Additionally, history has shown that increased concentration in the industry has led to reductions in employment and poorer service flowing from carrier market dominance which has allowed them to reduce employment because shippers suffering from poor service due to reduced staffing have nowhere else to turn for rail service, and the statutorily weakened regulatory authority of the Board has limited its ability to provide recourse to shippers suffering poor and unreliable service.

10. We are also concerned about the likelihood that approval of the proposed UP-NS merger will lead to a follow-on trans-continental merger, creating national duopoly. Experience

of the 1990s was that one merger led to another; there is no reason to believe that approval of a UP-NS merger will not lead to a merger of competitor railroads. Creation of a national duopoly will mean that neither railroad would be truly accountable to anyone, which will result in employment being reduced to lower operating ratios, and service will suffer as a consequence of fewer employees to provide the service, and because there will be no consequences for deteriorated service due to a lack of competition and a weak regulatory regime that was not designed for duopolies.

11. In the event the Board does approve the transaction, BRS requests imposition of conditions to protect the UP and NS workers, and to preserve employee rights. Our requested conditions are described and explained in the ARU comments, but generally, we request that any approval of the merger be conditioned on terms that preserve the work and employment of current workers, impose the so-called Cramdown Agreement as a condition of approval, require *New York Dock* protections for post-merger line sales and leases, prevent infinite use of the *New York Dock* conditions to change collective bargaining agreements outside Railway Labor Act by limiting the time to use the *New York Dock* conditions to a reasonable time period when the merger is actually being implemented, and a declaration that employees whose jobs are abolished who decline to relocate hundreds or a thousand miles from their residences will not forfeit dismissal allowance benefits for which they would be eligible as employees whose jobs were abolished.

12. It is also our position that the Board should clear up any uncertainty regarding employee protective benefits for employees of certain switching railroads, control of which will be changed if the transaction is approved. Currently the Terminal Railroad of St Louis is jointly owned by UP-43%, BNSF-14.25%, NSR- 14.25%, CSX-14.25%, and CN-14.25%. Conrail

Shared Assets is currently owned by NSR-58% and CSXT-42%. Terminal Railroad has 63 employees, 19 of them Signalmen; Conrail Shared Assets generally has between 500 and 600 employees, 54-65 Signalmen. If the transaction is approved, the merged carrier will have control of the Terminal Railroad and of Conrail Shared Assets as a result of the merger. The ARU submit that employees of those railroads would therefore be affected by the transaction, so the *New York Dock* employee protections that would be imposed as a condition of an approval of the transaction must apply to employees of the Terminal Railroad and of Conrail Shared Assets. While we believe that should necessarily be the case, we ask the Board to make an express finding to that effect to preemptively assure that there will be no dispute as to that question, and to remove any uncertainty affected employees may have. The ARU realize that UP has an understanding with CN that, if the transaction is approved, CN would acquire NSR's shares in the Terminal Railroad. Given that the arrangement flows directly from the merger, the change in ownership would still be a result of the merger, so the *New York Dock* employee protections should still cover employees of the Terminal Railroad.

13. Finally, BRS opposes requests for divestiture of UP or NSR lines to Class II or Class III railroads, as well as conditions that would involve sales or leases of UP or NSR lines to Class II or Class III railroads and acquisitions of trackage rights over UP or NSR lines by Class II or Class III railroads. As is explained in ARU's comments, employees on many Class II and Class III do not have union representation; and even when they have representation, the agreements covering those employees are below the standards of agreements applicable on Class I railroads because of the lower profit margins on largely captive feeder railroads. Those circumstances are a result of Class I spinoffs of what they called "marginally profitable" lines in the late 1980s and early 1990s, with the Class I's retaining the long haul traffic from those lines. The Class I's were

relieved of the labor costs for lower density lines while retaining their long haul traffic, and the profitability of the short lines and regionals was a result of lower labor costs as result of reduced employment, lower pay and benefits and below industry standard agreements when employees were represented. In short, a problem of the Class I's and some shippers was resolved by diminishing the employment, pay, benefits and rules on the conveyed lines. If the STB decides that the merger cannot be approved because of the effects it will have on competition and the market dominance of the merged carrier, the Board should not try to mitigate those problems by authorizing divestitures, sales, leases and access to Class II and III railroads that will diminish the pay, rules and benefits of rail workers; the merger should not be "saved" by making the workers "pay" for it.

14. Attached to this Declaration are statements forwarded to me by BRS members expressing their concerns about the proposed merger, concerns that are shared by many other Signalmen.

I declare under penalty of perjury, that the foregoing is true and correct.

November 11, 2026 *<u>/s/ Michael S. Baldwin</u>*
Michael S. Baldwin

Joseph Foster, Union Pacific

"I work on a signal construction gang and hearing they feel we have enough employees is very scary. They barely hired enough to fill most of the gangs we have left but not all. Even filling most of these gangs now is not enough. We use[d] to have way more gangs then we currently have. Everyone is stretched thin, deadlines are constantly moving up. Back in the day years ago when we had plenty of gangs it was hey let me know when you get close we will schedule a cuttover. Then it went to let me know when the job gets close but they really want it done by this date. Now with way less people it's Hey this is your next job get your prints call in dig tickets get started the cuttover will be in 2 months. Before we even see the job at all we're told when the cuttover will be. But the scariest part is all the people that will be retiring. You don't learn this railroad in a year or 2. So when the people up top that haven't worked in the field at all realize we need to hire it's too late. They can hire someone that doesn't know anything at all but we will all be taking a big step backwards."

Paul Eby, Union Pacific

"We have to do 2 weeks worth of work just to take a weeks vacation cause we have no relief maintainers also we used to have one more maintenance foreman in our group who would relieve us when we were gone if we don't do it we screw our adjoiners [Signalmen in adjoining territories] which we don't want to do."

Ron Olesh, Union Pacific

"As a maintainer on the Yuma subdivision sunset route, I've been out here for almost 20 years. Single track when I hired out in 2007. Double tracked in 2015. I maintain about 30 miles of mainline track. High speed double cross overs, hot box detectors, high water detectors and crossings. Since 2015 when the double track was installed, we've gone through many changes. Higher traffic, heavier trains, longer trains, longer wait times for us to get time on the track to do testing and maintenance. My section of mainline is in the middle of the desert in imperial county Ca, where we deal with big temperature swings daily, extreme heat in the summer and cold winters. Switch points run back and move forward during these swings and changes. With these temperatures and the extra trains our equipment is taking a beating. With most of it being 10-13 years old, we are really starting to see the signs of wear and tear. We are not getting the parts to replace things fast enough. When I first hired out in 2007, we had a Forman, relief and a tech. Our MSM has a split team of California and Arizona roster employees. The Arizona side had a Forman, relief and tech as well. Now, all reliefs are gone, I was a relief at one time until abolished, Arizona Forman gone and about to lose our California Forman as well to give the Arizona side an extra tech. Our Arizona side is more understaffed than the California side but we are losing manpower as well now because of it. I've had to cross the state line and help with testing and calls on the Arizona side many times. Most of us California guys do. Our Forman and tech spends most their time in Arizona now leaving us very little help in California. With talks of the merger happening, they say it will bring more traffic which will give us less time, less people to do our jobs. I've been told by our director to do more with less. Another director called the sunset route a race track compared to other subdivisions."

Michael Thetford, Union Pacific

"From the signal construction side we have been short handed for couple years now. We used to have 5 man gangs some had 6-7 but for the last several years several gangs are lucky to have 3 and this is counting the foreman. Have maintainer jobs that are posted bid sheet to bid sheet with no takers. We have lost valuable employees either from petty write ups or tired of the constant trying to catch someone breaking some petty infraction. But make no mistake they want to add another

arsa to micro manage or babysit the gangs they are quick to do that. Now we have crossing that should have been done last year that has been put off and having to work 12 hours to try and get them done with what small man power we have."

Hunter Allen, Union Pacific

"I work in the yard but was also giving a portion of main line control points to lower the unit count of that maintainer but in liu made my job heavier .I currently have 2 yards with over 60 switches plus the 7 mainline m23 machines added on top .there is no other yard maintainer just me that does tech and yard maintenance already ...I brought this to Dave [B]lack[']s attention when he was a director in San Antonio, but all he did was say it can be done or go work for Walmart as a greeting person was his response."

Ross Lutz, Union Pacific

"It's easy to see the lack of man power especially in hump yards. Little Rock hump yard needs more positions to keep pace with work load, testing, hump maintenance. New projects are adding more tracks to hump in, additional inerts on top of what we allready have. Pine Bluff hump yard only has TWO signal employees for the yard. Pine Bluff is basically a hump yard again, using ALL the retarders again. Pine Bluff yard needs more employees as well. I have not worked on mainline in a few years but there need to be relief maintainers again. Maintainers should not have to work double the tests in order to take vacation."

William White, Union Pacific

"UP is so understaffed in the signal dept when a manager of signal maintenance has a vacant signal maintainer position they are actively and intentionally violating the CBA by forcing ETI's to do both their work and help cover the vacant maintainers position for MONTHS at a time. When a manager from maintenance calls signal construction to inform them they need to send a signal person from a gang to cover a vacant signal maintenance position to perform vital fra inspections and signal maintenance tasks (like support the track dept) the signal construction group states they are too understaffed to spare one headcount to temporarily backfill that vacant maintenance position.

Signal construction is so understaffed in one instance signal construction set a cabin and gates at a crossing and left. They claimed they did not have the manpower to cutover the crossing. A signal maintenance ETI was tasked with completing the project and cutting over this location. That location was down for far too long as the signal maintenance employee had to keep performing all their regular job duties and work on that crossing a little a time. This is dangerous for so many reasons. First signal maintenance is not equipped to perform signal construction duties. Second signal maintenance groups often do not know exactly how to perform signal construction duties. No one would dream of giving a regular auto mechanic all the parts to a car completely dissembled and expect him with his specialized tools and space meant for repairs and maintenance in his one bay in a shop to completely assemble the car ***BY HIMSELF*** while still performing his regular repairs and maintenance duties on other cars. Could a master mechanic eventually assemble an entire car by themselves in this situation? Maybe, but more importantly ***should*** a car thats goimg to be driven on public roads be assembled in this fashion? Or should a car be assembled in a factory properly equipped for auto assembly by trained groups of multiple employees who specialize and focus solely on the proper assembly of each car? But this is precisely what union pacifics understaffing is causing in todays signal dept. This is dangerous and in total violation of a legal contract union pacific agreed to."

Jonathan Pogue, Union Pacific

"I am writing to submit concrete feedback regarding current signal staffing levels and safety conditions at the **North Little Rock Hump Yard**, specifically addressing **Points 2, 3, and 4** requested by the union for the Surface Transportation Board (STB) merger review.

1. Shift Breakdown & Severe Off-Peak Shortages (Point 2)

While day shifts (Monday–Friday, 0600–1400) maintain standard staffing levels, off-peak operations are dangerously understaffed:

- **12-Hour Off-Peak Shifts (0600–1800 / 1800–0600):** Four shifts are regularly manned by **only two signal employees** total.
- **The Safety Bottleneck:** Under mandatory railroad safety rules, any live work on or near active tracks requires one employee to perform the work while the second acts strictly as the dedicated watchman/lookout.
- **Operational Gridlock:** When a shift is staffed by only two people, effective maintenance drops to **one worker**. Many standard signal maintenance tasks, heavy repairs, and component replacements in a hump yard physically require two or more workers *actively carrying out the task*, which is impossible while simultaneously maintaining a dedicated lookout.

2. Operational & Safety Impacts (Point 4)

- **Compromised Safety Prototypes:** Two-person coverage forces a choice between delaying critical repairs or attempting heavy physical tasks with insufficient hands on the job, creating elevated risks for physical injury and worker fatigue.
- **Deferred Maintenance Risks:** Essential preventative maintenance and routine inspections during 12-hour shifts fall behind, as the single active repair hand cannot safely complete complex troubleshooting while maintaining required track protection rules.

3. Impact of Proposed Merger & Flat Employment (Points 1 & 3)

Projecting flat employment or further lean staffing under a merger ignores the reality of active hump yard operations. Increased traffic over existing or expanded yard infrastructure will only exacerbate these safety gaps. Relying on minimal off-peak headcounts forces excessive callouts and overtime, leading to fatigue among an already stretched signal workforce.

I hope this operational evidence helps demonstrate to the STB that current signal staffing is already stretched past safe operational limits, and that flat employment projections fail to reflect the true safety requirements on the ground."

Rodney Magnett, Union Pacific

"We are the closest to constantly operating on the edge of failure I've seen in my 30+ years working in the Signal Department.

1-The frequency of battery failures is at an unprecedented level I've never seen until the last 4-5 years.

2-The reliance on the ETI and Maintenance Foreman position to perform relief work is at an all time high

3-The replacement of equipment that has been deemed obsolete by the manufacturer is non-existent. We are forced to hoard spare equipment to avoid prolonged disruptions caused by electronic failures.

4-New equipment is installed then abandoned for years till it is cutover."

Michael Curry, Union Pacific

"We are already doing more with less, both gangs here are slotted for four signalman, one gang did not get another signalman for months when one bid off. The other gang has had only a foreman and a couple of assistants for two years and all of this to do these big yard switch projects. We have been loaned out to several other managers due to manpower shortage. Now they have been talking about canceling our vacation due to manpower shortage and just today heard that they want to cut off and put other jobs up to cover the rail gang and give the switch gang more assistants to replace signalman. This job on the switch gang is not for assistants at all. That would give us even more work with even less employees as assistants for the most part cant do this work. Add to that, they are new and green and would be who is used as lookout so that signalman can do the work. Time and time again, these assistants fail miserably at lookout, this is a huge safety concern. They have been requesting that we come to work days early and leave days late and have gotten pissed off when someone doesn't stay and have made threats to force guys to stay. All of this is getting way out of hand. I do not support the merger at all. It will only get worse and safety here is just a word merely spoken for legal reasons as they dont care about safety. We don't have safety aarsas or safety meetings and now, no start ups and apparently no more car training. Safety wise, this is the worst I have seen in 16 years."

Joe Tarrant, Norfolk Southern

"Good evening to the distinguished Surface Transportation Board. I would first like to say thank you for hearing my statement and I hope the points will assist you in making an informed decision moving forward. To begin I am writing this statement because I was informed that Union Pacific has essentially stated that they do not need any new signal employees to continue operations if the Norfolk Southern and Union Pacific merger goes through. I believe they are severely mistaken in this line of thinking and I have several points to back up my belief. The first of which is the aging workforce that we already have. In fact, I know of at least 10 employees alone that will be retiring in the next 2 or 3 years. There will be many more to follow in the next 5 years. Not only will you be losing a boots on the ground employee necessary to compete test work, but you will be also be losing a significant amount of experience, knowledge and wisdom when it comes to the signal craft. Many of the individuals making these assumptions are probably unaware of just how technical and skilled the job we do is. We are required to work on various types of equipment from location to location. Much of the equipment, both in signal system and highway-rail grade crossing warning systems is microprocessor based and function in ways that are not remotely similar to each other. Many of our older and outgoing employees have significant experience and expertise on how older equipment functions in the current infrastructure which can turn a 3-hour train delay into a 15 minute repair. Not hiring more new employees means that there are less people who have the knowledge to go out and repair these issues, and inevitably less people learning these valuable skills.

This will eventually lead to a hiring crisis, which when it hits, may result in the hiring of new people, but will not address the gap in knowledge. The amount of people who can really bail tue railroad out of trouble will have drastically decreased which will create a situation where only a few select employees can truly address repairs and trouble. If you continue to hire and have a steady influx of new employees, this knowledge base will continue to grow and prosper. This

knowledge base is something that can't be rebuilt overnight. Simply put, if you fail to bring new people in now, you will experience less on time performance and more costly delays.

To speak to my second point, I would also like to bring up the aging infrastructure that many of our lines face. To put it frankly, I, in the year 2026 have removed vital signal components that have been in service since 1946. If the plan is to keep using these equipment that is 80 years old to govern train movement, I would liken it to going to your parents or even grandparents house and ask them to direct traffic when a traffic signal malfunctions. How far do you think they make it? It is not a question of if these components will fail,
but when. Also, when they do, it's not as if you cannot pull out your phone and order a new one on Amazon. Many of these components cannot be replaced because they do not produce them anymore. So, speaking logically, you will have to replace these systems and, referring to my previous point, the more employees you have learning about these new technologies the better off you will be in the long run. Also the more employees working on replacing aging equipment and systems, the faster it will get done. When a well
maintained and modern signal system is in place, you don't have to worry as
much about a particularly windy day on the aging part of your territory that will cripple the ability to run trains. Moreover, I question the logic to keep running trains on an already deteriorated system to save money on hiring new employees and replacing aging equipment and compare that how much it costs to clean up a train derailment that polluted the local river and destroyed a small town's drinking water. In short, it is smart to address this issue properly before it becomes an issue so large you can't fix it.
I would liken this to a doctors check up; if you catch the the cancer early enough they can treat it. However if you just ignore the problem and hope for the best, you might get told you have two weeks to live.

For my third and final point, I would state the already aging workforce is also being asked to do far more than is safely possible. I once had a territory with 25 crossings, 10 power switches, and 15 electric lock switches (this is also not including all the automatic locations that were also on this job). For perspective, let's say you had 40 daily driver cars you were responsible to maintain. If you know anything about cars, you would know that a car requires maintenance; oil changes, tire rotations, brakes, daily inspections…the list could go on and on. Would you, as one person, be able to maintain 40 cars as effectively as you could 20? Common sense would tell you absolutely not. Also, what happens if an engine in of those cars you are responsible for failed and needed to be replaced? You would still have 39 more cars to maintain on top of this repair that you had to do. My point is this, if the railroad keeps pushing the limits on what your employees can do, eventually the system will fail! When that happens, you won't have any of your locations maintained properly which will lead to the entire system failing.

I view adding more employees as a long term investment for the health of the entire railroad. For example, a railroad could not hire new employees, cut existing employees, destroy infrastructure, and cripple the entire systems ability to run trains five years down the line for a 4% profit boost this year. Conversely, you could invest in your business and set up a scenario where the railroad will thrive for years and years to come. While that choice isn't mine, personally any time I've attempted to take the easy way out in my life, it has always come back to bite me and make it

harder than it would have been. I would say that doing something that isn't even mildly difficult to make your company thrive in the future would be a wise choice.

- In conclusion, if the merger goes through and a hiring freeze ensues, UP is getting a work force that is already doing everything it can to survive on what it has been provided, which hasn't been much. Taking away the little bit of resources they have will make everyone's job nearly impossible. However if you invest in your employees and make a couple of common sense decisions, you will create the ability to have a railroad that will thrive in the future and help move this country forward instead of crippling one of the nation's most valuable infrastructures. Thank you for your time."

Brotherhood of Railroad Signalmen

Union Pacific General Committee | www.brsupgc.org

A.J Carter
General Chairman
923 NE Woods Chapel Rd. #157
Lees Summit, MO 64064
816.564.8262 • *a.carter@brs.org*

D.M. Lemp
General Secretary-Treasurer
2637 N. Washington Blvd. #152
North Ogden, UT 84414
801.317.7740 • *d.lemp@brs.org*

R.D. Garrison
1st Vice General Chairman
4829 S. 1070 E.
Salt Lake City, UT 84117
407.579.9991 • *r.garrison@brs.org*

D.S. Ward
2nd Vice General Chairman
17540 Madison St.
Omaha, NE 68135
402.889.7297 • *d.ward@brs.org*

November 6, 2026

STATEMENT OF AARON CARTER, GENERAL CHAIRMAN, BROTHERHOOD OF RAILROAD SIGNALMEN, UNION PACIFIC GENERAL COMMITTEE, IN OPPOSITION TO THE PROPOSED MERGER

I submit this statement as General Chairman of the Brotherhood of Railroad Signalmen, representing signal employees on Union Pacific Railroad, Alton & Southern Railway, and the Terminal Railroad Association of St. Louis. I have approximately 20 years of experience with Union Pacific, including 12 years working in the field as a Signalman, Signal Maintainer, Maintenance Foreman, and Electronic Technician Inspector. I now represent employees responsible for constructing, inspecting, testing, and maintaining the signal systems and highway-rail grade crossing warning devices essential to safe railroad operations.

I strongly oppose the proposed merger between Union Pacific and Norfolk Southern. My opposition is based on my experience working for Union Pacific, my responsibilities representing its signal employees, and the staffing and operational problems I have repeatedly brought to the Carrier's attention over the last several years. Union Pacific is proposing to expand its railroad through additional yards, sidings, track capacity, and other infrastructure while it continues to struggle to adequately staff and maintain the railroad it already operates.

According to the Organization's historical records, the number of BRS-represented employees on Union Pacific declined from approximately 2,215 in 2018 to slightly more than 1,600 in 2026. That represents a reduction of approximately 615 employees, or nearly 28%, in eight years. While the implementation of Positive Train Control resulted in some temporary additional staffing, the Organization's records show approximately 1,950 represented employees in 2000, before that implementation. Today's workforce is substantially smaller even when compared with that earlier period.

During these same years, Union Pacific has added crossings, switches, sidings, second main tracks, Positive Train Control equipment, and other signal infrastructure that must be inspected, tested, maintained, and repaired. The geographical boundaries of a Signal Maintainer's territory may not have changed, but the amount and complexity of equipment within those boundaries have increased. The result is fewer employees responsible for maintaining more equipment.

Union Pacific's hiring and attrition records further demonstrate the problem. Employees continue to leave through retirement, resignation, and other causes, while replacement hiring has not restored the workforce to its previous levels. Although the Carrier has periodically announced hiring efforts, the overall decline in represented employees demonstrates that these efforts have not kept pace with the reduction in available manpower.

For several years, I have repeatedly raised concerns with Union Pacific management regarding vacant Signal Maintainer positions, insufficient construction forces, the lack of relief positions, the loss of headquartered maintenance gangs, and the growing responsibilities being placed on the remaining workforce. These

concerns have not been adequately addressed, and the consequences are increasingly apparent in the Carrier's daily operations.

One of the clearest examples is Union Pacific's continued use of Electronic Technician Inspectors, or ETIs, to cover vacant Signal Maintainer territories. ETIs have their own assigned inspection and testing responsibilities. When the Carrier directs them to cover maintenance territories, those employees must suspend or rearrange their regular duties to perform work that would otherwise be performed by a Signal Maintainer.

In June 2026, I raised concerns regarding a Signal Maintainer vacancy that had remained open for approximately eight months while ETIs were being used to cover the territory. In another documented instance, an ETI in the Austin, Texas area was directed to perform the duties of a Signal Maintainer. The Organization identified 22 hours during which the employee was required to suspend work associated with his regular assignment to cover another position.

These are not isolated examples of employees temporarily assisting one another. They demonstrate how Union Pacific is using an already reduced workforce to cover positions that remain necessary to its operations. The maintenance work does not disappear, and neither do the ETI's regularly assigned inspection and testing responsibilities.

The lack of adequate relief coverage has created similar problems. All but a few Relief Maintainer positions remain. Union Pacific increasingly relies on employees assigned to other territories to cover vacations, vacancies, and other absences. Employees have experienced difficulty obtaining earned vacation because management does not have sufficient personnel available to cover their assignments. When employees are absent, their work is frequently distributed among the remaining workforce, increasing the responsibilities of employees who already have assigned territories and duties.

The Organization has repeatedly pursued claims involving employees required to absorb excessive portions of an absent employee's workload. Union Pacific has paid claims arising from these situations, yet the underlying staffing problems continue. Paying additional compensation after the work has been redistributed does not provide the manpower necessary to perform that work.

The reduction in headquartered maintenance gangs has also affected the Carrier's ability to complete work that requires additional personnel beyond a regularly assigned Signal Maintainer. These gangs historically provided manpower for maintenance projects and work that could not reasonably be completed by an individual maintainer while also covering an assigned territory. As these resources have diminished, more responsibility has been shifted to employees who already have regular maintenance, inspection, and trouble-call obligations.

The same staffing deficiencies exist in signal construction. Union Pacific has repeatedly requested that employees assigned to one type of construction work perform duties associated with other construction assignments because sufficient manpower was unavailable. The Carrier has also attempted to require Signal Maintainers to work planned construction projects because sufficient construction gang manpower was unavailable.

These are scheduled projects, not unforeseen emergencies. The Carrier knows the work must be performed but does not maintain enough qualified employees in the appropriate assignments to complete it.
The Carrier's reliance on outside contractors provides further evidence of these staffing deficiencies. As recently as November 5, 2026, Union Pacific recognized that certain work belonged to BRS-represented employees and stopped a contractor from performing it, only to bring the contractor back because the

Carrier did not have sufficient qualified employees available to complete the work. This is a recent example of the Carrier acknowledging that the work should be performed by its own signal employees while lacking the workforce necessary to do so.

Over the past two years, I have also entered into agreements allowing outside contractors to perform certain work because Union Pacific did not have adequate staffing to complete it with its own employees. These arrangements were made in response to existing manpower shortages, not because the work was unnecessary or because the Carrier no longer required qualified signal employees.

These circumstances demonstrate that the staffing shortage is not simply a concern raised by the Organization. The Carrier's own actions show that it lacks sufficient employees to complete work on its existing railroad. Union Pacific is already relying on outside contractors to perform work that would otherwise be performed by its signal workforce, yet the proposed merger would introduce substantial additional construction and maintenance responsibilities.

This is particularly concerning because the proposed merger includes construction and expansion of railroad facilities. Additional sidings, yard tracks, switches, and related infrastructure will require qualified signal employees during construction. Once completed, these installations will create permanent inspection, testing, maintenance, and emergency response obligations.

The staffing requirements do not end when construction is completed. Every additional signal installation becomes part of the railroad's continuing maintenance responsibility. Union Pacific is already struggling to provide adequate staffing for its existing infrastructure, and I have seen nothing that gives me confidence it will provide sufficient employees to construct and maintain the additional facilities proposed under this merger.

Another consequence of inadequate staffing is the increasing difficulty employees face in completing federally required signal inspections and testing. I have repeatedly raised concerns about FRA-required testing becoming overdue as employees attempt to balance their regular assignments, maintenance responsibilities, trouble calls, and additional territories.

These testing requirements exist to help ensure the proper operation of safety-critical railroad equipment. When employees are required to spend additional time covering vacancies or responding to trouble calls, that time is no longer available for their regularly assigned testing and maintenance work. The obligations remain, but the workforce available to complete them has not increased.

Another recent concern involves the Carrier's instructions regarding the documentation of defects discovered during signal maintenance and testing. I have received reports that employees are being instructed not to record certain defects in the established testing and maintenance reporting system as requiring corrective action. Instead, employees are being directed to report those defects to management, which maintains a separate list that is not accessible to the employees responsible for maintaining and testing the equipment.

I have specifically questioned the Carrier about where employees are supposed to document these defects if they are no longer being properly recorded in the established reporting system. To date, I have not received an answer.

This practice is particularly concerning because it is directly related to the Carrier's inadequate staffing. The defects still exist, and the work necessary to correct them remains. However, rather than ensuring sufficient qualified employees are available to address identified deficiencies, the Carrier is directing employees to

report them outside the established process without providing a clear and accessible method of documentation.

I have raised concerns about similar reporting practices in the past. Accurate testing and maintenance records are essential to identifying equipment deficiencies, tracking outstanding corrective work, and ensuring that safety-critical equipment is properly maintained. A separate management-maintained list that employees cannot access raises serious questions about how defects are tracked, whether corrective work is being completed, and whether the Carrier's maintenance records accurately reflect the condition of its signal infrastructure.

These concerns are occurring on Union Pacific's existing railroad, before the additional infrastructure contemplated by the proposed merger is constructed. I find it difficult to have confidence in the Carrier's ability to maintain a substantially expanded signal system when it is already struggling to provide adequate staffing to correct identified defects and has not explained how those defects are to be properly documented.

Hours of Service limitations compound these problems. Employees responding to trouble calls outside their regular working hours can exhaust their available service time, limiting their ability to perform regularly scheduled work and federally required testing. The Carrier then has fewer employees available to cover the next assignment or respond to another problem.

I have also raised concerns about management declining to use available Signal Maintainers to respond to trouble calls in neighboring territories because doing so would consume their available Hours of Service and potentially leave their own territories without coverage. This illustrates how limited the Carrier's available manpower has become. An employee may be available to respond to a problem, but management must consider whether using that employee will leave another territory without sufficient coverage.

The Organization has also documented situations in which trouble calls were held rather than immediately assigned to an available employee. In some instances, management determined that an immediate response was unnecessary, and the problem was addressed when the regularly assigned employee returned to work. Regardless of the reason for holding a particular call, these situations demonstrate the operational decisions being made with limited maintenance resources.

These are problems occurring on Union Pacific's existing railroad. Additional signal installations and expanded operations will create more equipment requiring attention, more opportunities for equipment failures, and additional demands on the same classifications of employees already struggling to keep up with their assigned responsibilities.

Union Pacific's recent 33% weekend availability policy provides another example of the Carrier's difficulty providing adequate coverage with its existing workforce. Under this policy, employees are pressured to maintain a specified percentage of weekend availability or face the loss of permission to take their company vehicles home (which aids the carrier by expediting response times). To be clear, employees are not required by the agreement to respond to these calls on their rest days, covering these calls has always been by voluntary acceptance of calls among an adequate workforce; the problem today is that there are so few employees working so much that they choose not to accept as many calls on their rest days. Due to the shortfall in voluntary coverage due to overwork, employees have not only been threatened with loss of permission to take their company vehicles home they have also been threatened with changes to their regularly assigned rest days if they do not provide the weekend availability the Carrier demands.

These actions demonstrate how Union Pacific is attempting to obtain additional coverage from its existing employees rather than increasing staffing to meet its operational needs. Parking company vehicles does not create additional employees, nor does changing an employee's rest days resolve the underlying manpower shortage. Parking vehicles can increase response times by requiring an employee who previously could respond directly to first travel to a headquarters location. Changing rest days merely shifts the shortage to another part of the workweek.

The policy can also have the opposite effect from what the Carrier intends. Employees who previously made themselves available for calls during the week may lose the ability to respond directly from home because they do not meet the weekend availability requirement. Rather than increasing coverage, the Carrier risks reducing the availability it previously had.

The increasing reliance on the remaining workforce also creates additional pressure on employees who are responsible for maintaining safety-critical equipment. Employees must balance scheduled inspections and testing, emergency response, maintenance work, construction support, and coverage for absent employees, often while working within Hours of Service limitations. These competing responsibilities are a direct consequence of attempting to operate an expanding railroad with fewer qualified employees.

Another concern I have with the proposed merger is the potential for Union Pacific to subsequently sell or lease portions of its railroad to short-line operators, further reducing the number of employees on its system. Over the last two years, I have already dealt with two instances involving the transfer of Union Pacific operations to Genesee & Wyoming. These transactions directly affect the employees and the work performed on the affected portions of the railroad.

This raises serious questions about the reliability of any staffing projections associated with the proposed merger. Even if the applicants project that certain positions will remain following the merger, I have no assurance that Union Pacific will not subsequently transfer additional branch lines or operations to other carriers, resulting in further reductions in its workforce.

The transfer of operations in Eugene, Oregon, to Genesee & Wyoming's Central Oregon & Pacific Railroad is a documented example of this practice. My concern is that the proposed merger could provide additional opportunities for Union Pacific to reduce its workforce through similar transactions after obtaining approval, while presenting employment projections that do not account for those potential reductions.

Given the staffing reductions I have already witnessed, the existing shortage of qualified signal employees, and the Carrier's willingness to transfer operations to other railroads, I have little confidence that the proposed merger will provide the employment stability or workforce growth suggested by the applicants. The proposed merger would expand Union Pacific's operating responsibilities considerably. The applicants propose capital improvements that include siding extensions and expansions of existing yards and intermodal facilities across multiple states. The combined railroad would encompass approximately 50,000 miles of track across 43 states.

My concern is not simply the number of employees Union Pacific currently has. It is the relationship between the amount of infrastructure the Carrier operates and the workforce available to maintain it. Union Pacific has continued to increase the responsibilities of its existing employees rather than adequately addressing the staffing deficiencies I have repeatedly brought to management's attention.

The projection of no net increase in Signal positions is particularly concerning given the staffing problems Union Pacific is already experiencing. Vacant maintenance territories are being covered by ETIs, employees

are assigned additional territories during absences, construction projects require employees to be diverted from their regular responsibilities, required testing competes with emergency response and other duties, and weekend coverage is obtained by placing additional pressure on the existing workforce.

These are not hypothetical concerns about what might occur following a merger. They are conditions I have personally dealt with as General Chairman and have repeatedly brought to the Carrier's attention.

Union Pacific's history following its merger with Southern Pacific provides additional reason for concern. The 1996 merger was followed by severe service disruptions in 1997 and 1998. That history demonstrates the potential consequences of major railroad consolidation when operational demands exceed the resources available to meet them.

I also have concerns about the broader consequences of placing two major railroad systems under common corporate control. The applicants have promoted the benefits of a single transcontinental railroad, but the loss of independent railroad ownership raises questions about competition, transportation rates, and service for the customers who depend on these railroads.

Recent remarks by Union Pacific CEO Jim Vena have added to those concerns. During a March 2026 conference of the Southwest Association of Rail Shippers, Mr. Vena suggested that customers who opposed the merger could face an additional three or four percent increase in rates if the transaction did not proceed. After the recording became public, he characterized those remarks as humor.

I find those remarks troubling. Shippers whose businesses depend on Union Pacific should be able to express opposition to a proposed merger without concern that doing so could affect their transportation rates. The proposed merger would affect railroad employees, shippers, agricultural producers, manufacturers, communities, and consumers who depend on reliable and competitive freight transportation.

I have spent much of my career working on Union Pacific's signal infrastructure and now represent the employees responsible for maintaining it. The staffing problems I have described are supported by historical workforce records, grievances, and years of correspondence with Union Pacific management. They are not isolated incidents, and they are not problems that developed overnight. They reflect a continuing pattern of inadequate staffing and increasing operational demands.

Union Pacific is proposing to substantially expand its operating responsibilities while failing to demonstrate how it will provide the qualified workforce necessary to support that expansion. Its existing record of allowing vacancies to remain unfilled, failing to provide adequate relief coverage, diverting employees from their regular assignments, relying on contractors to perform work that would otherwise be performed by its own employees, and placing additional responsibilities on the remaining workforce gives me no confidence that the proposed merger will result in adequate staffing, improved service, or safer operations.

For these reasons, we strongly oppose the Union Pacific–Norfolk Southern merger. Union Pacific has not adequately staffed the railroad it already operates, and I have seen no credible plan demonstrating how it intends to adequately staff the substantially larger railroad it proposes to create. I believe approving this merger under these circumstances would place additional demands on an already strained workforce and create unnecessary risks to the safety and reliability of railroad operations.

I declare under penalty of perjury that the foregoing is true and correct.

/s/Aaron Carter__
Aaron Carter
General Chairman
Brotherhood of Railroad Signalmen
Union Pacific General Committee

November __, 2026

ARU/BLET

Addendum C

Declarations of IAM District #19 President Murtagh and District #19 Local Chairman Statements

BEFORE THE
UNITED STATES SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

—CONTROL—

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

DECLARATION OF Reece Murtagh

I, Reece Murtagh, declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the following is true and correct.

1. I am President of the International Association of Machinists and Aerospace Workers District Lodge 19 ("District 19" or "Union") which is the representative, for collective bargaining under the Railway Labor Act of railroad employees working in the Machinist class or craft, including Machinists employed by the Union Pacific Railroad ("UP") and Machinists employed by the Norfolk Southern Railway ("NSR"). District 19 members maintain, repair and overhaul locomotives and track maintenance equipment. They perform complete overhauls of locomotives and track equipment. Machinists inspect test and repair mechanical, and pneumatic systems such as airbrakes, and distributive power systems. Machinists rebuild airbrake parts and the trucks that hold up locomotives. They also use wheel truers to restore locomotive and car wheels back to FRA specification and machine parts to tolerances within one thousandth of an inch or less. Machinists also maintain repair and overhaul the machines used to repair tracks; and

they maintain and repair in-plant machines used to repair locomotives, track repair equipment and field structures. For Machinists to qualify to be employed by UP, among other items, they must either have 4 years of mechanic experience or have completed an apprenticeship program to perform the inspections and repairs to locomotives.

2. I have been a member of District 19 for over 15 years and before I was elected to office I worked as a system production traveling mechanic, traveling throughout the entire CSX rail network in all 26 states east of the Mississippi River.

3. District 19 has been participating in the STB's proceedings in this Finance Docket with several other rail unions, filing jointly as the Allied Rail Unions ("ARU"). I am submitting this Declaration to the Board in support of ARU's Comments in response to the Application by which UP and its affiliates seek authorization to control and merge with NSR and its affiliates. District 19 and the other ARU unions oppose Board approval of the proposed transaction. Alternatively, if the Board nonetheless decides to approve the transaction, District 19 and the other ARU unions request that certain conditions be imposed on such approval. District 19 and the other ARU unions also oppose responsive applications and requests for conditions sought by other parties (or concessions by Applicants) that would convey property of UP or NSR to Class II or Class III railroads, or provide Class II or Class III railroads operating rights over UP or NS lines.

4. District 19's full position is set forth in the ARU's Comments. In this Declaration I will respond to certain evidence and arguments presented by the Applicants as they relate to members of the District 19.

5. Applicants say that they will reduce work at locomotive shops and consolidate locomotive shops across upper and lower midwest but have refused to specify which shops

would be closed, which would have reduced work and which would have more work creating uncertainty among our members as to how a merger would affect them.

6. According to the Applicants Craft Employee Impact Report, 81 locomotive mechanic jobs will be abolished, 400 created and 117 transferred (the difference between transferred and abolished then created is not explained). Given these plans and the geographic distances between shops that Applicants say will be affected by the merger, our members are concerned about job losses and compelled relocations. This is on top of the reduction of 1,123 Machinists since 2016, the 45 Machinists who are currently furloughed, and the lack of hiring for attrition during this 10-year period.

7. While Applicants acknowledge that the New York Dock employee protections will apply to adversely affected employees, we understand that they will take the position that employees whose jobs are abolished at one location will be obligated to accept a transfer to another location, even one far away in order to retain their right to New York Dock dismissal benefits. Based on the Employee Impact Report, there would be at least 117 locomotive mechanics and possibly another 81 mechanics who may experience job abolishments and dismissals and be confronted with Applicant arguments that they must accept a transfer or a newly created position that requires them to relocate. The majority of Machinists have over 15 years of seniority. Closing down shops or forcing Machinists to relocate could devastate families and destroy railroad communities that depend on good railroad jobs. As is explained in our Comments, we contend that such arguments are contrary to the New York Dock conditions and the Board should declare them to be wrong under New York Dock and the statute.

8. Attached to my sworn statement are letters from Local Chairmen at District 19 describing the serious concerns about the UP/NS merger that they are routinely hearing from

working members – including that being forced to relocate to another state to maintain their job could be difficult or impossible. Marco Melendez wrote that "Excessive overtime is wearing our members down and raises serious questions about employee fatigue and workplace safety" where employees are forced "to choose between concerns about fatigue and the possibility of disciplinary action" by UP. Christoper Paulsen wrote about how Machinists at his shop were working an extra 4 hours of forced overtime every week, but that has been bumped up to 8 hours of forced overtime each week effective October 12, 2026. He wrote "Just a couple of years ago, Union Pacific was furloughing massive amounts of employees, now we are forcing the remaining employees that were not furloughed to work 48 hours a week… if Union Pacific is struggling to manage the current railroad in this manner, what will that look like with a merger?" Ryan Butler wrote that his entire shop has been required to work 8 hours of forced overtime per week for nearly 3 years because UP closed his facility in 2019, realized this was an error, reopened the facility and began recalling employees and doing a limited amount of new hiring. Brother Butler's experience is a clear warning about some of the operational efficiencies UP and NS may believe they may be able to achieve by shutting down shops across the country. Saying "Oops!" and trying to undo the damage is much easier said than done. In the process, lives are uprooted, institutional knowledge from highly skilled Machinists is lost and it is clearly very challenging to replace. Brother Butler wrote that "employees now travel several hundred miles each week to return home and spend time with their families" and "[e]mployees should not continually be expected to uproot their lives, separate themselves from their families, or absorb significant financial burdens as a consequence of corporate restructuring and consolidation."

9. District 19 opposes the proposed transaction because history shows mergers result in reduced employment and are highly skeptical of the Applicants growth projections. Additionally,

history has shown that increased concentration in the industry has led to reductions in employment and poorer service flowing from market dominance which has meant adverse impacts on employees which in turn result in reduced service since employees provide the service. Just since this proposed merger was announced, UP has furloughed more Machinists in Salt Lake City, UT and Portland, OR in September 2025 and San Antonio, TX in October 2025. In my meetings with UP, I asked about these furloughs and the importance of keeping trained staff in anticipation of future growth. I was told "we don't need people at those locations." UP currently doesn't have the adequate staffing to properly maintain their existing locomotive fleet. They are in no position to take on additional work. Recently UP served a subcontracting notice on July 6, 2026 that the Carrier needed to bring an additional 400 locomotives out of storage due to an increase in intermodal traffic. UP cited their lack of manpower as the need to subcontract these locomotives to ready status. UP's Chief Mechanical Officer has recently confirmed to District 19 that UP will not staff their shops adequately and expect to get by with a continued use of forced overtime at 8 hours or more per week. UP will not hire the skilled Machinists needed to safely repair their fleet of locomotives. UP is not ready to take on any additional work and can't keep up with the current work they have.

10. We are also concerned about the likelihood that approval of the proposed UP-NS merger will lead to a follow-on trans-continental merger, creating national duopoly. Experience of the 1990s was that one merger led to another; there is no reason to believe that approval of a UP-NS merger will not lead to a merger of competitor railroads. Creation of a national duopoly will mean that neither railroad would be truly accountable to anyone, which will result in employment being reduced to lower operating ratios, and service will suffer as a consequence of fewer employees to provide the service, and because there will be no consequences for

deteriorated service due to a lack of competition and a weak regulatory regime that was not designed for duopolies.

11. In the event the Board does approve the transaction, District 19 requests imposition of conditions to protect the UP and NS workers, and to preserve employee rights. Our requested conditions are described and explained in the ARU comments, but generally, we request that any approval of the merger be conditioned on terms that preserve the work and employment of current workers, impose the so-called Cramdown Agreement as a condition of approval, require *New York Dock* protections for post-merger line sales and leases, prevent infinite use of the *New York Dock* conditions to change collective bargaining agreements outside Railway Labor Act by limiting the time to use the *New York Dock* conditions to a reasonable time period when the merger is actually being implemented, and a declaration that employees whose jobs are abolished who decline to relocate hundreds or a thousand miles from their residences will not forfeit dismissal allowance benefits for which they would be eligible as employees whose jobs were abolished.

12. Finally, District 19 opposes requests for divestiture of UP or NSR lines to Class II or Class III railroads, as well as conditions that would involve sales or leases of UP or NSR lines to Class II or Class III railroads and acquisitions of trackage rights over UP or NSR lines by Class II or Class III railroads. As is explained in ARU's comments, employees on many Class II and Class III do not have union representation; and even when they have representation, the agreements covering those employees are below the standards of agreements applicable on Class I railroads because of the lower profit margins on captive feeder railroads. If the STB decides that the merger cannot be approved because of the effects it will have on competition and the market dominance of the merged carrier, the Board should not try to mitigate those problems by

authorizing divestitures, sales, leases and access that will diminish the pay, rules and benefits or rail workers; the merger should not be "saved" by making the workers "pay" for it.

I declare under penalty of perjury, that the foregoing is true and correct.

November 12, 2026
Date

Reece Murtagh
Reece Murtagh

INTERNATIONAL
ASSOCIATION
OF MACHINIST
ALBERT J. HAYES
LOCAL LODGE 478

President Myron Magee
Vice President Marco Melendez
Recording Secretary Matthew Kisk
Financial Secretary Karl Hoffman
Conductor Sentential Steven Huskie
Trustee Isaul Rosales
Trustee Carl Hill
Trustee Mark Kroeger

November 6, 2026

Subject: IAM Local 478 Concerns Regarding the UP–NS Merger

Dear Members of the Surface Transportation Board:

My name is Marco Melendez. I am a machinist and the Local Chairman of IAM Local 478. Our local is based in Chicago, one of the cities directly affected by the proposed merger, and represents approximately 90 machinists at Union Pacific's Proviso facility and outlying points.

Our number one concern is job security. Union Pacific's "jobs for life" commitment may protect a member's employment, but it does not guarantee that their current location or craft will remain available. A member may be forced to relocate to another state, leave their craft, and accept a different position that may pay less than their current job. Members are also concerned about the possibility of furloughs. This uncertainty affects not only our members but also their families.

Safety must come before schedules. Members at our facility feel intimidated about speaking up when they discover locomotive defects. We have been instructed to notify management and obtain permission before documenting defects we find. This practice can discourage employees from reporting legitimate safety concerns. We have witnessed defects being ignored and tasks being deferred or canceled so equipment can be returned to service and trains can continue moving.

The company's C.A.P.S. and critical rules policies contribute to this atmosphere of fear. Employees who fail to comply with management instructions can be charged with a Rule 1.6 violation, which can result in termination or a one-year probationary period if they agree to waive their right to a formal investigation. If an employee challenges the violation and it is upheld, they may face termination or a probationary period doubled to two years. These disciplinary consequences create an atmosphere of intimidation that discourages employees from speaking up, questioning management decisions, or challenging instructions they believe may compromise safety.

The company's CEO also warned at the Southwest Association of Shippers conference that costs to shippers could rise if they did not support the merger. To our members, statements of this nature reflect a broader culture of intimidation that extends through multiple levels of management. They also raise serious questions about who will ultimately bear the financial burden of the merger.

Mandatory overtime is another significant concern. Excessive overtime is wearing our members down and raises serious questions about employee fatigue and workplace safety. Employees who refuse mandatory overtime risk being charged with rule violations and facing the disciplinary

consequences previously described. This places employees in a difficult position, forcing them to choose between concerns about fatigue and the possibility of disciplinary action.

Our members worry that safety is treated as a priority only when it does not interfere with keeping trains on schedule. A merger that increases pressure to reduce costs, improve efficiency, or move trains faster could further intensify these existing concerns.

From our perspective, this merger appears to be driven primarily by the goal of increasing profits for shareholders. The Board should carefully consider the potential consequences for railroad employees, customers, and the communities these railroads serve, rather than focusing solely on the financial benefits presented in support of the merger.

I urge the Surface Transportation Board to give serious consideration to the concerns of the employees who keep these railroads operating every day. Any decision regarding this merger should include meaningful protections for our members' jobs, their ability to report defects and raise safety concerns without fear of retaliation, and the safety of railroad employees and the communities in which they work.

Sincerely,

Marco Melendez
Machinist and Local Chairman
IAM Local 478

IAM UNION

North Platte Local Lodge 180

Local Chairman Chris Paulsen

A little introduction, I'm Chris Paulsen, I have been employed by Union Pacific since July of 2005. My entire career with Union Pacific has been in the machinist craft, July of 2005 I started as an apprentice and was promoted to journeyman machinist a year and half later. I was a shift committeeman for 8 years before accepting the Local Chairman position with the local lodge 180 organization. We have seen some major changes in Union Pacific over those years. When I started in 2005, I was number 410 on our seniority roster, today we struggle to employ over 180 machinists at North Platte. We are currently attempting to hire for the machinist craft in North Platte, we have the authority to hire 23 machinists with a working roster of about 176 machinists at this point. Representing those 176 machinists lets me hear all kinds of view points about the railroad and how we see their priorities. I can say our organization feels like the biggest priority for Union Pacific at this point is strictly profits, share holders, and getting the merger approved.

Currently one of our major issues with Union Pacific in North Platte is the hours the railroad is demanding from us to maintain our current fleet of locomotives. Since about August 12 we have been forcing every machinist for an extra four hours of overtime weekly. Starting October 12th we had to increase that mandatory overtime to eight hours per machinist weekly. This amount of work added to a 40 hour work week adds a lot of stress and consumes a lot of our members' down time, its by far the biggest concern that we have with the pending merger. Just a couple of years ago Union Pacific was furloughing massive amounts of employees, now we are forcing the remaining employees that were not furloughed to work 48 hours a week. From a local union perspective this seems like a poor way to manage a company and the workforce. Another big concern with my members is how these hours may be getting presented, and is Union Pacific being honest about the current overtime hours being mandated to maintain the current fleet. To give you a glimpse of the hours we are referring to, the last three weeks of October we were mandated eight hours per machinist, per week. Between the mandated and extra overtime we are coming in at 1,500 - 1,800 hours of overtime weekly for those three weeks. That breaks down to about twenty nine, eight hour shifts covered daily. I think our big question or concern knowing all this is, if Union Pacific is struggling to manage the current railroad in this manner, what will that look like with a merger ?

In summary, our local lodge is very concerned with our current situation with Union Pacific and we struggle seeing the benefit of adding to this mismanagement. We have seen the furloughs, lack of hiring, and mandatory or forced overtime. We struggle to see what the benefit would be if Union Pacific is applying their management practices to a railroad that is currently functioning without the problems Union Pacific has created. It's the small things that concern us, we can't resolve something as small as hiring employees in a timely manner to avoid forcing the current workforce, how can we manage a whole railroad with how many employees added under Union Pacific management.

Sincerely,

Christopher J Paulsen

Local Lodge 180 Local Chairman

Statement of Opposition to the Proposed Union Pacific Railroad (UP) and Norfolk Southern Railway (NS) Merger

Submitted by: IAM Local Lodge #1333 – Local Chairman

To the Surface Transportation Board:

On behalf of the machinists represented by IAM Local Lodge #1333, I am submitting this statement to express our opposition to the proposed railroad merger. Our concerns are based on the direct impact that previous railroad consolidations, facility closures, workforce reductions, and operational changes have had on our members. We believe these experiences provide important insight into the potential consequences of another merger, particularly regarding employee safety, job security, working conditions, and the long-term stability of railroad employees and their families.

1. Employee Safety, Staffing, and Operational Demands

For nearly three years, our entire shop has been required to work an additional eight hours of overtime per employee each week. This overtime is either accomplished by extending employees' regular workdays or requiring them to report to work on their scheduled rest days. The requirement is driven by either elevated locomotive unit counts or increased workload and shop-hour demands.

The fact that this requirement has continued for nearly three years raises serious questions about the railroad's ability to adequately staff and sustain the operation without relying on mandatory overtime. What may have initially been intended as a temporary solution has effectively become a permanent part of our weekly work schedule.

This situation is largely a consequence of the closure of our facility in September 2019. The closure left our facility with a limited number of employees possessing the experience and qualifications necessary to perform the required work.

After recognizing the continued necessity of our facility and the importance of its strategic location, the railroad began recalling employees, followed by a limited amount of additional hiring. Since then, our workforce has gradually increased through a combination of recalls and new hires. However, retirements, previous workforce reductions, and the time required to develop inexperienced employees have created ongoing challenges in maintaining an adequately experienced workforce.

Requiring employees to consistently work additional hours for such an extended period raises legitimate concerns regarding fatigue, workplace safety, workmanship, and the ability to consistently maintain the quality of repairs and inspections necessary for safe railroad operations.

There is also an important distinction between having an adequate number of employees on paper and having an adequately experienced workforce. Experienced machinists possess years of accumulated knowledge, troubleshooting abilities, and familiarity with locomotive systems. That knowledge cannot simply be replaced by hiring additional employees. Developing competent and experienced machinists takes considerable time, training, and practical experience.

We are concerned that another merger could introduce additional production demands, operational changes, and staffing pressures without adequately addressing the existing challenges. Increased production expectations must be accompanied by sufficient staffing, proper training, retention of experienced employees, and reasonable consideration for employee fatigue and safety.

Railroad employees should not be expected to continually compensate for staffing deficiencies through mandatory overtime.

2. Employment Security and the Job Guarantee

The job-for-life guarantee being offered to employees raises significant concerns because the actual protections and limitations of that guarantee remain unclear.

A guarantee of continued employment means very little if the location, craft, classification, or compensation associated with that employment are not protected. Employees could potentially be required to relocate hundreds of miles, accept positions in different crafts, or take positions with reduced compensation in order to retain employment.

For many railroad families, these possibilities would create substantial financial and personal hardships. Employees have established their lives around their current communities, homes, family responsibilities, and careers. Requiring employees to relocate or accept significantly different employment conditions could place considerable strain on families, particularly in the current economic environment.

A meaningful employment guarantee should provide clear and enforceable protections for an employee's existing craft, seniority, compensation, and geographic location. Without those assurances, the guarantee offers limited protection against the actual hardships employees may experience.

Simply guaranteeing that an employee will have a job somewhere within the railroad does not necessarily protect the career, livelihood, or standard of living that employee has worked years to establish.

3. The Historical Impact of Furloughs and Facility Closures

Many of our machinists have already experienced the consequences of repeated furloughs, workforce reductions, and shop closures. These impacts began with the workforce reductions and facility closures in 2019 and have continued through more recent employment disruptions.

Our facility has received several employees who were displaced by these closures and furloughs. While we are fortunate to have been able to provide employment opportunities for some of these individuals, the circumstances surrounding their employment illustrate the personal sacrifices railroad employees are routinely asked to make.

Some employees now travel several hundred miles each week to return home and spend time with their families. Others have relocated themselves and their families significant distances simply to retain their railroad employment.

These are not minor inconveniences. They represent substantial disruptions to family life, financial stability, and the ability of employees to maintain meaningful connections with their communities.

Employees should not continually be expected to uproot their lives, separate themselves from their families, or absorb significant financial burdens as a consequence of corporate restructuring and consolidation.

Another merger creates legitimate concerns that these same circumstances could be repeated on an even larger scale. The Board should carefully consider the cumulative impact that previous consolidations, closures, and furloughs have already had on the railroad workforce before approving another major restructuring.

4. The Loss of Experienced Railroad Employees

One of our greatest concerns is the potential loss of experienced employees and the long-term consequences that creates for railroad operations.

The machinists who maintain and repair locomotives are responsible for work that directly affects the reliability and safe operation of railroad equipment. Their experience, technical knowledge, and ability to identify problems are developed over many years of hands-on work.

When experienced employees are furloughed, displaced, forced to relocate, or leave the industry because of uncertainty surrounding their employment, that knowledge and experience leave with them.

Hiring additional employees does not immediately resolve this problem. New employees require substantial training, mentoring, and practical experience before they can independently perform the work with the knowledge and proficiency of a seasoned machinist.

Our own facility is an example of the challenges created by workforce reductions and closures. The September 2019 shutdown resulted in the loss of experienced personnel and created staffing challenges that continue to affect our operation today.

The railroad industry cannot continually reduce experienced workforces, close facilities, and expect production demands to be met without considering the time and resources required to rebuild that experience.

The long-term effects of these decisions extend beyond individual employees. They affect operational efficiency, equipment reliability, training, and the ability to maintain consistent standards of safe railroad operations.

5. Labor's Historical Experience with Railroad Consolidation

Our local's position is that we oppose this merger. Our experiences with previous workforce reductions, facility closures, furloughs, and operational changes have created significant concerns about the potential effects another consolidation could have on railroad labor.

While the railroad may identify operational efficiencies and financial benefits as reasons for pursuing consolidation, those potential benefits must be considered alongside the consequences for the employees who perform the work necessary to keep the railroad operating.

The people who maintain the locomotives, equipment, and infrastructure are essential to safe and reliable railroad operations. Their experience, institutional knowledge, and commitment cannot simply be replaced without consequences.

We believe the interests of railroad employees, their families, and the communities that depend on railroad employment deserve meaningful consideration before another consolidation is approved.

6. Conclusion and Request to the Board

As Local Chairman representing the machinists of IAM Local Lodge #1333, I respectfully ask the Surface Transportation Board to carefully consider the actual and potential consequences this merger could have on railroad employees.

Our concerns are not based solely on speculation about what might happen. They are rooted in the experiences of our members who have already endured facility closures, furloughs, forced relocations, increased workloads, and prolonged periods of employment uncertainty.

Our current requirement of eight additional hours of overtime per machinist each week demonstrates the staffing and production challenges that already exist within our facility. These challenges developed following the 2019 closure and continue despite subsequent recalls and limited hiring.

We are concerned that another merger could further increase these pressures while placing additional demands on an already challenged workforce.

We respectfully ask the Board to give serious consideration to the following:

- The impact of the proposed merger on existing staffing levels and the retention of experienced employees.
- The potential effects of increased production demands and mandatory overtime on employee fatigue and workplace safety.

- The adequacy of employee training and the time required to develop an experienced workforce.
- The actual protections provided by the proposed job guarantee, including craft, seniority, compensation, and geographic location.
- The potential for additional facility closures, furloughs, relocations, and disruptions to employees and their families.
- The long-term effects of workforce reductions and operational restructuring on the reliability and safe operation of railroad equipment.

We recognize that the railroad industry continues to evolve, but progress should not come at the expense of employee safety, reasonable working conditions, employment stability, and the families who depend on these jobs.

Our members have dedicated their careers to maintaining the equipment and supporting the operations that keep this railroad moving. They deserve more than vague assurances about future employment. They deserve meaningful protections and consideration of the long-term consequences of decisions that directly affect their livelihoods.

The railroad cannot expect to maintain safe, reliable, and efficient operations while continually placing the burden of staffing shortages, workforce restructuring, and increased production demands on the employees who perform the work.

For these reasons, IAM Local Lodge #1333 stands in opposition to the proposed merger and respectfully requests that the Surface Transportation Board take these concerns into account when evaluating the application.

Respectfully submitted,

Ryan Butler

Local Chairman
IAM Local Lodge #1333

November 6, 2026

ARU/BLET

Addendum D

Declaration of TCU/IAM President Hollis And TCU/IAM Member Declarations and Statements

BEFORE THE
UNITED STATES SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

—CONTROL—

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

DECLARATION OF MATT HOLLIS

I, Matt Hollis, declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the following is true and correct.

1. I am President of the Transportation Communications Union/IAM ("TCU/IAM"). TCU/IAM is the representative, for collective bargaining under the Railway Labor Act of railroad employees working in the Clerk class or craft, including Clerks employed by the Union Pacific Railroad ("UP") and Clerks employed by the Norfolk Southern Railway ("NSR"). Among other things, clerical workers represented by TCU/IAM perform various duties on the lines of UP, NSR, other Class I railroads, Amtrak, major commuter railroads as well as some regional and short line railroads - such as administrative (payroll, time & material, accounting, mail handlers, etc.), crew callers (contact train crews for their assignments), crew haulers (transport train crews), truck drivers, stocking clerks (warehousing parts and other materials), stevedores & intermodal workers (load/unload trains at ports and other intermodal facilities), customer service and salesmen, bridge tenders (responsible for raising/lowering bridges;

managing marine traffic), and many more.

2. Before becoming an officer of the TCU/IAM, I began my railroad career in 2004 as a yard clerk for CSX- Boyles Yard in Birmingham, Alabama.

3. TCU/IAM has been participating in the STB's proceedings in this Finance Docket with several other rail unions, filing jointly as the Allied Rail Unions ("ARU"). I am submitting this Declaration to the Board in support of ARU's Comments in response to the Application by which UP and its affiliates seek authorization to control and merge with NSR and its affiliates. TCU/IAM and the other ARU unions oppose Board approval of the proposed transaction. Alternatively, if the Board nonetheless decides to approve the transaction, TCU/IAM and the other ARU unions request that certain conditions be imposed on such approval. TCU/IAM and the other ARU unions also oppose responsive applications and requests for conditions sought by other parties (or concessions by Applicants) that would convey property of UP or NSR to Class II or Class III railroads, or provide Class II or Class III railroads operating rights over UP or NS lines.

4. TCU/IAM's full position is set forth in the ARU's Comments. In this Declaration I will respond to certain evidence and arguments presented by the Applicants as they relate to members of the TCU/IAM.

5. Applicants say that they will essentially cease all clerk work at NS's headquarters in Atlanta and transfer the work performed by those employees to positions at what would be the merged carrier's headquarters in Omah, NE, a distance of about 1000 miles.

6. According to the Applicants Craft Employee Impact Report, 11 Clerical jobs will be abolished, 0 created, and 187 transferred (the difference between transferred and abolished then created is not explained). Given these plans and the geographic distances between Atlanta and

Omaha our members are concerned about job losses and compelled relocations. Many of our members have worked at NS' Atlanta offices for years, they have families in Atlanta, spouses who have their own jobs in Atlanta, children in schools in Atlanta, other relatives in Atlanta and connections to communities, organizations and religious institutions in Atlanta.

7. While Applicants acknowledge that the New York Dock employee protections will apply to adversely affected employees, we understand that they will take the position that employees whose jobs are abolished at Atlanta will be obligated to accept a transfer to position in Omaha in order to retain their right to New York Dock dismissal benefits. In August of 2026 UP Labor Relations VP Macqui Parkerson explicitly told me that the carriers would take the position that if an employee refused to relocate from Atlanta to Omaha, they would no longer be eligible for New York Dock dismissal benefits. Based on the Employee Impact Report, there would be 187 Clerks who will experience job abolishments and dismissals and be confronted with Applicant arguments that they must accept a transfer or a newly created position that requires them to relocate. As is explained in our Comments, we contend that such arguments are contrary to the New York Dock conditions and the Board should declare them to be wrong under New York Dock and the statute.

8. Attached to my sworn statement are the declarations of working TCU/IAM members describing their tenure with NS at Atlanta, the position they hold, the work they perform, and the strong connections they have in Atlanta that would make moving to Omaha difficult or impossible. I have also attached statements of several TCU/IAM members who wished not to disclose their name for fear of retaliation, I will furnish the members' names to the STB if the Board requests that I do so.

9. TCU/IAM opposes the proposed transaction for a variety of reasons. Among other things history shows mergers result in reduced employment, and we are highly skeptical of the Applicants projections of growth in employment. Even when carriers have projected increases in employment, reality has not matched the projections. For example, CPKC projected that post-merger it would have net 750+ additional U.S. jobs. But in the years after the merger, CPKC did not increase its employment to numbers anywhere near the projections in the application. CPKC's own filings with this agency show that for the largest categories of craft employees (engineering -L300, mechanical-L400, Operating -L600) CPKC employment was 4339 on January 1, 2024 (CPKC's first report as a merged entity), 4365 on January 1, 2025, 4424 on January 1, 2026 and 4372 in the most recent report (September 2026); in short for those reporting categories -33 more employees today than at consummation of the merger (less than a 1% increase). It is my understanding that clerk craft positions are reported in STB categories L-100 and L-200, but executives, managers, and exempt employee employment is also reported in those categories; so one must be careful in drawing conclusions about the Clerk craft from reporting in those categories. But CPKC's reporting in those categories show employment levels of 1202 as of January 1, 2024, 1242 as of January 1, 2025, 1094 as of January 1, 2026 and 1048 as of September 1, 2026—154 fewer employees in the two classifications than there were as of January 1, 2024. Additionally, history has shown that increased concentration in the industry has led to reductions in employment and poorer service flowing from carrier market dominance which has allowed them to reduce employment because shippers suffering from poor service due to reduced staffing have nowhere else to turn for rail service, and the statutorily weakened regulatory authority of the Board has limited its ability to provide recourse to shippers suffering poor and unreliable service.

10. We are also concerned about the likelihood that approval of the proposed UP-NS merger will lead to a follow-on trans-continental merger, creating national duopoly. Experience of the 1990s was that one merger led to another; there is no reason to believe that approval of a UP-NS merger will not lead to a merger of competitor railroads. Creation of a national duopoly will mean that neither railroad would be truly accountable to anyone, which will result in employment being reduced to lower operating ratios, and service will suffer as a consequence of fewer employees to provide the service, and because there will be no consequences for deteriorated service due to a lack of competition and a weak regulatory regime that was not designed for duopolies.

11. In the event the Board does approve the transaction, TCU/IAM requests imposition of conditions to protect the UP and NS workers, and to preserve employee rights. Our requested conditions are described and explained in the ARU comments, but generally, we request that any approval of the merger be conditioned on terms that preserve the work and employment of current workers, impose the so-called Cramdown Agreement as a condition of approval, require *New York Dock* protections for post-merger line sales and leases, prevent infinite use of the *New York Dock* conditions to change collective bargaining agreements outside Railway Labor Act by limiting the time to use the *New York Dock* conditions to a reasonable time period when the merger is actually being implemented, and a declaration that employees whose jobs are abolished who decline to relocate hundreds or a thousand miles from their residences will not forfeit dismissal allowance benefits for which they would be eligible as employees whose jobs were abolished.

12. Finally, TCU/IAM opposes requests for divestiture of UP or NSR lines to Class II or Class III railroads, as well as conditions that would involve sales or leases of UP or NSR lines to Class II or Class III railroads and acquisitions of trackage rights over UP or NSR lines by Class II or Class III railroads. As is explained in ARU's comments, employees on many Class II and Class III do not have union representation; and even when they have representation, the agreements covering those employees are below the standards of agreements applicable on Class I railroads because of the lower profit margins on captive feeder railroads. If the STB decides that the merger cannot be approved because of the effects it will have on competition and the market dominance of the merged carrier, the Board should not try to mitigate those problems by authorizing divestitures, sales, leases and access that will diminish the pay, rules and benefits or rail workers; the merger should not be "saved" by making the workers "pay" for it.

I declare under penalty of perjury, that the foregoing is true and correct.

November 10, 2026
Date

Matt Hollis
Matt Hollis

BEFORE THE

SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY —CONTROL— NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

DECLARATION OF NEIMAN J. DUNAMS, SR.

I, Neiman J. Dunams, Sr., declare under penalty of perjury pursuant to 28 U.S.C. §1746, that the following is true and correct.

1. I am an IDS Coordinator and 20 year employee of Norfolk Southern.
2. I moved to Atlanta when I had to evacuate my home due to Hurricane Katrina. It was a hard transition, especially with aging parents.
3. Coming to Atlanta, getting hired at Norfolk Southern, and maintaining a railroad career has been very challenging.
4. Having to move again after the life I've built here in Atlanta is a hard pill to swallow.
5. We have too much technology to have to move in order to do our job. Why do we have to move to Omaha in order to continue our employment?
6. This move should not have to happen in order for me to continue employment!

November __, 2026

Neiman J Dunams, Sr

Signature: Neiman J Dunams (Nov 13, 2026 09:48:37 EST)

Email: njdunams146@gmail.com

BEFORE THE

SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY —CONTROL— NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

DECLARATION OF RHONDA LEWIS

I, Rhonda Lewis, declare under penalty of perjury pursuant to 28 U.S.C. §1746, that the following is true and correct.

1. I have dedicated 20 years of my career to Norfolk Southern as a Crew Dispatcher in Atlanta, Georgia. Over those 20 years, I have built not only my career but also my home and family life in this community. Norfolk Southern has been a major part of my life, and I take pride in the years of service and commitment I have given to this company.
2. If my position is relocated, I could be forced to make an extremely difficult decision between maintaining my employment and uprooting the family and life I have spent decades building.
3. Relocating to Omaha would create significant hardships for my family.
4. I have an older husband whose well-being and quality of life would be greatly affected by such a move.

5. In addition, I am responsible for helping care for my elderly mother and brother-in-law – both of whom depend on the support and care that I provide. Their medical care, doctors, and ongoing treatments are already established here in Atlanta.
6. Relocating would mean having to find appropriate living arrangements for them, establish new medical providers, transfer their care, and ensure that their needs continue to be met. These are not simple adjustments; they are major life changes that could place an enormous burden on my entire family.
7. My inability to move to Omaha should not be considered a voluntary decision to leave my employment, nor should it be used as a reason to deny me any employee protections or benefits to which I may otherwise be entitled. Employees who cannot relocate because of legitimate family, financial, medical, or personal circumstances deserve meaningful consideration and protection.
8. This move should not have to happen in order for me to continue employment!
9. This merger is not just a business transaction or a corporate restructuring for those of us directly affected. It represents the possibility of losing our jobs, disrupting our families, sacrificing our homes, and having to make life-changing decisions after years of loyalty and service to Norfolk Southern.
10. After 20 years of service, I believe employees like myself deserve more than uncertainty and the possibility of being forced to choose between our livelihoods and our families. Our years of dedication, our established lives, and our responsibilities outside of work should matter when decisions are made that could permanently change our futures.

November __, 2026

_____
Rhonda Lewis

Signature: Rhonda Lewis (Nov 13, 2026 10:03:26 EST)

Email: rhondalewistcu943@gmail.com

BEFORE THE

SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY —CONTROL— NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

DECLARATION OF SHAWNDA TIGGS

I, Shawnda Tiggs, declare under penalty of perjury pursuant to 28 U.S.C. §1746, that the following is true and correct.

1. I am a Crew Dispatcher. I have worked for Norfolk Southern for 22 years and I am a Local Chairman for the Transportation Communications Union.
2. I was born and raised in Atlanta. This is home and this is where my whole life is. All my family is here. I love my job and would want to keep working in the same capacity.
3. It is not at all feasible for me to move to Omaha.
4. I am a single mother with a son who still relies on me heavily. My mama is nearly 80 years old and I am responsible for her support and care.
5. Just this year, we lost three family members on my mama's side and that has only increased my responsibilities to my relatives. I have become an elder in my family. I'm one of the ones everyone else is counting on.

6. I can't just pack up and leave the people who depend on me to keep a job I've been doing for over twenty years. I've been dedicated and dependable to this company the whole time. To just uproot us for no real reason is ridiculous. Making people leave their whole lives behind when the job can be done right where we are in Atlanta – that makes no sense.
7. The Surface Transportation Board should take the proper time to truly consider the impact this would have on thousands of innocent families and people – the real people behind these jobs, our families, our homes, our communities – before a decision is made that changes all of our lives.

November __, 2026

_____
Shawnda Tiggs

Signature: Shawnda Tiggs (Nov 13, 2026 10:22:33 EST)
Email: shawndatiggstcu943@gmail.com

BEFORE THE

SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY —CONTROL— NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

DECLARATION OF SHANICE WILLIS

I, Shanice Willis, declare under penalty of perjury pursuant to 28 U.S.C. §1746, that the following is true and correct.

1. I am a Norfolk Southern CMC Crew Dispatcher with 9 1/2 of service in Atlanta.
2. If my position is transferred. relocating would not be realistic because I am a single mother who relies heavily on the support of my parents both financially and with day-to-day responsibilities.
3. Due to financial constraints, their assistance is an essential part of my support system and allows me to balance my responsibilities as a working mother.
4. Relocating out of state would mean losing access to this critical support, creating additional financial burdens and childcare challenges that would be extremely difficult to manage independently.

5. Additionally, relocating would disrupt the stability and support system that my children currently depend on.
6. Considering my financial limitations, parental responsibilities, and reliance on my family's support, an out-of-state relocation is not reasonable or practical.
7. Remaining in my current state is essential to maintaining stability for both myself and my children.
8. I want to keep working. My inability to move should not be treated as a voluntary decision to leave employment or used to deny protections that might otherwise apply.

November __, 2026

_____
Shanice Willis

Signature: Shanice Willis (Nov 13, 2026 14:43:38 EST)
Email: shanicelwillis@gmail.com

BEFORE THE
UNITED STATES SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

—CONTROL—

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

ADDITIONAL STATEMENTS FROM TCU/IAM MEMBERS

The following additional statements have been submitted by members of Transportation Communications Union/IAM ("TCU/IAM"). Some members of TCU/IAM requested that their names not be included in the public docket, but their names can be provided privately and confidentially to the Surface Transportation Board upon request.

Michelle Stewart

I have been employed with Norfolk Southern Railroad for 18 years and 11 months in Crew Management in Atlanta, Georgia. I started my career with Norfolk Southern as a Crew Caller and have worked my way into my current position as a Support Chief Caller.

Over the years, I have built my career, established my home, and created a life for myself and my family here in Atlanta. I have a fiancée who is established here in Atlanta and has his own responsibilities and commitments. Relocating may not be a realistic option for him. I am concerned that being required to move could put a significant strain on our relationship and potentially force us to make difficult decisions about our future together. I have developed long-standing relationships with my medical providers and have established a level of trust and comfort with them over the years. I also have routine yearly medical appointments and procedures that require continued care. I have an adult son who lives and works in Atlanta. I'm concerned about moving to a new place where I don't know anyone. All my friends are here in Atlanta. What if I become sick and need someone to help? Who would I call when my friends and family are hundreds of miles away?

I have dedicated a significant portion of my working life to this company – almost 19 years. Employees are more than positions on an organizational chart. We have homes, financial responsibilities, families, relationships, and lives that are established in the communities where we currently work. Norfolk Southern employees like me should be able to maintain their employment without being placed in a position where relocating hundreds of miles away is their only option.

Respectfully,
Michelle Stewart
Crew Management – Support Chief Caller
Norfolk Southern Railroad
Atlanta, Georgia

Tiffany Allen

I am a Crew Dispatcher and I have worked for Norfolk Southern for 15 years. I have family obligations here in Atlanta. I take care of my aging father and my sister and her kids while she is in remission from cancer. I love my job and would want to keep working in the same capacity. My inability to move should not be treated as voluntary decision to leave employment or used to deny protections that might otherwise apply. I would love to retire from Norfolk Southern if I can stay in Atlanta and continue to support my family.

Tiffany Allen
Crew Dispatcher
650 WPT
15 years of Service

Kevin Thomas

I am a Crew Caller for Norfolk Southern in Atlanta and I will have worked for the railroad for 4 years this January. I moved to Atlanta from the MetroNorth railroad in New York. I have built my career and my family life here.

If my work is moved to Omaha, I'll have to choose between my job, giving up custody of my girls, or uprooting them. Co-parenting my 15-, 12-, and 8-year-old daughters isn't easy, but my family has worked out a joint custody arrangement. Moving across state lines and upending this arrangement with a potential court custody fight would be emotionally difficult and financially impossible.

Anonymous Statements from verified TCU Members

1. I am a Norfolk Southern employee with more than 21 years of service in Atlanta (WPT).

If /when my train reporting position is transferred, relocating would not be realistic because I am the only living parent and caregiver for my adult child with special needs. I am

responsible for more than just myself. I administer his medications, coordinate and attend his medical business as well as providing him with his meals, grocery shopping and assistance with his financial business. My son has both a medical and mental disability and has difficulty navigating thru the day to day on his own. Over the years we have established a strong team of medical and social providers that has extended his years of life.

I want and need to keep working! My inability to move should not be treated as a voluntary decision to leave employment or used to deny protections that may otherwise apply. I pray that there is some way that I keep the job the I love and have been dedicated to while not relocating.

2. I am a TCU-represented Norfolk Southern Crew Dispatcher in Atlanta with 12 years of service. I understand that clerical work in Atlanta may be transferred to Omaha. If my position is affected, moving that distance would mean me selling my home at a significant loss of current value especially since the market to sell has almost completely died. I'm also the sole caregiver to my mother of 85 years of age and a single mother to my two daughters who depend on my income to live. Moving will definitely impact my finances as we are unsure how the pay structure will affect my income. I am concerned about the protections available to employees who cannot relocate and ask the STB to examine the actual impact of the proposed merger.

3. I am a TCU-represented Norfolk Southern in Atlanta with [21 years] of service. I understand that clerical work in Atlanta may be transferred to Omaha. If my position is affected, moving that distance would mean me having to sell my home and lose money and acquire another home with significant higher interest rate, leave my elderly parents with no one around in case of emergency. It would also mean my husband would have to quit his job in anunstable job market, especially being over 50 years old. I am concerned and ask the STB to examine the actual impact of the proposed transfer..

4. I am writing to express my opposition with the merger between Norfolk Southern and Union Pacific. My concern is that the Union Pacific has failed to make any binding commitment to protect the livelihoods of the men and women who actually do the significant work to keep and maintain these rail lines. In my 16 years of service to Norfolk Southern as a clerk, I have created a life along with my family here in Atlanta. This merger would mean that I may have to choose my job and uprooting my family elsewhere.

Monopolization does not improve service. Shippers across the board will be faced with reduced choices and higher freight rates will probably follow suit. I respectfully ask the STB to stand up for labor stability by rejecting this merger outright.

5. I am a TCU-represented Norfolk Southern Customer Logistics Specialist in Atlanta. I understand that clerical work currently performed in Atlanta may be transferred to Omaha. If my position is affected, relocating that distance would create significant personal, financial, and family hardships.

My mother is elderly and requires my assistance and support. Relocating to Omaha would place considerable distance between us and make it extremely difficult for me to continue providing the care and assistance she depends on. Traveling back and forth to Atlanta to help my mother would create substantial additional travel expenses and financial strain. Additionally, relocating would likely require me to sell my home and leave the community and life I have established in Atlanta. The costs associated with selling my home, relocating, securing new housing, and adjusting to a significantly different cost of living could create a substantial financial burden.

I am concerned about the protections and consideration available to employees who, due to family responsibilities, financial circumstances, and established lives in their current communities, cannot reasonably relocate. I respectfully ask the Surface Transportation Board (STB) to carefully examine the actual impact of this proposed transfer on affected employees, including the personal, financial, and family hardships it may create.

6. I am a Norfolk Southern Crew Dispatcher with 14 years of dedicated service in Atlanta, Georgia. If my position is transferred, relocating would not be a realistic option due to my family caregiving responsibilities for my 4-year-old granddaughter. I sincerely want to continue working and maintaining my financial obligations to my creditors. My inability to relocate should not be considered a voluntary decision to leave Norfolk Southern or be used as a reason to deny me any protections that may otherwise apply. I respectfully ask that Norfolk Southern consider keeping all Atlanta-based employees in Atlanta, taking into account the cost-of-living differences and the challenges of extreme weather conditions in Omaha, Nebraska.

ARU/BLET

Addendum F

Declaration of
BLET President Wallace

BEFORE THE
UNITED STATES SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

—CONTROL—

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

DECLARATION OF MARK L. WALLACE

I, Mark L. Wallace, declare as follows:

1. I am the National President of Brotherhood of Locomotive Engineers and Trainmen (BLET), a Division of the Rail Conference of the International Brotherhood of Teamsters. BLET represents locomotive engineers (engineers) employed by Applicants and also trainmen employed by Applicants who elect to satisfy union security requirements by membership in the BLET. Collectively, engineers and trainmen are referred to as "operating crew."

2. In this proceeding, Applicants propose more than a mere change in corporate control: they plan to reorganize traffic flows, introduce through trains across the existing UP-NS boundaries, reduce interchange and switching work, and change crew districts and terminal limits. An important distinction in analyzing the application is between Applicants' *Optimized Plan*, which reorganizes existing traffic, and their *Growth Plan*, which adds service to handle projected new business. Most Optimized Plan trains replace existing operations, thereby significantly impacting operating employees. Indeed, Applicants estimate that, in net, the *Optimized Plan* will eliminate approximately 30 daily through-freight crew starts and 4,700 daily train miles. (Vol. 2, p. 704)

3. Under the *Optimized Plan*, Applicants state that they intend to change how existing traffic moves through and, in some cases, around, the present interchange gateways. These new routings and through service are described as follows:

Proposed service	**Routing and operational change**	**Source**

Southern California–Northeast intermodal: ZLCCX/ZHBLC	New train pair via Kansas City, Springfield, and Sidney, Illinois , avoiding the existing Chicago routing for this traffic. Applicants project routes up to 252 miles shorter, saving approximately 17 hours eastbound and 19 hours westbound.	Operating Plan, Vol. 2, pp. 692–695.
Southern California–Southeast intermodal: ZLBAT/ZCTLB	Shift traffic using Memphis to a new train pair over the Meridian Speedway . Applicants project a route 123 miles shorter and transit-time savings of 70–95 hours.	Vol. 2, p. 696.
North Platte–Conway manifest: MNPCW	New through train with blocks for Elkhart, Bellevue, and Conway, reducing handling in Chicago and Elkhart.	Vol. 2, p. 698.
Altoona, Wisconsin–Elkhart / Conway–Altoona: MALEK/MCWAL	New services and longer-distance blocks linking Wisconsin and Minnesota with eastern destinations, reducing intermediate handling and BRC switching demand.	Vol. 2, pp. 699–700.
North Little Rock–Conway: MNLCW	New service via Salem and Sidney , rather than the existing East St. Louis interchange route. Applicants project approximately 41 fewer route miles and reduced St. Louis handling.	Vol. 2, pp. 701–702.
North Little Rock–Chattanooga: MNLCT/MCTNL	New train pair with blocks for Sheffield, Birmingham, and Chattanooga, reducing intermediate car handling at Sheffield.	Vol. 2, p. 703.

4. Applicants further project additional service dependent on growth in their *Growth Plan*. Applicants design seven intermodal train pairs, operating seven days a week, to attract and accommodate supposed, projected demand. The principal Growth Plan intermodal services are:

- **Lathrop-Croxton**, via North Platte and Chicago; the eastbound train has a Chicago crew change but no planned Chicago work event.
- **Lathrop-Charlotte**, via North Platte and Kansas City.
- **City of Industry-Croxton**, via Kansas City, Springfield, and Sidney.
- **Los Angeles Transportation Center–Detroit**, also via Kansas City, Springfield, and Sidney.
- **Southern California-Southeast**, via the Meridian Speedway, with eastbound service extending to Jacksonville. Trains may need to split and recombine because of CPKC's Meridian Speedway train-length restriction.
- **Port Laredo-Croxton**, via New Orleans and Atlanta.
- **Houston-Atlanta**, via New Orleans, connecting with service to the Southern Ohio Valley and Southeast.

(Vol. 2, pp. 722-731) For manifest traffic, Applicants identify nine new core trains, including four pairs, across the legacy UP-NS networks, plus eleven net new trains within the existing footprint of either railroad. Named additions include Livonia–Chattanooga, Elkhart–Boone paired with North Platte–Elkhart, another Chattanooga–North Little Rock pair, Conway–North Little Rock, Chattanooga–Englewood, Livonia–Macon, and Birmingham–Englewood. These additions depend on the traffic growth assumed in the application. (Vol. 2, p. 732

5. With respect to crew districts, crew bases and terminal limits, Applicants identify one particular new road district, Salem, Illinois-Peru, Indiana, and two specific terminal-limit changes, Kansas City/Voltz and Chicago/Global 4. They also anticipate additional districts, interdivisional services, and negotiated crew-responsibility areas as integration proceeds, but do not elaborate. They also state that consolidation will require changes to train crew districts and terminal limits to align the workforce with the proposed operating patterns. Applicants do not, however, go into detail of what will be required and do not identify with respect to anticipated changes to districts, bases and terminal limits:

- Which endpoint will be the home terminal and which the away-from-home terminal;
- Whether service will be supplied from one endpoint or both;
- Which legacy workforce or seniority roster will protect the district;
- The number of pool turns, extra-board positions, or assignments;
- Whether existing assignments will be extended, combined, or replaced;
- How many employees will need to change reporting points or residences.

The impact on employees through the unidentified changes to districts, bases and terminal limits will mean changed reporting points and possible significant relocations and distant terminal points requiring more overnight stays and long through trains would require new intermediate crew change/reporting points. It will also mean changes in seniority districts and CBAs that may disrupt the lives of employees, their families and their communities.

6. In sum, the application explains the operational changes it wants in yet to be negotiated labor arrangements to accomplish, but provides very little definite information about the final operating crew structure. Therefore, the most accurate characterization is Applicants

propose a reconfiguration of crew territories and work jurisdiction, with very few selected geographic changes identified now and substantial details deferred to integration planning and labor agreements. The lack of concrete plans in the application on home- and away-terminal designations, pool and extra-board structure, legacy-workforce allocation, seniority treatment, precise reporting points, and employee relocations has a potentially devastatingly negative impact on operating employees. These ambiguities leave employees and their future, such as where they may be required to locate in order to continue working, in limbo and leaves the precise allocation of that work to later arrangements that may require significant relocations of employees to the detriment of them, their families and the communities they live in.

7. The likely negative impact on operating crews is highlighted by the Craft Employee Impact Report that Applicants originally designated as Highly Confidential, but that they were forced to redesignate as Public by the Board. According to the Applicants' Craft Employee Impact Report, 928 train service jobs will be abolished (there is no differentiation among engineers, conductors, yardmen, etc.) through the *Optimized Plan*, and a supposed but highly unlikely creation of 1698 operating crew positions through the *Growth Plan*, for a net gain of 770 operating crew employees. But, the projected net gain does not mean existing jobs or assignments remain intact; it depends on growth offsetting the anticipated reductions and history tells us merges usually result in the opposite as explained in Paragraph XX below.

8. Further, while Applicants do not identify a single train crew position transferred in their Craft Employee Impact Report, the absence of train crew positions in the "transferred" column is not a commitment that no train service employee will have to relocate. Applicants expressly contemplate relocation where necessary to align employees with the work, and their labor plan states that they will seek implementing agreements where relocation goes beyond existing agreements' terms, practices, and interpretations. (Vol. 2, p. 975)

9. While Applicants acknowledge that the New York Dock employee protections will apply to adversely affected employees, we understand that they will take the position that employees whose jobs are abolished at one location will be obligated to accept a transfer to another location, even one far away in order to retain their right to New York Dock dismissal benefits. Based on the Employee Impact Report, there would be at least 928 operating crew employees who are projected to experience job abolishments and dismissals and be confronted with Applicant arguments that they must accept a transfer or a newly created position that requires them to relocate. As is explained in our Comments, we contend that such arguments are contrary to the New York Dock conditions and the Board should declare them to be wrong under New York Dock and the statute.

10. The BLET has no confidence that merged carrier will even reach workforce projections in application. Prior mergers resulted in reductions in workforces. CPKC projected net plus 750 US jobs but in years after merger, CPKC did not increase employment to numbers anywhere near the projections in the application. CPKC's own filings with this agency show that for the largest categories of craft employees (engineering -L300, mechanical-L400, Operating - L600) CPKC employment was 4339 on January 1, 2024 (CPKC's first report as a merged entity), 4365 on January 1, 2025, 4424 on January 1, 2026, and 4372 in the most recent report (September 2026); in short 33 more employees today than at consummation of the merger (less than a 1%

increase). For Operating employees there has been an actual decrease in jobs (2524 on 1/1/2024, and 2417 on 9/1/2026).

11. The projected increase in train crews is not commensurate with the traffic Applicants propose to handle, and the gap will be absorbed by engineers who are already being worked short. Applicants' crew projections assume the existing workforce is properly sized for today's traffic. It is not. The *Optimized Plan* abolishes 928 train service positions as existing traffic is reorganized, and those reductions follow directly from integration. The 1,698 positions in the *Growth Plan* exist only if the projected new business materializes, and as explained in Paragraph 10, prior mergers give little reason to expect that it will. The reductions are certain; the additions are contingent. Every train Applicants propose, whether existing, rerouted or new, will still require a crew.

12. BLET's experience on both UP today demonstrates the problem. Across UP's system, engineers protect work through 11/4 work/rest boards established under negotiated agreements and implementation plans. Under those agreements, the Carrier alone is responsible for regulating, that is, staffing, the boards. The implementation plans also contain language barring the Carrier from staffing one board at a lower level only to have it supplemented by another. Even so, the Carrier has routinely failed to staff the boards at levels sufficient to protect their own work and has covered the shortfall by cross-protecting and supplementing from other boards. Between 01/01/2026 and 11/06/2026, the BLET General Committees on Union Pacific documented approximately 15,577 instances of cross-protection or supplementation on 179 boards across 5 General Committee territories. The General Committees have repeatedly put the Carrier on notice through the agreed dispute resolution process, and the boards remain understaffed.

When a board is understaffed, and another board is used to fill its vacancies, the engineers on the supplementing board are drawn away from the work their own board was established to protect, and that work in turn falls to someone else. Because these boards have no set on-duty time and engineers are called on two hours' notice, this improper staffing leaves engineers unable to know when their service will be needed. That uncertainty makes it difficult for an engineer to plan rest and be properly rested when called, resulting in a fatigued engineer at the controls of a train. If the Carrier cannot staff its existing boards at current traffic levels, it will not be able to staff the new through trains, rerouted traffic, and new districts described in Paragraphs 3 through 5 without placing even greater pressure on engineers to always be working. That pressure carries not only into service, because a train that cannot be crewed does not move, but also into safety, because a fatigued engineer puts the crew, the public, and the communities along the line at risk.

13. BLET's experience with NS is no different. There is already substantial pressure on existing NS engineers. NS has imposed an 8% cap on employee requests for time off regardless compensated/uncompensated, medical days/sick days, etc. In fact, the 8% threshold includes scheduled weekly vacations. In many locations, the inclusion of scheduled weekly vacation meets or exceeds the 8% threshold meaning no other lay offs are approved. Manpower needs are also aggravated due to "stacking" of off-days (NS' 6&2 rotating off-day schedule). Stacking is when multiple off-day groups bunch up together due to long layovers at the Away-from-home-terminal (AFHT), tours in excess of 12 hours resulting in limbo time extending statutory rest periods, etc. Stacking can have a domino effect thus placing greater strain on manpower resulting in a fatigued

engineer at the controls of a train.

NS is currently at an 8% attrition rate for Transportation employees and is only hiring at a 6% rate. At some locations, NS as high as a 90% attrition rate of those new hires. NS often states that they are hiring as fast as they can, but that the pools of eligible candidates are shallow. Currently, NS is offering monetary incentives for T&E employees to: step-up to other assignments on the weekends, sell back scheduled weekly vacations, defer retirement, and is even actively recruiting retirees to return to active service. These initiatives highlight NS' inability to hire/retain employees needed now, and highlights the pressures on employees to be working all the time, with no personal time, continuous call outs, and maxing out on hours of service, which stresses employees and heightens the possibility of lost concentration that once again puts the crew, the public, and the communities along the line at risk.

14. Both Applicants' operating models are to staff the boards lean and cover the gaps with whatever engineers are available. The consequences of that approach reach well beyond the engineers who work under it, and this Board has seen this firsthand. On May 6, 2022, the Board ordered UP, NS, BNSF and CSX to file service recovery plans. On June 13, 2022, the Board ordered those carriers to correct deficiencies in their plans and to report their monthly progress in increasing the size of their workforces, noting that UP and NS "flatly refused to provide the six-month targets" its order required. On June 17, 2022, the Board issued an emergency service order directing UP to meet specific service commitments to Foster Farms. The Board has therefore already recognized what our members experience every day: reliable service depends on an adequate workforce.

A transaction that combines these two operating models, abolishes 928 train service positions, and defers the details of crew districts, home terminals, and extra boards to later integration should not be approved on the assumption that the workforce will keep pace with the traffic. Our members' experience is that it has not kept pace even without a merger.

15. Another negative impact of the merger, if approved, that must be ameliorated is the infinite time period in which the merged carrier may serve New York Dock Section 4 notices. As background on this issue, on February 19, 2025, CPKC invoked Article I, Section 4 of the New York Dock conditions imposed in the ICC's June 4, 1993, approval of KCS's acquisition of common control of MidSouth. Nearly thirty-two years after that approval, CPKC sought to consolidate KCS and MidSouth operations and engineer workforces in a Shreveport Hub Operating District and replace the separate agreements governing those operations with the MidSouth collective bargaining agreement, over the BLET's objection. In his January 16, 2026, award, Arbitrator Michael D. Phillips upheld reliance on the 1993 approval, concluding that the passage of time did not bar a consolidation related to the original transaction. He also held that the Anti-Cramdown Agreement did not apply because the underlying 1993 transaction was classified as "significant," rather than "major," and approved application of the MidSouth agreement to employees previously covered by the KCS agreement. Thus, a decades-old control approval supplied the basis for compulsory changes to collectively bargained terms long after the original transaction, and despite the fact that the subsequent CP-KCS merger was a major transaction that plainly led to CPKC's actions decades after the MidSouth merger.

16. The CPKC-MidSouth experience demonstrates why the Board should establish a definite endpoint for merger-based changes to BLET agreements if the UP-NS merger is approved. Employees worked under separately negotiated agreements for decades, yet remained exposed to compulsory replacement of those agreements under authority granted in 1993. BLET identified threatened losses involving trip rates, held-away compensation, guaranteed extra boards, and leave rights. The unfairness lies in the indefinite exposure of collective bargained, negotiated rights to this extraordinary process. An old merger approval should not remain a perpetual alternative to bargaining under the RLA whenever a carrier later seeks different contract terms. The availability of that alternative weakens employees' bargaining position and undermines their ability to rely on agreements negotiated and maintained over intervening decades. The Board need not reject the Phillips award to recognize that its outcome illustrates a gap requiring an express prospective condition in this proceeding.

A defined limited duration of the ability to use the *New York Dock* implementing agreement process to change collective bargaining agreements outside the Railway Labor Act would give the combined UP–NS Carrier a substantial, defined opportunity to identify and initiate agreement changes needed to implement the approved transaction, but restrict the ability to do so to a time period when the merged carrier could reasonably be said to be implementing the merger. Thereafter, the merged-Carrier could still pursue changes, but would do so through the Railway Labor Act's ordinary procedures, including notice, bargaining, mediation, and applicable status-quo obligations-not compulsory merger-implementation arbitration. Indeed, such a condition would further the Board's statutory responsibility to require a fair employee-protective arrangement, as required by 49 U.S.C. § 11326(a). BLET believes that it would be entirely reasonable to limit the duration of the ability to invoke the *New York Dock* implementing agreement process to change collective bargaining agreements to either the duration of dismissal and displacement allowance benefits—six years; or, at the outside, the duration of the STB's oversight proceedings concerning the merger, once the oversight ends, surely the ability to invoke merger implementation changes to collective bargaining agreements should end.

The condition must also cover prior merger and control authorities involving either predecessor. Otherwise, the combined Carrier could evade the limit by invoking an older approval, reproducing the very problem illustrated by CPKC's reliance on the MidSouth transaction. BLET therefore requests that the Board impose the following condition:

> The post-merger/common control Carrier may not serve any notice under Article I, Section 4 of the New York Dock conditions that would involve any change in a collective bargaining agreement with BLET more than six (6) years after the STB's approval of the merger/control transaction, or after expiration of the Board's merger oversight period whichever is later. If the post-merger/control Carrier seeks to make changes to any BLET collective bargaining agreement after the period of six (6) years after the STB's approval of the merger/control transaction or after expiration of Board oversight, including under any and all prior merger/control cases involving either pre-merger Carrier, it will do so only in accordance with the Railway Labor Act.

17. History has shown further shown that increased concentration in the rail industry

has led to reductions in employment and poorer service flowing from carrier market dominance which has allowed them to reduce employment because shippers suffering from poor service due to reduced staffing have nowhere else to turn for rail service, and the statutorily weakened regulatory authority of the Board has limited its ability to provide recourse to shippers suffering poor and unreliable service. There can be little doubt that approval of the proposed UP-NS merger will lead to a follow-on trans-continental merger, creating national duopoly. Experience of the 1990s was that one merger led to another, and there is no reason to believe that approval of a UP-NS merger will not lead to a merger of competitor railroads.

Creation of a national duopoly will mean that neither railroad would be truly accountable to anyone, which will result in employment being reduced to lower operating ratios, and service will suffer as a consequence of fewer employees to provide the service, and because there will be no consequences for deteriorated service due to a lack of competition and a weak regulatory regime that was not designed for duopolies.

18. In the event the Board does approve the transaction, BLET requests imposition of conditions to protect the UP and NS workers, and to preserve employee rights. Our requested conditions are described and explained in the ARU/BLET comments, but generally, BLET requests that any approval of the merger be conditioned on terms that preserve protected positions and terminal work as well as the employment of current workers, as specified in paragraphs 34 and 35, impose the so-called Cramdown Agreement as a condition of approval, require *New York Dock* protections for post-merger line sales and leases, and the following express relocation condition:

> Where a covered employee's existing position is abolished or transferred as a result of this transaction, refusal to accept a position requiring a change of residence shall not, by itself, defeat initial eligibility for a dismissal allowance or terminate an allowance already payable. Such refusal shall not itself be treated as a voluntary resignation or an independent cause severing the connection between the transaction and the employee's loss of employment. All other applicable eligibility requirements remain in effect, and this condition shall not diminish more protective rights.

19. BLET further opposes requests for divestiture of UP or NS lines to Class II or Class III railroads, as well as conditions that would involve sales or leases of UP or NS lines to Class II or Class III railroads and acquisitions of trackage rights over UP or NS lines by Class II or Class III railroads. Employees on many Class II and Class III railroads do not have union representation; and even when they have representation, the agreements covering those employees are below the standards of agreements applicable on Class I railroads because of the lower profit margins on largely captive feeder railroads. Those circumstances are a result of Class I spinoffs of what they called "marginally profitable" lines in the late 1980s and early 1990s, with the Class I's retaining the long-haul traffic from those lines. The Class I's were relieved of the labor costs for lower density lines while retaining their long-haul traffic, and the profitability of the short lines and regionals was a result of lower labor costs as result of reduced employment, lower pay and benefits and below industry standard agreements when employees were represented. In short, a problem of the Class I's and some shippers was resolved by diminishing the employment, pay, benefits and

rules on the conveyed lines. If the STB decides that the merger cannot be approved because of the effects it will have on competition and the market dominance of the merged carrier, the Board should not try to mitigate those problems by authorizing divestitures, sales, leases and access to Class II and III railroads that will diminish the pay, rules and benefits of rail workers; the merger should not be "saved" by making the workers "pay" for it.

20. In anticipation of, or in response to, shipper and state and local government objections to reduced competition and concentration of market power in a merged UP-NS, Applicants may offer trackage rights, haulage arrangements or reciprocal switching to mitigate the anti-competitive effects of the proposed merger. Or opponents of the transaction may, by responsive applications or in comments, seek divestitures, trackage rights, haulage arrangements or reciprocal switching to remedy the market concentration consequences of approval of the proposed transaction.[1] As representative of the engineers, who actually operate trains, BLET submits that the potential proposed ameliorative measures will not redress the adverse competition and service consequences of an approval of the proposed transaction. Furthermore, even if such measures might be effective, they should not be ordered by the Board because if the proposed merger is problematic as to competition and service, those problems should not be redressed by negating, undermining, or diminishing the statutory or agreement rights of Locomotive Engineers.

21. BLET opposes reliance on trackage rights, haulage arrangements or reciprocal switching as a substitute for preserving effective competition and reliable service in the proposed UP-NS merger. A right to operate over another carrier's lines, a right to carry another carrier's freight or a right to exchange cars do not resolve which employees are entitled to perform the work, under which collective bargaining agreement (CBA), or with what qualifications and protections.

Newly conferred access rights that may be imposed by the Board do not eliminate physical interchange limitations or change the controlling railroad's management of traffic. The Board must also address risks to union-represented employees' scope of work protections and seniority rights, operating communications, and safe operations, with particular scrutiny of any proposed Class II and Class III operations on Class I tracks and any use of affiliates to bypass CBA protection that have been negotiated with the Applicants. These concerns require examination of the actual operating form of each proposed arrangement in this merger.

The governing merger policy requires consideration of effective competition, safety, adequate service, and fair working conditions for employees. It recognizes that even end-to-end mergers can reduce geographic and product-market competition and that some competitive harms may be difficult to remedy. Conditions must be operationally feasible and produce net public benefits. *See* 49 C.F.R. § 1180.1(b)–(e). The question is therefore not whether a trackage rights,

[1] **Trackage rights** are agreements in the railroad industry where the owner of a rail line grants another railroad company permission to operate its own trains and crews over the owner's tracks. A **haulage arrangement** (or haulage rights agreement) is a commercial contract in the railroad industry where one railroad hires another railroad to physically transport freight over a specific segment of track. **Reciprocal switching** is a railroad operation where a customer served exclusively by a single railroad ("incumbent carrier") arranges for a nearby competing railroad to handle or access their rail traffic.

haulage arrangement or reciprocal switching arrangement can be described on paper, but whether it preserves or enhances a commercially usable alternative without exporting merger costs to employees, connecting carriers, or shippers.

22. The Board should distinguish reciprocal switching from open gateways, haulage, and trackage rights. In ordinary reciprocal switching, one Railroad A performs the local movement between the customer and an interchange, and Railroad B performs the line haul. That arrangement does not itself authorize the other Railroad B's crews to operate over the Railroad A's tracks. Haulage may provide another carrier with commercial access while the hauling railroad continues to perform the physical movement. Trackage rights, by contrast, may permit another carrier's trains and crews to operate over the host's track. The labor and safety consequences depend on which arrangement is actually proposed. Indeed, the distinction between reciprocal switching and trackage rights is essential to evaluating the proposed remedies for any given situation, and BLET does not contend that every reciprocal switch necessarily transfers local switching work to another railroad's employees.

23. Applicants' Amended Application illustrates why precision is necessary. Their open-gateway commitments address commercially reasonable rates, terms, service, and rate divisions. Their identified 2-to-1 facility remedies include haulage for AgRail, an effort to negotiate trackage rights with BNSF for the Foresight facilities with a haulage fallback, and haulage commitments for additional identified or subsequently discovered 2-to-1 facilities. These are not one uniform reciprocal-switching remedy. Each requires an independent examination of competitive effectiveness, operating feasibility, and employee effects. (App. Vol. 1, pp. 348-350, gateway commitments ¶¶ 163-172; pp. 393–397, Novak Verified Statement ¶¶ 52-59).

24. Where the merged carrier retains the customer's only physical connection, reciprocal switching leaves that carrier responsible for the indispensable first or last movement. An alternate line-haul carrier cannot, merely by quoting a rate, ensure timely spotting, pulling, classification, release, or delivery of the cars. A remedy may change the commercial seller of transportation while leaving the operational bottleneck in the same hands.

The merged carrier may also retain control over yard access, dispatching, switching windows, interchange tracks, and the sequence in which traffic is handled. Formal nondiscrimination is insufficient if equivalent treatment of unlike movements yields an inferior competitive product. The Board should require evidence that an alternative can compete in actual transit time, reliability, frequency, and total cost, not simply that the alternative can technically accept a car.

While access to another line-haul carrier can theoretically improve pricing and create an incentive for better service, that potential benefit does not establish adequacy and effectiveness as a remedy to the competition consequences of the proposed merger. The value of trackage rights, haulage arrangements and reciprocal switching depends on an alternate carrier's willingness and ability to quote commercially usable service, the incumbent's performance of the local movement, and adequate resources at the interchange. Those facts must be demonstrated for the affected traffic and location, which Applicants have not done.

25. A lower alternate line-haul rate is not necessarily a lower delivered transportation cost. The comparison must include switching charges and any applicable terminal, transfer, storage, reconsignment, special-handling, or other accessorial charges. It must identify whether the quoted rate absorbs those charges or passes them through to the customer, and whether additional intermediaries generate additional charges.

Demurrage should be addressed precisely. Reciprocal switching does not automatically create a lawful demurrage charge, and not every hour at an interchange is chargeable to the shipper. Liability depends on the applicable tariff or contract, free time, placement and release events, and responsibility for delay. Nevertheless, an arrangement that lengthens car cycles or produces disputed placement and release events can expose customers to additional charges or billing disputes. Private-car detention, lease costs, inventory carrying costs, and extra fleet requirements can also make an apparently cheaper routing commercially unattractive.

If Applicants propose certain access remedies to the problems that their proposed merger would create, or if opponents of the merger propose their own remedies, the Board should require an all-in rate and cost comparison and clear rules preventing customers and connecting carriers from bearing charges caused by Applicants' own failure to perform a timely handoff. An access remedy is illusory if its economic value can be eroded through switching fees, restrictive free time, inconsistent billing, or service terms that force the customer to maintain a larger railcar inventory. BLET does not allege that every such charge will occur; it asks the Board to require proof that the proposed alternative remains viable after these costs are accounted for.

26. Applicants, responsive applicants and commenters proposing alternative and access remedies must show, and in considering such proposals, the Board must examine usable interchange-track length, yard and lead capacity, mainline occupancy, siding availability, track configuration, and the space required to assemble and clear a movement. Added switching may consume a scarce lead or occupy a main track needed by other trains. A remedy can improve one customer's theoretical access while delaying other customers or undermining terminal fluidity.

Long trains, infrastructure limits, and reduced crew starts must be evaluated together. Here the relevant question is whether Applicants' actual post-merger operating plan leaves sufficient train and yard capacity for competing movements. The Board should require demonstration of peak-period and disruption testing, rather than relying exclusively on average daily volume. BLET does not ask the Board to assume that every long train creates congestion; it asks for evidence that the proposed train lengths, yard configuration, and interchange work are compatible.

A switching commitment must also be supported by qualified crews, locomotives, relief coverage, supervision, and funded maintenance. If the existing problem is an insufficient number of crews or locomotives, adding a commercial handoff without providing those resources does not solve it. Applicants should identify which assignments will perform the additional work, how they will be staffed, and what happens if the scheduled crew cannot complete the movement within lawful duty time. The Board should not credit an access promise whose implementation depends on routinely stretching existing assignments or assuming unlimited employee availability.

27. If the Board considers approval, BLET requests two separate conditions. First, the Board should reject line divestitures, trackage rights, haulage and reciprocal-switching arrangements between the merged Class I carrier and Class II or Class III carriers as remedies for or conditions of this transaction. This requested prohibition includes independent and unionized carriers and arrangements in which UP-NS employees retain the physical movement. Second, the Board should prohibit any new or expanded authority granted through this transaction for Class II or Class III carriers' crews to operate over the merged carrier's tracks, whether styled as trackage rights, terminal access, a forced-switch remedy or another authorization. Ordinary incumbent-performed reciprocal switching does not itself authorize another carrier's crews to operate on host tracks. Neither requested condition would prohibit ordinary interchange where each railroad operates on its own property or extinguish independently existing operating rights not created or expanded by this approval.

28. First, a merger remedy must not become a mechanism for replacing collectively bargained employment with lower-cost labor. Many employees of Class II and III railroads are not represented or have agreements that are not up to the standards of agreements applicable to Class I railroads. This has been the result of creation of Class II or III railroads from branch or feeder lines once owned by Class I's that are low density lines resulting in reduced revenues and reduced numbers of employees, which makes it relatively more difficult and costly to organize employees on those line, and to negotiated and administer agreements for those employees. BLET's agreements with the Class I railroads protect more than a wage rate: they allocate work and preserve seniority, assignments, reporting arrangements, benefits, and working conditions. Allowing a Class II or Class III carrier to perform work over the merged carrier's tracks would shift that work to employees covered by a less protective agreement, or no collective bargaining agreement, while leaving the merged carrier in control of the underlying infrastructure, commercial relationships, and long-haul traffic. Cost savings achieved by bypassing employee rights and protections are not preservation of. enhancements to competition, or remedies for market concentration. An express prohibition would prevent access conditions from becoming a vehicle for labor arbitrage rather than a remedy for merger-related harm.

29. Second, a separately incorporated regional or short-line carrier is not necessarily an independent competitive alternative. A carrier connected only to the merged railroad does not acquire an independent network merely because it has trackage rights or some other form of access or participates in a switching arrangement. Even where another connection exists, lease terms, interchange commitments, paper barriers, minimum-volume provisions, revenue divisions, or other economic restrictions, where present, may make the supposed alternative commercially unusable. Dependence on the merged carrier for traffic, locomotives, interchange performance, or revenue can further weaken the smaller carrier's practical ability to challenge discrimination or insist on timely service. The Board should not permit the loss of independent Class I competition to be answered by an access or switching arrangement that leaves the essential bottleneck and the connecting carrier's commercial leverage under the merged carrier's control.

30. Third, an affiliate exception would undermine both the competitive and employee-protective purposes of the requested condition. A subsidiary or contract operator of the merged carrier should not qualify as independent competition simply because it holds a different corporate identity or carrier classification. Nor should the merged carrier be able to accomplish indirectly,

through an affiliated Class II or Class III operator, a transfer of work that would implicate existing collective bargaining agreements if undertaken directly. The prohibition therefore should turn on the actual participating carrier and operation, not the label attached to the arrangement, and should contain no exception based merely on Class I ownership, control, agency, or affiliation.

31. Fourth, a compelled additional operator does not create additional track, yard capacity, locomotives, or qualified crews. As explained above, an extra switching movement may occupy a main track or scarce lead, delay other trains, and add classification and handling. Class I road trains, regional schedules, and short-line local turns may operate at different frequencies and times; a missed cut-off can leave cars awaiting the next available departure. Switching charges, additional handling costs, and potential detention or demurrage exposure can further impair the alternative's usefulness. A Board-created access right does not eliminate these physical and commercial constraints, and it should not be purchased at the expense of the employees whose work and safe operating environment would be affected.

32. Fifth, Board-authorized Class II/III operations over the merged carrier's tracks would introduce a distinct operational interface requiring coordination of movement authority, dispatching, physical-characteristics qualifications, operating rules, radio channels, train-control requirements where applicable, emergency response, and supervision. A competition remedy should not create additional operating interfaces and expose existing crews to new conflicts while the merged carrier retains dispatching control, and the underlying capacity constraints remain unresolved. Nor should smaller carriers be treated as cost-free overflow capacity: diversion of supporting traffic or unfunded growth can weaken the resources available for maintenance, staffing, and continued local service.

33. Finally, the Board should distinguish the two components of BLET's requested protection. Ordinary reciprocal switching does not itself grant a foreign carrier's crews trackage rights; the incumbent can perform the local switch and exchange cars with the other carrier at an interchange. BLET nevertheless requests rejection or prohibition of merged carrier Class I to Class II/III line divestitures, trackage rights, haulage or reciprocal switching as a remedy in this merger because of the competitive-dependence and employee-protection concerns described above. Separately, the Board should expressly prohibit using a forced-switch order, trackage-rights condition, or differently labeled access authorization to permit Class II or Class III carriers to operate over the merged Class I carrier's tracks. Maintaining that distinction prevents the prohibition from being evaded by relabeling the proposed operation.

34. The requested condition is consistent with the Board's obligation to evaluate operational feasibility, effective competition, and fair working conditions for employees together. Its merger policy strongly favors negotiated implementing agreements and looks with extreme disfavor on CBA overrides except to the very limited extent necessary to carry out an approved transaction. Congress also expressly authorized employee-protective provisions in prescribed reciprocal-switching agreements, and the Board should impose this condition under that authority. *See* 49 C.F.R. § 1180.1(b)–(e); 49 U.S.C. § 11102(c)(2).

Accordingly, any approval should expressly reject any:

Divestiture of lines, trackage rights, haulage or reciprocal switching arrangement between the merged Class I carrier and any Class II or Class III railroad as a remedy for or condition or approval of the proposed merger.

35. Additionally, the Board should deny any request for a Class II or Class III railroad, including any subsidiary, affiliate, or agent of a Class I carrier, to gain trackage or haulage rights or participate in a forced switch over the tracks of the merged Class I railroad or otherwise be authorized by Board order to operate over those tracks. Applicants may not circumvent this condition by relabeling the arrangement as haulage, terminal access, trackage rights, or another form of access where the arrangement would authorize the prohibited Class II or Class III operations. And requests for such arrangements by other parties a should be denied.

This request concerns the proposed merger and its access remedies; it does not seek a prohibition on ordinary interchange at existing connections where each railroad operates on its own property, or the extinguishment of independently existing operating rights not created or expanded by approval of this transaction. If Applicants cannot demonstrate adequate competitive protection without the prohibited arrangements, the Board should deny the merger rather than make affected employees bear the cost of an ineffective remedy.

36. Labor rights and safe implementation must also be considered when the Board assesses various proposed remedies for the competitive harms that will flow from approval of the merger. For every proposed switch, haulage movement, trackage-rights operation, or change in operator, Applicants should identify the employing carrier; the employees entitled to perform each segment; the governing agreements; and any proposed effects on yard and road work, terminal boundaries, reporting points, seniority districts, pools, extra boards, and assignments. The Board should not assume that creating traffic creates equivalent protected employment, or that maintaining a systemwide job total prevents loss of work at a particular terminal.

BLET requests an enforceable condition establishing a position and work baseline by terminal, craft, assignment and employing carrier immediately before consummation, disclosed to the affected unions before implementation. For six years following consummation, or for period of Board oversight, whichever is later, the Carrier must maintain those protected positions and the work attached to them at the protected terminals and replace vacancies caused by retirement, resignation, death, transfer or other attrition, rather than treat a promise to protect current employees as permission to eliminate their positions when they leave. The condition must prohibit evasion through reassignment, outsourcing, line sales or leases, or transfers to affiliates or other carriers, regardless of the receiving carrier's classification. A different allocation of protected work should require the affected union's voluntary agreement, without reducing the protection of adversely affected employees. Protection must extend to adversely affected employees on connecting and terminal railroads, with the responsible carriers and obligations identified before the relevant work transfer. These are requested additional protections, not descriptions of existing guarantees.

37. BLET requests early notice (earlier than what is required by the *New York Dock* conditions), disclosure of operating plans, and meaningful participation in developing arrangements affecting represented work. An access condition should not be treated as a blanket

authorization to disregard agreements. Where an actual conflict is asserted, Applicants should identify the precise agreement provision and claimed necessity, and the Board should apply the governing legal standards rather than assume that every desired reduction in operating cost is necessary to the transaction.

Applicants should file the terminal and position baselines and report quarterly to the Board and affected unions on staffing, vacancies, replacements, work transfers and compliance, with access to supporting records sufficient to audit the reports. Affected unions should have express standing to invoke an expedited enforcement process, seek interim preservation of work and positions pending a decision, and obtain prompt restoration of improperly removed work or positions and make-whole relief for resulting losses. The Board should retain authority to direct corrective action and suspend the challenged implementation pending compliance. BLET asks that these terms be stated as enforceable conditions in the final order, rather than left as voluntary assurances. The combination of planned work elimination, uncertain terminal-level implementation and growth-dependent employment promises warrants these stronger protections in the unusual circumstances of this transaction under 49 C.F.R. § 1180.1(e).

The Board's merger policy strongly favors negotiated implementing agreements and expresses extreme disfavor toward agreement overrides except to the very limited extent necessary to carry out an approved transaction. Separately, Congress expressly authorized employee-protective provisions in prescribed reciprocal-switching agreements. These protections should be addressed before implementation, not left for employees to pursue only after displacement occurs.

38. Where the arrangement actually contemplates crews operating on another carrier's territory, the safety plan must address applicable qualifications, physical characteristics, operating rules, radio channels, dispatching authority, yard procedures, train-control requirements where applicable, emergency response, and supervision. Where crews remain on their own properties, the handoff still requires unambiguous movement authority, track occupancy coordination, car information, and acceptance protocols. Carrier classification alone is not a proxy for employee competence. The issue is whether the specific operation has been planned, staffed, and qualified safely.

Additional handling may also increase employees' exposure to coupling and uncoupling, switching movements, and work around moving equipment. The Board should require a task-specific assessment rather than assume that the competitive label makes the operation risk-free. Operational targets must not be implemented through pressure to rush switching, disregard securement or inspection requirements, or perform unfamiliar work without appropriate preparation.

39. Applicants' promise to maintain gateways on commercially reasonable terms must be tested against the proposed service product. Pricing transparency does not guarantee a timely connection. Monthly gateway totals can obscure a particular customer's repeated missed connections. A prohibition on discrimination is difficult to enforce without contemporaneous information about dispatching decisions, available capacity, interchange acceptance, and reasons for delay.

A merger remedy should not depend on a customer or short line financing prolonged litigation after traffic has already been lost. The Board should identify who may invoke enforcement, the information available to them, the time for response, interim operating relief, allocation of responsibility for failed connections, and effective consequences for noncompliance. Rail labor should have a meaningful route to raise employee and operating concerns within merger oversight. Applicants should not receive credit for the mere availability of some separate future switching proceeding.

40. With respect to any proposed divestitures, line sales, leases, trackage rights, haulage or reciprocal switching arrangements between Applicants and another Class I railroad, BLET requests that the Board reject any contention that any divestitures, trackage rights, haulage or nominal reciprocal-switching availability, open-gateway language, or a separately incorporated connecting carrier is sufficient to remedy merger-related competitive harm. Before giving any such proposal material weight, the Board should require the following showing for each affected facility, gateway, and traffic corridor:

- An identified independent competing route and a willing participating carrier, with enforceable access rights and a clear distinction among switching, haulage, and trackage rights.
- A complete operating plan showing interchange tracks, usable capacity, coordinated schedules and cut-offs, service frequency, responsibility for acceptance, and recovery from missed connections.
- An all-in delivered-cost comparison, including applicable switching and accessorial charges, car-cycle costs, and responsibility for demurrage or other charges associated with carrier-caused delay.
- Funded crews, locomotives, relief coverage, maintenance, and any necessary capital improvements, supported by testing of peak traffic and disrupted operations.
- An assignment-by-assignment labor analysis; early union consultation; negotiated implementation wherever possible; the protected terminal and position baselines, vacancy replacement, anti-evasion provisions, duration, connecting-carrier employee protection, reporting, union enforcement and relief requested in paragraphs 34 and 35; and no presumption that access authority overrides bargaining rights.
- A specific safety and communications plan for the actual operating arrangement, with appropriate qualification and training before any foreign-territory operations.
- Car-level and gateway-level reporting, prompt independent dispute resolution, interim relief, meaningful enforcement, and continuing Board oversight with authority to correct an ineffective remedy.

41. These requests do not concede that conditions can cure the transaction. If Applicants cannot demonstrate that their proposed alternatives are competitively effective, operationally feasible, safe, sustainable, and consistent with appropriate employee protection; if competitors or commenters cannot show that their proposed remedies are competitively effective, operationally feasible, safe, sustainable, and consistent with appropriate employee protection, , the Board should not approve the merger on the assumption that such remedies will supply the missing competition later. A remedy that depends on the merged carrier's indispensable local service, reproduces the same capacity constraints, adds commercially disabling delay or charges, or

substitutes lower-cost labor for protected work does not provide the public benefits required to justify further consolidation. And the market concentration problems that would flow from approval of the merger should not be mitigated by reducing the rights and wages and benefits of railroad workers. BLET therefore urges the Board to reject reliance on divestitures, trackage rights, haulage arrangements and reciprocal switching as a substitute for preserving effective competition and safe and reliable service, and to deny approval of the proposed merger.

42. Finally, BLET's opposition to this transaction is independent of its positions concerning reciprocal switching in other proceedings. Nothing in this declaration endorses a broader reciprocal-switching requirement, waives any BLET objection in another proceeding, or concedes that switching or other access conditions can cure the competitive and employee harms of this merger.

I declare under penalty of perjury, pursuant to 28 U.S.C. §1746, that the foregoing is true and correct.

Date: November 13, 2026

/s/Mark L. Wallace
Mark L. Wallace

ARU/BLET

Addendum E

Declarations TWU
Railroad Director Feltz

BEFORE THE
UNITED STATES SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION AND
UNION PACIFIC RAILROAD COMPANY

—CONTROL—

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

DECLARATION OF JOHN FELTZ

I, John Feltz, declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the following is true and correct.

1. I am the Railroad Director of the Transportation Workers Union of America ("TWU"). TWU represents railroad Carmen employed by freight railroads including Norfolk Southern Ry. and Conrail Shared Assets, Amtrak, and various commuter railroads. On freight roads railroad Carmen are responsible for inspecting and repairing rail cars.

2. I have been a member of TWU for 52 years and TWU Railroad Director since 2017. In 2008, I was elected president of TWU Local 2001. I became a TWU Shop Steward in 1976.

3. TWU has been participating in the STB's proceedings in this Finance Docket with several other rail unions, filing jointly as the Allied Rail Unions ("ARU"). I am submitting this Declaration to the Board in support of ARU's Comments in response to the Application by which UP and its affiliates seek authorization to control and merge with NSR and its affiliates. TWU and the other ARU unions oppose Board approval of the proposed transaction.

Alternatively, if the Board nonetheless decides to approve the transaction, TWU and the other ARU unions request that certain conditions be imposed on such approval. TWU and the other ARU unions also oppose responsive applications and requests for conditions sought by other parties (or concessions by Applicants) that would convey property of UP or NSR to Class II or Class III railroads, or provide Class II or Class III railroads operating rights over UP or NS lines.

4. TWU's full position is set forth in the ARU's Comments. In this Declaration I will respond to certain evidence and arguments presented by the Applicants as they relate to members of the TWU.

5. Applicants say that they will reduce work at equipment shops and consolidate equipment shops across upper and lower midwest but have refused to specify which shops would be closed, which would have reduced work and which would have more work creating uncertainty among our members as to how a merger would affect them.

6. According to the Applicants' Craft Employee Impact Report, 67 Carmen jobs will be abolished, 251 created and 16 transferred (the difference between transferred and abolished then created is not explained). Given these plans and the geographic distances between shops that Applicants say will be affected by the merger, our members are concerned about job losses and compelled relocations

. 7. While Applicants acknowledge that the New York Dock employee protections will apply to adversely affected employees, we understand that they will take the position that employees whose jobs are abolished at one location will be obligated to accept a transfer to another location, even one far away in order to retain their right to New York Dock dismissal benefits. Based on the Employee Impact Report, there would be at least 67 Carmen and possibly another 16 Carmen who may experience job abolishments and dismissals and be confronted with

Applicant arguments that they must accept a transfer or a newly created position that requires them to relocate. As is explained in our Comments, we contend that such arguments are contrary to the New York Dock conditions and the Board should declare them to be wrong under New York Dock and the statute.

8. TWU opposes the proposed transaction because history shows mergers result in reduced employment and are highly skeptical of the Applicants growth projections. Additionally, history has shown that increased concentration in the industry has led to reductions in employment and poorer service flowing from market dominance which has meant adverse impacts on employees which in turn result in reduced service since employees provide the service.

9. We are also concerned about the likelihood that approval of the proposed UP-NS merger will lead to a follow-on trans-continental merger, creating national duopoly. Experience of the 1990s was that one merger led to another; there is no reason to believe that approval of a UP-NS merger will not lead to a merger of competitor railroads. Creation of a national duopoly will mean that neither railroad would be truly accountable to anyone, which will result in employment being reduced to lower operating ratios, and service will suffer as a consequence of fewer employees to provide the service, and because there will be no consequences for deteriorated service due to a lack of competition and a weak regulatory regime that was not designed for duopolies.

10. In the event the Board does approve the transaction, TWU requests imposition of conditions to protect the UP and NS workers, and to preserve employee rights. Our requested conditions are described and explained in the ARU comments, but generally, we request that any approval of the merger be conditioned on terms that preserve the work and employment of

current workers, impose the so-called Cramdown Agreement as a condition of approval, require *New York Dock* protections for post-merger line sales and leases, prevent infinite use of the *New York Dock* conditions to change collective bargaining agreements outside Railway Labor Act by limiting the time to use the *New York Dock* conditions to a reasonable time period when the merger is actually being implemented, and a declaration that employees whose jobs are abolished who decline to relocate hundreds or a thousand miles from their residences will not forfeit dismissal allowance benefits for which they would be eligible as employees whose jobs were abolished.

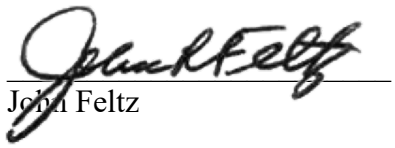
11. It is also our position that the Board should clear up any uncertainty regarding employee protective benefits for employees of certain switching railroads, control of which will be changed if the transaction is approved. Conrail Shared Assets is currently owned by NSR-58% and CSXT-42%. If the transaction is approved, the merged carrier will have control of Conrail Shared Assets as a result of the merger. The ARU submit that employees of Conrail Shared Assets would therefore be affected by the transaction, so the *New York Dock* employee protections that would be imposed as a condition of an approval of the transaction must apply to employees of Conrail Shared Assets. While we believe that should necessarily be the case, we ask the Board to make an express finding to that effect to preemptively assure that there will be no dispute as to that question, and to remove any uncertainty affected employees may have.

12. Finally, TWU opposes requests for divestiture of UP or NSR lines to Class II or Class III railroads, as well as conditions that would involve sales or leases of UP or NSR lines to Class II or Class III railroads and acquisitions of trackage rights over UP or NSR lines by Class II or Class III railroads. As is explained in ARU's comments, employees on many Class II and Class III do not have union representation; and even when they have representation, the

agreements covering those employees are below the standards of agreements applicable on Class I railroads because of the lower profit margins on captive feeder railroads. If the STB decides that the merger cannot be approved because of the effects it will have on competition and the market dominance of the merged carrier, the Board should not try to mitigate those problems by authorizing divestitures, sales, leases and access that will diminish the pay, rules and benefits or rail workers; the merger should not be "saved" by making the workers "pay" for it.

I declare under penalty of perjury, that the foregoing is true and correct.

11/12/2026
Date


John Feltz

ARU/BLET

Addendum G

Statement and Graphs of Labor Economist Thomas R. Roth

STATEMENT OF THOMAS R. ROTH

1. I, THOMAS R. ROTH, am President of the Labor Bureau Inc., a private consulting firm providing financial and economic consulting services to labor organizations for over 100 years.[1] I have been employed by the Labor Bureau Inc. since 1974 and over the past 52 years have served as financial and economic advisor in hundreds of cases throughout the transportation sector, particularly the railroad, airline and urban transit industries. I have been engaged as financial and economic advisor on behalf of all rail labor organizations on a regular and continuous basis for over 50 years. Specifically, I have prepared economic evidence and appeared as an expert witness in approximately 50 interest arbitration and Presidential Emergency Board (PEB) cases on behalf of rail labor. These include several national cases involving all rail labor organizations representing employees on the Class 1 railroads.

2. In addition to the above, my experience includes the preparation of expert reports in approximately 150 judicial cases where I have appeared as a qualified forensic economist based upon my expertise in railroad employee compensation.

3. The financial and economic facts set forth herein are based on my personal knowledge and data from The Surface Transportation Board's R-1 Reports and Carrier Security and Exchange 10-K filings.

4. In current dollars profits on Class 1 railroads have risen an incredible 2,547% since deregulation in 1980 – from **$913.5 million** in 1979 to **$24.2 billion** in 2025. (Attachment 1) Some of this is explained by the wave of major railroad mergers during the second half of the 1990s

[1] The Labor Bureau Inc. was known as The Labor Bureau of the Middle West prior to 1983.

beginning with the Burlington Northern–Santa Fe merger, which became effective in September 1995. Next came the Union Pacific–Southern Pacific merger, effective in September 1996; Union Pacific (UP) had previously completed its acquisition of the Chicago and North Western in April 1995. Finally, CSX and Norfolk Southern (NS) acquired Conrail, with the new operating arrangements becoming effective in June 1999.

5. The strategic objective of these combinations was to create large, seamless transportation networks that would improve service reliability, shorten transit times through more direct routing, reduce operating and capital costs through consolidation, and generate other operating efficiencies. Although the mergers promised improved efficiency, stronger competitive positions, and greater operating flexibility, realizing those benefits required significant investment, extensive organizational coordination, and several years of operational adjustment. It was not until 2001 that the merged railroads were fully digested and operational efficiencies realized.

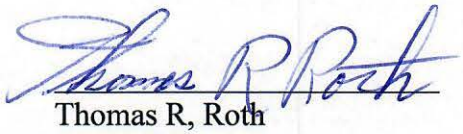
6. Between 2001 and 2025 profits increased 783%. In constant dollars (profits adjusted for inflation), profits increased **46%** between 1979 and 2001 (22 years); however, following the mergers, real profits increased **415%** over the next 24 years between 2001 and 2025. (Attachments 1, 4)

7. It is clear that the other principal stakeholders did not share in this corporate success. Over the past 24 years, real wages increased **20%** – less than a scant 8 tenths of a percent per year. Shippers fared slightly better – rail prices in constant dollars (measured as revenue per carload originated) increased **37%** or 1.3% per year. This compares to increased profits of **415%** over the same period following the mega-mergers. (Attachment 2, 4)

8. Another look at the experience of rail labor following the mergers is revealed in the employment data. Since deregulation, Class I employment has shrunk by 356,111 jobs – a **75% decline**. Most of the carnage occurred in the first 22 years following Staggers. However, following the mega-merger era – over the past 24 years – an additional 44 thousand jobs have been abolished. A **27%** drop since 2001. (Attachment 3, 4)

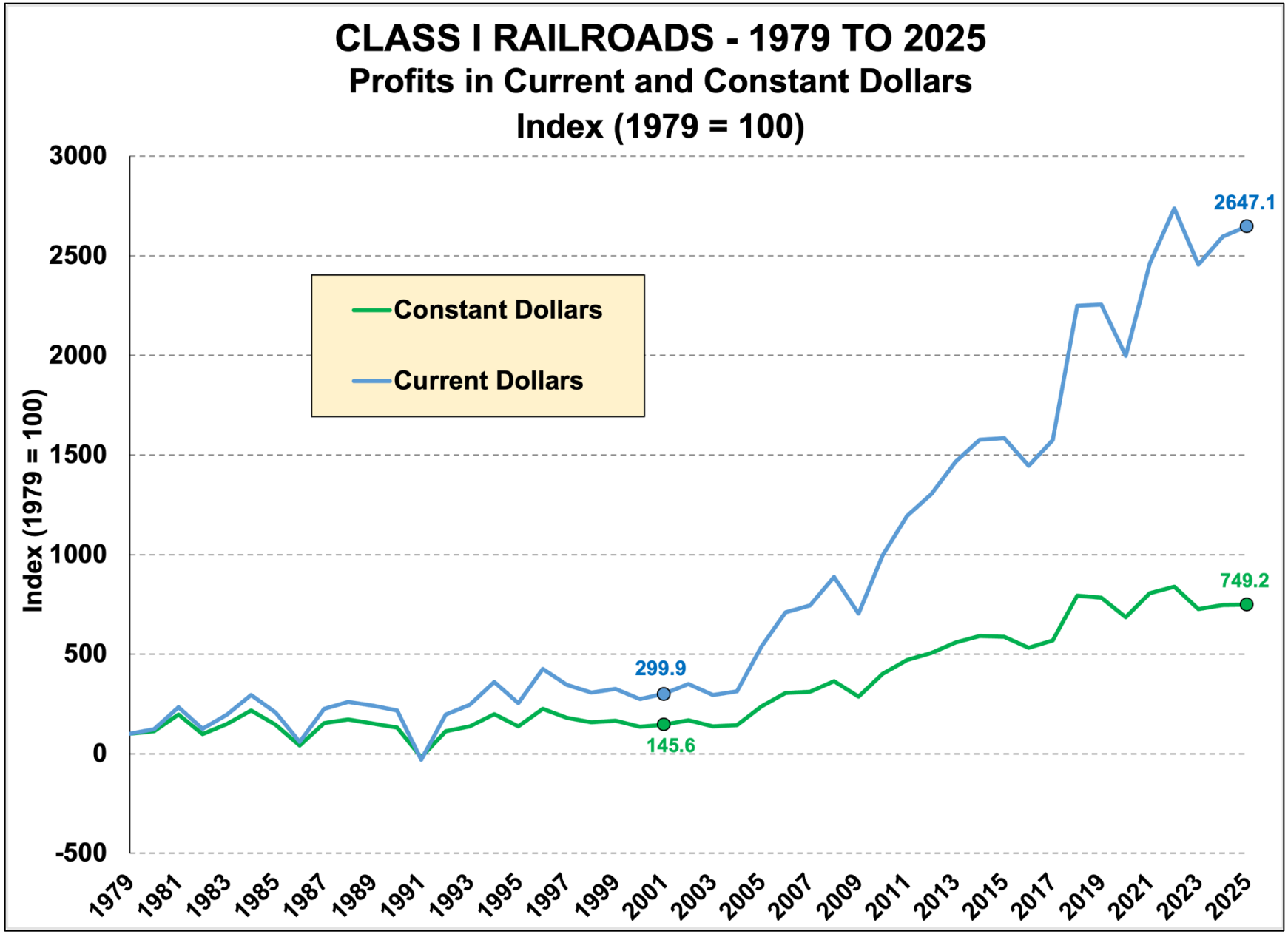
9. Shippers have also been hurt. Since 2001, rail rates are **up 134%** in current dollars. Adjusted for inflation rail prices are **up 37%** over this period. However, this followed a period between 1979 and 2001 where real prices **fell by 41%**. All told, rail prices in constant dollars are **down 20%** since staggers. It's clear that rail labor has been the real victim of deregulation and the resulting consolidation. (Attachment 3, 4)

I, Thomas R. Roth, do hereby declare that the foregoing is true and correct.



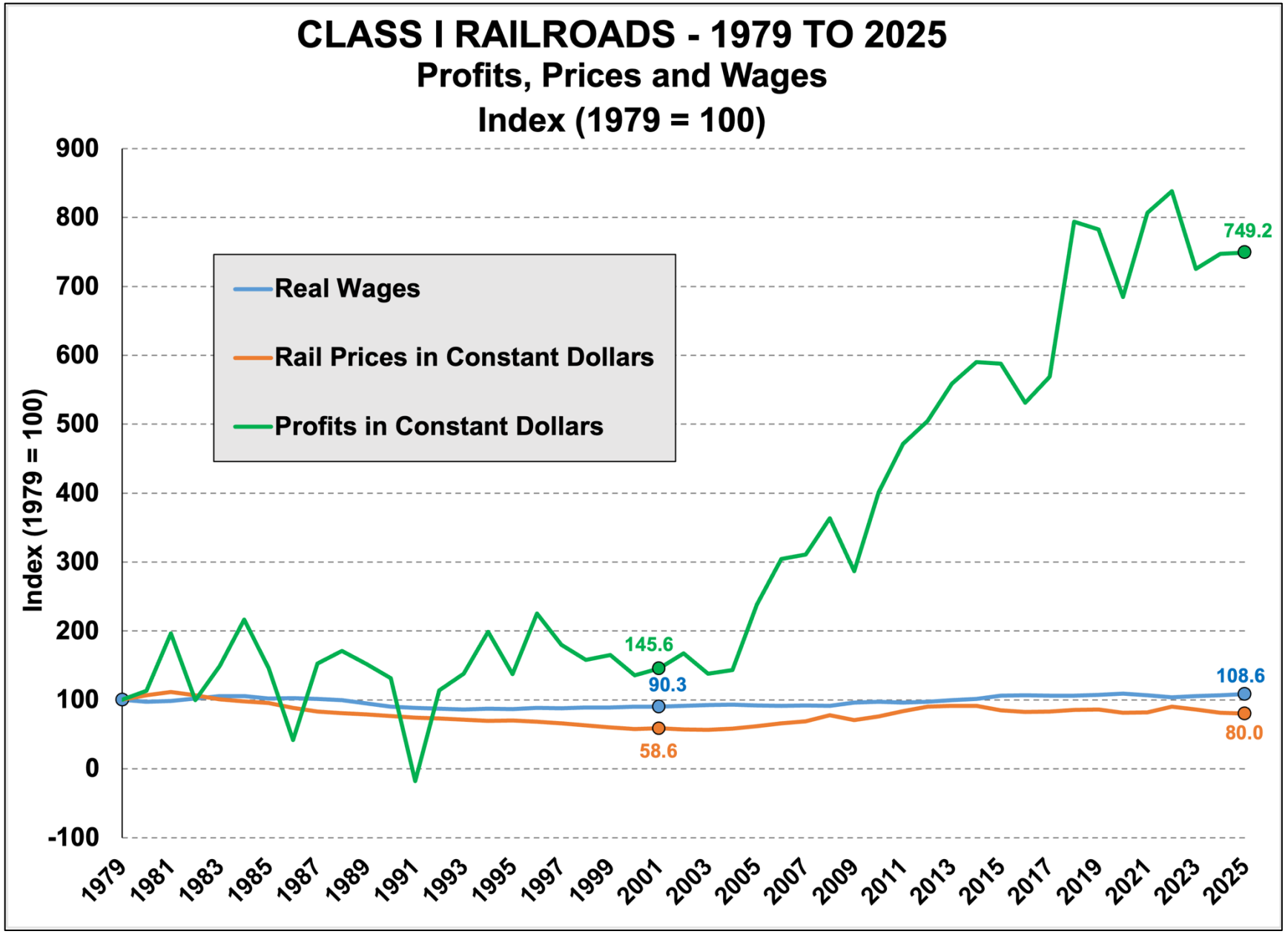
Thomas R, Roth

November 9, 2026
Date



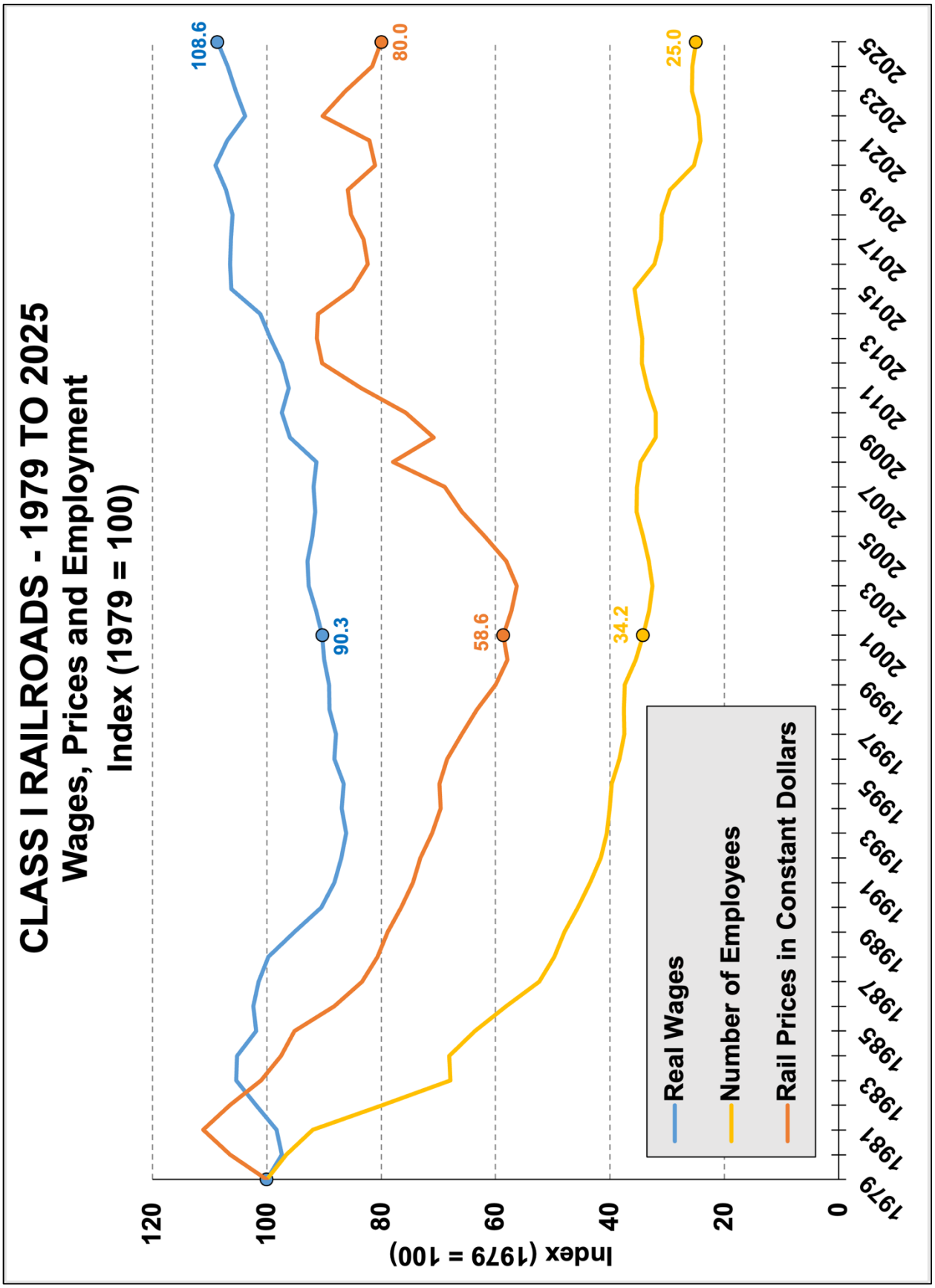
THE LABOR BUREAU, INC.

Attachment 1



THE LABOR BUREAU, INC.

Attachment 2


CLASS I RAILROADS - 1979 TO 2025
Wages, Prices and Employment
Index (1979 = 100)
Index (1979 = 100)
120
100
80
60
40
20
0
1979
1981
1983
1985
1987
1989
1991
1993
1995
1997
1999
2001
2003
2005
2007
2009
2011
2013
2015
2017
2019
2021
2023
2025
108.6
80.0
25.0
90.3
58.6
34.2
Real Wages
Number of Employees
Rail Prices in Constant Dollars

Attachment 4

CLASS I RAILROADS -- 1979 TO 2025

Year	Wage Change Current $	Constant $
1979	100.0	100.0
1980	110.4	97.4
1981	123.0	98.3
1982	135.1	101.9
1983	143.9	105.4
1984	148.7	105.3
1985	148.9	101.9
1986	152.1	102.4
1987	156.2	101.5
1988	159.6	99.7
1989	159.6	95.2
1990	159.6	90.5
1991	162.0	88.2
1992	164.4	87.0
1993	167.5	86.1
1994	173.1	86.9
1995	177.4	86.6
1996	185.9	88.2
1997	189.6	87.9
1998	194.6	89.1
1999	198.9	89.1
2000	208.0	90.0
2001	214.4	90.3
2002	220.0	91.4
2003	228.0	92.7
2004	234.5	92.9
2005	240.4	92.0
2006	246.8	91.5
2007	254.7	91.8
2008	263.7	91.3
2009	275.2	96.0
2010	285.0	97.4
2011	291.6	96.2
2012	301.1	97.3
2013	311.7	99.4
2014	322.2	101.2
2015	336.9	106.2
2016	340.8	106.4
2017	347.6	106.3
2018	355.4	106.0
2019	365.2	107.1
2020	376.1	109.0
2021	388.4	106.9
2022	408.9	103.8
2023	431.2	105.4
2024	449.5	106.8
2025	468.6	108.6

CLASS I RAILROADS -- 1979 TO 2025

Year	Number of Employees Actual	1979=100
1979	474,501	100.0
1980	458,322	96.6
1981	436,397	92.0
1982	378,904	79.9
1983	322,030	67.9
1984	323,030	68.1
1985	301,879	63.6
1986	275,817	58.1
1987	248,526	52.4
1988	235,880	49.7
1989	227,548	48.0
1990	216,424	45.6
1991	206,386	43.5
1992	197,421	41.6
1993	192,526	40.6
1994	189,962	40.0
1995	188,215	39.7
1996	181,809	38.3
1997	177,981	37.5
1998	178,222	37.6
1999	177,557	37.4
2000	168,360	35.5
2001	162,155	34.2
2002	157,372	33.2
2003	154,652	32.6
2004	157,699	33.2
2005	162,438	34.2
2006	167,581	35.3
2007	167,216	35.2
2008	164,439	34.7
2009	151,906	32.0
2010	151,854	32.0
2011	158,623	33.4
2012	163,464	34.4
2013	162,819	34.3
2014	166,209	35.0
2015	169,394	35.7
2016	152,702	32.2
2017	147,537	31.1
2018	146,783	30.9
2019	139,956	29.5
2020	120,007	25.3
2021	114,516	24.1
2022	116,246	24.5
2023	121,702	25.6
2024	121,311	25.6
2025	118,390	25.0

CLASS I RAILROADS -- 1979 TO 2025

Year	Profits in Thousands $ Current $	Constant $	1979=100
1979	$913,450	$843,181	100.0
1980	$1,129,392	$956,014	113.4
1981	$2,140,905	$1,655,609	196.4
1982	$1,151,548	$838,717	99.5
1983	$1,797,483	$1,260,112	149.4
1984	$2,701,064	$1,827,426	216.7
1985	$1,881,522	$1,233,890	146.3
1986	$544,407	$349,955	41.5
1987	$2,055,221	$1,289,287	152.9
1988	$2,381,782	$1,443,264	171.2
1989	$2,202,808	$1,284,368	152.3
1990	$1,977,411	$1,111,262	131.8
1991	-$281,334	-$152,941	-18.1
1992	$1,800,364	$956,947	113.5
1993	$2,239,638	$1,162,848	137.9
1994	$3,298,343	$1,676,754	198.9
1995	$2,323,914	$1,157,096	137.2
1996	$3,885,282	$1,899,782	225.3
1997	$3,155,655	$1,516,841	179.9
1998	$2,806,717	$1,334,132	158.2
1999	$2,970,964	$1,392,517	165.2
2000	$2,500,226	$1,145,908	135.9
2001	$2,739,835	$1,228,006	145.6
2002	$3,201,404	$1,412,951	167.6
2003	$2,686,683	$1,162,893	137.9
2004	$2,867,257	$1,208,558	143.3
2005	$4,916,536	$2,009,283	238.3
2006	$6,482,025	$2,569,729	304.8
2007	$6,797,225	$2,623,641	311.2
2008	$8,101,774	$3,067,819	363.8
2009	$6,422,621	$2,417,188	286.7
2010	$9,102,251	$3,384,661	401.4
2011	$10,909,167	$3,974,534	471.4
2012	$11,900,165	$4,256,244	504.8
2013	$13,396,923	$4,711,501	558.8
2014	$14,403,212	$4,978,752	590.5
2015	$14,470,416	$4,955,825	587.8
2016	$13,202,313	$4,479,032	531.2
2017	$14,392,773	$4,797,099	568.9
2018	$20,544,844	$6,694,093	793.9
2019	$20,593,411	$6,599,208	782.7
2020	$18,249,817	$5,772,588	684.6
2021	$22,491,978	$6,803,254	806.9
2022	$25,016,364	$7,067,773	838.2
2023	$22,434,202	$6,115,320	725.3
2024	$23,714,600	$6,301,655	747.4
2025	$24,180,006	$6,316,841	749.2

CLASS I RAILROADS -- 1979 TO 2025

Year	Revenue Per Carload Originated Actual	Constant $
1979	$10.21	100.0
1980	$11.86	106.5
1981	$13.55	111.2
1982	$13.79	106.5
1983	$13.59	101.1
1984	$13.59	97.6
1985	$13.69	95.2
1986	$12.94	88.2
1987	$12.52	83.3
1988	$12.54	80.6
1989	$12.75	78.8
1990	$12.84	76.5
1991	$12.91	74.5
1992	$12.97	73.1
1993	$12.91	71.1
1994	$12.91	69.6
1995	$13.22	69.8
1996	$13.20	68.5
1997	$12.92	65.9
1998	$12.55	63.3
1999	$12.06	60.0
2000	$11.92	57.9
2001	$12.33	58.6
2002	$12.23	57.2
2003	$12.27	56.3
2004	$13.00	58.1
2005	$14.28	61.9
2006	$15.67	65.9
2007	$16.83	68.9
2008	$19.40	77.9
2009	$17.74	70.8
2010	$19.20	75.7
2011	$21.61	83.5
2012	$23.82	90.4
2013	$24.46	91.2
2014	$24.84	91.1
2015	$23.42	85.1
2016	$22.89	82.4
2017	$23.50	83.1
2018	$24.67	85.3
2019	$25.25	85.8
2020	$24.17	81.1
2021	$25.58	82.1
2022	$30.11	90.2
2023	$29.85	86.3
2024	$28.94	81.6
2025	$28.88	80.0

ARU/BLET

Addendum H

Materials from STB Docket E.P. No. 775

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE No. 775

GROWTH IN THE FREIGHT RAIL INDUSTRY

COMMENTS OF THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION/IBT; BROTHERHOOD OF RAILROAD SIGNALMEN; INTERNATIONAL ASSOCATION OF MACHINISTS AND AEROSPACE WORKERS DISTRICT #19; 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 TRANSPORT WORKERS UNION OF AMERICA

The Brotherhood of Maintenance of Way Employes Division/IBT; Brotherhood of Railroad Signalmen; International Association of Machinists and Aerospace workers District #19; 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 Transport Workers Union of America ("Unions") respectfully submit these comments in response to the Board's notice of a hearing regarding prospects for growth in the freight rail industry. These comments will be supplemented by a presentation of the Unions' counsel at the hearings scheduled for September16 and 17, 2024.

I. INTRODUCTION

The Class I railroads say that they want to grow and are ready to pivot to growth, but what they are doing contradicts what they are saying; and even if they actually do wish to grow the business, they are not staffed to be able to do so.

Rail service is provided by rail workers, the railroads have cut their staffing and keep cutting workers. Even after a slight increase in staffing in 2023, the Class I railroads are still way

down in staffing. These comments will demonstrate the massive reductions in staffing that have occurred and how that negatively impacts both current service and possibilities for growth. Beyond that showing, the unions will also show that the cuts to the workforce exceed the reductions in carloadings cited by the railroads. Additionally, the Unions will show that the increases in profits among the Big 4 Class I railroads are entirely disproportionate to the cuts in carloadings and cuts in employment; and that the recent regression from peak profits is no justification for the retrenchment that has occurred in the industry.[1]

As for growth, the Class I's cannot grow without increasing the workforce. But they have either effectively maintained flat employment or engaged in further workforce cuts. Furthermore, the railroads' own statements indicate that they are interested in growing profit margins, not in increasing profits by increased revenue from increased traffic. This is the result of the malign influence of stock speculators who push ever greater cost cutting as they extract value from the industry. The best solution is real and regular enforcement of the common carrier obligation. But to truly have an impact, we need more legislation to better define and enforce the common carrier obligation.

II. EMPLOYMENT

Railroading is a service business. And a service business depends on its employees. The railroads cannot take on more work, increase the amount of freight that moves by rail, without increasing the workforce that provides and supports the service. In fact the Class I railroads have

[1] Some of the information and materials provided with these comments have been submitted to the Board before in Ex Parte No. 770, but they are pertinent to the issues raised in this docket, and the Unions want all of the information and materials to be submitted and available in this docket.

dramatically cut employment. And, after the job cuts resulted in a service implosion, the Class I's have only merely recovered to a level of service that is mediocre at best and is incapable of responding to extreme but predictable conditions or surges in demand; from an employment perspective, they are certainly not in a position to take on increases in traffic.

As many have noted, and as the Unions have repeatedly demonstrated in Ex -Parte No. 770 Sub. No.1, rail employment among the Big 4 Class I railroads is down substantially since 2016, and significantly since 2019. And despite assertions that they intended to increase their workforces and thereby increase resiliency and reliability, Big 4 Class I rail employment is actually marginally down from 2023 to present. This is shown on Addendum A to these comments, which reviews the Big 4 Class Is' own employment reporting to this agency for categories L300 (engineering- maintenance of way and signal), L400 (maintenance of equipment-shops) and L600 (operating). Addendum A shows that for those categories for the month of June, for the Big 4 collectively, employment is down 22% since 2016, down 17% since 2019, and down 1% since 2023. For the individual railroads, BNSF employment is down 11% since 2016, down 16% since 2019 and down 1% since 2023; CSXT employment is down 22% since 2016, down 1% since 2019, and up 4% since 2023; NSR employment is down 29% since 2016, down 22% since 2019, and up 2% since 2023; and UP employment is down 27% since 2016, down 21% since 2019 and down 3% since 2023. Since railroading is highly employee intensive and a service industry, there is no way for the railroads to "pivot to growth", or to be ready for increased traffic when they dramatically reduced employment over 8 years and have even marginally reduced employment over the last year.

The railroads sometimes claim, especially with respect to employment cuts after 2019, that the reductions simply reflect declines in business. But that is not true. The reductions in employment, even since 2019, significantly exceed the reduced carloadings. This is shown by Addendum B to these comments- graphs and charts showing employment, profits and carloads for the Big 4 for each year from 2010 through 2023[2]. Measured on an annual basis as shown by these charts, overall carloadings for the Big 4 were down 6% from 2016 levels and 7% from 2019 levels; but employment was down 24% from 2016 levels and 18% from 2019 levels. The reductions in employment far exceed the reductions in carloadings. But profits are dramatically up from 2016 and 2019. As is discussed more fully below, while profits decreased a little from 2022, they still remain quite high; and 2022 was a record year. The comparison of employment to carloadings to profits is shown on the graphs at Addendum B.

The roads sometimes claim that the reductions in employment just reflect changes in operations and methods of performing work that mean smaller workforces are required. With respect to engineering and equipment maintenance, that is simply not true. The reductions in employment have left the remaining employees with greater workloads and more responsibilities, which has adversely affected their ability to support operations and service. For

[2] The charts and graphs at Addendum B were prepared by Thomas R. Roth of the Labor Bureau, Inc. The Labor Bureau has provided professional services in labor relation matters to labor organizations throughout the United States continuously for 99 years. Mr. Roth has served Labor Bureau clients from 1974. In the railroad industry, Mr. Roth has served as economic and financial advisor to all railroad unions in national freight negotiations, commuter rail negotiations and Amtrak negotiations. He has represented all 14 standard railroad unions as financial and economic advisor in presentation of rail labor's case before numerous Presidential Emergency Boards and interest arbitrations under the Railway Labor Act, including over 40 Presidential Emergency Boards and interest arbitrations under the RLA.

example, the total track miles for the Big 4 has been essentially static since 2016, so the reduction in the engineering workforce (maintenance of way and signal) has meant that the current work force has to inspect, maintain, and repair the same infrastructure with fewer co-workers, and with increased burdens on the smaller work force. In the engineering departments, for each of the Big 4, the number of trackmiles per employee steadily increased between 2016 and 2022. This is shown on Addendum C to these comments. Using STB track miles data (R-1 Sched. 700) and L300 reports for 2016, 2019 and 2022, we see that on BNSF the number of trackmiles per employee increased from 5.37 in 2016 to 6.30 in 2019 to 6.73 in 2022 (percentage increases of 20% since 2016 and 6% since 2019); for CSXT those numbers go from 6.09 to 7.09 to 7.34 (up 17% and 3%), for NSR those numbers go from 6.36 to 6.89 to 8.19 (up 22% and 16%), and for UP those numbers go from 4.63 to 5.45 to 6.43 (up 18% and 15%). There are factors that explain different track miles per employee among carriers (terrain, type of cargo, contracting-out), but those factors should be consistent for each carrier. And for each of the Big 4, the number of employees per track mile-- the imputed amount of territory each employee is responsible for, has increased, significantly.[3]

Data for the shopcraft workers (responsible for maintenance of equipment), tell a similar story. The number of employees relative to the number of locomotives and cars has been significantly reduced. This is shown on the charts at Addendum D to these comments. The Class I's reduced both their numbers of active locomotives and rail cars between 2015 and 2022 (locomotives by 12.3% and cars by 22.1%), thus reducing their capacity to move freight. But

[3] The chart at Addendum C also shows trackmiles per employee based on BMWED and BRS membership data submitted to the Board in May of 2023; those numbers show similar or greater increases in track miles per employee.

their reductions in numbers of shopcraft workers over that period were dramatic (43%); and disproportionate to the numbers of locomotives and cars. The ratio of shopcraft employees to locomotives was reduced from 1.032 employees per locomotive, to 0.676 employees per locomotive (a reduction of 34%). This reduction in the ratio of employees to locomotives increases the pressure on the remaining workers in their performance of inspection, maintenance and repair work; leads to pressure on employees to work quickly and less thoroughly (that has been documented by employee statements in Ex Parte No. 770-1, and in recent journalistic reporting); and it also further diminishes the railroads motive power capacity as the effectiveness of their active fleets is reduced when locomotives are not thoroughly and adequately inspected and maintained.

There is also no basis for attributing the deceases in numbers of engineering and mechanical department workers relative to assets to changes in technology. There has been no technological change with regard to the performance of Maintenance of Way, Signal, or Shopcraft work since 2015 that could possibly explain the increase in trackmiles per engineering department employee or the reduction in shopcraft employees per locomotive.

The railroads have on occasion attempted to blame workforce shortages on difficulty in hiring and retaining workers. In particular, they said they were surprised that after having furloughed thousands of employees for many months, the number who returned when recalled was smaller than they had expected based on past experience. Regardless of whether their surprise at the recall rate was reasonable, a number of years have since passed and the railroads should reasonably expect that they need to do more to retain and recruit workers. Instead they keep doing the same things and then express frustration when experienced employees leave and

hiring does not match their goals. Certainly, the continued furloughs that keep employment to a bare minimum are damaging to efforts to retain and recruit workers. Likewise, changing overtime policies from sudden mandatory 6 day weeks to sudden prohibitions against overtime frustrate current workers and discourage new hires. Because railroad jobs have always been highly desirable, the railroads seem to assume that if they merely post bulletins and advertise jobs, an adequate number of applicants will materialize. But with the erosion of the comparative advantages to railroad employment, diminution of quality of life for railroad workers, and the demands and stresses on overstretched workforces, rail employment is less desirable than it once was and the railroads need to adapt to increase the desirability of rail employment. Industry stakeholders should not accept the railroads continuing to throw up their hands and saying "we are doing the best we can to increase employment". As shown in the unions' first supplemental comments in Ex Parte 770-1, both Amtrak and the airlines, employers with jobs comparable to freight rail jobs, have succeeded in substantially increasing their workforces through aggressive recruitment and improved compensation packages. If the railroads cannot similarly increase their workforces, it is because they are not really trying.

There are also concrete examples of Class I railroads reducing their employment, and hence their ability to grow, for reasons that have nothing to do with operational needs, traffic volume, or their finances. Rather, the railroads have engaged in furloughs to increase profit margins (not gross revenues) in order to satisfy stock speculators.

Union Pacific

As was explained in the unions' third supplemental comments in Ex Parte No. 770-1, in October of 2023, shortly after James Vena took the helm at Union Pacific, the carrier advised the

BMWED that in November, the carrier would furlough approximately 1300 maintenance of way employees (about 21% of UP's maintenance of way workforce), and that those employees would not be recalled until the end of January this year. Union Pacific responded that the number of employees who actually would be unable to hold a position after exercise of seniority would be minimal, that furloughed employees would not have to wait two months to be recalled, and that the furloughs were not unusual but were typical seasonal furloughs. As the Unions demonstrated, none of those assertions were true at the time they were made. UP's own reporting to the Board for employment category L300 (maintenance of way and signal) shows that: 1) 569 maintenance of way employees were actually laid off (about 10% of the maintenance of way workforce); 2) those employees were not recalled for at least two months, and UP's June 2024 reporting for category L300 shows 334 fewer employees than it reported in June 2023; and 3) UP's assertion that the furloughs were seasonal is contradicted by UP's L300 reporting data from 2022, as well as data for the other major Class I railroads– BNSF's reduction of its L300 employees was half the reduction implemented by Union Pacific, and CSXT and NSR actually increased employment in that category. So, neither seasonality nor broad market forces explains UP's maintenance of way furloughs. In short, UP's supposed justifications for the furloughs were all mere fabrications. Rather, as asserted by BMWED, the furloughs represented a cynical effort to reduce UP's operating ratio in the first quarter of James Vena's tenure as CEO by depriving maintenance of way employees of 2 months of income, and some of them additional months of income. And this does have an effect on service and the ability of the railroad to grow. It was a mere two years ago that UP promulgated a stunningly unprecedented number of embargoes due to "congestion". See Ex Parte No. 772-Union Pacific Embargoes. The maintenance of way

employees furloughed last year were working on production gangs, those that perform capital work. With UP running longer and longer trains, trains that exceed the length of sidings and yard tracks for assembling trains, UP has created its own congestion and capacity limitations. If it is going to run extra long trains, it needs to increase the length of sidings so trains can pass each other, and the length of yard tracks so trains do not extend out of yards when they are being assembled so they won't extend onto mainline tracks and block other trains. Indeed, in Ex Parte No. 772, the unions showed examples of very long UP trains blocking each other, and blocking yard ingress and egress. It is production gangs that do the work of extending sidings and yard tracks, yet almost 600 production gang workers were removed from work between November of 2023 and January of 2024, and currently there are more than 300 fewer of them than there were a just year earlier. Union Pacific cannot increase its capacity and assure prospective customers that it can handle their freight when it handicaps its own ability to make sure that its track can handle more traffic. One of the first actions of Union Pacific once Mr. Vena took the helm was to furlough Shopcraft workers who perform maintenance of equipment work. In August of 2023, before Mr. Vena was hired, UP reported 4934 employees in category L400 (maintenance of equipment). Almost immediately after Mr. Vena took charge, UP furloughed over 200 shopcraft workers. Significantly, UP furloughed employees in the Los Angeles Basin shops, which would be needed to support growth in intermodal traffic, and where there had been significant congestion as the economy began to recover from the early stages of the pandemic as containers could not be moved from the ports of Los Angeles and Long Beach so container ships remained parked in the harbor. The Los Angeles Basin shops had 106 machinists in 2020, there were around 50 in the summer of 2023. On August 25, 2023, UP furloughed 9 machinists reducing the

complement to 41; UP furloughed an additional 14 machinists in January of 2024 leaving only 25 machinists in the shops that inspect and maintain locomotives used to service the ports of Los Angeles and Long Beach. This is documented by the Statement of Juan Estrada in Addendum E to these comments. UP thus handicapped itself from increasing intermodal work from those ports, as it would have fewer locomotives in the area and fewer mechanics to inspect and maintain locomotives in the area.

BNSF shop furloughs

On February 25, 2024, Warren Buffett released his annual letter to investors in which he complained about BNSF's profit margins relative to the other Class I's. Mr. Buffett praised rail workers who have to work outdoors and in dangerous conditions, but he then criticized the pay increases those workers received in the most recent collective bargaining agreements (which were based on Presidential Emergency Board recommendations and accepted by the carriers, with the recommendations legislatively imposed with respect to some unions--at the carriers' request). Mr. Buffett asserted that the agreements provided pay increases that he said were "far beyond the country's inflation goals", but which were well below actual inflation. In fact, the increases were relatively consistent with inflation, and followed three years of wage stagnation in the face of dramatic increases in the cost of living. So, Mr. Buffett credited workers for hard work in dangerous and difficult conditions, but he does not believe that they are worth the pay increases recommended by the Presidential Emergency Board; and he would have preferred that the wage increases were less than the increases in the cost of living.

Two days after Mr. Buffett's letter was released, BNSF suddenly furloughed over 360 maintenance of equipment/shopcraft workers. BNSF did so even though BNSF has been

understaffed with respect to shopcraft workers in recent years. As described in the Unions' Second Supplemental comments in Ex Parte No. 770-1, in January of 2023, BNSF announced that over 1000 of its locomotives were overdue for their FRA mandated inspections (over 20% of its active fleet); the situation was so bad that BNSF had to seek FRA forbearance in enforcing the applicable regulations, and then had to contract-out the performance of work that it had never previously contracted-out. But BNSF then imposed a hiring freeze last summer and curtailed its mechanic hiring plans. Unsurprisingly given the hiring freeze, in January of this year, BNSF again found a large number of its locomotives overdue for FRA mandated inspections (over 650 locomotives) and ordered mandatory 6 day work weeks for locomotive mechanics; among the locations where 6 day work weeks were imposed were six where BNSF furloughed workers two days after Mr. Buffett's letter. Accordingly, after twice in two years being unable to keep up with the minimum FRA required locomotive inspections, and just after requiring 6 day work weeks for many locomotive mechanics, BNSF reduced the number of its employees who can perform the FRA inspections.

The February 27th furloughs were just a hurried attempt to satisfy Mr. Buffett's demand for improved profit margins by reducing operating expenditures in the Maintenance of Equipment department.

Norfolk Southern

Norfolk Southern had responded to complaints about the quality of its service by adopting a resilience plan under which it would not cut staffing to the bone, but would retain headcounts in order to be prepared for service interruptions and surges in demand. However, in response to the Ancora Holdings effort to change NSR management, Norfolk Southern

announced that it would significantly reduce its inventory of locomotives and would reduce staffing by 2% by the end of this year. Those announcements and others were designed to placate investors by jettisoning the resilience model and instead focusing on reducing operating ratio. That is certainly not a way to pivot to growth. In the battle between stock speculators and NS management, the capacity for growth and to respond to service interruptions and changes in demand gave way to short term efforts to increase profit margins.

II. THE CLASS I RAILROADS HAVE NO PLANS TO GROW, AND THEY ARE NOT POSITIONING THEMSELVES TO GROW; THEIR FOCUS IS ON PROFIT MARGINS FROM THE SAME OR SMALLER TRAFFIC BASES, NOT INCREASED PROFITS FROM INCREASED CARLOADS AND REVENUE

It has been apparent since the stock speculator induced adoption of the cost-cutting business model branded as "PSR" about 8 years ago that the Class I railroads have no interest in growth, but rather seek smaller but more highly profitable businesses. While managements of the Class I railroads have told this Board that they have plans to increase traffic on their lines, they have disclosed their real aims in discussions with finance interests. Most prominently, James Vena and other Union Pacific top managers expressly told financial analysts that they are not interested in traffic that can be handled at a profit, but not at their target profit margin.

On January 25, 2024, Mr. Vena and Union Pacific's CFO Jennifer Hamann, EVP Marketing and Sales Kenny Rocker, and EVP Operations Eric Gehringer held an earnings call with industry financial analysts in which those corporate officers were adamant that they will not reduce prices to gain more business, that they will gain profitability by "efficiencies", that there is room to continue to reduce headcount to gain further efficiencies, that Union Pacific has maintained "price discipline' and would not lower prices to increase volumes, and that a shipper

would have to meet Union Pacific's [profit] margin to be on the system.4 During the course of the call (at 53:59 of the recording), Mr. Vena said that our goal is very clear, to have the best O/R in the business. UP apparently lost an international intermodal contract because of its "price discipline". Ms. Hamman said (at 31:23): we want to make sure that the business on our railroad is at an acceptable margin; Mr. Rocker then said (31:39) the margins have to be acceptable [for a shipper] to be on the network. Later Mr. Vena said (at 54:52) that, with respect to lost business, we need to replace lost business without making an adjustment on price to get the business; and Mr. Rocker said he's bullish on intermodal but wants to make sure that they are moving product at "acceptable margins". They continued to talk about reducing headcount (36:00-36:50) and said that they can continue operating with fewer people handling the same amount of business. The Union Pacific officers could not be more clear-- they are laser focused on reducing operating ratio and maintaining price discipline, and they are not interested in increasing the business if serving the prospective new shipper (or keeping an existing one) cannot be done at the required profit margin, even if the shipper may be served profitably, but not maximally profitably—**you have to meet our margin to be on the system**. No one addressed how requiring shippers to meet the demanded margin in order to provide service is consistent with UP's obligations as a common carrier. Simply put, Union Pacific is not interested in increased volumes and revenue; it is solely interested in increased profit margins.

[4] The link to a recording of that conversation is https://www.up.com/cs/groups/public/@uprr/@investor/documents/investordocuments/mp3_unp_4q23_er_replay.mp3. An unofficial transcript of the call was submitted with the Unions Third Supplemental Comments in Ex Parte No. 770-1.

Warren Buffet's complaints about BNSF's profit margins that led to hundreds of mechanical department furloughs are indicative of a similar mind-set. Perhaps vexed by the praise heaped on BNSF's competitor by finance interests after appointment of Mr. Vena, and the subsequent increased UP profit margins by cost-cutting and business contraction, with no apparent near-term consequences from shareholders or regulators, BNSF embarked on its own cost-cutting regime, with more employees furloughed, and more locomotives in storage. Thus, we have clear rejection of the philosophy of former BNSF CEO Matt Rose– that you grow the business by growing the business. It should also be recalled that it was BNSF that fought with NTEC over BNSF's rationing of trains and crews–after the carrier had furloughed operating craft employees and shopcraft workers, and mothballed locomotives. Instead of responding to a request for more service by working to accommodate the customer and increase its traffic, BNSF fought the customer saying that it did not have the resources to provide service. Indeed, at a time when it was arguing that it lacked sufficient trainsets to meet NTEC's service needs, BNSF had reduced its locomotive fleet and was behind on its FRA mandated inspections by 1000 locomotives. BNSF is simply not interested in growing the business, especially if the new business does not improve the profit margin.

NS's response to the Ancora challenge to NS management by announcement of reductions in employment and locomotives (discussed above), is similarly reflective of the no growth philosophy– to leverage better profit margins not increase revenues– that prevails among the Class I's today.

III. UNION OFFICER AND EMPLOYEE STATEMENTS REGARDING BIG 4 ACTIONS INCONSISTENT WITH GROWTH

Addendum E includes statements of officers of the Unions and employees (some employee statements have their names redacted to protect the individuals from retaliation) that describe how the reductions in rail employment have led to recent service issues and how the reduced staffing will impede the ability of the Class I's to grow. The Unions will not repeat all that information here and respectfully refer the Board to Addendum f. Here the Unions will just summarize some of the key information.

Engineering

The reductions in maintenance of way and signal workforces means that the Class I railroads cannot keep up with inspections, maintenance and repairs to provide adequate service today. The reductions in the maintenance of way workforces of the Class I's means while the railroads have the same miles of track as there were 8 years ago, there are many fewer employees to maintain those same miles of track, which means they cannot keep up with the maintenance and routine renewals of the track and bridges. The furloughing of production gangs that do the capital work for the railroads reduces operating costs and improves operating ratios in the short-term; but it portends problems for existing levels of traffic in the long-term, and undermines the ability of the railroads to increase traffic. Additionally, while a major strategy of the Class I's to improve profit margins is to run fewer but longer trains, and they presumably hope to handle increased traffic with even longer trains, running of longer trains puts extra stress on the tracks which creates more defects and increases the possibility of derailments, so not only do reduced workforces have to inspect, maintain and repair the same miles of track, but that track is under

additional stress because of the longer trains. *See* Statement of BMWED President Tony Cardwell and the statements of various BMWED General Chairpersons at Addendum F-1.

The job cuts also mean that the Class I railroads cannot take necessary actions with respect to their infrastructures to accommodate additional traffic. Where there is only single tracking, as trains moving in opposite directions meet, practice should be for one of the trains to pull into a siding to allow the other to pass. But many sidings are only a mile or a mile and a half long because they were designed and constructed when trains were typically of such lengths. When trains are two or three miles long, they cannot fit many of the sidings. When one or both of the trains are two or three miles long, either a train is held at a yard or junction or a point well before a possible meet until the other train passes, or a train is directed to a longer routing. In either case, movement of one or both of the trains is delayed. This is also a problem when a carrier builds a two- or three-mile-long train in yards; a train may extend out onto the main line because yard tracks were not constructed with such long trains in mind; that results in blocking other trains from entering or leaving the yard, again causing congestion and delays. The obvious remedy to these problems if the plan is continue to run long trains is to lengthen sidings and yard tracks. But with the reductions in the Maintenance of Way workforces, carriers lack the workforces to do so. If these sorts of capital improvements are not made, the carriers will lack the capacity to respond to add trains to accommodate increased shipper use of freight rail. *See* Statements of BMWED President Tony Cardwell and General Chairman John Mozinski at Addendum F-1.

The reductions in the number of Signalmen have also negatively impacted the ability of the Class I railroads to do necessary capital work, preventive maintenance and timely respond to

"trouble calls", which means that there are service disruptions, slow orders, and increased congestion on the tracks. *See* Statement of BRS President Michael S. Baldwin at Addendum F-2, which includes correspondence from BRS members. BRS members report multiple locations that desperately need new crossing cases installed, but due to personnel shortages and the constant reshuffling of staff, the projects remain incomplete, leaving exposed cabling and equipment haphazardly arranged on the ground. Sometimes the cases are at the location, but not installed due to lack of manpower. Signalmen are often forced to rely on temporary solutions just to keep crossings operational, all while struggling to manage their regular duties. In many locations, failed infrastructure is left in service until complete breakdowns occur, jeopardizing safety and increasing the risk of accidents. Members report that in some territories, joint bars and rails are in disrepair, in others failed insulated joints are still in service and the carrier waits until the second insulated fails and the circuit breaks, meaning that the Signal system is not operating on that stretch of track. Another Signalman reports that at one yard the Signal complement is half what it should be and the Signalmen are on call all the time because there are not enough of them to provide regular cover for such work; at another yard, trains sit on branch lines and even main line tracks for hours outside the yard even preventing the Signalman from getting to a crossing that required work. In other locations, essential testing and maintenance are often delayed or canceled due to workforce and operational constraints. All of these failures, delays in making repairs and lack of preventive maintenance lead to slow orders and capacity constraints on the lines. *See* Statement of BRS President Michael S. Baldwin and correspondence at Addendum F-2.

Across the United States, on multiple railroads, there have been many deferred responses to malfunctions and trouble tickets, with repairs and corrections delayed because the Signal staff is stretched too thin. These failures not only violate regulatory requirements but also significantly jeopardize the safety of train operations, and contribute to slow orders that disrupt the efficiency of rail traffic. BRS has supplied examples of letters to the FRA regarding multiple examples of disregarded malfunctions across rail networks that involve grade crossings, where the railroad issued a slow order, but then did not address the issue for several hours, sometimes days. These actions ultimately reduce velocity which in turn clogs mainlines and reduces any possibility that the railroads could possibly add more trains to a network that is not well maintained. BRS does not see how the Class I railroads can increase traffic on their lines under the current conditions and with the reduced Signal workforce. *See* Statement of BRS President Michael S. Baldwin at Addendum F-2.

Mechanical

The reductions in shopcraft positions has rendered the Class I's unable to keep locomotives maintained so they are in good condition and serviceable for movement of trains. As documented by the officers of IAM District #19 and employees of various railroads represented by IAM #19 and SMART Mechanical Division various Class I railroads are sending locomotives out when they have not been fully inspected and maintained. For example BNSF has sent out locomotives with air brakes that are leaking air, but not leaking enough to require that they be taken out of service; so they are put into consists but not as the lead locomotives, but the brakes often fail and the trains have to stop. Supervisors, who are under pressure from higher management to move locomotives (told that their highest priority is to get locomotives out of the

shop and back on the road) often take inspection check lists from assigned mechanics before the inspections and maintenance are completed and the supervisors (who have not performed the inspections) sign off on release of locomotives that are not roadworthy. Those locomotives tend to break down and slow or stop a train, blocking or slowing movements on the tracks. Employees also report that BNSF has been cannibalizing stored locomotives for spare parts rendering those locomotives unavailable if there is a surge in demand, or if a customer requests increased service. See Statements of IAM #19 officers and members and SMART MD members at Addendum F-3 and F-4.

Currently, there are 433 BNSF locomotives that are Laid-Up Bad Order (LUBO), meaning that they are broken in some manner or missing parts. This is about 9% of BNSF's active fleet. See chart at Addendum F-4. If BNSF were to experience a surge in demand for service, these locomotives would be useless to it. And, as described above, BNSF had over 1000 locomotives overdue for FRA required inspections in January of 2023 and over 600 overdue in 2024. The situation in 2023 was so dire that BNSF had to seek "enforcement discretion" from FRA and contract-outs basic work that it had never contracted-out before. In January of 2024 BNSF decreed mandatory 6-day work weeks to clear up the backlog. But since then, it furloughed hundreds of shopcraft workers and is apparently content with having 9% of its fleet unavailable for service. With BNSF so short of staff that it cannot complete the most basic locomotive inspections in a timely manner, it is not situated to respond to a surge in demand; and it certainly cannot assure its shippers or potential new customers that it has the equipment to handle more traffic. *See* Statements of IAM #19 officers and members at Addenda F-3 and F-4.

At Norfolk Southern robbing stored locomotives for parts happens multiple times each week. CSXT has eliminated its parts inventory, so it often takes days to get necessary parts to effect repairs. *See* statement of IAM #19 General Chairman Orwan at Addendum F-4. Union Pacific's shops that service the Los Angeles Basin (Dolores and Commerce) are understaffed and the Drop Pit at Dolores is not operational and UP hasn't fixed it. As a result, trains out of Los Angeles are delayed as locomotives are sent to UP's West Colton facility which is 65 miles away. So rather than maintain and repair locomotives near the Ports of Los Angeles and Long Beach, UP is sending locomotives further away which limits the inventory of locomotives available near the ports. *See* Statement of IAM #19 General Chairman Juan Estrada at Addendum F-4. This impedes UP's ability to handle traffic coming from the Ports, and certainly diminishes UP's ability to handle increased traffic coming from the Ports.

IV. INCREASED USE OF SHORT LINE AND REGIONAL RAILROADS IS NOT AN ANSWER TO THE REFUSALS OF THE CLASS I RAILROADS TO TAKE IN INCREASED BUSINESS

Rather than encourage or induce Class I railroads to carry more freight, some have promoted increased use of short line and regional railroads as an alternative way to move more freight by rail. The unions reject the notion that the proper response to the refusals of the Class I's to do their job is to expand the use of short lines and regionals to serve customers on Class I lines and yards.

Many employees of short line and regional railroads are not covered by union contracts. And for employees of short lines and regionals who are covered by union contracts, their rates of pay, benefits, and rules are well below the rates of pay, benefits, and rules under agreements applicable on the Class I railroads. In essence, proponents of trying to increase the use of rail by

increasing freight carried by short lines and regionals would do so by undercutting standard Class I collective bargaining agreements. For example, an Environmental Defense Fund sponsored paper on increasing the amount of traffic moved by rail observed that the Class I's do not want to grow; so the paper promoted increased use of short lines and regionals, noting that their labor costs are below those of the Class I's. That is simply unacceptable to the Unions, and we have so advised EDF. It is unacceptable to the unions that there would be a plan to increase the use of rail transportation by undercutting standard national rates of pay, benefits and rules.

A proposal to fill the rail transportation shortfall of the Class I railroads by expanding the use of short line and regional railroads is reminiscent of what happened in the late 1980s and early 1990s with the creation of many of the short line and regional railroads. As the post-Staggers Act Class I railroads sought to reduce their networks, they sold off lines to newly created short line and regional railroads. Typically, those were lower density branch lines that were profitable, but the selling carriers deemed them to be inadequately profitable- they referred to them as "only marginally profitable". So the Class I's sought to spin off those lines. But they also acted to retain the long-haul movements of cars coming off the branch lines and onto the trunk lines, where the movements would be more profitable. In order to do that, the Class I's made the sales subject to contractual restrictions preventing or disincentivizing the purchasers from interchanging traffic with anyone other than the sellers- those restrictions are informally called "paper and steel barriers".

While the Class I's deemed the branch lines to be insufficiently profitable, those lines could be operated at an acceptable profit for the new short lines and regionals because they were non-union; they reduced the workforces by about 15%, and wages by about 15%; and there were

other reductions from Class I wages, benefits, and rules. In essence, the Class I railroads cut their labor costs of gathering freight on lighter density (but still profitably served) lines while retaining the traffic coming off those lines through the device of line sales to captive and typically unorganized short lines. Rail unions challenged those transactions as sham conveyances and as involving the phony use of corporate affiliates and subsidiaries, and they contended that the denial of employee protections was contrary to law. But the ICC and STB did some legal contortions to allow those sales with the Class I's retaining the long-haul movements under contractual restrictions and without employee protections under the policy goals of retaining service on the transferred lines. The policy goal of continuing service on the conveyed lines was thus achieved on the backs of the rail workers who lost jobs and union representation, and suffered reduced wages and benefits; while the Class I's retained the traffic off the conveyed lines. In the Unions' view, those were a series of bogus transactions backed by legal fictions that benefitted the Class I's, the new short lines and regionals and shippers, but exploited rail workers. Trying to induce increased use of rail by again moving work from railroads under standard national agreements to short lines and regionals would be flat unacceptable.

V. THE RETRENCHMENT AND LACK OF PREPARATION FOR GROWTH BY THE CLASS I RAILROADS ARE NOT JUSTIFIED BY THEIR INABILITY TO CONTINUE THEIR STREAK OF RECORD-BREAKING PROFITS

The Class I railroads have attempted to justify their refusals to increase their workforces, their withdrawal from staffing for resiliency, and their failure to position themselves for growth by citing recent declines in volumes and profits. In doing so they have ignored the lessons of the resurgence of demand as the pandemic abated, when they were caught flat-footed with insufficient staff because cavalierly furloughed employees did not return after months-long or

longer furloughs. But the poor-mouthing by the Class I railroads as an explanation for cutting their rail workforces, and not creating resiliency or positioning themselves for growth is not in any way justified by the recent financial experience of the Class I's.

Addendum B to these comments (charts, graphs and tables prepared by the Labor Bureau, Inc. regarding the financial performance of the Big 4 Class I railroads since 2010), demonstrates that while it is true that carloads are down and profits are off from their historic peak of 2022, the reduction in carloads has been minimal, and the reduction in profits since 2022 has been relatively insignificant. Profits for the Big 4 combined in 2023 are more than double their combined profits in 2010- around the end of the Great Recession. The chart at the first page of Addendum B shows a dramatic steep increase the profits of the Big 4 since the end of the Great Recession, even after short declines in 2016 and 2019. Indeed 2022 qualifies as the most profitable year ever for the Big 4 combined. The drop in combined profits from the record year in 2022 to 2023 still left 2023 profits at double the level in 2010. Current profits even exceed the then high mark in 2018 which doubled the profits from 2010. Even when calculated in constant dollars from 2010, there is no basis for the alarm and retrenchment by some Class I's, or the paralyzed stasis of other Class I's. In constant 2010 dollars, current profits are 150% of 2010 profits and exceed 2017 profits. *See* Addendum B. The cost-cutting and job reductions by industry executives to placate dissatisfied investors (or to placate an individual investor), who would have been thrilled by these results in 2016), and the attacks on the financial performance of the railroads by stock speculators, are unwarranted in the context of recent historical performance-even very recent historical performance.

The recent reduction in profits from record-breaking to merely historically very good does not justify the cuts in employment and lack of efforts to increase demand and prepare for growth. With respect to employment, the workforces of the Big 4 are 22% below 2018 levels while profits are higher. Operating ratios are still historically low. The combined results of the Big 4 are generally consistent with the results of the individual carriers; all of them are currently far more profitable than they were after the Great Recession, and all of them are either as profitable, or more profitable, than they were in in 2018. As shown Addendum B the cuts in employment significantly exceed the reductions in carloadings.

The reduced carloadings are cited as a principal reason for the job cuts. But the job cuts far exceed the reduced carloadings, And the reductions in employment are virtually the inverse of the increases in profits– profits increased as employment was reduced. In essence the increase in profits has been driven in large part by the cost-cutting, especially with respect to the workforce. That means that the Class I's have no incentive to grow, to increase profits by increased revenue.

The Unions contend that to the extent that volume is down, it is significantly because the Class I's have rejected, discouraged, or disincentivized increased movement of freight by rail because they are interested in only the highest profit margin traffic. Union Pacific just said the quiet part out loud—they don't want business that does not meet their margin, even if shippers can be served profitably, but not at the high target profit rates-- regardless of their obligations as common carriers.

Under pressure from stock speculators the Class I's have favored short-term profits and less revenue but at higher margins, over increased revenue and longer-term profits from expanded use of freight rail. The stock speculators can extract value from the railroads with little consequence for them or the railroads. Unfortunately, it is rational for management to respond to the desires of the stock speculators in this manner; but it is bad for customers, bad for rail employees, and bad for the Country.

VI. WHAT SHOULD BE DONE

The Unions submit that the current Class I business model is not only inconsistent with expanded use of rail for freight transportation, it is fundamentally at odds with the common carrier obligation. But the ICC and STB allowed the mergers that created today's mega-carriers as consistent with the public interest creating today's duopolies and a highly concentrated industry; and the Class I's have no incentive to improve service and increase traffic because they do not face competitive consequences for maintaining and extending the cost-cutting/low service business model; and they have evaded meaningful and consistent enforcement of the common carrier obligation. The Class I railroads will not provide more and better service until there are regulatory consequences for their failure to do so. The most important steps that can be taken involve better enforcement of the common carrier obligation.

While enforcement of the statute as currently written is certainly welcome; it is not enough. The standard is somewhat general and less clear than it should be and it is hard to apply in an individual case. And the hope for creation of specific standards under the current statute through development of a common law of the common carrier obligation through litigation of individual cases is a hope that has not been, and will not be, realized given the nature of the

current standard and the practice of the railroads of settling "bad" cases so there rarely are adjudications based on specific facts that establish the parameters of the duty.

What is necessary is better definition and enforcement of common carrier obligation. There is currently a bill drafted by Senator Tammy Baldwin and co-sponsored by Senator Roger Marshall that is supported by Rail Labor and many major shipper groups. The Unions urge other shippers to get on board and to press Members of Congress to support that bill. Such legislation is the only way to turn the railroads to a model of increased profits from growth rather than a model of increased profit margins by limiting their networks to less but higher profit margin traffic, and relentless cost-cutting which ultimately hollows out the railroads.

VII. GOVERNMENT ACTIONS TO PROMOTE FREIGHT RAIL GROWTH AND TO DISINCENTIVIZE LIMITS ON SERVICE TO ONLY HIGH PROFIT MARGIN CUSTOMERS ARE ENTIRELY APPROPRIATE

Railroads and others may contend that this Board, and Congress, have no business getting involved in the railroads' business; that the railroads are private entities and whether they should grow or contract, who they serve, and how frequently they are served should be determined solely by railroad managements and ultimately their shareholders, without "government interference". *See e.g.* Center for Regulatory Freedom and Washington Legal Foundation. Some contend that the incessant drive for ever higher profits driven by stock speculators (while the workforce is reduced, and customers are poorly served) at privately owned corporations is not properly the concern of a government agency or the Congress of the United States. *Id.* But these privately owned businesses are responsible for essential parts of the Nation's transportation

infrastructure. Poor freight service and a reluctance to increase shipping by rail when it would benefit the economy, transportation safety, and the environment are matters of national concern.

And the railroads are not like other private businesses in a variety of ways. The government provided the land and paid for the creation of much of our rail system, it has fostered the growth of the railroads, relieved them of legal obligations, mitigated the railroads' financial constraints when they were in financial extremis, authorized a level of concentration in the industry that would not be allowed in other industries, provided the railroads with immunity from anti-trust laws and other laws, and intervened to protect railroads in labor disputes. All of that support, protection, special treatment relative to other businesses, and legal immunity, were based on the premise that it was advantageous or necessary because of the importance of rail transportation to the economy and the Country generally. The railroads have no business complaining about government oversight and intervention in their businesses.

More specifically, the railroads:

1) operate under government issued certificates;

2) have common carrier obligations;

3) are government permitted duopolies, with each of the Big 4 spanning half the United States, the mergers that created the mega-carriers that are the Big 4 and the very large carriers that are the other Class I's, each with no more than one competitor (though they are often practically monopolies in certain regions and for certain commodities) would never have been allowed to form in other industries, they were allowed to form because this agency and its predecessor determined that their combinations were consistent with the public interest, and that the public transportation benefits of the combinations outweighed the potential negative effects of extreme industry concentration;

4) have immunity from anti-trust law and other laws with respect to post-merger actions, with the scope of that immunity broadly construed, and wielded liberally against Rail Labor to override the Railway Labor Act and negotiated agreements, and even the Norris

LaGuardia Act (concerning injunctions in labor disputes)- *see e.g. Norfolk & Western Ry. v. American Train Dispatchers Ass'n*, 499 U.S. 117 (1991), *CSX Transportation v. United Transportation Union*, 86 F. 3d 346 (4th Cir. 1996).

Additionally:

5) the railroads were the recipients of federal land grants that combined would be larger than 46 States;

6) the federal government paid to build much of the western railroads;

7) substantial parts of CSXT and NSR benefited from the government takeover of the former Penn Central lines (by creation of Conrail and "rationalization" of its lines);

8) all of the railroads were relieved of their common carrier obligations for passenger service with the federal government's creation of Amtrak which relieved them of parts of their service that ran at significant losses;

9) the government has repeatedly intervened to prevent strikes and other actions by railroad employees and to impose substantive terms of collective bargaining agreements to prevent disruptions in the Country's rail service (for example legislative imposition of the recommendations of Presidential Emergency Boards 219 and 250), because of such government action, the rail unions have not been able to use the threat of, or exercise of, self-help, as contemplated by the Railway Labor Act in order to obtain limitations on the dramatic reductions in the workforce, or to address such important issues as the increased contracting-out of work, changing and stricter attendance policies, operational and technological changes, or better safety protocols.

Accordingly, assertions that it is none of the government's business if the Class I railroads focus on ever greater and short-term profits to the detriment of service, choose to serve only those customers who meet the railroads' target margins, and staff themselves so thinly that they cannot provide good service and are not prepared for surges in demand, typical weather events, and growth are ahistorical, contrary to law, and generally specious. The unions submit that the actual actions of the Class I railroads are in conflict any assertion that they are pivoting to growth, and even if they want to grow, their actual staffing renders them incapable of being able to handle increased traffic.

VIII. CONCLUSION

The Class I railroads are too thinly staffed to provide adequate service today; they certainly are not positioned to handle increased traffic. This will not change without more regulation appropriate to the industry we have today (not the one that existed in 1980) and better definition and enforcement of the common carrier obligation. Action by the Board and by Congress is necessary. The Unions anticipate that there will be scaremongering about proposals for more robust regulation of the industry and greater Board oversight of the service provided by the railroads and the availability of rail service (*see e.g.* Center for Regulatory Freedom and Washington Legal Foundation). We will surely here that any action the Board takes, and any legislative action, will bring the industry back to the days before the Staggers Act. In doing so, those who advance such arguments attack a strawman. The Unions do not advocate pre-Staggers (1940 Act) levels of regulation; instead, they advocate a regulatory regime appropriate to the highly concentrated, duopolistic industry that exists today.

Respectfully submitted,

August 16, 2024

/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) 783-0010Fax: (202) 783-6088

Counsel for Brotherhood of Maintenance of Way Employes Division/IBT, Brotherhood of Railroad Signalmen, International Association of Machinists and Aerospace Workers District #19; International Association of Sheet Metal, Air, Rail and Transportation Workers Mechanical Division; International Brotherhood of Boilermakers; National Conference of Firemen and Oilers/32BJ SEIU; Transport Workers Union of America

308733

ENTERED
Office of Proceedings
September 16, 2024
Part of
Public Record



Source: Reddit

Fading Relevance and Elusive Growth

Presented to the Surface Transportation Board by:
Rick Paterson
Managing Director, Loop Capital
(212) 823-1311, rick.paterson@loopcapital.com
September 16, 2024

LOOP CAPITAL

The 20-Year Growth Picture

Consolidated, Originated, Loads for Union Pacific, BNSF, CSX and Norfolk Southern						
Year	Coal	Agricultural	Intermodal	Automotive	All Other	TOTAL
2000	6,777,460	1,156,631	8,890,416	1,278,059	6,797,421	24,899,987
2001	7,130,941	1,151,236	8,657,572	1,193,812	6,481,733	24,615,294
2002	6,881,711	1,115,482	9,085,786	1,239,488	6,539,148	24,861,615
2003	6,962,698	1,158,712	9,850,328	1,218,657	6,744,871	25,935,266
2004	7,061,492	1,158,037	10,726,815	1,177,782	6,863,564	26,987,690
2005	7,161,778	1,157,996	11,400,956	1,150,676	6,885,225	27,756,631
2006	7,474,398	1,208,269	11,988,984	1,084,686	6,833,696	28,590,033
2007	7,397,689	1,195,638	11,719,160	1,025,721	6,616,999	27,955,207
2008	7,679,314	1,245,987	11,356,379	810,759	6,353,367	27,445,806
2009	6,681,350	1,041,959	9,621,891	534,049	5,011,556	22,890,805
2010	6,811,106	1,163,104	10,992,794	625,603	5,670,457	25,263,064
2011	6,843,097	1,133,763	11,586,805	684,939	5,919,102	26,167,706
2012	6,098,551	1,038,400	11,953,437	798,583	6,148,291	26,037,262
2013	5,834,397	945,737	12,485,991	839,047	6,375,211	26,480,383
2014	6,002,664	1,086,145	13,292,791	876,897	6,822,067	28,080,564
2015	5,205,780	1,103,928	13,304,652	901,368	6,457,171	26,972,899
2016	4,213,529	1,183,488	13,103,165	914,067	6,198,213	25,612,462
2017	4,548,773	1,146,646	13,622,740	854,075	6,319,782	26,492,016
2018	4,522,932	1,179,269	14,361,474	846,707	6,530,234	27,440,616
2019	4,112,031	1,098,233	13,617,836	820,348	6,371,943	26,020,391
2020	3,158,383	1,178,695	13,560,346	671,420	5,925,967	24,494,811
2021	3,426,075	1,182,918	14,014,261	660,784	6,179,386	25,463,424
2022	3,510,915	1,129,270	13,324,519	684,944	6,131,183	24,780,831
2023	3,496,363	1,026,120	12,667,421	769,456	6,210,977	24,170,337
2024E	2,981,005	1,121,264	13,854,953	783,278	6,199,071	24,939,571
2003 to 2023 Growth						
	-50%	-11%	29%	-37%	-8%	-7%

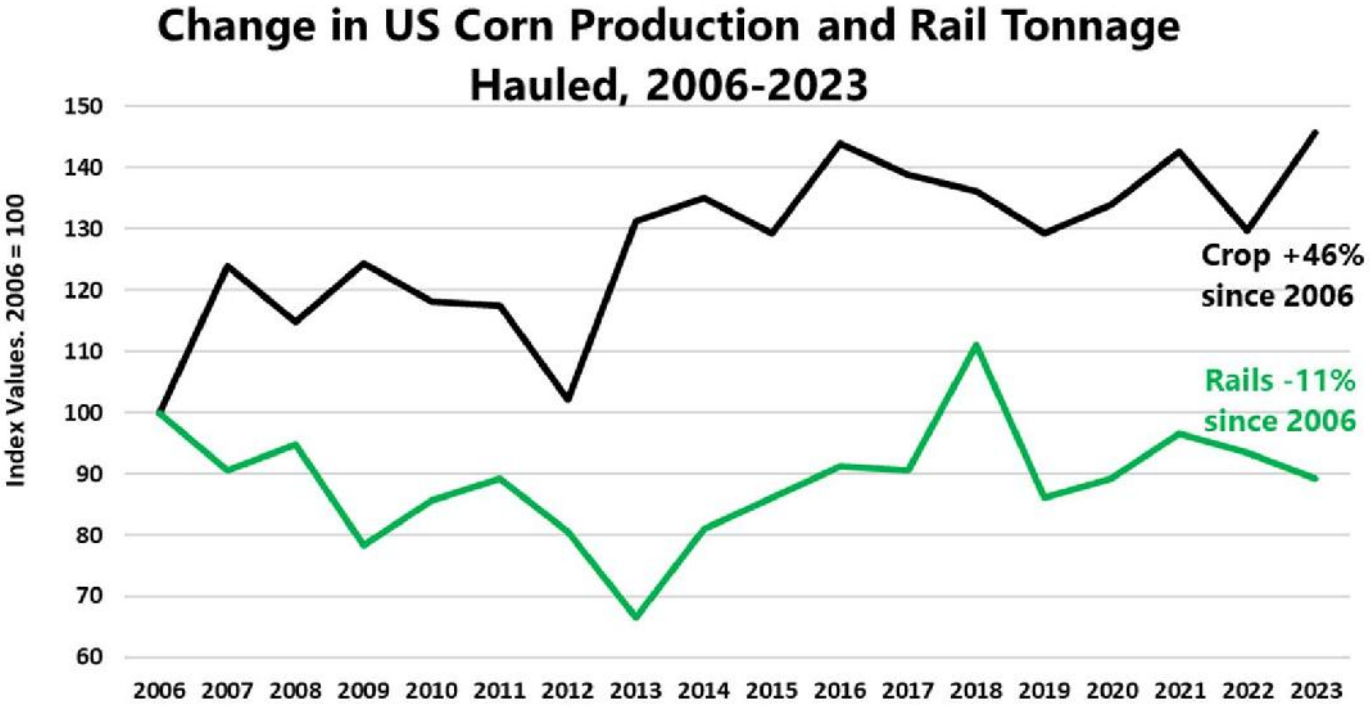
20 Years

Benchmarks			
Real GDP	Industrial Production	IP - Manufacturing	Truck Tonnage
14,096	92.5	93.2	74.9
14,231	89.7	90.0	74.5
14,473	90.0	90.6	77.6
14,877	91.1	92.0	79.9
15,450	93.6	95.1	84.8
15,988	96.7	99.2	86.3
16,433	98.9	101.9	84.8
16,762	101.5	105.2	83.8
16,781	97.9	100.4	85.1
16,349	86.8	86.7	77.4
16,790	91.6	92.4	82.0
17,052	94.5	95.4	86.5
17,443	97.4	98.2	88.8
17,812	99.3	99.3	94.3
18,262	102.3	100.5	97.5
18,800	100.9	100.1	100.0
19,142	98.7	99.4	102.5
19,612	100.0	100.0	106.4
20,194	103.2	101.4	113.5
20,692	102.4	99.5	117.3
20,234	95.1	93.0	112.9
21,408	99.3	97.7	112.9
21,822	102.7	100.3	116.6
22,377	102.9	100.0	114.6
2003 to 2023 Growth			
50%	13%	9%	43%

Source: AAR, St. Louis Fed, American Trucking Associations. Ag is 96% grain. 2024E applies the 2024 YTD growth rates through 9/7/24 to 2023 volumes. Real GDP in billions. IP and Truck Tonnage are index values.

Agricultural - Corn

Between 2006 and 2023 total US corn production increased 46% while tonnage hauled by the four Class I carriers declined 11%. This is exaggerated by an unusual 2006. From 2007, the increase in corn production was 18% versus a 1% decline in rail tonnage hauled, which is probably more representative.

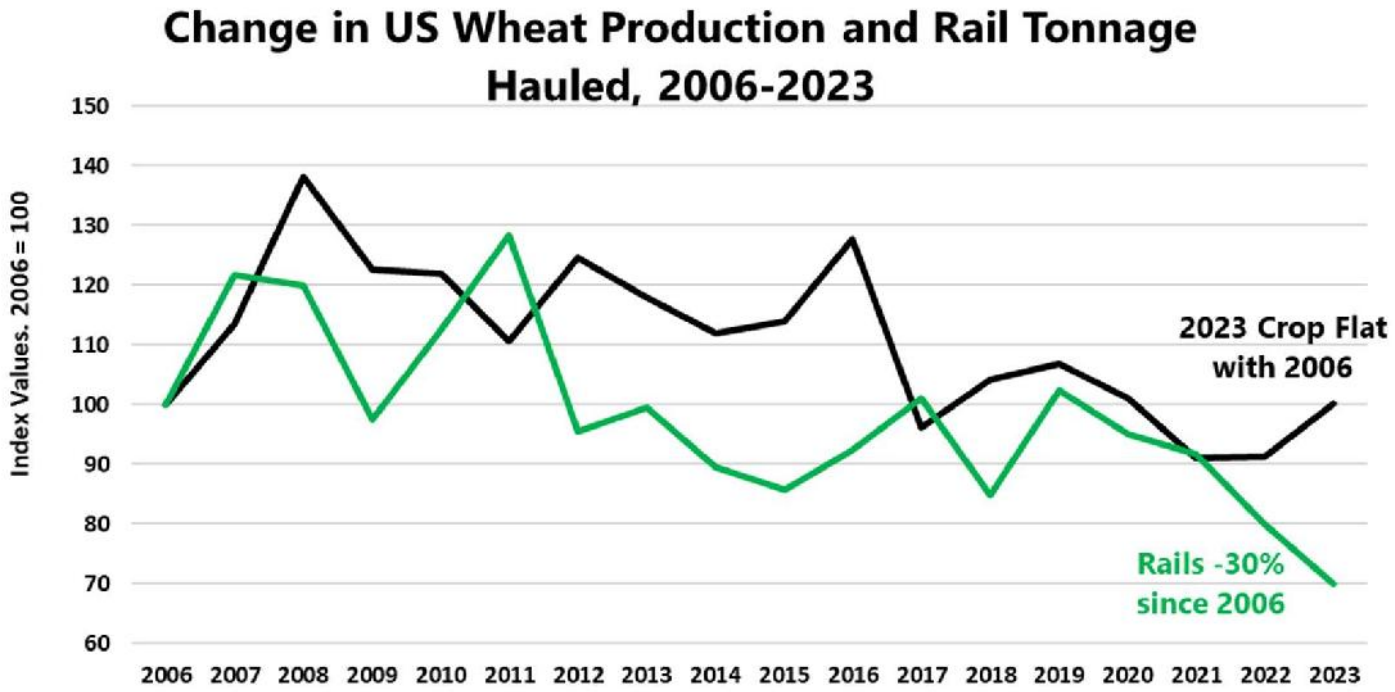


Year	US Crop Tonnage	Rail Tonnage Hauled
2006	267.5	67.0
2007	331.2	60.7
2008	307.1	63.5
2009	332.6	52.5
2010	316.2	57.4
2011	314.0	59.8
2012	273.2	54.0
2013	351.3	44.7
2014	361.1	54.2
2015	345.5	57.8
2016	384.8	61.2
2017	371.1	60.7
2018	364.3	74.3
2019	346.0	57.7
2020	358.5	59.8
2021	381.5	64.8
2022	346.7	62.6
2023	389.7	59.8

Source: USDA, STB, Loop Capital. Rail tonnage is the consolidated, originated, tonnage for Union Pacific, BNSF, CSX, and Norfolk Southern. STCC 01132. Table tonnage numbers in millions.

Agricultural - Wheat

Between 2006 and 2023 total US wheat production was flat, while the volume hauled by the four Class I carriers declined 30%.

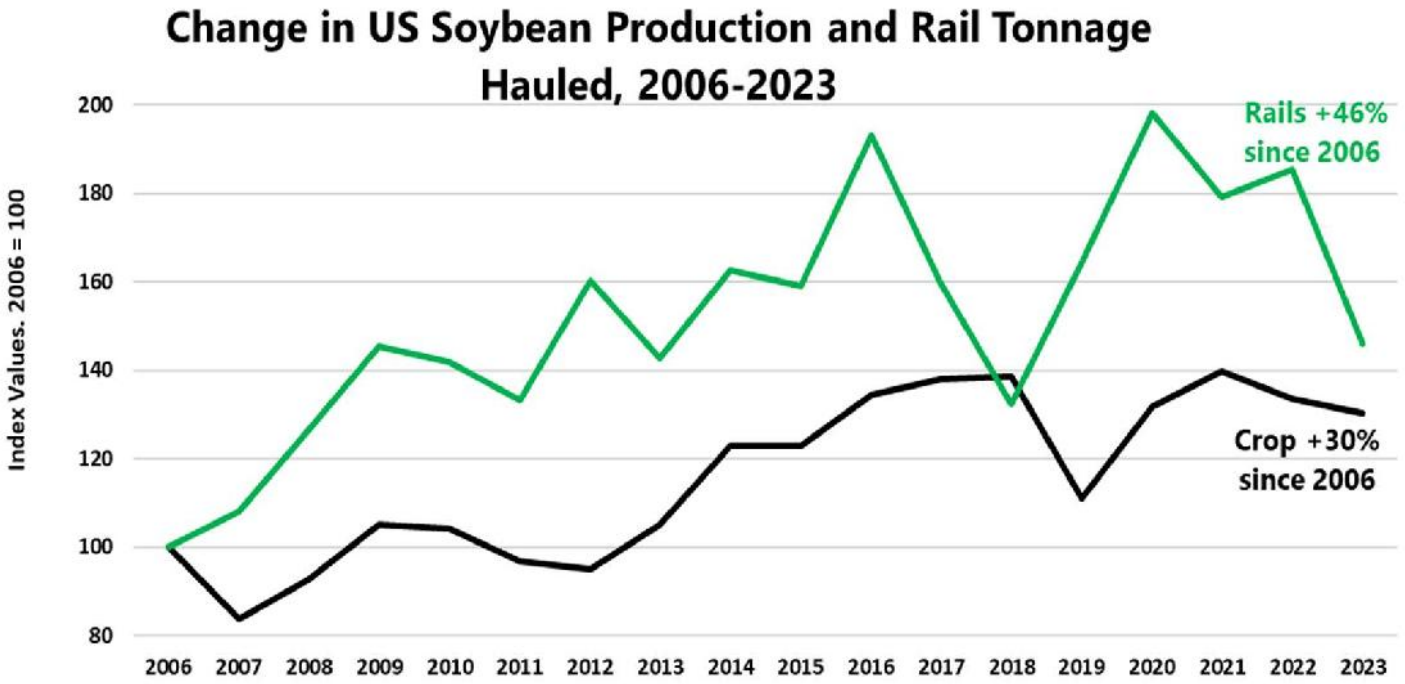


Year	US Crop Tonnage	Rail Tonnage Hauled
2006	45.9	30.4
2007	52.1	36.9
2008	63.5	36.4
2009	56.3	29.6
2010	56.1	34.2
2011	50.8	39.0
2012	57.2	29.0
2013	54.2	30.2
2014	51.5	27.2
2015	52.4	26.0
2016	58.6	28.1
2017	44.2	30.7
2018	47.9	25.8
2019	49.1	31.1
2020	46.4	28.9
2021	41.8	27.9
2022	41.9	24.3
2023	46.0	21.3

Source: USDA, STB, Loop Capital. Rail tonnage is the consolidated, originated, tonnage for Union Pacific, BNSF, CSX, and Norfolk Southern. STCC 01137. Table tonnage numbers in millions.

Agricultural - Soybeans

Between 2006 and 2023 total US soybean production increased 30% while the volume hauled by the four Class I carriers increased 46%.

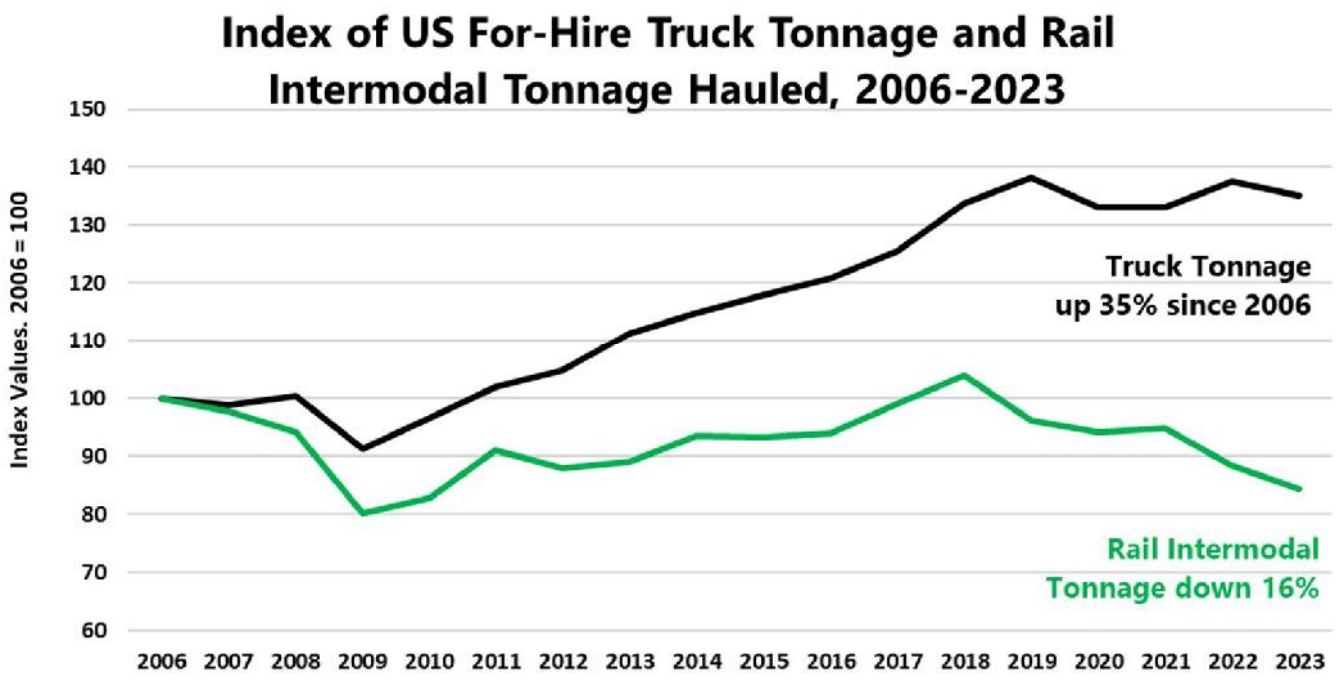


Year	US Crop Tonnage	Rail Tonnage Hauled
2006	81.2	13.4
2007	68.0	14.5
2008	75.4	16.9
2009	85.3	19.5
2010	84.6	19.0
2011	78.6	17.9
2012	77.3	21.5
2013	85.3	19.2
2014	99.8	21.8
2015	99.7	21.3
2016	109.1	25.9
2017	112.1	21.4
2018	112.5	17.7
2019	90.2	22.1
2020	107.1	26.6
2021	113.4	24.0
2022	108.5	24.9
2023	105.8	19.6

Source: USDA, STB, Loop Capital. Rail tonnage is the consolidated, originated, tonnage for Union Pacific, BNSF, CSX, and Norfolk Southern. STCC 01144. Table tonnage numbers in millions.

Intermodal Isn't as Good as it Looks

Intermodal volumes, including empties, grew 6% between 2006 and 2023, but intermodal tonnage hauled—to be more comparable with the American Trucking Associations For-Hire Truck Tonnage Index—actually fell 16% and underperformed the ATA index by 51%.

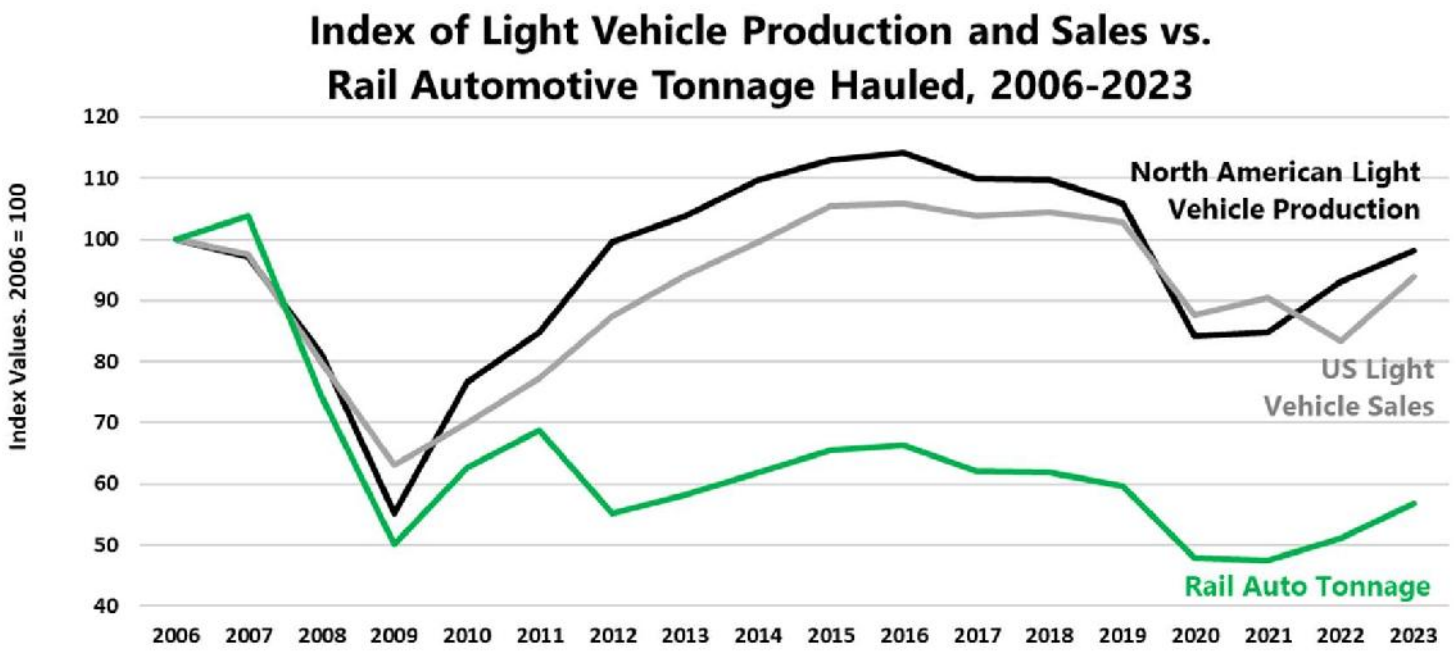


Year	ATA Tonnage Index	Rail Tonnage Hauled
2006	84.8	126.9
2007	83.8	124.1
2008	85.1	119.5
2009	77.4	101.9
2010	82.0	105.2
2011	86.5	115.6
2012	88.8	111.5
2013	94.3	113.1
2014	97.5	118.8
2015	100.0	118.4
2016	102.5	119.2
2017	106.4	125.7
2018	113.5	132.0
2019	117.3	122.0
2020	112.9	119.5
2021	112.9	120.3
2022	116.6	112.2
2023	114.6	107.1

Source: American Trucking Associations, STB R1s, Loop Capital. Rail tonnage is the consolidated, originated, tonnage for Union Pacific, BNSF, CSX, and Norfolk Southern, excluding MTs. STCC 44, 45, 46, 47.'Rail Tonnage Hauled' is in millions.

Automotive

US rail automotive tonnage hauled last year was only 7% higher than where it bottomed during the 2008/2009 recession. In contrast, North American light vehicle production was up 43% and US light vehicle sales were 31% above 2009 levels. Gap exacerbated by the decline of the rail-heavy Big 3 US automakers.



Year	NA LV Production	US LV Sales	Rail Tonnage Hauled
2006	15.9	16.5	30.4
2007	15.4	16.1	31.6
2008	12.9	13.2	22.6
2009	8.8	10.4	15.2
2010	12.2	11.6	19.0
2011	13.5	12.7	20.9
2012	15.8	14.4	16.8
2013	16.5	15.5	17.7
2014	17.4	16.5	18.8
2015	18.0	17.4	19.9
2016	18.2	17.5	20.2
2017	17.5	17.2	18.9
2018	17.4	17.2	18.8
2019	16.8	17.0	18.1
2020	13.4	14.5	14.5
2021	13.5	14.9	14.4
2022	14.8	13.8	15.5
2023	15.6	15.5	17.3

Source: STB, FRED, Statista, Loop Capital. Rail tonnage is the consolidated, originated, tonnage for Union Pacific, BNSF, CSX, and Norfolk Southern. STCC 371. All numbers in the table are millions.

‘Other’ Breakout; Commodities Primarily Reliant on Local Operations

Consolidated, Originated, Loads for Union Pacific, BNSF, CSX and Norfolk Southern									
Year	All Other		Chemicals	Aggregates	Building Mats	Metals	Waste & Scrap	Food	Paper & Forest
2000	6,797,421		1,422,410	835,698	747,687	647,130	460,588	424,627	610,699
2001	6,481,733		1,345,902	874,848	726,179	583,107	428,797	440,950	547,001
2002	6,539,148		1,375,199	859,646	743,507	597,274	437,974	435,935	522,078
2003	6,744,871		1,432,122	896,799	774,897	599,655	472,841	436,124	541,871
2004	6,863,564		1,464,844	927,821	797,474	634,256	508,029	416,961	520,772
2005	6,885,225		1,441,901	981,454	807,037	617,870	491,465	428,946	505,915
2006	6,833,696		1,428,980	1,002,548	753,298	659,229	492,309	448,196	471,286
2007	6,616,999		1,486,532	936,052	662,287	609,843	493,182	444,854	431,083
2008	6,353,367	Includes	1,453,260	882,012	585,773	569,853	483,646	385,702	406,787
2009	5,011,556		1,281,200	679,804	437,541	310,073	353,289	329,510	314,510
2010	5,670,457		1,413,386	786,062	475,595	448,204	402,242	325,221	320,677
2011	5,919,102		1,461,731	840,128	503,463	503,668	393,909	325,893	324,425
2012	6,148,291		1,449,990	893,814	537,510	508,181	374,139	331,894	325,055
2013	6,375,211		1,458,695	970,261	557,292	501,681	377,481	327,471	332,872
2014	6,822,067		1,505,358	1,110,875	593,546	528,962	382,384	320,200	340,684
2015	6,457,171		1,482,241	1,086,259	553,953	448,232	339,128	311,734	324,453
2016	6,198,213		1,508,968	1,050,775	537,343	418,996	363,919	312,690	298,656
2017	6,319,782		1,525,578	1,195,808	541,171	441,501	377,318	305,855	293,975
2018	6,530,234		1,585,473	1,216,323	553,977	472,310	379,863	308,037	294,690
2019	6,371,943		1,570,421	1,110,760	550,305	435,662	353,662	298,776	286,546
2020	5,925,967		1,542,971	925,544	548,556	377,992	353,594	294,990	271,779
2021	6,179,386		1,601,262	931,053	565,315	446,583	401,285	305,600	296,133
2022	6,131,183		1,607,773	1,014,641	543,308	405,087	397,787	324,666	286,479
2023	6,210,977		1,603,550	1,058,592	534,895	424,594	403,946	327,776	273,948
2024E	6,199,071		1,674,448	954,691	537,450	408,209	404,299	327,669	284,530
					2003 to 2023 Growth				
	-8%		12%	18%	-31%	-29%	-15%	-25%	-49%

Source: AAR, Loop Capital. 2024E applies the 2024 YTD growth rates through 9/7/24 to 2023 volumes.

This is primarily non-unit train business that involves local operations, which adds complexity.

It’s the railroads traditional bread ‘n butter business, and it’s struggling.

Within this selection, only chemicals and construction aggregates have grown over the last two decades, at CAGRs of 0.6% and 0.8%, respectively.

Some Conclusions on Growth

In most of their markets the railroads are shrinking in absolute terms, while in a handful of others they're growing slower than the industries they serve.

THE RAILROADS ARE LOSING RELEVANCE and participate less in the US economy every year.

(The only saving grace is they're, at least, fading from a high base.)

WHY?

Exploiting Pricing Power, a Supply Chain Stuck in the 1980s, and Captive to Wall St.

1. **Lack of rail-to-rail competition on the back of post-Staggers consolidation.**
   The preference for price increases over volumes has had a long-term suppressive effect on the latter as rail simply gets more expensive. This is completely rational. Any for-profit company will prioritize price over volume, if it can get it, because, unlike volumes, price has no associated cost and falls straight to the pre-tax line. In the current environment, volumes have a 40% operating margin (assuming 60 OR) while the margin on price is 100%. So 1% price growth = 2.5% volume growth.

   Pricing power emerged in 2004, so customers have now hit *20 years of price fatigue*. Happy anniversary.

2. **Modern supply chains have two basic requirements:**
   - Consistent on-time performance; i.e., SERVICE.
   - Close to real-time tracking visibility for customers.

   The Railroads Have Neither

   This is why initiatives like RailPulse are so important because it could eventually solve the second. RAILPulse

3. **Completely captive to Wall Street in a way that further handicaps service and growth.**
   Let's dig into this piece…

Wall Street Exerts ABNORMAL Influence on the Railroads

Wall Street owns and controls the railroads to an unhealthy degree, and to an extent that the public interest is diminished more than it should be. There are two basic components to this:

1. Wall Street likes and, ideally, wants volume growth, <u>but</u>:

- Volume growth has <u>not</u> been a component of the dramatic outperformance of the stocks over the last 20 years (since pricing exploded in 2004).
- Wall Street is skeptical the railroads will be able to grow volumes meaningfully in the future because we haven't seen it in the past, apart from specific business units in specific periods.
- Wall Street still believes the railroads are primarily a <u>pricing story</u> based on leveraging market power (raising rates above inflation on captive shippers) and a related cost cutting <u>operating ratio</u> story.

2. Wall Street has a very effective *POLICING MECHANISM*.

- It's normal for Wall Street to nag companies to do what shareholders want. Prioritize price over volumes and minimize capex to maximize buybacks, for example. This is capital markets 101.
- However, what's different with the railroads is the recent history of <u>enforcing</u> these demands with shareholder activism. We've had four major activist battles since 2008. *There's only six companies!* This is an unusual concentration of activist attention (and success).

Unpacking the Policing Mechanism

Why do the railroads receive outsized attention from shareholder activists?

Short answer:

The scarcity and premium placed on a handful of operational change agents in networks that are extraordinarily difficult to manage.

Long answer:

The biggest differentiator of a rail network versus road, air, and ocean, is dedicated right-of-way, which makes these networks the most difficult to operate efficiently and consistently.

If a plane, ship, or truck has a problem, the ones behind just go around it with little or no network effects.

Not so on a rail network, where a derailment on BNSF's Southern Transcon, for example, will quickly back up *200 trains*. Domino effects and backlogs take at least two weeks to normalize.

The role of Class I COO is therefore, in my view, the most difficult job in the transportation sector.

Arguably PSR Has Made a Hard Job Even Harder

There are many aspects to "Precision Scheduled Railroading", but we'll focus on the primary end goal –

It's designed to do the same with less.

Hunter Harrison basically figured out a way to move the same amount of freight with dramatically fewer train starts, crews, and locomotives. This of course requires longer trains; a trend that was already in place but was accelerated with PSR.

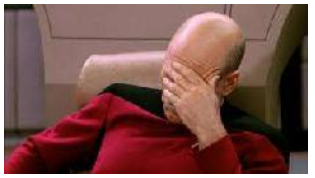
Fewer, longer, trains were easier to manage on simpler networks like the Illinois Central, Canadian National, and Canadian Pacific, but when you try to apply it to the spiderwebs at Union Pacific, BNSF, CSX, and Norfolk Southern it's more challenging.

In theory you're decongesting the network with fewer trains, aiding on-time performance, but a negative consequence of PSR has been the "no-fitter" problem. They're trying to build trains longer than the yards and trying to pass trains longer than the passing sidings. *There's a mismatch between the operating plan and their infrastructure*, which in most cases can't be solved (landlocked yards within cities, for example).

Proof point: When Ed Harris returned to CN in late 2022 and got it running better, what did he do? Shortened the trains so they'd once again fit in the sidings. Harris 2023 quote: *"It's not that hard is it"*.

Other Aspects of PSR and Wall Street Pressure Compound the Growth Problem

- **Reducing headcount hasn't been limited to train crews**, as Wall Street's demands for operating ratio has cut into other growth-related personnel. Ask the railroads how many people are employed in sales, customer service, and business development now versus 10 years ago.



- **Railroads can't grow if they're reluctant to pursue business that's dilutive to the OR.**

- **The local operations death spiral**. It reinforces a pre-existing problem:

Railroad cuts local service at a customer facility from seven days per week to five.

↓

Customer reacts by reducing rail share of volumes as assets and produce sit longer.

↓

Railroad reacts to lower volumes by cutting local service from five days per week to three.

↓

Customer reacts by reducing rail share of volumes as assets and produce sit longer.

↓

Railroad gives up and rips up the spur. Customer is gone forever.



Image source: Reddit, Campaignlive.com

The Networks Have Become Far Too Sensitive to Individual Talent

We now have Class I operating departments put in extremely difficult positions:

- We've taken the most difficult transportation network to optimize—freight rail — and further starved it of critical resources under PSR.
- In pursuit of operating ratio, operating teams are pressured to build trains that don't fit in yards, pass trains that don't fit in sidings, and do it all with not quite enough crews, mechanics, maintenance of way, and capex. No growth and periodic service chaos has been the result, as we discussed here in 2022.
- It's a minor miracle these networks function at all, but a tiny handful of individuals have managed to figure out how to do it with reasonable efficiency; primarily the old Hunter sidekicks that keep getting unretired.
- These are also the change agents that an activist fund is able to pick up and pitch to other shareholders: *This one individual (among tens of thousands) can take this network from worst to first!*
- In the first three activist battles Hunter Harrison was the change agent, while it was Jamie Boychuk in this year's Ancora vs. Norfolk Southern battle. NS only "won" because it countered the Ancora PSR change agent with its own PSR change agent (John Orr). Yes, it's getting silly.
- We've become the NFL where you can't win without a superstar quarterback.

Has Norfolk Southern's "Victory" Over Ancora Banished the Policing Mechanism?

Partially and temporarily.

But here's the problem: even when you win you lose.

- Fighting off Ancora cost Norfolk Southern $50 million in expenses, plus another $25 million to hire John Orr away from CPKC.

- It's embarrassing for management when a subset of their shareholders effectively accuse them of incompetence.

- Norfolk tried to move past focusing on operating ratio after the 2022 Service Crisis, but they were pulled back in line during the activist battle. Specifically:
  - Pressured to issue aggressive operating ratio guidance during the proxy contest.
  - Reintroduced operating ratio as a management incentive compensation metric.

No company wants to go through this, so the activist threat—while diminished—is not banished.

Looking Forward - What's Going to Change?

On the current trajectory, the industry will continue to:

- Grow slower than the market in a handful of commodities, most prominently intermodal.
- Stagnate in others, like Ag and Auto.
- Shrink in many of the more complex merchandise businesses that entail local operations (plus of course coal). This could ultimately necessitate infrastructure rationalization or sharing if revenues become insufficient to justify maintenance and operating costs.

What's going to change to get the US railroads off this road to nowhere?

"Nothing" is unfortunately a significant probability, but there are a couple of better scenarios that have the potential to improve the industry's growth profile.

One is a long shot, the other is actually probable…

The Long Shot: We Need One More "Legend"

The first scenario is that the Wall Street pressure points don't change, but the railroads find a way to manage their way out of their no growth situation.

The prevailing PSR model was developed by Hunter Harrison and is being maintained by his former colleagues at four of the six Class Is that operate in the US (Creel, Vena, Cory, Orr). Adding (now consulting) Ed Harris, we have a group that has also been tasked in recent years with training the next generation but, frankly, evidence of success here is sparse. This is why most of them keep getting pulled back out of retirement.

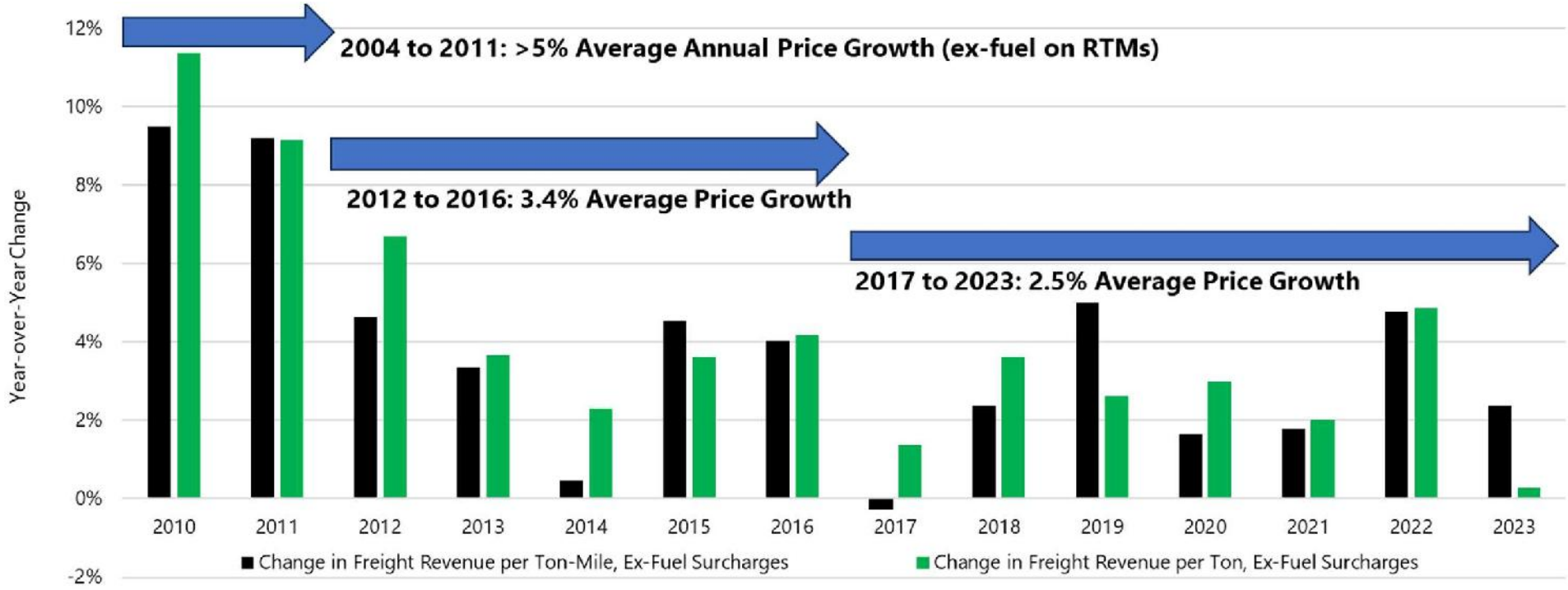
Rather than trying to groom replacements for impossible to manage networks, I would argue we need new thinking or a new generation of operators that takes this PSR foundation and figures out a way to make the four big US networks more manageable, consistent, and resilient, to the extent that sustainably improved service can beget growth.

This may involve a partial rollback of PSR, incorporating more, shorter, trains and higher headcount and capex. The trick would be that the rollbacks are sufficiently modest not to trigger a Wall Street reaction.

It might not be possible, but if anyone wants their name in the history books, this is your opportunity.

More Probable: Wall Street's Acceptance of the Faded Pricing Story

When pricing exploded in 2004 it was running at >6% in the US and softened the volume blow from the 2009 recession. We then saw a step down to 3.4% in 2012-2016, and 2.5% since 2017. Regardless, Wall Street clings to the hope that pricing will materially rebound when we exit the current freight recession. If this rebound proves weak, Wall St. pressure on management may switch to a healthier balance between volume and price.



Source: STB R1s (schedule 210 & 755) and fuel surcharges, Loop Capital. Data is consolidated UP, BNSF, CSX, and NS. Freight revenues exclude demurrage/accessorials.

Individual Railroad Volumes

Union Pacific
BNSF
CSX
Norfolk Southern

PLEASE SEE IMPORTANT DISCLOSURES AND ANALYST CERTIFICATION ON PAGES 26-30 OF THIS REPORT

Union Pacific Long-term Volumes

Year	Coal	Ag	Intermodal	Autos	Chemicals	Aggregates	Building Mats	Metals	Waste & Scrap	Food	Paper & Forest	Other	Total
2000	1,921,060	453,584	2,812,342	578,831	798,047	312,991	376,514	158,178	133,649	206,204	192,060	939,692	8,883,152
2001	2,151,335	431,416	2,675,661	582,393	751,009	332,183	387,564	151,695	121,650	219,155	179,551	915,024	8,898,636
2002	2,154,979	431,369	2,782,471	641,726	766,921	342,443	405,559	145,941	127,198	221,768	182,678	900,414	9,103,467
2003	2,219,657	443,694	2,893,602	620,530	783,625	354,158	421,463	156,533	136,317	222,802	185,731	908,993	9,347,105
2004	2,156,272	429,465	2,972,953	613,072	807,281	340,836	438,276	168,007	141,126	221,342	176,066	954,125	9,418,821
2005	2,168,833	400,446	3,077,165	578,453	797,025	382,508	431,971	160,882	134,623	231,432	163,145	1,006,487	9,532,970
2006	2,286,454	402,373	3,266,046	597,289	783,441	384,936	403,615	169,419	125,603	250,399	143,802	1,023,994	9,837,371
2007	2,290,070	388,971	3,279,086	572,377	809,386	355,147	349,894	161,998	121,338	243,011	130,038	1,010,665	9,711,981
2008	2,375,801	418,978	3,027,705	438,999	798,018	347,157	296,549	176,800	114,835	226,050	123,449	996,843	9,341,184
2009	2,005,380	349,899	2,625,758	289,281	695,360	256,841	208,684	87,804	81,687	210,925	92,535	858,895	7,763,049
2010	2,039,772	378,051	3,126,545	396,975	773,405	318,475	212,983	137,806	85,157	212,422	98,673	1,020,412	8,800,676
2011	2,148,767	371,582	3,056,329	420,992	817,448	341,751	222,815	153,941	89,710	224,091	105,037	1,112,778	9,065,241
2012	1,851,945	334,361	3,113,548	465,455	819,160	407,182	239,836	151,193	83,569	229,838	103,042	1,216,987	9,016,116
2013	1,690,368	316,498	3,135,897	481,011	844,470	450,541	254,935	154,026	80,497	227,184	102,576	1,249,614	8,987,617
2014	1,789,182	400,300	3,446,420	490,006	894,198	556,486	279,496	154,108	85,973	235,656	104,016	1,308,648	9,744,489
2015	1,444,691	353,980	3,334,217	524,680	874,193	482,269	260,572	113,359	73,938	233,116	101,223	1,232,453	9,028,691
2016	1,152,072	390,893	3,134,474	501,868	870,941	410,421	261,147	102,801	71,336	233,980	96,141	1,195,725	8,421,799
2017	1,220,975	377,180	3,160,600	468,298	899,685	511,416	268,484	114,164	77,783	226,438	98,504	1,154,729	8,578,256
2018	1,151,827	349,089	3,413,418	468,904	942,972	513,915	272,457	137,902	75,228	229,632	103,386	1,227,233	8,885,963
2019	969,870	328,996	3,166,039	447,852	942,361	431,545	263,578	134,549	72,074	224,376	99,728	1,241,837	8,322,805
2020	775,460	372,517	3,114,485	354,135	918,242	351,753	265,056	120,322	74,305	222,281	100,876	1,159,484	7,828,916
2021	793,975	393,137	3,128,135	342,194	964,581	350,899	282,411	126,694	86,515	231,441	117,667	1,205,639	8,023,288
2022	858,873	371,930	3,050,485	385,003	1,002,132	415,993	284,823	142,116	91,097	236,480	116,653	1,207,271	8,162,856
2023	839,813	342,796	2,993,060	421,574	1,012,419	439,417	260,211	142,613	81,506	239,132	109,660	1,217,726	8,099,927
2024E	667,824	361,414	3,172,436	430,685	1,069,368	362,372	249,172	134,161	80,511	241,478	117,344	1,296,054	8,182,819

20 Years

2003 to 2023 Growth

Coal	Ag	Intermodal	Autos	Chemicals	Aggregates	Building Mats	Metals	Waste & Scrap	Food	Paper & Forest	Other	Total
-62%	-23%	3%	-32%	29%	24%	-38%	-9%	-40%	7%	-41%	34%	-13%

Source: Union Pacific, AAR, Loop Capital. Loads are total, not originated. 2024E applies the 2024 YTD growth rates through 9/7/24 to 2023 volumes. 'Other' includes crude oil, metallic ores, fertilizers, and grain mill products.

BNSF Long-term Volumes

Year	Coal	Ag	Intermodal	Autos	Chemicals	Aggregates	Building Mats	Metals	Waste & Scrap	Food	Paper & Forest	Other	Total
2000	2,046,249	466,237	3,060,336	248,826	344,228	136,205	264,611	154,989	72,202	174,520	171,569	1,034,600	8,174,572
2001	2,159,120	493,789	3,034,164	193,296	324,757	152,139	250,354	140,116	65,262	178,719	156,247	990,867	8,138,830
2002	2,125,750	460,001	3,184,749	150,533	329,860	146,413	253,038	123,548	58,350	166,586	140,533	1,021,270	8,160,631
2003	2,114,653	492,830	3,627,559	152,030	342,087	144,674	265,114	127,227	57,296	172,694	142,443	1,109,307	8,747,914
2004	2,238,890	527,124	4,086,125	151,301	356,298	156,926	290,729	137,072	65,641	171,325	137,578	1,176,378	9,495,387
2005	2,267,959	546,178	4,497,487	170,276	356,091	157,116	305,033	125,942	69,435	171,268	137,333	1,208,194	10,012,312
2006	2,489,638	589,711	4,800,425	171,235	384,366	160,496	289,510	141,007	70,396	176,699	127,004	1,216,904	10,617,391
2007	2,499,988	606,692	4,593,899	165,919	428,484	170,534	243,864	142,402	69,164	177,245	108,380	1,086,933	10,293,504
2008	2,597,243	632,512	4,445,348	145,492	431,857	177,714	197,906	144,184	64,105	160,478	102,358	993,438	10,092,635
2009	2,416,077	522,796	3,622,282	98,928	370,009	135,430	145,810	79,233	46,787	136,860	75,087	737,844	8,387,143
2010	2,452,375	585,719	3,934,420	118,756	425,997	174,048	170,001	104,544	57,695	134,315	78,114	907,059	9,143,043
2011	2,341,529	584,031	4,254,604	125,035	428,627	199,642	182,603	122,509	63,338	132,045	78,381	936,745	9,449,089
2012	2,197,783	550,136	4,331,656	168,307	414,497	216,491	198,824	127,536	68,461	137,310	77,548	1,133,226	9,621,775
2013	2,259,579	491,431	4,552,998	182,947	405,553	247,597	200,159	127,056	59,592	135,792	79,122	1,316,484	10,058,310
2014	2,338,916	520,153	4,608,987	195,226	411,899	296,881	214,838	124,490	55,265	135,557	78,612	1,434,861	10,415,685
2015	2,303,685	572,612	4,619,616	200,251	418,571	269,749	198,516	97,434	46,468	134,123	77,735	1,294,171	10,232,931
2016	1,835,380	628,566	4,663,738	245,485	436,352	274,567	192,335	86,822	42,005	138,246	75,445	1,108,677	9,727,618
2017	1,952,559	611,980	4,919,719	267,687	441,414	361,497	196,620	98,563	50,790	143,828	74,389	1,141,387	10,260,433
2018	1,935,793	671,576	5,095,408	272,884	479,851	362,344	214,983	112,456	59,642	149,610	81,684	1,237,851	10,674,082
2019	1,821,169	603,754	4,859,079	262,457	478,255	289,764	204,698	102,116	56,518	147,770	78,662	1,288,272	10,192,514
2020	1,448,883	655,351	4,894,840	228,021	473,513	195,714	210,503	85,894	57,829	151,648	72,594	1,109,011	9,583,801
2021	1,555,594	651,597	5,167,972	225,139	476,931	222,795	216,776	98,865	72,092	154,142	73,753	1,195,971	10,111,627
2022	1,559,151	621,699	4,686,598	231,943	456,981	230,834	210,883	89,253	70,517	169,734	69,126	1,141,581	9,538,300
2023	1,494,196	551,244	4,271,150	278,536	447,563	232,991	204,396	93,738	78,282	182,633	65,510	1,086,925	8,987,164
2024E	1,176,924	641,622	4,994,504	277,495	474,680	202,168	204,559	91,970	78,928	180,553	62,541	1,114,293	9,500,239

20 Years

2003 to 2023 Growth

Coal	Ag	Intermodal	Autos	Chemicals	Aggregates	Building Mats	Metals	Waste & Scrap	Food	Paper & Forest	Other	Total
-29%	12%	18%	83%	31%	61%	-23%	-26%	37%	6%	-54%	-2%	3%

Source: BNSF, AAR, Loop Capital. Loads are total, not originated. 2024E applies the 2024 YTD growth rates through 9/7/24 to 2023 volumes. 'Other' includes crude oil, metallic ores, fertilizers, and grain mill products.

CSX Long-term Volumes

Year	Coal	Ag	Intermodal	Autos	Chemicals	Aggregates	Building Mats	Metals	Waste & Scrap	Food	Paper & Forest	Other	Total
2000	1,743,402	205,282	1,963,518	592,225	634,686	277,918	270,655	206,448	212,951	135,082	368,981	660,592	7,271,740
2001	1,796,907	210,121	1,915,179	518,698	603,268	272,302	255,319	192,477	208,209	140,313	332,321	614,376	7,059,490
2002	1,639,212	200,884	2,026,473	539,167	607,411	264,442	255,473	196,587	209,157	136,888	324,932	636,395	7,037,021
2003	1,677,362	211,567	2,163,938	534,042	621,911	288,085	269,553	218,988	237,020	140,136	343,408	631,961	7,337,971
2004	1,706,220	199,819	2,197,266	503,909	617,673	301,988	278,061	229,521	251,043	132,096	326,068	632,107	7,375,771
2005	1,793,712	201,524	2,110,265	488,592	594,897	304,920	276,624	220,809	249,057	133,212	308,865	616,313	7,298,790
2006	1,871,829	224,495	2,131,643	462,029	576,911	316,369	261,983	232,662	244,190	137,909	285,646	565,645	7,311,311
2007	1,843,397	212,895	2,060,100	438,528	591,929	276,171	229,069	224,363	241,849	133,860	257,660	553,469	7,063,290
2008	1,884,602	205,150	2,031,822	344,591	581,630	229,995	198,395	211,669	232,981	132,745	241,539	550,384	6,845,503
2009	1,530,962	187,834	1,844,227	235,163	520,334	174,549	151,021	118,254	173,538	120,982	185,917	493,194	5,735,975
2010	1,511,633	196,256	2,175,364	336,337	563,740	187,507	161,462	148,785	177,724	120,842	184,510	513,130	6,277,290
2011	1,492,859	186,954	2,276,196	362,609	578,294	201,247	173,883	166,145	195,006	120,806	200,286	510,512	6,464,797
2012	1,245,141	174,395	2,444,515	427,060	557,947	195,504	175,125	165,158	186,953	120,078	200,311	511,297	6,403,484
2013	1,163,422	170,993	2,571,532	432,622	565,263	202,455	180,961	164,819	205,423	117,469	204,212	550,323	6,529,494
2014	1,238,139	189,895	2,757,100	439,253	589,672	223,572	189,518	184,370	208,326	116,445	211,478	675,325	7,023,093
2015	1,008,542	186,290	2,833,034	449,761	548,001	231,184	184,230	157,787	185,788	114,317	191,444	669,451	6,759,829
2016	816,117	167,955	2,757,503	478,343	536,751	238,122	180,197	133,299	205,867	111,507	171,628	574,115	6,371,404
2017	851,476	150,357	2,817,485	455,855	538,297	249,798	176,740	129,384	201,671	108,722	167,471	533,755	6,381,011
2018	882,764	159,379	2,878,584	464,589	509,181	248,088	189,292	144,645	205,943	110,645	181,299	504,952	6,479,361
2019	837,997	169,183	2,656,090	457,355	502,768	258,761	196,755	129,615	194,894	110,342	184,653	516,930	6,215,343
2020	642,244	163,616	2,738,385	347,542	517,807	245,369	186,520	126,461	191,245	111,594	183,240	507,841	5,961,864
2021	701,187	154,665	2,968,095	317,905	540,516	236,793	198,046	159,878	208,988	113,525	190,588	463,031	6,253,217
2022	695,772	159,642	2,957,419	338,106	530,802	249,715	194,169	144,381	205,777	117,646	189,580	442,101	6,225,110
2023	754,624	156,861	2,759,691	387,689	516,823	270,623	207,360	155,896	210,101	116,122	178,125	433,093	6,147,008
2024E	747,182	152,582	2,894,403	394,155	543,682	258,303	215,906	145,347	203,084	112,433	186,860	435,977	6,289,914

20 Years

2003 to 2023 Growth

Coal	Ag	Intermodal	Autos	Chemicals	Aggregates	Building Mats	Metals	Waste & Scrap	Food	Paper & Forest	Other	Total
-55%	-26%	28%	-27%	-17%	-6%	-23%	-29%	-11%	-17%	-48%	-31%	-16%

Source: CSX, AAR, Loop Capital. Loads are total, not originated. 2024E applies the 2024 YTD growth rates through 9/7/24 to 2023 volumes. 'Other' includes crude oil, metallic ores, fertilizers, and grain mill products.

Norfolk Southern Long-term Volumes

Year	Coal	Ag	Intermodal	Autos	Chemicals	Aggregates	Building Mats	Metals	Waste & Scrap	Food	Paper & Forest	Other	Total
2000	1,626,091	197,616	1,675,061	689,388	378,982	169,733	304,547	348,036	137,096	86,371	281,218	943,847	6,837,986
2001	1,657,189	205,002	1,639,582	620,711	351,894	172,831	290,580	315,197	118,483	86,910	253,328	909,743	6,621,450
2002	1,549,384	205,540	1,730,194	660,833	358,643	161,662	286,748	329,972	127,604	87,272	240,852	961,790	6,700,494
2003	1,580,676	218,208	1,810,089	644,554	372,178	164,876	290,814	318,533	138,319	90,721	253,764	1,050,973	6,933,705
2004	1,647,709	214,080	2,104,700	633,230	394,393	182,898	296,496	333,016	161,359	91,777	248,497	1,136,830	7,444,985
2005	1,707,903	210,412	2,327,639	614,846	402,091	192,453	295,223	339,872	154,795	91,927	260,692	1,181,399	7,779,252
2006	1,730,358	212,667	2,399,958	560,642	404,881	197,710	289,448	369,234	170,157	92,253	249,817	1,210,541	7,887,666
2007	1,674,562	211,625	2,353,218	532,878	418,180	194,699	256,892	332,140	169,594	95,574	235,972	1,107,137	7,582,471
2008	1,756,359	208,970	2,368,493	412,107	395,230	193,174	220,047	304,142	174,638	86,478	233,313	1,040,678	7,393,629
2009	1,406,356	187,211	1,996,709	290,708	343,803	160,256	158,670	180,601	135,425	76,344	187,322	815,999	5,939,404
2010	1,539,143	212,604	2,295,917	289,800	390,074	181,517	168,813	261,103	172,320	81,005	202,032	969,869	6,764,197
2011	1,603,510	198,761	2,540,326	332,536	384,536	196,590	162,874	284,348	137,349	83,763	193,203	992,511	7,110,307
2012	1,403,826	190,375	2,622,908	373,886	375,444	188,986	171,334	287,020	132,377	84,635	186,230	1,065,135	7,082,156
2013	1,346,695	195,356	2,812,120	400,276	387,644	192,695	184,639	279,667	125,014	87,292	189,204	1,115,869	7,316,471
2014	1,307,441	210,496	3,073,747	410,675	399,518	224,892	196,833	302,844	123,849	88,860	190,046	1,240,685	7,769,886
2015	1,077,658	202,748	3,067,725	426,970	404,774	222,263	188,467	259,651	109,703	87,581	185,988	1,218,527	7,452,055
2016	902,124	201,479	3,094,674	439,051	397,558	218,105	194,193	272,683	121,067	91,117	168,708	1,142,191	7,242,950
2017	1,047,333	198,435	3,259,888	421,748	403,881	235,982	190,786	291,756	124,719	89,311	166,120	1,171,113	7,601,072
2018	1,032,833	184,359	3,480,130	402,899	439,236	238,361	182,024	286,951	125,009	88,077	163,841	1,282,800	7,906,520
2019	916,114	185,561	3,361,215	393,499	418,702	241,357	176,828	261,287	122,792	86,743	154,634	1,218,768	7,537,500
2020	583,676	174,389	3,185,959	330,791	389,939	198,496	169,204	220,836	121,403	85,903	142,795	1,150,705	6,754,096
2021	658,852	165,769	3,200,299	343,959	407,717	201,757	176,587	269,848	147,234	90,918	145,083	1,204,286	7,012,309
2022	684,027	174,170	3,073,708	337,806	390,510	225,486	169,248	238,715	149,104	93,766	136,821	1,153,191	6,826,552
2023	677,354	176,443	3,058,381	360,947	394,779	225,767	163,852	244,324	157,026	93,664	127,569	1,054,166	6,734,272
2024E	685,304	178,820	3,302,814	362,749	394,928	229,022	171,002	245,678	163,020	88,153	130,962	1,107,142	7,059,593

20 Years

2003 to 2023 Growth

Coal	Ag	Intermodal	Autos	Chemicals	Aggregates	Building Mats	Metals	Waste & Scrap	Food	Paper & Forest	Other	Total
-57%	-19%	69%	-44%	6%	37%	-44%	-23%	14%	3%	-50%	0%	-3%

Source: Norfolk Southern, AAR, Loop Capital. Loads are total, not originated. 2024E applies the 2024 YTD growth rates through 9/7/24 to 2023 volumes. 'Other' includes crude oil, metallic ores, fertilizers, and grain mill products.

Disclosures

Disclosures

Public Companies Mentioned in this Report

CSX Corporation (CSX:$33.51-BUY)

Canadian National Railway Company (CNR-TSE:C$158-HOLD)

Canadian Pacific Kansas City Limited (CP-TSE:C$114-BUY)

Norfolk Southern Corp. (NSC:$257-BUY)

Union Pacific Corporation (UNP:$253-HOLD)

Disclosures

IMPORTANT DISCLOSURES

This report has been prepared by Loop Capital Markets LLC ("Loop Capital Markets"). Loop Capital Markets is a broker-dealer registered with the SEC and a member of FINRA and the Securities Investor Protection Corporation (SIPC). Loop Capital Markets is located at 425 South Financial Place, Suite 2700, Chicago, IL 60605. For up-to-date Loop Capital Markets' disclosures, including company specific disclosures and price charts, please click on the following link or paste URL in a web browser: [https://loopcapital.bluematrix.com/sellside/Disclosures.action]. Alternatively, disclosures may also be made available by emailing compliance@loopcapital.com or by calling 888-294-8898.

Analyst Certification and Disclosures

Research Analyst Compensation: Loop Capital Markets' Research Analysts, including the author(s) of this report, receive compensation that is based on a variety of factors, including overall profitability of the Firm and total revenue from all sources, including those from investment banking.

Company Disclosures

Client: Loop Capital Markets currently has, or had within the past 12 months, the following entity(ies) as clients: Union Pacific Corporation

Investment Banking Services (Next 3 Months): Loop Capital Markets expects to receive, or intends to seek, compensation for investment banking services in the next three months from the Subject Company and other companies discussed in this Report.

Disclaimer

Information about our recommendations, holdings and investment decisions:

The information and rating included in this report represent the long-term view as described more fully below. The analyst may have different views regarding short term trading strategies with respect to the stocks covered by the rating, options on such stocks, and/or other securities or financial instruments issued by the company. Our brokers and analysts may make recommendations to their clients, and our affiliates may make investment decisions that are contrary to the recommendations contained in this research report. Such recommendations or investment decisions are based on the particular investment strategies, risk tolerances, and other investment factors of that particular client or affiliate. From time to time, Loop, and its respective directors, officers, employees, or members of their immediate families may have a long or short position in the securities or other financial instruments mentioned in this report. We provide to certain customers on request specialized research products or services that focus on covered stocks from a particular perspective. These products or services include, but are not limited to, compilations, reviews, and analysis that may use different research methodologies or focus on the prospects for individual stocks as compared to other covered stocks or over differing time horizons or under assumed market events or conditions. Readers should be aware that we may issue investment research on the subject companies from a technical perspective and/or include in this report discussions about options on stocks covered in this report and/or other securities or financial instruments issued by the company. These analyses are different from fundamental analysis, and the conclusions reached may differ. Technical research and the discussions concerning options and other securities and financial instruments issued by the company do not represent a rating or coverage of any discussed issuer(s). The disclosures concerning distribution of ratings and price charts refer to fundamental research and do not include reference to technical recommendations or discussions concerning options and other securities and financial instruments issued by the company.

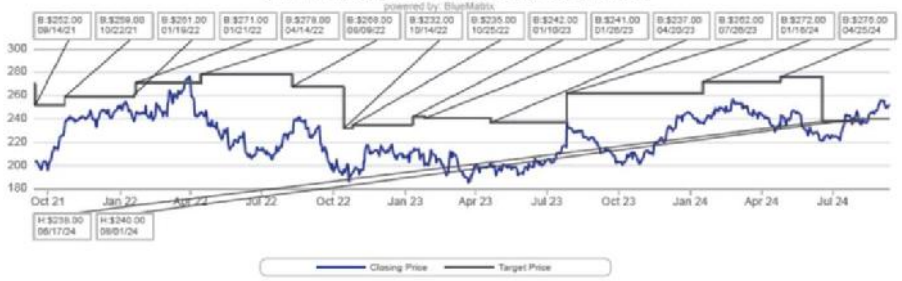
The information presented in this report is for informational purposes only. It was prepared based on information and sources that we believe to be reliable, but we make no representations or guarantees as to the accuracy or completeness of the information contained herein. This report is not to be construed as an offer to sell or a solicitation of an offer to buy any security. The opinions expressed in this report may change without notice.

Loop Capital Markets research reports are intended for use by institutional investors. The securities discussed in Loop Capital Markets research reports may not be suitable for some investors. Investors must make their own determination as to the appropriateness of an investment in any securities referred to herein, based on their specific investment objectives, financial status and risk tolerance. Past performance is no guarantee of future results and the predictions made in this report may not be met.

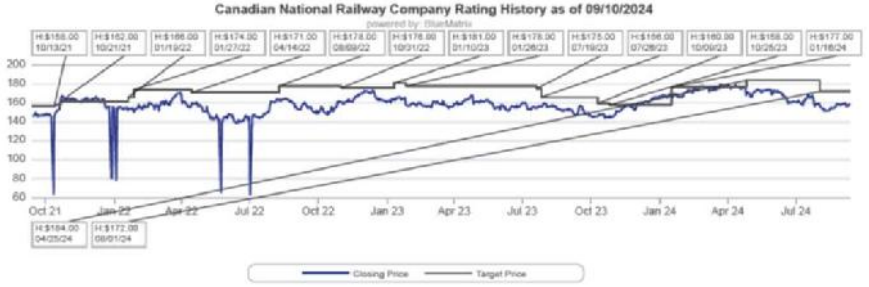
Loop Capital Markets accepts no liability whatsoever for any loss or damage of any kind arising out of the use of all or any part of this report. Loop Capital Markets specifically prohibits the re-distribution of this report by third parties, via the internet or otherwise, and accepts no liability whatsoever for the actions of such third parties in this respect. Additional information is available to clients upon request.

Disclosures

Union Pacific Corporation Rating History as of 09/10/2024



Canadian National Railway Company Rating History as of 09/10/2024



CSX Corporation Rating History as of 09/10/2024



Canadian Pacific Kansas City Limited Rating History as of 09/10/2024



Norfolk Southern Corp. Rating History as of 09/10/2024



Disclosures

Stock Ratings

Buy - The stock is expected to trade higher on an absolute basis or outperform relative to the market or its peer stocks over the next 12 months.

Hold - The stock is expected to perform in line with the market or its peer stocks over the next 12 months.

Sell - The stock is expected to trade lower on an absolute basis or underperform relative to the market or its peer stocks over the next 12 months.

Ratings Distribution for Loop Capital Markets as of September 10, 2024

			IB Serv./Past 12 Mos.	
	Count	% of total	Count	% of total
BUY	138	58.47%	14	10.14%
HOLD	96	40.68%	4	4.17%
SELL	2	0.85%	0	0.00%

Source: Loop Capital Markets

Disclaimer

Loop Capital® is a registered trademark of Loop Capital Holdings, LLC. Securities, investment banking and commodities services are offered through Loop Capital Markets LLC. Loop Capital Markets LLC is a registered broker-dealer and a member of the Financial Industry Regulatory Authority (FINRA), the Municipal Securities Rulemaking Board (MSRB) and the Securities Investor Protection Corporation (SIPC). Loop Capital Markets LLC is also registered as an introducing broker with the Commodities Futures Trading Commission and a member of the National Futures Association.

Loop Capital prepared this document for informational purposes only. This document and the information herein (collectively "Information") is not a research report and it should not be construed as such. The Information has been gathered from sources believed to be reliable, but is not guaranteed and is not a complete summary of all available data. Any historical price(s) or value(s) are also only as of the date indicated and from any source that may be noted. Loop Capital is under no obligation to update opinions or other information. Any opinions expressed by Loop Capital represent our present opinions as of the date of this Information and are subject to change without further notice. The Information, including proposed terms and conditions, are indicative and for discussion purposes only. Finalized terms and conditions of any transaction or engagement are subject to further discussion and negotiation and will be evidenced by a formal agreement.

The Information is confidential. By accepting the Information, you agree that you will, and you will cause your directors, partners, officers, employees and representatives to use the Information only to evaluate your potential interest in the strategies described herein and for no other purpose and will not divulge the Information to any other party except as otherwise permitted herein. Any reproduction, redistribution or transmission of the Information, in whole or in part, without the prior written permission of Loop Capital is prohibited. Except as required to comply with applicable law or regulation, Loop Capital makes no warranty whatsoever (including but not limited to, warranties as to quality, accuracy, performance, timeliness, continued availability or completeness) as to the Information contained herein.

The Information contained is not an offer to buy or sell or a solicitation of an offer to buy or sell any security or instrument or to participate in any trading strategy. Loop Capital does not provide accounting, tax or legal advice; however, you should be aware that any proposed indicative transaction could have accounting, tax, legal or other implications that should be discussed with your advisors and or counsel.

The Information should not be relied upon for the maintenance of your books and records or for any tax, accounting, legal or other purposes. Subject to applicable law, you may disclose any aspects of any potential transaction or structure described herein that are necessary to support U.S. federal income tax benefits.

The fact that Loop Capital has made the Information or other information available to you constitutes neither a recommendation that you enter into or maintain a particular transaction or position nor a representation that any transaction is suitable or appropriate for you. Transactions involving derivative or other products may involve significant risk and you should not enter into any transaction unless you fully understand the risks and have independently determined that such transaction is appropriate for you.

Loop Capital shall have no liability, contingent or otherwise, to you or to any third parties, or any responsibility whatsoever, for the correctness, quality, accuracy, timeliness, pricing, reliability, performance or completeness of the Information, data or formulae provided herein or for any other aspect of the performance of the Information. In no event will Loop Capital be liable for any damages (including special, indirect, incidental or consequential damages) which may be incurred or experienced on account of your use of the information provided herein or this document, even if Loop Capital has been advised or the possibility of such damages. Loop Capital will have no responsibility to inform you of any difficulties experienced by Loop Capital or any third parties with respect to the use of the Information or to take any action in connection therewith.

Loop Capital and its affiliates, officers, directors, and employees, including persons involved in the preparation of this document, may from time to time have "long" or "short" positions in and buy or sell, the securities, derivatives (including options) or other financial products thereof, of entities mentioned herein. In addition, Loop Capital and/or its affiliates may have served as manager or co-manager of an offering of securities by any such entity. Further information may be obtained upon request.

To the extent this material involves Municipal Securities, unless it is otherwise agreed in writing between you and Loop Capital, Loop Capital is acting solely as a principal/underwriter in an arm's length commercial transaction in which Loop Capital has financial and other interests that differ from yours. Loop Capital is not acting as a municipal advisor, financial advisor or fiduciary and the information provided should not be construed as "advice" within the meaning of Section 15B of the Securities Exchange Act of 1934.

LOOP CAPITAL

Good morning Chairman Primus, Vice Chair Hedlund, member Fuchs, and member Schultz for the opportunity to be here today.

My name is Rick Paterson and I represent Loop Capital, a Chicago-based private investment bank, and I've been a Wall Street analyst covering the railroads for 24 years.

I'll start by putting some numbers around the industry's lack of growth, and then I'll offer some reasons why, and what the future might hold.

This first slide, and the others that come after it, show consolidated volumes for Union Pacific, BNSF, CSX, and Norfolk Southern. It's annual data back to 2000, but if we focus on the 20-year track record, between 2003 and 2023, it's a depressing picture.

308740

ENTERED
Office of Proceedings
September 20, 2024
Part of
Public Record

Coal is now less than half of 2003 levels.

Agricultural products are 11% lower.

Intermodal is the bright spot, up 29% over the last 20 years.

Automotive has crashed by 37% as the rail-heavy Big 3 US automakers have struggled.

All other commodities are down 8%.

If you put it all together, the four major railroads hauled 7% fewer loads last year than they did in 2003.

Over that same 20-year period, US GDP grew by 50%, Industrial Production by 13%, and for-hire Truck Tonnage, as measured by the American Trucking Associations, was 43% higher.

The 20-Year Growth Picture

Consolidated, Originated, Loads for Union Pacific, BNSF, CSX and Norfolk Southern								Benchmarks			
Year	Coal	Agricultural	Intermodal	Automotive	All Other	TOTAL		Real GDP	Industrial Production	IP - Manufacturing	Truck Tonnage
2000	6,777,460	1,156,631	8,890,416	1,278,059	6,797,421	24,899,987		14,096	92.5	93.2	74.9
2001	7,130,941	1,151,236	8,657,572	1,193,812	6,481,733	24,615,294		14,231	89.7	90.0	74.5
2002	6,881,711	1,115,482	9,085,786	1,239,488	6,539,148	24,861,615		14,473	90.0	90.6	77.6
2003	6,962,598	1,158,712	9,850,328	1,218,657	6,744,871	25,935,266		14,877	91.1	92.0	79.9
2004	7,061,492	1,158,037	10,726,815	1,177,782	6,863,564	26,987,690		15,450	93.6	95.1	84.8
2005	7,161,778	1,157,996	11,400,956	1,150,676	6,885,225	27,756,631		15,988	96.7	99.2	86.3
2006	7,474,398	1,208,269	11,988,984	1,084,686	6,833,696	28,590,033		16,433	98.9	101.9	84.8
2007	7,397,689	1,195,638	11,719,160	1,025,721	6,616,999	27,955,207		16,762	101.5	105.2	83.8
2008	7,679,314	1,245,987	11,356,379	810,759	6,353,367	27,445,806		16,781	97.9	100.4	85.1
2009	6,681,350	1,041,959	9,621,891	534,049	5,011,556	22,890,805		16,349	86.8	86.7	77.4
2010	6,811,106	1,163,104	10,992,794	625,603	5,670,457	25,263,064		16,790	91.6	92.4	82.0
2011	6,843,097	1,133,763	11,586,805	684,939	5,919,102	26,167,706		17,052	94.5	95.4	86.5
2012	6,098,551	1,038,400	11,953,437	798,583	6,148,291	26,037,262		17,443	97.4	98.2	88.8
2013	5,834,397	945,737	12,485,991	839,047	6,375,211	26,480,383	20 Years	17,812	99.3	99.3	94.3
2014	6,002,664	1,086,145	13,292,791	876,897	6,822,067	28,080,564		18,262	102.3	100.5	97.5
2015	5,205,780	1,103,928	13,304,652	901,368	6,457,171	26,972,899		18,800	100.9	100.1	100.0
2016	4,213,529	1,183,488	13,103,165	914,067	6,198,213	25,612,462		19,142	98.7	99.4	102.5
2017	4,548,773	1,146,646	13,522,740	854,075	6,319,782	26,492,016		19,612	100.0	100.0	106.4
2018	4,522,932	1,179,269	14,361,474	846,707	6,530,234	27,440,616		20,194	103.2	101.4	113.5
2019	4,112,031	1,098,233	13,617,836	820,348	6,371,943	26,020,391		20,692	102.4	99.5	117.3
2020	3,158,383	1,178,695	13,560,346	671,420	5,925,967	24,494,811		20,234	95.1	93.0	112.9
2021	3,426,075	1,182,918	14,014,261	660,784	6,179,386	25,463,424		21,408	99.3	97.7	112.9
2022	3,510,915	1,129,270	13,324,519	684,944	6,131,183	24,780,831		21,822	102.7	100.3	116.6
2023	3,496,363	1,026,120	12,667,421	769,456	6,210,977	24,170,337		22,377	102.9	100.0	114.6
2024E	2,981,005	1,121,264	13,854,953	783,278	6,199,071	24,939,571					
2003 to 2023 Growth								2003 to 2023 Growth			
	-50%	-11%	29%	-37%	-8%	-7%		50%	13%	9%	43%

Source: AAR, St. Louis Fed, American Trucking Associations. Ag is 96% grain. 2024E applies the 2024 YTD growth rates through 9/7/24 to 2023 volumes. Real GDP in billions. IP and Truck Tonnage are index values.

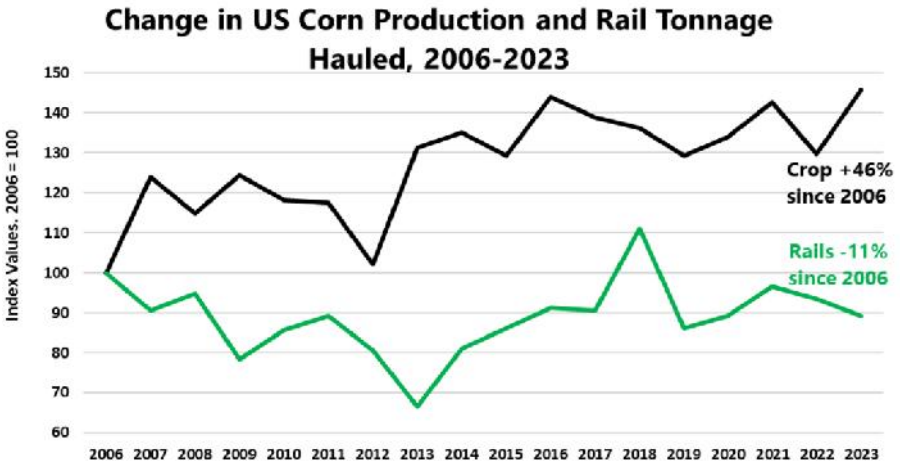
We can drill down further with tonnage data that's available from 2006.

Here's US corn production versus corn tonnage hauled by rail, with positive crop tonnage and negative rail tonnage.

2006 is an unusual base year, but if we start from 2007 the rail share loss is about 19%.

Agricultural - Corn

Between 2006 and 2023 total US corn production increased 46% while tonnage hauled by the four Class I carriers declined 11%. This is exaggerated by an unusual 2006. From 2007, the increase in corn production was 18% versus a 1% decline in rail tonnage hauled, which is probably more representative.



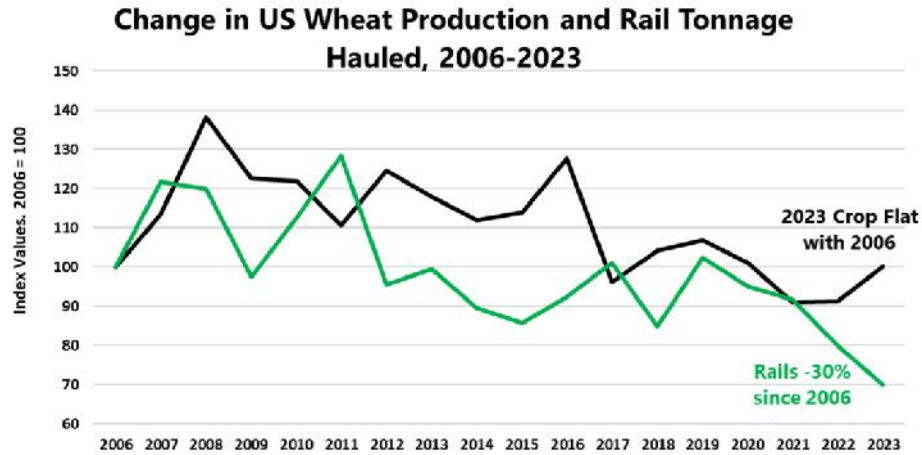
Year	US Crop Tonnage	Rail Tonnage Hauled
2006	267.5	67.0
2007	331.2	60.7
2008	307.1	63.5
2009	332.6	52.5
2010	316.2	57.4
2011	314.0	59.8
2012	273.2	54.0
2013	351.3	44.7
2014	361.1	54.2
2015	345.5	57.8
2016	384.8	61.2
2017	371.1	60.7
2018	364.3	74.3
2019	346.0	57.7
2020	358.5	59.8
2021	381.5	64.8
2022	346.7	62.6
2023	389.7	59.8

Source: USDA, STB, Loop Capital. Rail tonnage is the consolidated, originated, tonnage for Union Pacific, BNSF, CSX, and Norfolk Southern. STCC 01132. Table tonnage numbers in millions.

Another share loss in wheat, with last year's crop flat with 2006, while rail tonnage hauled was 30% lower.

Agricultural - Wheat

Between 2006 and 2023 total US wheat production was flat, while the volume hauled by the four Class I carriers declined 30%.



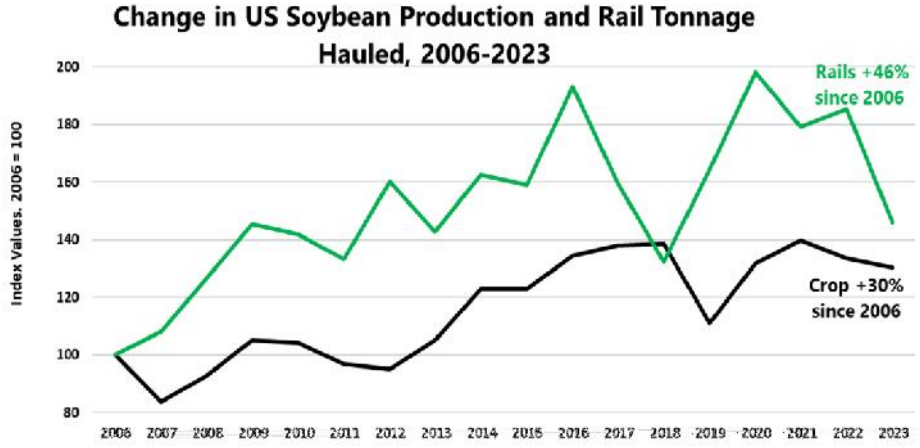
Year	US Crop Tonnage	Rail Tonnage Hauled
2006	45.9	30.4
2007	52.1	36.9
2008	63.5	36.4
2009	56.3	29.6
2010	56.1	34.2
2011	50.8	39.0
2012	57.2	29.0
2013	54.2	30.2
2014	51.5	27.2
2015	52.4	26.0
2016	58.6	28.1
2017	44.2	30.7
2018	47.9	25.8
2019	49.1	31.1
2020	46.4	28.9
2021	41.8	27.9
2022	41.9	24.3
2023	46.0	21.3

Source: USDA, STB, Loop Capital. Rail tonnage is the consolidated, originated, tonnage for Union Pacific, BNSF, CSX, and Norfolk Southern. STCC 01137. Table tonnage numbers in millions.

Soybeans is a better story, with tonnage hauled by the railroads outpacing crop tonnage by 16% since 2006.

Agricultural - Soybeans

Between 2006 and 2023 total US soybean production increased 30% while the volume hauled by the four Class I carriers increased 46%.



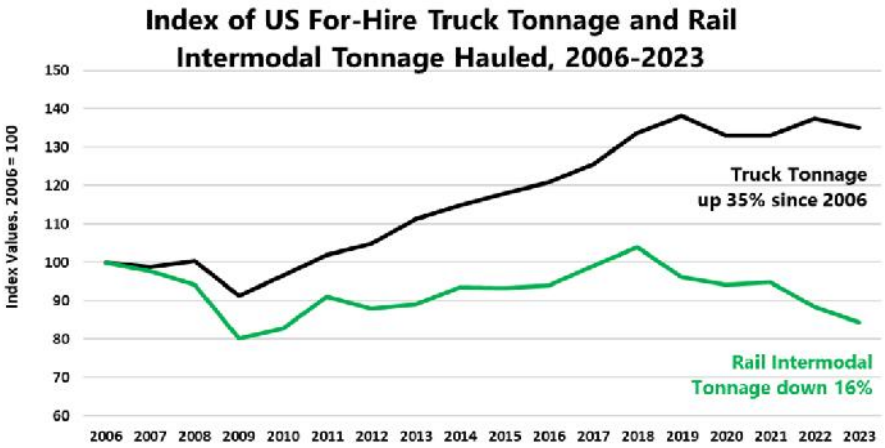
Year	US Crop Tonnage	Rail Tonnage Hauled
2006	81.2	13.4
2007	68.0	14.5
2008	75.4	16.9
2009	85.3	19.5
2010	84.6	19.0
2011	78.6	17.9
2012	77.3	21.5
2013	85.3	19.2
2014	99.8	21.8
2015	99.7	21.3
2016	109.1	25.9
2017	112.1	21.4
2018	112.5	17.7
2019	90.2	22.1
2020	107.1	26.6
2021	113.4	24.0
2022	108.5	24.9
2023	105.8	19.6

Source: USDA, STB, Loco Capital. Rail tonnage is the consolidated, originated, tonnage for Union Pacific, BNSF, CSX, and Norfolk Southern, STCC 0114. Table tonnage numbers in millions.

Here's a different view of intermodal, and the railroad's big success story isn't quite what it appears. Volumes last year were 6% higher than 2006, but if we ignore empties and compare the tonnage of customer freight with the truck tonnage index, to be more comparable, we have a 16% decline in rail tonnage versus truck growth of 35% over the last 17 years. That's a 51% underperformance on tonnage.

Intermodal Isn't as Good as it Looks

Intermodal volumes, including empties, grew 6% between 2006 and 2023, but intermodal tonnage hauled—to be more comparable with the American Trucking Associations For-Hire Truck Tonnage Index—actually fell 16% and underperformed the ATA index by 51%.



Year	ATA Tonnage Index	Rail Tonnage Hauled
2006	84.8	126.9
2007	83.8	124.1
2008	85.1	119.5
2009	77.4	101.9
2010	82.0	105.2
2011	86.5	115.6
2012	88.8	111.5
2013	94.3	113.1
2014	97.5	118.8
2015	100.0	118.4
2016	102.5	119.2
2017	106.4	125.7
2018	113.5	132.0
2019	117.3	122.0
2020	112.9	119.5
2021	112.9	120.3
2022	116.6	112.2
2023	114.6	107.1

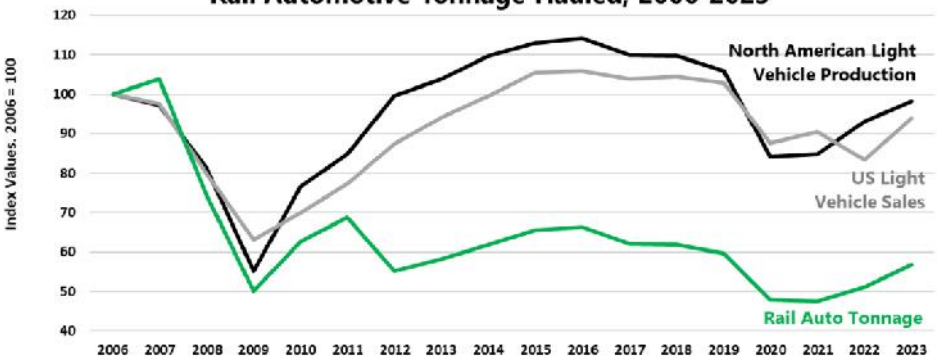
Sources: American Trucking Associations, STB R1s, Loco Capital. Rail tonnage is the consolidated, originated, tonnage for Union Pacific, BNSF, CSX, and Norfolk Southern, excluding MTs. STCC 44, 45, 46, 47. Rail Tonnage Hauled is in millions.

Here's automotive tonnage. This industry obviously took a big hit during the great recession, and since then rail tonnage has only recovered by 7%.

In contrast, North American light vehicle production is up 43% and US light vehicle sales were 31% above 2009 levels last year.

Automotive

US rail automotive tonnage hauled last year was only 7% higher than where it bottomed during the 2008/2009 recession. In contrast, North American light vehicle production was up 43% and US light vehicle sales were 31% above 2009 levels. Gap exacerbated by the decline of the rail-heavy Big 3 US automakers.



Year	NA LV Production	US LV Sales	Rail Tonnage Hauled
2006	15.9	16.5	30.4
2007	15.4	16.1	31.6
2008	12.9	13.2	22.6
2009	8.8	10.4	15.2
2010	12.2	11.6	19.0
2011	13.5	12.7	20.9
2012	15.8	14.4	16.8
2013	16.5	15.5	17.7
2014	17.4	16.5	18.8
2015	18.0	17.4	19.9
2016	18.2	17.5	20.2
2017	17.5	17.2	18.9
2018	17.4	17.2	18.8
2019	16.8	17.0	18.1
2020	13.4	14.5	14.5
2021	13.5	14.9	14.4
2022	14.8	13.8	15.5
2023	15.6	15.5	17.3

Source: STD, FRED, Statista, Loop Capital. Rail tonnage is the consolidated, originated, tonnage for Union Pacific, BNSF, CSX, and Norfolk Southern, STCC 371. All numbers in the table are millions.

Here's a breakout of some of the smaller categories; most of which rely on local operations.

If we go back to using a 20-year timeframe on loads, chemicals have grown by 12% and construction aggregates by 18%, which is good, but it gets ugly after that.

Building materials are down 31%.

Metals are down 29%.

Waste and scrap is down 15%.

Food is down 25%; and

Paper and forest has been cut in half as print media continues to go digital.

'Other' Breakout; Commodities Primarily Reliant on Local Operations

Consolidated, Originated, Loads for Union Pacific, BNSF, CSX and Norfolk Southern

Year	All Other	Chemicals	Aggregates	Building Mats	Metals	Waste & Scrap	Food	Paper & Forest
2000	6,797,421	1,422,410	835,698	747,687	647,130	460,588	424,627	610,699
2001	6,481,733	1,345,902	874,848	726,179	583,107	428,797	440,950	547,001
2002	6,539,148	1,375,199	859,646	743,507	597,274	437,974	435,935	522,078
2003	6,744,871	1,432,122	896,799	774,897	599,655	472,841	436,124	541,871
2004	6,863,564	1,464,844	927,821	797,474	634,256	508,029	416,961	520,772
2005	6,885,225	1,441,901	981,454	807,037	617,870	491,465	428,946	505,915
2006	6,833,696	1,428,980	1,002,548	753,298	659,229	492,309	448,196	471,286
2007	6,616,999	1,486,532	936,052	662,287	609,843	493,182	444,854	431,083
2008	6,353,367	1,453,260	882,012	585,773	569,853	483,646	385,702	406,787
2009	5,011,556	1,281,200	679,804	437,541	310,073	353,289	329,510	314,510
2010	5,670,457	1,413,386	786,062	475,595	448,204	402,242	325,221	320,677
2011	5,919,102	1,461,731	840,128	503,463	503,668	393,909	325,893	324,425
2012	6,148,291	1,449,990	893,814	537,510	508,181	374,139	331,894	325,055
2013	6,375,211	1,458,695	970,261	557,292	501,681	377,481	327,471	332,872
2014	6,822,067	1,505,358	1,110,875	593,546	528,962	382,384	320,200	340,684
2015	6,457,171	1,482,241	1,086,259	553,953	448,232	339,128	311,734	324,453
2016	6,198,213	1,508,968	1,050,775	537,343	418,996	363,919	312,690	298,656
2017	6,319,782	1,525,578	1,195,808	541,171	441,501	377,318	305,855	293,975
2018	6,530,234	1,585,473	1,216,323	553,977	472,310	379,863	308,037	294,690
2019	6,371,943	1,570,421	1,110,760	550,305	435,662	353,662	298,776	286,546
2020	5,925,967	1,542,971	925,544	548,556	377,992	353,594	294,990	271,779
2021	6,179,386	1,601,262	931,053	565,315	446,583	401,285	305,600	296,133
2022	6,131,183	1,607,773	1,014,641	543,308	405,087	397,787	324,666	286,479
2023	6,210,977	1,603,550	1,058,592	534,895	424,594	403,946	327,776	273,948
2024E	6,199,071	1,674,448	954,691	537,450	408,209	404,299	327,669	284,530
		2003 to 2023 Growth						
	-8%	12%	18%	-31%	-29%	-15%	-25%	-49%

Includes

Source: AAR, Loop Capital. 2024E applies the 2024 YTD growth rates through 9/7/24 to 2023 volumes.

This is primarily non-unit train business that involves local operations, which adds complexity.

It's the railroads traditional bread 'n butter business, and it's struggling.

Within this selection, only chemicals and construction aggregates have grown over the last two decades, at CAGRs of 0.6% and 0.8%, respectively.

It's clear that in most of their markets the railroads are shrinking, while in a handful of others they're growing slower than the industries they serve.

In a nutshell, **THE RAILROADS ARE LOSING RELEVANCE**, and participate less in the US economy every year.

So, the question, and reason we're all here, is WHY?

Exploiting Pricing Power, a Supply Chain Stuck in the 1980s, and Captive to Wall St.

1. **Lack of rail-to-rail competition on the back of post-Staggers consolidation.**
   The preference for price increases over volumes has had a long-term suppressive effect on the latter as rail simply gets more expensive. This is completely rational. Any for-profit company will prioritize price over volume, if it can get it, because, unlike volumes, price has no associated cost and falls straight to the pre-tax line. In the current environment, volumes have a 40% operating margin (assuming 60 OR) while the margin on price is 100%. So 1% price growth = 2.5% volume growth.

   Pricing power emerged in 2004, so customers have now hit *20 years of price fatigue*. Happy anniversary.

2. **Modern supply chains have two basic requirements:**
   - Consistent on-time performance; i.e., SERVICE.
   - Close to real-time tracking visibility for customers.

   The Railroads Have Neither

   This is why initiatives like RailPulse are so important because it could eventually solve the second. RAILPulse

3. **Completely captive to Wall Street in a way that further handicaps service and growth.**
   Let's dig into this piece...

In my view it boils down to three primary reasons.

The first is that the railroads, quite rationally, have exploited the opportunity from post-Staggers consolidation and a lack of rail-to-rail competition to extract above-inflation pricing starting in 2004.

Given the choice, a for-profit company will always prioritize price over volumes because, unlike volumes, price has no associated cost and drops straight to the pre-tax line.

A consequence of pulling on the pricing lever for 20 years, however, is that the rail product has become a lot more expensive, and customers have reacted by simply using less of it.

It's still been a no-brainer for the railroads, because price driven revenue growth and margin expansion has enabled the rail stocks to outperform the S&P 500 by *3.7-to-1* since 2004, despite a 10% loss of business.

The second reason is of course service, as we discussed here two years ago.

13 Class I meltdowns in the last ten years is a little hard to hide from customers; and the other required element of a modern supply chain is customer tracking visibility.

While service will remain a problem, tracking is solvable with emerging car telematics, and this is why initiatives like RailPulse are so important. We need everyone on board with RailPulse.

The final volume growth handicap is the fact that the railroads are completely captive to Wall Street, so let me take you down that rabbit hole and explain why that is, and how the Wall Street pressure points ultimately manifest themselves in terms of price, service, and growth.

Wall Street obviously likes growth, in any industry, but the railroads are unusual because volume growth has not been a component of the dramatic outperformance of the stocks over the last 20 years.

We remain skeptical of the railroads' ability to grow because we just haven't seen it, apart from sporadically in certain business units at certain times.

Wall Street still believes the railroads are primarily a pricing story, with the ability to raise prices above inflation on heavy weight and bulk shippers where trucking isn't a viable option.

Wall Street also wants to see operating ratios in every year that are lower than the year before.

Now, Wall Street nagging companies to do what it wants is completely normal; it happens in every industry.

What's different about the railroads is the fact that Wall Street, additionally, has a very effective *policing mechanism* to enforce its demands, and that's shareholder activism.

While activism is obviously not limited to the rail industry, we've seen an absurd amount of concentration, and success, of it here.

We've had four major activist battles since 2008.

There's only six companies, and one of those (BNSF) is protected from activism under the Berkshire Hathaway umbrella.

Wall Street Exerts ABNORMAL Influence on the Railroads

Wall Street owns and controls the railroads to an unhealthy degree, and to an extent that the public interest is diminished more than it should be. There are two basic components to this:

1. Wall Street likes and, ideally, wants volume growth, but:

- Volume growth has not been a component of the dramatic outperformance of the stocks over the last 20 years (since pricing exploded in 2004).
- Wall Street is skeptical the railroads will be able to grow volumes meaningfully in the future because we haven't seen it in the past, apart from specific business units in specific periods.
- Wall Street still believes the railroads are primarily a pricing story based on leveraging market power (raising rates above inflation on captive shippers) and a related cost cutting operating ratio story.

2. Wall Street has a very effective *POLICING MECHANISM*.

- It's normal for Wall Street to nag companies to do what shareholders want. Prioritize price over volumes and minimize capex to maximize buybacks, for example. This is capital markets 101.
- However, what's different with the railroads is the recent history of enforcing these demands with shareholder activism. We've had four major activist battles since 2008. *There's only six companies!* This is an unusual concentration of activist attention (and success).

So the next question is - why are the railroads so frequently targeted?

The short answer is the scarcity and premium placed on a handful of operational change agents in networks that are extraordinarily difficult to manage.

What's unique about rail networks is the dedicated right-of-way.

If a plane, ship, or truck has a problem, the ones behind just go around it with little or no network-wide effects.

Not so on a rail network, where a derailment on BNSF's Southern Transcon, for example, will quickly back up 200 trains.

Domino effects and backlogs take at least two weeks to normalize if everything goes well.

The role of Class I Chief Operating Officer is therefore, in my view, the most difficult job in the transportation sector.

Unpacking the Policing Mechanism

Why do the railroads receive outsized attention from shareholder activists?

Short answer:

The scarcity and premium placed on a handful of operational change agents in networks that are extraordinarily difficult to manage.

Long answer:

The biggest differentiator of a rail network versus road, air, and ocean, is dedicated right-of-way, which makes these networks the most difficult to operate efficiently and consistently.

If a plane, ship, or truck has a problem, the ones behind just go around it with little or no network effects.

Not so on a rail network, where a derailment on BNSF's Southern Transcon, for example, will quickly back up *200 trains*. Domino effects and backlogs take at least two weeks to normalize.

The role of Class I COO is therefore, in my view, the most difficult job in the transportation sector.

We've then taken that hard job and made it even harder with PSR.

When PSR was originally sold to Wall Street there were supposed to be two huge benefits.

The first was much lower operating ratios because you're removing lanes, reducing complexity, and running fewer, longer, trains; reducing costs and capital intensity.

That piece *has* played out.

The second promise was better service.

In theory, by decongesting the system with hundreds fewer daily train starts, it should be easier to get what's left to run on time.

This worked at Illinois Central, then it worked at Canadian National, and then it worked at Canadian Pacific.

However, when we've tried to apply it to the more complex spiderwebs at Union Pacific, CSX, and Norfolk Southern it's proven much more challenging.

One example of the impediments is the "no-fitter" problem.

In order to run the longer trains, in some cases they're trying to build trains longer than the yards and pass trains that are longer than the sidings.

In other words, there's a mismatch between the operating plan and their infrastructure, which in most cases cannot be solved.

Arguably PSR Has Made a Hard Job Even Harder

There are many aspects to "Precision Scheduled Railroading", but we'll focus on the primary end goal –

It's designed to do the same with less.

Hunter Harrison basically figured out a way to move the same amount of freight with dramatically fewer train starts, crews, and locomotives. This of course requires longer trains; a trend that was already in place but was accelerated with PSR.

Fewer, longer, trains were easier to manage on simpler networks like the Illinois Central, Canadian National, and Canadian Pacific, but when you try to apply it to the spiderwebs at Union Pacific, BNSF, CSX, and Norfolk Southern it's more challenging.

In theory you're decongesting the network with fewer trains, aiding on-time performance, but a negative consequence of PSR has been the "no-fitter" problem. They're trying to build trains longer than the yards and trying to pass trains longer than the passing sidings. *There's a mismatch between the operating plan and their infrastructure*, which in most cases can't be solved (landlocked yards within cities, for example).

Proof point: When Ed Harris returned to CN in late 2022 and got it running better, what did he do? Shortened the trains so they'd once again fit in the sidings. Harris 2023 quote: *"It's not that hard is it".*

Other Aspects of PSR and Wall Street Pressure Compound the Growth Problem

- **Reducing headcount hasn't been limited to train crews**, as Wall Street's demands for operating ratio has cut into other growth-related personnel. Ask the railroads how many people are employed in sales, customer service, and business development now versus 10 years ago.
- **Railroads can't grow if they're reluctant to pursue business that's dilutive to the OR.**



- **The local operations death spiral.** It reinforces a pre-existing problem:

Railroad cuts local service at a customer facility from seven days per week to five.

↓

Customer reacts by reducing rail share of volumes as assets and produce sit longer.

↓

Railroad reacts to lower volumes by cutting local service from five days per week to three.

↓

Customer reacts by reducing rail share of volumes as assets and produce sit longer.

↓

Railroad gives up and rips up the spur. Customer is gone forever.



Image source: Reddit, Campaign Live.com

So we've now put these Class I operating departments in very difficult positions.

We've taken the most difficult transportation network to optimize, rail, and further starved it of critical resources under PSR.

In pursuit of operating ratio, operating teams are pressured to build trains that don't fit in yards, pass trains that don't fit in sidings, and deliver service with not quite enough crews, mechanics, and maintenance of way, and not quite enough capex.

Negative growth and periodic service chaos has been the result.

It's frankly a minor miracle these networks function at all, but a tiny handful of individuals have managed to figure out how to do it.

Out of a population of 370 million in the US and Canada there are, by my count, exactly *eight people* with a track record of being able to run these networks successfully.

Two of them are retired and one of them is dead.

Those that are left are the change agents that an activist like Ancora can pick up and use to persuade other investors that it's time to replace incumbent management.

In the case of Ancora, Norfolk Southern only prevailed because it countered Ancora's PSR change agent, Jamie Boychuk, with its own PSR change agent, John Orr.

The Networks Have Become Far Too Sensitive to Individual Talent

We now have Class I operating departments put in extremely difficult positions:

- We've taken the most difficult transportation network to optimize—freight rail — and further starved it of critical resources under PSR.
- In pursuit of operating ratio, operating teams are pressured to build trains that don't fit in yards, pass trains that don't fit in sidings, and do it all with not quite enough crews, mechanics, maintenance of way, and capex. No growth and periodic service chaos has been the result, as we discussed here in 2022.
- It's a minor miracle these networks function at all, but a tiny handful of individuals have managed to figure out how to do it with reasonable efficiency; primarily the old Hunter sidekicks that keep getting unretired.
- These are also the change agents that an activist fund is able to pick up and pitch to other shareholders: *This one individual (among tens of thousands) can take this network from worst to first!*
- In the first three activist battles Hunter Harrison was the change agent, while it was Jamie Boychuk in this year's Ancora vs. Norfolk Southern battle. NS only "won" because it countered the Ancora PSR change agent with its own PSR change agent (John Orr). Yes, it's getting silly.
- We've become the NFL where you can't win without a superstar quarterback.

Technically, Norfolk Southern won the recent proxy battle, so the next question is whether that will discourage future activism in this industry, thereby removing the policing mechanism?

My view is yes, but only partially and temporarily.

What we also learned from the Ancora battle is that even when you win - you lose.

Norfolk Southern came out of the 2022 Service Crisis determined to focus on resiliency rather than operating ratio, yet in order to win the proxy contest, management had to issue aggressive operating ratio targets and reintroduce operating ratio as a management incentive compensation metric.

The proxy battle also got personal and nasty and cost the company $50 million dollars in expenses.

No company wants to go through that, so activism as a policing mechanism, while diminished, has not been banished in my view.

Has Norfolk Southern's "Victory" Over Ancora Banished the Policing Mechanism?

Partially and temporarily.

But here's the problem: even when you win you lose.

- Fighting off Ancora cost Norfolk Southern $50 million in expenses, plus another $25 million to hire John Orr away from CPKC.
- It's embarrassing for management when a subset of their shareholders effectively accuse them of incompetence.
- Norfolk tried to move past focusing on operating ratio after the 2022 Service Crisis, but they were pulled back in line during the activist battle. Specifically:
  - Pressured to issue aggressive operating ratio guidance during the proxy contest.
  - Reintroduced operating ratio as a management incentive compensation metric.

No company wants to go through this, so the activist threat—while diminished—is not banished.

I'll wrap up with three growth scenarios we could see going forward.

Scenario 1 is the most negative and the status quo:

The railroads will continue to grow slower than the market in a handful of commodities; most prominently intermodal.

They will stagnate in others, like grain, and continue to lose business in a lot of their merchandise traffic that entails local operations, plus of course coal.

At some point this will necessitate infrastructure rationalization or sharing if revenues become insufficient to justify maintenance and operating costs.

Looking Forward - What's Going to Change?

On the current trajectory, the industry will continue to:

- Grow slower than the market in a handful of commodities, most prominently intermodal.
- Stagnate in others, like Ag and Auto.
- Shrink in many of the more complex merchandise businesses that entail local operations (plus of course coal). This could ultimately necessitate infrastructure rationalization or sharing if revenues become insufficient to justify maintenance and operating costs.

What's going to change to get the US railroads off this road to nowhere?

"Nothing" is unfortunately a significant probability, but there are a couple of better scenarios that have the potential to improve the industry's growth profile.

One is a long shot, the other is actually probable...

Scenario 2 is that the Wall Street pressure points on price and operating ratio do not change, but the railroads are able to manage their way out of their no-growth quagmire by improving service.

I basically said earlier that I regard these big US PSR networks as borderline unmanageable, so for this to work someone is going to have to take this PSR foundation and figure out a way to make these networks more manageable, resilient, and consistent, to the point that multi-year service track records can be established, and customer confidence is restored.

This might require a partial rollback of PSR.

We basically need a growth version of Hunter Harrison to emerge, but realistically I think this scenario is least likely.

The Long Shot: We Need One More "Legend"

The first scenario is that the Wall Street pressure points don't change, but the railroads find a way to manage their way out of their no growth situation.

The prevailing PSR model was developed by Hunter Harrison and is being maintained by his former colleagues at four of the six Class Is that operate in the US (Creel, Vena, Cory, Orr). Adding (now consulting) Ed Harris, we have a group that has also been tasked in recent years with training the next generation but, frankly, evidence of success here is sparse. This is why most of them keep getting pulled back out of retirement.

Rather than trying to groom replacements for impossible to manage networks, I would argue we need new thinking or a new generation of operators that takes this PSR foundation and figures out a way to make the four big US networks more manageable, consistent, and resilient, to the extent that sustainably improved service can beget growth.

This may involve a partial rollback of PSR, incorporating more, shorter, trains and higher headcount and capex. The trick would be that the rollbacks are sufficiently modest not to trigger a Wall Street reaction.

It might not be possible, but if anyone wants their name in the history books, this is your opportunity.

Scenario 3 is, I think, how this ultimately plays out.

In this scenario the Wall Street pressure points do change.

After the 3.7-to-1 outperformance of the stocks over the last 20 years, there's an understandable reluctance to believe the rail pricing story is over.

But it is.

The glory days were 2004 through 2011, when annual price growth exceeded 5%.

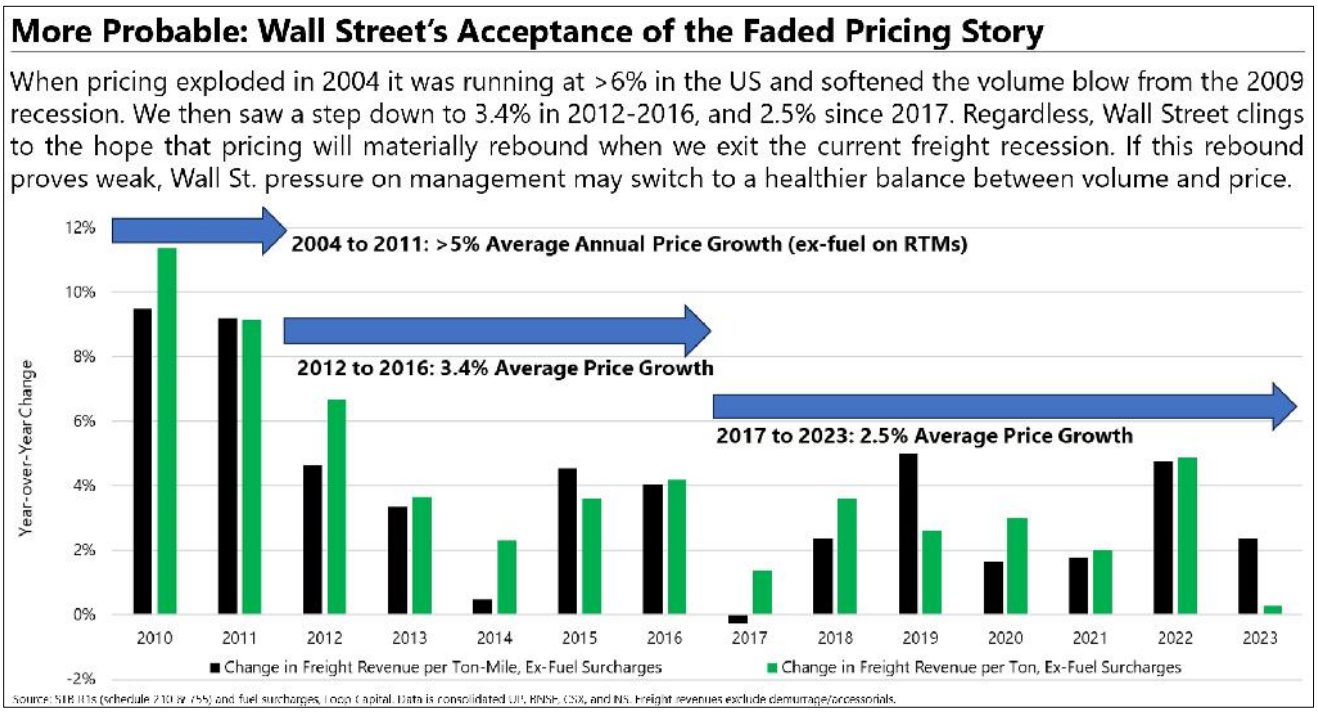
That throttled back to 3.4% between 2012 and 2016 and decelerated again to just 2.5% from 2017 through the present.

With the recent exception of intermodal, we've been in a freight recession for two years now, and the last piece of Wall Street hope is that when demand strengthens we'll see a significant increase in rail pricing.

If that proves underwhelming, which I think it will, that might be the last straw when Wall Street finally accepts the end of the pricing story, and pressure on management will rebalance into a healthier mix of volume and price.

You'll know when we reach that point, because someone will get on a quarterly earnings call and ask railroad management a question that goes something like this:

"We all know the rail pricing story is over, so what are you doing to grow volumes?"



Finally, for your reference, I've included tables showing the long-term volume growth profiles for the four US Class I's.

Thank you for your attention and I look forward to your questions.

Union Pacific Long-term Volumes

Year	Coal	Ag	Intermodal	Autos	Chemicals	Aggregates	Building Mats	Metals	Waste & Scrap	Food	Paper & Forest	Other	Total
2000	1,921,060	453,584	2,812,340	578,831	798,047	312,991	376,114	168,178	133,649	206,204	149,060	989,692	8,883,152
2001	2,151,335	431,416	2,675,661	582,393	751,009	332,183	387,564	151,695	121,650	219,155	179,551	915,024	8,898,636
2002	2,154,979	431,369	2,782,471	641,726	766,921	342,443	405,559	145,941	127,198	221,768	182,678	900,414	9,103,467
2003	2,219,657	443,694	2,893,602	620,530	783,625	354,158	421,463	156,533	136,317	222,802	185,731	908,993	9,347,105
2004	2,156,272	429,465	2,972,953	613,072	807,281	340,836	438,276	168,007	141,126	221,342	176,066	954,125	9,418,821
2005	2,168,833	400,446	3,077,165	578,453	797,025	382,508	431,971	160,882	134,623	231,432	163,145	1,006,187	9,532,970
2006	2,286,454	402,373	3,266,046	597,289	788,441	384,936	403,615	160,419	125,603	250,399	143,802	1,023,994	9,837,371
2007	2,290,070	388,971	3,279,086	572,377	809,386	355,147	349,894	161,998	121,338	243,011	130,038	1,010,665	9,711,981
2008	2,375,801	418,978	3,027,705	438,999	708,018	347,157	296,549	176,800	114,835	226,050	123,449	996,843	9,341,184
2009	2,005,380	349,899	2,625,758	280,281	605,360	256,841	208,684	87,804	81,687	210,925	92,535	858,805	7,763,049
2010	2,039,777	378,051	3,126,545	396,975	773,405	318,475	212,983	137,806	85,157	212,422	98,673	1,020,412	8,800,676
2011	2,148,767	371,582	3,056,329	420,992	817,448	341,751	222,815	153,941	89,710	224,091	105,037	1,112,778	9,065,241
2012	1,851,045	334,361	3,113,548	465,455	819,160	407,182	239,836	151,193	83,569	229,838	103,042	1,216,987	9,016,116
2013	1,600,368	316,408	3,135,897	481,011	841,470	450,541	254,035	154,026	80,497	227,184	102,576	1,249,614	8,087,617
2014	1,789,182	400,300	3,446,420	490,006	894,298	556,486	279,496	154,108	85,973	235,656	104,010	1,308,648	9,744,489
2015	1,444,691	353,980	3,334,217	524,680	874,193	482,269	260,572	113,359	73,938	233,116	101,223	1,232,453	9,028,691
2016	1,152,072	390,803	3,134,474	501,868	870,941	410,421	261,147	102,801	71,336	233,080	96,141	1,195,725	8,421,799
2017	1,220,975	377,180	3,160,680	468,298	899,685	511,416	268,484	114,164	77,783	226,448	98,304	1,154,729	8,578,256
2018	1,151,827	349,089	3,413,418	468,904	942,972	513,915	272,457	137,902	75,228	229,632	103,386	1,227,233	8,885,963
2019	969,870	328,996	3,166,039	447,852	942,361	431,545	263,578	134,549	72,074	224,376	99,728	1,241,837	8,322,805
2020	775,460	372,517	3,114,485	354,135	918,242	351,753	265,056	120,322	74,305	222,281	100,876	1,159,484	7,828,916
2021	793,975	393,137	3,128,130	342,194	964,581	350,899	287,411	126,694	86,515	231,441	117,667	1,208,639	8,031,283
2022	858,873	371,930	3,050,485	385,003	1,002,132	415,993	284,823	142,116	91,097	236,480	116,653	1,207,271	8,162,856
2023	839,813	342,796	2,993,060	421,574	1,012,419	439,417	260,211	142,613	81,506	239,132	109,660	1,217,726	8,099,927
2024E	667,824	361,414	3,172,436	430,685	1,069,368	362,372	249,172	134,161	80,511	241,478	117,344	1,296,054	8,182,819

20 Years

2003 to 2023 Growth

Coal	Ag	Intermodal	Autos	Chemicals	Aggregates	Building Mats	Metals	Waste & Scrap	Food	Paper & Forest	Other	Total
-62%	-23%	3%	-32%	29%	24%	-38%	-9%	-40%	7%	-41%	34%	-13%

Source: Union Pacific, AAR, Loop Capital. Loads are total, not originated. 2024E applies the 2024 YTD growth rates through 9/7/24 to 2023 volumes. 'Other' includes crude oil, metallic ores, fertilizers, and grain mill products.

BNSF Long-term Volumes

Year	Coal	Ag	Intermodal	Autos	Chemicals	Aggregates	Building Mats	Metals	Waste & Scrap	Food	Paper & Forest	Other	Total
2000	2,046,249	466,237	3,060,336	248,826	344,228	136,205	264,611	154,989	72,202	174,520	171,569	1,034,600	8,174,572
2001	2,159,170	493,789	3,034,164	193,296	324,757	152,139	250,354	140,116	65,262	178,719	156,247	990,867	8,138,830
2002	2,125,750	460,001	3,184,749	150,533	329,860	146,413	253,038	123,548	58,350	166,586	140,533	1,021,270	8,160,631
2003	2,114,653	492,830	3,627,559	152,030	342,087	141,674	265,114	127,227	57,296	172,694	142,443	1,109,307	8,747,914
2004	2,238,890	527,124	4,086,175	151,301	356,298	156,926	290,729	137,072	65,641	171,325	137,578	1,176,378	9,495,387
2005	2,267,959	546,178	4,197,487	170,276	356,091	157,116	305,083	125,947	69,435	171,768	137,333	1,208,194	10,017,317
2006	2,489,638	589,711	4,800,425	171,235	384,366	160,496	289,510	141,007	70,396	176,649	127,004	1,216,904	10,617,391
2007	2,499,988	606,692	4,593,899	165,919	428,484	170,534	243,864	142,402	69,164	177,245	108,380	1,086,933	10,293,504
2008	2,597,243	632,512	4,445,348	145,492	431,857	177,714	197,906	144,184	64,105	160,478	102,358	993,438	10,092,635
2009	2,416,077	522,796	3,622,282	98,928	370,009	135,430	145,810	79,233	46,787	136,860	75,087	737,844	8,387,143
2010	2,452,375	585,719	3,934,420	118,756	425,997	174,048	170,001	104,544	57,695	134,315	78,114	907,059	9,143,043
2011	2,341,529	584,031	4,254,604	125,035	428,627	199,642	182,603	122,509	63,338	132,045	78,381	936,745	9,449,089
2012	2,197,783	550,136	4,331,656	168,307	414,497	216,491	198,824	127,536	68,461	137,310	77,548	1,133,226	9,621,775
2013	2,259,579	491,431	4,552,998	182,947	405,553	247,597	200,159	127,056	59,592	135,792	79,122	1,316,484	10,058,310
2014	2,338,916	520,153	4,608,987	195,226	411,899	296,881	214,838	124,490	55,265	135,557	78,612	1,434,861	10,415,685
2015	2,303,685	572,612	4,619,616	200,251	418,571	269,749	198,516	97,434	46,468	134,123	77,735	1,294,171	10,232,931
2016	1,835,380	628,566	4,663,738	245,485	436,352	274,567	192,335	86,822	42,005	138,246	75,445	1,108,677	9,727,618
2017	1,957,559	611,980	4,719,719	267,687	441,414	361,497	196,620	98,563	50,790	143,878	74,389	1,141,387	10,260,483
2018	1,935,793	671,576	5,095,408	272,884	479,851	362,344	214,983	112,456	59,642	149,610	81,684	1,237,851	10,674,082
2019	1,821,169	603,754	4,859,079	262,457	478,255	289,764	204,698	102,116	56,518	147,770	78,662	1,288,272	10,192,514
2020	1,448,883	655,351	4,894,840	228,021	473,513	195,714	210,503	85,894	57,829	151,648	72,594	1,109,011	9,583,801
2021	1,555,594	651,597	5,167,977	225,139	476,931	222,795	216,776	98,865	77,092	154,142	73,753	1,195,971	10,111,627
2022	1,559,151	671,699	4,686,598	231,943	456,981	230,834	210,883	89,253	70,517	169,734	69,126	1,141,581	9,538,300
2023	1,494,196	551,244	4,771,150	278,536	447,563	232,991	204,396	93,738	78,287	182,633	65,510	1,086,935	8,987,164
2024E	1,176,924	641,622	4,994,504	277,495	474,680	202,168	201,559	91,970	78,928	180,553	62,541	1,114,293	9,500,230

20 Years

2003 to 2023 Growth

Coal	Ag	Intermodal	Autos	Chemicals	Aggregates	Building Mats	Metals	Waste & Scrap	Food	Paper & Forest	Other	Total
-29%	12%	18%	83%	31%	64%	-23%	-26%	37%	6%	-54%	-2%	3%

Source: BNSF, AAR, Loop Capital. Loads are total, not originated. 2024E applies the 2024 YTD growth rates through 9/7/24 to 2023 volumes. 'Other' includes crude oil, metallic ores, fertilizers, and grain mill products.

CSX Long-term Volumes

Year	Coal	Ag	Intermodal	Autos	Chemicals	Aggregates	Building Mats	Metals	Waste & Scrap	Food	Paper & Forest	Other	Total
2000	1,743,403	205,282	1,963,518	593,225	634,686	277,918	270,655	206,448	212,951	135,082	368,981	660,592	7,271,740
2001	1,796,907	210,121	1,915,179	518,698	603,268	272,302	255,319	192,177	208,209	140,313	332,321	614,376	7,059,490
2002	1,689,213	208,884	2,026,473	539,167	607,411	264,447	255,473	196,587	209,157	136,888	324,932	636,395	7,037,021
2003	1,677,362	211,567	2,163,938	534,042	621,911	288,085	269,553	218,988	237,020	140,136	340,408	631,961	7,337,971
2004	1,706,220	199,819	2,197,266	503,909	617,673	301,988	278,061	229,521	251,043	132,096	326,068	632,107	7,375,771
2005	1,743,713	201,594	2,110,265	488,597	594,897	304,930	276,624	220,809	249,057	133,212	308,816	616,313	7,298,790
2006	1,871,879	204,495	2,131,643	469,029	576,911	316,369	261,983	232,662	244,190	137,909	285,646	566,645	7,311,311
2007	1,813,397	212,895	2,060,100	438,528	591,929	276,171	229,069	224,363	241,849	133,860	257,660	553,469	7,063,290
2008	1,884,602	206,150	2,031,827	344,591	581,630	229,995	198,395	211,669	237,981	137,745	241,539	550,384	6,845,508
2009	1,580,962	187,834	1,844,227	285,168	520,334	174,549	151,071	118,254	173,538	120,982	185,917	498,194	6,135,970
2010	1,511,633	196,256	2,175,364	336,337	563,740	187,507	161,462	148,785	177,724	120,842	184,510	513,130	6,277,290
2011	1,492,859	186,954	2,276,196	362,609	578,294	201,747	173,883	166,145	195,806	120,806	200,286	510,512	6,464,697
2012	1,245,141	174,395	2,444,515	427,060	597,947	193,504	175,125	166,158	186,953	120,078	200,311	511,297	6,403,484
2013	1,163,422	170,993	2,571,532	432,622	565,263	202,455	180,961	164,819	205,423	117,469	204,212	550,323	6,529,494
2014	1,238,139	180,895	2,654,100	439,258	589,672	223,577	189,518	184,370	208,326	116,446	211,478	605,325	7,023,098
2015	1,038,542	186,290	2,833,034	449,761	588,001	231,184	184,230	157,787	185,788	114,317	191,444	660,451	6,709,829
2016	816,117	167,955	2,757,503	478,343	536,751	238,122	180,197	133,299	205,867	111,507	171,628	574,115	6,371,404
2017	851,476	158,357	2,817,485	455,855	548,297	249,498	176,440	129,384	201,670	108,422	167,471	533,755	6,381,011
2018	882,764	158,379	2,868,584	464,589	589,181	248,088	189,292	144,645	205,943	110,645	181,299	501,952	6,479,361
2019	837,997	169,183	2,656,090	457,355	502,768	258,761	196,755	129,615	194,894	110,342	184,653	516,930	6,215,343
2020	642,244	163,616	2,738,385	347,542	517,807	245,360	186,520	126,461	191,245	111,591	183,240	507,841	5,961,864
2021	701,187	154,665	2,968,005	317,905	540,516	236,793	198,046	159,878	208,088	113,525	190,588	463,031	6,253,217
2022	685,773	158,642	2,957,419	338,106	580,802	249,715	194,169	144,381	205,777	117,646	189,580	442,101	6,225,110
2023	754,624	156,861	2,759,691	387,689	516,823	270,623	207,360	155,896	210,101	116,122	178,125	433,093	6,147,008
2024E	701,182	152,582	2,894,403	394,155	548,682	258,303	215,906	145,347	203,084	112,433	186,860	435,977	6,289,914

20 Years

2003 to 2023 Growth

Coal	Ag	Intermodal	Autos	Chemicals	Aggregates	Building Mats	Metals	Waste & Scrap	Food	Paper & Forest	Other	Total
-55%	-26%	28%	-27%	-17%	-6%	-23%	-29%	-11%	-17%	-48%	-31%	-16%

Source: CSX, AAR, Loop Capital. Loads are total, not originated. 2024E applies the 2024 YTD growth rates through 9/7/24 to 2023 volumes. 'Other' includes crude oil, metallic ores, fertilizers, and grain mill products.

Norfolk Southern Long-term Volumes

Year	Coal	Ag	Intermodal	Autos	Chemicals	Aggregates	Building Mats	Metals	Waste & Scrap	Food	Paper & Forest	Other	Total
2000	1,626,091	197,616	1,675,061	689,388	378,982	169,733	304,547	348,036	137,096	86,371	281,218	943,847	6,837,986
2001	1,657,189	205,002	1,639,582	620,711	351,894	172,831	290,580	315,197	118,483	86,910	253,338	909,743	6,621,450
2002	1,549,384	205,540	1,730,194	660,833	358,643	161,662	286,748	329,972	127,604	87,272	240,852	961,790	6,700,494
2003	1,580,676	218,208	1,810,089	644,554	372,178	164,876	290,814	318,533	138,319	90,721	253,764	1,050,973	6,933,705
2004	1,647,709	214,080	2,204,700	633,230	394,393	182,898	296,696	333,016	161,359	91,777	248,197	1,136,830	7,444,985
2005	1,707,903	210,412	2,337,639	614,846	402,091	197,453	295,223	339,872	154,795	91,937	260,692	1,181,399	7,778,259
2006	1,730,358	212,667	2,399,958	560,642	404,881	197,710	289,448	369,234	170,157	92,253	249,817	1,210,541	7,887,666
2007	1,674,562	211,625	2,353,718	532,878	418,180	194,699	256,892	332,140	169,591	95,571	235,972	1,107,137	7,582,471
2008	1,756,359	208,970	2,368,493	412,107	385,230	193,174	220,047	304,142	174,638	86,478	233,313	1,040,678	7,393,629
2009	1,406,356	187,211	1,996,709	290,708	343,803	160,256	158,670	180,601	135,425	76,344	187,322	815,999	5,939,404
2010	1,530,143	212,604	2,295,917	289,800	390,074	181,517	168,813	261,103	172,320	81,005	202,082	969,869	6,764,197
2011	1,603,510	198,761	2,540,326	332,536	384,536	196,590	162,874	284,348	137,349	83,763	193,203	992,511	7,110,307
2012	1,408,826	190,375	2,693,908	373,886	375,444	188,986	171,334	287,020	132,377	84,635	186,230	1,065,135	7,082,156
2013	1,340,695	196,356	2,812,120	400,276	387,644	192,695	184,639	279,667	125,014	87,292	189,204	1,115,869	7,316,471
2014	1,307,441	210,496	3,073,747	410,675	390,518	224,892	196,833	302,844	123,849	88,860	190,046	1,240,685	7,760,886
2015	1,077,658	202,749	3,067,725	426,970	404,774	222,263	198,467	259,651	109,703	87,581	185,988	1,219,527	7,462,055
2016	902,124	201,479	3,094,674	439,051	397,568	218,105	194,193	222,683	121,067	91,117	168,708	1,142,191	7,242,960
2017	1,047,333	198,435	3,259,888	421,748	403,881	235,982	190,786	241,756	124,719	89,311	166,130	1,171,113	7,601,072
2018	1,032,803	184,359	3,480,130	402,899	439,236	238,361	182,024	286,951	125,009	88,077	163,841	1,282,800	7,906,520
2019	916,114	185,561	3,361,215	398,499	418,702	241,357	176,828	261,287	122,792	86,743	154,634	1,218,768	7,537,500
2020	583,676	174,389	3,185,958	330,791	389,939	198,496	169,204	220,936	121,403	85,900	142,795	1,150,705	6,754,096
2021	658,852	165,769	3,200,299	343,959	407,717	201,757	176,587	269,848	147,234	90,018	145,083	1,204,286	7,012,309
2022	684,027	174,170	3,073,708	337,806	390,510	225,486	169,248	238,715	149,104	93,760	136,821	1,153,191	6,826,552
2023	677,354	176,443	3,058,381	360,947	394,779	225,767	163,852	244,824	157,026	93,864	127,569	1,054,166	6,734,272
2024E	686,304	178,820	3,302,814	362,749	394,928	229,022	171,002	245,678	163,020	88,153	130,962	1,107,142	7,059,593

20 Years

2003 to 2023 Growth

Coal	Ag	Intermodal	Autos	Chemicals	Aggregates	Building Mats	Metals	Waste & Scrap	Food	Paper & Forest	Other	Total
-57%	-19%	69%	-44%	6%	37%	-44%	-23%	14%	3%	-50%	0%	-3%

Source: Norfolk Southern, AAR, Loop Capital. Loads are total, not originated. 2024E applies the 2024 YTD growth rates through 9/7/24 to 2023 volumes. 'Other' includes crude oil, metallic ores, fertilizers, and grain mill products.

Disclosures

Public Companies Mentioned in this Report

CSX Corporation (CSX:$33.51-BUY)

Canadian National Railway Company (CNR-TSE:C$158-HOLD)

Canadian Pacific Kansas City Limited (CP-TSE:C$114-BUY)

Norfolk Southern Corp. (NSC:$257-BUY)

Union Pacific Corporation (UNP:$253-HOLD)

Stock Ratings

Buy - The stock is expected to trade higher on an absolute basis or outperform relative to the market or its peer stocks over the next 12 months.

Hold - The stock is expected to perform in line with the market or its peer stocks over the next 12 months.

Sell - The stock is expected to trade lower on an absolute basis or underperform relative to the market or its peer stocks over the next 12 months.

Ratings Distribution for Loop Capital Markets as of September 10, 2024

			IB Serv./Past 12 Mos.	
	Count	% of total	Count	% of total
BUY	138	58.47%	14	10.14%
HOLD	96	40.68%	4	4.17%
SELL	2	0.85%	0	0.00%

Source: Loop Capital Markets

IMPORTANT DISCLOSURES

This report has been prepared by Loop Capital Markets LLC ("Loop Capital Markets"). Loop Capital Markets is a broker-dealer registered with the SEC and a member of FINRA and the Securities Investor Protection Corporation (SIPC). Loop Capital Markets is located at 425 South Financial Place, Suite 2700, Chicago, IL 60605. For up-to-date Loop Capital Markets' disclosures, including company specific disclosures and price charts, please click on the following link or paste URL in a web browser: [https://loopcapital.bluematrix.com/sellside/Disclosures.action]. Alternatively, disclosures may also be made available by emailing compliance@loopcapital.com or by calling 888-294-8898.

Analyst Certification and Disclosures

Research Analyst Compensation: Loop Capital Markets' Research Analysts, including the author(s) of this report, receive compensation that is based on a variety of factors, including overall profitability of the Firm and total revenue from all sources, including those from investment banking.

Company Disclosures

Client: Loop Capital Markets currently has, or had within the past 12 months, the following entity(ies) as clients: Union Pacific Corporation

Investment Banking Services (Next 3 Months): Loop Capital Markets expects to receive, or intends to seek, compensation for investment banking services in the next three months from the Subject Company and other companies discussed in this Report.

Disclaimer

Information about our recommendations, holdings and investment decisions:

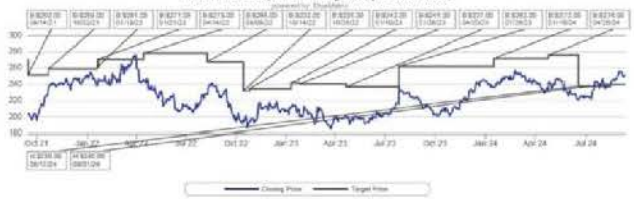
The information and rating included in this report represent the long-term view as described more fully below. The analyst may have different views regarding short term trading strategies with respect to the stocks covered by the rating, options on such stocks, and/or other securities or financial instruments issued by the company. Our brokers and analysts may make recommendations to their clients, and our affiliates may make investment decisions that are contrary to the recommendations contained in this research report. Such recommendations or investment decisions are based on the particular investment strategies, risk tolerances, and other investment factors of that particular client or affiliate. From time to time, Loop, and its respective directors, officers, employees, or members of their immediate families may have a long or short position in the securities or other financial instruments mentioned in this report. We provide to certain customers on request specialized research products or services that focus on covered stocks from a particular perspective. These products or services include, but are not limited to, compilations, reviews, and analysis that may use different research methodologies or focus on the prospects for individual stocks as compared to other covered stocks or over differing time horizons or under assumed market events or conditions. Readers should be aware that we may issue investment research on the subject companies from a technical perspective and/or include in this report discussions about options on stocks covered in this report and/or other securities or financial instruments issued by the company. These analyses are different from fundamental analysis, and the conclusions reached may differ. Technical research and the discussions concerning options and other securities and financial instruments issued by the company do not represent a rating or coverage of any discussed issuer(s). The disclosures concerning distribution of ratings and price charts refer to fundamental research and do not include reference to technical recommendations or discussions concerning options and other securities and financial instruments issued by the company.

The information presented in this report is for informational purposes only. It was prepared based on information and sources that we believe to be reliable, but we make no representations or guarantees as to the accuracy or completeness of the information contained herein. This report is not to be construed as an offer to sell or a solicitation of an offer to buy any security. The opinions expressed in this report may change without notice.

Loop Capital Markets research reports are intended for use by institutional investors. The securities discussed in Loop Capital Markets research reports may not be suitable for some investors. Investors must make their own determination as to the appropriateness of an investment in any securities referred to herein, based on their specific investment objectives, financial status and risk tolerance. Past performance is no guarantee of future results and the predictions made in this report may not be met.

Loop Capital Markets accepts no liability whatsoever for any loss or damage of any kind arising out of the use of all or any part of this report. Loop Capital Markets specifically prohibits the re-distribution of this report by third parties, via the internet or otherwise, and accepts no liability whatsoever for the actions of such third parties in this respect. Additional information is available to clients upon request.

Union Pacific Corporation Rating History as of 09/10/2024



Canadian National Railway Company Rating History as of 09/10/2024



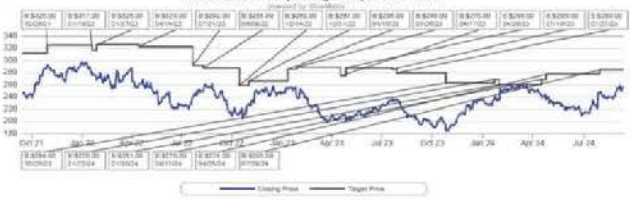
CSX Corporation Rating History as of 09/10/2024



Canadian Pacific Kansas City Limited Rating History as of 09/10/2024



Norfolk Southern Corp. Rating History as of 09/10/2024



Disclaimer

Loop Capital® is a registered trademark of Loop Capital Holdings, LLC. Securities, investment banking and commodities services are offered through Loop Capital Markets LLC. Loop Capital Markets LLC is a registered broker-dealer and a member of the Financial Industry Regulatory Authority (FINRA), the Municipal Securities Rulemaking Board (MSRB) and the Securities Investor Protection Corporation (SIPC). Loop Capital Markets LLC is also registered as an introducing broker with the Commodities Futures Trading Commission and a member of the National Futures Association.

Loop Capital prepared this document for informational purposes only. This document and the information herein (collectively "Information") is not a research report and it should not be construed as such. The Information has been gathered from sources believed to be reliable, but is not guaranteed and is not a complete summary of all available data. Any historical price(s) or value(s) are also only as of the date indicated and from any source that may be noted. Loop Capital is under no obligation to update opinions or other information. Any opinions expressed by Loop Capital represent our present opinions as of the date of this Information and are subject to change without further notice. The Information, including proposed terms and conditions, are indicative and for discussion purposes only. Finalized terms and conditions of any transaction or engagement are subject to further discussion and negotiation and will be evidenced by a formal agreement.

The Information is confidential. By accepting the Information, you agree that you will, and you will cause your directors, partners, officers, employees and representatives to use the Information only to evaluate your potential interest in the strategies described herein and for no other purpose and will not divulge the Information to any other party except as otherwise permitted herein. Any reproduction, redistribution or transmission of the Information, in whole or in part, without the prior written permission of Loop Capital is prohibited. Except as required to comply with applicable law or regulation, Loop Capital makes no warranty whatsoever (including but not limited to, warranties as to quality, accuracy, performance, timeliness, continued availability or completeness) as to the Information contained herein.

The Information contained is not an offer to buy or sell or a solicitation of an offer to buy or sell any security or instrument or to participate in any trading strategy. Loop Capital does not provide accounting, tax or legal advice; however, you should be aware that any proposed indicative transaction could have accounting, tax, legal or other implications that should be discussed with your advisors and or counsel.

The Information should not be relied upon for the maintenance of your books and records or for any tax, accounting, legal or other purposes. Subject to applicable law, you may disclose any aspects of any potential transaction or structure described herein that are necessary to support U.S. federal income tax benefits.

The fact that Loop Capital has made the Information or other information available to you constitutes neither a recommendation that you enter into or maintain a particular transaction or position nor a representation that any transaction is suitable or appropriate for you. Transactions involving derivative or other products may involve significant risk and you should not enter into any transaction unless you fully understand the risks and have independently determined that such transaction is appropriate for you.

Loop Capital shall have no liability, contingent or otherwise, to you or to any third parties, or any responsibility whatsoever, for the correctness, quality, accuracy, timeliness, pricing, reliability, performance or completeness of the Information, data or formulae provided herein or for any other aspect of the performance of the Information. In no event will Loop Capital be liable for any damages (including special, indirect, incidental or consequential damages) which may be incurred or experienced on account of your use of the Information provided herein or this document, even if Loop Capital has been advised of the possibility of such damages. Loop Capital will have no responsibility to inform you of any difficulties experienced by Loop Capital or any third parties with respect to the use of the Information or to take any action in connection therewith.

Loop Capital and its affiliates, officers, directors, and employees, including persons involved in the preparation of this document, may from time to time have "long" or "short" positions in and buy or sell, the securities, derivatives (including options) or other financial products thereof, of entities mentioned herein. In addition, Loop Capital and/or its affiliates may have served as manager or co-manager of an offering of securities by any such entity. Further information may be obtained upon request.

To the extent this material involves Municipal Securities, unless it is otherwise agreed in writing between you and Loop Capital, Loop Capital is acting solely as a principal/underwriter in an arm's length commercial transaction in which Loop Capital has financial and other interests that differ from yours. Loop Capital is not acting as a municipal advisor, financial advisor or fiduciary and the information provided should not be construed as "advice" within the meaning of Section 15B of the Securities Exchange Act of 1934.

Hearing Before the Surface Transportation Board

Docket No. Ep 775

Growth in the Freight Rail Industry

September 16 and 17, 2024

Testimony of Adriene Bailey, Partner, Oliver Wyman

308640

ENTERED
Office of Proceedings
August 26, 2024
Part of
Public Record

Introduction

I would first like to thank the Surface Transportation Board members for providing me with the opportunity to speak here today. I am Adriene Brooks Bailey, a Partner with Oliver Wyman, a leading general management consulting firm. Before joining Oliver Wyman, I held senior executive positions at Southern Pacific Railroad (which is now part of Union Pacific Railroad), CSX, Pacer International (which is now part of STG Logistics), and Yusen Logistics. I led the service design function at both Class I railroads and was involved in all aspects of intermodal operations at Pacer International and Yusen Logistics.

At Oliver Wyman, I currently lead the North American Rail Practice and actively work with Class I railroads, intermodal equipment and drayage providers, terminal operators, and technology enterprises. I have more than 30 years of experience in total as a railroad executive, railroad customer, and consultant to railroads. I publish and present regularly at industry conferences on growth strategies and other strategic topics for the rail industry. More detailed information and background on what I will discuss today is available on the Oliver Wyman website and referenced as citations in this submission.

Today, I would like to share my and Oliver Wyman's view of the importance of growth to North American freight rail, and what the collective stakeholders in this critically important industry must do to reverse the market share erosion that we have seen in the past 10-15 years.

Why is growth in the rail industry important?

To start, it is important to note that rail is a highly energy efficient, sustainable, safe, and low-cost mode for transporting freight. This is particularly true for the United States and North

© Oliver Wyman

America as a whole, which has the largest self-sustaining rail freight network in the world. In other parts of the world, freight rail operations frequently require government subsidies.

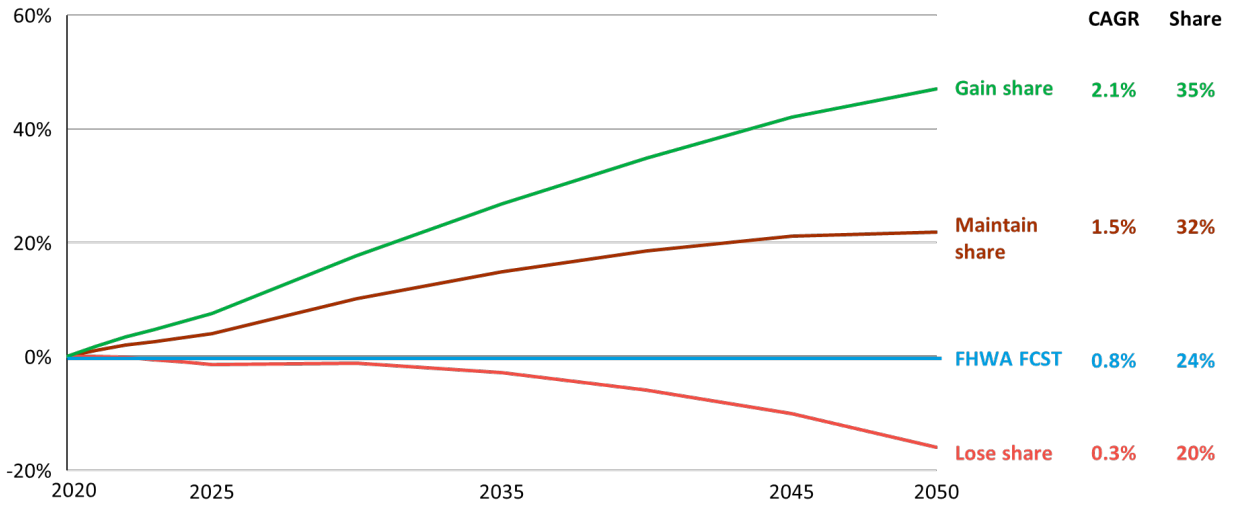
As the Board pointed out in its hearing notice, it is concerning that Class I rail volumes have not materially grown over the past decade. Indeed, rail is the only freight transportation mode that has lost overall net tons since 2017. Rail moved eight percent fewer total net tons between 2017 and 2023, while truck increased net tons moved by three percent.

In addition, the US Department of Transportation currently projects that rail will have the slowest growth among freight transportation modes through 2050 – which means that railroads are predicted to lose share to other freight modes over that timeframe.

Implications of share loss

To put context around what a continued loss of rail market share could mean for our society as well as rail stakeholders, I would like to summarize an analysis that Oliver Wyman performed in 2022, in which we looked at the implications of several scenarios for rail market share through 2050. These are shown in Exhibit 1.

Exhibit 1: Possible Growth Trajectories for Rail Market Share to 2050
Percent deviation from US DOT forecast of revenue net-ton miles



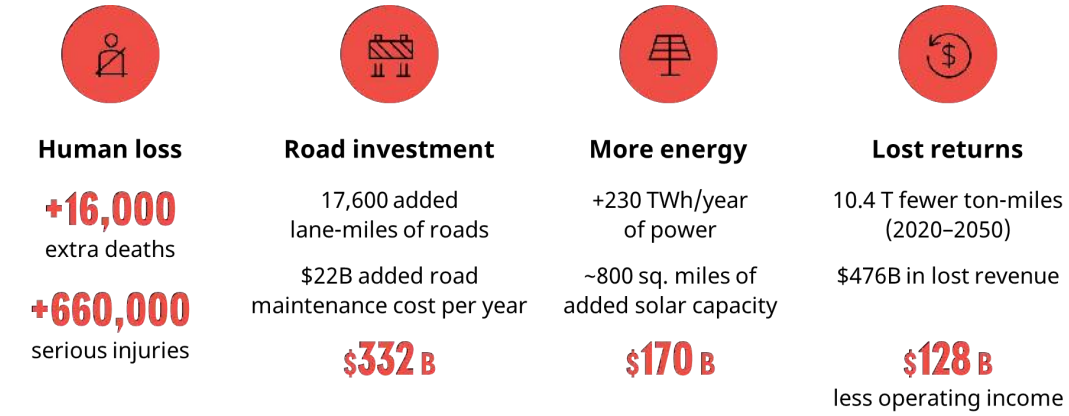
Source: US DOT forecast of rail revenue net-ton miles as per FAF 5.4, Oliver Wyman analysis to calculate deviation based on rail market share scenarios

The blue line is the baseline Federal Highway Administration forecast for rail market share. We then created three alternative scenarios to project the potential for rail to gain, hold, or lose additional market share.

The baseline forecast anticipates that rail market share will drop four percentage points by 2050. We believe that this may be optimistic, however, because the FHWA forecast simply grows the current volumes of individual commodities that are NOW shipping on rail. It does not reflect the more critical trend of flexible freight, which is freight with a choice between truck and rail, migrating to truck. That is, we believe that without a change in the railroads' operating performance, shippers using rail now who have the option to ship by truck will continue the current trend of moving more freight by truck in the future. This is shown by the red "lose share" line in Exhibit 1.

In every one of our future scenarios, the volume of rail freight grows. What is critical to understand, however, are the far-reaching implications of rail losing share versus gaining share relative to truck. As an example, let us consider these implications across four dimensions, as shown in Exhibit 2.

Exhibit 2: Implications of Rail Loss of Market Share
Rail market share loss scenario compared to gain scenario



Source: Oliver Wyman analysis of public data

In the area of safety, rail has far fewer incidents each year than trucking that cause injury or a loss of life. With more freight moving on trucks, the US will most certainly see significantly more deaths and serious injuries. On a ton-mile basis, rail is about 28 times safer for the public and workforce than trucking. Our analysis estimates that if railroads could regain share, this would save approximately 16,000 lives and prevent 660,000 serious injuries between now and 2050.

More trucks on highways also would require billions more in federal and state dollars to be spent on maintaining and expanding road infrastructure. There would be no choice but to keep adding

more lane-miles to roads to keep them from gridlock. We estimate that by 2050, the US would need to spend an additional $332 billion on roads if railroads fail to take share back from trucks.

In terms of overall carbon emissions and energy efficiency, there is no question that railroads are a better solution. In 2022, for example, US railroads accounted for two percent of transportation-related greenhouse gas emissions, while moving 40 percent of intercity freight. Trucking moves one and a half times as much freight, but to do so, generates 11.5 times more greenhouse gas emissions.

But let us also consider a future in which both rail and truck have achieved net-zero emissions. At that point, the goal will shift from sourcing clean energy to minimizing total energy consumption. That's because no matter what future energy sources we use, they are unlikely to be unlimited or free. Given that rail is four times more energy efficient than trucking, a world with little or no freight rail would consume vastly more energy than one that maximizes the use of rail. For example, we estimate that added energy requirements for trucking by 2050, in the rail market share loss scenario, would require 30% of current renewable energy generation. Or put another way, the US would need to install solar panels covering an area five times the size of Washington, D.C., at a cost of approximately $170 billion.

Last but not least, if railroads fail to reclaim market share from trucking, the industry and its investors would miss out on billions in revenue and operating income. This would impact the railroads' ability to raise capital, to continue to invest in infrastructure and assets, and to employ a growing workforce – all of which benefits US businesses and the economy as a whole.

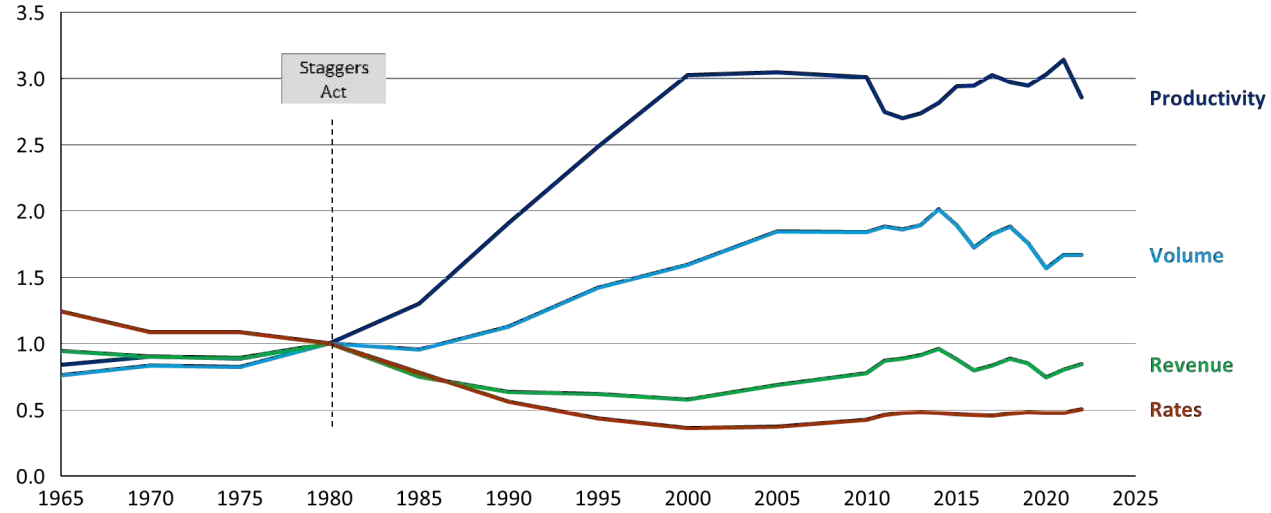
Growing rail market share is a monumentally important public good, whether the goal is improving transportation safety, lowering public spending, ensuring energy independence, or maintaining the efficiency and resilience of US transportation networks.

What is causing the market share erosion that has plagued the industry for a decade?

Next, I would like to briefly review what is causing current rail market share erosion. Since the Staggers Act deregulated rail in 1980, the railroads have delivered tremendous improvements in productivity – much of which has been delivered back to shippers and consumers in the form of rate reductions, as shown in Exhibit 3.

Exhibit 3: Indexed Class I Rail Metrics, 1965-2023

1981=1.0



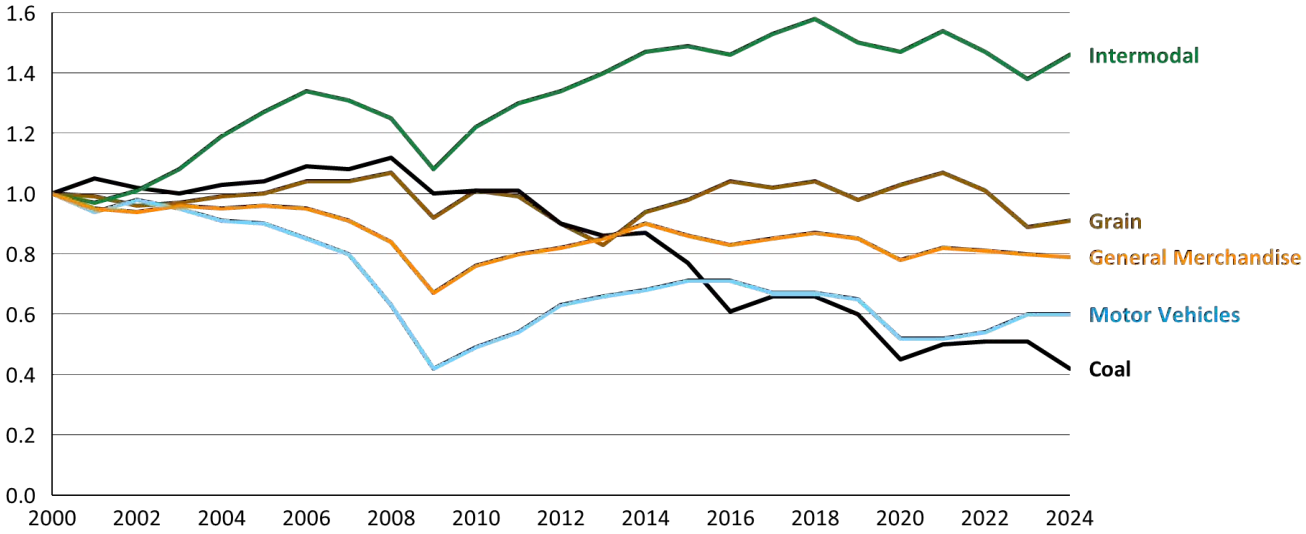
Note: Rates = inflation-adjusted revenue per ton-mile, volume = ton-miles, productivity = revenue ton-miles per constant dollar operating expense, revenue = operating revenue in 2022 dollars
Source: Association of American Railroads

Starting around 2015, however, productivity gains began to flatten out and rates began to move up again. Volumes have stagnated, and coal volumes have declined, as utilities have moved away from using coal to generate electricity. To be clear, revenues have still grown – but volume gains have not kept pace with the rise in overall freight volumes, and the industry has been ceding share to truck year over year.

It is tempting to attribute the railroads' market share loss exclusively to the decline of coal, but as shown in Exhibit 4**,** except for intermodal, major non-coal sectors of rail freight also have not been growing. Truck ton-miles, on the other hand, have grown steadily by 1.4 percent a year since 2000.

Exhibit 4: indexed Rail Carload and Intermodal Traffic, 01/00-07/24

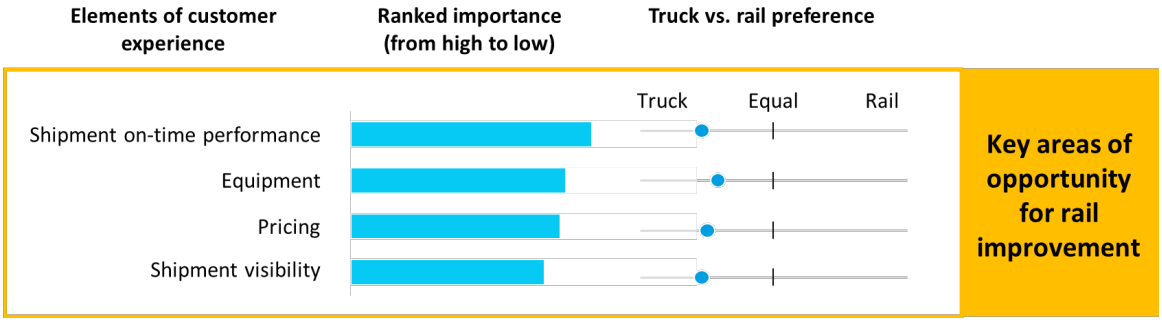
Average annual weekly traffic, 2000 = 1.0



Note: General merchandise is all traffic not included in intermodal, coal, grain, or motor vehicles
Source: Association of American Railroads, US Weekly Railroad Traffic, 12/31/99-8/2/2024

What is behind this shift? In 2020, Oliver Wyman surveyed large rail shippers to identify some of the key reasons as well as their views on what might reverse this trend. Notably, 100 percent of the executives we surveyed found truck to be superior to rail on all attributes of customer experience, as shown in Exhibit 5. At the same time, shippers consistently told us that they want to do more with rail because of its advantages, but that the product and experience simply are not meeting their supply chain needs.

Exhibit 5: Customer Experience Factors: Shipper Ranking of Importance, Truck vs. Rail Preference



Source: Flexible Freight and the Future Of Rail, 2020 North American Freight Shipper Survey, Oliver Wyman

Since the 2000's, and even before, supply chains have only become more globalized, often involving multiple transport modes. There have been radical changes in how industries and consumers source and buy goods. Shippers have had to become much more sophisticated to

manage these complex supply chains, including changing the criteria by which they evaluate their transportation mode choices.

When I began my career in the industry, the most important thing to a shipper was the pure transportation cost on the invoice. Today's shippers are increasingly focused on the total cost of doing business with a carrier or transport mode. Freight rates are still important of course, but shippers now factor many other considerations into their choice of a carrier or mode, such as safety stock, warehouse productivity, inventory turns, billing accuracy, problem resolution speed, shipment visibility, and timely and accurate data reporting.

Based on our interviews with shippers, Oliver Wyman identified three important factors that are causing shippers to shift more freight to trucking. The first is that railroads have failed to adapt as supply chain structures and shipper choice models have changed. Railroads must become more integrated with their customers to understand how they can best fulfill shippers' more complex needs.

They also need to be more proactive, to ensure shippers are not making decisions that could lock them out of future rail access. For example, some shippers told us they were converting rail sidings and rail unloading doors to "higher value purposes," while others were evaluating sites for distribution centers without considering whether this would make it more difficult to use rail intermodal. Railroads cannot grow back share if they allow themselves to be dealt out before the game even starts.

The second factor is that rail service performance is simply not good enough. Shippers we surveyed expressed disappointment in rail's poor on-time performance and lack of shipment visibility and accurate ETA's. It is important to note here that shippers are not expecting "fast" service nor even the same degree of reliability as trucking. But they do expect substantially more transit time consistency and a more responsive approach to problem resolution if they are going to risk their freight on rail.

Third, the railroads are not delivering an overall customer-centric experience. It is no secret that trucking is considered the gold standard for ease of doing business. Rail shippers we talked to are frustrated with slow response times, overly complex transaction processes, and a general unwillingness by the railroads to be accountable for rail-related service failures. Ultimately, this

may be the most difficult challenge to overcome, as it requires the railroads to make a full on culture shift and to take a different approach to how processes are designed, how employees are evaluated and rewarded, how resources are deployed, and how strategic projects are selected.

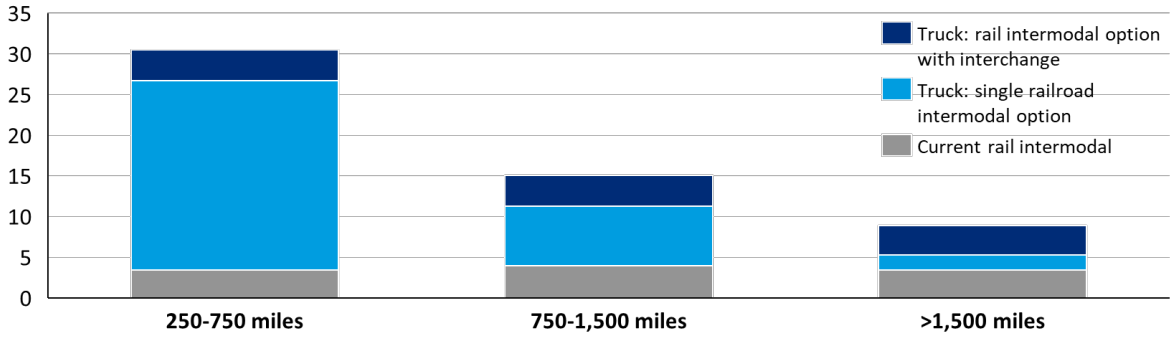
Can the volume decline trend be reversed?

So, given the challenges that have led to market share erosion for rail, is there hope that this trend can be reversed? At Oliver Wyman, we would say yes, if railroads can deliver consistent, reliable transit times and a customer experience that is much closer to truck on all touchpoints or moments of truth. We think this is entirely feasible.

Assuming railroads can solve their transit reliability and customer experience issues, Oliver Wyman has identified several specific volume and market share growth opportunities that the Class I railroads could begin to pursue and that I will briefly discuss here.

The first of these is in intermodal. As shown in Exhibit 6, railroads already have a 65 percent market share for intermodal in lanes that are over 1,500 miles and served by a single railroad. But rail only accounts for 11 to 13 percent of volume in lanes under 750 miles. We estimate that rail intermodal could serve as many as 27 million out of the 41 million total truckloads in these lanes, using the current terminal and railroad network.

Exhibit 6: Estimated addressable US domestic rail intermodal market >250-mile length of haul
Million equivalent loads



Current rail share of addressable market

	250-750 miles	750-1,500 miles	>1,500 miles
Single-line only	13%	35%	65%
Requires interchange	11%	27%	39%

Note: Intermodal compatible, mode-flexible freight commodities only, excludes revenue empties
Source: US Department of Transportation Freight Analysis Framework FAF 5.5.1; Oliver Wyman analysis

In addition, some lanes over 750 miles that are now served by truck could be made more accessible to rail in the future by adding smaller, more flexible terminals closer to demand. Railroads also have noticeably lower share of intermodal when there is more than one railroad involved, so streamlining interchanges to match single-railroad levels of service could add more volume to the existing network as well.

The second opportunity for rail is capturing freight growth from the manufacturing upturn now occurring in North America. Railroads are indeed investing to develop large flagship transloading and industrial parks in locations they can efficiently serve. But we believe a more comprehensive view of the industrial space is needed. As I mentioned previously, shippers do not always consider rail access in their site selection, and some shippers have repurposed existing rail infrastructure. These are lost opportunities that will tax our system for decades to come, as that freight will default to moving on the highway, with no rail option. Thus, there is a need for a renewed focus on building rail access to shippers – including new lanes, connections, service offerings, and transload facilities – as well as preventing further loss of access at existing rail-served sites.

A third opportunity for growth lies in the short line rail sector. With a strong customer-first culture, many of these railroads have realized impressive volume gains in recent years by leveraging infrastructure, ancillary services, and industrial development that is not directly available to the Class I's. Although they only account for a small share of industry revenue, short lines contribute 25 to 35 percent of Class I rail volume.

Oliver Wyman recently interviewed senior executives representing some 300 of these short line railroads – over half of the industry. Many believe there is more volume to be captured if Class I railroads would help their short line connections better leverage their strengths and complement their efforts to deliver growth. There are several steps that Class I's could take here.

One would be to ensure C-suite-level line of sight and support for growth-oriented short line strategies. Another would be to increase active collaboration with short lines to attract more shippers to rail. To justify the investment and transit time risks of choosing rail, shippers need to be confident in the partnership between their serving short line and the Class I providing their mainline transportation.

Lastly, Class I's could work to improve their timelines for responding to short line requests for new business support, as well as interchange performance with their short line connections. Many short line customers have the option to ship by truck – which typically can supply a rate and capacity commitment in a matter of hours. By comparison, Class I railroads may take days or even weeks to provide a response.

In general, railroads face a challenge that truckers do not, which is that they must work with connecting railroads – whether other Class I's, regionals, or short lines – for well over half of their shipments. Is it harder? Yes. Does that mean it is impossible to design joint processes that are simple, fast, and easy for customers, or to deliver consistent transit times door-to-door? At Oliver Wyman, we believe the answer to that is no. But if the railroads fail to figure out how to solve for this, their share of freight will continue to erode.

I do believe that as a group, the Class I's are more strategically focused on growth now than they have been at any other time in my career. I am hearing CEO's articulate that while efficiency is always a goal, and there are ways of making any operation more efficient over time, earning more of shippers' share of wallet and bringing more volume to the railroad is going to be the next opportunity to create substantive earnings growth.

However, I am not yet sensing that the investor community has bought into this strategy. And we should not underestimate the influence of the investment community on where public companies focus their efforts. Ultimately, I am confident that successful railroad growth strategies will prove that increasing market share also yields higher investor returns.

If railroads can deliver a customer-centric experience and more reliable on-time performance, they will takes trucks off of our highways. And we will all enjoy the benefits of a US transportation system that is safer, less costly, more energy efficient, and more sustainable.

Thank you for this opportunity to appear before the Board. I appreciate your attention to this matter and I am happy to take any questions you might have.

Citations

Flexible Freight and the Future of Rail: 2020 North American Freight Shipper Survey, Adriene Bailey, Oliver Wyman, December 2020.

Following the Freight – Where to Find Rail Intermodal Growth, Matthew Schabas, Oliver Wyman, June 2024.

The Great Pivot: Can North American Rail Become a Customer-Centric Growth Industry? Adriene Bailey, RailTrends 2021.

The Growth Journey, Rounding the First Bend, Adriene Bailey, RailTrends 2022.

The Path to Long-Term Shareholder Value for Rail is Growth, Adriene Bailey and Matthew Schabas, Oliver Wyman, April 2024.

Unleash the Short Lines: Accelerating North American Rail Industry Growth, James Miller and Michelle Bowling, Oliver Wyman (available online September 2024).

52181 SERVICE DATE –JULY 15, 2024
DO

SURFACE TRANSPORTATION BOARD

NOTICE

Docket No. EP 775

GROWTH IN THE FREIGHT RAIL INDUSTRY

Decided: July 9, 2024

AGENCY: Surface Transportation Board.

ACTION: Notice of Public Hearing.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing on September 16 and 17, 2024, to gather information about recent trends and strategies for growth in the freight rail industry. The Board requests the attendance of executive-level officials from the BNSF Railway Company, Canadian National Railway Company, Canadian Pacific Kansas City Limited, CSX Transportation, Inc., Norfolk Southern Railway Company, and Union Pacific Railroad Company (collectively, "Class I railroads"). The Board also invites and welcomes testimony from industry analysts, other rail carriers, rail customers, rail suppliers, labor organizations, and other interested parties who can contribute to the Board's understanding of how the industry has grown and intends to grow in the future.

DATES: The hearing will be held on September 16 and 17, 2024, beginning at 9:30 a.m. ET each day, in the Hearing Room of the Board's headquarters and will be open for public observation. The hearing will also be available for public viewing on YouTube. Any person wishing to speak at the hearing must file with the Board a notice of intent to participate (identifying the party, proposed speaker, and amount of time requested) no later than August 14, 2024. In addition, written testimony from hearing participants, and written comments by any other interested persons, must be submitted by August 16, 2024.

ADDRESSES: The hearing will be held in the Hearing Room of the Board's headquarters, located at 395 E Street, S.W., Washington, DC 20423-0001. All filings must be submitted via e-filing on the Board's website at www.stb.gov under the docket for EP 775, or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. Filings will be posted to the Board's website and need not be served on the other hearing participants, written commenters, or any other party to the proceeding.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet at (202) 245-0368. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: Freight rail is critically important to the nation's economy, and the Board has an interest in the health and growth of the industry and the need for rail customers to move their goods efficiently and reliably. On the subject of freight rail industry growth, while the Board recognizes that some shifts in volume may not be primarily within the control of rail carriers, the Board has observed that over the past ten years carload volumes have not grown, and have in fact decreased.[1] The Board wishes to explore how industry participants are strategizing and innovating to reverse this recent trend and achieve freight rail growth. For example, the Board is interested in the Class I railroads' short-, medium-, and long-term growth strategies, including investments, across traffic types. The Board would also like the perspective of short line railroads, who can present evidence of their own growth strategies. The Board is also interested in shippers' plans or desire for future use of rail, factors that may affect their shipment decisions, and what rail carriers are doing and can do to increase shippers' use of rail. This hearing presents a chance to discuss the opportunities for growth in the freight rail industry, as well as the challenges and effects associated with a failure to grow.

The Board will hold a public hearing to explore these topics on September 16 and 17, 2024, beginning at 9:30 a.m. ET each day, at its headquarters in Washington, D.C. In addition to requesting the attendance of executive-level officials from the Class I railroads, the Board invites and welcomes testimony from industry analysts, other rail carriers, rail customers, rail suppliers, labor organizations, and other interested parties. Participation at the hearing will be limited to those who file notices of intent to participate, and the Board will, in a subsequent decision, provide time limits for each speaker.

BOARD RELEASES AND TRANSCRIPT AVAILABILITY: Decisions and notices of the Board, including this notice, are available on the Board's website at www.stb.gov. The Board will issue a separate notice containing the schedule of appearances. A transcript of the hearing will be posted on the Board's website once it is available.

It is ordered:

1. A public hearing will be held on September 16 and 17, 2024, beginning at 9:30 a.m. ET each day, in the Hearing Room of the Board's headquarters, located at 395 E Street, S.W., Washington, DC 20423-0001.

2. By August 14, 2024, any person wishing to speak at the hearing shall file with the Board a notice of intent to participate identifying the party, the proposed speaker(s), and the amount of time requested.

3. Written testimony from hearing participants and written comments from any other interested persons must be filed by August 16, 2024.

---

[1] See Federal Reserve Bank of St. Louis, Rail Freight Carloads, https://fred.stlouisfed.org/series/RAILFRTCARLOADSD11 (last updated June 12, 2024) (data collected by U.S. Dep't of Transportation, Bureau of Transportation Statistics).

4. Filings will be posted to the Board's website and need not be served on any hearing participants or other commenters.

5. This decision is effective on its service date.

6. This decision will be published in the Federal Register.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

BUILDING AMERICA®

308607

ENTERED
Office of Proceedings
August 16, 2024
Part of
Public Record

August 16, 2024

Via Electronic Filing

The Honorable Robert Primus, Chairman
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

The Honorable Karen Hedlund, Vice Chairman
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

The Honorable Patrick Fuchs
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

The Honorable Michelle Schultz
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

Re: **STB Docket No. EP 775 – *Growth in the Freight Rail Industry***

Dear Chairman Primus, Vice Chairman Hedlund, and Board Members Fuchs and Schultz,

Union Pacific respectfully requests the enclosed Testimony of Mr. Kenny G. Rocker be filed in Docket Number EP 775. Please contact me if you have any questions.

Very truly yours,

Tonya W. Conley

Tonya Conley

Enclosure

cc: Cynthia T. Brown
Chief, Section of Administration

UNION PACIFIC RAILROAD
1400 Douglas Street, MS 1580
Omaha, Nebraska 68179

Tonya Conley
Senior Counsel

Surface Transportation Board

Docket No. EP 775

Hearing on Growth in the Freight Rail Industry

Written Testimony of Union Pacific Railroad Company

STB Hearing on EP 775 – Growth in the Freight Rail Industry

Testimony of Kenny Rocker
Union Pacific Railroad Company

Union Pacific has been in business for over 160 years, building America and being an integral part of global supply chains by providing safe and efficient transportation to move goods that families and businesses use every day. Our long-term strategy has always been to look for opportunities to expand our business and our reach to grow with customers. This long history shows we are consistently responding to the challenges of an ever-changing market landscape.

A strong company strategizes for growth by deploying its resources responsibly to achieve the greatest value and outcomes. Our commitment to safety, service, and operational excellence underpins and drives the long-term growth strategy. We commit to being the best at safety – safety is a key pillar of our strategy, and we continue to make progress to be the best in the industry. We strive to deliver the service we sold to our customers – and our operational excellence supports that goal by driving decision making to the front lines and ensuring the wise use of our resources. We also know that growth is only possible with engaged teams and stakeholders. Our growth strategy makes Union Pacific resilient when faced with external challenges beyond our control.

While public policies and macro forces naturally impact the markets Union Pacific serves – such as the ongoing decline in the use of coal – the commercial team is intensely focused on business development and has successfully grown our business in other markets. By committing to innovation and investment, Union Pacific adapts to the ever-changing macroeconomic forces.

In a capital-intensive industry we know that effectively allocating our resources requires deploying capital strategically to promote and maximize growth. We invest where long term cost-

benefit analysis shows opportunity for growth, and where we can maximize our network operations. We have a consistent history of investing back in our network – spending over $3 billion annually, with $3.7 billion spent in 2023 alone.

Over the past five years, Union Pacific has invested more than $1.5 billion to support just our manifest and carload network. And over the same period, Union Pacific has invested more than $275 million to expand our intermodal infrastructure in Southern California alone, providing customers with fast, reliable service to key markets such as Houston and Chicago. We continue to invest in our intermodal network and plan to add over one million lift capacity in the coming years to benefit both our international and domestic customers.

We have a passion for growth by delivering innovative product offerings, extending our reach to serve new markets, and leveraging technology to make it easier for customers to do business with Union Pacific. Our diverse suite of product offerings support both intermodal and carload customers. We extend our reach by investing in new transload facilities, collaborating with short line and interline partners, and onboarding new customers within industrial rail parks. Our investments in infrastructure and technology support growth with our customers, making rail an easier and more accessible option for them. We compete vigorously against all modes of freight transportation, and with rail being one of the most environmental responsible and fuel-efficient modes to transport large volumes over long distances, a solid consistent service product positions us well to take trucks off the road. As more customers aim to reduce their environmental footprints, our team works closely with them to understand their sustainability goals and find ways to help them achieve their targets by offering a lower carbon transportation solution.

The Surface Transportation Board plays a crucial role in minimizing regulatory barriers to growth for Union Pacific and its customers. For example, the Board's recent pro-growth action in

describing its important role in relation to the California Air Resources Board's "In-Use Locomotive Regulation" is a vivid example of the STB's commitment to growth, which we greatly appreciate. More broadly, the STB's defense of reasonable and balanced federal preemption – giving effect to Congress' clear intention that we not have a patchwork of unnecessary, inconsistent, and inefficient state regulations – is a good example of *national* regulation by the STB that stimulates growth. Union Pacific looks forward to partnering with the STB on these and other opportunities to support growth and to expand our services for new and existing customers throughout America's rail network.

BUILDING AMERICA®

308734

ENTERED
Office of Proceedings
Setpember 19, 2024
Part of
Public Record

September 19, 2024

Via Electronic Filing

The Honorable Robert Primus, Chairman
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

The Honorable Karen Hedlund, Vice Chairman
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

The Honorable Patrick Fuchs
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

The Honorable Michelle Schultz
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

Re: **STB Docket No. EP 775 – *Growth in the Freight Rail Industry***

Dear Chairman Primus, Vice Chairman Hedlund, and Board Members Fuchs and Schultz,

Union Pacific respectfully requests the enclosed Supplemental Testimony of Mr. Kenny G. Rocker be filed in Docket Number EP 775. Please contact me if you have any questions.

Very truly yours,

James B. Boles

Enclosure

cc: Cynthia T. Brown
Chief, Section of Administration

UNION PACIFIC RAILROAD
1400 Douglas Street, MS 1580
Omaha, Nebraska 68179

James B. Boles
Vice President - Law

STB Hearing on EP 775 – Growth in the Freight Rail Industry

September 16, 2024
Testimony of Kenny Rocker

Union Pacific Railroad Company

Good morning, Chairman Primus, Vice Chairman Hedlund, Board Member Fuchs, Board Member Schultz, and Board Staff.

On behalf of Union Pacific, thank you for the opportunity to speak to you about our growth strategy and our Company's innovation to achieve growth – today, I'm focusing on how Union Pacific thinks about this growth strategy.

And there are three things I want to hit hard:

- First, delivering the service we sold to our customers,
- Second, investing in our network, and
- Third, innovating with technology and new product offerings to meet the needs of our customers.

First, let me make it clear – Union Pacific has been growing. Since 2010, our volume has grown over 500,000 carloads, if you exclude coal. We've seen growth across several markets, which are also very competitive with trucks. In our agricultural business segment, biofuels have grown 65% and beverages have increased 62%. For the industrial markets, we've seen a 68% growth in plastics and a 42% growth in industrial chemicals. And in our auto parts business, it's increased by 47%.

We're not immune to the external factors that impact the markets we serve – but we find ways to adapt. In 2010, Union Pacific launched over 30 coal trains per day out of Wyoming – each with over 100 cars. Today, that number averages closer to 10 trains per day – which translates to

about 20,000 fewer cars per week due to increased fuel competition with natural gas and public policies that have reduced coal-fired utilities.

But our team has hustled to recover from the backdrop of coal and done a fabulous job to fill that void.

The beauty of our franchise lies in the diversity of our business mix which gives us strength by providing stability during the ebbs and flows of the economy. Some examples of growth markets include domestic intermodal, automotive, petrochemicals and construction. Our unmatched network allows us to capitalize on these growing markets and protects us when other markets struggle.

Next, let me briefly outline Union Pacific's strategy for long-term growth. The team is all-in when it comes to Safety, Service and Operational Excellence. Safety is at the forefront – with the goal of becoming the best in the industry. We strive to deliver the service that we sold to our customers. And our focus on operational excellence ensures that we are using resources efficiently and wisely. In addition, we maintain a buffer, a buffer of both people and equipment, so we are ready for unforeseen weather events or surges in demand. In fact, quarter to date, our carloads are up double digits year-over-year for grain, petroleum, and renewable fuels. And despite expecting international intermodal volumes to be down this year because of a contract loss, we've seen the market grow double digits and we've been able to capture all that volume.

My Commercial team has a passion for growth in all markets we serve – both in carload and for our intermodal customers. The team has a 'hustle' mindset to engage our customers, be the first to act on new opportunities, and find innovative solutions to help our customers win.

We focus on what we can control, and we are out there meeting face to face with customers to drive business development. Plus, becoming a more efficient railroad has led to a lower cost structure - which helps us compete, especially on shorter haul business. For example, we won new business with fertilizer, construction and lumber customers where the length of haul was less than 500 miles. Those efficiencies along with a solid service product have opened up more doors for us – allowing us to grow and reach markets that we previously could not reach.

So I'm proud of our team's hustle – we've launched more than 90 business development campaigns to generate sales leads this year and have a strong pipeline of new and incremental business opportunities totaling over one billion dollars. For us, every carload matters when we are hunting for new growth.

Despite the challenges from the freight recession and the secular decline of coal, Union Pacific remains committed to investing back in the network. In the past five years, we've invested $3.4 billion specifically for long-term growth.

The rail industry is capital-intensive and requires significant investments to promote and maximize growth for customers. Last year alone, we spent $3.7 billion in total capital for infrastructure, equipment, technology and network expansion – this equates to investing about $10 million per day. And I want to just make sure we think through that. That's $10 million per day. We strategically deploy our capital dollars – to invest where the cost-benefit over the long term shows opportunity for growth and make rail an easier and more accessible option for our customers.

Compared to truck, rail is the most environmentally responsible way to ship freight over land. To capture more over the road shipments, Union Pacific extends its reach through new transloads, short line partners and industrial rail parks.

Our subsidiary company, Loup Logistics, manages 18 transload sites and has over 800 transload partners across all of North America to help shippers who don't have tracks at their doors. Since 2021, we purchased two new transload facilities in Phoenix, Arizona, and Colton, California, to extend our reach in the fastest growing areas in the nation. Last year, Union Pacific acquired MHX, a full logistics service provider in California who provides first and last mile solutions. MHX operated seven transload facilities when we acquired them, and since then, has added two more transload facilities in Portland, Oregon, and Tacoma, Washington.

Union Pacific connects to more than 260 short lines and ports, which extends our reach by over 20,000 track miles. Last year, nearly 25% of Union Pacific's volume touched a short line. Earlier this month, we invited 125 individuals from short lines and ports to meet with our senior leadership and our Commercial team. We listened to them and partnered on specific ways to increase business. This was very productive.

In addition, growth is often driven by customers who want to build or expand their own facilities. We have a team of experts who will guide customers looking to connect to rail. Our Industrial Development team supports customers who want to build a new rail-served site. Since 2023, we completed 70 construction projects to locate new customers on Union Pacific's rail network. And we've made the onboarding process faster by taking out around 15 to 25% of the time to complete a project.

For customers who want to utilize an existing rail-served site, we deployed a Site Selector Tool that currently lists over 6,000 properties located within a half a mile of UP's track. We also promote 30 Focus Sites, which are premier rail-served locations across our network. These sites are shovel-ready with access to utilities and roads, which provides an easier way for customers to connect with us. Whichever option is chosen, our dedicated team of experts is there to help walk our customers through this process.

But if customers do not want to make the investment to build a rail-served site, then intermodal is one of the quickest ways to convert business from over the road to rail. Over the last five years, we've accelerated our investments to support intermodal growth and spent one billion dollars in commercial facilities.

And we're not stopping there – over the next three years, we are investing in our intermodal terminals to expand capacity by 11%. We invest where the nation's fastest growing markets are thriving, like the Inland Empire in Southern California, like Phoenix, and Minneapolis – and we're looking to expand in Kansas City in the near future.

And lastly, Union Pacific continues to innovate creative new product offerings to meet our customer needs. This includes promoting cross-border growth and responding to the changing market needs through new services with our interline partners and supporting international crews. Product development means leveraging technology too – we've doubled down when it comes to technology and spent about $50 million of our capital dollars over the last three years to improve the customer experience and make it easier to do business with us.

So as you can see, Union Pacific has a strong focus towards growth with the investment and innovation driven by our team. And I'd be remiss if I didn't mention that the STB plays a crucial role in minimizing regulatory barriers to growth, for our company and our customers.

We thank this Board for taking the steps like defending a coherent NEPA process at the U.S. Supreme Court and creating a uniform regulatory system for rail service through pre-emption. Both are helpful steps towards supporting growth of the rail industry. We look forward to partnering with this Board on opportunities to support growth and expand our services for new and existing customers.

So I would like to close the same way I started off. Our focus on growth is built around three things:

- It's safely delivering the service that we sold to our customers,
- Investing in our network to support growth, and
- Innovating through technology and new product development to meet the needs of our customers.

These three key areas are needed to compete in an ever-changing landscape and drive growth at Union Pacific. This is how we win and grow with our customers. And we have great momentum, and I am confident Union Pacific has the right strategy.

Thank you for allowing me to be here today and share our growth story. I'm open for any questions.

ARU/BLET

Addendum I

Decisions, Awards and Notices in *New York Dock* Cases

ARBITRATION PURSUANT TO
ARTICLE I, SECTION 4 OF THE NEW YORK DOCK PROTECTIVE CONDITIONS

PARTIES	)	BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
TO	)	AND
DISPUTE	)	CANADIAN PACIFIC KANSAS CITY RAILWAY

Michael D. Phillips, Arbitrator

Background:

In Finance Docket No. 32167, the Interstate Commerce Commission approved the acquisition by Kansas City Southern Industries, Inc. of common control of Kansas City Southern Railway Company ("KCS"), MidSouth Rail Corporation "(MidSouth"), MidLouisiana Rail Corporation ("MidLouisiana"), SouthRail Corporation ("South Rail"), and TennRail Corporation ("TennRail"). That approval, rendered in a decision served June 4, 1993, was subject to the employee protective conditions described in New York Dock Railway – Control – Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (*"New York Dock"*). MidLouisiana, SouthRail, and TennRail have since been merged into KCS. At the time of the ICC decision, the Louisiana & Arkansas Railway ("L&A") was controlled by KCSR, but it also has been merged into KCS.

In Finance Docket No. 34342, the Interstate Commerce Commission also approved control by KCS of the Texas Mexican Railway Company (Tex-Mex), finding that the transaction was a "minor" transaction. That approval, rendered in a decision served November 29, 2004, likewise imposed the *New York Dock* protective conditions.

In 2023, KCSR merged with Canadian Pacific Railway, forming a combined system known as Canadian Pacific Kansas City Railway ("CPKC" or "Carrier"). The locomotive engineer

workforces on the former KCS, L&A, MidSouth and Tex-Mex properties are represented by the Brotherhood of Locomotive Engineers and Trainmen ("BLET" or "Organization"). The Organization also represents trainmen on the Tex-Mex property.

On February 19, 2025, the Carrier served a notice to the BLET General Chairmen, in accordance with Article I, Section 4 of *New York Dock*, to coordinate and merge the entirety of the properties, train operations, and associated engineer workforces of the former KCS, MidSouth and Tex-Mex properties. The parties progressed the matter of the KCS and MidSouth combination to arbitration before this neutral, with the Tex-Mex property not being involved. An award dated January 16, 2026, provided the Carrier authority to consolidate train operations and engineer workforces of the former KCS and MidSouth under the MidSouth collective bargaining agreement. Another award dated March 2, 2026, (Ref. Tener), provided for a similar consolidation of trainmen forces.

After those awards were issued, the Carrier submitted a proposed implementing agreement to consolidate train operations and transportation assets of the Tex-Mex property under the MidSouth collective bargaining agreement. Among other things, the notice stated that the consolidation was necessary to achieve the benefits of common control approved by the ICC, and to decrease congestion and promote more efficient movement of rail traffic in what would be known as the Consolidated Southern Region (CSR). The Organization rejected that proposal, and it submitted a counterproposal which would provide for retention of the Tex-Mex agreement unless specifically modified in certain respects.

The parties agreed on the selection of this arbitrator to handle the dispute, and a virtual hearing was held on March 25, 2026. Both parties submitted comprehensive briefs and supporting documents prior to the hearing, and during the hearing both parties were capably represented by experienced advocates. The following constitutes the Arbitration Award resolving the parties' dispute.

Statement of Issues:

The issues formulated by the Carrier are as follows:

1. Does the Implementing Agreement proposed by the Carrier provide an appropriate basis for the selection and assignment of forces made necessary by the transaction described in the Carrier's *New York Dock* Article I, Section 4 notice of February 19, 2025?

2. If the answer to the above question is no, what is the appropriate basis for selection and assignment of forces?

The issues formulated by the Organization are as follows:

1. Whether the Carrier's Notice is jurisdictionally defective because it relies on Finance Docket No. 34342 as authority to replace the Tex-Mex agreement structure with the MidSouth Agreement, even though the 34342 record described the KCS/TM transaction as separate and limited and it recognized that existing Tex-Mex agreements would remain in force.

2. Whether the Carrier has satisfied the strict nexus and necessity requirement under Article I, Section 4 of New York Dock for the elimination or modification of Tex-Mex guaranteed extra boards, single day vacation rights, personal leave day rights, held-away protections, Road Switcher protections, seniority protections, and other bargained-for terms.

3. Whether, even if some implementing agreement is permissible, any such implementing agreement must be limited to necessary operational changes under the existing Tex-Mex agreement structure, rather than the Carrier's proposed replacement of Tex-Mex with MidSouth.

The Organization further submits that once those threshold questions are answered, the Board should remand the matter to the parties to negotiate a lawful implementing agreement consistent

with the Tex-Mex agreements, with the Board retaining jurisdiction in the event the parties are not able to reach a voluntary implementing agreement.

Positions of the Parties:

The Carrier first states that the planned consolidation of train operations is an exercise of authority conferred in the ICC's control order, and that it was properly undertaken pursuant to *New York Dock*, Article I, Section 4. It points to portions of the control order which recognized that the coordination would "provide seamless, efficient, and competitive rail service in all of North America," and it asserts that the planned consolidation of train operations will promote precisely such efficiencies in operations and improved rail service. The Carrier also notes that the control order acknowledges that the *New York Dock* procedures would be used to carry out future operating changes.

The Carrier states that there is nothing unusual about its plan to conduct operations under a single set of work rules with a unified work force. It states that it is well understood that to achieve the public benefits made possible by consolidation of train operations, it is nearly always necessary to provide for the application of a single labor agreement to govern the consolidated operations. The Carrier cites prior ICC decisions and court cases which have found appropriate implementing agreements providing that employees would be placed onto a consolidated roster, subject to a single labor agreement, when a carrier consolidates train operations of separate properties under its common control.

The Carrier asserts that the passage of time does not restrict it from making the proposed changes. It states that the issue of a time limit has been raised in prior cases, but that the ICC has held that the initial approval of a merger or control extends to subsequent transactions that fulfill the purposes of the principal transaction. The Carrier avers that passage of time alone is a settled issue where there is a nexus between the proposed changes and the initially approved transaction, and it submits that the record here confirms there is a direct connection between the proposed operational changes and the transaction approved by the ICC in the control order.

The Carrier maintains that its proposed implementing agreement is an appropriate basis for the selection and rearrangement of forces for the planned consolidation of train operations and transportation assets. It states that the proposed agreement specifies the employees who will be selected for the consolidated operations, and that they will be dovetailed onto a new consolidated seniority roster for each Zone therein based on their earliest engineer seniority date. The Carrier states that the agreement specifies the collective bargaining agreement that will apply, and that the employees will be governed by the MidSouth agreement. It adds that the availability of compensatory benefits for individual employees, in accordance with the protective conditions, is assured.

The Carrier asserts that this is a standard, fair, and appropriate method for the selection and assignment of forces, comparable to the procedures which have been adopted in numerous prior *New York Dock* implementing agreements. It notes that the proposed agreement provides for prior rights, and it states that the proposal creates potential unassigned freight pool operations that will increase efficient use of freight crews and minimize deadheading and held trains. The Carrier contends that this methodology serves the objective of the transaction by prescribing workable procedures calculated to provide adequate train crews for the operating needs in the District, while at the same time minimizing employee disruption, honoring and preserving employee seniority, and otherwise being fair to the affected employees.

The Carrier also contends that the MidSouth agreement has elements which are better for employees than the Tex-Mex agreement. For example, it states that employees working under the MidSouth agreement receive a significantly higher rate of pay than they would working under the Tex-Mex agreements. As another example, it states that engineers subject to the MidSouth agreement are eligible for nine personal leave days per year from the beginning of their employment, while engineers working under the Tex-Mex agreement have to work ten years before being eligible for ten personal leave days. The Carrier further observes that the MidSouth agreement has a 401(k) match, while the Tex-Mex agreement has no 401(k) at all.

The Carrier avers that its selection of the MidSouth agreement is appropriate to the transaction, as the MidSouth agreement is consistent with the practical operational needs of the District, and its

application will permit effective implementation of consolidated operations. It states that application of the Tex-Mex agreement, in contrast, would prevent achievement of the service improvements the Carrier seeks to achieve through consolidation, and that it is therefore inappropriate.

The Carrier maintains that the Tex-Mex agreement would not allow the flexible use of crews in the District, as it does not permit the use of road crews of one legacy carrier to take a train beyond Beaumont Terminal onto another legacy carrier. It also states that the Tex-Mex agreement limits work that road crews can perform in yards, and that it inhibits flexible use of crews by requiring run-though trains to take the yard at Beaumont, even when there is no work event to be performed in connection with their those trains at Beaumont, thus creating unnecessary delay, congestion and lack of fluidity. The Carrier submits that, in view of the operational difficulties which would be created by imposing the Tex-Mex agreement on the District, application of the MidSouth agreement is essential to the realization of service improvements and operational efficiencies, and resultant benefits to customers, made possible by consolidation.

The Carrier states that the ICC and STB's unequivocal instruction, expressed in numerous cited decisions, is that labor agreements must yield as necessary to the achievement of public transportation benefits of a transaction. It also cites prior arbitration awards for the principle that it would be inappropriate to impose a collective bargaining agreement that would have the effect of impeding the intended operational and service improvements, and resultant benefits to customers, and it urges that we employ a similar analysis here.

The Carrier maintains that no additional terms are required or appropriate. It states that there is no legitimate objection to its plan to create consolidated, dovetailed rosters and to award positions based on seniority rank on the consolidated roster, especially since prior rights will be recognized. The Carrier emphasizes that any employees who may be adversely affected by the consolidation are assured compensatory benefits as provided in *New York Dock*, which protect employees from being placed in a worse position with respect to their compensation. The Carrier concludes that its first issue presented for review should be answered in the affirmative, and that its proposed implementing agreement should be adopted.

The Organization, on the other hand, maintains that the Carrier does not have the right to impose the MidSouth agreement on the proposed consolidated territory, and that the Carrier's Notice is therefore jurisdictionally defective. It asserts that the "minor" transaction approved in Finance Docket No. 34342 was limited in scope, and that it did not allow the Carrier to modify the existing collective bargaining agreements. The Organization states that, while the Carrier may negotiate for operational efficiencies where necessary, the Carrier may not violate the Railway Labor Act by using Section 4 to eliminate or materially weaken core protections for employees that currently exist.

The Organization asserts that the Carrier has not demonstrated a nexus between the proposed agreement changes and the operational efficiencies sought by the Carrier. It goes on to state that we should find that the Tex-Mex CBA is the appropriate CBA to apply, and it cites caselaw for the principle that modifications to an existing CBA using the *New York Dock* Section 4 process should be "limited to those necessary to permit the approved consolidation." The Organization asserts that to satisfy its burden of establishing that a particular change is necessary, the Carrier must prove that it will secure to the public some transportation benefit that would not be available if the CBA were left in place, not merely to transfer wealth from the employees to their employer. It states that a board such as this should identify which changes are necessary to secure public benefits of a transaction, and which are not, and that the transaction should accommodate existing CBA rights to the extent that they do not substantially impede the transaction.

Applying those standards, the Organization argues that the Carrier's *New York Dock* Section 4 notice is improper because it does not involve a change that is necessary to secure a public transportation benefit that would not be available if the Tex-Mex CBA were left in place. It contends, rather, that the notice is merely intended to transfer wealth from the employees to the Carrier. The Organization avers that the efficiencies sought by the Carrier here can just as easily be obtained by applying the Tex-Mex CBA to the consolidated workforces.

The Organization cites several differences between the Tex-Mex and the MidSouth CBAs which it maintains demonstrate that the Tex-Mex CBA is more beneficial to the employees. Among

those differences include how extraboards are treated. The Organization notes that the Tex-Mex CBA has provisions for guaranteed extraboards, but that the MidSouth CBA does not have language for guaranteed extraboards. It cites the potential guarantee earnings that employees could receive under the Tex-Mex agreement, and it submits that the Carrier's proposal would substantially reduce those earnings.

Other differences cited by the Organization include how held away time is paid. It states that, even if employees may receive a calendar day's pay under the MidSouth CBA regardless of whether service is performed, that does not make up for the potential loss of earnings should the Carrier mismanage its crew base, so the continuous held away pay provisions of the Tex-Mex CBA are superior.

The Organization further cites provisions regarding vacations and personal leave days which would result in an overall loss if the MidSouth CBA is imposed. It states that, although both properties fall under the National Vacation Agreement, the Tex-Mex CBA allows employees to take one week of their vacation in single day increments, while the MidSouth CBA does not allow single day usage. The Organization states that the loss of single day vacation rights, which employees might use to attend to personal obligations which do not require a full week of vacation, could expose employees to discipline over attendance issues.

With respect to personal leave, the Organization states that Tex-Mex engineers fall under the 1996 National Agreement, which provides engineers, depending on years of service, the ability to obtain up to 11 personal leave days per year, and the ability to carry over up to 30 days from year to year. It contrasts that with the provisions of the MidSouth CBA, which provides for nine personal leave days per year, and which only allows carryover personal leave days in even years. The Organization submits that, while MidSouth engineers receive their full allotment of PLDs on employment, the overall loss to Tex-Mex engineers would be substantial.

The Organization maintains that the consolidation of properties and seniority can be obtained without forcing a substantially inferior agreement on the employees involved, and it avers that its counterproposal demonstrates the availability of a lawful alternative. It states that prior rights

should be recognized, and that the results of the National Agreement reached following PEB 250 have given the Carrier the flexibility it seeks, even under the Tex-Mex CBA. The Organization also avers that the Carrier can use the provisions of Article IX of the 1986 National Agreement to seek to establish ID runs to accomplish what it seeks in the *New York Dock* Section 4 notice, including one ID run that is already in place. The Organization adds that the Carrier's claimed efficiencies are limited because over 50% of the territory in question is operated under trackage rights, positing that the Carrier's lack of dispatching control constrains its operations.

The Organization characterizes the Carrier's attempt to force the MidSouth CBA onto the consolidated District as a money grab that does not involve a change that is necessary for the Carrier to obtain a public transportation benefit that would not be available if the Tex-Mex CBA were left in place. It states that the Carrier's proposal is intended merely to transfer wealth from the employees to their employer, a concept found to be impermissible in prior cases.

The Organization concludes that it has acted in good faith in an attempt to negotiate an agreement which would address seniority consolidation, but that the Carrier employed the *New York Dock* Section 4 process to force changes it could not obtain at the bargaining table. It cites a prior award, PLB 7635, Award 1, as placing limits on a Carrier in allegedly similar circumstances, and it urges that we reach a similar conclusion as was reached in that award. The Organization requests that if we deem the Carrier's notice to be proper and valid, that we find that the Carrier cannot obtain seniority efficiencies and a financial windfall by imposing an inferior CBA. The Organization submits that we should not allow the Carrier to override the Tex-Mex CBA, and that we should remand the matter to the parties to negotiate application, retaining jurisdiction in the event the parties are not able to reach a voluntary implementing agreement.

Findings:

Both parties have cited multiple administrative, arbitral and judicial opinions to support their positions. We have carefully reviewed the entire record, and the absence of a detailed recitation of each argument should not be taken as any indication that the materials were not fully considered.

We first note that most, if not all, of the issues raised here were raised and addressed in the arbitration proceedings involving the consolidation of the KCS and MidSouth territories. Although there are some differences in this case, we find no reason to reach a different conclusion here than was reached in those awards.

We find that the Carrier's proposed consolidation of territories currently covered by both Tex-Mex and MidSouth agreements into a single District constitutes a transaction within the meaning of *New York Dock*. There is no real question that the Carrier's proposed consolidation is appropriate pursuant to the ICC's control order. Although considerable time has passed, it has been held in many prior awards that mere passage of time is not a barrier to transactions that are directly related to and fulfill the purposes of the principal transaction. See, e.g., *CSX Corp. – Control – Chessie System, Inc, et al.*, 8 I.C.C.2d 715 1992 WL 20617 (1992), *aff'd* 26 F.3d 1157 (D. C. Cir. 1994). As noted by the ICC in that decision, there may be "any number of reasons why an entity formed as a result of a Commission-approved transaction might wish to postpone a coordination which could have been taken earlier."

While the Organization posits that the subsequent transaction involving creation of CPKC is the driver of the instant consolidation, we note that the consolidation proposed here does not involve combination of any territories or agreements other than those completely contained within the KCSR itself, so that no new authority for this transaction was required from the order allowing formation of the CPKC. As discussed below, the Carrier has established a direct connection between the proposed operational changes and the transaction approved by the ICC in the initial control order, and we do not find that the passage of time has impacted that proven nexus.

We also find that the Carrier has demonstrated necessity of operating under a single collective bargaining agreement in the consolidated District. Many prior awards, ICC and STB decisions, and court cases have confirmed that, for carriers to achieve the public benefits made possible by a consolidation of operations, it is appropriate to provide for application of a single labor agreement to govern the consolidated operations. We believe this concept is so well recognized that it is not necessary to quote numerous prior decisions, but a representative example is found in *United Transportation Union v. STB*, 108 F.3d 1425, 1431 (D.C. Cir. 1997), where the court stated "there

is little point in consolidating railroads on paper if a consolidation of operations cannot be achieved. It is obvious that separate and distinct parts, operating separately and distinctly, will not generate the value of consolidation." As we held in the award involving the KCS and MidSouth agreements, we find that adoption of a single collective bargaining agreement for the new District is necessary to effectuate the transaction.

Although the parties have not discussed the Cramdown Agreement to the extent they did in the earlier case, we again find that the Cramdown Agreement does not apply to this proposed consolidation. The Cramdown Agreement specifies that it applies to collective bargaining modifications involved with "Major Transactions." The transaction here did constitute a "Major Transaction," and to the extent that application of cramdown is at issue here, we reach the same conclusion on that matter as we reached in the prior award. We do not believe it is necessary to repeat that analysis here.

The Organization asserts that, because in its view the Tex-Mex CBA is better for the employees, the Carrier's proposal to impose the inferior MidSouth CBA is merely an attempt to transfer wealth from the employees to the Carrier, which we should not permit. The Carrier denies that this is the case, stating that selecting the Tex-Mex CBA would impede its ability to improve operations and to better serve customers. It also points to elements of the MidSouth CBA which it maintains are better for the employees than the Tex-Mex CBA.

We addressed similar arguments in the prior case, and we reach a similar conclusion here. As was held in *American Train Dispatchers Ass'n v. I.C.C.*, 26 F.3d 1157 (D.C. Cir. 1994), a transaction "must yield enhanced efficiency, greater safety, or some other gain." We find that the record in this case reveals that the Carrier has articulated the transportation benefits necessary to meet that standard.

"Arbitrators should not require the carrier to bear a heavy burden (for example, through detailed operational studies) in justifying" changes that are necessary to make a merged entity operate efficiently as a merged operation. *CSX Corp. – Control – Chessie System, Inc, et al.*, 4 S.T.B. 701 (1998), internal citation omitted. Here, the Carrier has supplied adequate confirmation that

application of the Tex-Mex CBA impedes operational efficiency and contributes to delay and congestion, impacts which can be reduced or eliminated if the MidSouth CBA is applied to the consolidated District.

The Organization suggests that the Carrier can overcome those operational impediments via methods such as establishment of interdivisional runs in accordance with Article IX of the 1986 National Agreement, or other negotiations. Whether such options are available, however, is not in our view relevant to how the existing agreements should be addressed in this proceeding, especially since there is no guarantee as to the outcome of the procedures suggested by the Organization.

Although the Organization urges that the Tex-Mex CBA is better for the employees than the MidSouth CBA, we cannot say that one is empirically superior to the other. While it seems that some aspects of the Tex-Mex CBA could be preferable to some employees, the Carrier has pointed to aspects of the MidSouth CBA which appear to be better, including rates of pay. As was observed in an Article I, Section 4 arbitration award involving CSX, IBEW and TCU (Ref. Simon), "it would be an impossible task to determine which agreement, taken in its entirety, is 'the best.' Some 'better' provisions of one agreement may be outweighed by 'better' provisions on different matters in another agreement. Furthermore, what may be beneficial for one employee may be immaterial to another."

With respect to the Organization's reliance on PLB 7635, Award No. 1, we note that the award in question involved a Section 3 matter, and that the dispute resolution processes of New York Dock applicable here were not implicated. It also appears that the board there fashioned a unique remedy applying the concepts of the Cramdown Agreement because the agreement at issue did not afford the carrier sole discretion to select an applicable agreement. It is unclear how the board there arrived at that decision, especially after it said that the Cramdown Agreement was not applicable, but in any event we do not think we are required to reach a similar conclusion, as the facts are not comparable and the Carrier here does have rights in this instance which apparently were not applicable there.

On this record, we find that the implementing agreement proposed by the Carrier, with its prior rights and dovetailing of seniority provisions, is appropriate for the transaction, subject to the amendments described below. The Carrier has sufficiently established that applying the MidSouth CBA to the consolidated District is not merely an attempt to transfer wealth from the employees to the employer, but that it is necessary to produce efficiencies and to better serve its current and potential customers. We find that allowing the Organization to retain the Tex-Mex CBA would impede operational efficiencies and benefits obtained by merging the territories. The New York Dock protective conditions are in place to address claims of employees who allege they have suffered wage loss as a result of changes in operations and agreements.

As was found in the prior award, however, there are two aspects of the Carrier's proposal which we again do not believe will be adequately addressed by those conditions. First is the difference between the Tex-Mex and the MidSouth CBAs pertaining to personal leave days. The Tex-Mex agreement allows engineers to qualify for up to 11 personal leave days, depending on length of service, while the MidSouth CBA caps the number of personal leave days at nine. We find that the appropriate way to address those differences is that engineers currently working under the Tex-Mex CBA who qualify for more personal leave days than what is afforded under the MidSouth CBA will be entitled to retain the number of personal leave days they currently receive, which will not increase with additional service. The MidSouth CBA will apply to those engineers working under the Tex-Mex CBA who currently qualify for less than or equal to the number of days afforded under the MidSouth CBA.

Second, the Organization avers that engineers currently working under the Tex-Mex CBA are allowed to take one week of vacation in single day increments, while the MidSouth CBA does not allow for any single days of vacation. We believe that this is a substantial benefit that cannot be addressed by the protective conditions. Therefore, we find that the appropriate way to address this matter is to allow engineers currently working under the Tex-Mex CBA to continue to be permitted to take one week of vacation in single day increments. Neither of the modifications set forth above in any way impede the Carrier's ability to obtain the benefits of consolidating the District, and we believe it is within our broad discretion to formulate those conditions.

Award:

The Carrier's first question at issue is answered in the affirmative, subject to the two specific modifications set forth above. Its second question at issue is addressed by those specific modifications.

The Organization's first question at issue is answered in the negative. Its second and third questions at issue are addressed in the findings.

Michael D. Phillips
Chairman and Neutral Member

L. Randy Fannon
Organization Member

I dissent

Myron Becker
Carrier Member

Dated: April 1, 2026

ARBITRATION PURSUANT TO
ARTICLE I, SECTION 4 OF THE NEW YORK DOCK PROTECTIVE CONDITIONS

PARTIES	)	BROTHERHOOD OF LOCOMOTIVE
	)	ENGINEERS AND TRAINMEN
	)	
TO	)	AND
	)	
DISPUTE	)	CANADIAN PACIFIC KANSAS CITY RAILWAY
	)	

Michael D. Phillips, Arbitrator

Background:

In Finance Docket No. 32167, the Interstate Commerce Commission approved the acquisition by Kansas City Southern Industries, Inc. of common control of Kansas City Southern Railway Company ("KCS"), MidSouth Rail Corporation "(MidSouth"), MidLouisiana Rail Corporation ("MidLouisiana"), SouthRail Corporation ("South Rail"), and TennRail Corporation ("TennRail"). That approval, rendered in a decision served June 4, 1993, was subject to the employee protective conditions described in New York Dock Railway – Control – Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (*"New York Dock"*).

MidLouisiana, SouthRail, and TennRail have since been merged into KCS. At the time of the ICC decision, the Louisiana & Arkansas Railway ("L&A") was controlled by KCSR, but it also has been merged into KCS.

In 2023, KCSR merged with Canadian Pacific Railway, forming a combined system known as Canadian Pacific Kansas City Railway ("CPKC" or "Carrier"). The locomotive engineer workforces on the former KCS, L&A and MidSouth properties are represented by the Brotherhood of Locomotive Engineers and Trainmen ("BLET" or "Organization").

On February 19, 2025, the Carrier served a notice to the Organization General Chairmen, in accordance with Article I, Section 4 of *New York Dock*, to coordinate and merge the entirety of the properties, train operations, and associated engineer workforces of the former KCS, MidSouth and Tex-Mex properties.[1] The notice proposed consolidation of train operations and transportation assets into a newly formed Shreveport Hub Operating District, with a single seniority district and single locomotive engineer seniority roster. It proposed that all locomotive engineer positions headquartered within the Shreveport District would be established pursuant to the MidSouth collective bargaining agreement. Among other things, the notice stated that the consolidation was necessary to achieve the benefits of common control approved by the ICC, including increased throughput on the Shreveport District and to decrease congestion and promote more efficient movement of rail traffic in the District.

The Organization responded that it was not agreeable to the Carrier's suggested changes outlined in the Section 4 notice, and the parties agreed to extend the time frame set forth in Article I, Section 4 while they were also engaged in bargaining pursuant to Section 6 of the Railway Labor Act. That bargaining apparently also involved potential consolidation of operations and workforces. The record indicates that a tentative Section 6 agreement was reached in April of 2025.

A dispute about portions of the tentative agreement arose, however, and the Carrier withdrew the proposal and indicated it would proceed with the *New York Dock* notice. By letter dated May 9, 2025, the Organization informed that Carrier that it believed the "Cramdown Agreement," discussed in more detail below, was in effect for the *New York Dock* notice. The Organization stated that, pursuant to that agreement, it chose the KCS agreement for those employees who were currently under the KCS and MidSouth agreements.

The Carrier responded that the Cramdown Agreement did not apply, but that it was willing to discuss proposals the Organization wished to make. The record confirms that the parties met several times thereafter, but they were unable to reach agreement on either the Section 6 or Section 4 notices.

[1] The Tex-Mex is not involved in this proceeding.

The parties agreed on the selection of this arbitrator to handle the dispute, and a hearing was held in Kansas City, Missouri on December 8, 2025. Both parties submitted comprehensive briefs and supporting documents prior to the hearing, and during the hearing both parties were capably represented by counsel and by experienced advocates. The parties agreed to waive the 30-day requirement set forth in Article 4 of *New York Dock* for issuance of the instant award. The following constitutes the Arbitration Award resolving the parties' dispute.

Statement of Issues:

The issues formulated by the Carrier are as follows:

1. Does the Implementing Agreement proposed by the Carrier provide an appropriate basis for the selection and assignment of forces made necessary by the transaction described in the Carrier's *New York Dock* Article I, Section 4 notice of February 19, 2025?

2. If the answer to the above question is no, what is the appropriate basis for selection and assignment of forces?

The issues formulated by the Organization are as follows:

1. Does the Anti-Cramdown Agreement apply to the consolidation of forces of CPKC's KCSR and MidSouth territories proposed by CPKC in its February 19, 2025, NYD Article I, Section 4 Notice to the BLET such that BLET may choose which CBA, KCSR or MidSouth, will apply to the consolidation?

2. If the Anti-Cramdown Agreement does not apply to the consolidation of forces of CPKC's KCSR and MidSouth territories proposed by CPKC in its February 19, 2025, NYD Article I, Section 4 Notice to the BLET, what CBA, KCSR or MidSouth, should apply to the consolidation?

The Organization further submits that once those threshold questions are answered, the Board should remand the matter to the parties to negotiate application of the chosen CBA to the

consolidation, with the Board retaining jurisdiction in the event the parties are not able to reach a voluntary implementing agreement.

Positions of the Parties:

The Carrier first states that the planned consolidation of train operations in the Shreveport District is an exercise of authority conferred in the ICC's control order, and that it was properly undertaken pursuant to *New York Dock*, Article I, Section 4. It points to portions of the control order which recognized that shippers and the public would benefit from the operating efficiencies made possible, and it asserts that the planned consolidation of train operations will promote precisely such efficiencies in operations and improved rail service.

The Carrier states that there is nothing unusual about its plan to conduct operations under a single set of work rules with a unified work force. It states that it is well understood that to achieve the public benefits made possible by consolidation of train operations, it is nearly always necessary to provide for the application of a single labor agreement to govern the consolidated operations. The Carrier cites prior ICC decisions and court cases which have found appropriate implementing agreements providing that employees would be placed onto a consolidated roster, subject to a single labor agreement, when a carrier consolidates train operations of separate properties under its common control.

The Carrier asserts that the passage of time does not restrict it from making the proposed changes. It states that the issue of a time limit has been raised in prior cases, but that the ICC has held that the initial approval of a merger or control extends to subsequent transactions that fulfill the purposes of the principal transaction. The Carrier avers that passage of time alone is a settled issue where there is a nexus between the proposed changes and the initially approved transaction, and it submits that the record here confirms there is a direct connection between the proposed operational changes and the transaction approved by the ICC in the control order.

The Carrier denies that the Cramdown Agreement provides the Organization with the option to select which collective bargaining agreement will apply to the consolidated operations. The

Cramdown Agreement, also known as the Anti-Cramdown Agreement, or ACA, is a March 21, 2021, agreement formally titled "Revised Standards of Collective Bargaining Agreements for Transactions Initiated Pursuant to Section 11323 of the Interstate Commerce Act," between the class I carriers, including the Kansas City Southern Railway, and multiple unions, including the BLET. It sets forth "standards to be applied by such Carriers and the involved Labor Organizations when the Carriers seek to override or modify Collective Bargaining Agreements in the implementation of consolidations, mergers, and acquisitions of control ('Major Transactions') pursuant to Section 11323 of the Interstate Commerce Act."

The Carrier states that, by its terms, the Cramdown Agreement only applies to "Major Transactions" under Section 11323, but that the proposed consolidation at issue here is not a "Major Transaction." It cites the regulations pertaining to Section 11323 which state that "a major transaction is a control or merger involving two or more class I railroads," and it points out that the 1993 KCS-MidSouth control order did not involve class I railroads. It cites the portion of the control order which stated that it was a "significant" transaction, and it posits that any follow-up transactions should continue to be categorized as "significant" rather than "major" transactions, for which the Cramdown Agreement is not applicable.

The Carrier maintains that its proposed implementing agreement is an appropriate basis for the selection and rearrangement of forces for the planned consolidation of train operations and transportation assets. It states that the proposed agreement specifies the employees who will be selected for the consolidated operations, and that they will be dovetailed onto a new consolidated seniority roster for each Zone therein, Louisiana and Mississippi, based on their earliest engineer seniority date. The Carrier states that the agreement specifies the collective bargaining agreement that will apply, and that the employees will be governed by the MidSouth agreement. It adds that the availability of compensatory benefits for individual employees, in accordance with the protective conditions, is assured.

The Carrier asserts that this is a standard, fair, and appropriate method for the selection and assignment of forces, comparable to the procedures which have been adopted in numerous prior *New York Dock* implementing agreements. It notes that the proposed agreement provides for prior

rights, and it states that the proposal creates potential unassigned freight pool operations that will increase efficient use of freight crews and minimize deadheading and held trains. The Carrier contends that this methodology serves the objective of the transaction by prescribing workable procedures calculated to provide adequate train crews for the operating needs in the District, while at the same time minimizing employee disruption, honoring and preserving employee seniority, and otherwise being fair to the affected employees.

The Carrier also contends that the MidSouth agreement has elements which are better for employees than the KCS agreement. For example, it states that yard service engineers working under the MidSouth agreement are paid 19% more per day than yard service engineers working under the KCS agreement. As another example, it states that engineers subject to the MidSouth agreement are eligible for nine personal leave days per year from the beginning of their employment, while engineers working under the KCS agreement have to work ten years before being eligible for ten personal leave days. It states that if the MidSouth agreement applied to all current engineers currently working under the KCS agreement, 120 of those engineers would see an increase in personal leave days. The Carrier further observes that the MidSouth agreement has a 401(k) match, while the KCS agreement has no 401(k) at all.

The Carrier avers that its selection of the MidSouth agreement is appropriate to the transaction, as the MidSouth agreement is consistent with the practical operational needs of the District, and its application will permit effective implementation of consolidated operations. It states that application of the KCS agreement, in contrast, would prevent achievement of the service improvements the Carrier seeks to achieve through consolidation, and that it is therefore inappropriate.

The Carrier maintains that the KCS agreement would not allow the flexible use of crews in the District, as it does not permit the use of road crews of one legacy carrier to take a train beyond Shreveport Terminal onto another legacy carrier, or even through the terminal onto its own home network. It also states that the KCS agreement limits work that road crews can perform in yards, and that it inhibits flexible use of crews by bracketing start times for assignments, thus restricting the launching of trains consistent with the needs and requests of shippers. The Carrier submits

that, in view of the operational difficulties which would be created by imposing the KCS agreement on the District, application of the MidSouth agreement is essential to the realization of service improvements and operational efficiencies, and resultant benefits to customers, made possible by consolidation.

The Carrier states that the ICC and STB's unequivocal instruction, expressed in numerous cited decisions, is that labor agreements must yield as necessary to the achievement of public transportation benefits of a transaction. It also cites prior arbitration awards for the principle that it would be inappropriate to impose a collective bargaining agreement that would have the effect of impeding the intended operational and service improvements, and resultant benefits to customers, and it urges that we employ a similar analysis here.

The Carrier maintains that no additional terms are required or appropriate. It states that there is no legitimate objection to its plan to create consolidated, dovetailed rosters and to award positions based on seniority rank on the consolidated roster, especially since prior rights will be recognized. The Carrier emphasizes that any employees who may be adversely affected by the consolidation are assured compensatory benefits as provided in *New York Dock*, which protect employees from being placed in a worse position with respect to their compensation. The Carrier concludes that its first issue presented for review should be answered in the affirmative, and that its proposed implementing agreement should be adopted.

The Organization, on the other hand, maintains that the Carrier does not have the right to impose the MidSouth agreement on the proposed consolidated territory. It states that, by its plain language, the Cramdown Agreement applies to the consolidation of workforces proposed by the Carrier in its *New York Dock* notice, and that accordingly, the BLET is permitted to choose which collective bargaining agreement will apply to the consolidation. The Organization states that it chooses the KCS CBA.

The Organization states that prior to the Cramdown Agreement, carriers enjoyed broad power to abrogate CBA provisions, and even entire CBAs, via the *New York Dock* Section 4 process. It asserts that this changed with the adoption of the Cramdown Agreement, however, as that

agreement greatly limits a carrier's prerogatives in that area. The Organization points to the opening paragraph of the Cramdown Agreement, quoted in part above, and its reference to "Major Transactions" and Section 11323 of the Interstate Commerce Act. It quotes Section 11323 of the Interstate Commerce Act, which lists six categories of transactions that may only be carried out with the approval and authorization of the STB, and it asserts that the transaction cited by the Carrier as the basis for its *New York Dock* Section 4 notice is indeed a transaction covered by Section 11323.

The Organization states that the plain language of the Cramdown Agreement identifies all of the transactions in which a carrier seeks to override or modify a CBA in the implementation of consolidations, mergers, and acquisitions of control as "Major Transactions" covered by the Cramdown Agreement. It avers that the transaction relied on by the Carrier is therefore a "Major Transaction," because it is covered by Section 11323.

In response to the Carrier's assertion that the Cramdown Agreement does not apply because the transaction at issue did not involve two class I railroads, the Organization states that the Cramdown Agreement makes no reference to any regulations or any other definition of what a "Major Transaction" means beyond plainly stating that it means situations in which a carrier seeks to override or modify a CBA in the implementation of a consolidation, merger, or acquisition of control pursuant to Section 11323. The Organization says the Cramdown Agreement does not in any way place labels on the six identified transactions which require STB approval.

The Organization states that the parties to the Cramdown Agreement were all experienced negotiators, and it posits that if the parties had intended "Major Transactions" as used in the Cramdown Agreement to mean anything more or less than the transactions identified in Section 11323, they certainly would have said so. It notes that the parties did include language adding to the definition of "Major Transaction" of "a lease, grant of trackage rights and/or contract to operate by one or more Class I Carrier(s) of all or substantially all of its/their track and/or operations to another carrier or non-carrier in one or more transactions." The Organization states that this clarification was needed to cover transaction involving a non-carrier, which would not be covered by Section 11323, but that the negotiators chose not to reference STB regulations for the definition

of a "Major Transaction," so there is no reason to conclude that the Cramdown Agreement does not apply here based on uncited or unreferenced regulations.

The Organization next cites the language of the opening paragraph as subjecting to the terms of the Cramdown Agreement those notices where the Carrier is "seeking to override or modify an existing collective bargaining agreement." The Organization states that, because the Carrier's notice is clearly a notice served pursuant to the *New York Dock* protective conditions imposed by the STB in approving the KCS-MidSouth transaction in FD 32167, and because this represents a situation in which the Carrier is seeking to override or modify the existing KCS and MidSouth CBAs, the notice falls squarely within the coverage of the Cramdown Agreement.

The Organization also cites portions of the Cramdown Agreement which state that it applies to "any notice for an implementing agreement by any carrier party that seeks to override or modify collective bargaining agreements, whether under existing merger, control or acquisition authority or any such authority sought or granted in the future by the STB or any successor agency." It states that CP and KCSR are two of the signatory railroads, so this provision confirms that the Cramdown Agreement applies, regardless of the fact that the transaction cited by the Carrier occurred well before the Cramdown Agreement was finalized. The Organization asserts that the Cramdown Agreement shifted the decision-making powers from the carriers to the organizations in broad fashion, and it reiterates that it chooses to use its right thereunder to choose the KCS CBA.

The Organization further states that if we find that the Cramdown Agreement does not apply to the transaction cited by the Carrier in its *New York Dock* notice (FD 32167), CPKC nevertheless agreed to, and the STB imposed adherence to the Cramdown Agreement as a condition of approving Canadian Pacific's merger and control over KCSR in FD 36500, which resulted in the creation of CPKC. It states that in basing the present *New York Dock* Section 4 notice on the earlier transaction, the Carrier is improperly attempting to obtain a financial windfall and to cram down an inferior CBA on the impacted employees.

The Organization cites to a Verified Statement from the Vice President of Labor Relations at Canadian Pacific, who holds the same title with CPKC, as confirming that "CP will extend similar

assurances that, following CP's acquisition of control, KCSR will honor any protective agreements it has entered into with labor unions, including but not limited to the Cramdown Agreements." The Organization also points to the portion of the STB's decision approving the merger which stated, "As applicants have represented that they will honor the obligations established in the Cramdown Agreement, the Board will grant the rail unions' request to impose a condition holding Applicants to that representation." The Organization argues that the Carrier should not now be able avoid that commitment by claiming that the Cramdown Agreement does not apply to this case.

Next, the Organization goes on to state that, even if we find that the Cramdown Agreement does not apply to the Carrier's proposed consolidation of workforces, we should still find that the KCS CBA is the appropriate CBA to apply. It cites caselaw, including *Norfolk & Western R. Co. v. Train Dispatchers*, 499 U.S. 117 (1991) and *Railway Labor Executives' Ass'n v. U.S.*, 987 F.2d 806 (D.C. Cir. 1993) ("RLEA"), for the principle that modifications to an existing CBA using the *New York Dock* Section 4 process should be "limited to those necessary to permit the approved consolidation."

The Organization asserts that to satisfy its burden of establishing that a particular change is necessary, the Carrier must prove that it will "secure to the public some transportation benefit that would not be available if the CBA were left in place, not merely to transfer wealth from the employees to their employer." *RLEA*, 987 F2d at 815. It states that a board such as this should identify which changes are necessary to secure public benefits of a transaction, and which are not, and that the transaction should accommodate existing CBA rights to the extent that they do not substantially impede the transaction, citing among others *CSX Corp. – Control – Chessie System, Inc. and Seaboard Coast Line Industries, Inc.,* 3 S.T.B. 701 (1998).

Applying those standards, the Organization argues that the Carrier's *New York Dock* Section 4 notice is improper because it does not involve a change that is necessary to secure a public transportation benefit that would not be available if the KCS CBA were left in place. It contends, rather, that the notice is merely intended to transfer wealth from the employees to the Carrier.

The Organization points to a prior arbitration award as being particularly instructive. As set forth in that award, prior to the merger of Union Pacific and Southern Pacific, each carrier had separate yards in the Kansas City Terminal, where TCU-represented employees performed crew hauling duties, among other things. UP proposed to consolidate crew hauling operations under the UP agreement, which permitted contracting of some work, while the SP agreement did not allow contracting. The pay rate under the UP agreement was 34-36% less than under the SP agreement, and the UP agreement allowed for a lesser percentage of employees to be maintained on a guaranteed extra board.

The board there denied the UP's request, finding that the proposed changes were not necessary to effectuate the consolidation and rearrangement of crew hauling in the Kansas City Terminal. The board held that "the same public transportation benefit can be attained by placing positions involved in crew hauling under the SP CBA," and it held that the SP CBA therefore could not be overridden. The Organization contends that, as in that case, the efficiencies sought by the Carrier here can just as easily be obtained by applying the KCS CBA to the consolidated workforces.

The Organization cites several differences between the KCS and the MidSouth CBAs which it maintains demonstrate that the KCS CBA is more beneficial to the employees. Among those differences include potential reduction from current trip rates paid under the KCS agreement if the MidSouth provisions become applicable. It states that both CBAs have thru-freight service governed by trip rates, and that the KCS CBA has multiple assignments with varying rates of pay based on the trip rate calculation formulae. In particular, it cites the trip rates for the Shreveport to Beaumont ID pool and the Shreveport to Baton Rouge ID run.

The Organization contrasts those rates with the MidSouth CBA, which it says has only a single trip rate for all thru-freight service and local service regardless of any agreements or mileage. It asserts that when the single rate is compared to similar runs under the KCS CBA, the MidSouth CBA falls short in almost every instance, with all but one of the KCS ID runs exceeding the MidSouth CBA's trip rates.

Other differences cited by the Organization include how held away time is paid. It states that, regardless of whether employees may receive a calendar day's pay under the MidSouth CBA regardless of whether service is performed, that does not make up for the potential loss of earnings should the Carrier mismanage its crew base, so the continuous held away pay provisions of the KCS CBA are superior.

The Organization also cites a loss under the MidSouth CBA pertaining to additional compensation when ID crews are used for other than ID work, such as hours-of-service relief. Likewise, it states that the KCS CBA provisions pertaining to rates of pay, call windows, and meal periods for yard assignments are better, especially when comparing what a yard employee could make on a twelve-hour day, which includes overtime, to the single rate of pay for local service under the MidSouth CBA.

Another item of concern involves extraboards. The Organization notes that the KCS CBA has provisions for guaranteed extraboards, but that the MidSouth CBA does not have language for guaranteed extraboards. It notes that the Carrier's proposal indicates it will consolidate extraboards, which would force employees to cover more territory, while allowing the Carrier to inflate the extraboards without consideration of the impact on employee earnings.

The Organization further cites provisions regarding vacations and personal leave days which would result in an overall loss if the MidSouth CBA is imposed. It states that, while both properties fall under the National Vacation Agreement, the KCS CBA allows employees to take one week of their vacation in single day increments, while the MidSouth CBA does not allow single day usage. The Organization states that the loss of single day vacation rights, which employees might use to attend to personal obligations which do not require a full week of vacation, could expose employees to discipline over attendance issues.

With respect to personal leave, the Organization states that KCS engineers fall under the 1996 National Agreement, which provides engineers, depending on years of service, the ability to obtain up to 11 personal leave days per year, and the ability to carry over up to 30 days from year to year. It contrasts that with the provisions of the MidSouth CBA, which provides for 7 personal leave

days per year, and which only allows carryover personal leave days in even years. The Organization submits that, while MidSouth engineers receive their full allotment of PLDs on employment, the overall loss to KCS engineers would be substantial, considering the yearly loss of 4 personal leave days.

The Organization maintains that the consolidation of properties and seniority can be obtained without forcing a substantially inferior agreement on the majority of the employees involved, as was found in the UP-SP crew hauling case. It states that prior rights should be recognized, and that the results of the National Agreement reached following PEB 250 have given the Carrier the flexibility it seeks, even under the KCS CBA. The Organization also avers that the Carrier can use the provisions of Article IX of the 1986 National Agreement to seek to establish ID runs to accomplish what it seeks in the *New York Dock* Section 4 notice.

The Organization characterizes the Carrier's attempt to force the MidSouth CBA onto the consolidated District as a money grab that does not involve a change that is necessary for the Carrier to obtain a public transportation benefit that would not be available if the KCS CBA were left in place. It states that the Carrier's proposal is intended "merely to transfer wealth from the employees to their employer," a concept found to be impermissible in *RLEA* and other cases. It further asserts that the Carrier's attempt to impose the MidSouth CBA is contrary to the spirit of what every class I carrier, including CP and KCSR, agreed not to do in the Cramdown Agreement, which CPKC agreed to apply in the merger case that led to its creation.

The Organization concludes that it has acted in good faith in an attempt to negotiate an agreement which would address seniority consolidation, but that the Carrier employed the *New York Dock* Section 4 process to force changes it could not obtain at the bargaining table. It requests that if we deem the Carrier's notice to be proper and valid, that we find that the Carrier cannot obtain seniority efficiencies and a financial windfall by imposing an inferior CBA. The Organization submits that whether we do so because the Cramdown Agreement requires it, or due to equitable principles, we should find that the KCS CBA applies to the proposed consolidation, and that we should remand the matter to the parties to negotiate application, retaining jurisdiction in the event the parties are not able to reach a voluntary implementing agreement.

Findings:

Both parties have cited multiple administrative, arbitral and judicial opinions to support their positions. We have carefully reviewed the entire record, and the absence of a detailed recitation of each argument should not be taken as any indication that the materials were not fully considered.

We initially address the Organization's arguments about the Carrier's handling of the *New York Dock* notice. Although the Organization asserts that the Carrier only pursued the Article I, Section 4 notice in an attempt to influence the Section 6 negotiations, and that the negotiations regarding the instant notice were not meaningful, we are not in position to say that they were not in good faith. The fact that no agreement was reached is in itself no indication to the contrary, nor does it bar us from addressing the matter. Otherwise, there could never be arbitration regarding a *New York Dock* notice. We also find that the Carrier has complied with the notice requirements of Article I, Section 4, and that the negotiations required by that section took place over several sessions before the matter was progressed to arbitration. The matter is properly before this panel.

We also find that the Carrier's proposed consolidation of territories currently covered by both KCS and MidSouth agreements into a single Shreveport District constitutes a transaction within the meaning of *New York Dock*. There is no real question that the Carrier's proposed consolidation is appropriate pursuant to the ICC's control order. Although considerable time has passed, it has been held in many prior awards that mere passage of time is not a barrier to transactions that are directly related to and fulfill the purposes of the principal transaction. See, e.g., *CSX Corp. – Control – Chessie System, Inc, et al.*, 8 I.C.C.2d 715 1992 WL 20617 (1992), *aff'd* 26 F.3d 1157 (D. C. Cir. 1994). As noted by the ICC in that decision, there may be "any number of reasons why an entity formed as a result of a Commission-approved transaction might wish to postpone a coordination which could have been taken earlier."

While the Organization posits that the subsequent transaction involving creation of CPKC is the driver of the instant consolidation, we note that the consolidation proposed here does not involve combination of any territories or agreements other than those completely contained within the

KCSR itself, so that no new authority for this transaction was required from the order allowing formation of the CPKC. As discussed below, the Carrier has established a direct connection between the proposed operational changes and the transaction approved by the ICC in the initial control order, and we do not find that the passage of time has impacted that proven nexus.

We also find that the Carrier has demonstrated necessity of operating under a single collective bargaining agreement in the consolidated District. Many prior awards, ICC and STB decisions, and court cases have confirmed that, for carriers to achieve the public benefits made possible by a consolidation of operations, it is appropriate to provide for application of a single labor agreement to govern the consolidated operations. We believe this concept is so well recognized that it is not necessary to quote numerous prior decisions, but a representative example is found in *United Transportation Union v. STB*, 108 F.3d 1425, 1431 (D.C. Cir. 1997), where the court stated "there is little point in consolidating railroads on paper if a consolidation of operations cannot be achieved. It is obvious that separate and distinct parts, operating separately and distinctly, will not generate the value of consolidation."

In fact, the Organization does not dispute the Carrier's right and need to consolidate operations and forces at Shreveport. As noted above, its statement of issues does not raise any question about whether the proposed consolidation at Shreveport is appropriate, nor does it dispute that a single collective bargaining agreement is necessary to govern the employees working there. Rather, the Organization's sole focus is on which collective bargaining agreement should be chosen for that purpose. We agree that adoption of a single collective bargaining agreement for the Shreveport District is necessary to effectuate the transaction.

The Organization maintains that it has the right to select which collective bargaining agreement will apply pursuant to the terms of the Cramdown Agreement. The Cramdown Agreement begins as follows:

> "This Agreement made March 21, 2001 by and between the labor organizations listed in Attachment A hereto, and the Class I Carriers listed in Attachment B hereto, is intended to set forth standards to be applied by such Carriers and the

> involved Labor Organizations when the Carriers seek to override or modify Collective Bargaining Agreements in the implementation of consolidations, mergers, and acquisitions of control ('Major Transactions') pursuant to Section 11323 of the Interstate Commerce Act. The term 'Major Transactions' as used in this Agreement and for the purposes herein only will also include a lease, grant of trackage rights and/or contract to operate by one or more Class I Carrier(s) of all or substantially all or its/their track and/or operations to another carrier or non-carrier in one or more transactions. This Agreement does not apply when a Carrier is not seeking to override or modify Collective Bargaining Agreements in such circumstances."

It also provides in Conditions – 3, that the procedures therein apply:

> "[T]o any notice for an implementing agreement by any carrier party that seeks to override or modify collective bargaining agreements, whether under existing merger, control or acquisition authority or any such authority sought or granted in the future by the STB or any successor agency."

Inasmuch as the Cramdown Agreement procedures apply to proposed modifications of CBAs under existing authority, the fact that the control order relied on by the Carrier preceded the Cramdown Agreement does not in itself mean that the Cramdown Agreement is not applicable here.

Nevertheless, we concur with the Carrier that the Cramdown Agreement does not apply to this proposed consolidation. The Cramdown Agreement specifies that it applies to collective bargaining modifications involved with "Major Transactions."

In this case, however, the ICC control order did not find the initial consolidation to be a "Major Transaction." Rather, the ICC deemed the initial consolidation to be a "significant transaction within the meaning of our rail consolidation regulations at 49 CFR 1180.2(b)." (FD 32167, emphasis added).

The CFR provision cited in the ICC's control order, 49 CFR Section 1180.2, distinguishes between four types of transactions proposed under Section 11323. The two types relevant here are defined as follows:

(a) A major transaction is a control or merger involving two or more class I railroads.
(b) A significant transaction is a transaction not involving the control or merger of two or more class I railroads that is of regional or national transportation significance . . . .

The transaction approved in FD 32167 did not involve two or more class I railroads.

The Organization maintains, however, that the parties did not intend to use the definitions set forth in the regulations when they used the term "Major Transactions" in the Cramdown Agreement, but rather they intended that any transaction listed in Section 11323 would fall within its coverage. It posits that the parties were experienced negotiators who could have referred to the regulations in defining "Major Transactions," but because they did not do so, those definitions are not relevant here.

We concur that the parties to the Cramdown Agreement were experienced negotiators, but we believe that they intended when they chose the term "Major Transactions" to mean what the Carrier urges. If they had intended that all transactions subject to ICC approval were to be covered by the Cramdown Agreement, they could have easily said so. Instead, they chose the term "Major Transactions," which in our view was intended to conform with the ICC's well-established definition thereof. The fact that they added specific other transactions, which otherwise would not be covered by the ICC's definition of "Major Transaction," reinforces in our view that they meant to add only those limited exceptions to the definition. As the underlying transaction in question here is a "significant" transaction, not a "Major Transaction," we find that the Cramdown Agreement is inapplicable to the consolidation proposed here.

With respect to the Organization's argument that the Carrier's Vice President of Labor Relations promised during the CPKC merger application that the Carrier would honor the Cramdown

Agreement, we do not read his statement as saying the Carrier would extend application of the Cramdown Agreement to transactions which do not fall within its coverage. The STB's order likewise refers to the Carrier honoring "the obligations established in the Cramdown Agreement," but it did not extend such obligations beyond what was established in the Cramdown Agreement itself.

The Organization goes on to state that, even if the Cramdown Agreement is found to be inapplicable, it should still have the right to select the KCS CBA to apply to the consolidated District. It asserts that, because in its view the KCS CBA is better for the employees, the Carrier's proposal to impose the inferior MidSouth CBA is merely an attempt to transfer wealth from the employees to the Carrier, which we should not permit. The Carrier denies that this is the case, stating that selecting the KCS CBA would impede its ability to improve operations and to better serve customers. It also points to elements of the MidSouth CBA which it maintains are better for the employees than the KCS CBA.

As noted above, the Organization likens this situation to one which was presented in the UP-SP crew hauling case. In that case, Arbitrator O'Brien agreed with the carrier that the operational efficiencies contemplated by the consolidation warranted application of a single collective bargaining agreement to the employees engaged in crew hauling in the Kansas City Terminal. He found, however, that the carrier had not established that it was necessary to override the SP agreement to effectuate the transaction. He cited a reduction of wages of between 34 and 36% from the SP rates, elimination of a prohibition against subcontracting from the SP agreement, and a reduction in the percentage of positions on a guaranteed extra board.

Arbitrator O'Brien held that no public transportation benefits would be achieved by overriding the SP CBA, and that the efficiencies of operations that would result from the coordination of crew hauling functions could just as easily be obtained by placing all of the positions under the SP agreement. That decision was upheld by the STB.

We have carefully reviewed that award, and while we take no exceptions to its conclusions, we do not find that it was addressing circumstances similar to what are presented here. In denying the

carrier's request to impose the UP CBA, the arbitrator found that "the Carrier has not demonstrated any 'necessity' to override the SP Agreement to effectuate the rearrangement and coordination of crew hauling work at the Kansas City Terminal." The award there is in fact devoid of any indication that the SP agreement imposed any impediment to the consolidation or that selecting it for the single applicable agreement would deprive the carrier or the public of any transportation benefits. That is far different from the circumstances presented here.

As was held in *American Train Dispatchers Ass'n v. I.C.C.*, 26 F.3d 1157 (D.C. Cir. 1994), a transaction "must yield enhanced efficiency, greater safety, or some other gain." Unlike the situation presented in the UP-SP crew hauling case, we find that the record in this case reveals that the Carrier has articulated the transportation benefits necessary to meet that standard.

"Arbitrators should not require the carrier to bear a heavy burden (for example, through detailed operational studies) in justifying" changes that are necessary to make a merged entity operate efficiently as a merged operation. *CSX Corp. – Control – Chessie System, Inc, et al.*, 4 S.T.B. 701 (1998), internal citation omitted. Here, among other things, the Carrier has supplied confirmation that application of the KCS CBA impedes its ability to promptly serve its customers, as confirmed by correspondence from one such customer, and that it slows its service of military trains, impacts which can be reduced or eliminated if the MidSouth CBA is applied to the consolidated District. And as the customer who complained about delays observed, its own customers would benefit if delays attributable to the current arrangement are eliminated.

The Organization has not really disputed those attributes of the KCS CBA. Instead, it suggests that the Carrier can overcome those operational impediments via methods such as establishment of interdivisional runs in accordance with Article IX of the 1986 National Agreement. Whether such options are available, however, is not in our view relevant to how the existing agreements should be addressed in this proceeding, especially since there is no guarantee as to the outcome of the procedures suggested by the Organization.

Although the Organization urges that the KCS CBA is better for the employees than the MidSouth CBA, we cannot say that one is empirically superior to the other. While it seems that some aspects

of the KCS CBA could be preferable to some employees, the Carrier has pointed to aspects of the MidSouth CBA which appear to be better. As was observed in an Article I, Section 4 arbitration award involving CSX, IBEW and TCU (Ref. Simon), "it would be an impossible task to determine which agreement, taken in its entirety, is 'the best.' Some 'better' provisions of one agreement may be outweighed by 'better' provisions on different matters in another agreement. Furthermore, what may be beneficial for one employee may be immaterial to another."

We note that subsequent to the hearing of this matter, the Organization submitted an arbitration award (PLB 7635, Award No. 1) in support of its argument that the terms of the Cramdown Agreement should be applied even if we deem that the specific language of the Cramdown Agreement renders it inapplicable. The Carrier objects to the Organization's attempt to add materials not exchanged prior to the hearing, and which were not even introduced at the hearing. It also asserts that the award has no relevance to this matter.

We share the Carrier's concerns for the manner in which this award was presented to us, as we have been offered no compelling reason why it could not have been submitted when the submissions and supporting materials were exchanged. Even if we do consider that award, however, we do not believe it requires us to afford the Organization rights comparable to those found in the Cramdown Agreement.

We note that the award in question involved a Section 3 matter, and that the dispute resolution processes of New York Dock applicable here were not implicated. It also appears that the board there fashioned a unique remedy applying the concepts of the Cramdown Agreement because the agreement at issue did not afford the carrier sole discretion to select an applicable agreement. It is unclear how the board there arrived at that decision, especially after it said that the Cramdown Agreement was not applicable, but in any event we do not think we are required to reach a similar conclusion, as the facts are not comparable and the Carrier here does have rights in this instance which apparently were not applicable there.

On this record, we find that the implementing agreement proposed by the Carrier, with its prior rights and dovetailing of seniority provisions, is appropriate for the transaction, subject to the

amendments described below. The Carrier has sufficiently established that applying the MidSouth CBA to the consolidated District is not merely an attempt to transfer wealth from the employees to the employer, but that it is necessary to produce efficiencies and to better serve its current and potential customers. We find that allowing the Organization to select the KCS CBA would impede operational efficiencies and benefits obtained by merging the territories. The New York Dock protective conditions are in place to address claims of employees who allege they have suffered wage loss as a result of changes in operations and agreements.

There are two aspects of the Carrier's proposal, however, which we do not believe will be adequately addressed by those conditions. First is the difference between the KCS and the MidSouth CBAs pertaining to personal leave days. The KCS agreement allows engineers to qualify for up to 11 personal leave days, depending on length of service, while the MidSouth CBA caps the number of personal leave days at seven.[2] We find that the appropriate way to address those differences is that engineers currently working under the KCS CBA who qualify for more personal leave days than what is afforded under the MidSouth CBA will be entitled to retain the number of personal leave days they currently receive, which will not increase with additional service. The MidSouth CBA will apply to those engineers working under the KCS CBA who currently qualify for less than or equal to the number of days afforded under the MidSouth CBA.

Second, the Organization avers that engineers currently working under the KCS CBA are allowed to take one week of vacation in single day increments, while the MidSouth CBA does not allow for any single days of vacation. We believe that this is a substantial benefit that cannot be addressed by the protective conditions. Therefore, we find that the appropriate way to address this matter is to allow engineers currently working under the KCS CBA to continue to be permitted to take one week of vacation in single day increments. Neither of the modifications set forth above in any way impede the Carrier's ability to obtain the benefits of consolidating the District, and we believe it is within our broad discretion to formulate those conditions.

[2] The Carrier stated during the hearing that MidSouth engineers receive nine personal leave days. Whether they receive seven or nine personal leave days, the KCS allows for more if an engineer has sufficient years of service.

Award:

The Carrier's first question at issue is answered in the affirmative, subject to the two specific modifications set forth above. Its second question at issue is addressed by those specific modifications.

The Organization's first question at issue is answered in the negative. The Cramdown Agreement does not apply to this consolidation. Its second question at issue is addressed in the findings.



Michael D. Phillips
Chairman and Neutral Member

Dated: January 16, 2026

NOTICE PURSUANT TO ARTICLE I, SECTION 4
OF THE NEW YORK DOCK CONDITIONS
FINANCE DOCKET NOS. 28905 AND 33388

CSX Transportation, Inc. ("CSXT") serves this notice pursuant to Article I, Section 4 of the New York Dock conditions imposed in Finance Docket Nos. 28905 and 33388.

CSXT is proposing to consolidate and coordinate train operations, employees, and related facilities in the territories within the Northern Mid-Atlantic District ("NMAD"), Consolidated Southern Region, and Baltimore and Ohio Chicago Terminal Railroad Company ("Chicago Terminal") to create a system-wide territory for train operations. The consolidation of the NMAD, Consolidated Southern Region, and Chicago Terminal will allow CSXT to better utilize trainmen employees throughout CSXT's system, improve train service, operate trains more efficiently, realize costs savings, and improve utilization of equipment. The system-wide consolidation of trainmen will also better align CSXT's train operations with those performed by locomotive engineers, who are already consolidated under a single-system agreement.

The above-proposed consolidation includes all main lines, branch lines, yard tracks, industrial leads, stations between points identified, and all terminals that lie at the end of a line segment.

CSXT anticipates that, among other operational and service improvements, the following initial changes can be implemented as a result of the proposed coordination.

1. Evansville, IN. The consolidation will allow CSXT to operate trains through Evansville, which today stop only in order to change crews because Evansville is at the boundary of the NMAD and Consolidated Southern Region. For example, northbound empty coal unit trains bound for coal mines in the Illinois Basin and empty grain unit trains bound for Indiana

and Illinois load out locations currently must stop at Evansville for crew change for no other reason than the jurisdictional lines between the collective agreements that apply to NMAD (primarily the B&O Agreement) and to the Consolidated Southern Region (the Consolidated Southern Region Agreement ("CSRA")). Conversely, loaded coal and grain unit trains moving to locations in the Consolidated Southern Region must stop at Evansville for crew change before proceeding into the NMAD territory. After the coordination, northbound unit trains will be operated from Casky Yard (Consolidated Southern Region) to mine locations in the Illinois Basin (NMAD) without stopping for crew change at Evansville. Similarly, empty grain unit trains will operate from Casky Yard to load out locations in Indiana and Illinois without stopping for crew change in Evansville. Loaded coal unit trains moving from NMAD locations to destinations in the Consolidated Southern Region will not stop in Evansville for crew change. Avoiding crew changes for these trains in Evansville will help relieve congestion in that terminal.

CSXT estimates that six positions currently required for crew changes between the separated territories could be abolished in Evansville, IN, and that new positions would be created to improve service and operations or support new business opportunities. CSXT expects no employees would be furloughed, as positions that are currently unfilled and vacancies created through natural attrition would also be available for bid.

2. Columbus, OH. Columbus is another touch point between NMAD and the Consolidated Southern Region, and trains moving through Columbus must stop there to change crews. These trains include coal unit trains originating on the former C&O (Consolidated Southern Region) destined for locations in Michigan and along the Great Lakes (NMAD) and coal unit trains originating in the MGA coal fields (NMAD) destined for utilities in the Southeast (Consolidated Southern Region). After the coordination, CSXT will be able to operate trains

through Columbus without changing crews simply because it is at the boundary of the NMAD and Consolidated Southern Region. For example, instead of changing crews at Columbus, northbound trains may operate from Russell, KY (Consolidated Southern Region) through Columbus to points on the former B&O (NMAD) such as Crestline, Toledo, Cleveland, and Marysville, OH.

CSXT estimates that four trainmen positions currently required for crew changes between the separated territories could be abolished in Columbus, OH, and that new positions would be created to improve service and operations or support new business opportunities. CSXT expects no employees would be furloughed, as positions that are currently unfilled and vacancies created through natural attrition would also be available for bid.

3. Indianapolis, IN. CSXT can operate trains over trackage rights on the Louisville and Indiana Railroad Company between Louisville, KY (Consolidated Southern Region) and Indianapolis (NMAD). Traffic flows between Louisville and points east (e.g., Crestline, OH) and west (e.g., Terre Haute, IN) of Indianapolis can be improved if trains do not need to stop at Indianapolis for a crew change. Utilization of crews in this territory currently subject to the B&O Agreement or the CSRA will be improved as equity requirements in existing agreements are eliminated.

4. Cincinnati, OH. Trains operating through Cincinnati between points on NMAD and points on the Consolidated Southern Region can be operated without a crew change in Cincinnati. For example, unit trains originating at Russell, KY on the former C&O (Consolidated Southern Region) and delivering steel ingots to a shipper at Middletown, OH on the former B&O (NMAD) must stop in Cincinnati to change crews, even though the distance from Cincinnati to Middletown is only about 25 miles. With the coordination, these unit trains can be operated between Russell

and Middletown without a crew change in Cincinnati. Similarly, hazmat trains of ammonia moving between Lima, OH to Russell, KY can operate through Cincinnati without a crew change.

CSXT estimates that 30 trainmen positions currently required for crew changes between the separated territories could be abolished in Cincinnati, OH, and that new positions would be created to improve service and operations or support new business opportunities. CSXT expects no employees would be furloughed, as positions that are currently unfilled and vacancies created through natural attrition would also be available for bid.

5. Richmond, VA. Currently trains cannot operate through Richmond without a crew change because it is another touch point between the Consolidated Southern Region and NMAD. After the coordination, CSXT will be able to operate trains though Richmond without such a crew change. For example, CSXT may have northbound trains that stop in Richmond change crews at Collier Yard, VA instead. Conversely, southbound trains can change crews at Collier Yard. Reducing the number of trains that must stop in Richmond will relieve congestion in the Richmond terminal area, which has relatively small yards.

CSXT estimates that 27 trainmen positions currently required for crew changes between the separated territories could be abolished in Richmond, VA, and that new positions would be created to improve service and operations or support new business opportunities. CSXT expects no employees would be furloughed, as positions that are currently unfilled and vacancies created through natural attrition would also be available for bid.

6. Huntington, WV. CSXT will obtain the ability to move coal, chemical, and other traffic through Huntington, WV between Russell, KY (Consolidated Southern Region) and Parkersburg and Brooklyn, Jct. on the former B&O (NMAD) without regard to the artificial boundary between NMAD and the Consolidated Southern Region.

7. Chicago Terminal. Chicago currently is the away from home terminal for crews that bring trains in and out of the Terminal. Yard jobs and locals working within the Terminal are staffed with employees on the Baltimore and Ohio Chicago Terminal Agreement ("B&OCT") seniority roster. CSXT will be able to cross-utilize trainmen based in Chicago with those at other supply points who also work in Chicago. CSXT will be able to use Chicago-based crews to work line of road trains outside of the Terminal, creating efficiencies.

8. At various locations, there will be less yard congestion and additional meet and turn and relief service opportunities with the ability to operate in any direction out of a terminal or supply point. There will be less yard congestion, for example, because trains will not have to wait in yards for crew changes. In addition there will be less yard congestion because where there are crew changes, there will be less delay in re-crewing. There will be more meet and turn and relief service opportunities, for example, because CSXT will have the flexibility to call trainmen at a terminal or supply point for such service regardless if the service that operates out of the terminal or supply point is over NMAD or Consolidated Southern Region territory or both. Velocity will improve because trains will not need to be held as long on the main line waiting for a relief crew.

9. Extra boards, pools, and road switchers at supply points and terminals will be revised so that employees can be utilized in any direction out of a terminal or supply point regardless of the former property that operated into, through or at that terminal or supply point.

All road territory and terminals within CSXT's system will have one common trainmen work force working under one labor agreement. CSXT is proposing that the CSRA, as amended, apply system-wide throughout the new consolidated territory. The CSRA will replace any and all existing property agreements. The implementing agreement reached pursuant to this notice will replace all prior implementing agreements with the Organization.

The proposed system-wide consolidation of territory and coordination of work therein will result in the rearrangement of forces in NMAD, the Consolidated Southern Region, and Chicago Terminal. All employees in the craft of trainmen in the NMAD, Consolidated Southern Region, and Chicago Terminal will be placed on a new consolidated seniority roster, the Consolidated System Roster. Current equity arrangements and prior rights will be eliminated. The proposed consolidation of seniority districts and rosters to form the Consolidated System Roster will not create any new prior rights.

CSXT expects that the consolidation of NMAD, Consolidated Southern Region, and Chicago Terminal and the coordination of the work within the consolidated territory will result altogether in the abolishment of about 67 trainmen positions, with many of those positions reallocated to other assignments. As explained above, CSXT anticipates that no trainmen employees will be furloughed because additional positions will be available due to attrition, improved business opportunities and anticipated increased business volumes, and the filling of vacant positions.

CSXT will be entering into negotiations with the employees' representatives for the purpose of reaching an implementing agreement required by Article I, Section 4 of the New York Dock conditions, which will protect the interests of employees affected by the proposed consolidation and coordination of work in the consolidated territory.

* * * * * * * * * * * * * * *

NYD

Arbitration pursuant to Article I - Section 4 of the employee protective conditions developed in New York Dock Ry.-Control-Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) as provided in ICC Finance Docket No. 28905 (Sub. No. 1) and related proceedings

16

PARTIES TO DISPUTE	International Association of Machinists and Aerospace Workers and The Baltimore and Ohio Railroad Company Louisville and Nashville Railroad Company	DECISION

QUESTIONS AT ISSUE:

What provisions shall be contained in an arbitrated implementing agreement pursuant to Article I, Section 4 of the New York Dock Conditions in order to provide an appropriate basis for the selection and assignment of forces and the application of the New York Dock Conditions with respect to the transaction which was the subject of the Carrier's September 2, 1982, notice?

BACKGROUND:

On September 25, 1980, the Interstate Commerce Commission (ICC) served its Decision in Finance Docket No. 28905 (Sub. No. 1) approving acquisition of control by CSX Corporation of rail carriers subsidiary to Chessie System, Inc. and Seaboard Coast Line Industries, Inc. The Commission in its Decision imposed conditions for the protection of employees set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 350 I.C.C. 60 (1979) (New York Dock Conditions).

On September 2, 1982, the Baltimore & Ohio Railroad Company (B&O) and the Louisville & Nashville Railroad Company (L&N), two carriers over which CSX Corporation had acquired control by virtue of the Commission's Decision in Finance Docket No. 28905 (Sub. No. 1), served notice upon the International Association of Machinists and Aerospace Workers (IAM or Organization) pursuant to Article I, Section 4 of the New York Dock Conditions. The notice stated that the Carriers intended to discontinue operation of the B&O Car Wheel Shop at Glenwood, Pennsylvania and to transfer and coordinate such work with the work performed on the L&N railroad at its South Louisville Shops, Louisville, Kentucky. The notice also stated that positions of 12 machinists and 4 machinist helpers would be abolished at the Glenwood Shop and 9 machinists' positions established at the South Louisville Shops.

Further pursuant to Article I, Section 4 of the New York Dock Conditions, the parties met on September 15 and 16, October 21 and 22 and November 1, 1982, for the purpose of reaching agreement with respect to the selection and assignment of forces resulting from the coordination and with respect to the application of the New York Dock Conditions to the coordination. The Carriers submitted a written proposal at the October 21 meeting. However, the parties were unable to reach agreement, and the dispute remained unresolved.

Thereafter, the Carriers invoked the arbitration procedures of Article I, Section 4 of the New York Dock Conditions. The parties did not select a Neutral Referee as provided in Article I, Section 4 and as further provided therein the Carriers applied to the National Mediation Board for appointment of a Referee. That agency appointed the undersigned

on November 30, 1982. Hearing was held in this matter pursuant to Article I, Section 4(a)(1) on December 20, 1982, at which time the parties presented written submissions and oral argument.

FINDINGS:

The parties have complied with the procedural requirements of Article I, Section 4 of the New York Dock Conditions, and the question at issue noted above is properly before this Neutral for determination.

The Carriers take the position that their proposed agreement covering this transaction is fair, equitable and appropriate. The Organization holds a contrary view on several points.

At the outset the Organization contends that the question at issue in this proceeding must be resolved against the background of another coordination which the Organization urges has direct and substantial impact upon the coordination here. On September 2, 1982, the same date the Carrier served notice triggering this proceeding, the B&O and the Chesapeake & Ohio Railway (C&O) served notice upon the IAM of the Carriers' intent to discontinue all work in connection with locomotive repair performed at the B&O Glenwood Backshop, Glenwood, Pennsylvania, and to transfer and consolidate such work with work being performed at the C&O Huntington Locomotive Shop, Huntington, West Virginia. The notice stated that 25 machinists' and 4 machinist helper's positions would be abolished at Glenwood Backshop and 13 machinists' and 2 machinist helper's positions added to the Huntington Locomotive Shop. This notice was furnished pursuant to the C&O-B&O-Western Maryland coordination agreement (Master Transfer Agreement) with the IAM, and

the effective date was set for December 6, 1982, the same effective date set for the closure of the Glenwood Car Wheel Shop and the abolition and creation of machinists' and machinist helpers' positions in connection therewith.

Both notices served on September 2, 1982, affected the same seniority group, and apparently much of the time spent in the negotiating meetings held pursuant to Article I, Section 4 of the New York Dock Conditions was spent discussing the notice served under the Master Transfer Agreement and its potential effects. The Carriers implemented the notice concerning the Glenwood Backshop on December 6, 1982, although at that time, as is evidenced by the instant proceeding, no agreement had been reached pursuant to Article I, Section 4 of the New York Dock Conditions. As a result the Glenwood Backshop was closed, and several employees on the seniority roster transferred to Huntington, West Virginia.

The Organization contends that the Carriers' action was unfair and asks this Neutral to right the perceived wrong to the employees by providing in the arbitrated implementing agreement that any machinist employees holding as assignment at the Glenwood Shop on September 2, 1982, be given thirty days to elect the benefits flowing from the Decision in this proceeding or those under the Master Transfer Agreement.

The Organization points out that by closing the Glenwood Backshop on December 6, 1982, the Carrier forced employees to exercise their seniority, either to transfer to Huntington, West Virginia, which several did, or to displace junior employees working in the Glenwood Car Wheel Shop. As a consequence, most present members of the machinist craft working in the Glenwood Car Wheel Shop are very senior employees, while

junior employees are out of work and collecting dismissal allowances, all under the Master Transfer Agreement.

The Carriers argue that under Article I, Section 3 of the New York Dock Conditions, inter alia, employees must elect between the protections of the New York Dock Conditions and those offered by any other protective arrangement under which they are entitled to benefits. However, the Organization argues that the Carriers' actions deprived employees of a meaningful choice between benefits under the Master Transfer Agreement and benefits under the New York Dock Conditions because on December 6, 1982, no agreement had been reached or arbitrated pursuant to Article I, Section 4 of the New York Dock Conditions.

The Carriers argue that the Organization seeks to "unscramble the eggs" which would unduly burden the Carriers. The Carriers point out that they attempted to effectuate simultaneously the closure of the Backshop and the Car Wheel Shop at Glenwood, Pennsylvania, but were unable to do so by December 6, 1982, because the parties failed to reach agreement by that date.

The unfairness of the Carriers' actions, emphasized so strongly by the Organization, is more apparent than real. What the Organization actually seeks is the option for the most senior employees, and thus the least likely to lose their positions, to transfer to Louisville or Huntington. While the choice between transferring to Louisville or Huntington understandably is a highly desirable one, there is nothing fundamentally unfair about the absence of that choice under the circumstances of this case.

Closure of the Glenwood Backshop and the resulting effects on employees flowed from a transaction under the Master Transfer Agreement and not the New York Dock Conditions. Once employees exercised their seniority pursuant to the Master Transfer Agreement only those remaining at Glenwood actually would be affected by the transfer pursuant to New York Dock. With respect to Article I, Section 3 of the New York Dock Conditions, there simply is no election remaining for the machinist employees who transferred to Huntington, because by transferring they elected to take jobs at Huntington rather than to bump into the Car Wheel Shop at Glenwood which they knew would be closed within a short time and all machinists' positions abolished there.

It is true that the difficulties here were to some extent created by the Carriers. Furthermore, the fact that the Carriers served both notices on the same day would support the inference that they were attempting to exert pressure on the Organization to reach agreement under Article I, Section 4 of the New York Dock Conditions by creating the potential situation which actually resulted. Nevertheless, the Carrier apparently tried to effectuate both transactions simultaneously, and if they had been successful the employees would have had the choice the Organization seeks here. Only the parties' failure to reach agreement precluded that choice. Under these circumstances the Carriers did not violate their obligations under the New York Dock Conditions.

It must be borne in mind that the function of the New York Dock Conditions as well as most protective arrangements is to preserve

employment for those capable of holding it through the exercise of seniority and to make whole those employees who must take positions producing less compensation or who lose their positions altogether. In the final analysis the Organization's request for language is not necessary to a fair and equitable arrangement for the selection of forces, and accordingly it will not be included in the arbitrated implementing agreement.

The Organization disputes the need for the creation of nine new machinists' positions at the South Louisville Shops and argues that the work to be performed by employees in those positions should accrue to L&N employees, many of whom are on furlough. The Carriers argue that inasmuch as substantial work is being transferred from the Glenwood Car Wheel Shop to the South Louisville Shops, the positions are justified and that they should accrue to the Glenwood Shop machinists to whose craft the work originally belonged.

By its Decision in Finance Docket No. 28905 (Sub. No. 1) the ICC granted the Carriers authority to engage in the transaction which was the subject of the Carriers' September 2, 1982, notice. Creation of the machinists' positions at the South Louisville Shops is an integral part of that transaction. The authority of a Neutral acting under Article I, Section 4 extends to the selection of forces to fill those positions, but it does not extend to review of the Carriers' decision to create such positions.

The Carriers' proposal recognizes the equitable interest of the Glenwood Shop machinists in the work which was part of their craft. It permits those employees to follow their work. It allows the L&N machinists

the opportunity for the work in the event the Glenwood Shop machinists do not follow their work. This appears to be a more appropriate basis for the assignment of forces than that urged by the Organization.

The Organization contends that the Glenwood Shop machinists cannot be forced to transfer to Louisville at the peril of losing protection under the New York Dock Conditions because such a move requires a change of residence. The Carriers urge that they cannot refuse such transfer and continue to be dismissed employees within the meaning of Article I, Section 1(c) of the New York Dock Conditions.

In support of its contention the Organization analyzes the treatment of the terms "dismissed employee" and "change of residence" in various protective agreements and arrangements. The Organization argues that it is the intent of those conditions and arrangements that employees not be forced to move against their wishes if such move involves a change of residence. The Organization seeks specific language in the arbitrated implementing agreement which it contends would apply this protection to the coordination in this case.

The basic defect in the Organization's argument, as the Carrier notes, is that it ignores the history of this issue before the ICC. In its Decision in Finance Docket No. 28905 the Commission was requested by labor organizations to expand the definition under Article I, Section 1(c) of the New York Dock Conditions of a dismissed employee so as to protect employees from having to relocate. The ICC specifically rejected the organizations' request. The ICC has spoken authoritatively on the matter, and this Neutral must follow the ICC's pronouncement.

The Organization relies upon an Award in an Article I, Section 4 proceeding, issued after the ICC's Decision in Finance Docket No. 28905, involving the CSX Corporation and the Brotherhood of Railway Airline and Steamship Clerks, Freight Handlers, Express and Station employees-Irwin M. Lieberman, Neutral. That Award contains language which appears contrary to the thrust of the ICC's Decision. However, that Award dealt with a displacement allowance and not a dismissal allowance. Furthermore, the Award does not assess the ICC's Decision. Accordingly this Neutral does not find the Award persuasive.

Thus, it is concluded that the Glenwood Shop machinists may not refuse to transfer to Louisville and still come within the definition of a dismissed employee set forth in Article I, Section 1(c).

The Organization urges that seniority be observed in the transfer of employees from the Glenwood Car Wheel Shop to the South Louisville Shops, and the Carriers do not disagree. In fact the Carriers' proposed agreement recognizes that proposition. However, the Organization seeks a provision in the arbitrated implementing agreement allowing employees who do transfer a reasonable time to report. This Neutral does not believe that specification of a time or period for reporting is necessary. It is contemplated that the parties will follow the rule of reason in this regard.

Both the Carriers and the Organization agree that any transferees to Louisville should have their seniority dovetailed into the Louisville roster. The only apparent difference between the Carriers' proposal and the Organization's proposal on this matter concerns the situation where

two employees may have the same seniority date and the same service date. The Carriers would resolve the ranking by lot, but the Organization proposes that the oldest employee in chronological age be ranked ahead of the younger employee. The Organization's proposal seems more consistent with the principle of seniority, and it will be included in the arbitrated implementing agreement.

The Carriers and the Organization failed to reach agreement on whether the L&N working agreement should apply to Glenwood machinists who transfer to the South Louisville Shops or whether the B&O working agreement should apply. The Organization challenges the jurisdiction of this Neutral to resolve the issue on the basis of Section 2 of the New York Dock Conditions which provides:

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

The Carriers argue that such jurisdiction exists and that the L&N agreement should apply because that agreement will be applicable to all other machinists working at the South Louisville Shops.

In support of their jurisdictional argument the Carriers rely upon a Decision under Article I, Section 4 of the New York Dock Conditions by Neutral Robert Peterson involving the Southern Railway Co.-Norfolk & Western Railway Co. and Railroad Yardmasters of America. In that Decision Neutral Peterson applied to transferees the agreement in effect on the property to which they transferred as a result of a coordination. The

Organization relies upon a Decision by the undersigned in an Article I, Section 4 proceeding between the Southern Railway Co. and the Brotherhood of Railroad Signalmen which the Organization contends supports its position.

As the Carriers note, this Neutral's Decision in the Southern Railway case involved a situation where to grant the Carrier's request would have extinguished a collective bargaining agreement, a factor not present in the case decided by Neutral Peterson and so noted by him. Nevertheless, this Neutral's review of the Peterson Decision and his Decision in the Southern Railway proceeding forces the conclusion that no jurisdiction exists in this case to grant the Carriers the relief they request.

It is true as the Carriers contend that in the instant case the B&O agreement will continue in effect at the Glenwood Shop and thus application of the L&N agreement would not result in the destruction of the Glenwood Shop agreement. In this Neutral's opinion that distinction does not vest jurisdiction in him to apply the L&N contract.

The rationale of this Neutral's jurisdictional ruling in the Southern Railway case, and the awards upon which it was based, is that a Neutral under Article I, Section 4 has no authority to alter rates of pay, rules or other benefits preserved by Section 2 of the New York Dock Conditions. Accordingly, such Neutral has no authority to modify a collective bargaining agreement where the parties have not agreed to confer that authority upon him. In the instant proceeding the Organization has not agreed to the Carriers' proposal or to submit the issue voluntarily to arbitration.

This Neutral is sensitive to the fact that his Decision of January 12, 1983, in an Article I, Section 4 proceeding between these Carriers and the Brotherhood Railway Carmen of the United States and Canada involving the transfer of carmen to the South Louisville Shops provided for application of the L&N working agreement to the transferees. However, in that case the Carriers and the Organization agreed that the L&N agreement would have such application.

Accordingly, no provision will be contained in the arbitrated implementing agreement applying the L&N agreement to machinists who transfer to the South Louisville Shops.

The attached arbitrated implementing agreement, which is hereby made a part of this Decision, constitutes the Neutral's determination under Article I, Section 4 of the New York Dock Conditions as to the appropriate basis for the selection and rearrangement of forces pursuant to the coordination which gave rise to this proceeding. This Decision and the implementing agreement are intended to resolve all outstanding issues in this proceeding as provided in Article I, Section 4 of the New York Dock Conditions.

William E. Fredenberger, Jr.
Neutral Referee

DATED: January 19, 1983

ATTACHMENT

ARBITRATED IMPLEMENTING AGREEMENT

BETWEEN

THE BALTIMORE AND OHIO RAILROAD COMPANY

LOUSIVILLE AND NASHVILLE RAILROAD COMPANY

AND THEIR EMPLOYEES REPRESENTED BY

INTERNATIONAL ASSOCIATION OF MACHINIST AND AEROSPACE WORKERS

WHEREAS, this transaction is made pursuant to Interstate Commerce Commission decisions in Finance Docket No. 28905 (Sub.-No. 1) and related proceedings, and

WHEREAS, The Baltimore and Ohio Railroad Company and Louisville and Nashville Railroad Company, hereinafter designated respectively as "B&O" and "L&N" gave notice in accordance with Article I Section 4(a) of the conditions for the protection of employees enunciated in New York Dock Ry. - Control Brooklyn Eastern Dist., 360 I.C.C. 60(1979) hereinafter designated as "New York Dock Conditions" of the intent of the B&O to discontinue operation of the wheel shop at Glenwood, Pennsylvania and transfer such work to the L&N Railroad South Louisville Shops,

WHEREAS, the parties have conferred, but have reached no agreement,

NOW, therefore, it is determined:

1. The Labor Protective Conditions as set forth in the New York Dock Conditions which, by reference hereto, are incorporated herein and made a part hereof, shall be applicable to this transaction.

2. As a result of this transaction, the B&O will discontinue operation of the car wheel shop located at Glenwood, Pennsylvania, and the B&O machinist and machinist helper positions assigned at that location will be abolished. Thereafter, B&O's car wheel operations will be performed by L&N at their South Louisville Shops, Louisville, Kentucky, and all work at that location accruing to machinists under the provisions of the Collective Bargaining Agreement between L&N and the International Association of Machinist and Aerospace Workers will be performed by employees on the Machinist's Seniority Roster at South Louisville, Kentucky.

3. Positions to be established on L&N at South Louisville Shops, effective with the date of coordination, will be bulletined at Glenwood, Pennsylvania, for

a period of ten (10) days and will accrue to employees holding assignment on the Glenwood Machinist Roster, Central Region Seniority Point 6.

4. (a) Upon expiration of the ten-day bulletin, determination will be made of the employees who have bid and who have been awarded a position at South Louisville Shops. At the same time, determination will also be made of those employees whose jobs are being abolished as a result of this coordination and who, rather than bid on a position in the coordinated operation at South Louisville Shops, have elected to exercise displacement rights over junior regularly assigned employees whose positions are not being abolished. Such employees will designate the positions on which they intend to exercise seniority rights, and junior employees to be affected thereby shall make the same determination.

(b) In the event any positions advertised in the coordinated operation at South Louisville Shops are not filled in accordance with Paragraph (a), Glenwood employees whose positions are to be abolished and who have not bid on advertised positions in the coordinated operation or who do not have sufficient seniority to exercise seniority on other positions on the roster, and employees who are to be displaced through the exercise of seniority as described in Paragraph (a) and are unable to exercise seniority on other positions on the roster, will be assigned to the unfilled position(s) at South Louisville Shops in reverse order of seniority. Such assignment will be by letter signed by the appropriate Carrier officer with copies to the Local Chairman and General Chairman. An employee assigned a position at South Louisville Shops who fails to report to the position on the effective date of assignment, or as otherwise arranged with the L&N officer having jurisdiction at that location, except under circumstances beyond his control, shall forfeit protection as set forth in Article I, Section 6 of the New York Dock Conditions.

(c) The junior Glenwood employee(s) will be assigned in accordance with Paragraph (b) until the position(s) are either filled or until the employees described in such Paragraph (b) are exhausted.

(d) In the event employees at Glenwood fail to accept positions to which they are entitled at South Louisville Shops, such unfilled positions shall then accrue to the employees at the latter location . Positions then unfilled will be filled by recall of furloughed employees, if any, and then by new hires.

5. (a) Employees accepting positions at South Louisville on the L&N will have their seniority date, as it appears on the Glenwood Machinist Roster, dovetailed on the appropriate roster to which transferred upon reporting to work, and their name will be removed from the Glenwood Machinist Roster. Where, following this procedure results in two (2) or more employees having the same seniority date on the dovetailed roster, their respective positions on the roster will be determined by continuous service standing and then by age, oldest first.

(b) Employees transferring to South Louisville will be assigned positions in accordance with the bulletins advertising positions.

6. In order that the provisions of the first proviso set forth in Article I, Section 3 of the New York Dock conditions may be properly administered, such employee determined to be a displaced or dismissed employee as a result of this Agreement, who also is otherwise eligible for protective benefits and conditions under some other job security or other protective conditions or arrangements shall, within ten (10) days after notification of his monetary protective entitlement under the New York Dock Conditions, elect between the benefits thereunder and similar benefits under such other arrangement. In the event an employee does not make an election within the ten (10) day period specified herein, he shall be considered to have elected to retain the protective benefits he is presently eligible to receive. This election shall not serve to alter or affect any application of the substantive provisions of Article I, Section 3.

7. (a) Each dismissed employee shall provide either B&O or L&N with the following information for the preceding month in which he is entitled to benefits no later than the tenth (10th) day of each subsequent month on a standard form provided by the Carrier:

1. The day(s) claimed by such employee under any unemployment insurance act.

2. The day(s) each such employee worked in other employment, the name and address of the employer and the gross earnings made by the dismissed employee in such other employment.

(b) In the event an employee referred to in this Section 7 is entitled to unemployment benefits under applicable law but forfeits such unemployment benefits under any unemployment insurance law because of his or her failure to file for such unemployment benefits (unless prevented from doing so by sickness or other unavoidable causes) for purposes of the application of Sub-section (c) of Section 6, Article I of the New York Dock Conditions, they shall be considered the same as if they had filed for, and received, such unemployment benefits.

(c) If the employee referred to in this Section 7 has nothing to report under this Section 7 account of their not being entitled to benefits under any unemployment insurance law and having no earnings from any other employment, such employee shall submit, within the time period provided for in Sub-section (a) of this Section 7, on the appropriate form annotated "Nothing to Report".

(d) The failure of any employee referred to in this Section 7 to provide the information required in this Section 7 shall result in the withholding of all protective benefits during the month covered by such information pending Carrier's receipt of such information from the employee.

8. Nothing in this implementing agreement shall be interpreted to provide protective benefits less than those provided in the New York Dock Conditions or exclude coverage to those covered by New York Dock Conditions imposed by the I.C.C. and incorporated herein by paragraph 1.

9. The provisions of this Agreement shall become effective upon ten (10) days advance written notice by the B&O and L&N to their respective General Chairman.

EC

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

SERVICE DATE

DEC 7 1995

INTERSTATE COMMERCE COMMISSION

DECISION

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

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

Decided: November 22, 1995

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

BY THE COMMISSION:

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

BACKGROUND

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

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

---

[1] CSX Corp.--Control--Chessie System, Inc. and Seaboard Coast Line Industries, Inc., 363 I.C.C. 521 (1980) (CSXT--Control--Chessie and Seaboard).

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

CSX Corporation into its subsidiary CSXT.[3] The last steps in this process involved the RF&P Railroad. In 1991, CSXT spun off RF&P Railroad's non-rail assets and created the Richmond, Fredericksburg & Potomac Railway Company ("RF&P Railway") to acquire and to operate RF&P Railroad's rail assets. CSXT invoked our class exemption for corporate families to obtain approval for the acquisition and control.[4] In 1992, CSXT again invoked our corporate family class exemption to operate RF&P Railway directly and to assume all of its rights and obligations.[5]

The decisions creating present-day CSXT were approved subject to our standard labor protection conditions. These conditions were adopted in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (New York Dock) to implement our mandate to provide such protection under 49 U.S.C. 11347. Under New York Dock, labor changes that are related to Commission-approved transactions are established by implementing agreements negotiated before the changes occur. If the parties cannot reach an implementing agreement, the issues are resolved by arbitration. Arbitration awards may be appealed to the Commission under our Lace Curtain standard of review.[6]

---

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

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

[5] CSX Transportation, Inc.--Operation Exemption--Richmond, Fredericksburg and Potomac Railway Company, Finance Docket No. 32020 (ICC served Apr. 15, 1992).

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

> Once having accepted a case for review, we may only overturn an arbitral award when it is shown that the award is irrational or fails to draw its essence from the imposed labor conditions or it exceeds the authority reposed in arbitrators by those conditions. [Citations omitted.]

This agency (and an arbitrator acting under New York Dock) is authorized to override provisions of collective bargaining agreements that prevent realization of the public benefits of a transaction.[7] Those contesting proposals that we exercise our authority to override collective bargaining agreements argue that: (1) New York Dock requires the preservation of pre-transaction bargaining agreements; or (2) the changes may not be made because they are not (perhaps due to the passage of time) related to, or necessary for effectuating the purposes of, the proposed transaction. Under New York Dock, employees affected when a collective bargaining agreement is overridden must be compensated pursuant to the formula established therein, which provides comprehensive displacement and termination benefits for up to 6 years.

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

Briefly, CSXT is proposing to coordinate train operations in a portion of its system, its new "Eastern B&O Consolidated District" (the "Eastern District"), by transferring work, abolishing and creating positions, and merging seniority rosters. All engineers and trainmen working in the new district would be placed under CSXT's collective bargaining agreements with UTU and BLE covering the former B&O lines. The notice reveals a net loss of 5 positions (47 abolished minus 42 established). CSXT made minor alterations and proposed further details as to the implementation of these coordinations in draft implementing agreements (one for each union) transmitted to the unions on February 25, 1994. In the Appendix to this decision, we have reproduced the major operational changes that were proposed in Article I of CSXT's draft implementing agreements.[8]

The unions refused to participate in the negotiation of an implementing agreement, objecting that: (1) the changes may not be made under New York Dock because they violate existing collective bargaining agreements; (2) CSXT improperly related the changes to the whole group of Commission decisions[9] rather than specified individual decisions; and (3) the changes cannot be related to any of the transactions approved in the decisions because the decisions are too old. CSXT then invoked arbitration under New York Dock. Unable to negotiate, the parties selected Robert M. O'Brien as the arbitrator. An arbitration hearing was

---

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

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

[9] See note 3, supra, for a statement of the decisions.

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

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

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

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

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

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

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

ARGUMENTS OF THE PARTIES

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

1. Whether the appeal should be heard

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

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

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

In their petition for review filed June 9, 1995, the unions argue that the Arbitrator lacked jurisdiction under New York Dock to consider the changes sought by CSXT pursuant to our authority to approve operational changes that are necessary to effectuate mergers. That is so, according to the unions, because the changes cannot be linked to, or were not caused by, any of the merger transactions cited by CSXT. The unions maintain that the changes sought here are due to pre-1980 control proceedings not cited by the carrier and involving the property at issue. According to the unions, the changes cannot be linked to the 1980 decision that put Chessie and SCLI under common control because they do not involve SCLI property.[11]

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

---

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

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

3. RLA bargaining requirement in prior decisions

In their petition for review, the unions argue that the merger transactions have already been covered by implementing arrangements and that the coordination sought here would improperly reopen these prior agreements.[12] The unions maintain that the prior implementing agreements require that the changes proposed here be accomplished through bargaining under the Railway Labor Act (RLA) rather than arbitrations under New York Dock.[13]

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

4. Ability to override prior agreements

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

---

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

[13] The language in question typically provides that "This agreement ... shall remain in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended." See, e.g., the 1979 implementing agreement reached between the B&O, WM, and several unions, in CSXT's petition filed June 9, 1995, Appendix volume II, exhibit 36, page 8.

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

The unions argue that, under RLEA, the changes must be necessary to secure the public benefits of the merger and that the changes at issue fail this test. CSXT responds that its changes will effectuate the cited transactions by merging operations on lines where train operations are allegedly being conducted as though they continued to belong to separate railroads. The unions dispute CSXT's statement (that operations in the proposed district are being conducted as though they continued to belong to separate railroads) on the grounds that operations in the district have in fact been merged, except for the consolidation of seniority districts.[9]

CSXT argues that the changes meet the standard imposed in RLEA for changing prior practices that interfere with attainment of the public benefits of the transaction. CSXT argues that: (1) the changes will improve operational efficiency; (2) this improvement is a public benefit under RLEA; and (3) the cost savings from this improvement satisfy RLEA by not creating merely a transfer of wealth from labor to CSXT.[10] Concerning this last point, CSXT contrasts the operational changes proposed here with changes in pay and pension benefits (not proposed here) and other changes that, according to CSXT, can directly transfer wealth from labor to carriers. CSXT accuses the unions of interpreting RLEA as disallowing any changes to collective bargaining agreements, not just changes that are designed to transfer wealth from labor to carriers.

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

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

---

[9] See Appendices A and B of the unions' reply filed June 29, 1995.

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

The parties dispute the relevance of section 11341(a). The unions question the Arbitrator's premise that modifications of collective bargaining agreements may be ordered pursuant to 49 U.S.C. 11341(a), on the grounds that section 11341(a) does not apply to transactions that are approved under our section 10505 exemption authority.[15] In response, CSXT argues that, first, the Arbitrator did not rely exclusively on section 11341(a) but also relied on section 11347, and, second, that the Arbitrator related the changes to Finance Docket No. 28905 (the common control proceeding), which was not approved via an exemption under section 10505.

DISCUSSION

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

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

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

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

The Arbitrator's finding of linkage was not egregious error. The purpose of the changes is to ensure that CSXT ceases to operate as a collection of separate railroads and fully enjoys the operational economies of being a unified system.[16] The

---

[15] We have asserted two statutory grounds for modification of collective bargaining agreements: section 11347, the statutory basis of New York Dock; and section 11341(a).

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

opportunity to make these changes was created by an entire series of decisions. These began with the 1963 and 1967 decisions that brought the B&O, C&O, and WM under common control and ended with the 1992 decision that formally merged the RF&P into the CSXT system.[15] All of these decisions played a role in creating the opportunity for CSXT to coordinate operations in the proposed Eastern District by use of a single pool of employees. This opportunity cannot be attributed solely to any individual decision in this series of decisions.

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

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

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

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

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

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

---

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

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

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

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

(a) Territorial differences. The Arbitrator found that the changes proposed by CSXT here do not involve the same territory or property involved in the prior agreements.[19] We have no

---

[19] In making this finding, the Arbitrator distinguished an earlier arbitration award where Arbitrator Harris found to the contrary (Award at 19):

> The Unions cite a 1994 award rendered by Neutral Robert O. Harris in a case between the UTU and CSXT (involving Carrier's notice to coordinate work performed on the C&O and the Louisville and Nashville Railroad Company) in support of its contention. Arbitrator Harris found that because of an earlier implementing agreement involving the same properties, CSXT was precluded from asking for de novo arbitration to coordinate property subject to an implementing agreement which, by its express terms, may only be changed pursuant to the RLA. The Carrier has appealed the Harris award to the ICC.
>
> It appears that Arbitrator Harris concluded that an implementing agreement may not be changed in a second coordination of the same properties except in accordance with the terms of the implementing agreement. However, CSXT and or its predecessors agreed to implementing agreements involving the WM and the RF&P. Evidently, there were no implementing agreements involving the B&O and the C&O. Since over 80% of the territory the Carrier now proposes to coordinate involves former B&O and C&O property the Carrier is not now seeking coordination of "the same properties" which were subject to earlier implementing agreements, in this Arbitrator's judgment.

reason to question this finding, much less to find it egregiously wrong.[20]

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

(b) Past dealings. The Arbitrator also implied that past dealings show that the RLA requirement was not intended to bar the instant coordination.[21] Under general contract law, the intent of parties to an agreement can be ascertained from a course of dealing or usage of the trade. Custom and usage, as reflected in the arbitration agreements cited by CSXT, contravenes the contention that RLA procedures are required for subsequent coordination efforts under New York Dock.[22] The

---

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

1. The WM trackage involved in the two 1983 agreements coordinating operations on the WM and the B&O only partially overlaps the WM trackage at issue here. Part of the WM trackage involved in the 1983 agreements seems to have been abandoned.

2. The B&O track involved in the 1992 agreements coordinating operations on the RF&P and the B&O ran from Potomac Yard to Baltimore and Philadelphia and from Potomac Yard west to Brunswick and east again to Baltimore, a small subsegment of the B&O track involved here. Unlike the agreements at issue here, the 1992 agreements did not involve C&O track.

[21] The Arbitrator stated (Award at 20):

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

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

(continued...)

awards cited by CSXT, going back over 30 years, show that neither party had any reason to view this language as restricting CSXT's ability to invoke New York Dock to implement future operational changes, an ability that CSXT would not have readily given up. This usage history is consistent with CSXT's position that the language is boilerplate language that provides merely that matters touched upon in implementing agreements can be changed pursuant to transactions that do not require our approval without going through New York Dock procedures.

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

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

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

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

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

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

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

---

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

changes sought by CSXT would improve efficiency,[23] a factual finding entitled to deference under our Lace Curtain standard. CSXT has supported its claims that merging the separate seniority rosters into one will produce real efficiency benefits: see volume III of the Appendix of Exhibits to the Petition of CSXT, Tab B at 8-12. Improvements in efficiency reduce a carrier's costs of service. This is a public transportation benefit because it results in reduced rates for shippers and ultimately consumers. The savings realized by CSXT can be expected to be passed on to the public because of the presence of competition. Where the transportation market for particular commodities is not competitive, regulation is available to ensure that cost decreases are reflected in rate decreases. Moreover, increased efficiency and lower costs would enable CSXT to increase traffic and revenue by enabling that carrier to lower its rates for the service it provides or to provide better service for the same rates. While the railroad thereby benefits from these lower costs, so does the public.

The changes sought by CSXT do not appear to be a device merely to transfer wealth from employees to the railroad. Indeed, there does not appear to be a significant diminution of the wealth of the employees. The extent of unionization will not change. The reduction in labor costs will occur through more efficient use of employees and equipment, not by any reduction in current hourly wages and benefits.[24] In order to use employees more efficiently, CSXT will require some employees to work different territories and report to different staging areas. Some employees may have to move. Moving expenses are a benefit under our New York Dock compensation formula.

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

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

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

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

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

---

[23] See note 16, above.

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

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

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

We must also determine whether the CBA provisions to be changed--(1) "scope" provisions governing "ownership" of work;[21] and (2) seniority provisions--are "rights, privileges, and benefits" that must be preserved. The D.C. Circuit Court remanded RLEA to permit the Commission to define the meaning and scope of the phrase "rights, privileges, and benefits" in section 405 of the Amtrak Act as incorporated into 49 U.S.C. 11347. 987 F.2d at 814.

The history of the phrase "rights, privileges, and benefits" indicates that it has traditionally meant what it implies--the incidents of employment, ancillary emoluments or fringe benefits--as opposed to the more central aspects of the work itself--pay, rules and working conditions. The genesis of section 405 of the Amtrak Act was the Urban Mass Transit Act of 1962 (UMTA), which authorized federal financial assistance to state and local governments for the improvement of urban mass transit systems. Section 13(c) of that Act (now codified as 49 U.S.C. 5333(b)) required the Secretary of Labor to certify as "fair and equitable" arrangements to protect affected employees. The first requirement of section 13(c) for a "fair and equitable" arrangement was "the preservation of rights, privileges, and benefits under existing collective bargaining agreements or otherwise."

Since no UMTA financing could be completed without the Secretary of Labor's section 13(c) certification, a model protective agreement was developed to permit rapid and dependable processing of applications. The current regulations of the Department of Labor provide that the Secretary will certify pursuant to section 13(c) if the parties adopt the Model Agreement. 29 CFR 215.6. Paragraph 10 of the Model Agreement sets forth the type of rights, privileges, and benefits that are "preserved" (emphasis added):

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

---

[21] See ATDA, 26 F.3d at 1160-61 for discussion of scope provisions.

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

We believe that this is compelling evidence that the term "rights, privileges, and benefits" means the "so-called incidents of employment, or fringe benefits," Southern Ry. Co.--Control--Central of Georgia Ry. Co., 317 I.C.C. 557, 566 (1962), and does not include scope or seniority provisions.

In any event, the particular provisions at issue here do not come within "rights, privileges, or benefits" because they have consistently been modified in the past in connection within consolidations. This may well be due to the fact that almost all consolidations require scope and seniority changes in order to effectuate the purpose of the transaction. Railway Labor Act bargaining over these aspects of a consolidation would frustrate the transactions. The ATDA court looked to past conduct in consolidations when it ruled that scope rules were not among those provisions protected as "rights, privileges, and benefits." 26 F.3d at 1163. The court relied, in part, on CSX Corporation--Control--Chessie System, Inc. and Seaboard Coast Line Industries, Inc., 6 I.C.C.2d 715, 736, 742 (1990) (Carmen II), and its recitation of the power of arbitrators under the Washington Job Protection Agreement of 1936 and pre-1976 labor conditions.

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

The unions argue that section 2 of New York Dock gives employees a right to retain their existing union representation. The coordination will require WM engineers, currently represented by UTU, to work under the agreement that BLE negotiated with the B&O rather than their current agreement. The effect of our transactions on selection of union membership is under the jurisdiction of the National Mediation Board acting under the Railway Labor Act. Fox Valley & Western Ltd.--Exemption Acquisition and Operation--Certain Lines of Green Bay and Western Railroad Company, Fox River Valley Railroad Corporation, and the Ahnapee & Western Railway Company, Finance Docket No. 32035 (Sub-No. 1) (ICC served Dec. 19, 1994), slip op. at 7. Therefore, we find that the issue of which union is to represent WM engineers or receive them as dues-paying members does not involve a right that must be preserved under section 2 of New York Dock.

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

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

CONCLUSIONS

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

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

It is ordered:

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

2. This proceeding is discontinued.

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

(SEAL)

Vernon A. Williams
Secretary

APPENDIX
CSXT's Statement of Changes Under Section 4 of New York Dock[1]

Article I

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

Jeff Wall
Vice President, Labor Relations

500 Water Street
Jacksonville, FL 32202

VIA EMAIL

September 22, 2026

Joe Bennett
General Chairperson
International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division
3560 Cardinal Point Drive, Suite 201
Jacksonville, FL 32257

Brian Killough
General Chairperson
International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division
3560 Cardinal Point Drive, Suite 201
Jacksonville, FL 32257

Travis Raynes
General Chairperson
International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division
1319 Chestnut Street
Kenova, WV 25530

Richard Lee
General Chairperson
International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division
12443 San Jose Blvd., Suite 701
Jacksonville, FL 32223

Gentlemen:

CSX Transportation (CSX) intends to resume the New York Dock Section 4 consolidation of separate Train Service Employee territories and workforces under a single system collective bargaining agreement.

As communicated in my letter of July 14, 2025, CSX withdrew, without prejudice, our initial January 31, 2025 New York Dock Section 4 consolidation notice due to a lack of productive engagement and the union's expressed concerns over then-pending arbitration with NMAD of Articles V, VI and VII of the 2022 National Agreement and the on-going Section 6 bargaining round.

The NMAD arbitration was concluded on September 3, 2025. On September 15, 2025, SMART-TD rejected CSX's offer to adopt the SMART-TD Section 6 tentative national agreement with the National Carriers' Conference Committee, and CSX therefore invoked the services of the National Mediation Board. A number of mediation sessions have been conducted, with CSX offering terms identical to those of the ratified pattern national agreements adopted by every rail union (including SMART-TD) during the 2025 bargaining round and expressing our willingness to consider alternatives on an equal value-for-value basis. Your committees have declined our offers and advanced proposals which materially depart from the pattern economic framework. We do not anticipate reaching an agreement in a timely manner under these circumstances.

Accordingly, CSX intends to move forward with the Section 4 consolidation process. Enclosed please find a Notice served pursuant to Article I, Section 4 of the New York Dock conditions imposed in STB Finance Docket Nos. 28905 and 33388. As explained in the Notice, CSXT is proposing to consolidate and coordinate all train operations, employees, and related facilities in the territories within the Northern Mid-Atlantic District, Consolidated Southern Region, and Baltimore and Ohio Chicago Terminal Railroad Company to create a system-wide territory for train operations. All trainmen would be placed on a consolidated system roster per the attached proposed Implementing Agreement and be placed under a single collective bargaining agreement, which CSXT proposes shall be a modified version of the Consolidated Southern Region Agreement, also attached.

New York Dock Section 4 provides that within five days of your receipt of this Notice, the parties should agree on a time and place for an initial conference to begin negotiations. The Carrier proposes to begin negotiations via videoconference at 10:00 a.m. EDT on September 30, 2026. Please let me know your availability no later than close of business September 28, 2026.

Sincerely,



cc: Mike Cory
Riz Chand
Liza Griffin
Jeremy Ferguson, President, SMART-TD
Jamie Modesitt, Vice President, SMART-TD

ARU/BLET

Addendum J

Transportation Law Journal Articles – William G. Mahoney

Articles

The Interstate Commerce Commission/Surface Transportation Board as Regulator of Labor's Rights and Deregulator of Railroads' Obligations: The Contrived Collision of the Interstate Commerce Act with the Railway Labor Act

William G. Mahoney*

TABLE OF CONTENTS

I. The Congress and Railroad Labor Relations 245
II. The Congress and the Protection of Employee Interests... 251
III. The Congress Deregulation 262
IV. The ICC and the Protection of Employee Interests..... 264
V. The ICC as Labor Relations Expert..... 275
VI. From Regulator of Railroads to Regulator of Labor..... 300

* William G. Mahoney is a founding partner in the law firm of Highsaw, Mahoney & Clarke, P.C. He holds a law degree from the University of Notre Dame Law School. He has represented railroad and airline unions in state and federal courts and is counsel for the Railway Labor Executives Association. He has been involved in various legislative campaigns including participating in the drafting of a number of statutes and amendments to statutes affecting railroad and airline labor relations as well as representing the rail unions in the negotiation of the legislation and agreements that created and privatized Conrail.

Published by Digital Commons @ DU, 1996

For almost a century the predecessor of the Surface Transportation Board, the Interstate Commerce Commission ["STB" and "ICC"], regulated the financial and economic aspects of the railroad industry. For most of the latter half of that century, when the ICC approved railroad for financial transactions (mergers, stock controls, purchases of railroad assets, leases, trackage rights agreements), it imposed upon individual railroads seeking that approval conditions for the protection of the interests of their employees which the approval might affect. Then in late 1983, without benefit of legislative or judicial sanction, the Commission reversed course and began to protect the interests of the railroads against those of their employees, whether the employees' interests were protected by contract or by the Railway Labor Act. The ICC simply injected itself directly into the relationship between management and labor to the benefit of the former and to the decided detriment of the employee interests it was mandated to protect.

Prior to that time, the ICC had deliberately and very carefully avoided involvement in labor matters as being outside its jurisdiction and beyond its area of expertise.[1] The Commission's practical reasons for such avoidance would be evident to anyone who, for the first time, compared point, district and system seniority rosters; attempted to fathom the workings of a pool extra board; reviewed the work rules at a railroad terminal; or just read a railroad collective bargaining agreement. Unless one has had daily practical experience in the application of these key elements of the working relationship between railroad labor and management, one simply cannot make judgments about the extent to which modifications to any of those elements would affect the rights of individual employees or the operations of the railroads for which they work. Also, without knowledge of the content of the negotiations which culminated in a collective bargaining agreement and the consideration traded by the parties to reach that agreement, one cannot intelligently assess the effects of the removal from one party of its contract obligations to the other.

The Commission's reasons for expressly avoiding involvement in railroad labor relations matters for over 50 years were based not only upon its lack of knowledge and expertise, both legal and practical, but also upon Congress' acknowledged purpose in creating the ICC and in the duties and responsibilities Congress imposed upon that agency. The ICC was created as a reaction to abuses of the so-called "Robber Barons"

1. *Hearings on H.R. 7650 Before the House Committee on Interstate and Foreign Commerce*, 73rd Cong. 2d Sess. 54 (1934); Leavens v. Burlington N. Inc., 348 I.C.C. 962, 975, 976 (1977); Brotherhood of Locomotive Eng'r v. Chicago and N. W. Transp. Co., 366 I.C.C. 857, 861 (January 26, 1983). *See also*, Southern Ry.—Control—Central of Ga. Ry., 331 I.C.C. 151, 169-170 (1967).

of the late nineteenth century. The discriminatory rates charged farmers and other shippers had forced reaction from state legislatures, which enacted "Granger Laws" that were intended to end the rate-setting abuses of the railroads. At that time the railroads were the dominant economic force in this country.[2] The frenzy of railroad industry expansion between the end of the Civil War and the turn of the century, coupled with its absolute monopoly of transportation, led author-historian Henry Adams to describe his generation as one "mortgaged" to the railroads. He wrote:

> [S]ociety dropped every thought of dealing with anything more than the single fraction [of society] called a railroad system. This relatively small part of its task was still so big as to need the energies of a generation, for it required all the new machinery to be created—capital, banks, mines, furnaces, shops, powerhouse, technical knowledge, mechanical population, together with a steady remodeling of social and political habits, ideas and institutions to fit the new scale and suit the new conditions. The generation between 1865 and 1895 was already mortgaged to the railways, and no one knew it better than the generation itself.[3]

Other industry abuses included stock frauds, manipulation of financial markets[4] and corruption of public officials in connection with the building of the western railroads.[5] Congress stepped in and created the Interstate Commerce Commission in an attempt to end these industry abuses on a nationwide basis. The ICC was not authorized by the Act of February 4, 1887 (which created it)[6] to interfere in any way with the daily operations of individual railroads, but only in the pricing of their transportation services to their customers and in their intercorporate financial dealings.

In time, as the deplorable working conditions of railroad employees fomented labor unrest, which in turn threatened the economic fabric of the nation, Congress enacted a series of laws independent of the Interstate Commerce Act which sought a solution to that problem.[7] Its efforts culminated in the enactment of the Railway Labor Act of 1926.[8] How-

---

2. Between 1869 and 1889 the railroads laid 114,442 miles of main line track and 31,443 miles of other track. Shelton Stromquist, A GENERATION OF BOOMERS, THE PATTERN OF RAILROAD LABOR CONFLICT IN NINETEENTH CENTURY AMERICA, 7 (1987).

3. Henry Adams, THE EDUCATION OF HENRY ADAMS: AN AUTOBIOGRAPHY 240 (Boston, 1918), *as quoted* in STROMQUIST, 15.

4. CHARLES FRANCIS ADAMS, THE CHAPTERS OF ERIE (Osgood, 1871).

5. DEE BROWN, HEAR THE LONESOME WHISTLE BLOW (Simon & Shuster, 1977).

6. ICC Act of 1887, Ch. 104, § 1, 24 Stat. 379 (1887) (codified as amended in scattered sections of 49 U.S.C.).

7. The Arbitration Act of 1888, ch. 1063, 25 Stat. 501 (1888); Erdman Act of 1898, ch. 370, 30 Stat. 424 (1898); Newlands Act of 1913, ch. 6, 38 Stat. 103 (1913); Adamson Act of 1916, ch. 436, 39 Stat. 721 (1916);Transportation Act of 1920, Title III, Pub. L. No. 66-152, 41 Stat. 456 (1920) (codified as amended in scattered sections of 49 U.S.C.).

8. Pub. L. No. 69-257, 44 Stat. 577 (1926) (codified as 45 U.S.C. § 151 (1940)).

ever, as the Supreme Court has noted, that Act merely provided a process for dispute resolution; it was, and is, indifferent to the substantive terms of the parties' agreement which may be as favorable or unfavorable to labor or management as they choose.[9] When Congress did address itself directly to railroad labor concerns within the parameters of the Interstate Commerce Act or other laws involving railroads and their service to the public, it was to provide employees with the protection of their interests against the effects of railroad actions taken pursuant to those statutes.[10]

Yet, in late 1983, the ICC suddenly concluded, with little explanation and no reference to its history, that it had "expansive and self-executing authority to immunize an approved transaction from the Railway Labor Act and existing collective bargaining agreements"[11] and within two more years the Commission held that its orders, "not the RLA [Railway Labor Act] or the [collectively bargained] WJPA [Washington Job Protection Agreement], . . . govern employee-management relations in connection with the approved transaction."[12] Since 1983 those orders, without exception, have approved carrier-desired changes in employees' contractual and statutory rights over the objections of the affected employees.[13]

The 1983 and 1985 holdings of the ICC constituted a radical break with its traditional statutory role as viewed by the ICC itself,[14] the railroads[15] and their employees. In order to obtain some understanding of the Congressional approach to railroad labor relations and to evaluate the more recent ICC/STB assumption of the role of labor relations ex-

9. Terminal R.R. Ass'n of St. Louis v. Brotherhood of Railroad Trainmen, 318 U.S. 1, 6 (1942).

10. Emergency Railroad Transportation Act of 1933, ch. 91, §§ 1-17, 48 Stat. 211; The Transportation Act of 1940, Pub. L. No. 76-785, 54 Stat. 898 (1940); Urban Mass Transportation Act of 1964, Pub L. No. 88-365, 78 Stat. 302 (1964) (codified at 49 U.S.C. § 1601 *et seq.*) (1988 and 1993 Supp. V); Rail Passenger Service Act of 1970, Pub. L. No. 91-518, 84 Stat. 1327 (1970) (codified at 45 U.S.C. § 501 *et seq.* (1988)); Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, 87 Stat. 985 (1973) (codified as amended at 45 U.S.C. § 701, *et seq.* (1988)); Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31 (1976) (codified as amended in scattered sections of 45 U.S.C.); Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1897 (1980) (codified in scattered sections of 49 U.S.C.); Northeast Rail Services Act of 1981, Pub. L. No. 97-35. 95 Stat. 643 (codified as 45 U.S.C. § 1101, *et seq.)*; ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (codified as 49 U.S.C. § 14501, *et seq.*).

11. Denver and Rio Grande W. R.R. Co.—Trackage Rights—Missouri Pac. R.R. Co., Finance Docket No. 30000 (Sub-No. 18) (October 19, 1983) (not printed) ("DRGW").

12. Maine Central R.R.—Exemption from 49 U.S.C. 11342 and 11343, Finance Docket No. 30522 (Sept. 16, 1985) (not printed), *aff'd per curiam*, Railway Labor Executives' Ass'n v. I.C.C., 812 F.2d 1443 (D.C. Cir. 1987) (Table) ("Maine Central").

13. *See* cases cited *infra*, Section V and note 318.

14. *See* sources cited supra note 1, *infra*, pp. 269-271.

15. *See infra*, pp. 258-259.

pert, in addition to its traditional congressionally mandated role of transportation expert, one must examine the history of transportation, labor and deregulation legislation as that history relates to railroad employee interests.

I. The Congress and Railroad Labor Relations

Congressional interest in railroad labor relations has a long history dating well into the last century. It was born in the turmoil and bloodshed of the major railroad strikes of 1877, 1886 and 1888 along with the many lesser strikes of that time. The railroads utilized two types of government assistance in combating those strikes: first, they sought and obtained federal court injunctions against the strikes and related activity;[16] and, second, they sought and obtained the aid of federal troops to suppress the strikers.[17] The railroads successfully lobbied for the establishment of armories and federal military establishments in or near large population centers so that federal troops would be handy to put down "civil disturbances."[18] Following a bloody strike on the Chicago, Burlington & Quincy Railroad in 1886, Congress knew it had to do something to avoid these repeated disruptions to the commerce and economy of the nation.[19]

The first federal statute directly dealing with labor disputes, the Arbitration Act of 1888, was enacted one year after the Interstate Commerce Act.[20] It provided for investigation and voluntary arbitration of labor disputes, but no arbitrations were handled pursuant to its provisions. Then came the economic recession of 1893 and the Pullman Strike of 1894.

The Pullman Company maintained the company-owned town of Pullman, Illinois, near Chicago. The Pullman Company workers lived in this town and paid Pullman for their rent and their utilities. The Pullman Company imposed the rules by which the town was governed, and it was considered by some to be a model city: no saloons, no brothels, no public speaking and, no union activity.[21]

During the 1893 recession, Pullman cut jobs and wages by 25% to 40%. However, Pullman did not reduce its rents or its charges for utilities. At the time Pullman paid $.33 for one thousand cubic feet of gas and charged its tenants $2.25; it paid $.04 for one thousand gallons of water

16. Stromquist, *supra* note 2, at 19.
17. *Id.*
18. *Id.*
19. *Id.* at 27. Between 1881 and 1894 some 668 strikes occurred on the railroads. *Id.* 27.
20. The Arbitration Act of 1888, ch. 1063, 25 Stat. 501.
21. William Cahn, A Pictorial History of American Labor, 174 (1972).

and charged its tenants $.10.[22]

The situation became so serious that Governor John P. Altgeld of Illinois visited the town of Pullman, and then wrote a personal letter to George M. Pullman pleading for him to relieve the suffering of his employees. He closed his letter with these lines:

> I repeat now that it seems to me your Company cannot afford to have me appeal to the charity and humanity of the State to save the lives of your employees. Four-fifths of those people are women and children. No matter what caused this distress, it must be met.[23]

Pullman did nothing. The strike began in the spring of 1894.

As the strike broadened through employee boycotts of the use of Pullman equipment on other railroads, particularly in the West, U.S. Attorney General Richard B. Olney entered the picture. As a lawyer and legislative draftsman, Olney would have a significant impact on railroad labor relations into the Twentieth Century.

Prior to his cabinet appointment, Mr. Olney had been a leading attorney for and director of the Chicago, Burlington & Quincy Railroad. Still on the payroll of that railroad even as U.S. Attorney General, Olney quickly proved his worth. When Governor Altgeld refused to ask for federal troops, Olney had them called out over Altgeld's protest. Olney sought injunctions against the strikers as well as the unions and employees of other railroads who were boycotting Pullman equipment. His first theory was that the strike and boycott interfered with the U.S. mail, but if a national general strike of railroad workers was developing as it seemed to be, he considered that argument to be too narrow to obtain the relief he sought. He modified his arguments to rely upon the Sherman Anti-Trust Act and its prohibitions upon restraint of trade and interference with interstate commerce. Olney obtained broad injunctions based upon this theory and, using them, broke the strike.[24] Later, before the Supreme Court, Olney would shift his arguments once again, relying on the historic right of government to prevent public nuisances and obstructions of "public highways" which, it was argued, the railroads had become since the enactment of the Interstate Commerce Act.[25]

The Supreme Court decision in *In Re Debs,* upheld Mr. Olney's theories, virtually outlawing all future railroad strikes as obstructions of the public highways or interstate commerce.[26] Olney however, knew that a

22. *Id.*

23. *Id.*

24. Some of the injunctions issued during the strike and boycott included prohibitions against workers consulting with the heads of their unions. STROMQUIST, *supra* note 2, at 88.

25. *Id.* at 257-9.

26. 158 U.S. 564, 584-7 (1895) .

Supreme Court decision outlawing strikes would neither eliminate stikes or the severe labor unrest then prevalent throughout the industry. Moreover, to the surprise and shock of many of his colleagues, Olney believed that workers had the right to associate themselves into unions.

Shortly after he had won the *In Re Debs* case Olney submitted a proposed bill to the Congress in which he incorporated many of the recommendations of the Strike Commission appointed by President Cleveland to investigate the Pullman Strike along with many other ideas. For example, Olney proposed that since the government should be able to enjoin strikes, it should also be able to appoint receivers to operate railroads that were at fault in labor disputes and refused to correct the situation.[27]

Many of Olney's recommendations were incorporated into the Erdman Act of 1898, including a broad provision, Section 10,[28] which made it a misdemeanor for a carrier to require an employee, as a condition of employment, to promise to join or not join or to remain a member of a union; to blacklist employees;[29] to threaten employees with dismissal or unjustly discriminate against them, because of their membership in a union; or to require an employee to contribute to any type of fund. In 1908, Section 10 was declared unconstitutional by the Supreme Court on the ground that it deprived carriers of their freedom of contract (a right which the Court found to be protected by the Fifth Amendment) and was not justified by the Commerce Clause.[30] The Erdman Act covered only operating employees and telegraphers, as these crafts of employees were the most highly organized in late 1898.[31] It provided for government involvement through mediation before arbitration, and if mediation failed, voluntary, binding (for one year) arbitration. It made unions "parties" to the labor dispute and authorized them to select one member of the three-person arbitration panel.[32]

In 1899 a union requested mediation, but the railroads refused to participate, and the Act lay unused for eight years,[33] during which time there were some 105 strikes.[34] However, in 1906 the Southern Pacific sought the aid of the ICC Chairman and the Commissioner of Labor who were the designated Erdman Act mediators, to mediate a dispute with

27. STROMQUIST, *supra* note 2, at 260.

28. The Erdman Act, ch. 370, 30 Stat. 424, 425 (1898).

29. The blacklist had been an extremely effective weapon of the railroads after the Pullman Strike and Boycott with employees being required to change their names in order to secure railroad work. *See* STROMQUIST, *supra* note 2, at 274.

30. Adair v. U.S., 208 U.S. 161 (1908).

31. *Railway Labor Act*, 1995 A.B.A. SEC. OF LABOR AND EMPLOY. LAW 14.

32. The Erdman Act, ch. 370, 30 Stat. at 424, 425, §§ 2-3.

33. ABA, *supra* note 31, at 17.

34. *Id.* at 18.

the Brotherhood of Locomotive Firemen and Enginemen. Following the successful conclusion of that dispute, those officials resolved some 42 cases by mediation, arbitration, or a combination of the two over the next seven years.[35]

The Erdman Act was amended by the Newlands Act of 1913.[36] Like its predecessor, it applied only to operating employees and telegraphers. The Act created a permanent Board of Mediation and Conciliation consisting of a Commissioner, two other government officials, and an Assistant Commissioner.[37] In the four years of its existence, the Board was quite successful, as it entertained 71 disputes and helped resolve 52 by mediation and 6 by a combination of mediation and voluntary arbitration.[38] During its life, there were fewer than half a dozen strikes on the railroads, all of which were relatively minor.[39]

In 1915 the four operating brotherhoods began a movement for an 8-hour work day. President Wilson convened a conference of the parties and asked the unions to arbitrate. They refused. He then asked the railroads to agree to the 8-hour day. They refused. The unions set a strike date of September 4, 1916. The President went before Congress and requested enactment of an 8-hour law, a rate increase for the railroads, and a prohibition against strikes pending an investigation of the dispute. Congress enacted the 8-hour day, but rejected Wilson's other proposals.[40]

The railroads refused to implement the law and sought to have it declared unconstitutional. The Supreme Court held Congress' action to be constitutional because under the Commerce Clause the Congress could "compulsorily arbitrate [a] dispute" that labor and management could not "fix by agreement."[41] This holding became the basis for Congressional imposition of President Emergency Board recommendations in future years. Thus, from the time of enactment of the Arbitration Act of 1888 through passage of the eight-hour day, the Congress' only role in the regulation of relations between railroad labor and railroad management was to seek means of facilitating the voluntary resolution of railroad labor disputes. The ICC never entered the legislative picture.

Because the United States had entered World War I in desperate need of the services of a coordinated continental railway system which did not exist in 1917, on December 26, 1917, President Wilson ordered

35. *Id.*

36. The Newlands Act of 1913, ch. 6, 38 Stat. 103 (1913).

37. *Id.* at 104.

38. ABA, *supra* note 31, at 21.

39. *Id.*

40. *Id.* at 22.

41. Wilson v. New, 243 U.S. 332, 351-2 (1917).

the takeover of the railroads by the government[42] pursuant to the Army Appropriations Act of 1919.[43]

A Director General of the Railroads was appointed to operate the railroads. He, in turn, appointed Directors of Divisions, including a Division of Labor.[44] The results of the government's operation of the railroads between 1918 and 1920 had far-reaching effects upon the future of railroad labor relations in the United States.[45] For example,

- Wages, and to a large extent rules and working conditions, were standardized throughout the country,
- Negotiations between railroads and unions were conducted on a national basis,
- A National Board of Adjustment was created to consider all disputes involving "the interpretation or application of . . . agreements."[46]

After the war, the government had to decide what to do with the railroads. It was determined to return them to their owners, but "not to be operated in the future as they had been under the old system."[47] Among other things, there was a realization that the pre-war system had resulted in a hodge-podge rail network which had hindered war effort transportation and could not provide efficient service for shippers. Ultimately, the Transportation Act of 1920,[48] was signed into law on February 8, 1920.

The first two titles of the Act dealt with amendments to the Interstate Commerce Act, and Title III dealt with labor relations matters. The ICC was given greater control over the economic affairs of the railroads by regulating market entry and exit. The Commission was also to prepare a plan for the consolidation of the many railroad companies then operating into fewer, larger systems. Only future railroad merger or consolidation operations consistent with that plan could be approved by the ICC.[49]

Title III of the 1920 Act created the U.S. Railroad Labor Board, an agency wholly separate from the ICC. A number of the provisions and much of the language of Title III presaged the Railway Labor Act. For example: it required the carriers and their employees "to exert every reasonable effort . . . to avoid any interruption" to commerce;[50] it empha-

42. A.B.A., *supra* note 31 at 24-5.

43. Army Appropriations Act, ch. 8, 39 Stat. 619 (1919) (codified in scattered sections of 18 U.S.C. (1976)).

44. A.B.A. *supra* note 31, at 25-6.

45. *Id.* at 26-32.

46. The Boards successfully handled over 3500 cases with only 10 deadlocks. *Id.* at 32.

47. *Id.* at 34.

48. Transportation Act of 1920, Pub. L. No. 66-152, 41 Stat. 456 (1920).

49. A.B.A. *supra* note 31, at 35.

50. *Id.* at 36-7.

sized negotiation to resolve disputes; and, it authorized establishment of adjustment boards. Any disputes, including those involving wages, rules and working conditions, not resolved by negotiation could be submitted to an adjustment board and then appealed to the U.S. Railroad Labor Board.[51] The latter, as created by the 1920 Act, could hold hearings and issue decisions providing "just and reasonable" wages and working conditions, but its decisions were not binding, and its only power was the "moral constraint . . . of publication of its decision."[52]

While labor had agreed to abide by the Board's decisions, several large railroads, primarily the Pennsylvania Railroad, repeatedly violated or ignored its decisions.[53] Representative Alben Barkley reflected labor's feelings in an April 1924 statement:

> [U]p until November, 1923, there had been 148 violations of the decisions of the Railroad Labor Board by the carriers . . . . If an employee or group of employees is dissatisfied with the decision of the Railroad Labor Board all they can do is quit work. They either must abide by the decision or subject themselves to discharge by their employer, or quit work. In other words, the carrier has the means of enforcing the law against the employee by compelling him either to quit or to go on strike, while the employee has no remedy either legal or economic against the carrier who disobeys the orders of the commission except to strike.[54]

A spokesman for rail labor, D.B. Robertson, testifying before the Senate, described the Railroad Labor Board as a single-edged sword that had no effect upon railroad employers, but when used against their employees "is sharp and cuts deep."[55]

Following a national strike by shopcraft employees in 1922 and labor's boycott of Board procedures thereafter, it was clear that Title III had to be replaced. Indeed, in the election year of 1924, the platforms of both major political parties recognized the shortcomings of Title III and called for changes in its provisions.[56]

The change came about with the enactment of the Railway Labor Act of 1926.[57] Rail labor had submitted a bill to Congress in 1924, but Congress had not acted upon it. In late 1924, President Coolidge urged the carriers and the unions jointly to work out a procedure for labor peace. Labor and management met during 1925, and a draft bill similar

---

51. *Id.*
52. Pennsylvania R.R. v. RLB, 261 U.S. 72, 84 (1923).
53. A.B.A. *supra* note 31, at 38.
54. *Id.*
55. HARRY D. WOLF, THE RAILROAD LABOR BOARD 373 (1927), *quoting Hearings on S. 2646 Before the Senate Committee on Interstate Commerce*, 68th Cong. 233 (1924) (statement of D. B. Robertson).
56. A.B.A. *supra* note 31, at 43-4.
57. Railway Labor Act of 1926, ch. 347, 44 Stat. 577 (1926).

to the 1924 bill submitted by rail labor was agreed upon.[58] As Professor Charles Rehmus has said, the "underlying philosophy of the [RLA]. . . was, as it still is almost total reliance on collective bargaining for the settlement of labor-management disputes." [59] Congress strictly adhered to that philosophy in the intervening 70 years, even when in 1973 it forced the merger of the five bankrupt northeast railroads and parts of three other railroads which now comprise Conrail. In creating Conrail, Congress sought the consolidation of the agreements of each craft on each of the eight railroads into one agreement for each craft on Conrail, with suggested time limits for achieving the consolidations; but, it did not mandate the parties' agreements by any means other than negotiation.[60]

In dealing with management-labor relations, Congressional history is pristine in authorizing the creation, modification, or termination of contracts covering rates of pay, rules, and working conditions only by negotiation between the parties. The ICC was never mentioned in the legislation creating our national rail labor policy, and the agencies which were mentioned and were authorized to implement that policy were provided no authority to devise or change the terms of rail labor contracts, whether directly or by means of compelling interest arbitration.[61]

II. The Congress and the Protection of Employee Interests

Beginning in 1933, the Congress enacted a series of laws to improve the finances and services of the railroad system in the United States. These laws were not addressed to the ongoing relationship between rail management and labor. They did, however, contain provisions directed to the protection of the interests of employees which might be affected by implementing the laws.[62]

The first example of a direct and specific provision for the protection of railroad employees is to be found in the Emergency Railroad Trans-

58. Charles M. Rehmus, The Railway Labor Act at Fifty 7-8 (GPO 1977) (published under the auspices of the National Mediation Board).

59. *Id.* at 8. *See also* Detroit and Toledo Shore Line R. Co. v. United Transportation Union, 396 U.S. 142 (1969). For a detailed discussion of the development, meaning and effect of the Congressional policy of complete voluntarism of in railroad labor relations culminating in the enactment of the Railway Labor Act, *see* Lawrence S. Zakson, *Railway Labor Legislation 1888 to 1930*, 20 Rutgers L.J. 317 (1989).

60. Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, 87 Stat. 985 (codified in scattered sections of 45 U.S.C. (1988)).

61. The National Mediation Board and the National Railroad Adjustment Board are both authorized to implement national rail labor policy.

62. Congress has expressed a concern for railroad employees for almost a century in its attempts to shield them from arbitrary and unilateral acts of employers. *See* Rehmus *supra* note 58, at 1-22.

portation Act of 1933.[63] This law was enacted in a time of great financial peril for the railroad industry. It was passed to save certain railroads from bankruptcy and to perpetuate an efficient means of railroad transportation in the United States.[64] In the words of the district court in *Louisville,* the 1933 Act evidenced "the announced policy of the Government to render assistance to all carriers and keep their heads above water until calmer times appeared".[65]

Certain provisions of the 1933 Act amended the merger provisions of the Transportation Act of 1920. Other provisions of the 1933 Act provided for the appointment of a federal coordinator of railroad transportation who was charged with the duty of encouraging, promoting, or requiring action on the part of railroads to avoid unnecessary duplication of their services and facilities and promote financial reorganization. There was also provision for the immediate study of other means of improving conditions surrounding railroad transportation.[66] All actions taken to carry out the purposes of the 1933 Act were governed by Section 7(b) which provided:

> The number of employees in the service of a carrier shall not be reduced by reason of any action taken pursuant to the authority of this title below the number as shown by the pay rolls of employees in service during the month of May, 1933, after deducting the number who have been removed from the pay rolls after the effective date of this Act by reason of death, normal retirements, or resignations, but not more in any one year then 5 percentum of said number in service during May, 1933; nor shall any employee be deprived of employment such as he had during said month of May or be in a worse position with respect to his compensation for such employment, by reason of any action taken pursuant to the authority conferred by this title.[67]

Section 7(b) of the 1933 Act clearly provided that in mergers or other matters to which it applied, an employee must be given a job at least equivalent to his former position and compensation equal to that which he formerly received; in other words, he must be placed in no "worse position with respect to [his] . . . employment".

Section 17 of the 1933 Act provided that the provisions relating to

---

63. Emergency Railroad Transportation Act of 1933, ch. 91, §§ 1-17, 209, 48 Stat. 211 (1933).

64. Louisville and N. R. Co. v. U.S., 10 F. Supp. 185, 191 (N.D. Ill. 1934).

65. *Louisville,* 10 F. Supp. at 192.

66. Emergency Transportation Act of 1933, ch. 91, § 4, 48 Stat. at 212.

67. *Id.* at 213. Paragraph (d) of § 7 directed the Federal Coordinator of Railroads to require the railroads to compensate employees for financial losses caused by reason of moving to follow their work when it had been transferred:

> The Coordinator is authorized and directed to provide means for determining the amount of, and to require the carriers to make just compensation for, property losses and expenses imposed upon employees by reason of transfers of work from one locality to another in carrying out the purposes of this title.

the Federal Coordinator would expire on June 16, 1934, unless extended by proclamation of the President. The Act was extended to June 17, 1936, on which date it expired.

One month before the 1933 Act was to expire, an agreement was executed in Washington, D.C., by 85% of the major railroads in the United States and all of the standard railroad labor unions. This agreement was entitled "Agreement of May, 1936, Washington, D.C.". It is commonly referred to in the railroad industry as the "Washington Job Protection Agreement" (a misnomer, as it does not protect jobs), or the "Washington Agreement."[68] Much of the Washington Agreement was based upon provisions of the 1933 Act. Its purpose was to provide partial financial protection to employees who were deprived of their employment or otherwise adversely affected in their employment as a result of a "coordination"[69] and to provide by specific provision for the negotiation of a means of protecting employees in their seniority rights, and their place and type of work, before the railroad could take any action to affect them.

The expiration of the 1933 Act did not affect the merger provisions of the Transportation Act of 1920 which had amended the Interstate Commerce Act. Among these amendments, Section 5(4) of the Interstate Commerce Act permitted approval of a merger upon findings by the Commission that such merger would "be in harmony with and in furtherance of the plan for the consolidation of railway properties established pursuant to paragraph (3) and will promote the public interest".[70] The Commission had the power to approve a merger "upon the terms and conditions and with the modifications so found to be just and reasonable."

In 1939, the Supreme Court unanimously reversed a three-judge dis-

68. The WJPA provides a monthly "dismissal" allowance for those deprived of employment, or at the employeee's option, a "separation" allowance upon resignation; a monthly "displacement" allowance for retained employees who received reduced compensation; preservation of benefits attaching to previous employment; moving expenses when required to move to retain employment; and protection against loss on sale of home. The employee is protected up to five years depending upon length of previous service. Prior to the negotiation of the WJPA, the ICC had concluded that it had discretionary authority to impose, as a condition of its approval of a consolidation application, "just and reasonable requirements . . . in the interests of employees of the railways concerned." St. Paul Bridge & T. Ry.—Control, 199 I.C.C. 588, 596 (1934). After the Washington Agreement was negotiated, the Commission used that agreement as a model for its employee protective conditions. *See* U.S. v. Lowden, 308 U.S. 225 (1939).

69. A "coordination" is defined in section 2(a) of the Agreement as "joint action by two or more carriers whereby they unify, consolidate, merge, or pool in whole or in part their separate railroad facilities or any of the operations or services previously performed by them through such facilities."

70. Transportation Act of 1920, ch. 91, 41 Stat. 480, 482 (1920); Interstate Commerce Act of 1933, ch. 91, Title II, 48 Stat. 217-220 (1933).

trict court decision and affirmed the Commission's conclusion that Congress had empowered it under the Interstate Commerce Act to impose employee protective conditions as "just and reasonable conditions" in the public interest.[71] In its decision, the Court said:

> One must disregard the entire history of railroad labor relations in the United States to be able to say that the just and reasonable treatment of railroad employees in mitigation of the hardship imposed on them in carrying out the national policy of railway consolidation has no bearing on the successful prosecution of that policy and no relationship to the maintenance of an adequate and efficient transportation system.[72]

Soon after the Supreme Court rendered its *Lowden* decision, Congress enacted the Transportation Act of 1940.[73] This legislation, particularly Section 5(2), effected a considerable liberalization of the merger requirements of the Interstate Commerce Act. No longer would railroads seeking authority to merge be required to prove that their merger would be "in harmony with and in furtherance of" a national plan for railroad consolidation established by the Commission or would "promote" the public interest. The railroads now need only show that the merger would be "consistent" with the public interest.[74]

Congress was thoroughly familiar with the serious and extensive adverse effects which the railroads' utilization of Section 5(2) would have upon railroad employees. Therefore, in enacting those provisions, Congress added a subparagraph (f) which required mandatory protection for railroad employee interests similar to those Congress had provided for such employees in the 1933 Act. Specifically, Congress provided that employees could not be placed "in a worse position with respect to their employment" as a result of the use of the liberalized merger provisions for a period of at least four years after the merger had been approved.[75] These provisions protecting the interests of employees flowed directly from the Congressional policy of encouraging mergers deemed to be in the public interest, since advancement of that public interest clearly would have an impact on railroad workers. The protections remained unchanged until 1976.

In 1964 the Congress, faced with the collapse of privately owned ur-

71. United States v. Lowden, 308 U.S. 225 (1939).

72. *Id.* at 234.

73. Transportation Act of 1940, Pub. L. No. 76-785, 54 Stat. 899 (1940) (codified in scattered sections of 31 U.S.C. and 49 U.S.C.).

74. *See* County of Marin v. U.S., 356 U.S. 412, 416-17 (1958) ("The congressional purpose in the sweeping revision of § 5 of the Interstate Commerce Act in 1940, enacting § 5(2)(a) in its present form, was to facilitate merger and consolidation in the national transportation system.").

75. Transportation Act of 1940, Pub. L. No. 76-785, 54 Stat. 906 (1940) (codified in scattered sections of 31 U.S.C. and 49 U.S.C.).

ban bus, transit and rail commuter systems throughout the country, enacted the Urban Mass Transportation Act of 1964.[76] Congress' purpose was to provide federal assistance to support continued mass transit. Again, aware that promotion of public interest would affect employees, Congress balanced its action by providing protections for affected employees. Section 10(c) of that Act, later renumbered Section 13(c), provided not only for protection of the economic interests of employees by guaranteeing them protections no less beneficial than those established by the ICC under Section 5(2)(f), but five additional protections, only one of which was specifically set forth in the Interstate Commerce Act:

1. preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;
2. continuation of collective bargaining rights;
3. protection of individual employees against a worsening of their positions with respect to their employment [similar to the requirement in section 5(2)(f)];
4. assurance of employment to employees of acquired mass transportation systems and priority of re-employment of employees terminated or laid off;
5. paid training or retraining programs.[77]

In 1970, when confronted with the ever-worsening rail passenger service crisis, Congress created Amtrak through the enactment of the Rail Passenger Service Act of 1970 [hereinafter "RPSA"].[78] Congress had been apprised of the adverse effects this legislation would have upon railroad employees and required each contract between Amtrak and each railroad transferring its passenger service obligations to Amtrak to provide protections for the interests of its employees.[79] The Congress lifted virtually verbatim the employee protection language found in the Urban Mass Transportation Act and placed it in Section 405 of RPSA. Section 405(a) of that Act,[80] provided that a "railroad shall provide fair and equitable arrangements to protect the interests of employees affected by discontinuance of intercity rail passenger service . . .," and Section 405(b),[81] amplified the directive in subsection (a) by mandating that such "protective arrangements shall include, without being limited to, such provisions as may be necessary" to accomplish the same five objectives as set forth

76. Urban Mass Transportation Act of 1964, Pub. L. No. 91-518, 78 Stat. 302 (codified at 49 U.S.C. §§ 1601-25) (1988 and Supp. V 1993).

77. Identical employee protective provisions were enacted into the High Speed Ground Transportation Act of 1965, 49 U.S.C. § 1636(a).

78. Rail Passenger Service Act, Pub. L. No. 91-518, 84 Stat. 1327 (1970).

79. Section 405(a) of RSPA; 45 U.S.C. § 565(a).

80. 45 U.S.C. § 565(a).

81. 45 U.S.C. § 565(b).

in Section 13(c) of the Urban Mass Transportation Act listed above. Moreover, that subsection, like Section 13(c), further provided:

> Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to Section 5(2)(f) of the Interstate Commerce Act.

Finally, Congress entrusted the Secretary of Labor with the responsibility of certifying whether the protective arrangement afforded affected employees "fair and equitable protection . . . ."[82]

Rail labor and management were unable to agree upon a protective formula under section 405, and on April 16, 1971, President Nixon's Secretary of Labor, James D. Hodgson, promulgated a protective arrangement and certified that it complied with the statutory mandate.[83] That arrangement, which was designated Appendix C-1 to the National Railroad Passenger Corporation [Amtrak] Contract, expressly provided those levels of protection specified in section 405(b)(1) through (5) of the RPSA and contained certain protections which exceeded in several respects the protections the ICC was providing under section 5(2)(f): First, article 1, sections 5 and 6 of Appendix C-1 extended the protective period from five to six years for employees with six or more years of service; second, in the arbitration of disputes on the issue whether an employee had been "affected," article 1, section 11(e) placed the burden of proof upon the carrier after the employee had merely "[identified] the transaction and [specified] the pertinent facts . . . relied upon;"[84] and, finally, article 1, sections 5 and 6, provided that the monthly guarantee should be increased by general wage increases during the protective periods.

The most notable deficiency of Appendix C-1 from the employees' viewpoint was that, while it required carriers to give notice before they consummated a transaction,[85] it permitted the carriers to consummate the transaction before they executed an implementing agreement.[86] Also, Appendix C-1, unlike the WJPA portion of the *New Orleans* conditions[87] then being imposed by the Commission, limited the protective period for

---

82. *Id.*

83. *See Review and Refunding of RPSA: Hearings on House Committee on Interstate and Foreign Commerce*, 92nd Cong. 331 (1971) (Statement of James D. Hodgson) [hereinafter, "Hearings on RPSA"]; *See also* Congress of Railway Unions v. Hodgson, 326 F.Supp. 68 (D.D.C. 1971).

84. *See* Affidavit of Secretary Hodgson, *Hodgson*, 326 F.Supp. 68 (D.D.C. 1971), at para. 9(i).

85. Art. 1, § 4.

86. *Id.*

87. *New Orleans*, the immediate predecessor of the *New York Dock* conditions, simply incorporated by reference a slightly modified WJPA and, in addition, for the first four years following ICC approval, superimposed upon WJPA the so-called *Oklahoma* conditions. These

a displaced employee who had less than six years of service (art. 1, section 1(d)). Unlike the *Oklahoma* portion of the *New Orleans* conditions, Appendix C-1 required an employee to relocate before he became a "dismissed" employee (Article 1, section 1(c)). Appendix C-1 limited the protective period of the fringe benefits protections to six years, or to the period of the employee's length of service, if less.[88]

Several unions brought suit against Secretary Hodgson and others to enjoin Amtrak from taking over the rail passenger service on May 1, 1971. They asserted that Appendix C-1 did not comply with the mandatory requirements of Section 405(b) of the RPSA.[89] On April 30, 1971, the District Court, after reviewing Secretary Hodgson's affidavit which cured all the defects complained of but one, denied the unions' request for a preliminary injunction. In so doing, the Court concluded that, in the unusual circumstances of that case, particularly the statutory deadline of May 1, 1971, for Amtrak to take over passenger service, the failure of the Secretary to include the precise language of Sections 4 and 5 of the WJPA did not invalidate the provisions certified.[90] Appendix C-1 and the equivalent protective arrangement applicable to employees of Amtrak (Appendix C-2) continue in place for the protection of employee interests affected by discontinuances of intercity rail passenger service.[91]

Between 1959 and 1970, many railroad merger and control cases were approved by the Commission in which the unions and managements involved had agreed to guarantees of lifetime employment in return for a management right to transfer work and employees throughout the merged system.[92] In 1973, the Congress extended the protection of employee interests by providing lifetime attrition-type protection to employ-

---

conditions required 100% compensation for "dismissed" employees instead of WJPA's 60%. The proceedings in which these conditions were promulgated are described *infra*, pp. 267-268.

88. *Compare* WJPA section 8 *with* Appendix C-1, Art. 1, § 8.

89. *Hodgson*, 326 F.Supp. at 75.

90. *Id.* at 76.

91. Section 405 has been amended over the years to restrict the application of Appendix C-2 and is currentlly the subject of pending legislation that would repeal it.

92. In the numerous merger and control cases which began with the *Norfolk & Western—Virginian* merger case in 1959 and ended in 1972 when the *Penn Central* met with disaster, labor and management executed so-called attrition agreements in which the railroads provided guarantees of lifetime compensation and employment in return for the right to move employees and their work from one formerly independent railroad property to another throughout the merged or commonly-controlled systems. Norfolk & Western Railway Company—Merger, etc., Virginian Railway Company, 307 I.C.C. 401, 439 (1959); Chicago & N.W. Ry. Co.—Purchase—Minneapolis & St. L. Ry. Co., 312 I.C.C. 285, 296 (1960); Norfolk & W. Ry. Co. and New York, C. & St. L. R. Co.—Merger, 324 I.C.C. 1, 50 (1964); Atchison, T. & S. Ry. Co.—Merger, 324 I.C.C. 254, 255, 261 (1965); Pennsylvania R.R. Co.—Merger—New York Central R.R. Co., 328 I.C.C. 304, 313 (1966); Great Northern Pac.—Merger—Great Northern, 331 I.C.C. 228, 277-279 (1967); Seaboard Coast Line R.R. Co.—Merger—Piedmont & N. Ry. Co., 334 I.C.C. 378, 384-385 (1969).

ees affected by the legislation creating Conrail.[93]

After the collapse of the Penn Central and other Northeast railroads, Congress enacted the Regional Rail Reorganization Act of 1973 (hereafter "3R Act"), to preserve the rail service in that region. Penn Central had agreed to lifetime protection for its employees, as had other merging railroads, and for the same reasons. During the course of the hearings on the 3R Act, representatives of labor and the managements of other railroads who had formed a committee to negotiate and submit to Congress for its consideration a statutory provision to replace the Penn Central attrition agreement, testified before the Senate Committee on Commerce. The labor witness testified that in reaching agreement with the railroads on this proposed statutory provision, which became Title V of the 3R Act,[94] labor wished to assure to the corporation to be created [now Conrail] "the widest possible latitude . . . in getting . . . underway" by placing in the statute unprecedented provisions for transfer of employees and work as between all these various preexisting [railroad] corporations."[95] The provisions referred to became Section 503 of Title V of the 3R Act.[96]

Graham Claytor, then president of the Southern Railway System and a management witness, when questioned as to the reason for such extensive protection being accorded employees by the proposed Title V, testified that, in return for that protection, the railroads involved had been given "the right to trasfer [sic] people within their craft outside of their seniority district"; that "this is terribly important as a practical matter . . . .[w]ork can be transferred freely . . . you may close a shop here and concentrate all the work in another shop there." Mr. Claytor further stated that the freedoms to transfer work and employees "were the principal items that we [the railroads] . . . felt, principal reasons that we felt this agreement made . . . this new corporation [Conrail] a viable thing . . . ."[97] Significantly therefore, the relief granted Conrail's management from provisions in collective bargaining agreements (CBAs) was part of a special *agreement* between management and labor which was enacted into law by the Congress. Obviously, at the time the 3R Act was enacted,

93. Regional Rail Reorganization Act of 1973, Title V, Pub. L. No. 93-236, 87 Stat. 1012 (codified at 45 U.S.C., sections 701-797 (1988)).

94. 3R Act, Title V, Pub. L. No. 93-236, 87 Stat. 1012 (repealed). This protection was later modified by Congress in the Staggers Rail Act of 1980 and the Northeast Rail Service Act of 1981.

95. *Hearings before the Surface Transportation Subcommittee of the Committee on Commerce, U.S. Senate, on S. 2188 and H.R. 9142*, 93rd Cong. 952-53 (1973) (Testimony of William G. Mahoney) [hereinafter "*Hearings before the STS*"].

96. 3R Act, Pub. L. No. 93-236, Title V, 87 Stat. 1014 (1973) (codified in scattered sections of 45 U.S.C., §§ 701-797 (1988).

97. *Hearings before the STS supra* note 95, at 972-73.

no one in the railroad industry or in the three branches of government thought that modification of employee CBA rights by transfer of employees from one agreement to another or by consolidation of seniority rosters could be accomplished by compulsory arbitration, an ICC order, or by any means other than by voluntary negotiation between management and labor. The industry has never requested the Congress to provide it with such authority.

In February 1976, the Railroad Revitalization and Regulatory Reform Act of 1976 [hereinafter "4R Act"],[98] was signed into law. Section 402(a) of that Act amended former Section 5(2)(f) of the Interstate Commerce Act by inserting near the end of that provision the following sentence: "Such arrangement shall contain provisions no less protective of the interests of employees than those heretofore imposed pursuant to this subdivision and those established pursuant to section 405 of the Rail Passenger Service Act (45 U.S.C. 565)."

In Section 802 of the 4R Act, Congress enacted a new abandonment procedure for rail carriers. While prior to that amendment, the decision whether to impose protective conditions rested within the sound discretion of the Commission,[99] the new abandonment provisions made the imposition of employee protective provisions mandatory.[100] Moreover, that amendment also specified the minimum levels of protection which must be imposed in future abandonment cases: "Such provisions shall be at least as beneficial to such interests as provisions established pursuant to section 5(2)(f) of this Act and pursuant to section 405 of the Rail Passenger Service Act (45 U.S.C. 565)."

These two amendments for the first time expressly incorporated into the Interstate Commerce Act the five specific requirements for the protection of bargaining agreements, representation, retraining and employment rights as established by the Secretary of Labor under the Amtrak statute although most of those rights had always been considered untouchable by the ICC, as well as the railroads[101], except through negotiation. As minimum protection for employees, the amendments required the Commission to combine the more beneficial employee protections contained in the *New Orleans* conditions with those provided in Appendix C-1.[102] To meet the requirements imposed upon it by the 4R Act, the

98. Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31 (codified in scattered sections of 15, 31, 45, and 49 U.S.C.).

99. *See generally*, ICC v. Railway Labor Executives' Ass'n, 315 U.S. 373 (1942).

100. 49 U.S.C. § 10903(b)(2).

101. *See supra* note 93. *See also* Claytor Testimony *supra*, p. 258.

102. New York Dock Ry. v. United States, 609 F.2d 83, 94 (2nd Cir. 1979). In RLEA v. ICC, 930 F.2d 511, 517 (6th Cir. 1991) the Court held that Congress deliberately chose not to incorporate the protections established under Urban Mass Transit Act, but "directly incorporated" the protections of C-1.

ICC developed the *New York Dock* conditions[103] including a specific prohibition against interference with employees' Railway Labor Act and collective bargaining agreement rights. These conditions required:

> 2. The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroad's employees under applicable laws and or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes.[104]

From the date it promulgated its *New York Dock* conditions (February 11, 1979) to the date of its decision in DRGW (October, 1983), the Commission and *New York Dock* arbitrators interpreted and applied those conditions as they had its predecessors, that is, they uniformly recognized and adhered to the rule that employee collective bargaining agreement rights were not to be affected.

Between 1983 and 1995, the ICC presented a public image of nonactivity in virtually every area of its responsibilities except that dealing with the protection of employee interests.[105] There were calls for eliminating the Commission and the Interstate Commerce Act altogether as being unnecessary. The Congress, however, decided not to eliminate all of the functions of that agency but to severely curtail the jurisdiction the ICC then had over all forms of surface transportation.[106] In 1995, the agency itself was "terminated"[107] and a new agency was created as an independent agency within the U.S. Department of Transportation.[108] The new law neither expanded nor contracted the coverage of employers and employees by the Railway Labor Act and other railroad labor laws.[109] The new Surface Transportation Board, as it was named, became the successor to the ICC on January 1, 1996, with the same members and address, but with its staff reduced. Its duties were far fewer than those of its predecessor in terms of regulating transportation industries, but Congress made no changes in the substantive protections it had provided employees of Class I carriers involved in merger, control, lease, and other

103. *Id. See also* New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979).

104. 360 I.C.C. at 84 and 99. *See also* ICC's statement in its original *New York Dock* decision that a special provision to protect subcontracting agreements was unnecessary because of the existing broad contract preservation language of Art. I, § 2. *Id.* at 73.

105. *See infra* Section V.

106. ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 804 (codified at 49 U.S.C. § 14501, *et seq.*).

107. *Id.*

108. *Id.* at 109 Stat. 932-33.

109. *Id.* at 109 Stat. 808.

financial transactions or in abandonments.[110] It did modify protections for employees of Class II and Class III carriers[111] (in transactions involving such carriers) to "one year of severance" pay to be reduced by the amount of earnings an affected employee receives from "the acquiring carrier during the 12-month period immediately following the effective date of the transaction."[112] The Congress also excluded employees of Class III carriers from protection.[113] A provision was added, however, that prohibits a transaction involving a Class II carrier and one or more Class III carriers from "having the effect of avoiding a collective bargaining agreement or shifting work from a rail carrier with a CBA to a rail carrier without a CBA."[114]

The employee protections in abandonment cases under the Interstate Commerce Act as amended by the 4R Act remained unchanged.[115]

There is no indication in the entire history of Congressional handling of the subject of employee interests that Congress intended to authorize the ICC or its successor to involve itself in the area of labor relations and collective bargaining agreements. To the contrary, Congress refused to permit such involvement when it created the Railway Labor Act in 1926 and even when Congress considered the consolidation of labor agreements to be essential to the resurgence of rail service in the Northeast[116] and, in its latest enactment (the "ICC Termination Act of 1995")[117], when Congress removed monetary protections from employees on Class III railroads and encouraged virtual regulatory freedom in the consolidation of Class II and III carriers.[118]

Railroads have been subject to federal regulation for more than 100 years,[119] and during virtually that same period Congress has also regulated to some extent railroad labor relations.[120] And although rail regula-

110. *Id.* at 109 Stat. 824, 842-43.

111. Carriers by railroad are classified by the ICC/STB in accord with their annual revenues: Class I, $250 million or more; Class II, between $20 million and $250 million; and, Class III, $20 million or less. 49 CFR Pt. 1201-A, 1-1.

112. 49 U.S.C. § 11326(b).

113. 49 U.S.C. § 11326(c).

114. 49 U.S.C. § 11324(e).

115. ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 824 (codified at 49 U.S.C. § 14501, *et seq.*).

116. Congress rejected a proposed amendment to the RLA which would have empowered the ICC to reject CBAs which the ICC considered as not to be in the public interest. *History of the Railway Labor Act,* 1988 A.B.A. SEC. LAB. & EMP. REP. 89-90; *see also*, S. 606, 69th Cong. 5-6 (1926); as to its refusal to compel consolidation of CBAs in the creation of Conrail, *see supra* text accompanying notes 94-98.

117. *See supra* note 115.

118. *See supra* text accompanying notes 111-114.

119. Interstate Commerce Act, ch. 104, 24 Stat. 379 (1887) (codified at 49 U.S.C. § 1, *et seq.*).

120. *See supra* note 10.

tion became more extensive after the railroads were returned to private ownership by the Transportation Act of 1920,[121] Congress consistently refused to authorize the ICC to exercise any control over labor relations matters, even though that control had been proposed on several occasions.[122] The legislative records of the enactment of employee protection provisions from 1933 to 1995, as well as the language of the enactments themselves, contain no suggestion by Congress or anyone else that those protective provisions could be used to override any of the rights protected or conveyed by the Railway Labor Act or collective bargaining agreements or any statutory or contractual provisions.[123] As just discussed, the actions of the ICC and the railroads during this period affirm the absence of any such intent.

III. The Congress and Deregulation

In the late 1950's, the 1960's and 1970's it was widely held—and not without reason—that the railroad industry was being stifled, if indeed not strangled, by regulations imposed by the federal and state governments. Abandonments of unprofitable railroad lines, mergers, and control cases sometimes took years to process and required the employment of scores of transportation experts in various specialities along with a virtual army of lawyers. Passenger train service, always a money-losing operation, was extremely difficult to discontinue because jurisdiction was retained by state, not federal, agencies. A railroad wishing to discontinue the operation of a passenger train was required to obtain authority from each state in which the train operated. On occasion, a state agency would simply refuse to permit discontinuance regardless of the merit of the railroad's case.

The first effort to relieve that oppressive situation—although it was not considered "deregulation" at the time—is found in the swiftly enacted Transportation Act of 1958.[124] In 1958, the railroad industry persuaded Congress of the merit of transferring passenger train discontinuance authority away from the states.[125] Congress responded by including provisions in the 1958 Transportation Act which not only trans-

121. Transportation Act of 1920, Pub. L. No. 66-152, 41 Stat. 456 (1920).

122. *See infra*, pp. 269-271.

123. Until 1983, the ICC repeatedly agreed with this position despite the continued presence since 1920 of the predecessors of § 11341(a) [now § 11321(a)] on which ICC/STB now relies as exempting railroads from CBA obligations. In considering the "ICC Termination Act" two members of Congress, without analysis or discussion, echoed the post-1983 holding of the ICC/STB that it can override CBAs virtually at will. *See* 141 Cong. Rec. S19076 (daily ed. Dec. 21, 1995); 141 Cong. Rec. H12306 (daily ed. Nov. 14, 1995).

124. Transporation Act of 1958, Pub. L. No. 85-625, 72 Stat. 568 (1958) (codified as amended in scattered sections of 49 U.S.C.).

125. Among the statistics presented to Congress by the railroads was the claim that 15% of

ferred jurisdiction over interstate passenger train discontinuances from the states to the ICC, but also provided railroads with a unique right of appeal to the ICC from state agencies which had denied, failed to act, or delayed action upon applications to discontinue wholly intrastate trains (The public had no similar right or appeal if the state approved a railroad's appliction.).

The Congress also shifted the burden of proof in interstate train discontinuance cases from the applicant railroad to the public by permitting the railroads to abandon their trains upon filing a 30-day notice with the Commission, unless the Commission, after investigation, concluded that the continuation of the train's operation was required by the public convenience and was not unduly burdensome to interstate commerce.[126]

The 1958 Act resulted in an immediate and continuing deterioration in the quality and quantity of rail passenger service throughout the country.[127] By 1970, it was clear that this country had to choose between no rail passenger service at all or an underfunded attempt at revivifying its lifeless carcass. The attempt at resurrection was chosen and resulted in the creation of Amtrak through the enactment of the Rail Passenger Service Act of 1970.[128]

A few years after Amtrak began its first tentative steps as a passenger railroad, Congress decided it was time to consider reforming the law and the procedures governing the air carrier industry. It could not be denied that the regulation of this industry required reformation. The Administration of President Gerald Ford opposed outright deregulation of the industry and pressed for enactment of a regulatory reform act. When President Carter took office, and the chairmanship of the Civil Aeronautics Board passed from John Robson to Alfred Kahn, "regulatory reform" was discarded in favor of "deregulation" that was as total and complete as its advocates could make it. The result was the Airline Deregulation Act of 1978.[129]

While consideration was being given to regulatory reform in the air carrier industry, Congress also undertook consideration and enactment of the Railroad Rehabilitation and Regulatory Reform Act of 1976 [4R

---

the passenger train discontinuance applications, both interstate and intrastate, presented to state agencies were denied for political reasons. S. Rep. No. 1647 (1958).

126. *Supra* note 125, at 571-72.

127. The Commission repeatedly held railroads to have deliberately destroyed the quality of their passenger service in order to drive passengers away so they might abandon that service and invest in more profitable operations. *See e.g.*, Adequacies—Passenger Service—Southern Pacific Company Between California and Louisiana, 335 I.C.C. 415, 439-40, 453-56 (1969).

128. Rail Passenger Service Act, Pub.L. No. 91-518, § 101, *et seq.*, 84 Stat. 1328 (codified at 45 U.S.C. § 501, *et seq.*). The protections imposed by Congress to protect employee interests in the implementation of this statute were discussed *supra*, pp. 255-257.

129. 49 U.S.C. § 40101, *et seq.*

Act]. That statute, signed by President Ford on February 5, 1976,[130] provided the first steps toward railroad industry deregulation by reforming the procedures employed by the ICC to review applications involving abandonment, extension, and acquisition of rail lines and the consolidation of railroads through merger, control, lease, or acquisition of assets. In each of those areas, as it loosened or removed regulations governing railroads, Congress expanded and strengthened the protections provided employee interests.[131]

The 4 R Act was followed four years later by the Staggers Rail Act of 1980, which provided for partial deregulation of the railroad industry.[132] In the Staggers Act, Congress did not affect the increased protections it had afforded employees in the 4 R Act, and, indeed, it attached additional specific mandatory or discretionary employee protection provisions to each section of the Act in which it relieved railroads of specific ICC regulations.[133]

Recently the Congress further reduced regulation of the railroad industry by enactment of the somewhat inappropriately named "ICC Termination Act of 1995,"[134] but again did not affect railroad employee rights.[135]

IV. The ICC and the Protection of Employee Interests

The protection of the interests of employees adversely affected by ICC approval of railroad applications was not new in 1940 when the Congress mandated such protection. Since 1934, the Commission had recognized that the impact of an ICC-approved transaction upon employees was an integral part of the public interest to be considered in deciding whether to approve a transaction.[136] It imposed employee protective

130. *See supra* notes 99-106 and accompanying text.

131. 49 U.S.C. §§ 10326(a) and 10903(a)(2) (1978).

132. Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 (1980) (codified as amended in scattered sections of 49 U.S.C.).

133. 49 U.S.C. § 10505 (relief from all ICA requirements and ICC regulations except (1) employee protection and (2) prohibited intermodal ownership); 49 U.S.C. § 10706 lessened the need for rate bureaus but required Section 11347 employee protection; 49 U.S.C. § 10901 (construction of rail lines, discretionary employee protection); 49 U.S.C. § 11123 (limitations on issuance of car service, orders, required hiring of employees who had performed that work); 11 U.S.C. § 1170 (bankruptcy courts bound by Section 11347); Section 228 (liberalized merger provisions but left Section 11347 untouched; 49 U.S.C. § 10910 (sales of lines to "financially responsible persons for feeder line development, required use of employees who normally would have performed the work); 49 U.S.C. §§ 10903, 10904 (liberalized abandonment provisions, but required Section 11347 protection).

134. 49 U.S.C. § 10101, *et seq.* (1994).

135. *See supra* notes 107-119 and accompanying text.

136. St. Paul Bridge & Terminal Ry.—Control, 199 I.C.C. 588, 596 (1934). See also the ICC's first *Burlington Northern Merger* decision which rejected the merger because of its adverse ef-

conditions upon carriers which had to accept those conditions if they wished to implement their approved transactions.[137]

The ICC's 1934 decision in the *St. Paul Bridge* case was based upon the conclusion that its authority to approve a merger or consolidation upon just and reasonable terms and conditions included conditions for the protection of the interests of employees.[138] The Supreme Court agreed.[139]

Following the *St. Paul Bridge* case, the ICC was asked to impose protective conditions in a rail line abandonment case, but refused to do so, concluding that the statutory criterion for abandonments (public convenience and necessity) was narrower than the criterion established for mergers and consolidations (public interest).[140] The Supreme Court disagreed. It affirmed the three-judge district court which had reversed the ICC[141], holding that these two criteria should be given the same meaning.[142]

During the decade following the passage of the Transportation Act of 1940, the Commission slowly began to evolve what it deemed to be fair and equitable arrangements to protect railroad employees in the event of consolidations or mergers. At first, the Commission reserved jurisdiction to consider what protections, if any, should be imposed if it subsequently learned that railroad employees had in fact been adversely affected.[143] Then, in *Oklahoma Ry. Trustees—Abandonment of Operations*,[144] a Section 5(2) purchase proceeding, the Commission attached five detailed conditions to its approval which were intended to protect railroad employees. Those conditions were commonly referred to as the *Oklahoma*

---

fects upon employees and shippers. Great No. Pacific—Merger—Great Northern, 328 I.C.C. 460, 521, 522, 528 (1966).

137. In Chicago, St. Paul, Minneapolis & Omaha Ry.—Lease, 295 I.C.C. 696, 701 (1958), the Commission stated:

> [U]nder section 5 of the Act [now 49 U.S.C. § 11321, *et seq.*] we merely authorize or permit the applicant carriers to enter into a proposed transaction. We may not even compel the carriers to consummate an authorized transaction . . . .
>
> Under section 5(2)(f) of the Act [49 U.S.C. § 11326(a)], we are required to impose upon the carriers in each approved transaction conditions for the protection of railroad employees affected. But this section only authorizes the imposition of duties upon the carrier. It does not authorize us to direct the employees or organizations of employees to do anything . . . .

The permissive character of ICC/STB approval orders has not changed.

138. *See supra* note 68.

139. U.S. v. Lowden, 308 U.S. 225 (1939).

140. Pacific Electric Ry.—Abandonment, 242 I.C.C. 9 (1940).

141. Railway Labor Executives' Ass'n., et al. v. U.S., et al., 38 F.Supp. 818 (D.D.C. 1941) *aff'd sub nom.*, ICC v. Railway Labor Executives' Ass'n., 315 U.S. 373 (1942).

142. *Rail Labor Executives' Ass'n*, 315 U.S. at 376-78.

143. Minneapolis & St. L.R.R.—Reorganization, 244 I.C.C. 357 (1941).

144. Oklahoma Ry. Trustees—Abandonment of Operations, 257 I.C.C. 177 (1944).

conditions. They provided that the period during which the protections were to be afforded the employees "shall extend from the date on which the employee was displaced to the expiration of 4 years from the effective date of our order herein . . .," but for a shorter period if the employee had fewer than four years of service.[145] At almost the same time, the ICC developed the *Burlington* conditions for imposition in abandonment cases.[146] These protective arrangements were based upon the compensatory provisions of the Washington Agreement and were virtually identical except that, unlike *Burlington*, the *Oklahoma* conditions did not require an employee to relocate to retain protection (unless he was required to do so by a collective bargaining agreement).

In 1946, the Commission issued its decision in the *Chicago & N.W. Ry.—Merger* case.[147] In that proceeding, rather than impose a specific formula for the protection of employees, the ICC simply imposed a paraphrase of the second sentence of Section 5(2)(f) as a condition of its approval.[148] In subsequent cases, rather than spelling out anew with appropriate name changes the specific provisions imposed to protect railroad employees, the ICC incorporated protective provisions into its orders by reference, titling each formula with the name of the case in which it initially was imposed.

In 1950, a question arose whether the four-year period referred to in the second sentence of Section 5(2)(f) should be regarded as a maximum limitation upon the power of the Commission to impose conditions or only a minimum requirement. The Commission had approved an application under Section 5(2)(f) to consolidate the various rail passenger terminal facilities at New Orleans by the construction of a joint terminal to be called the New Orleans Union Passenger Terminal. The ICC regarded the statutory four-year period as a maximum limitation upon its power. Accordingly, it limited the period of employee protection granted in that case to four years from the date of its order approving construction of the terminal. That limitation would have meant the loss of protection to employees affected by that construction, since the terminal could not be completed within four years from the date of the Commission's order, and the employees would not be affected until the terminal had been

145. Oklahoma Ry. Trustees, 257 I.C.C. at 198.

146. Chicago, Burlington & Quincy R. Co.—Abandonment, 257 I.C.C. 700 (1944).

147. Chicago & N.W. Ry.—Merger, 271 I.C.C. 672 (1946).

148. The sentence read: "In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction shall not result in employees of the carrier or carriers affected by such order being in a worse position with respect to their employment . . . . " Transportation Act of 1940, Pub. L. No. 76-785, 54 Stat. 899, 906 (1940) (codified in scattered sections of 31 U.S.C. and 49 U.S.C.).

completed.[149]

The ICC's order was appealed to a three-judge panel of the United States District Court for the District of Columbia. The Court upheld the Commission. The case was further appealed to the Supreme Court which reversed the District Court and the Commission.[150] The Supreme Court reviewed the legislative history of Section 5(2)(f) and concluded that the four-year limitation in the statute provided a minimum, not a maximum, period of protection for affected employees.[151]

Upon remand, the Commission imposed, as an employee protective arrangement, the Washington Agreement,[152] modified as to earnings from outside employment. The Commission also required that employees affected within four years from the effective date of the original order receive the protections of the *Oklahoma* conditions.[153] The conditions imposed in this *New Orleans* case, commonly called the *New Orleans* conditions, incorporated by reference both the Washington Agreement and the *Oklahoma* conditions. It became the basic arrangement imposed by the ICC in cases arising under Section 5(2).[154] The conditions have been imposed by the Commission in consolidation,[155] trackage rights,[156] merger,[157] reorganization,[158] and lease[159] cases.

The Commission, however, did not impose the *New Orleans* conditions in all proceedings arising under former Section 5(2). After 1952 it continued to impose the *Oklahoma* conditions in some Section 5(2) cases. However, it consistently imposed the *Burlington* conditions in most abandonment cases under former Section 1(18) of the Act (now 49 U.S.C. § 10903). While it appears that the Commission may have drawn an arbitrary distinction between the types of transactions regulated by former Section 5(2)(a) in determining whether to apply the *New Orleans* or *Oklahoma* conditions[160] it explained its selection process as follows:

149. New Orleans Union Passenger Terminal Case, 267 I.C.C. 763 (1948).

150. Railway Labor Executives' Association v. U.S., 339 U.S. 142 (1950).

151. *Railway Labor Executives Ass's*, 339 U.S. at 155.

152. The WJPA protective period commenced when the employee was first affected.

153. New Orleans Union Passenger Terminal Case, 282 I.C.C. 271, 280-81 (1952).

154. In a decision on remand in Southern Ry.—Control—Central of Ga. Ry., 331 I.C.C. 151, 162 (1967), the Commission described the *New Orleans* conditions as follows:

> We consider the net effect of our decision in the *New Orleans* case was to formulate and impose a separate code of employee protective conditions as a minimum fair and equitable standard, which superimposes the *Oklahoma* conditions upon the provisions of the Washington Agreement.

155. New Orleans Union Passenger Terminal, 282 I.C.C. 271 (1952).

156. Erie R. Co. Trackage Rights, 295 I.C.C. 303 (1956).

157. Louisville & N. R. Co. Merger, 295 I.C.C. 457 (1957).

158. Florida East Coast Ry. Reorganization, 307 I.C.C. 5 (1958).

159. St. Louis S.W. Ry. Co. of Texas Lease, 290 I.C.C. 205 (1953).

160. *See e.g.*, Norfolk & W. Ry.—Trackage Rights—BN, 354 I.C.C. 605, 607 (1978), *reopened* February 23, 1979.

> While there have been certain section 5 proceedings decided after the *New Orleans* case in which we have imposed the *Oklahoma* conditions for the protection of employees, they have been cases in which (1) there was no showing of adverse effect, or (2) measures already taken for the protection of employees had been developed to the point where the *Oklahoma* conditions alone thereafter would satisfy the statutory requirements.[161]

In 1962, a case arose which ultimately required the Commission to delineate carefully and deliberately the Commission's view of its authority under the Interstate Commerce Act vis-a-vis employees' rights under that Act, under the Railway Labor Act, and under collective bargaining agreements.

Dissatisfied with the *New Orleans* method of adopting by reference two other protective arrangements, the Commission decided to codify the standard protective formula by combining the protective features of each of the sources into a single definitive arrangement. On November 7, 1962, the Commission issued its decision in *Southern Ry.—Control—Central of Ga. Ry.*,[162] in which it stated that it was imposing the *New Orleans* conditions, with a modified arbitration procedure, as an employee protective arrangement. However, instead of incorporating those conditions by reference as it had in the past, the ICC attached an appendix to its order detailing a formula of protective provisions that it intended be a codification of the *New Orleans* conditions. Unfortunately, the appended detailed conditions failed to contain some of the essential protections found in the *New Orleans* conditions. The Railway Labor Executives' Association (RLEA)[163] challenged those conditions, and in December 1964, the Supreme Court, without oral argument, remanded the case back to the Commission for clarification of its order.[164] Upon remand, the Commission held a hearing at the request of the railroads. But after listening to the testimony of 206 employee witnesses and numerous management witnesses, it found "a callous disregard by [the railroads involved] for the established rights and interests of the employees".[165] It then unanimously set forth in extensive detail what it perceived to be the Commission's very limited role in labor relations and the limited authority in that area granted it by Congress. The Commission's report state that when it

161. *See supra* note 155, at 163.

162. Southern Ry.—Control—Central of Ga. Ry., 317 I.C.C. 557 (1962).

163. The RLEA is an association of the chief executive officers of railroad labor unions. It was established in 1926.

164. RLEA had challenged the failure of the ICC to include Sections 4 and 5 [notice and negotiation of implementing agreements] and 9 [lump sum separation pay] of the Washington Agreement in its codified provisions, and the Supreme Court's remand referred to those provisions only. *See* Ry. Labor Executives' Ass'n. v. U.S., 379 U.S. 199 (1964).

165. Southern Ry.—Control—Central of Ga. Ry., 331 I.C.C. at 185.

had imposed the *Southern—Central of Georgia* conditions,[166] it fully intended to impose the *New Orleans* conditions with one modification—a compulsory arbitration procedure: "Except for this minor change in the arbitration procedure [making it manadatory and binding], we made no change in the original *New Orleans* conditions."[167]

The Commission then spelled out its views of the law: it concluded it had no authority to supersede collective bargaining agreements; protective conditions were imposed "*upon the carriers. . .to protect* the interests of the employees;" employee rights under collective bargaining agreements, protective agreements (such as the Washington Agreement) and conditions imposed by the Commission were "separate, independent and distinct rights" of employees; the Commission-imposed conditions were "designed to apply after the carriers had arrived at their adjustments of labor forces *in accordance* with the governing provisions of their collective bargaining agreements;" and the transportation and labor laws of the nation must be accommodated to each other, neither being subordinate to the other.[168] These expressions of lack of authority over collective bargaining agreements or of jurisdiction over labor relations matters were consistent with the Commission's statements on that subject long before and well after they were uttered in the *Southern-Central of Georgia* case.

One of the first to express an authoritative opinion on the lack of ICC jurisdiction over labor relations was Joseph B. Eastman, Federal Coordinator of Transportation and Chairman of the ICC. In 1934, Congress was considering amendments to the Railway Labor Act. Section 2 of the pending bill related to the railroads' collective bargaining duties. It contained a provision requiring any U.S. Attorney to prosecute violations of the provisions of the Act upon the application of the employees' union representative. Representative Holmes suggested deleting the union as an applicant to seek prosecution and, instead, to give that responsibility to the ICC. Mr. Eastmand responded: "It certainly should not be the Interstate Commerce Commission, because they have no jurisdiction over labor matters at all and never have had."[169]

Commissioner Eastman's testimony appeared to put to rest the question of ICC jurisdiction in labor relations matters until, some 24 years later, the Chicago and North Western Railway Co. attempted to use Section 5(11)[170] to equip the ICC with authority to immunize railroads from the provisions of the Railway Labor Act and from the railroads' collec-

166. I.e., the faulty Appendix which it was correcting.

167. *Id.* at 164.

168. *Id.* at 168-170; (italics in original; underlining added)

169. *Hearings on H.R. 7650 Before the House Comm. on Interstate and Foreign Commerce*, 73rd Cong. 54 (1934).

170. Later 49 U.S.C. §11341(a) and now 49 U.S.C. §11321(a). This provision exempts rail-

tive bargaining agreements.[171] In 1958, the C&NW had obtained ICC authority to lease all of the lines of the Chicago, St. Paul, Minneapolis and Omaha Railway ("Omaha"). It returned to the Commission complaining that it had tried and failed to obtain agreements with certain of the unions involved which were necessary to enable it to carry out the approved transaction by integrating C&NW and Omaha properties under the lease. The Commission rejected the request of the C&NW on the ground that it had no authority to grant C&NW's request because its order approving the lease was permissive as to the carriers and required nothing of the employees;[172] Section 5(2)(f)[173] required that certain duties be imposed upon the carriers, but did not authorize the ICC to direct the employees or the unions to do anything;[174] and, Section 5(11) was self-executing and did not authorize the ICC to declare particular laws to be superceded by its orders.[175] Most significantly for the purposes of history of the ICC's view of its authority over labor relations matters was the following holding of the Commission:

> Congress has not conferred upon us the power to determine the disputes which are subject to the Railway Labor Act or questions regarding the jurisdiction to of the National Mediation Board, which, in effect, is what North Western requests us to do. It is apparent that the Railway Labor Act has *not prevented* the North Western from *effectuating* the transaction authorized by the prior order. That order authorized the lease of North Western of the line of railroad and other properties owned, used, or operated by the Omaha, and *this has been accomplished. The order did not provide any particular method for integration of the physical operations involved*, and, except for the imposition of the above-mentioned conditions for the protection fo employees, did not deal with employer-employee relationships.[176]

In addition to affirming its lack of authority to interfere with labor relations on the railroads, the Commission repeatedly acknowledged its lack of expertise in that area. The statements of Commissioner Eastman before Congress and the ICC in the *Omaha* case, just quoted, as well as in the *Southern—Central of Georgia* case, indicated that until at least 1967, the ICC believed itself to lack jurisdiction over labor related matters.

---

roads from all laws which would prevent them from carrying into effect ICC orders approving railroad applications for merger, control, lease, etc. filed under 49 U.S.C. §11343 (now §11323).

171. The railroads unsuccessfully attempted such use of that provision again in 1967 in the Southern Central of Georgia case and in 1981 in the N&W/IT arbitrations, *see infra* pp. 273-274.

172. Chicago, St. Paul, Minneapolis & Omaha Ry.—Lease, 295 I.C.C 696, 701 (1958).

173. Later §11347 and now 49 U.S.C. §11326(a).

174. *Id.*

175. Chicago, St. Paul, Minneapolis & Omaha Ry., 295 I.C.C at 702.

176. *Id.* (emphasis added). The nature of the ICC/STB orders today is identical to that of the order imposed in the *Omaha* case in that ICC/STB orders authorize the effectuation of a financial transaction and do "not provide any particular method for integration of the physical operations involved."

The issue did not arise again until 1977 when the Commission expounded at length on its lack of expertise in labor relations, rejecting a request from a union which it perceived as a "matter[ ] relating to labor relations."[177] The Commission repeated this repudiation of its expertise and involvement in labor matters when, in 1982, a union asked it to declare a railroad in violation of the employee protective conditions that the Commission had imposed. On January 26, 1983, the Commission refused to make this declaration, citing its lack of "expertise to place ourselves into the field of collective bargaining or labor management relations."[178]

In years following its decision in the *Southern-Central of Georgia* case, the ICC consistently adhered to its view of the law as expressed in that case as well as its conviction that the *New Orleans* conditions were the "minimum protections which the applicants must provide in order to obtain our approval of the transactions" under former Section 5(2) of the Act.[179]

The *New Orleans, Oklahoma,* and *Burlington* conditions would be supplanted by protective arrangements[180] which had their genesis in a series of legislative events beginning in 1964. In that year, Congress enacted the Urban Mass Transporation Act of 1964. In 1970, the Rail Passenger Service Act creating Amtrak was enacted and in February 1976, the 4R Act was signed into law.[181] As a result of these enactments, particularly the 4R Act, the ICC crafted the *New York Dock* and *Oregon Short Line* conditions with considerable help from the unions.[182] These conditions incorporated the substance of sections 4 and 5 of the Washington Agreement, as adapted into the *New Orleans* conditions and considered vital by the unions, requiring: notice and the execution of implementing agreements prior to a railroad's effectuating a "transaction" (as defined in the conditions) in furtherance of Commission-granted authority;[183] most of the improvements in protection developed by Secretary of Labor Hodgson in Appendix C-1 as required by §11347; and in

177. Leavens v. Burlington N. Inc., 348 I.C.C. 962, 975, 976 (1977).

178. Brotherhood of Locomotive Eng'r v. Chicago & N. W. Transp. Co., 366 I.C.C. 857, 861 (1983).

179. *E.g.,* Central of Ga. Ry.-Consolidation—Central of Ga. R.R., 338 I.C.C. 353, 377 (1971); *see also,* Chicago & N.W. Ry.—Control—Chicago, R.I. & P.R.R., 347 I.C.C. 556, 650 (1974); Seaboard Air Line R.R.—Trackage Rights—Atlantic Coast Line R.R., 312 I.C.C. 797 (1962).

180. *I.e.,* the *New York Dock* and *Oregon Short Line* conditions.

181. *See supra* notes 76-99 and accompanying text.

182. Oregon Short Line R.R. and the Union Pac. R.R. Co.—Abandonment Portion Goshen Branch, Etc., 360 I.C.C. 91 (February 9, 1979); New York Dock Ry.-Control-Brooklyn E. Dist. Terminal 360 I.C.C. 60 (February 9, 1979), *aff'd sub nom.* New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979); *see supra* notes 98-105 and accompanying text.

183. Ironically, it is this protection for which the employees battled so strenously that has been turned inward upon them as a basis for overriding their rights under the Railway Labor Act and their collective bargaining agreements. *See infra,* Section V.

Article I, Section 2, a specific prohibition against interference with an employee's Railway Labor Act and collective bargaining agreement rights established by Secretary Hodgson and therefore required by §11347:

> 2. The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroad's employees under applicable laws and or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes.[184]

In the course of its decision in the *New York Dock* case, the Commission clearly stated that this provision was intended to preserve collective bargaining agreement rights. Rejecting a request by the RLEA to add a sentence in Article I, Section 2 designed to protect employees' agreement rights against the subcontracting of their work, the ICC said:

> Article I, section 2, appears acceptable to all parties. RLEA does propose an additional sentence dealing with the effectiveness of subcontracting agreements subsequent to a transaction; however, the section, as now written, *preserves all existing agreements* and, therefore, the suggested language is redundant and unnecessary.[185]

The Commission had also inserted a provision in its first version of the *New York Dock* conditions to protect employees against deprivation of their rights under so-called protection agreements, such as the Washington Agreement, which they had negotiated with their employers. The RLEA felt that the wording of this provision might be subject to misinterpretation. The Commission adopted the modified language suggested by the RLEA[186] with the following comment:

---

184. New York Dock Ry.-Control-Brooklyn E. Dist. Terminal, 360 I.C.C. at 84.

185. *Id.* at 73 (emphasis added); RLEA's proposed sentence read:

> The various agreements dealing with subcontracting, scope rules, and classification of work rules in effect at the time of a transaction, shall contine in effect unless and until changed by agreement between the railroads and labor organizations involved in such transaction, and work performed on such properties shall not be subcontracted except as may be expressly, or by reasonable necessary implication, permitted by said agreements. Disputes concerning subcontracting of work shall be disposed of on the basis of existing collective bargaining agreements between the parties.

Id. at 77.

186. The RLEA's suggested wording appears in Article 1, Section 3, and reads:

> 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,* that if an employee otherwise is eligible for protection under both this appendix and some other job security or other protective conditions or arrangements, he shall elect between the benefits under this appendix and similar benefits under such other arrangement and, for so long as he continues to receive such benefits under the provision which he so elects, he shall not be entitled to the same type of benefit under the provisions which he

> Our study of the provision suggested by RLEA indicates that it *preserves protections* yet with the required prohibitions against duplication of benefits (see the first proviso) and against pyramiding (see the later portion of the final proviso). We will adopt the proposed provision as we feel it is an apporpriate clarification of the intent of that section.[187]

The Commission's adoption of provisions that preserved employees' existing statutory and contract rights was in conformity with the literal language of the statutory requirement and consistent with the stated purpose of Secretary of Labor Hodgson in placing those protections in Appendix C-1. Secretary Hodgson, when challenged that his Section 3 actually deprived employees of benefits of other protective agreements that applied to them, said, in his affidavit filed with the U.S. District Court: "[S]ection 3 specifically preserves the rights of an employee under other protective agreements, although it does prohibit the pyramiding and duplication of benefits."[188]

Two years following the introduction of the *New York Dock* conditions, the ICC authorized the acquisition of the Illinois Terminal Railroad Company ("IT") by the Norforlk & Western Railway Company ("N&W"), conditioning the acquisition upon N&W's acceptance of the *New York Dock* conditions. In July 1981, N&W served notice under *New York Dock* Article I, Section 4 that it intended to unify and consolidate the operations of IT with those of N&W's affiliate Wabash Railroad and that the IT employees would be integrated into the appropriate Wabash rosters and be subject to Wabash collective bargaining agreements. The N&W argued that Section 4 authorized the arbitrator to change the provisions of existing collective bargaining agreements and that such changes were necessary if N&W and IT were to carry out the transaction. The unions objected to the railroads' proposal, and the railroads submitted the matter to arbitration under Section 4. The unions challenged the jurisdiction of the Section 4 arbitrators to modify the employees' agreement rights. Because different crafts with different seniority rights and agreements were involved, the issues were tried in three separate arbitration proceedings at different times by three different arbitrators. All three reached the same conclusion: *New York Dock* Section 4 arbitrators had no jurisdiction to modify employees' collective bargaining agreement rights. Arbitrator Nicholas H. Zumas, who heard the case involving the

---

> does not so elect; *provided further*, that the benefits under this appendix, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits, and, *provided further*, that after expiration of the period for which such employee is entitled to protection under the arrangement for the remainder, if any, of his protective period under that arrangement.

187. New York Dock-Control-Brooklyn E. Dist. Terminal, 360 I.C.C. at 73; (emphasis added).

188. Congress of Ry. Unions v. Hodgson, 326 F.Supp. 68 (D.D.C. 1971)

Brotherhood of Locomotive Engineers and the United Transportation Union, expressly held that *New York Dock* did not authorize mandatory "interest arbitration" (which even the Railway Labor Act had never required) and did not authorize him "to alter rates of pay, rules, working conditions, or any other collectively bargained rights or benefits that are 'preserved' under Section 2 [of *New York Dock*]".[189]

The arbitrators in those cases limited their awards to ordering the consolidation of seniority rosters by a method each arbitrator specified. These cases constituted the first time the issue of a railroad's right to modify employee rights under section 4 of *New York Dock* or its predecessors had been raised in such a proceeding;[190] the railroads did not appeal the decisions.

The Commission varied the provisions of the *New York Dock* conditions as they were imposed in lease,[191] trackage rights,[192] and sale[193] cases, but the basic compensatory and perservation-of-rights provisions remained the same.

One year after the N&W/IT awards were issued, the Commission again professed its lack of "expertise to place ourselves into the field of

189. Norfolk & W. Ry. Co. and Illinois Terminal Co. v. Brotherhood of Locomotive Eng'rs and United Transp. Union, Finance Docket No. 29455 (Zumas, Feb.1, 1982) pages 16-18:

> Carriers argued that the Commission's order authorizing the purchase and consolidation of IT by N&W and requiring arbitration of disputes involving the "rearrangement of forces" supersedes any other agreements or laws, including the Railway Labor Act. Central to the position of the Carriers is the question of whether the negotiation and arbitration provisions of employee protection conditions in consolidation cases provide a mechanism that supersedes Railway Labor Act requirements and permits an Arbitrator to transfer work and employees despite any such prohibitions contained in collective bargaining agreements pursuant to the Railway Labor Act.
>
> This Arbitrator is of the opinion that the question must be answered in the negative.
>
> An arbitrator's authority under Article I, Section 4 of *New York Dock*, where the parties are unable to reach agreement, is limited to the determination of employee protections contained in Appendix III [*i.e. New York Dock*], and to provide a basis for the selection of work forces of the employees involved. Article I, Section 4 does not give an Arbitrator authority to alter rates of pay, rules, working conditions, or any other collectively bargained rights or beneftis that are "preserved" under Section 2. It follows that an Arbitrator is not empowered, without mutual agreement of the parties, to substitute, modify or terminate agreement [sic] negotiated pursuant to the provisions of the Railway Labor Act. Carrier's contention that the arbitration process (provided for in Section 4) is an integral part of the collective bargaining process, and, as such, an agreement may be changed (as provided in Section 2) either by negotiation by the parties or by an arbitration award is, in this Arbitrator's view, based on the erroneous premise that the ICC mandated involuntary "interest arbitration" in contravention of the provisions of the Railway Labor Act. No persuasive authority has been presented that supports or warrants such a far-reaching result.

190. *See infra* note 225.

191. Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

192. Norfolk & W. Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978).

193. Wilmington Term. R.R., Inc.—Purchase and Lease—CSX Transp., Inc., 7 I.C.C.2d 60 (1990).

collective bargaining or labor management relations."[194] But ten months after that reaffirmance of its historical position, the ICC would reverse its 96-year history of non-intrusion into labor matters. It would do so without reference to that history.

V. The ICC as Labor Relations Expert

At the beginning of 1983, the Commission had remained consistent in its avoidance of any involvement in labor matters when reviewing transactions placed before it for approval. It had restricted its activities to the imposition of conditions upon carriers for the protection of employee interests and had repeatedly held that the conditions were, indeed, imposed upon carriers, not employees, their "purpose being *to protect* the interests of the employees, some of which in a particular case may well have been established under bargaining agreements executed pursuant to the Railway Labor Act."[195] Near the end of 1983 however, the Commission's well-documented 50-year old view of the law governing its authority changed when abruptly it held itself to have "extensive and self-executing authority to immunize an approved transaction from the Railway Labor Act and existing collective bargaining agreements."[196]

Almost a year before the Commission had last protested its lack of expertise in the *Brotherhood of Locomotive Engineers* case, *supra*, it approve the consolidation of the Union Pacific Railroad Company ("UP") and the Missouri-Pacific Railroad Company ("MP") under the common control of a holding company. The ICC, however, conditioned the approval upon the grant of trackage rights by MP to the Denver and Rio Grande Western Railroad ("DRGW") and the Missouri-Kansas-Texas Railroad Company ("MKT") to operate over certain MP lines.[197] The ICC then approved the proposed trackage rights agreement submitted by DRGW and MKT subject to a determination of fair compensation to MP and the so-called *Mendocino Coast* employee protective conditions.[198]

After consummation of the UP-MP control transaction, DRGW began operating over the designated tracks of MP with DRGW crews. The

194. Brotherhood of Locomotive Eng'r v. Chicago & N. W. Transp. Co., 366 I.C.C. 857, 861 (1983).

195. Southern Ry.—Control—Central of Ga. Ry., 331 I.C.C. 151, 169 (1967); (emphasis in original).

196. Denver and Rio Grande W. R.R. Co.—Trackage Rights—Missouri Pac. Ry. Co., Finance Docket No. 3000 (Sub-No. 18) (October 19, 1983) (not printed).

197. Union Pac.—Control—Missouri Pac., W. Pac., 366 I.C.C. 459 (1982).

198. Norfolk & W. Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified by Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653, 664 (1980). These conditions are imposed by the ICC in trackage rights/lease cases and are identical to *New York Dock* except they require a 20-day notice instead of a 90-day notice and permit the carrier to proceed with its proposed changes after 20 days.

Brotherhood of Locomotive Engineers ("BLE") objected on the ground that the engineers it represented on MP had the exclusive right by contract to operate trains onver MP lines and the ICC had no jurisdiction over UP-MP/BLE contracts. BLE file a petition for clarification with the ICC requesting reaffirmation of its oft-stated position that the Commission's decision did not affect labor relations or interfere with collective bargaining agreements. The BLE was in for a surprise. The ICC simply denied the requested relief without substantive comment. BLE, now joined by the United Transportation Union ("UTU"), sought reconsideration of that decision. UTU argued that the ICC's jurisdiction over railroad consolidations did not authorize it to immunize railroads from the requirements of the Railway Labor Act or to approve unilateral railroad changes in collective bargaining agreements.

A reading of the Commission's decision on reconsideration[199] conveys the impression that the ICC had never before addressed the issue of its expertise in, or authority over, labor relations, and that modification of labor agreements by ICC orders had been an accepted practice by the Commission since its creation. Nowhere in the opinion is there any reference whatsoever to any of the Commission's decisions discussed above, although both unions emphasized that the ICC's denial of BLE's petition for clarification was inconsistent with the ICC's historic policy of not injecting itself into labor disputes.

Despite the fact that the trackage rights agreements clearly contravened the provisions of the MP/BLE collectively bargained contract which restricted work over MP tracks to MP employees, the Commission held that the trackage rights agreements did not involve a change in UP/MP employees' working conditions because DRGW had testified that fewer employees would be displaced if the trackage rights were granted than if they were denied;[200] because the trackage rights agreements stating that DRGW and MKT crews would perform the work were agreements between the railroads, and the labor parties had not proved they had a right to participate in their negotiation;[201] and because the unions did not suggest that their collective bargaining agreements or the Railway Labor Act protected the employees they represented after the trackage agreements went into effect.[202] For the first time the Commission took the position, contrary to its earlier practice, that 49 U.S.C. §11341(a)

199. *See supra* note 11 and accompanying text.

200. The relevancy of this reasoning is obscure.

201. A reason which would appear to confirm the unions' right to the perservation of their contracts. *See Omaha, supra* note 137 and Texas & N.O.R. Co. v. Brotherhood of R.R. Trainman, 307 F.2d 151, 159-60 (5th Cir. 1962).

202. Yet the basis for the unions' claim was their contract right to perform work on MP tracks before *and after* the trackage rights agreement went effect.

overrode collective bargaining agreements and working conditions: where those agreements and conditions "conflict with a transaction which we have approved, those conditions and agreements must give way to the implementation of the transaction."[203] The ICC's long-time holding that the conditions were imposed upon carriers to protect employees[204] was now disavowed by implication.

It seemed to the unions that the Commission had irresponsibly reversed its consistent, historic position without acknowledging that fact; that the ICC had arbitrarily and abruptly swept aside the statutory and collective bargaining agreement rights of employees guaranteed them by the Railway Labor Act; and, had rendered a nullity the employees' right to preservation of "rates of pay, rules, working conditions and other rights, privileges and benefits" as required by Section 11347 by holding that those rights must "give way to the implementation of the transaction."

The Commission's decision was appealed to the U.S. Court of Appeals for the D.C. Circuit which vacated and remanded it to the Commission.[205] The Court held that the ICC gave "no justification for a view that waiver of the Railway Labor Act [was] necessary to effectuate the [trackage rights] transactions at issue."[206] The Court relied upon and quoted from the Fifth Circuit's decision in the *City of Palestine, Texas v. United States*.[207] There, the City had a contract with the MP to maintain 4.5% of its entire workforce in Palestine. As an element of its merger with the Texas & Pacific Railway Company, MP asked the ICC to relieve it from the requirements of that agreement. The ICC ruled that it had the power to abrogate the agreement because "of the agreement's unduly burdensome effect on MoPac and on interstate commerce." The D.C. Circuit relied upon the following quotation from *City of Palestine*:

> The ICC exceeds the scope of its authority when it voids contracts that are not germane to the success of the approved***transaction. In its grant of

203. Denver and Rio Grande W. R.R. Co.—Trackage Rights—Missouri Pac. R.R. Co., Finance Docket No. 3000, p. 6 (Sub-No. 18) (October 18, 1983) (not printed).

204. *See supra* notes 166-179, 196 and accompanying text.

205. Brotherhood of Locomotive Eng'r v. ICC, 761 F.2d 714, 725 (D.C. Cir. 1985):

> We thus vacate the 1983 orders and remand the case to the Commission. The Commission is not empowered to rely mechanically on its approval of the underlying transaction as justification for the denial of a statutory right. On remand, to exercise it exemption authority, the Commission must explain why termination of the asserted right to participate in crew selection is necessary to effectuate the pro-competitive purpose of the grant of trackage rights or some other purpose sufficiently related to the transaction. Until such finding of necessity is made, the provisions of the Railway Labor Act and the Interstate Commerce Act remain in force.

206. *Id.*

207. City of Palestine, Texas v. United States, 559 F.2d 408 (5th Cir. 1977), *cert. denied*, 435 U.S. 950 (1978).

> approval authority, Congress did not issue the ICC a hunting license for state laws and contracts that limit a railroad's efficiency *unless those laws or contracts interfered with carrying out an approved merger.*[208]

The next question, of course, became when, as a matter of statutory application, was the "carrying out" of a merger considered as having been completed.[209] As the unions were soon to learn, the answer would be "never".

The Circuit Court's decision was appealed to the Supreme Court, where five Justices decided to side-step the issues presented and dismiss the case on a technical deficiency: the time for filling an appeal from an ICC decision, although tolled by a petition for reconsideration, is not tolled by a petition for clarification which the ICC had ruled on in that case. The Court held that the appeal to the Circuit Court had been filed too late and that Court therefore had no jurisdiction. The Court then vacated the Circuit Court's decision and remanded it with instructions to dismiss for a lack of jurisdiction.[210]

It took four years of continuous litigation for the issue to be returned to the Supreme Court, and the Court again refused to confront it. During this time, the Commission continued to broaden its intervention in the area of railroad labor relations. In *DRGW*, the Commission had relied on its view that a trackage rights agreement, even one that overrode the contract rights of employees to perform certain work, was an agrement between railroads and not a labor agreement. Therefore, said the ICC, it could not affect working conditions within the meaning of Section 11347. As time passed, the ICC determined it could intervene not only to override agreements, but also to modify them, and it could do so even when no contracts between carriers were involved.

Shortly after the *DRGW* case had been decided by the Circuit Court, the Commission published its decision in the *Maine Central* case.[211] In that case, the ICC had exempted Maine Central from the requirements of the Interstate Commerce Act in leasing to the Georgia Pacific Corporation four specific lines of railroad near Woodland, Maine. Georgia Pacific had contracted with the Springfield Terminal Company to operate the lines and would pool its existing traffic with that obtained by Maine

208. Brotherhood of Locomotive Eng'rs, 761 F.2d at 724 (quoting City of Palestine, 559 F.2d at 414).

209. The court here viewed the term "carrying out" the approved transaction in the same sense as the Commission had used the term "effectuating" in the *Omaha* case in 1958. *See supra* notes 173-177 and accompanying text.

210. Interstate Commerce Commission v. Brotherhood Locomotive Eng'rs, 482 U.S. 270 (1987).

211. Maine Central R.R.—Exemption from 49 U.S.C. 11342 and 11343, Finance Docket No. 30522 (Sept. 16, 1985) (not printed), *aff'd per curiam*, Railway Labor Executives' Ass'n v. ICC, 812 F.2d 1443 (D.C.Cir. 1987) (Table).

Central.[212] The ICC imposed the *Mendocino Coast* conditions on the leasing aspect of the case, but not its pooling aspect, because the Commission felt it was not required to protect employee interests in pooling cases.

The UTU sought reconsideration by the ICC, contending that because of the interrelated nature of the case, the *New York Dock* conditions should be imposed and applied to the pooling arrangements as well as the leases. The UTU pointed out that the Maine Central Railroad was a party to the Washington Agreement which covered pooling, and the Commission's decision could be read as denying to employees rights they had under that agreement, including negotiation and execution of implementing agreements before the carriers made any changes to affect them. The ICC rejected the UTU arguments, stating that prior to 1976, it had imposed the *Oklahoma* conditions in lease cases and *Mendocino Coast* was simimlar to *Oklahoma* in not requiring an implementing agreement before a carrier implements its approved transaction. The Commission, however, went a giant step further and held that "[i]t is that [ICC] order, not the RLA or WJPA, that is to govern employee-management relations in connection with an approved transaction."[213]

The Commission's decision regarding its supervening authority over employee rights under negotiated protective agreements, as well as the RLA and collective bargaining agreements, appeared to be based upon authority provided it by 49 U.S.C. §11347 alone, for at one point it said that the "preemptive power of Section. . .[11341(a)], [is] not an issue here."[214] However, the decision closes by saying that the result requested by UTU was "unacceptable and inconsistent with section 11341." In any event, the Commission had made it clear that whether Section 11341 or Section 11347 applied in a given case, it considered itself authorized to override any employee statutory or contractual rights which impeded a railroad in implementing a transaction that the agency had approved. Its decision was appealed to the D.C. Circuit, but was *affirmed per curiam.*[215]

In August 1986, CSXT served notice on the Brotherhood of Railway Carmen ("BRC") that the SCL[216] freight car heavy repair shop in Waycross, Georgia, would be closed on December 31, 1986, and that the

212. The ICC/STB may not exempt a carrier from employee protective conditions which absent the exemption, would be required to be imposed. 49 U.S.C. §10502 [formerly §10505].

213. Maine Central R.R.—Exemption from 49 U.S.C. 11342 and 11343, at 6.

214. This conclusion may have been reached because the case involved an exemption from 49 U.S.C. §10505 to which Section 11341(a) does not apply. *See* Railway Labor Executives Ass'n v. Uinted States, 987 F.2d 806, 812-13 (D.C.Cir. 1993).

215. Railway Labor Executives, 812 F.2d 1443 (D.C.Cir. 1987) (Table).

216. The SCL System had become a part of the CSXT System as of result of ICC approval of the common control of the SCL and Chessie System by the CSX Corporation in CSX Corp.—Control—Chessie Sys. & Seaboard Coast Line Indus., 363 I.C.C. 521 (1980).

freight car heavy repair work as well as certain storeroom work at Waycross, would be transferred to the C&O's[217] Raceland, Kentucky, repair facility and made subject to the C&O collective bargaining agreement. CSXT proposed to abolish 121 positions in the carman craft at Waycross and to establish 99 positions in the carman craft at Raceland. All of the carman craft employees were subject to a collective bargaining agreement with CSXT, and about one-half of those employees were also entitled to the protections of the "Orange Book" protective agreement between the union and the SCL which prohibited the transfer of the work and the protected employees beyond the property of the SCL, *i.e.,* to Raceland.[218]

About two weeks after CSXT's intended transfer, Norfolk Southern notified the Amercian Train Dispatchers' Association ("ATDA") of its intention to transfer all work of locomotive power distribution and assignment from the N&W at Roanoke, Virginia, where employees were represented by ATDA, to the Southern in Atlanta, Georgia, where the employees performing that work were unrepresented, being considered by Southern to be management personnel. Norfolk Southern said the N&W employees would be "considered" for work in Atlanta.[219]

The parties were unable to reach agreement under section 4 of the *New York Dock* conditions in either case. The respective disputes between the parties were submitted to arbitrators. The BRC and the ATDA disputed the jurisdiction of the arbitrators to change the wages, rules, or working conditions or employees or to eliminate any of their existing Railway Labor Act or collective bargaining agreement rights. Regarding the separate Orange Book protection applicable to half of the affected carman employees at Waycross, BRC argued that the abitrator had no jurisdiction to modify any of the substantive rights provided employees by that agreement, and that "section 3 of the *New York Dock* conditions absolutely preserves workers' rights and benefits under existing protection agreements."[220]

On behalf of the N&W employees it represented, the ATDA argued

217. C&O had been part of the Chessie System.

218. The "Orange Book", so-called from the color of its cover, was negotiated during the much earlier merger of the Atlantic Coast Line Railroad and the Seaboard Air Line Railroad which became the SCL. It guaranteed employees income for the remainder of their working lives and also guaranteed that neither they nor their work would be transferred beyond the boundaries of the SCL System, Inc. In exchange for those protections, SCL was granted the right to transfer work and employees within the merged ACL-SAL (*i.e.,* SCL) system but not beyond it.

219. The Norfolk and Western Railway Company and the Southern Railway Company were joined under the common control of Norfolk Southern Corporation as a result of ICC approval in Norfolk S. Corp.-Control-Norfolk & W. Ry. Co. and S. Ry. Co., 366 I.C.C. 173 (1982).

220. *See* text accompanying notes 187-188, *supra.*

that the ICC could not eliminate the agreement rights or the collective bargaining rights the employees has established with ATDA representation through the device of removing them and their work to a railroad where they would have no contract and no representation. The *Carmen* arbitration award was issued in March 1987, followed by the *ATDA* award in May 1987.

Holding that an arbitrator under section 4 was a "quasi-judicial extension of the ICC" and therefore "must strictly follow the ICC's interpretation of its own authority", the *Carmen* case arbitrator followed the ICC's decision in the *DRGW* case and stated that "[a]ccording to the ICC, Section 11341(a) insulates a transaction from all legal obstacles preventing or impeding effectuation." The arbitrator then held that CSXT could transfer work and employees from the CSXT and the SCL agreement to the C&O and the C&O agreement because to permit the preservation of the CSXT employees' agreement rights, including their Orange Book guarantee that their work would not be transferred, "would for all practical purposes block. . .[that particular] transaction," that is, the 1986 transfer of SCL work and employees to the C&O.

The arbitrator, however, felt that some of the Orange Book rights of the employees could be protected without impeding the completion of the transfer. He found that without the right granted by the employees in 1962 to the then newly-merged SCL to "transfer work and workers throughout the merged (SAL-ACL) system. . .the point seniority terms of the [collective bargaining] working agreement would have restricted the Carriers from moving employees."[221] The arbitrator concluded that the Orange Book prohibited the movement of work and workers beyond the limits of the former SCL property and therefore would bar "transfers of work and employees to the C&O at Raceland, KY." He held that employees' rights "must be subordinated to the Carrier's right to engage in the authorized *New York Dock* transaction"[222] by permitting the transfer of their work; but, he prohibited the transfer of the "Orange Book" employees because he made the *factual* finding that recognition of that particular agreement right of the employees would "only slightly impair the transaction", *i.e.*, the transfer of work and employees.

Some two months following issuance of the *Carmen* award, the decision and award in the *ATDA* case was issued. The arbitrator in that case,

221. Here the arbitrator acknowledges a railroad's inability to move work or employees without voluntary agreement. The agreement he refers to had been negotiated over 20 years before the ICC first ruled that its orders effectively authorized transfer of work and employees from one collective bargaining agreement or one railroad property to another.

222. The arbitrator, following the ICC's rulings, viewed the 1986 transfer of work as itself having been authorized by the Commission rather than having been simply a *result* of the 1980 underlying statutory transaction (the control) authorized by the Commission.

former National Mediation Board Chairman Robert O. Harris, noted that between "1981 and 1983 at least five arbitrators [had] ruled that the ICC did not desire that changes of rates of pay, rules or working conditions, or of representation under Railway Labor Act, occur through arbitration under Section 4 of the *New York Dock* conditions." He then proceeded to quote extensively from the Commission's 1985 *Maine Central* decision to the contrary. Mr. Harris also quoted that portion of the Commission's decision in the *Maine Central* case in which it had made clear its intent to use section 4 of the *New York Dock* conditions to compel arbitration or new collective bargaining agreements:

> Such a result [goverance of labor relations by ICC orders] is essential if transactions approved by use are not to be subjected to the risk of nonconsummation as a result of the inability of the parties to agree on new collective bargaining agreements effecting changes in working conditions necessary to implement those transaction.[223]

Holding that he derived this authority from the ICC and the "it is clear that the ICC believes that its order supersedes Railway Labor Act protection", the arbitrator held that the N&W could transfer the work and the employees to the Southern at Atlanta.[224] He imposed the implementing agreement proposed by the N&W transferring the work and the employees to Southern without their existing agreement or representation rights as the employees performing locomotive power on the Southern portion of Norfolk Southern property had no agreeement and were not represented.

Both awards were appealed to the Commission. In the *Carmen* case, the Commission held that the arbitrator had correctly interpreted the Commission's view of its authority that Section 11341(a) overrode the Railway Labor Act and collective bargaining agreements and affirmed the arbitrator on that point. However, the Commission concluded that the arbitrator had committed "egregious error" in holding that the employees covered by the Orange Book could not be required to transfer to Raceland, KY. The "slight impairment of the transaction" found by the arbitrator was held to be an unacceptable "standard" as it would "permit[ ] a provision of a collective bargaining agreement to conflict with the implementation of an approved transaction" and thereby "effectively undercut the Commission's authorization of the transaction here."[225] The

223. In *Maine Central* the ICC made no attempt to square this language with section 11347's requirement that employees' working conditions be preserved. *See supra* pp. 259-260.

224. In the course of his opinion Arbitrator Harris stated that "[p]rior to 1981, the question of whether a carrier could, through a consolidation of forces, effect changes in rates of pay, rules, or working conditions had never been raised in a section 4 proceeding." Such changes had been made, of course, but by agreement as noted *supra* note 92.

225. Here the ICC held that it not only approved for purposes of statutory immuity the

Commission concluded that the evidence did not support the arbitrator's factual finding of "slight impairment" of the transaction.[226] It reversed that finding and remanded the case to the arbitrator for a further review consistent with the Commission's decision.

In reviewing the *ATDA* award, the Commission relied upon its decision in *Maine Central* and affirmed the arbitrator's holding that the terms of its 1982 order approving the Norfolk Southern control of N&W and Southern "and specifically the compulsory, binding arbitration required by Article I, Section 4 of *New York Dock*, took precedence over RLA procedures whether asserted independently or based on existing collective bargaining agreements," and that any "action taken under our control authorization is immunized from conflicting laws by section 11341(a)."[227]

The unions sought review of the Commission's decisions in the Court of Appeals, which heard the cases simultaneoulsly and issued a consolidated opinion.[228] The Court of Appeals held that "Section 11341(a) of the Act [did] not grant the ICC its claimed power to override provisions of a CBA between a carrier and its employees".[229] The Court reversed the ICC's decision and remanded the cases "with respect to the ICC's RLA holding in order that the agency may determine whether further proceedings are necessary."[230] The Court of Appeals felt it unnecessary to address the issues presented by the unions in light of its threshold interpretation of Section 11341(a).

Nine days after the Court of Appeals issued its decision, the Commission issued its next decision showing how it wished to apply and interpret Section 11341(a) in a case involving the purchase by a shortline

---

express "transactions" the Congress authorized it to approve in §11343 but also "approved" by implication all actions taken as a result of those transactions regardless of when they might occur. In the *New York Dock* conditions, the ICC had defined the *results* of approved §11343 transactions as "transactions" to which *New York Dock* and its other conditions would apply. The effect was to confuse the specific statutory transactions which Congress listed as subject to authorization by the ICC with carrier activities *resulting* from ICC approval which ICC had no statutory authority to approve simply because of the use of the term "transactions" to describe two entirely disparate concepts. *See Omaha, supra* pp. 269-270.

226. The only evidence relied upon by the Commission to reach its conclusion were general statements relating to reductions in cost savings and operating efficiencies which were not quantified.

227. The issue whether the employees' pre-existing right to representation by the ATDA was preserved by *New York Dock*, Article I, Section 2 and 49 U.S.C. §11347, was not addressed by the ICC nor was the Commission's purpose in crafting Article I, Section 3 of those conditions which purportedly preserved the Employees' Protective Agreement ("Orange Book") rights. *See supra* notes 186-188 and accompanying text.

228. Brotherhood of Ry. Carmen v. ICC, 880 F.2d 562 (1989), *rev. and rem. sub. nom.,* Norfolk & W. Ry. Co. v. Am. Train Dispatchers Ass'n, 499 U.S. 117 (1991).

229. Brotherhood of Ry. Carmen, 880 F.2d at 574.

230. *Id.*

railroad of 102 miles of CSXT line in Florida.[231] The Commission held that it did "not dispute the validity" of the Court of Appeals holding in *Carmen*; that *it had never* "relied upon. . .§11341(a). . .to require that agreements be modified"; and that its authority to override collective bargaining agreements was derived from Section 11347.[232]

The Commission's *Carmen* decision following remand from the Court of Appeals[233] adhered to that court's ruling that it was not authorized by Section 11341(a) to override provisions of collective bargaining agreements, but concluded that such authority was unnecessary in any event since that authority had been afforded the Commission by Congress' inclusion of the employee protective provisions of section 5(2)(f) in the 1940 Act[234] (later §11347 now §11326(a)) and held that section 11341(a) empowered the ICC "to exempt mergers and consolidations from the RLA at least to the extent of our authority under section 11347."[235]

The Commission did "concede that our assertion of this power is fairly recent, as both RLEA and the *Carmen* court assert."[236] It admitted that its decisions in 1983 (*DRGW*) and 1985 (*Maine Central*) had contributed to a deterioration of labor-management relations which had not theretofore existed in this area.[237] The Commission noted that"a relatively harmonious working relationship. . .when implementing ICC-approved consolidations" had existed for almost forty years prior to its 1983 and 1985 decisions and the inclusion of Section 2 in *New York Dock* in 1979.[238]

The Commission interpreted Section 2 of *New York Dock* as providing employees with "the opportunity to bargain collectively over their basic and continuing conditions of employment, as contemplated by the

231. Brandywine Valley R.R. Co.—Purchase—CSX Transp., Inc., Lines in Florida, 5 I.C.C.2d 764 (1989).

232. Brandywine, 5 I.C.C.2d at 772 n.5. After the railroads appealed the Circuit Court's *Carmen* decision to the Supreme Court and certiorari had been granted, the ICC changed its position and disputed the validity of the Court of Appeals' decision, contending that its "absolute authority" over labor management relations in cases subject to Section 11343 of the Act was derived both from Section 11341(a) and Section 11347.

233. CSX Corp.—Control—Chessie Sys., Inc. and Seaboard Coast Line Indus., Inc., 6 I.C.C.2d 715 (1990). The issuance of this decision preceded the Supreme Court's grant of certiorari in that case.

234. *Id.* at 750-51.

235. *Id.* at 754.

236. *Id.* at 755.

237. *Id.* at 745-746.

238. *Id.* at 745. The ICC's conclusion that the 1979 inclusion of Section 2 of the *New York Dock* conditions (set forth at p. 272, *supra*), as required by section 402(a) of the 4R Act, had contributed to the labor unrest that began in 1983 was based upon an assumption that Section 2 had added something new to the law instead of simply confirming the law as it had always been interpreted and applied to that time.

RLA", but permitting modifications of collective bargaining agreements "when necessasry to complete an approved merger or consolidation."[239] To support that interpretation, the ICC was compelled to rely solely upon speculations and assumptions of what "must have happened": the 1940-1980 arbitrators "*must have defined* them [the terms 'selection of forces' and assignment of employees' in *New York Dock* and the Washington Agreement] broadly enough to include contract changes involving the movement of work (and *probably* employees) as well as adjustments in seniority";[240] "[i]t *appears* that arbitrators, management and labor developed approaches in the 1940-80 period for resolution of the inevitable conflicts with CBAs that permitted the carrying out of the transaction while maintaining labor peace";[241] between 1940 and 1980 "the disruptive effect on labor *appears* to have been successfully handled through WJPA-type negotiation and arbitration";[242] "[m]ost of the changes were *presumably* made through WJPA (or *New Orleans*) negotiations, with only the more difficult issues being decided by an arbitrator";[243] while the scope of the terms "selection of forces and assignment of employees" is "not well-defined. . .[i]t *must extend beyond* the mere mechanism for selection or assignment of employees, *and include* the modification of certain *important* contractual rights";[244] "[w]e *assume* they [labor and managment] did what was necessary to premit the carrying out of the merger, including. . .those projects that were direct results of the merger";[245] "[w]e *believe* that arbitrators have successfully followed this narrow and difficult path in the past. . .".[246]

The evidence upon which the ICC has based its speculations as to what "must have happened" between 1940 and 1980, consisted of a list submitted by CSX of 95 labor/management agreements relating to transfers.[247] The Commission did acknowledge that the list "cover[ed] a later

239. CSX Corp.—Control—Chessie Sys., Inc. and Seaboard Coast Line Indus., Inc., 6 I.C.C.2d 715, 749 (1990). *But see supra* pp. 271-272.

240. *Id.* at 721, (emphasis added). But it cited no such decisions of arbitrators.

241. *Id.* at 721-22. The "approach developed" was the negotiation of protection agreements granting to managment the right to transfer work and employees in return for lifetime protection for the employees. *See supra* note 92.

242. *Id.* at 740; (emphasis added). The only "WJPA-type negotiation and arbitration" which occurred during this period was the decision in WJPA Docket No. 141 in which the arbitrator rejected Southern's defense of §5(11)[§11341(a)] against employees' WJPA claims.

243. *Id.* at 741; (emphasis added). The ICC cited no such arbitration decisions.

244. *Id.* at 742; (emphasis added). This single bald speculation is elevated in later ICC decisions to a finding and still later, as precedent for ICC action in this area.

245. CSX Corp.—Control—Chessie Sys., Inc. and Seaboard Coast Line Indus., Inc., 6 I.C.C.2d 715, 743 (1990).

246. *Id.* at 753; (emphasis added). *See supra* note 224 where Arbitrator Harris noted that the issue of a carrier changing rates of pay, rules, or working conditions "had never been raised in a section 4 proceeding" before 1981.

247. *Id.* at 743.

period" and was referred to only for "some guidance",[248] but, as Commissioner Lamboley's dissent noted,[249] those agreements afforded no assistance on the issue whether employees or unions had ever been *required* to arbitrate contract modifications or elimination prior to 1981. Of the 95 agreements listed, only nine were arbitrated, and none of thsoe indicated whether they were voluntary or compulsory arbitrations.

As noted by Commissioner Lamboley in his dissent, the Commission had ignored the meaning it had given Section 2 when it created the *New York Dock* conditions:

> When adopting §2, the Commission noted that it "appears acceptable to all parties" and rejected a labor proposal addtion relating to [preserving] subcontracting agreements, stating that "the section, as now written, preserves all existing agreements and, therefore, the suggested language is redundant and unnecessary."[250]

The remand decision did not address the provisions of Section 3 of *New York Dock* which preserved to employees covered by protective agreements the rights and benefits provided by those agreements and afforded employees the option to choose between benefits of an applicable protective agreement (the Orange Book) and those provided by the conditions imposed by the Commission.[251]

As the Commission was rendering its remand decision, the Supreme Court took up the appeal by the railroads from the Court of Appeals *Carmen* decision. The ICC then joined the railroads in their appeal. On March 19, 1991, the Court issued its decision reversing the Court of Appeals and remanding the case to that court.[252]

The Supreme Court again refused to confront the issue of the effect of the Section 11347 requirement for the preservation of "rates of pay, rules, working conditions and other rights. privileges and benefits" although it was fully aware of the parties' positions on those issues.[253] Instead, the Court took what was, for it, the very unusual step of basing its decision upon assumptions. The Court assumed, but did not hold, that the requirements of Section 11347 and the "necessity" requirements of Seciton 11341(a) had been met and addressed itself only to the issue of whether Section 11341(a), in a proper case,[254] could immunize a railroad from the provisions of the Railway Labor Act and from collective bar-

248. *Id.*

249. *Id.* at 764 n.55.

250. *Id.* at 763 (quoting *New York Dock*, 360 I.C.C. at 73.)

251. New York Dock Ry.—Control—Brooklyn E. Dist. Terminal, 360 I.C.C. 60, 84-85 (1979); *see supra* pp. 272-273.

252. Norfolk & W. Ry. Co., v. Am. Train Dispatchers' Ass'n, 499 U.S. 117 (1991).

253. *See* dissent of Justices Stevens and Marshall, 499 U.S. at 134-143.

254. The Court did not decide that the cases before it were proper for the application of

gaining agreements executed pursuant to those provisions. The Court remanded the case to the Court of Appeals for "proceedings consistent with" its decision.

At the time *Dispatchers* was remanded to the Court of Appeals, there was pending before that Court a number of appeals from the Commission involving Sections 11341(a) and 11347. The ICC decisions involved in the appeals were consistent in that each overrode employee statutory or contractual rights, but their rationales for doing so were not so consistent.

In reviewing the *Carmen* and *ATDA* arbitration awards prior to the Court of Appeals decision, the ICC's primary claim of authority to override employee rights had been grounded in Section 11341(a). But immediately after that Court's decision, the ICC agreed with the validity of the Court's ruling, it disavowed ever having relied on section 11341(a) and it placed its full reliance on Section 11347 as the source of its authority. Then, following the Supreme Court's grant of the railroads' petitions for certiorari in that case, the Commission adopted its present position that both Section 11341(a) and Section 11347 independently provided it with the authority to modify or eliminate employee contract rights.

In addition, then, to the *Carmen* and *ATDA* cases remanded by the Supreme Court, that Court had pending before it an additional eight separate appeals from the ICC. On July 11, 1991, the Court, on its own motion, issued an order in those cases requiring the ICC to show cause why all of them should not be remanded back to it in light of the Supreme Court's decision in *Dispatchers'*, stating that "[s]uch a remand will enable the Commission to develop a coherent position on the issues remaining after the Supreme Court's decision." The ICC responded to the Court's order, and as a result all of the remaining pending cases,[255] except one, were remanded to the Commission by the Court's order dated September 17, 1991.

Upon remand, the Commission requested comments from the parties and the public. These comments were filed in March 1993. The ICC issued a decision in one case, but did nothing further in the remaining cases before the agency was terminated by Congress on December 31, 1995. At this writing,[256] its successor, the Surface Transportation Board, had done nothing with them.

In the one case that was not remanded, the Court of Appeals noted that the issue whether "§11357 limits the ICC's power to modify a CBA"

Section 11341(a)'s immunizing effects as "neither the conditions of approval [public interest], nor the standard for necessity is before us today." 499 U.S. at 134.

255. One had been settled in the interim by the union and the railroad involved.

256. July 25, 1997.

had been "expressly reserved by the [Supreme] Court in *Norfolk and Western", i.e., Dispatchers*.[257] The Court went on to hold:

> The statute clearly mandates that "rights, privileges and benefits" afforded employees under the existing CBAs be preserved. Unless, however, every word of every CBA were thought to establish a right, privilege or benefit for labor—an obviously absurd proposition—§565 (and hence §11347) does seem to contemplate that the ICC may modify a CBA.[258]

The Court concluded that, at the level of generality it had just announced, the ICC's interpretation "seems eminently reasonable".[259]

The Court then held that the Commission had "not. . .addressed the meaning, and thus the scope, of those 'rights, privileges and benefits,' that must be preserved, nor has it determined specifically whether the CBA provisions at issue here are entitled to statutory protections under that rubric."[260] It remanded the case "for the ICC to make that determination in the first instance."[261]

The Court also addressed the issue when it might become "necessary" to modify a CBA to effectuate a proposed transaction:

> In this case the Commission reasonably interpreted this standard to mean "necessary to effectuate the purposes of the transaction." If the purpose of the lease transaction were merely to abrogate the terms of the CBA, however, then "necessity" would be no limitation at all upon the Commission's authority to set a CBA aside. We look therefore to the purpose for which the ICC has been given this authority. That purpose is presumably to secure to the public some transportation benefit that would not be available if the CBA were left in place, not merely to transfer wealth from employees to their employer. Viewed in that light, we do not see how the agency can be said to have shown the "necessity" for modifying a CBA unless is shows that the modification is necessary in order to secure to the public some transportation benefit flowing from the *underlying* transaction (here a lease).[262]

The case was remanded to the Commission where it has remained in a "pending" status.

Rail labor viewed the decisions in *Dispatchers* and *Executives* as governing future action of the Commission as follows:

1. Section 11341(a) permits a carrier subject to its provisions to supersede a CBA provided the public interest, necessity and Section 11347 requirements have been satisfied.

257. Railway Labor Executives Ass'n v. United States, 987 F.2d 806, 813 (D.C.Cir. 1993) ("Executives").

258. *Id.* at 814; (footnotes omitted).

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.* at 815; (emphasis added).

2. Section 11347 "mandates that 'rights, privileges and benefits' afforded employees under existing CBAs must be preserved".
3. Section 11347 permits "words", i.e., contract terms, which do not confer "rights, privileges or benefits", to be modified but, only if "necessary".
4. The "necessity" requirement is met when the ICC/STB shows that a public transportation benefit flowing from the merger, control, etc., authority granted by the agency would be unavailable otherwise.
5. The arbitration provisions of *New York Dock's* Article I, Section 4 are strictly limited to selecting the percentage of the work forces involved to perform consolidated work and preparing consolidated rosters to permit employees to assign themselves to the available work.

Executives required the Commission to define what comes within the meaning of the term "rights, privileges and benefits" and then to apply that definition to the facts of the case before it.[263]

The cases remanded by the Court of Appeals had been pending since 1991 and 1993, and the Commission had taken steps to carry out the remand orders, when, in an unprinted decision reviewing an arbitration award unrelated to the remanded cases, the Commisison decided all of the issues pending in those cases. It issued that decision on December 7, 1995;[264] That decision was followed by three more decisions (issued by the Surface Transportation Board) which addressed some of the same issues disposed of by the *O'Brien Award Decision.*[265] In each case all of the issues were decided adversely to the employees.

In *O'Brien*, CSXT had grouped some seven separate ICC finance docket approvals together as authority to transfer employees working under Western Maryland, Richmond, Fredericksburg & Potomac, and C&O railroad contracts to the Baltimore & Ohio Railroad contract.[266] In no case could CSXT link any single finance docket authority to any "transaction" it intended to accomplish. Additionally, all but one of the finance docket approvals has been obtained by exemption under 49 U.S.C. § 10505 to which the immunizing effects of Section 11341(a) did not apply. The one finance docket ot which Section 11341(a) did apply

263. American Train Dispatchers' Ass'n v. ICC, 26 F.3d 1157 (D.C.Cir. 1994)—the one remanded case acted on by the ICC following *Dispatchers*—held that union counsel had conceded that no "rights, privileges or benefits" were involved in that case. 26 F.3d at 1163.

264. CSX Corp.—Control—Chessie Sys., Inc., Etc., Finance Docket No. 28905 (Sub-No. 27) (Arbitration Review) (December 7, 1995) (unprinted) ("O'Brien Award Decision").

265. CSX Corp.—Control—Chessie Sys., Inc., Etc., Docket No. 28905 (Sub-No. 26) (Arbitration Review) (Apr. 29, 1996) (unprinted) ("Harris Award Decision"): Union Pac. Corp., Union Pac. R.R. Co., Etc. —Control—Missouri—Kansas—Texas R.R. Co., Finance Docket No. 30800 (Sub-no. 30) (Arbitration Review) (July 31, 1996) (unprinted) ("Moore Award Decision"); Union Pac. Corp., Etc.—Control—Missouri Pac. R.R. Corp., Etc., Finance Docket No. 30000 (Sub-No. 48) (Arbitration Review) (July 31, 1996) (unprinted) ("Eischen Award Decision").

266. Formerly independent railroads that are now part of the CSXT.

did not involve any of the employees or properties on which CSXT desired to make changes, except perhaps RF&P. The unions noted that when employees make claims under employee protective conditions, they are required to identify the particular finance docket transaction in which the conditions were imposed and show that they were affected by actions taken pursuant to that specifically approved transaction.[267] The *O'Brien Award Decision* therefore effectively held that a railroad wishing to employ the *New York Dock* conditions would not be subject to the same restriction requiring identification of a specific Finance Docket transaction as would employees seeking to invoke those conditions.

The ICC held that the arbitrator had found "linkage" between the finance dockets and the CSXT proposed changes[268] and that this finding "was not egregious error";[269] that the fact that the Section 11341(a) exemption did not apply to the finance docket authority relied upon by CSXT was immaterial because the proposed changes could be traced back to the original B&O - C&O control case of 1963 upon which CSXT *had not relied* for its authority, but to which Section 11341(a) did apply;[270] and, in any event, "the basis for a carrier's action [no longer] must be found in a single Commission-approved transaction", but can now be based on "a series of them"—"[i]t does not matter whether these conditions were imposed in one transaction or several."[271]

It would seem that the Commission has held that railroads need not show a cause-and-effect relationship between any particular finance docket approval and any change they propose to make and that a carrier may reach back in time as much as 33 years if it must in order to find Section 11341(a) exemption authority on which to base its proposed changes in employees' Railway Labor Act and CBA rights. While in former years the Commission was totally averse to interfering in the labor relations of railroads, it now seemed to rail labor that the ICC could not find enough ways to relieve railroads of their obligations to their employees.

In *O'Brien,* the ICC also struck down the parties' agreement in a prior implementing contract executed under Section 4 of *New York Dock* to modify that contract only "in accordance with the procedures of the Railway Labor Act". The unions had contended that the railroads, hav-

267. Atlantic Richfield Co. & Anaconda & Pacific R. Co. and Tooele Valley R. Co., Finance Docket No. 28490 (Sub-No. 1) (Arbitration Review) (Mar. 2, 1988) (unprinted), at page 8:

> BAP next seeks a finding that *New York Dock* benefits are limited to displacements or dismissals caused by the control transaction only. We so find.

268. No attempt was made to identify the "linkage".

269. CSX Corp.—Control—Chessie Sys., Inc. (slip op. at 8).

270. CSX Corp.—Control—Chessie Sys., Inc., Finance Docket No. 2805 (Sub-No. 27) (slip op. at 8) (Arbitration Review) (Dec. 7, 1995) (unprinted).

271. *Id.* at 8,9.

ing agreed to that restriction, could not use *New York Dock* to modify or eliminate those contract obligations. The Commission upheld Arbitrator O'Brien's holding that this agreed-to requirement to follow Railway Labor Act procedures was ineffective because "neither party had any reason to view this [RLA restriction] language as restricting CSXT's ability to implement future operational changes, an ability that CSXT would not readily have given up."[272] This holding of the ICC would indicate that language in future (and current) *New York Dock* Section 4 implementing agreements that restrict future modifications of their provisions to Railway Labor Act procedures would have no effect if the railroads decide to modify or eliminate them by service of another *New York Dock*, Section 4 notice.

In its *O'Brien Award Decision*, the Commission also disposed of the issue remanded to it by the Court of Appeals in *Executives* involving the preservation of employees' rights, privileges, and benefits. It did so without reference to that case or to the cases pending before it on remand from the Supreme Court. It simply held the standard on which an employee's rights are to be preserved is whether the change the railroad desires to make "is necessary to effect a public benefit of the transaction"[273] and that a "public transportation benefit" is realized when "improvements in efficiency reduce a carrier's costs of service," because the Commission assumed that "such reductions result[ ] in reduced rates for shippers and ultimately consumers."[274]

The Commission identified "rights, privileges and benefits" as relating only to "ancillary emoluments or fringe benefits—as opposed to the more central aspects of the work itself—pay, rules and working conditions."[275] The Commission based this conclusion upon an earlier protective arrangement crafted by the Secretary of Labor for application to employees affected by provisions of the Urban Mass Transportation Act of 1964, 78 Stat. 302, *i.e.*, Section 10 of the so-called UMTA "Model Agreement".[276] The Commission relied upon the protections established

272. CSX Corp.—Control—Chessie Sys., Inc. (slip op. at 12). It is difficult to understand how the ICC could have held that the CSXT would not readily have agreed to the Railway Labor Act restriction when it did not know or inquire into the consideration CSXT had obtained in return for that provision.

273. *Id.* The "transaction" here meaning the resulting particular change the carrier proposes to make as distinguished from the "transaction" the agency is authorized to approve by 49 U.S.C. §11343 [now § 11323].

274. CSX Corp.—Control—Chessie Sys., Inc., Finance Docket No. 2805 (Sub-No. 27) (Arbitration Review) (Dec. 7, 1995) (unprinted). The decision provides no factual basis for this conclusion.

275. *Id.* at 14. Yet Section 11347 requires preservation of "rates of pay, rules, working conditions and other rights privileges and benefits." *See supra* p. 272.

276. *Id.* at 14-15.

under UMTA even though the U.S. Court of Appeals for the Sixth Circuit had held that Congress had deliberately chosen not to incorporate the UMTA protections, but "directly incorporated protections" of the Rail Passenger Service Act.[277]

The Commission's reliance on this particular provision in another agreement crafted under a different statute, rather than upon the provisions established by the Secretary of Labor under the Rail Passenger Service Act as required by Section 11347, is puzzling in itself, but is doubly so when one realizes that Section 10 of the so-called "Model Agreement" crafted under Section 13(c) of the Federal Transit Act (formerly the Urban Mass Transportation Act) covers only "fringe benefits". Such a fringe benefit provision is also found in Article I, Section 8 of *New York Dock*. The "fringe benefit" provisions of the two protective arrangements require protection of fringe benefit rights, privileges, and benefits "including without limitation, group life insurance, hospitalization," etc. The fringe benefit provision of Section 8 of *New York Dock* has an entirely different purpose and covers an entirely different subject matter than does Section 2, the provision governing ICC action in *O'Brien* and remanded by the Court in *Executives* for Commission definition. The Model Agreement's counterpart to *New York Dock* Section 2, is that Agreement's Section 3. Yet the Commission, instead of comparing Section 2 with Section 3, for reasons it does not mention, decided to compare the disparate provisions of Section 2 with those of Section 10 and found the fringe benefit protection of Section 10 of the FTA (or UMTA) arrangement to be "compelling evidence" that because Section 10 covers only fringe benefits, so *New York Dock* Article I, Section 2, includes only "so-called incidents of employment, or fringe benefits."[278] The Commission also failed to note that Section 11347, by requiring adoption of the Secretary of Labor's protections, specifically identifies certain of the "rights, privileges and benefits" which must be preserved: "*rates of pay, rules, working conditions* and *other* rights, privileges and benefits under existing collective bargaining agreements or otherwise . . . ."[279]

It certainly could be argued with reason that an effect of the Commission's resolution of this issue in this manner is that employees' rights, privileges, and benefits, including rates of pay, rules, and working conditions as secured by collective bargaining agreements, need not be preserved if they impede a carrier in making a change which the railroad *claims* will be cost- efficient, even if that change is to occur as long as 33 years after the ICC approval authority upon which it relies.

277. Railway Labor Executives' Association v. I.C.C., 930 F.2d 511, 517 (6th Cir. 1991).

278. If Section 2 is to cover only fringe benefits and Section 8 already covers fringe benefits, one of those provisions is obviously superfluous.

279. Italics supplied.

The *O'Brien Award Decision* was followed by three decisions reversing awards favorable to the employees.[280] The first of these cases reviewed a decision by Arbitrator Harris who, as a New York Dock Section 4 arbitrator, had held that he had no jurisdiction to modify or otherwise affect an earlier *New York Dock* implementing agreement which the parties had agreed to modify only through the procedures of the Railway Labor Act. The STB cited the ICC's *O'Brien Award Decision* and held that, in referring to the Railway Labor Act, the parties were merely reciting existing law "which provides that RLA procedures apply to modification of rates of pay and rules (*i.e.*, matters which are outside the scope of modification to CBA's which can be made by an implementing agreement), . . ."[281] While the ruling on the parties' restriction to RLA procedures was consistent with the ICC's ruling on the same issue in *O'Brien*, the rationale for the ruling in *Harris* only served to further confuse just what elements of employment are contained within the "rights, privileges and benefits" that must be preserved under Section 11347.

On July 31, 1996, the STB issued two decisions that further muddled the picture of employee rights under the Interstate Commerce Act, as amended. In the first of these, the *Eischen Award Decision*,[282] the STB vacated and remanded the arbitrator's decision which had held that a carrier's proposed merger of two seniority districts was not, standing alone, a "transaction" as that term is defined in *New York Dock* and that therefore the arbitrator had no jurisdiction to hear the case. The STB noted that integration of operations had already occurred and that the case had arisen "because of the UP's attempt to make an *employment* change that the railroad *says* is related to, and necessary to realize the operational *benefits* from, the 1982 acquisition by UP of MP in *Union Pacific—Control.*" (Italics supplied.) The STB also noted UP's basic concession that no change in operations, services or facilities was involved[283] and that UP had stated the issue in the case as involving only the question whether a "change in the status of employees of two consolidated railroads—such as

280. *See cases* cited *supra* note 265.

281. But in *O'Brien* the ICC had appeared to express the view that "pay, rules and working conditions" *are within* the scope of rights which *can* be changed by an arbitrated implementing agreement. *See supra* p. 291.

282. *See cases* cited *supra* note 265.

283. Union Pac. Corp.—Control—Missouri Pac. R.R. Corp., Finance Docket No. 30000 (Sub-No. 48) (slip op. at 2) (Arbitration Review) (unprinted). The Second Circuit in *New York Dock v. U.S.*, *supra*, note 182, held that "transaction", as defined in *New York Dock*, was meant by the ICC "to encompass . . . the same situations that were within the parallel term 'coordination' employed in . . the Washington Agreement" (609 F.2d at 95), *i.e.*, consolidations of railroad facilities or railroad operations or services performed through such facilities. (*See supra*, note 69) Only when a railroad contemplates such a "transaction" which "may cause the dismissal or displacement of any employees, or rearrangement of forces" may it serve the required 90-day notice which activates the *New York Dock* conditions. *New York Dock Ry*, *supra* 360 ICC at 85.

the consolidation of seniority districts—which [does not involve a change in railroad operations, services or facilities and which] results in operating efficiencies and economies is a 'transaction' under the *New York Dock* conditions."[284] Arbitrator Eischen said "no" and rested that conclusion upon the precedent of Arbitrator N.H. Zumas in a case involving the same legal issue as phrased by UP to Eischen.[285] Arbitrator Zumas had held himself to be without jurisdiction because the sole object of Seaboard was to rearrange forces—not to take action pursuant to an ICC order "the *result* of which would be a rearrangement of forces."[286]

The STB said that it would vacate the *Eischen Award* because the Zumas award on which Eischen had relied involved "corporate restructuring" and that the *UP Control* is "no mere corporate restructuring" but "involved the acquisition of control of two large Class I railroads by a third,"[287] and because Eischen allegedly undertook "no analysis of the facts of this case to support his conclusion."[288] The Board also placed great weight upon its conclusion that consolidation of seniority districts was "the sort of efficiency improvement that caused the ICC to approve the underlying merger transaction."[289]

The STB thus rejected Arbitrator Eischen's reliance on precedent, which held that the moving party in a *New York Dock* arbitration "must demonstrate a causal nexus between the merger and the alleged transaction (Eischen, 12):

> By now, it is firmly established that the moving Party in a New York [Dock] matter has the burden of demonstrating a causal nexus between the proposed action and the ICC's merger authorization. Typically, railroads have relied upon the principle in avoiding New York Dock arbitration but the present case presents a mirror image of the typical situation. In this case, the Carrier faces the Organization contention that no causal nexus exists between the proposed merger of the seniority districts in May 1993, and the 1982 merger in which the New York Dock conditions were imposed.[290]

284. Union Pac. Corp.—Control—Missouri Pac. R.R. Corp. (slip op. at 6-7).

285. Seaboard System Railroad/Brotherhood of Maintenance of Way Employes, Finance Docket Nos. 29916, 29985 and 30053, (Nicholas H. Zumas, August 20, 1983).

286. *Id.* at 21; italics in original.

287. Union Pac. Corp.—Control—Missouri Pac. R.R. Corp. (slip op. at 7). The STB Chairmen in separate comments emphasized without explanation that the *Seaboard* [Zumas] case was "based on facts . . . very different from those in this proceeding." Yet the material facts relied on by the two arbitrators would seem to have been identical: *New York Dock* was imposed in both cases; in each case the seniority roster consolidation of two or more formerly independent railroads were ends in themselves; and, neither carrier cited operations or facilities to be consolidated which in turn would necessitate seniority district consolidation thereby activating the protective conditions.

288. *Id.* at slip op. 8.

289. *Id.* at slip op. 9.

290. Eischen also relied upon *Transp. Communications Workers and Missouri Pac. R.R. Co.,*

Eischen then made the factual finding that the record had demonstrated that UP, as the moving party, had not discharged its burden and therefore, had not demonstrated the existence of a "transaction" under *New York Dock*.[291]

Concurrently with its reversal of Eischen, the STB issued a decision reversing another arbitrator, Preston Moore.[292] Arbitrator Moore had found that the circumstances presented to him and to Eischen were the same:

> "An award by Arbitrator Eischen (12-9-94) . . . appears to be squarely in point with this case. Therein Arbitrator Eischen stated: 'This dispute concerns Carrier's attempt to incorporate an existing Union Pacific seniority [sic] into existing Missouri Pacific seniority districts.' The same circumstances exist in this case, with the addition that the Union Pacific is attempting to require some employees who are represented by the IAM to merge with the employees of another carrier and then be represented by BMWE.[293]

Since the material circumstances of the two cases were identical and since he saw no error in *Eischen*, Moore also held that no "transaction" existed and dismissed the railroad's case.

The STB found that Moore had "conducted no analysis at all of the record and made no independent findings of fact" and had "merely relie[d] on the expertise of another arbitrator in a different proceeding with respect to a different transaction."[294] As it had vacated and remanded *Eischen,* so it vacated and remanded *Moore.*

The ICC/STB policy, born with the agency's issuance of its *DRGW* decision in 1983[295] and culminating in its decisions affirming *O'Brien* and reversing *Harris, Eischen* and *Moore,*[296] has placed the railroads in a uniquely dominant position in dealing with their employees' rights under the Railway Labor Act, their collective bargaining agreements, and their established rules and working conditions.

Although the STB has issued apparently contradictory definitions as

---

Award No. 1, Case No. 6 (Arbitrator LaRocco, December 18, 1987) and *Missouri Pac. R.R. Co. and American Train Dispatchers' Ass'n*, (Arbitrator Zumas, July 31, 1981).

291. *Id.* at 15. Because the parties in *Eischen* had resolved their dispute, the union moved to dismiss voluntarily the action brought by it against the STB provided the STB would vacate its *Eischen Award Decision.* The STB agreed, the appeal was dismissed, and, the *Eischen Award Decision* was vacated by STB order on February 26, 1997.

292. *See cases* cited *supra* note 265.

293. Union Pac. Corp., Union Pac. R.R. Corp.—Control—Missouri—Kansas—Texas R.R. Co., Finance Docket No. 30800 (Sub-No. 30) (slip op. at 3) (Arbitration Review) (unprinted).

294. *Id.* at 4. If by "transaction" the ICC here means the carriers' proposed actions, they, of course, were the same: consolidation of seniority districts.

295. *See supra* pp. 275-278.

296. *See supra* pp. 289-295.

to the "rights, privileges and benefits" which the statute requires it to preserve,[297] employees can have little doubt that their contract and other rights traditionally held to be beyond ICC/STB jurisdiction or expertise are now in serious jeopardy. The ICC/STB not only has reversed the traditional policy of non-interference in labor relations matters as established both by itself and by the Congress in crafting its national rail transportation and rail labor policies in the Interstate Commerce Act and Railway Labor Act,[298] but also has expanded the railroads' ability to employ this new policy to rid themselves of certain of their obligations to their employees under the RLA and their contracts.

The STB has established a railroad's right to rely upon its 30-plus year old original merger approval upon which the *New York Dock* conditions or a predecessor arrangement was imposed as authority to override the rights of the railroad's employees who may not even have been born when the original merger took place.[299] Since virtually all Class I railroads are the products of mergers which have occurred since 1957, and the STB has ruled that a railroad need not identify any particular approved statutory transaction to invoke the "rights override" provisions of Sections 11341(a) and 11347, but may aggregate any number of transactions approved under Section 11343 so long as a claim can be made that some "link" exists between those aggregated authorized transactions and the carrier's proposed actions, every Class I railroad in the United States is now free to invoke the *New York Dock* conditions as means of modifying its CBA obligations. Once those conditions are invoked and a railroad claims that it will save money (e.g. even the elimination of but one job)[300] by carrying out its proposal, "efficiency" is served and the elimination or modification of employee rights becomes "necessary" in the eyes of the STB. The employees then may be removed involuntarily from the protection of their contract and placed under a different contract with a different bargaining representative or they may be completely deprived of contract protection and any collective bargaining representation depending upon the carrier's discretionary choice in moving its work.

This "necessary" change or elimination of employee rights need no longer be caused by some change in railroad operations, services, or facilities in order to activate the *New York Dock* conditions. After the *Eischen* and *Moore Award Decisions*, a railroad's consolidation of seniority districts and its consequent modification or elimination of employee rights has become a "transaction" without reference to any change in rail-

297. *See supra* pp. 291-292.

298. For a discussion of those policies *see* RLEA v. Pittsburgh & Lake Erie R.R. Co., 845 F.2d 420, 438-446 (3rd Cir. 1988), *rev'd on other grounds*, P&LE v. RLEA, 491 U.S. 490 (1989).

299. *See supra* p. 290.

300. *See supra* note 288.

road operations, services or facilities.[301] The many agreements negotiated by the railroads and unions in collective bargaining in which each side gave up something to achieve limited objectives now have little integrity before the STB should a railroad wish to change or eliminate them without returning the consideration the railroad received from the union. While the railroads may alter or eliminate these contracts in the name of efficiency by simply invoking the procedures of *New York Dock*, the employees have no such option; they remain bound to the terms of their agreements.[302]

The U.S. Court of Appeals for the District of Columbia Circuit saw the danger in an ICC that was authorized to modify the wording of collective bargaining agreements even if those modifications did not affect "rights, privileges and benefits" secured to employees. In *Executives* that Court held that such modifications must be shown to be necessary "to secure to the public some transportation benefit" "flowing from the underlying transaction" identified in the railroads' basic merger or control application approved under the ICA "that would not be available if the CBA were left in place, not merely to transfer wealth from employees to employer."[303]

The ICC considered the "necessity" requirement as described by the Court to be met in the *O'Brien Award Decision* by its presumptive conclusion that improvements in efficiency reduce a railroads costs which in itself is a public transportation benefit, because it results in reduced rates for shippers and consumers. The actual quotation is as follows:

> Improvements in efficiency reduce a carrier's costs of service. This is a public transportation benefit because it results in reduced rates for shippers and ultimately consumers. The savings realized by CSXT can be expected to be passed on to the public because of the presence of competition. Where the transportation market for particular commodities is not competitive, regulation is available to ensure that costs efficiency and lower costs would enable CSXT to increase traffic and revenue by enabling that carrier to lower its rates for the service it provides or to provide better service for the same rates. While the railroad thereby benefits from these lower costs, so does the public.[304]

Regarding the Court's admonition against transfer of wealth from em-

301. *See supra* note 289.

302. The reference to elimination or modification of contracts is not altogether accurate. The statute and *New York Dock* preserve the employee's *rights* under the contracts, and it is the individual employee's rights that are eliminated or modified when he or she is removed to another, or to no contract.

303. *Executives* at, 815; *see supra* p. 288.

304. CSX Corp.—Control—Chessie Sys., Finance Docket No. 2805 (Sub-No. 27) (slip op. at 13) (Arbitration Review) (unprinted). While this statement may seem theoretically acceptable, the *O'Brien* record contained no evidence on this subject.

ployee to employer, the ICC said:[305]

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

These statements of the ICC/STB are contrary to earlier statements of the Commission which neither it nor the STB have formally disavowed:

> ". . .[S]ection 2 [of *New York Dock*] . . . as now written, *preserves* all existing agreements and, therefore the [RLEA] suggested language is redundant and unnecessary." (Italics supplied.)[306]
>
> * * *
>
> ". . . [The] purpose [of ICC conditions] . . . [is] *to protect* the interests of employees, some of which in a particular case may well have been established under bargaining agreements executed pursuant to the Railway Labor Act." (Italics in original.)[307]

The ambiguous language of its current statements also reflects a reluctance in that agency to confront the plain language of the governing statute and an intention to establish an ad hoc approach to the STB's statutory obligations. The Court of Appeals had said that changes in contracts could not be made "merely to transfer wealth from employees to employers." The Court said nothing about a transfer of "significant" wealth. And while the ICC appeared to consider the lack of effect upon the "extent of unionization" to be a material factor in the *O'Brien* case, the employees' complete loss of representation and of their contract in the *ATDA/N&W* case[308] was not considered material to the decision in that case.

On March 21, 1997, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision on the unions' appeal from the ICC's *O'Brien Award Decision*.[309] Although the case involved removing CSXT employees from the coverage of Western Maryland, C&O and RF&P agreements to that of the B&O agreements, the Court did not mention

305. *Id.* (footnote omitted).
306. *See supra* text accompanying notes 186-188.
307. *See supra* text and accompanying note 168.
308. *See supra* pp. 281-282.
309. United Transp. Union v. Surface Transp. Board, 108 F.3d 1425 (D.C. Cir. 1997).

that fact but found that the "only contested changes to CBAs are seniority provisions;"[310] that it did not involve "rates of pay, rules or working conditions," but only "other rights, privileges and benefits" required to be preserved by section 11347, and presented the issue of whether consolidation of seniority rosters fell within the proscription against change of "other rights," etc.[311] The Court, citing the principle of judicial deference, upheld the ICC's ruling that it did not. The Court however, confirmed *ATDA*[312] and *Executives*[313] "as holding that 'certain contractual provisions,' that is, those treading upon any rights, privileges or benefits in a CBA, 'are immutable.' 26 F.3d at 1163."[314]

On June 13, 1997, the D.C. Circuit issued its decision in the appeal from the *Harris Award Decision*[315]. The Court held that the STB's reversal of an arbitrator's interpretation of an ambiguous contract provision was acceptable because in that Courts' opinion, the STB could take into consideration the "impact of their (the arbitrators') decision on the STB's administration of the Act.[316]

In its 1991 order, the Court of Appeals remanded a number of cases to the ICC in order to "enable the Commission to develop a coherent position on the issues."[317] Five years later the Court and the employees still await a response to that order. The ICC/STB decisions rendered since 1991, while clearly setting forth the agency's view that employee statutory and contract rights must give way to efficiency in railroad operations,[318] do not yet state consistent or coherent positions in their ratio-

310. *Id.* at 1430.

311. *Id.*

312. American Train Dispatchers Ass'n. v. ICC, 26 F.3d 1157 (D.C. Cir. 1994).

313. Railway Labor Executives' Ass'n v. U.S., 987 F.2d 806 (D.C. Cir. 1993).

314. 108 F.3d at 1430.

315. United Transportation Union v. Surface Transportation Board, No. 96-1201, D.C. Circuit (June 12, 1997).

316. *Id.*, Slip op. 10.

317. *See supra* p. 287.

318. As of this writing, the ICC/STB has uniformly granted each railroad's request to eliminate its obligations under a given collection bargaining agreement, whether the ICC/STB had to do so by affirming or reversing the decisions of its arbitrators. In a recent article in the Journal of Commerce, (June 2, 1997), Frank N. Wilner, an Assistant Vice President of the Association of American Railroads at the time about which he was writing, noted the "zealous pro-management bias" of the ICC in dealing with labor contracts. Writing of a dispute between Guilford Transportation Co., a New England freight railroad, and a member of union he said:

> The Interstate Commerce Commission—with a zealous pro-management bias in those days—sanctioned the lease agreement and referred certain labor issues to binding arbitration. When a neutral arbitrator ruled in favor employees—concluding that existing collective bargaining agreements could no more be scrapped than existing contracts for locomotive fuel—the ICC partially overturned the award. A second arbitration ruling—more to the ICC's liking—provided for a single seniority system, smaller train crews and partial elmination of craft distinctions in assigning work.

The ICC approved the second arbitration ruling.

nales. But regardless of the merit of the ICC/STB decisions rendered since October 1983, the basic question remains unanswered: why did the commission abruptly reverse a historic policy that had been reaffirmed only nine months earlier?[319] The ICC never answer that qustion, nor has the STB.

VI. From Regulator of Railroads to Regulator of Labor

The Interstate Commerce Commission's sudden change of policy cannot be grounded upon Congressional action. No language in the amendments to the Interstate Commerce Act can be cited to support the result reached by the post-1983 ICC/STB decisions. Indeed, as Congress deregulated the industry, it increased and expanded the protections it afforded employees.[320] Nowhere in the legislative history of the 4R Act or the Staggers Rail Act is there any mention of Congressional dissatisfaction with the Commission's lack of jurisdiction over, or expertise in, labor relations matters nor can there be found any indication at all of any affirmative grant to the ICC of jurisdiction to affect CBAs or other rights of employees.

If Congress did not change the Commission's role, why did the ICC take it upon itself to do so? Was it because the ICC believed that, in relieving railroads of the burdens imposed by the Railway Labor Act and collective bargaining agreements, it was carrying out the "spirit" of the Staggers Rail Act to help railroads achieve "revenue adequacy through perceived "efficiencies"? Was it because new ICC Commissioners were appointed by a new Administration with a very different philosophy of government, a philosophy that included within governmental deregulation the deregulation of employers' contractual obligations to their employees? Or was it simply a way of justifying the continued existence of an agency whose *raison d'etre* was being diminished along with the regulations it once administered?[321]

---

319. *See supra* text accompanying notes 194-204.

320. *See supra*, 263-264.

321. As the ICC/STB's statutory duties and responsibilities with regard to regulation of surface transport have dwindled, its involvement in labor matters has increased. Prior to 1987 the ICC refused to review disputes arising under the conditions it imposed. (Bell v. Western Md. Ry. Co., 366 I.C.C. 64, 67 (1981); Brotherhood of Locomotive Engineers v. Chicago N.W.T. Co., 366 I.C.C. 857, 859-861 (1983). Since 1987 when it first decided to review arbitration decisions rendered by arbitrators in Chicago & North Western Transp. Co.—Abandonment, 3 I.C.C. 2d 729 (1987) *aff'd sub nom.* International Brotherhood of Electrical Workers v. ICC, 862 F.2d 330 (D.C. Cir. 1988), it has issued over eighty decisions involving appeals from arbitrators (fourteen in 1996 alone). Many of these cases have also involved appeals from its decisions to the courts. In all but a very few cases the ICC held against the employee—even to the extent of reversing an employee's award rendered by a Public Law Board established under the Railway Labor Act which the 8th Circuit held to be beyond ICC jurisdiction. (Brotherhood of Locomotive Engineers v. ICC, 885 F.2d 446 (8th Cir. 1989)). In cases involving the loss of employees' CBA or

Whatever the agency's reason for assuming the role of labor relations expert, none of its decisions requiring employees to move from one contract and bargaining representative to another, or to none at all, have addressed the effects such moves have upon the rules, working conditions, or other rights, privileges, and benefits of the individual employees involved. Whatever else may be said of the requirements of Section 11347, it is accepted by all that Section 11347 imposes a duty upon the ICC/STB to preserve some type of employee rights. Yet since 1983, the ICC/STB has consistently acceded to whatever changes in employee rights a carrier wished to obtain. It has never required the railroad to adduce evidence of the effects upon employees' rights of moving them from one collective bargaining agreement to another or to no agreement. Nor has the ICC/STB on any occasion compared the agreements to determine whether "rates of pay, rules, working conditions and other rights, privileges and benefits" or even "ancillary emoluments and fringe benefits" have been preserved.

In the end, the ICC/STB has placed the burden of proof upon the employees to demonstrate that they would be deprived of rights unnecessarily because the railroad's proposal would not result in an increase in efficiency of any kind. Such a burden cannot be sustained.[322] However, employees can demonstrate to arbitrators the specific loss of specific rules, working conditions and "other rights, privileges and benefits" under existing CBAs "or otherwise," including "ancillary emoluments and fringe benefits" and this they undoubtedly will do in future arbitrations.

The courts, of course, have been loathe to interfere with the Commission.[323] Thus far, they have accepted the ICC/STB's generalized conclusions of the lack of employee loss of rights or economic injury as the conclusions of an administrative agency expert in the administration of its governing statute. As a result, over a period of fourteen years the Commission has proceeded, one step at a time, from an override of employee rights because the override was written into a trackage rights agreement between railroads (to which labor was not a party) and was specifically approved by the ICC,[324] to the STB's direct approval of the consolidation of seniority districts which moved employees from one contract and bar-

statutory rights, the results have always been the same: to provide the railroad the relief it requested whether that required affirming or reversing the arbitrator's award.

322. In the *O'Brien Award Decision* the ICC made no explicit finding as to what "ancillary emoluments or fringe benefits" it held to be preserved by Section 11347, would indeed be preserved in that case.

323. Chevron, U.S.A. Inc. v. Natural Resources Defense Council, Inc., et al., 467 U.S. 387 (1984); United Transportation Union v. Surface Transportation Board No. 96-1201 (D.C. Cir., June 13, 1997, slip. op. 9-10).

324. *See supra* pp. 275-278.

gaining representative to another and which it justified as "necessary" because of the elimination of *one* job, even though the railroad employer conceded that railroad operations were not involved and it was a straight move to modify employee rights by consolidating seniority districts.[325]

The individual employee's loss of statutory and contract rights is a tragedy personal to the employee, but the even greater tragedy is the official adoption by the government of the view that a mere "claim" of a railroad that it may save money by eliminating employee statutory and contract rights is a sufficient "efficiency" to justify the "necessity" of such an act. That determination has created a regime of unprecedented regulation of labor-management relations that has abandoned the traditionally held view that "efficiency of [railroad] service is advanced by the just and reasonable treatment of those who serve."[326] The STB has sanctioned an effectively unilateral right in railroad managements to eliminate employees' CBA rights. This STB policy conflicts with Congress' historical policy of protecting employees' collectively bargained rights in order to safeguard such "collective action [as] an instrument of peace rather than strife."[327]

The managements of the railroads certainly should be experienced enough in their dealings with their employees to realize that their insistence upon returning to the laissez faire tactics of the latter decades of the nineteenth century will only recreate in the latter twentieth century and early twenty-first centuries the same atmosphere of employee mistrust and disaffection that existed one hundred years ago. The railroads, even with the sanction of the Surface Transportation Board, cannot be permitted to walk away from solemn contract obligations solemnly undertaken in good faith by the unions representing their employees. The railroads can reasonably expect the unions to continue to fight vigorously to protect the employees' statutory and contract rights by every available lawful means for as long as it proves necessary to do so. In a labor-intensive service industry such as the railroad industry, everyone, including the shipping public, will be losers if that battle is joined. Railroad actions which evade their collective bargaining agreement obligations and deprive railroad workers of their rights can never provide a foundation for the development of an efficient and responsive railroad industry.

---

325. *See supra* pp. 293-294, 296-297.

326. United States v. Lowden, 308 U.S. at 238; *See supra* note 72 and accompanying text.

327. *Texas & N.O. R. Co. v. Brotherhood of Ry. & S.S. Clerks*, 281 U.S. 548, 571 (1930); *see also* Zakson, *Rail Labor Legislation 1888-1930*, 390-391, *supra* note 59.

The Future of Railroad Labor-Management Relations as an Industry of Five, or Three, or Two Mega-Railroads Enter the Next Millennium

William G. Mahoney*

TABLE OF CONTENTS

I. Introduction 341
II. Collective Bargaining and Labor Relations 343
III. Effects of Mergers and Abandonments on Labor Relations, 1957-1975 346
IV. Effects of Mergers and Line Sales on Labor Relations, 1980-1998 350
V. Labor Relations into the Next Millennium 358

I. INTRODUCTION

Labor relations in the railroad industry have been governed by the provisions of the Railway Labor Act, 45 U.S.C. Sec. 151, *et seq.*, for the latter three-quarters of the 20th Century. For the most part, the Railway Labor Act has been considered an adequate instrument in keeping the railroads running despite times of severe labor-management stress. Given the turbulent and sometimes bloody history of railroad labor relations

* William G. Mahoney is a founder of the law firm of Highsaw, Mahoney and Clarke, P.C. in Washington, D.C. He received his law degree from the University of Notre Dame in 1950. In 1952, he began representing railroad and airline labor unions before government agencies, the courts and the Congress.

Published by Digital Commons @ DU, 1998

before the Act's enactment, one must conclude that the Act was a relatively successful expression of national policy.[1] Its success has been due to several factors, the first of which is the Act's emphasis upon the settlement of disputes between the parties by negotiation and mutual agreement.[2] A salient feature of the Act is its postponement of the possibility of self-help by any of the parties until its procedures are exhausted.[3] This postponement can be extended for a very long time, particularly when the services of the National Mediation Board are invoked by one of the parties.[4]

For more than two-thirds of its life the RLA (or simple voluntary mutual agreement by the parties outside the RLA's procedural provisions) provided the only means which could be employed to change the rates of pay, rules and working conditions the parties had agreed upon as a result of their negotiations. In addition, the laws governing the conduct of railroads in their financial and operational aspects included provisions designed to protect the interests of employees that might be adversely affectèd by the actions of the railroads.[5] These safeguards provided rail-

1. For a history of railroad labor relations in the Nineteenth Century, see generally SHELTON STROMQUIST, A GENERATION OF BOOMERS: THE PATTERN OF RAILROAD LABOR CONFLICT IN THE NINETEENTH CENTURY (1987); WILLIAM CAHN, A PICTORIAL HISTORY OF AMERICAN LABOR (1973); DEE BROWN, HEAR THE LONESOME WHISTLE BLOW (1977).

2. Compulsory arbitration was suggested many times as a means of resolving railroad bargaining impasses but, unlike its legislative enactments governing other industries, Congress consistently rejected it. The Arbitration Act of 1888, ch. 1063, 25 Stat. 501; Erdman Act of 1898, ch. 370, 30 Stat. 424; Newlands Act of 1913, ch. 6, 38 Stat. 103; Adamson Act of 1916, ch. 436, 39 Stat. 721; Transportation Act, 1920, Pub. L. No. 66-152, Title III, 41 Stat. 456 (codified as amended in scattered sections of 49 U.S.C.); Railway Labor Act of 1926, Pub. L. No. 69-257, 44 Stat. 577 (codified as 45 U.S.C. § 151 (1940)); Regional Rail Reorganization Act of 1973, Pub. L. 96-448, 94 Stat. 1895 (codified as amended at 45 U.S.C. § 74, *et seq.*(1988)).

3. Railway Labor Act, §§ 2 First, 6 and 10 (codified at 45 U.S.C. §§ 152 First, 156 and 160 (1994)).

4. Railway Labor Act § 5, (codified at 45 U.S.C. § 155 (1994)). Once a notice of intended change is served or the services of the NMB are invoked, the parties may not engage in self-help and it is entirely within the discretion of the NMB as to how long it will keep the parties in mediation. Detroit, Toledo & Shore Line R.R. . v. United Transport. Union, 396 U.S. 142, 150 (1968). Although the party seeking the contract change may feel that the delay caused by mediation seems interminable, that delay is an essential feature of the Act's bargaining process because it creates in the party seeking the change an incentive to compromise. *Id.*; Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co., 394 U.S. 369, 378 (1969).

5. Emergency Railroad Transportation Act, 1933, ch. 91, §§ 1-17, 48 Stat. 211; Transportation Act of 1940, Pub. L. No. 76-785, 54 Stat. 898; Rail Passenger Service Act of 1970, Pub. L. No. 91-518, 84 Stat. 1327; Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, 87 Stat. 985 (codified as amended at 45 U.S.C. § 701, *et seq.* (1988)); Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31 (1976) (codified as amended in scattered sections of 45 U.S.C.); Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 (codified in scattered sections of 49 U.S.C.); Northeast Rail Service Act of 1981, Pub. L. No. 97-35, 95 Stat. 643 (codified as 45 U.S.C. § 1101 *et seq.*); ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (codified as 49 U.S.C. § 14501, *et seq.*).

road employees with a sense of security in their employment, as well as a sense of individual dignity conveyed by the knowledge that they had contractual rights which could not be taken from them without the consent of their elected statutory representatives. As a result, a working relationship between the management and employee representatives of the railroads, while not always serene, was effective, as exemplified by the many successful results achieved through labor-management cooperation in joint legislative efforts between 1960 and 1980.[6]

Employees had a long history of fierce loyalty to their home railroads - evidenced by the ability of many to trace their railroad lineage to grandfathers and great-grandfathers. This loyalty was enhanced by knowledge that when dealing with railroad management, the employees' representatives were operating on a relatively level playing field.

II. Collective Bargaining and Labor Relations

Prior to World War I, about 30 percent of the non-operating railroad employees were organized and about 80 percent of the operating employees were organized.[7] Except for one or two instances, which involved operating employees, collective bargaining was conducted on a railroad-by-railroad basis.[8] The Coordinator of Railroads, appointed by President Woodrow Wilson to take over railroad operations for the World War I war effort, began negotiating with each of the unions on a nationwide basis[9] and, as a result of such negotiations and his prohibition against anti-union discrimination, union membership in the industry increased dramatically.[10] By 1920 the non-operating employees were 80 percent organized, and the operating employees were 90 percent organized.[11] The

6. *E.g.*, Railroad Retirement legislation; the Regional Rail Reorganization Act of 1973 creating Conrail (Pub. L. 93-236, 87 Stat. 986); the Rail Passenger Service Act of 1970 creating Amtrak (Pub. L. 103-272, § 7(b), 108 Stat. 1379 (codified at 45 U.S.C. § 501)) and the maintenance of the existence of Amtrak despite repeated attempts to eliminate it; the Railroad Revitalization And Regulatory Reform Act of 1976 (Pub. L. 94-210, 90 Stat. 31); Staggers Rail Act of 1980 (Pub. L. 96-448, 94 Stat. 1895); and, the defeats of Coal Slurry Pipeline legislation in the Congress as well as many other bills thought to be inimical to the interests of the railroad industry and its employees.

7. H.D. Wolf, The Railroad Labor Board 59 (1927).

8. For a history of the development of collective bargaining in the railroad industry see The Railway Labor Act (Douglas L. Leslie ed. 1995); The Railway Labor Act at fifty, Collective Bargaining in the Railroad and Airline Industries (Charles M. Rehmus ed. 1977).

9. Leslie, *supra* note 8, at 25-26; Army Appropriations Act, ch. 8, 39 Stat. 619 (1916) (codified in scattered sections of 18 U.S.C. (1976); *see also* William G. Mahoney, *Interstate Commerce Commission/Surface Transportation Board as Regulator of Labor's Rights and Deregulator of Railroads' Obligations: The Contrived Collision of the Interstate Commerce Act with the Railway Labor Act*, 24 Transp. L.J. 249 (1997).

10. Wolf, *supra* note 7, at 58-59.

11. Membership in the Brotherhood of Maintenance of Way Employees increased from

Government's method of national bargaining continued until Congress returned the industry to its private owners in 1920.[12]

The railroads divided themselves into regions for operational purposes: The Eastern Region or Territory consisting of approximately 67 railroads; the Western Region with about 188 railroads; and, the Southeastern Region representing 52 railroads.[13] They established Carriers' Conference Committees to negotiate for the railroads in each region.[14] The railroads in each region then selected their individual bargaining representatives to meet with the representatives of the various unions to bargain collectively on wages.[15] Other issues involving rules, working conditions, and other matters, were left for the individual railroads to bargain.[16]

In 1926 and 1934, the passage of the Railway Labor Act and its primary amendment,[17] established a procedure for bargaining to make and maintain agreements, as well as, to handle disputes in the application and interpretation of such agreements.[18] The procedure has not changed significantly during the seven decades of its existence.

In 1963, however, the railroads did make a significant change in their method of bargaining with the establishment of the National Railway Labor Conference (its negotiating arm), the National Carriers' Conference Committee, and the dissolution of the regional system of bargaining.[19] Under this method of bargaining, which continues today, the railroads negotiate national wages and rules with the national unions representing

---

30,000 in 1917 to 300,000 in 1920; the Brotherhood of Railway Carmen's membership went from 50,000 to 200,000; the Order of Railroad Telegraphers from 46,000 to 80,000; the Sheet Metal Workers from 4,000 to 15,000; the Trainmen from 159,000 to 184,000; Firemen and Enginemen from 103,000 to 125,000; Engineers from 75,000 to 86,000; and, Conductors from 48,000 to 52,000. Leslie, *supra* note 8, at 58-59.

12. Transportation Act, 1920, Pub. L. No. 66-152, 41 Stat. 456. At the time of its return to private ownership, the industry had over 1,993,000 employees. WOLF, *supra* note 7, at 67.

13. The Washington Job Protection Agreement of May 1936, at 11-19.

14. Rehmus, *supra* note 8, at 84-85.

15. *Id.*

16. Leslie, *supra*, note 8 at 29-30; Rehmus, *supra* note 8, at 80-81.

17. Railway Labor Act, ch. 347, 44 Stat. 577 (1926) (adopting compulsory mediation and voluntary arbitration as the preferred means of dispute resolution in railroad labor relations); Act of June 21, 1934, ch. 691, 48 Stat. 1185 (eliminating the Board of Mediation and establishing the present National Mediation Board; establishing the National Railroad Adjustment Board to resolve disputes involving the interpretation and application of agreements).

18. Railway Labor Act, §§ 2, 3, 6 and 10 (codified at 45 U.S.C. §§ 152, 153, 156 and 160). Terminal R.R. Ass'n of St. Louis v. Brotherhood of R.R. Trainmen, 318 U.S. 1, 6 (1942) (stating that the Railway Labor Act merely provides a procedure for dispute resolution and is indifferent to the parties' terms of agreement which may be as favorable or unfavorable to labor or management as they choose).

19. Rehmus, *supra* note 8, at 84-85. This bargaining is sometimes conducted with individual unions and sometimes with groups of unions.

the industry's employees.[20] Individual railroads bargaining with individual unions on issues is, however, still carried on.[21]

Labor relations by nature, are not continually tranquil. Over the years, strong disagreements between the parties arose which necessitated appointment of Presidential Emergency Boards under section 10 of the Act (45 U.S.C. 160).[22] These Boards recommend solutions to disputes over bargaining issues.[23] The Boards' recommendations are not binding on the parties, and if one party rejects a Board's recommendations, a strike or lockout may occur after a prescribed period of time.[24] Between 1963 and 1988, Congress enacted 14 bills in ten disputes which remained unresolved following Emergency Board recommendations.[25] This legislation either required further bargaining, or settled the pending disputes by imposing of a solution to avoid a nationwide strike or one, which would seriously affect the nation's commerce or economy.[26] While there were a number of strikes over contract issues, most involved individual railroads and individual unions over local issues.[27] In such disputes, each side recognized the legitimate right of the other to differ with regard to the issues involved in the pending dispute.[28] While these labor disputes were often heated, and resulted in strikes or lockouts, employee morale did not suffer because both parties were aware that each was exercising its legitimate rights in the area of labor relations. The employees were also secure in the knowledge that whatever agreement resulted from the dispute it would be one which could not be modified without the consent of their representatives.[29]

---

20. *Id.* at 80-84.

21. *Id.*

22. Section 10 requires the National Mediation Board to notify the President, if in its judgment an unadjusted dispute "threaten[s] substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service." Then the President, at his discretion, may appoint the board. 45 U.S.C. § 160.

23. *See generally*, Rehmus, *supra* note 8, at 151-86.

24. Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co., 394 U.S. 369, 378-79 (1969).

25. Pub. L. No. 100-429, 102 Stat. 1617 (1988); Pub. L. No. 100-380, 102 Stat. 896 (1988); Pub. L. No. 100-2, 101 Stat. 4 (1987); Pub. L. No. 99-431, 100 Stat. 987 (1986); Pub. L. No. 99-385, 100 Stat. 819 (1986); Pub. L. No. 97-262, 96 Stat. 1130 (1982); Pub. L. No. 93-5, 87 Stat. 5 (1973); Pub. L. No. 92-17, 85 Stat. 39 (1971); Pub. L. No. 91-541, 84 Stat. 1407 (1970); Pub. L. No. 91-203, 84 Stat. 22 (1970); Pub. L. No. 90-54, 81 Stat. 122 (1967); Pub. L. No. 90-13, 81 Stat. 13 (1967); Pub. L. No. 90-10, 81 Stat. 12 (1967); Pub. L. No. 88-108, 77 Stat. 132 (1963).

26. Wilson v. New, 243 U.S. 332, 351-52 (1917) interpreted congressional intent to establish authority to so "arbitrate" railroad labor disputes.

27. Rehmus, *supra* note 8, at 155.

28. For a discussion of railroad strike experience generally to 1976 see Rehmus, *supra* note 8, at 187-207; for a discussion of the various types of self-help employed by unions and management, see Leslie, *supra* note 8, at 310-24.

29. *Id.*

An agreement which contributed immensely to the stability of labor relations following the passage of the Railway Labor Act was the Agreement that occurred in Washington, D.C. during May 1936, known as the Washington Agreement or the Washington Job Protection Agreement.[30] This Agreement was executed by railroads that operated 85 percent of the mileage in the United States, and all of the standard railroad labor unions. It was executed one month before the 1933 Emergency Transportation Act, which effectively froze the number of jobs in the industry, was to expire or be renewed for another year. The Washington Agreement provided partial financial protection to employees who were deprived of their employment or otherwise adversely affected in their employment as a result of coordination.[31] The Washington Agreement also provides for negotiation of a means of protecting employees in their seniority rights, and their place and type of work, before the railroad can take action to affect them.[32] That agreement is still in effect, has never been amended, and has been the basis of all subsequent employee protective arrangements, whether reached by agreement or imposed by statute.[33]

The Railway Labor Act, together with the Washington Agreement and its progeny of employee protective arrangements, provided the basis for labor relation's stability in the industry until 1983.

III. Effects of Mergers and Abandonments on Labor Relations, 1957-1975

Mergers did not play a significant part in railroad economics for many years prior to 1957.[34] In that year the President of the Norfolk & Western Railroad ("N&W"), Stuart Saunders, began a campaign to merge the Virginian Railroad ("Virginia") into the N&W. An attempt to merge those railroads had failed in 1926 and Mr. Saunders wanted to ensure the success of this later attempt by personally lobbying the parties that opposed the earlier merger, and those that might oppose the later merger.

One day in 1957, Mr. Saunders called at the offices of the law firm, which represented the labor organizations with contracts on the N&W

30. This latter name is a misnomer since the agreement does not protect jobs, but rather protects the compensation that is paid to employees.

31. "Coordination" is a joint action by two or more carriers whereby they unify, consolidate, merge, or pool in whole or in part their separate railroad facilities or any of the operations or services previously performed by them through such facilities. Washington Agreement, § 2a.

32. Washington Agreement §§ 4, 5.

33. New York Dock Ry. Co. v. United States, 609 F.2d 83, 84 (2d Cir. 1979).

34. A readable guide to the history of the railroad merger movement in the United States is to be found in Frand N. Wilner, Railroad Mergers, History, Analysis, Insight (1997). This book, informative as it is, deals with the employee issues that arose in railroad mergers from a management perspective.

and Virginian. He commenced what clearly appeared to be a set speech that he delivered to every Chamber of Commerce and shipper on the lines of the two railroads. What was extraordinary about his presentation was that it was to two lawyers in the privacy of their firm's conference room, rather than a room full of people.[35] He began by saying that the two railroads served mines which produced different types of coal and that "blending coal is like blending scotch"; the purpose of the merger was to form a railroad that efficiently serves the producers of two types of coal, have the coal properly blended, and then it deliver it to the merged railroad's customers.

When Mr. Saunders turned to the effects of the merger upon the employees of the two railroads, he assured the two lawyers that no employees would lose their jobs or be otherwise adversely affected. The senior lawyer then asked Mr. Saunders if he would put that assurance in writing. Mr. Saunders paused a moment and then asked if he could call his Vice President-Law, John P. Fishwick. After speaking privately to Mr. Fishwick, Mr. Saunders announced that he would put his assurances in writing and so, the merger attrition agreement was born.

The merger attrition agreement adopted the Washington Agreement as the basic protective arrangement for the employees, with a number of specific modifications.[36] The merged railroad agreed to take into its employ all employees who had an employment relationship with the railroads between the date of the agreement and the date of consummation of the merger. The railroad also guaranteed that these employees "would not be deprived of employment or placed in a worse position with respect to compensation, fringe benefits, or rights and privileges pertaining at any time during such employment by"[37] the merged company with exceptions for death, retirement disciplinary dismissal, emergency force reduction (strike, act of God, etc.), or a decline in business as specified in the agreement.[38] In return for this guarantee, the unions agreed to enter into implementing agreements with the merged company and provide for the transfer and use of employees, allocations, and rearrangements of forces made necessary by transfers of work throughout the merged system to the extent not otherwise permissible under existing rules and agreements.[39] This latter provision was extremely important to the railroads

35. The lawyers were the firm's senior partner and the author.

36. Agreement for the Protection of Employees as a Result of the Merger of the Norfolk & Western Railway Company and the Virginian Railway Company, executed on June 18, 1959, by Stuart T. Saunders, President of the N&W, Frank D. Beale, President of the Virginian, and G.E. Leighty, Chairperson of the Railway Labor Executives' Association, § 1.

37. *Id.* at § 1(a).

38. *Id.* at § 1(b).

39. Agreement for the Protection of Employees as a Result of the Merger of the Norfolk & Western Railway Company and the Virginian Railway Company, June 18, 1959, Stuart T. Saun-

because without it, they could not transfer their employees beyond the boundaries of the employees' seniority districts without violating their union contracts. As expressed to Congress in 1973, by then Southern Railroad President Graham Clayton, that type of provision made the merged railroad a viable thing for without it employees could not be transferred.[40]

The merged company also took over and assumed all contracts, schedules and agreements between the merging carriers and the unions subject to changes in accordance with the provisions of the Railway Labor Act.[41]

The attrition agreement proved beneficial both to rail labor and to rail management. It was beneficial to rail labor because it provided security to employees. It was beneficial to rail management because it allowed the reduction of jobs through natural attrition[42] and enabled the transfers of work and employees between the former separate railroad properties which otherwise would have been prohibited by the railroads' existing contracts with the rail unions.[43] It improved employee morale thereby making difficult transitions more efficient and economical and it facilitated the successful negotiation of implementing agreements. These agreements effected the rearrangement of work and the work force prior to the carrier's proposed date for particular consolidations resulting from the merger. Thus, attrition agreements, when administered in a spirit of good faith (as they generally were) were advantageous to both management and labor.

The ICC's approval of the N&W-Virginian merger opened a floodgate of major merger and control approvals throughout the following decade, until the collapse of the Penn-Central in 1970.[44] Employment on

---

ders, Pres. N&W-Frank D. Beale, Pres. Virginian-G. E. Leighty, Chmn. Ry. Labor Executives' Ass'n.

40. Hearings on S. 2188 and H.R. 9142 Before the Surface Transp. Subcomm. of the Comm. on Commerce, 93rd Cong., 972-73 (1973) (statement of Graham Claytor, President, Southern Railroad)). *See* Mahoney, *supra* note 9, at 258-59.

41. Agreement for the Protection of Employees as a Result of the Merger of the Norfolk & Western Railway Company and the Virginian Railway Company, executed on June 18, 1959, by Stuart T. Saunders, President of the N&W, Frank D. Beale, President of the Virginian, and G.E. Leighty, Chairperson of the Railway Labor Executives' Association, § 1.

42. The overall attrition rate in the industry at the time was about five percent or six percent a year, so that within four years all job reductions resulting from the merger could be realized. The protective arrangement required by statute at that time provided compensation protection to employees who lost their jobs following approval of the merger at 100 percent for four years and at 60 percent thereafter. *See infra* note 47.

43. *See* text accompanying note 52.

44. Erie/Delaware, Lackawanna & W., 312 I.C.C. 185 (1960); Chicago & N. W./Minneapolis & St. Louis, 312 I.C.C. 285, 296 (1960)*; N&W/Virginian, 307 I.C.C. 401, 439(1959)*; Louisville & Nashville/Nashville, Chattanooga & St. Louis, 300 I.C.C. 125 (1957); *see* Illinois Central/Gulf, Mobile & Ohio into the Illinois Central Gulf, 338 I.C.C. 805 (1971)*; Seaboard Coast Line/

Class I railroads during this period declined from approximately 950,000 in 1957 to about 488,000 in 1975.[45] This drastic loss of jobs was due primarily to the merger-mania which swept the industry; technological advances, abandonment of miles of railroad lines and, the deterioration of rail passenger service were also contributing factors.

Despite this severe, unrelenting decline in employment, employee morale did not suffer as much as one might have expected because, even in those cases in which attrition agreements were not executed, the ICC imposed an employee protective arrangement known as the New Orleans Conditions.[46] The New Orleans Conditions, theoretically at least, protected adversely affected employees for periods of up to five years from the time they were first affected by the merger.[47] The employees who remained in the employ of the merged carrier were secure in the knowledge that their contracts protected them from arbitrary actions of management which could affect their income, the location of their work, or the rules under which they worked. This combination of contractual and statutory protections of employee interests provided relative tranquility in railroad labor relations while the industry experienced some of the

Piedmont & N., 334 I.C.C. 378, 384-385 (1969)*; Chicago & N. W./Chicago Great W., 330 I.C.C. 13 (1967); Great N./N. Pac./Chicago, Burlington & Quincy into the Great N. & Burlington, 331 I.C.C. 228, 277-279 (1967)*; N&W/Delaware & Hudson and the Erie-Lackawanna, 330 I.C.C. 780 (1967)*; Chesapeake & Ohio-Baltimore & Ohio/ the W. Maryland, 328 I.C.C. 684 (1967); Pennsylvania/New York Cent., 328 I.C.C. 304, 313 (1966)*; Missouri Pac./Chicago & E. Illinois, 327 I.C.C. 279 (1965); N&W/New York, Chicago & St. Louis, and the Wabash, 324 I.C.C. 1, 50 (1964)*; Atlantic Coast Line/Seaboard Air Line, 320 I.C.C. 122 (1963); Chesapeake & Ohio/ Baltimore & Ohio 317 I.C.C. 261 (1962); Southern/Cent. of Georgia, 317 I.C.C. 557 (1962); Line/ Minneapolis, St Paul & Sault Ste. Marie, the Duluth, S. Shore & Atl. and the Wisconsin Central, 312 I.C.C. 341 (1960). The asterisks (*) indicate the execution of attrition agreements by the railroad and union parties.

45. ASSOCIATION OF AMERICAN RAILROADS, RAILROAD FACTS 55 (1998).

46. First imposed in the New Orleans Union Passenger Terminal Case, 282 I.C.C. 271, 280-81 (1952), these conditions adopted by reference the provisions of the Washington Agreement and for the first four years following ICC approval of the merger, superimposed upon that agreement the provisions of the Oklahoma Conditions. The effect of this was to begin the employee's protective period (up to four or five years) on the date he or she was affected rather than on the date of the ICC's order of approval and to provide full compensatory protection for employees deprived of employment for the first four years following the ICC's order. These protections were imposed in order to comply with the terms of Section 5(2)(f) of the Interstate Commerce Act, 49 U.S.C. § 5(2)(f), as interpreted by the U.S. Supreme Court in Railway Labor Executives Association v. I.C.C., 339 U.S. 142, 155 (1950).

47. The attrition agreements negotiated by the unions provided effective protection from all causes for all employees of the merging railroads. However, the employee protective conditions required by law to be imposed by the I.C.C. protected only against effects caused by the merger and therefore were often not as effective at protecting employees since management often claimed that the effects suffered by the employees were the results of declines in business or technological advances and left it to the employees to prove otherwise to an arbitrator - an often impossible burden since the facts underlying a carrier's position were within its sole knowledge.

most traumatic events in its history as its workforce declined by half.[48]

IV. Effects of Mergers and Line Sales on Labor Relations, 1980-1998

The years between 1975 and 1980 produced no railroad mergers with any significant effects upon the employees in that industry, but they did produce two statutes which had lasting effects upon the welfare of railroad employees, both in their application and in their misapplication: the 4R Act[49] and the Staggers Rail Act.[50] These statutes were designed to relieve the rail industry of burdensome, unnecessary regulation by government. Because it was evident that providing railroad management with a freer hand in their financial and operational activities might jeopardize the interests of their employees, Congress expanded, both in scope and quality, the protection it afforded employees who might be affected by its enactment of these statutes.

In the 4R Act, Congress expanded the protection traditionally afforded employees under the Interstate Commerce Act[51] and in the Staggers Act, it provided specific protections for employees at each point in the statute where it relieved railroads of some form of regulation.[52] In

48. CSX Corporation—Control—Chessie System, Inc. and Seaboard Coast Line Industries, Inc. (Arbitration Review), Finance Docket No. 28905 (Sub-No. 22) Slip op. at 10 WL 661418, (I.C.C. Sept. 25, 1998): "[T]he enactment of section 5(2)(f) in the Transportation Act of 1940 [requiring the imposition of employee protective conditions] codified the legal framework that had been agreed upon by the negotiators of the WJPA in 1936, and set the stage for a 40-year era of labor peace with regard to mergers and consolidations."

49. Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31.

50. Staggers Rail Act of 1980, Pub. L.96-448, 94 Stat. 1895.

51. Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210 § 402(a), 90 Stat. 31 (recodified at 49 U.S.C. § 11326(a)). Section 402(a) provided employees with the protections developed by the Secretary of Labor under the law creating Amtrak as well as the protections already developed by the I.C.C. The effect of this, *inter alia,* was to extend the protection period for employees to six years and to expressly direct the then Interstate Commerce Commission to condition its orders of approval upon terms requiring the carriers to preserve all existing statutory and contract rights of the employees involved should the carriers decide to carry out the permissive authority granted. The protective arrangement developed by the I.C.C. pursuant to Section 402(a) became known as the New York Dock Conditions.

52. Staggers Rail Act of 1980, Pub. L.96-448, 94 Stat. 1895. Section 213 (relief from all ICA requirements and I.C.C. regulations except (1) employee protection provisions and (2) prohibited intermodal ownership); Section 219 (lessened need for rate bureaus but required Section 11326(a) employee protection for employees affected); Section 221 (construction of rail lines liberalized-discretionary protection provided equal to Section 11326(a)); Section 223 (reciprocal switching agreements-discretionary employee protection provided); Section 226 (limitations on issuance of car service orders-required hiring of employees who had performed that work); Section 227 (bankruptcy courts bound by section 11326(a)); Section 228 (liberalized merger provisions but left Section 11326(a) untouched); Section 401 (sales of lines to financially responsible persons for feeder line development-required use of employees who normally would have per-

short, in 1976 and 1980, Congress continued the policy it pursued since 1933[53] - of protecting the interests of railroad employees in furtherance of efficient railroad operations throughout the country.[54] The Interstate Commerce Commission, charged with administering the employee protective provisions of the Interstate Commerce Act, continued to apply the compensatory protections to employees as it had since 1944.[55] It also refused to meddle in the contractual relationships between labor and management.[56] Consequently, labor-management relationships on the nation's railroads remained stable.

This stability began to weaken in 1982 when the ICC refused to impose the traditional employee protective provisions in the sales of lines by major railroads to non-carrier companies created to purchase them.[57] The ICC converted that decision into an official policy in December 1985, with its promulgation of regulations formally exempting sales of such lines from virtually all regulation and ruling that employee protective conditions would be imposed only in "exceptional circumstances."[58]

The ICC accomplished this objective by a creative interpretation of the Interstate Commerce Act. Sales of rail lines between carriers were subject to the provisions of then Sections 11343 and 11347 of the Act (now Sections 11323 and 11326(a), respectively). The latter section required the ICC to impose employee protective conditions upon the sale. The ICC opined, correctly as it turned out, that if it could eliminate em-

---

formed the work); Section 402 (liberalized abandonment provisions but mandated Section 11326(a) protection rather than the lesser discretionary protection previously provided).

53. Emergency Railroad Transportation Act of 1933, 48 Stat. 211, *expired* June 17, 1936, 49 Stat. 376. Particularly Section 7(b) which prohibited a reduction in the numbers of jobs by reason of any action taken pursuant to the authority of the Federal Railroad Coordinator and guaranteed against individual employees being deprived of employment or placed in a worse position with respect to compensation by reason of any action taken pursuant to the authority of the Coordinator.

54. United States v. Lowden, 308 U.S. 225, 234 (1939):

> One must disregard the entire history of railroad labor relations in the United States to be able to say that the just and reasonable treatment railroad employees in mitigation of the hardship imposed on them in carrying out the national policy of railway consolidation has no bearing on the successful prosecution of that policy and no relationship to the maintenance of an adequate and efficient transportation system.

55. Oklahoma Ry. Trustees—Abandonment of Operations, 257 I.C.C. 177 (1944); New York Dock Railway—Control—Brooklyn E. Dist. Terminal, 360 I.C.C. 60, 73, 84 (1979), *aff'd.* New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979).

56. Chicago, St. Paul, Minneapolis & Omaha Ry.—Lease, 295 I.C.C. 696, 701 (1958); Leavens v. Burlington N., Inc., 348 ICC 962, 975, 976 (1977); Brotherhood of Locomotive Eng'rs v. Chicago and N. W. Transp. Co., 366 ICC 857, 861 (1983).

57. Knox & Kane R.R. Co. (Petition for Exemption), 366 I.C.C. 439 (1982).

58. *See* Ex Parte No. 392 (Sub.-No. 1), 1 I.C.Cb2d 810, 811 (1985). The ICC made its determination without reference to any study or any evidence as to what protective conditions had cost railroads in the past and never required any applicant to produce evidence as to such costs in any case before it.

ployee protective conditions from the purchase equation, sales of railroad lines would soar.

The ICC decided to declare the sales of such lines subject to that provision of the Act which dealt with the construction of railroad lines and the extension of a railroad's lines caused by acquisition of additional lines.[59] The advantage in utilizing this provision was that the imposition of employee protective conditions, while always imposed under this section when it appeared that employees might be affected by its use, was not mandated but was left to the discretion of the Commission. The ICC simply refused to impose such conditions in sales conducted under this section to non-carriers or to operating short lines.[60] The fact that Section 10901 by its express terms could be invoked only by a *rail carrier providing transportation* subject to the jurisdiction of the Interstate Commerce Commission[61] did not impede the Commission from encouraging *non*-carrier corporations that did *not* provide transportation to utilize Section 10901. The ICC merely ruled that these corporations would *become* carriers providing transportation *after* the ICC approved their purchase of the rail lines in question. Therefore, under the ICC's novel interpretation, such non-carriers (including newly formed subsidiaries of major railroads that purchased lines from their own parent carriers) could avail themselves of the new ICC policy of rejecting employee protection as these non-carriers purchased thousands of miles of lines from the Class I carriers.[62] Employment opportunities on the Class I railroads were not only reduced by these sales, but jobs offered by the new short lines were fewer in number. Short lines employ about 71 percent fewer workers per mile of line than do Class I carriers[63] and short line pay was about 15

59. 49 U.S.C. § 10901.

60. The I.C.C. at first held that it would not impose employee protective conditions unless the employee adverse effects were "significant" but when confronted with a sale of 700 miles of track in which 261 employees would lose their jobs with the Illinois Central Gulf Railroad, it held that to impose protection with so many employees affected would defeat the sale. Gulf & Mississippi R.R. Corp. – Purchase (Portion) – Exemption – Illinois Cent. Gulf R.R. Co., F.D. 30439 (Jan. 2, 1985) (not printed). Later that year the ICC issued its formal exemption policy, see *supra* note 58, and in 1989 interpreted its "exceptional circumstances" test, "in a manner (to quote dissenting Commissioner Lamboley) which precludes petitioners (i.e., employees' representatives) from ever prevailing on the merits of their arguments." Southeastern Rail Corp. – Acquisition and Operation Exemption – Gulf and Mississippi R.R. Corp., F.D. 31187 (Aug. 31, 1989) (not printed).

61. Italics supplied.

62. In 1995, Congress amended Section 10901 to allow any person to utilize its provisions and expressly prohibited the imposition of employee protective conditions in Section 10901 sales, thereby belatedly legitimizing the STB's short line policy. ICC Termination Act of 1995, Pub. L. 104-88, Title I, § 102(a), 109 Stat. 822.

63. The number of employees of a railroad divided by the number of miles of line operated by that railroad provides the number of employees per mile operated. Nine Class I railroads have 177,981 employees and operate 121,670 miles of line or 1.46 employees per mile; 34 re-

percent less than on the Class I pay.[64] Needless to say, this new philosophy of the ICC and the enthusiasm with which railroad management embraced it, did not improve labor relations in the industry. To the contrary, it began the most highly litigious period in the history of the industry; one which continues to this day.[65]

In 1983, the Commission decided to deregulate the railroad managements' obligations to their employees under their labor contracts by holding that 49 U.S.C. § 11341(a) (now § 11321(a)) overrode collective bargaining agreements and where those agreements conflict with a transaction which we have approved they must give way to the implementation of the transaction.[66] This decision was appealed to the U.S. Court of Appeals for the D.C. Circuit which vacated and remanded it to the Commission holding that the ICC gave no justification for a view that waiver of the Railway Labor Act [was] necessary to effectuate the [trackage rights] transactions at issue.[67] The U.S. Supreme Court, in a 5-4 decision, dismissed the case on a technical deficiency which was raised *sua sponte* by a member of the Court at oral argument - the appeal was filed too late as it was taken from an ICC decision on clarification which does not toll the time for appeal, rather than from an ICC decision on reconsideration which does toll such time.[68]

That decision of the ICC was followed in 1985 by its decision in the *Maine Central* case[69] in which the Commission announced that its orders, not the RLA or Washington Agreement (WJPA) govern employee-management relations in connection with an approved transaction.[70]

---

gional railroads (350 miles or more of line) have 10,995 employees for 21,466 miles of line or .512 employees per mile; and, 507 short lines (less than 350 miles of line) operate 28,149 miles of line with 11,741 employees or .417 employees per mile. AMERICAN ASSOCIATION OF RAILROADS, *supra* note 33, at 3.

64. *See* Paul S. Dempsey and William G. Mahoney, *The U.S. Short Line Railroad Phenomenon: The Other Side Of The Tracks*, 21 TRANSP. L. J. 383 (1993).

65. *Id.*

66. Denver and Rio Grande W. R.R. Co.—Trackage Rights—Missouri Pac. R.R. Co., Finance Docket No. 3000, p. 6 (Sub-No. 18) (Oct. 18, 1983) (not printed).

67. Brotherhood of Locomotive Eng'rs v. I.C.C., 761 F.2d 714, 725 (D.C. Cir. 1985):

> We thus vacate the 1983 orders and remand the case to the Commission. The Commission is not empowered to rely mechanically on its approval of the underlying transaction as justification for the denial of a statutory right. On remand, to exercise its exemption authority, the Commission must explain why termination of the asserted right to participate in crew selection is necessary to effectuate the pro-competitive purpose of the grant of trackage rights or some other purpose sufficiently related to the transaction. Until such finding of necessity is made, the provisions of the Railway Labor Act and the Interstate Commerce Act remain in force.

68. I.C.C. v Brotherhood of Locomotive Eng'rs, 482 U.S. 270 (1987).

69. Maine Cent. R.R.-Exemption from 49 U.S.C. 11342 and 11343, Finance Docket No. 30522 (Sept. 16, 1985) (not printed), *aff'd per curiam*, Railway Labor Executive Ass'n v. I.C.C., 812 F.2d 1443 (D.C. Cir. 1987) (Table).

70. *Id.* at 6.

Since these two decisions were issued, there has been continuous litigation before the ICC, its successor Surface Transportation Board, and the federal courts. The issue of the STB's authority over the collective bargaining agreement and statutory rights of employees has not been resolved. The Supreme Court had two opportunities to determine the matter and each time avoided it. In the first case, *ICC* v. *BLE*,[71] it dismissed on a technical deficiency. In the second case, eight years later, the Supreme Court chose to reverse the decision of the D.C. Circuit (which had again reversed and remanded the ICC's decision) by *assuming* the railroad had met all of the requirements of the statute which, as is manifest from a reading of the dissenting opinion, was an ill-founded assumption.[72]

Eight more years have passed since the Supreme Court last had an opportunity to address the issue. During this time, the ICC, and its successor STB, have continuously extended government control over the agreement, as well as statutory rights of railroad employees in a series of decisions. The agency held that a railroad does not need to show a connection between the change it wishes to make and a specific ICC or STB order containing the so-called employee protective conditions in order to force changes in employees' agreement rights by compulsory arbitration.[73] Nor does the carrier have time limits when deciding to make a change effecting elimination of employee contract rights even though the order containing the conditions on which the railroad relies may have been issued over 30 years before.[74] The STB has expressly held that the explicit language of its New York Dock Conditions, language required by Section 11326(a), does not mean what it plainly says. That statute requires the STB to mandate that rates of pay, rules, working conditions and other rights, privileges and benefits under existing collective bargaining agreements or otherwise must be preserved by railroads obtaining STB merger approval.[75] However, the STB holds that this language in reality means quite the opposite: rates of pay, rules and working condi-

71. I.C.C. v. Brotherhood of Locomotive Eng'rs, 482 U.S. 270 (1987).

72. Norfolk & W. Ry. v. Am. Train Dispatchers Ass'n, 499 U.S. 117 (1991) (*see* dissent of Justices Stevens and Marshall at 134-43.)

73. CSX Corp.—Control—Chessie System, Inc. Etc., Finance Docket No. 28905 (Sub-No. 27) (Arbitration Review), slip op. at 8) (Dec. 7, 1995) (not printed). Employees submitting claims for protection however, must show a *causal nexus* between a specific order approving a railroad application and its effects upon them. Atlantic Richfield Co. & Anaconda & Pac. R.R. Co. & Tooele Valley R. Co., Finance Docket No. 28490 (Sub-No. 1 (Arbitration Review), slip op. at 8 (Mar. 2, 1988)) (not printed).

74. *Id.* at 8, 9; CSX Corporation—Control—Chessie System, Inc. and Seaboard Coast Line Indus., Inc. (Arbitration Review), Finance Docket No. 28905 (Sub-No. 22) Slip op. at 25 (Sept. 25, 1998): "Moreover, it is now settled that the mere passage of time does not prevent a finding of nexus between the proposed changes and the initially approved transaction."

75. New York Dock Ry. Co. v. United States, 609 F.2d 83, 84 (2d Cir. 1979).

tions are *not* to be preserved if their modification or elimination would be beneficial to the railroad involved:

> [C]hanges in rates of pay, rules, and working conditions can be required by this agency acting under *New York Dock.* Carriers may invoke *New York Dock* to modify such CBA terms when modification is necessary to obtain the benefits of a transaction that was approved as being in the public interest.[76]

In rendering this extraordinary reading of the statute, however, the STB held that its arbitrators must not modify contracts beyond the extent to which they traditionally modified them between 1940 and 1980.[77]

The six major railroads existing today[78] are the result of ICC and STB orders approving the merger of some 47 railroads into those six carriers over the past 40 years with each order subject to either the New Orleans, or New York Dock Conditions.[79] Consequently, the collective bargaining agreement rights of virtually every railroad employee in the United States are threatened with modification or elimination by their railroad employers under the New Orleans or New York Dock conditions as the STB interprets and applies them. A railroad need only claim that it is the product of an approved merger or control application and that its planned changes are necessary in order to achieve efficiencies or benefits. On the basis of such claims the employees can be forced to arbitration. And, if an arbitrator's decision proves in any way unsatisfactory to the railroad, the railroad can appeal to the STB for a more satisfactory result

---

76. *Id.* at 29.

77. *Id.* at 12, 20, 36. The STB based this conclusion upon the *assumption* that such modifications traditionally must have been made by arbitrators during that period. *Id.* at 23. In fact there was no such tradition of modification of agreements between 1940 and 1980, or at any other time prior to 1983. Consequently, it remains to be seen whether the STB meant what it has said and will now require the railroads to adduce evidence of the existence of such traditional modifications when they seek to change agreements before arbitrators or, whether the STB in future decisions will reverse that directive to its arbitrators, clarify it out of existence, or perhaps, simply ignore it.

78. Norfolk Southern; Burlington Northern/Santa Fe; Union Pacific/Southern Pacific; CSX; Conrail; CN/ICG. These six are about to become five with the STB-approved division of Conrail between Norfolk Southern and CSX.

79. The single exception is Conrail, which was created by Congress from the remains of Penn Central and had congressionally imposed attrition-agreement-type protection for the employees of Penn Central. 3R Act, Title V, Pub. L. No. 93-236, 87 Stat. 1012 (repealed). The employees subject to attrition agreements have virtually all left the railroads as the last agreement became effective in 1971. *See* Chicago, St. Paul, Minneapolis & Omaha Ry.—Lease, 295 I.C.C. 696, 701 (1958); Leavens v. Burlington N., Inc., 348 I.C.C. 962, 975, 976 (1977); Brotherhood of Locomotive Eng'rs v. Chicago and N. W. Transp. Co., 366 I.C.C. 857, 861 (1983).

Since that time those railroads either have merged, controlled or come under the control of other railroads through ICC or STB orders of approval upon which the New Orleans or New York Dock Conditions were imposed.

or simply serve another notice of change.[80]

New York Dock arbitrators are bound by the policy of the STB in all cases so that New York Dock arbitrators must conform to the agency's wishes even though they would decide otherwise on the basis of the evidence before them.[81] Entire seniority districts of employees may be removed from their agreements and moved to other agreements or to unrepresented status, thereby being stripped of all agreement rights and their collective bargaining representation if to do so would save the railroad but one job.[82]

The STB's basic justification for the removal of employees' contract and statutory rights is its contention that the modification or loss of such rights is the *quid pro quo* for the employees' receipt of six years compensation protection under the protective conditions.[83] Aside from the questionable credibility of a contention first raised some 60 years into the history of employee protection, it is fallacious because there is no compensation provided in any formula of employee protection, including the original Washington Agreement, for the loss of contractual or statutory rights.[84] As the plain language of the protective formulas reflect, compensation protection is provided only for specific adverse effects to employees (dismissal, displacement, and transfer). No compensation is provided for the loss of one's collective bargaining agreement rights or the loss of one's representation by their elected bargaining agent. In short, an employee who is not dismissed, displaced, or transferred, re-

80. In no other American industry are employees' collective bargaining agreement rights so subject to governmental modification or elimination.

81. *See, e.g.*, Delaware and Hudson Ry. Co. C Lease and Trackage Rights C Springfield Terminal Ry. Co., Finance Docket No 30965 (Sub-Nos. 1 and 2), slip op. at 4-5 (Sept. 21, 1998) (not printed).

82. Union Pac. Corp., Pac. Rail Sys., Inc., and Union Pac. R.R. Co.—Control—Missouri Pac. Corp. and Missouri Pac. R.R. Co., Finance Docket No. 30000 (Sub-No. 48) (Arbitration Review) slip op. at 8 (July 17, 1996) (not printed). Because the parties in this case had resolved their dispute, the union agreed to move to dismiss the Petition for Review of the decision it had filed with the D.C. Circuit Court of Appeals provided the STB would vacate its decision. The STB agreed, the appeal was dismissed, and the decision was vacated by STB on February 26, 1997.

83. Study of Interstate Commerce Commission Regulatory Responsibilities Pursuant to Section 210(A) of the Trucking Regulatory Act of 1994, Interstate Commerce Commission, at 13; 1994 WL 639996, at *12 (I.C.C.).

84. The reason no compensation is provided is because neither the Washington Agreement nor its progeny were designed to affect, nor did they affect, rates of pay, rules or working conditions except in the very limited area of adjustments in seniority when work is consolidated. All other rights privileges and benefits under collective bargaining agreements remain unaffected. *See* Washington Agreement, Journal of Negotiations, Feb. 3 – May 21, 1936, at 3, 8, 11-12, 16-17, 19, 136, 142, 160-61, 168, 183-84. *See also*, I.C.C. v Brotherhood of Locomotive Eng'rs, 482 U.S. 270 (1987); Maine Cent. R.R.-Exemption from 49 U.S.C. 11342 and 11343, Finance Docket No. 30522 (Sept. 16, 1985) (not printed), *aff'd per curiam*, Railway Labor Executive Ass'n v. I.C.C., 812 F.2d 1443 (D.C. Cir. 1987) (Table).

ceives no compensation under New York Dock or any other protective arrangement. Yet, that employee can have his agreement and statutory rights modified or eliminated just like the employees who do receive compensation under the arrangement. It is disingenuous for anyone who understands railroad labor relations and employee protective arrangements to claim that *quid pro quo* is provided employees for the loss of their contractual and statutory rights.

The loss of those rights, when compounded by the severe decline in employment and employment opportunities in the railroad industry, has had a gravely enervating effect upon relations between labor and management in the industry. Little else is expected when a contract, negotiated as the result of an exchange of consideration, with each side having provided the other with significant concessions, can be changed or eliminated by management without return of the employees' consideration. This can be done a day, a week, a month or ten years after the contract's execution through a governmentally imposed compulsory arbitration process.[85] And it can occur because, in the eyes of the railroad, such changes are necessary in order for it to achieve "efficiencies," "economies," or "benefits."[86]

A sense of the tenor of labor relations in the industry today can be found in an article written by Mr. Sonny Hall, President of the Transportation Trades Department, AFL-CIO and President of the Transport Workers Union. This article appears in the October 26, 1998 issue of the Journal of Commerce. Mr. Hall said in part:

> The irony is rich: emboldened by the STB's advocacy, carriers now bypass the collective-bargaining process and go straight to the agency to change labor agreements in their favor. Why sit down with your workers when the federal government will give you a better deal?
>
> So, as past and future mergers are played out, mega-rail corporations will be free to do what they want with their employees. Workers who thought they were protected by contracts they negotiated will instead be at the mercy of powerful corporations and government seemingly unconcerned with their plight.
>
> Sound familiar? More than 100 years ago, this was the modus operandi of the robber barons, the monopolists who built American railroads on the mistreated backs of workers.
>
> Little has changed. Today, the STB is undermining its explicit mandate to

85. William G. Mahoney, Interstate Commerce Commission/Surface Transportation Board as Regulator of Labor's Rights and Deregulator of Railroads' Obligations: The Contrived Collision of the Interstate Commerce Act with the Railway Labor Act, 24 TRANSP. L.J. 249, 290 (1997).

86. *Id.* at 296-97.

protect the public interest by fostering the types of abuses that harmed workers more than a century ago.

The jobs and rights of tens of thousands of workers are on the line. Dealing fairly with these people is a big part of what our government is supposed to do. It's called the public interest, and current and future STB members must be forced to understand what the term means or be replaced with appointees who do.

V. Labor Relations into the Next Millennium

As the railroads become fewer, their size larger, and the number of jobs on those railroads decline, the members of unions will become fewer and the pressure on unions to merge will become greater. As the efforts of the labor force become more unified and focused through merger among unions, their effects upon the industry will become more pronounced. And, as the railroads rely more and more upon the compulsory arbitration provisions of a STB-imposed arrangement[87] as a vehicle to modify or eliminate employee rights in the name of efficiency, the futility of negotiating contracts with those railroads become more and more apparent to the employees and their representatives.

When the railroad industry's workforce determines it is fruitless to negotiate contracts with the railroads, the entire fabric of labor relations will be changed.[88] What might occur is speculation but, to determine what might happen, we can look to the history of the industry during that very unfortunate period in the 19th Century when employees had no contract right protection upon which to rely.[89]

Such a dark future seems likely unless railroad management: (1) becomes aware of the long term damage their present course can inflict upon themselves; or (2) Congress acts to avoid future damage to the nation's economy by removing the STB from that field about which it knows nothing - labor relations; or (3) the STB once again acknowledges it has no expertise in labor relations as it has attested so many times in the past[90] and removes itself from the field; or (4) the Supreme Court

87. Ironically, the protective arrangements imposed by the STB were originally designed to *protect* employee rights and effectively did so for some 50 years. *See* Mahoney, *supra* note 9, at 251-62, 264-75.

88. Contracts can be changed at any time a railroad wishes to go to arbitration to change or eliminate them and the employees right to strike is now effectively eliminated because each Class I railroad is a combination of a number of railroads and serves a large region of the country. Consequently, Congress is most unlikely to permit strikes to occur in the future. *See supra* notes 20 and 25.

89. Those who cannot remember the past are condemned to repeat it. George Santayana, The Life of Reason, vol. 1 (1905).

90. See Hearings on H.R. 7650 Before the House Committee on Interstate and Foreign Commerce, 73rd Cong., 2d Sess. at 54 (1934); Chicago, St. Paul, Minneapolis & Omaha Ry.—

confronts and decides the issue if it is again presented; or (5) the employees and their representatives decide to acquiesce meekly in the modification or elimination of their rights by the STB or its arbitrators. Absent the realization of one of these alternatives, as we proceed into the next millennium, the future of labor relations in the railroad industry is ominous.

Lease, 295 I.C.C. 696,702 (1958); Leavens, et al. v. Burlington N., Inc., 348 I.C.C. 962, 975, 976 (1977); Brotherhood of Locomotive Eng'rs v. Chicago and N. W. Transp. Co., et al., 366 I.C.C. 875, 861 (1983); and for an extensive discussion of the duties and limitations upon the I.C.C. (now STB) under the law see Southern Ry.—Control—Cent. of Ga. Ry. Co., 331 I.C.C. 151, 169-170 (1967).

ARU/BLET

Addendum K

Transcripts of Depositions (redacted) of Macqui Parkerson, Grant Janke and John Turner and Applicant Responses to ARU/BLET Interrogatories

Page 1

BEFORE THE SURFACE TRANSPORTATION BOARD

- - -

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY,	:	FINANCE DOCKET NO. 36873
-- CONTROL --	:	
NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY.	:	

HIGHLY CONFIDENTIAL
PURSUANT TO PROTECTIVE ORDER

- - -

September 30, 2026

- - -

Videotaped hybrid deposition of MAQUILING B. PARKERSON, taken pursuant to notice, was held at the law offices of Covington & Burling, 850 10th Street, NW, Washington, D.C., beginning at 8:07 a.m., on the above date, before Michelle L. Ridgway, a Registered Professional Reporter, Certified Shorthand Reporter, Certified Realtime Reporter, Certified Court Reporter, and Notary Public.

- - -

APPEARANCES:

MOONEY, GREEN, SAINDON, MURPHY & WELCH, P.C.
BY: RICHARD S. EDELMAN, ESQ.
1620 Eye Street, NW, Suite 700
Washington, D.C. 20006
202.783.0010
redelman@mooneygreen.com
Representing Brotherhood of Maintenance of Way of Employees Division IBT, Brotherhood of Railroad Signalling, International Association of Machinists District 19, Transportation Communications Union, and Transport Workers Union of America

KIRKLAND & ELLIS LLP
BY: GRACE C. BRIER, ESQ.
(In person)
1301 Pennsylvania Avenue, NW
Washington, D.C. 20004
202.389.5000
grace.brier@kirkland.com
Representing the Burlington North Santa Fe Railroad Corporation

COVINGTON & BURLING LLP
BY: LAURA FLAHIVE WU, ESQ.
BY: CHARLOTTE KROVOZA, ESQ.
(In person)
BY: JOSHUA GONZALEZ, ESQ.
(Zoom)
One City Center,
850 10th Street, NW
Washington, D.C. 20001
202.662.6000
lflahivewu@cov.com
ckrovoza@cov.com
jgonzalez@cov.com
Representing Union Pacific Corporation and Union Pacific Railroad Company

APPEARANCES: (Cont'd.)

CROWELL & MORING LLP
BY: RACHEL S. LESSER, ESQ.
(In person)
600 Fifth Street, NW
Washington, D.C. 20001
202.624.2500
rlesser@crowell.com
Representing CSX Transportation, Inc.

SULLIVAN & CROMWELL LLP
BY: PHOEBE E. SAM, ESQ.
(In person)
1700 New York Avenue, NW, Suite 700
Washington, D.C. 20006
202.956.7500
samp@sullcrom.com
Representing Canadian Pacific Kansas City

WENTZ, MCINERNEY, PEIFER & PETROFF, LLC
BY: JOSHUA D. McINERNEY, ESQ.
(In person)
14 E. Gay Street, Floor 4
Columbus, Ohio 43215
614.756.5566
jmcinerney@lawforlabor.com
Representing Brotherhood of Locomotive Engineers and Trainmen

SHERMAN DUNN, P.C.
BY: ERICH H. LANGE, ESQ.
BY: SHIVA M. SETHI, ESQ.
(In person)
900 Seventh Street, NW
Washington, D.C. 20001
202.785.9300
lange@shermandunn.com
sethi@shermandunn.com
Representing the IBEW

APPEARANCES: (Cont'd.)

MULLINS LAW GROUP
BY: SPENCER NAAKE, ESQ.
(Zoom)
2001 L Street
Suite 720
Washington, D.C. 20036
202.663.7851
snaake@mullinslawgroup.net
wmullins@mullinslawgroup.net

- and -

SIDLEY AUSTIN LLP
BY: NAILA M. SCOTT, ESQ.
(In person)
1501 K Street, NW
Washington, D.C. 20005
202.736.8000
naila.sctott@sidley.com
Representing Norfolk Southern Corporation and Norfolk Southern Railway Company

ALSO PRESENT:

VIDEOTAPE TECHNICIAN:
David Armstrong - in person
(Thompson Reporters)

James B. Boles - in person
(Union Pacific Railroad)

Erika Diehl-Gibbons - in person
(SMART - inhouse)
Tonya Conley - in person
(Union Pacific - inhouse)

- - -

- - -

I N D E X

- - -

Testimony of:

MAQUILING B. PARKERSON

By Mr. Edelman 16, 278

By Mr. McInerney 120

By Mr. Lange 148

By Ms. Sam 181

By Ms. Ms. Lesser 221

- - -

- - -

E X H I B I T S

- - -

NO.	DESCRIPTION	PAGE
Parkerson Exhibit 310	Verified Statement Maqui B. Parkerson 4/29/26	22
Parkerson Exhibit 310-B	Verified Statement Maqui B. Parkerson (Updated numbers) 4/29/26	44
Parkerson Exhibit 311	Craft Employee Summary	23
Parkerson Exhibit 312	Verified Statement Grant Janke 12/17/25	34
Parkerson Exhibit 313	Craft Employee Impact Report	40

- - -

E X H I B I T S

- - -

NO.	DESCRIPTION	PAGE
Parkerson Exhibit 314	Mechanical Synergies (OE) Curtail Mechanical Locomotive Facilities At Current Interchange Locations	47
Parkerson Exhibit 315	Union Pacific's Responses and Objections To Interrogatories in Allied Rail Unions' First Set of Discovery Requests to Union Pacific	60
Parkerson Exhibit 316	Verified Statement Katherine N. Novak	64
Parkerson Exhibit 317	Merriam-Webster Definition of "Necessary"	72

- - -

E X H I B I T S

- - -

NO.	DESCRIPTION	PAGE
Parkerson Exhibit 318	Implementation Expense - One Time Expenses	82
Parkerson Exhibit 319	Mechanical Synergies (OE) Curtailment of Locomotive Facilities	87
Parkerson Exhibit 320	Teams Chat 7/29/25 UP_0390349-52	100
Parkerson Exhibit 321	E-mail Thread 7/27/25 Subject, Priv/Conf Communication Materials & Transaction Microsite Draft for Review UP_0277960-63	105

- - -

E X H I B I T S

- - -

NO.	DESCRIPTION	PAGE
Parkerson Exhibit 322	Teams Chat 12/16/25 UP_0390451-52	109
Parkerson Exhibit 323	E-mail Thread 12/19/25 Subject, Teamsters Falsehoods UP_0391827-29	115
Parkerson Exhibit 324	Electronic Appendix A Employee Impact Exhibit Craft Employees	121
Parkerson Exhibit 325	E-mail Thread 9/22/25 Subject, Teamsters Will Oppose the Merger UP_0334671-72	129

- - -

E X H I B I T S

- - -

NO.	DESCRIPTION	PAGE
Parkerson Exhibit 326	Operating Plan (Exhibit 13) Joint Verified Statement Of Eric Gehringer and John F. Orr	151
Parkerson Exhibit 327	Jobs for Life: A Firm Promise to Union Employees 4/9/26	211
Parkerson Exhibit 328	Teams Chat 9/23/25 UP_0390180	213
Parkerson Exhibit 329	Teams Chat 11/13/25 UP_0390138	218

- - -

E X H I B I T S

- - -

NO.	DESCRIPTION	PAGE
Parkerson Exhibit 330	Org Chart Mechanical 9/4/25 Mechanical Craft Review UP_0354125	236
Parkerson Exhibit 331	NS UP Labor Strategy 8/8/25 UP_0354265	246
Parkerson Exhibit 332	E-mail Thread 12/9/25 Subject, Topics For 9:00 a.m. UP_0331586-88	260

- - -

- - -

DEPOSITION SUPPORT INDEX

- - -

Direction to Witness Not to Answer

PAGE LINE PAGE LINE PAGE LINE

None.

Request for Production of Documents

PAGE LINE PAGE LINE PAGE LINE

None.

Stipulations

PAGE LINE PAGE LINE PAGE LINE

None.

Questions Marked

PAGE LINE PAGE LINE PAGE LINE

None.

- - -

STENO NOTE: All quotations from exhibits are reflected in the manner in which they were read into the record and do not necessarily indicate an exact quote from the document.

- - -

Page 14

- - -
THE VIDEOGRAPHER: Here begins the video deposition of Maqui Parkerson in the matter of Union Pacific Corporation and Norfolk Southern Corporation.
Today's date is September 30, 2026, and the time is 8:07 a.m. Eastern Time.
My name is David Armstrong.
And the court reporter is Michelle Ridgway of Thompson Court Reporting.
Today's deposition is taking place at Covington & Burling LLP in Washington, D.C.
All counsel will be reported on the stenographic record.
Will the court reporter please swear in the witness.
(Witness sworn.)
//

Page 15

- - -
... MAQUILING B. PARKERSON, having been first duly sworn, was examined and testified as follows:
- - -
MR. EDELMAN: Okay.
MS. FLAHIVE WU: Counsel, if I may, this is Laura Flahive Wu for Union Pacific and the witness.
At this time, I'd like to designate this deposition, including the transcript and video, highly confidential, pursuant to the protective order entered in this matter.
MR. EDELMAN: Okay. And we will review that and the appropriateness of the designation at a later time.
- - -
EXAMINATION
- - -
//

Page 16

BY MR. EDELMAN:
Q. Good morning, Ms. Parkerson.
A. Good morning.
Q. We know each other, but for the -- matter of form for the record, I'm Richard Edelman. I'm counsel for a group of unions participating in this matter as the allied rail unions. Those are the Brotherhood of Maintenance of Way Employees Division, IBT; Brotherhood of Railroad Signalmen; International Association of Machinists District 19; Transportation Communications Union; and Transport Workers Union of America.
You'll tell me if I'm going too fast. I'm from New York originally, so...
Would you state your name and current title for the record?
A. Sure. My name is Maqui Parkerson. I'm the vice president labor relations at Union Pacific.
Q. And since we know each

Page 17

other, I prefer to use first names, if that's okay with you --
A. That's fine. That's fine.
Q. -- with you and your counsel.
Okay. Cause it seems funny otherwise.
All right. Just some general stuff about depositions. You understand that you have been sworn in, which means you've agreed to provide truthful testimony, and that you're responsible, you know -- you know, to testify based on your knowledge and experience and do so truthfully.
A. Yes.
Q. Okay. And you understand that your testimony today will be transcribed and can be used in the proceeding for the Surface Transportation Board?
A. Yes.
Q. And I will ask questions. You will be asked to provide responses.

Page 18

It's my job to ask an intelligible question, not yours to convert something confusing into something you understand. So please ask for clarification if you need it.

A. Okay.

Q. Otherwise, I will assume you understand the question.

A. Okay.

Q. Please respond verbally. The court reporter can't record gestures and nods. We always say that, we all violate that, but let's both try to do the best we can.

In conversations, sometimes people speak over each other which then is hard for the court reporter. So let's both try to be cognizant of that.

The court reporter won't go off the record unless counsel agree, I assume?

MS. FLAHIVE WU: Yes.

MR. EDELMAN: Okay.

BY MR. EDELMAN:

Page 19

Q. I'll do some questioning first. Other attorneys will follow. It's possible that your counsel may object to a question, and if you do, you know, you need to answer, unless they direct you not to answer.

And it's okay for you to consult with attorneys during breaks but not during the middle of a question.

A. Understood. Yes.

Q. Yeah. The practice is, generally, we'll take periodic breaks at some planned points, but if you need one, please ask for it.

Anybody have anything to add to any of that? Okay.

Okay. Miss Maqui, how long have you held your current position?

A. Oh, should be an easy question. Six -- five years maybe.

Q. Five-ish?

A. Five-ish, yes.

Q. Okay. And to whom do you report at Union Pacific?

Page 20

A. I report to Josh Perkes, the CHRO.

Q. What is a CHRO?

A. The chief human resources officer.

Q. Okay. And what prior positions, if any, have you had with Union Pacific?

A. So when I joined Union Pacific in 2021, I was the AVP of labor relations and sustainability. I was promoted a year and a half later to vice president of labor relations and sustainability. And then PVT 50 happened, so I dropped the sustainability.

Q. That was a fun time for everybody.

A. Oh, yeah.

Q. So prior to working for Union Pacific, you were employed by Kansas City Southern, right?

A. That's correct.

Q. And what was your title

Page 21

there when you left?

A. So when I left, it was vice president of labor relations.

Q. Okay. And did you hold another position at KCS before that?

A. I did. I was -- started in 2016 as an associate general counsel. Yeah.

Q. Okay. What is the National Railway Labor Conference?

A. That is the industry association that has typically handled multi-employer bargaining.

Q. And you hold the position with the National Railway Labor Conference?

A. I am a -- Union Pacific's designated member on the National Carriers Conference Committee, or the NCCC.

Q. Okay. And did you hold the position with the NRLC or NCCC when you were with KCS?

A. I did.

Page 22

MS. FLAHIVE WU:
Objection. Compound.
BY MR. EDELMAN:
Q. All right. For purposes of the questioning today, I'm going to have some documents that I'm going to ask you about. We're going to start with what is being marked, which will be Exhibit 310, as I understand it.
(Document marked for identification as Parkerson Exhibit 310.)
BY MR. EDELMAN:
Q. Do you recognize this document?
A. I do.
Q. And is this a verified statement you submitted to the Surface Transportation Board as part of the Union Pacific-Norfolk Southern merger application?
A. It appears to be, yes.
Q. Okay. I'm going to start with a question about total numbers of

Page 23

agreement employees on Union Pacific and Norfolk Southern. There's something that seems to me might be an inconsistency in your work papers and the craft summary, but I'm hoping you can explain it.
A. Okay.
Q. So could you turn to Page 3, Paragraph 5, of your verified statement?
A. Sure.
Q. And would you agree that shows a grand total of 41,839 employees of the two railroads?
A. Yes.
Q. Okay. Now I'd like to show you Exhibit F -- sorry -- 311. Sorry. Yeah, 311.
(Document marked for identification as Parkerson Exhibit 311.)
BY MR. EDELMAN:
Q. And just for the record, the handwriting on the bottom of this is

Page 24

mine, because it wasn't labeled in itself, but I took this from the work papers.
Is this one of your work papers?
A. Yes.
Q. Okay. Now, if you look at Exhibit 311, it lists, again, the total number of employees of UP/NS. And there's a table at the top with the 41,839 number, and then another table at the bottom that says 21,919.
Could you explain the difference between this table, "Total Number of Employees," and the one in your verified statement?
MS. FLAHIVE WU:
Objection. Vague.
BY MR. EDELMAN:
Q. So just --
A. Yeah. I mean --
Q. Okay. So the verified statement says 41,839.
A. Yes.

Page 25

Q. Then there are two numbers here, 41,839 and then 21,916. I don't know if those are intended to be cumulative or duplicative in some way.
MS. FLAHIVE WU: Objection to form.
Counsel, is there a question?
MR. EDELMAN: Yes.
BY MR. EDELMAN:
Q. Are they duplicative or -- in any way or are they cumulative?
MS. FLAHIVE WU:
Objection. Vague and compound.
THE WITNESS: So when you say are they, the --
BY MR. EDELMAN:
Q. The verified statement chart and the chart here.
A. Yes. They --
MS. FLAHIVE WU: Same -- same objections.
You can answer if you understand it.

Page 26

THE WITNESS: I really am trying to answer -- understand and answer your question.
BY MR. EDELMAN:
Q. Is the 21,916 subsumed in the 41,839? That's all I'm trying to get at.
A. Yes. Yes.
Q. Okay. So the total number is not 41,839 and 21,916 combined, but, rather, the total number is 41,839 total?
A. Yes.
Q. Okay.
A. Yes.
Q. That's all I was trying to get at.
A. Sorry. Sorry.
Q. And so that the bottom table, "Engineer and Trained Persons," is that subsumed in one of the categories --
A. Yes.
Q. -- in the table on top?

Page 27

Which one is that?
A. Train crew.
Q. Okay. Thank you.
Now, while we're on the Exhibit 311, does the -- you see the category there that says "Signal Maintainers"?
A. Yes.
Q. Okay. Does that include all signalmen, such as signal construction, gangs, technicians, communication workers, or only people who perform signal maintenance?
MS. FLAHIVE WU: Objection. Compound.
THE WITNESS: I believe that represents all of the employees represented by BRS.
BY MR. EDELMAN:
Q. Okay. And under "Track Maintainers," does that include all maintenance of way workers, including track inspectors, production gangs, bridge and building workers?

Page 28

A. So my understanding is that that covers employees represented by BMWED.
Q. Okay. Thank you.
Now if you go back to your statement, Exhibit 310, and we go to Paragraph 8, please.
A. Sure.
Q. At the bottom of Page 4, it discusses that applicants project a proposed transaction. Will add 327 craft jobs once the operations are fully integrated.
Which was expected to be three years after the transaction is contemplated, correct?
A. Yes.
Q. So what does "fully integrated" mean in this context?
A. My understanding is that fully integrated means that the merger has been approved, and UP and NS has -- have integrated their operations.
Q. So the integration of the

Page 29

operations would be completed by that point?
MS. FLAHIVE WU: Objection. Vague.
THE WITNESS: So that is the assumption.
BY MR. EDELMAN:
Q. Okay. Now if you look at your verified statement again, Paragraphs 8, 9, and 10.
A. Yes.
Q. And you can re-read them if you want after I ask the question.
A. Okay. Yeah.
Q. These refer to plans to add 2,327 craft jobs and eliminating 1,156 craft jobs, for a net increase of 1,171 jobs by the end of Year 3.
Is that correct as to what you said?
A. Yes.
Q. Okay. And then in Paragraph 9, you refer to applicants assuming a combined annual attrition

Page 30

rate for craft employees of 8 percent for both carriers; is that correct?
A. Yes.
Q. Now, when you discuss a net increase of 1,171 jobs, is that 1,171 above the pre-application employment numbers that are on -- in your verified statement at Table 1?
MS. FLAHIVE WU: Objection. Vague.
BY MR. EDELMAN:
Q. All I'm asking -- so you see Table 1?
A. Yes. Yes.
Q. Okay. It says -- and you have a combined number of 41,839?
A. Yes.
Q. And that is as of September 15, '25?
A. Yes.
Q. Okay. And my question is, is the 11,171 [sic] a net increase above 41,839?
A. I believe that is the case.

Page 31

Q. So you also have assumed attrition rate of 8 percent per year, right?
A. Yes.
Q. So I will represent to you that over two years, 8 percent reduction from 41,839 is 35,145. If you or your counsel wants to pull out a calculator and check me on that, you're welcome to.
But -- so my question is: Is the net increase projected of 1,171 on top of the 41,839 or on top of 41,839, minus the attrition rate?
MS. FLAHIVE WU: Objection to form. I'll move to strike the testimony of counsel. Vague and compound.
You can answer if you understand.
THE WITNESS: So the net craft jobs to be added, the 1,171 jobs, uses the 41,000 and change number from the prior table.

Page 32

BY MR. EDELMAN:
Q. Okay. That's all I'm looking for.
So is there an assumption, then, that during the period between September 15th, '25, and consummation of the transaction, if approved, UP and NS will backfill positions as employees have tried out?
MS. FLAHIVE WU: Objection. Vague.
THE WITNESS: I -- I think the -- at the end of the day, those decisions will be made when -- in -- at the appropriate time, understanding the work that remains to be done.
BY MR. EDELMAN:
Q. Well, are the applicants making a commitment to add 1,171 jobs?
MS. FLAHIVE WU: Objection. Vague.
THE WITNESS: So the nature of the exercise, as you

Page 33

know, the regulations require us to use a certain traffic base to develop the models. And based on that analysis, the result was that we would have added 1,171 jobs.
Ultimately, after the combination, the traffic -- we'll have to understand what the traffic does.
BY MR. EDELMAN:
Q. So what happens if there are not -- is not a net increase of 1,171 jobs? Is that merely an aspiration?
MS. FLAHIVE WU: Objection. Lacks foundation. Calls for speculation.
THE WITNESS: I don't think it's an aspiration. It's a result of the modeling exercise.
BY MR. EDELMAN:
Q. Okay. I'd like you to look

Page 34

at your verified statement, Paragraph 8.
In the second sentence, you say, "The proposed transaction is an end-to-end combination. There are no abandonments, discontinuances, or line divestitures complicated" -- sorry -- "contemplated."
So when the applicants built this model, there was an assumption of no line sales, abandonments, or discontinuance of services; is that correct?
A. Correct.
Q. Okay. Now, are you aware that applicants assert they will make infrastructure investments to the lines, such as adding sidings, lengthening sidings, adding parallel track, to handle projected increased traffic?
A. I am aware, yes.
(Document marked for identification as Parkerson Exhibit 312.)
BY MR. EDELMAN:

Page 35

Q. I'd like you to look at what's marked as Exhibit 312. This is the verified statement of your colleague, Grant Janke. I'd like you to look at Paragraphs 11 through 12, which are on Pages 4 and 5.
And Mr. Janke, on Paragraph 12, says that applicants estimate UP/NS will spend 2.1 billion the first three years in capital investments in support of the merger and will invest 1.1 billion for enabled growth planned traffic volumes.
To your knowledge, does having more infrastructure require a railroad to do more inspection, maintenance, and repair of the infrastructure?
MS. FLAHIVE WU: Objection. Vague.
THE WITNESS: That's out of my lane. I don't know.
BY MR. EDELMAN:
Q. You don't know?

Page 36

A. I don't know.
Q. How long have you been in this industry?
A. A long time.
Q. Yeah.
A. But I'm not an FRA lawyer.
Q. Well, as the owner of the infrastructure, does a railroad have to do more inspection, maintenance and repair of it, if they have more of it?
MS. FLAHIVE WU: Objection. Asked and answered.
THE WITNESS: I don't know.
BY MR. EDELMAN:
Q. Okay. To your knowledge, does increased traffic on infrastructure, increase wear and tear and deterioration of the infrastructure, require -- that would require more inspection, maintenance, and repair?
MS. FLAHIVE WU: Objection. Lacks foundation.
THE WITNESS: I don't

Page 37

know.
BY MR. EDELMAN:
Q. Okay. Have you handled contracting out notices to BMWED or BRS, either at UP or KCS, where the carrier claimed a need to perform a maintenance of way and signal work with contractors that it said it couldn't do with its own forces?
MS. FLAHIVE WU: Objection to form. Compound.
THE WITNESS: Have I, personally?
BY MR. EDELMAN:
Q. Yeah.
A. No, but teams that have worked for me have.
Q. And in notices of that sort, doesn't labor relations have to know the relationship between the need for maintenance, inspection, repair, and the maintenance of way and signal workforces?
MS. FLAHIVE WU: Objection

Page 38

to form. Lacks foundation.
THE WITNESS: With respect to each notice, we make sure we understand what the rationale is so that we comply with our CBAs.
BY MR. EDELMAN:
Q. And do those notices sometimes say we lack sufficient forces to do the work with our own forces so we have to contract out?
MS. FLAHIVE WU: Objection. Lacks foundation.
THE WITNESS: That is one of the criteria in our CBA, so I hope they do, yes.
BY MR. EDELMAN:
Q. So are applicants planning presently to do advanced planning for how they will perform construction, inspection, and maintenance of the additional infrastructure if the merger is approved?
MS. FLAHIVE WU: Objection. Lacks foundation.

Page 39

THE WITNESS: Can you ask that question again.
BY MR. EDELMAN:
Q. Sure.
Are the applicants planning for how they are going to do the inspection, maintenance, and repair of the infrastructure if the merger is approved?
MS. FLAHIVE WU: Same objection.
BY MR. EDELMAN:
Q. If you know. If you don't know, you don't know.
A. I don't know.
Q. Okay.
A. It's a little out of my lane.
Q. Do you know if applicants are planning to increase the numbers of maintenance of way and signal employees to do inspection, maintenance, and repair?
A. I don't know.

Page 40

Q. All right. I'd like you to look at the employee impact report in your work papers, and that is Exhibit 313.
(Document marked for identification as Parkerson Exhibit 313.)
BY MR. EDELMAN:
Q. So under the -- you have categories of signal maintainers/communications and track maintenance.
So on this report -- I'm sorry.
This is one of your work papers; is that correct?
A. Yes.
Q. Okay. So --
MS. FLAHIVE WU: Counsel, just for good order, is it the case that the handwriting included on Exhibit 313 is included by counsel?
MR. EDELMAN: Yes, it is.

Page 41

Every time you see the handwriting on the bottom, it's because there was no title on the work paper.
MS. FLAHIVE WU: Thank you.
BY MR. EDELMAN:
Q. Okay. So -- so you can see, if you look at net positions, Year 1, 2, 3, at the end, it shows no increase in the number of signalmen and an increase of 27 maintenance of way employees; is that correct?
A. Yes.
Q. And you've said that there will be no abandonments, discontinuances, or divestments planned in this application, right?
A. There were none.
Q. Okay. So how will the applicants -- if you know, how will the applicants construct and then maintain more infrastructure, more heavily used infrastructure, with less than a

Page 42

1 percent increase in maintenance of way forces and less than a static number of signalmen?

MS. FLAHIVE WU: Objection. Lacks foundation and compound.

THE WITNESS: I don't know.

BY MR. EDELMAN:

Q. Were any projections made by the applicants regarding the potential use of contractors to build or extend new sidings and yard expansions?

A. Not that I'm aware of.

Q. Were any projections made by applicants regarding the potential use of contractors to inspect, maintain, or repair an increased amount of infrastructure than exists today?

A. Not that I'm aware of.

Q. Maybe you can clarify this. So Exhibit 310 is a copy of your verified statement that says "Executed this 29th day of April, 2026."

Page 43

Mr. McInerney has got a copy that also says -- I'll show this to you -- executed 29th day of April, 2026, but his -- the paragraph -- Paragraph 8 in the one he has shows --

MS. FLAHIVE WU: Counsel, are you marking that as an exhibit?

MR. EDELMAN: Not -- not at the moment.

MS. FLAHIVE WU: Please mark it if you want the witness to review it for the record.

MR. EDELMAN: Totally -- can I call it --

MR. McINERNEY: Mark it as 310-A.

MR. EDELMAN: -- 310-A -- B? Is that okay?

MS. FLAHIVE WU: That's fine. But for good order on the transcript, if you're asking the witness to provide testimony and consultation of the document,

Page 44

please mark it for the record.

MR. EDELMAN: Okay. We'll call this 310-B.

(Document marked for identification as Parkerson Exhibit 310-B.)

BY MR. EDELMAN:

Q. So can you tell us the difference between --

MS. FLAHIVE WU: Could you provide a copy of 310-B for counsel?

MR. EDELMAN: I don't have it.

MR. McINERNEY: I don't have an extra copy.

MR. EDELMAN: Why don't we -- why don't we go off the record.

MS. FLAHIVE WU: Nope. Go ahead and ask your question, Counsel. I think you started a question.

MR. EDELMAN: All right.

Page 45

BY MR. EDELMAN:

Q. Do you know the difference, in Paragraph 8, between 23 and 27 jobs and then the different number in the 310-B?

MS. FLAHIVE WU: Ms. Parkerson, counsel has identified for you two multi-page documents. Please feel free to take your time to review any portions of them that you need in order to attempt to answer counsel's question.

THE WITNESS: My understanding is when the application was updated, they also updated the numbers in my verified statement.

BY MR. EDELMAN:

Q. Was that in the -- these are both dated 29th of April. Was there -- is this -- in the errata papers that the applicants filed about a month

Page 46

ago, was there a new verified statement from you?
MS. FLAHIVE WU: Objection. Vague, and the STB docket speaks for itself.
THE WITNESS: I -- I don't know --
BY MR. EDELMAN:
Q. Do you recall executing a document in the last month or two that changed the number from 310 to 310?
MS. FLAHIVE WU: Objection. Vague.
THE WITNESS: I don't recall executing another document.
MR. McINERNEY: We'll need to make a copy at a break.
MS. FLAHIVE WU: Counsel, if you need your copy during the deposition, we can get a copy during the break.
MR. McINERNEY: Okay. Thank you.

Page 47

MR. EDELMAN: Do you want it back?
MR. McINERNEY: Sure.
BY MR. EDELMAN:
Q. All right. Let's go to Paragraph 11 in Exhibit 310.
A. Okay.
Q. Now, Paragraph 11, the first bullet point refers to negotiating/implementing agreements to facilitate the consolidation of mechanical shop facilities.
Do you see that?
A. Yes.
Q. Okay. I'm going to show you what we've marked as Exhibit 314.
(Document marked for identification as Parkerson Exhibit 314.)
BY MR. EDELMAN:
Q. Now, the handwriting down at the bottom is mine. It says, "Janke work paper, mechanical, mech syn, curtail locomotive and interchanges."

Page 48

MS. FLAHIVE WU: Counsel, is the title you provided in your handwriting the same as the file name of the document?
MR. EDELMAN: It's pretty close to what is labeled at the top. Again, it's just a little -- yes. That's the way I took it off of the tab in the work paper.
But I'll -- at the top of it, it says, "Mechanical Synergies (OE): Curtail mechanical locomotive facilities at current interchange locations.
THE WITNESS: I see that.
BY MR. EDELMAN:
Q. Okay. Thank you.
Have you -- and then table, sort of toward the top, says, "Current agreement, workforce levels at potential impacted interchange locations, UP/NS data."

Page 49

A. Okay.
Q. What does this table show?
MS. FLAHIVE WU: Objection. Lacks foundation.
THE WITNESS: So from the title, it says curtail mechanical locomotive facilities at current interchange locations. And then I see the interchange locations listed, a list of positions by position type.
BY MR. EDELMAN:
Q. So this identifies employees currently at a number of locations where there may be curtailment of mechanical locomotive facilities; is that correct?
A. That is my understanding.
Q. Okay. What does the table in the middle show?
MS. FLAHIVE WU: Objection. Vague.
THE WITNESS: It's titled

Page 50

the "Interchange Location Efficiencies."
BY MR. EDELMAN:
Q. So is that changes that applicants intend to make at locomotive facilities at current interchange locations, changes in workforce?
MS. FLAHIVE WU:
Objection. Lacks foundation. And vague.
THE WITNESS: So this -- my understanding is that this -- these numbers reflect the output of the models that were run. That is different from the ultimate decision that our mechanical folks are going to have to make in terms of what actually happens.
BY MR. EDELMAN:
Q. Okay. And the bottom says, "Fully burdened cost savings inclusive of shop overheads."
Do you see that?

Page 51

A. I do.
Q. So is this essentially dollar savings from changes in the workforces at these various locations?
MS. FLAHIVE WU:
Objection. Lacks foundation and vague.
THE WITNESS: So without doing the math, if -- if it relates to the information in the middle table, what I would say is that, again, the information in this table reflects the output of the model. And so I think it's just the math.
BY MR. EDELMAN:
Q. So the -- in the output of the model, is that if you do these interchange location facilities, the specified number of dollars will be saved.
Is that your understanding?
MS. FLAHIVE WU:

Page 52

Objection. Vague.
THE WITNESS: I think the output, again, of the model said that these are potential synergies. You know, ultimately, the operating decision of whether or not to -- how to staff those facilities will rest with the mechanical department.
I think the table at the bottom is the math that multiplies whatever the burdened rate is per employee.
BY MR. EDELMAN:
Q. Okay. I'd like you to go look back at Exhibit 313.
A. Sure.
Q. And there are categories saying, across the top, positions abolished, positions created, positions transferred.
Do you see that?
A. I do.

Page 53

Q. And then there are totals of those categories, right?
A. Yes.
Q. Okay. What does positions transferred mean in this document?
A. So, again, based on the modeling that was performed, my understanding is that, based on where the work will ultimately be, as predicted by those models, this is the impact on workforce that would be required to handle those work events, where they are.
Again, the operating leadership ultimately has a responsibility to determine if they feel that this is -- that those are the decisions they need to make.
Q. Okay. So I understand what positions abolished means because that's a common term in the industry. And I understand positions created.
What does positions transferred mean?

Page 54

A. So my understanding -- and job transfers are -- is a term of art, as you know. Generally, when work performed in one location that's discrete and identifiable is moved to a different location, that's considered a transfer of work.

Q. And what is the mechanism, if you know, for how work is transferred from a shop on two independent carriers -- scratch that. Let me start over again.

What is the mechanism for transferring positions from the Norfolk Southern facility to a Union Pacific facility?

MS. FLAHIVE WU: Objection. Lacks foundation.

THE WITNESS: I -- so if we are dealing with a transfer of work, it's discrete, identifiable work that's moving from one location to another, my expectation is that we would

Page 55

negotiate an implementing agreement to affect that.

BY MR. EDELMAN:

Q. An implementing agreement pursuant to the New York Dock conditions?

A. Yes.

MS. FLAHIVE WU: Objection. Lacks foundation.

Counsel, are you asking about the model output reflected in Exhibit 313?

MR. EDELMAN: No.

MS. FLAHIVE WU: Or are you asking conceptually?

MR. EDELMAN: I'm -- I'm asking what positions transferred means and how transferring positions works.

MS. FLAHIVE WU: Your questions speak for themselves. They were framed around Exhibit 313.

MR. EDELMAN: Which has a

Page 56

title that says positions transferred, so I'm asking how position -- what that means and how it works.

BY MR. EDELMAN:

Q. So is it your understanding that absent a New York Dock implementing agreement, if employees work at a Norfolk Southern locomotive facility and work -- their work is consolidated to a Union Pacific facility, there is no mechanism in their collective bargaining agreements for those employees to be transferred outside a facility covered by the NS agreement to a facility covered by the UP agreement?

MS. FLAHIVE WU: Objection to form. Lacks foundation. Incomplete hypothetical.

THE WITNESS: So absent an agreement, under New York Dock or otherwise, the NS CBA governs work at specific facilities, the UP CBA governs work at specific

Page 57

facilities, and there is no current mechanism in either of those CBAs that contemplates transferring employees from facilities of one carrier to another.

BY MR. EDELMAN:

Q. Great. Thank you. I thought you'd understand that question.

So when -- when applicants would want to transfer jobs from a Norfolk Southern facility to a Union Pacific facility, wouldn't applicants need to abolish the jobs of the Norfolk Southern employees and then make jobs at Union Pacific facility available to them?

MS. FLAHIVE WU: Objection. Lacks foundation.

THE WITNESS: I would think that the way -- the specific mechanism of how those jobs are transferred would be addressed and spelled out in an

Page 58

implementing agreement.
BY MR. EDELMAN:
Q. Well, how does a railroad eliminate jobs today?
MS. FLAHIVE WU:
Objection. Lacks foundation.
Vague.
BY MR. EDELMAN:
Q. How does -- how does Union Pacific eliminate jobs? Don't they abolish the jobs?
MS. FLAHIVE WU:
Objection. Lacks foundation.
Vague.
THE WITNESS: That is one way to eliminate jobs, yes.
BY MR. EDELMAN:
Q. Is there another way?
MS. FLAHIVE WU:
Objection. Vague.
THE WITNESS: It depends on what kinds of employees you're asking about.
BY MR. EDELMAN:

Page 59

Q. Okay. Craft employees, is there any other way other than abolishing the job?
MS. FLAHIVE WU: Objection to form.
THE WITNESS: I'm unaware of any.
BY MR. EDELMAN:
Q. All right. If you look at Paragraph 11 from your statement, you say that "To achieve planned efficiencies and other efficiencies that may become evident as implementation proceeds, applicants will follow the New York Dock procedures."
Do you see that?
A. Yes.
Q. Okay. Did you say that because existing collective bargaining agreements won't allow movement of jobs of NS employees to UP facilities?
A. I don't know if that was the rationale. I think the thinking was the New York Dock would apply to this

Page 60

transaction and that is the way we would do it.
Q. But absent a New York Dock implementing agreement, you couldn't do it under the two CBAs, right?
MS. FLAHIVE WU:
Objection. Lacks foundation.
THE WITNESS: Yes.
BY MR. EDELMAN:
Q. All right. I'm going to show you what is Exhibit D -- sorry -- 315.
(Document marked for identification as Parkerson Exhibit 315.)
THE WITNESS: Thank you.
BY MR. EDELMAN:
Q. This is Union Pacific's responses and objections to interrogatories, propounded by the allied rail unions.
I'd like you to look at Page 10.
And interrogatory Number 5

Page 61

asks about transferring work from locations -- new locations, resulting in transfers of positions, and we ask how that would be done.
If you look at Union Pacific's response on Page 11, Subparagraph A, it says, "Applicants intend to follow existing collective bargaining agreements as modified through implementing agreements reached through New York Dock process to address merger-related transfers of work and the effects of transfers on employees."
And, again, is the answer to this because positions can't be moved from an NS location to a UP location under existing collective bargaining agreements?
MS. FLAHIVE WU: Objection to form. Lacks foundation.
THE WITNESS: Yes.
BY MR. EDELMAN:
Q. Okay. If you look back at your verified statement, Exhibit 310,

Page 62

Paragraph 11.
A. Okay.
Q. The second sentence says, "To achieve the planned efficiencies described in the operating plan and other efficiencies that may become evident as the implementation proceeds, applicants will follow customary New York Dock procedures to obtain any necessary implementing agreements."
Do you see that sentence?
A. I do.
Q. Okay. And if you could go back to Paragraph 8.
A. Okay.
Q. At the end of Paragraph 8, again, you stated it's "A full integration is expected to be three years after the transaction is consummated," right?
A. That's what it says. And I understand that that's consistent with the modeling requirement of the STB regulations.

Page 63

Q. So in Paragraph 11 where you say that "To achieve planned efficiencies described in the operating plan and other efficiencies that may become evident as implementation proceeds," are you talking there about efficiencies that become evident during the three-year period that applicants say they plan to complete integration in?
A. This says that there are efficiencies that may become evident as implementation proceeds, without a time limitation.
Q. Well, so if integration is expected to be three years, what kind of time period is contemplated?
MS. FLAHIVE WU: Objection. Vague.
THE WITNESS: My understanding is any time period required to fully implement the transaction and realize the benefits of the transaction.

Page 64

BY MR. EDELMAN:
Q. Are you familiar with applicants' commitment to the gateway pricing plan?
A. Generally.
Q. Okay. I'm going to show you Exhibit 315.
MS. FLAHIVE WU: Counsel, I think it's 316.
MR. EDELMAN: Really? Oh. It is. You're right.
MS. FLAHIVE WU: Thank you.
(Document marked for identification as Parkerson Exhibit 316.)
BY MR. EDELMAN:
Q. Do you know who Katherine Novak is?
A. I do.
Q. Okay. Can you tell us who she is?
A. I don't know her title. Yeah. She used to be in labor

Page 65

relations, though.
Q. Okay. And -- but she is an employee of Union Pacific, correct?
A. She is.
Q. Okay. I will represent to you this is her verified statement in the application, as you can see from the cover page.
MS. FLAHIVE WU: Counsel, again, for good order, I'd note that the document marked as Exhibit 316 is an excerpt of the verified statement of Katherine Novak.
MR. EDELMAN: It is. That is correct. Thank you.
BY MR. EDELMAN:
Q. So if you go to the second page of this document, which is Page 17 of the full document.
I'd like you to look at Paragraph 45, which says, "The committed gateway pricing will remain in place until the end of the oversight in this

Page 66

proceeding unless extended by the board."

And then Paragraph 45 then says, "Our reasoning for limiting the duration of the program is as follows."

And in Paragraph 46 and 47 it goes on to explain the reasoning.

A. Okay.

Q. Do you want to read those?

A. I would. Thanks.

Q. Okay.

MS. FLAHIVE WU: Counsel, while the witness is reading, would you be able to identify the date of the verified statement marked as Exhibit 316?

MR. EDELMAN: I cannot.

MS. FLAHIVE WU: We'd ask that you supplement Exhibit 316 to identify the date of the exhibit.

MR. EDELMAN: I'll try and do that. I have to say, keeping up with all the substitutions

Page 67

has been a challenge for everybody.

MS. FLAHIVE WU: Counsel, to simplify, we'd ask that you supplement the electronic record for this deposition with the full copies of any documents that you are providing as excerpts so that there's no confusion.

And where possible, please identify the date of the document for the witness.

MR. EDELMAN: I will do my best.

MS. FLAHIVE WU: Thanks, Counsel.

THE WITNESS: I have finished.

BY MR. EDELMAN:

Q. Okay. So you see that Ms. Novak has said that applicants intend for the committed gateway pricing to extend through the oversight period?

Page 68

A. I see that, yes.

Q. Okay. If this gateway pricing proposal is limited to an oversight period, how is it that applicants would be seeking to implement -- to do implementing agreements related to labor after the oversight period?

MS. FLAHIVE WU: Objection. Lacks foundation and vague.

THE WITNESS: Your question was how?

BY MR. EDELMAN:

Q. Well, if the -- if the committed gateway pricing program will end after the oversight period, why doesn't the use of implementing agreements to change collective bargaining agreements extend beyond the oversight period?

MS. FLAHIVE WU: Objection. Lacks foundation. And vague.

Page 69

BY MR. EDELMAN:

Q. Do you know?

A. I'm not sure. I thought you said why -- why doesn't it extend beyond?

Q. So -- no.

If the committed gateway pricing --

A. I forgot that part.

Q. -- extends through the oversight period --

A. Yes.

Q. -- why would the use of implementing agreements to change collective bargaining agreements extend beyond the oversight period?

MS. FLAHIVE WU: Lacks foundation. And vague.

THE WITNESS: There could be any number of reasons why the need to enter into implementing agreements extends beyond the three-year exercise that the board puts parties through, or

Page 70

whatever oversight period -- I don't know what the oversight period is going to be, so I can't really evaluate that question.
BY MR. EDELMAN:
Q. Look at Paragraph 50 of Ms. Novak's statement.
A. Yes.
Q. And at the end of Paragraph 50, she says, "It's appropriate for the program to sunset after a reasonable period."
A. Okay.
Q. Is it appropriate for the use of New York Dock implementing agreements to change collective bargaining agreements to sunset after a reasonable period?
MS. FLAHIVE WU: Objection. Lacks foundation.
THE WITNESS: I really -- I can't answer that question.
BY MR. EDELMAN:

Page 71

Q. Let's go back to your verified statement, Paragraph 11.
A. Okay.
Q. And in Paragraph 11, you say that "Applicants will use a New York Dock process to seek collective bargaining agreement changes only as necessary to achieve efficiencies made possible by the transaction, to ensure sufficient forces are available at the appropriate locations to support the transaction."
MS. FLAHIVE WU: Counsel, just to substitute, you -- the word is "proper," rather than "appropriate" in Paragraph 11.
MR. EDELMAN: Okay. Okay. You're right. I misread that.
BY MR. EDELMAN:
Q. Okay. In this context, what did you understand the word "necessary" to mean?
A. Necessary, needed. I mean, I don't --

Page 72

Q. Required?
I'm going to show you Exhibit 317.
(Document marked for identification as Parkerson Exhibit 317.)
BY MR. EDELMAN:
Q. These are excerpts from a Merriam Webster Dictionary definition of the word "necessary," and a Britannica definition of the word "necessary."
Would you look them over, please.
A. Okay.
Q. Do these definitions comport with your intent in using the word "necessary" in Paragraph 11?
MS. FLAHIVE WU: Objection. Lacks foundation.
THE WITNESS: Generally, yes.
BY MR. EDELMAN:
Q. We're talking about the same kind of necessary?

Page 73

MS. FLAHIVE WU: Objection. Vague.
THE WITNESS: I think it's the only kind of necessary.
BY MR. EDELMAN:
Q. Good. Thank you. Okay.
Now, in Paragraph 11 on Page 7 of your verified statement, the second bullet point on Page 7.
You said that "Most of the functions performed by craft employees in NS's headquarters in Atlanta will be relocated to UP's headquarters in Omaha."
Do you see that?
A. I do.
Q. Okay. Here, are you primarily talking about clerical positions?
A. Yes.
Q. Those would be employees represented by the Transportation Communications Union?
A. Yes.

Page 74

Q. Okay. How will the positions in Atlanta be cut?
MS. FLAHIVE WU: Objection. Lacks foundation. And vague.
THE WITNESS: I -- I don't --
BY MR. EDELMAN:
Q. Well, if positions are going to be consolidated from Atlanta to Omaha, what's going to happen to the positions in Atlanta?
MS. FLAHIVE WU: Objection. Lacks foundation.
THE WITNESS: To the extent that that work is transferred to a different location, those jobs would be transferred to the different location.
BY MR. EDELMAN:
Q. Well, will the -- won't the positions in Atlanta have to be abolished in order to send that -- in

Page 75

order to end those positions in Atlanta?
MS. FLAHIVE WU: Objection. Vague.
THE WITNESS: So, technically, that may be the case, but at the end of the day, we're transferring the work from one location to another so they will have jobs.
BY MR. EDELMAN:
Q. But in terms of the mechanism to end the jobs in Atlanta, that requires abolishing those jobs; is that correct?
A. The CBAs provide --
MS. FLAHIVE WU: Objection. Lacks foundation. And also object to the extent counsel's question requires a legal analysis.
You can answer.
THE WITNESS: Yeah, the CBA dictates or prescribes how those jobs would be eliminated

Page 76

and reposted in another location.
BY MR. EDELMAN:
Q. Well, on Union Pacific, if you're eliminating jobs, you issue abolishment notices, correct?
MS. FLAHIVE WU: Objection. Vague.
THE WITNESS: Generally, yes.
BY MR. EDELMAN:
Q. And the current employees at Norfolk Southern who were in the clerical craft, they do not, at present, have the ability to bid on jobs with Union Pacific in Omaha?
MS. FLAHIVE WU: Objection. Lacks foundation.
THE WITNESS: Not under their current CBA, no.
BY MR. EDELMAN:
Q. Will the employees whose jobs are abolished in Atlanta be treated as dismissed employees under the New

Page 77

York Dock conditions?
MS. FLAHIVE WU: Objection. Lacks foundation.
THE WITNESS: We will -- my understanding is that the intent is to offer positions in Omaha for those positions that are transferred from Atlanta to Omaha.
BY MR. EDELMAN:
Q. I understand. But will they be treated as dismissed employees?
MS. FLAHIVE WU: Objection. Lacks foundation. Asked and answered.
THE WITNESS: They have -- they will have jobs in Omaha.
BY MR. EDELMAN:
Q. Will Union Pacific take the position that clerical employees holding Norfolk Southern positions in Atlanta, who decline to relocate and transfer, will be ineligible for New York Dock dismissal benefits?

Page 78

MS. FLAHIVE WU:
Objection. Lacks foundation.
THE WITNESS: We will comply with our obligations under New York Dock.
BY MR. EDELMAN:
Q. Well, I'm asking whether you're going to take the position that an employee in Atlanta that declines to go to Omaha will be treated as a dismissed employee under New York Dock.
MS. FLAHIVE WU:
Objection. Lacks foundation.
Asked and answered.
THE WITNESS: I don't know how to answer that question. There may be an implementing agreement that describes how that process works.
Rich, I don't -- I can't answer that question.

[redacted]

Page 80

[redacted]

BY MR. EDELMAN:
Q. Did applicants make any projections or assumptions or estimates of how many employees from Atlanta will transfer to Omaha?
MS. FLAHIVE WU: Objection to form. Compound.
THE WITNESS: I'm sorry. The question again?
Did we make assumptions?
BY MR. EDELMAN:

[redacted]

Page 81

Q. Assumptions or projections as to how many of the employees in Atlanta would relocate to Omaha.
MS. FLAHIVE WU: Same objection.
THE WITNESS: So the assumption in the employee impact exhibit -- and I'm just looking at your Exhibit 313 -- assumes that all of the positions will be transferred.
BY MR. EDELMAN:
Q. I'd like you to look at Exhibit D again -- sorry -- the Janke statement, which is 312.
If you look at Paragraph 57. Paragraph 57 refers to calculation of employee relocation costs and separation payments and labor protection costs.
So do you know how those numbers were calculated?
MS. FLAHIVE WU: Objection to form. And lacks foundation.

Page 82

THE WITNESS: I don't.
BY MR. EDELMAN:
Q. Do you know if your department, labor relations, provided any information to Mr. Janke for Mr. Janke to do those calculations?
A. I don't.
Q. Let's look at Exhibit 318.
(Document marked for identification as Parkerson Exhibit 318.)
BY MR. EDELMAN:
Q. And I will represent that the highlighting on this is mine, and this is a --
MS. FLAHIVE WU: Counsel, I'd like to make a running objection to your use of exhibits that are hand-marked and identified. Also where you've excerpted exhibits without stating so for the record.
I'd ask that you identify

Page 83

the nature of the exhibits that you're marking and supplement the record appropriately.
MR. EDELMAN: Well, I think the -- the document says what it says. It's a work paper produced by Union Pacific. I was going to say that this is Mr. Janke -- one of Mr. Janke's work papers.
And it says, "Implementation Expense, One-Time Expenses for Summary of Benefits Statement."
And about a little below halfway down, there's a category of "Personnel," and then three down from the title "Personnel," says, "Agreement transfer allowance, clerical synergy."
And then it has category of relocation and operating expense over on the right-hand side.

Page 84

BY MR. EDELMAN:
Q. Do you see that?
A. I do.
Q. Okay. So do you know if anybody in your department provided any information to Mr. Janke for him to perform this work in his work papers?
A. I don't, no.
Q. Do you know if Mike Matya provided any information to Mr. Janke for him to do these calculations?
A. If somebody did, it would have been Mike.
Q. And who is Mike Matya?
A. Mike Matya is the general director of labor relations for the nonoperating crafts.
Q. Do you know if there was a calculation performed by Union Pacific as to how many employee -- clerical employees in Atlanta would be eligible for dismissal allowances?
A. I don't know.
MR. EDELMAN: I know we've

Page 85

been going about an hour and a quarter. Does it make sense to break? I'm fine, but we were doing it at kind of an hour.
MS. FLAHIVE WU: Five minutes.
THE WITNESS: I guess a bio break.
THE VIDEOGRAPHER: Going off the record. The time is 9:18.
(Short break.)
THE VIDEOGRAPHER: We are on the record. The time is 9:26.
BY MR. EDELMAN:
Q. Okay. Let's look again at Exhibit 315, which is Union Pacific's responses to the allied rail union's interrogatories.
A. Okay.
Q. And I'd like you to look at Interrogatory Number 1, which is on Page 3.

Page 86

A. Okay.
Q. So Interrogatory Number 1(b) asks, of the nine locomotive shops and locations that are current interchange points for UP and Norfolk Southern, which -- which of those shops will be closed.
Do you know the answer to that?
MS. FLAHIVE WU: Objection. Vague. Calls for speculation.
THE WITNESS: I don't.
BY MR. EDELMAN:
Q. So if you could look at Exhibit 314 again.
A. Okay.
Q. Which is titled "Mechanical Synergies (OE): Curtail locomotive facilities at current interchange locations," and there are a number of locations identified where there are interchange locations with locomotive facilities.

Page 87

Looking at Exhibit 314, do you know which, if any, of those shops will be closed?
MS. FLAHIVE WU: Objection to form. Lacks foundation. Calls for speculation.
THE WITNESS: I don't know. Ultimately, mechanical is going to have to figure out how to allocate their capacity.
BY MR. EDELMAN:
Q. I'm going to show you now what is Exhibit 319.
(Document marked for identification as Parkerson Exhibit 319.)
BY MR. EDELMAN:
Q. And this is a document -- again, the handwriting at the bottom is mine. It's titled "Mechanical Synergies (OE): Curtailment Locomotive Facilities." And there are, on the left, a list of locomotive facilities, and some of them, Decatur, Fort Wayne,

Page 88

Atlanta, Inman, Louisville, are highlighted.
Do you know why any of those were highlighted?
MR. EDELMAN: Highlighting is in the original. Not mine.
MS. FLAHIVE WU: Objection. Vague.
THE WITNESS: I don't know.
BY MR. EDELMAN:
Q. Okay. Do you know if Decatur, Fort Wayne, Atlanta, Louisville are places that are going to be closed?
MS. FLAHIVE WU: Objection. Lacks foundation. Calls for speculation.
THE WITNESS: So based on the language that's on the exhibit itself, it identifies those locations as facilities that could be curtailed.
It's a can, but the tense is, you know...

Page 89

BY MR. EDELMAN:
Q. I'd like you to look at -- on Page 4 of Exhibit 315.
A. Okay.
Q. The answer that Union Pacific gave in Subpart D says, "The estimated number of employees affected or identified in the work paper" -- and I'm not going to bother to read that into the record.
But do you see it?
A. I do.
Q. Okay.
MR. EDELMAN: It's already numbered 314.
BY MR. EDELMAN:
Q. If you look at Exhibit 314, please.
A. Okay.
Q. In the answer to the Interrogatory, Subpart D, there's a referral to another document. If you look at Exhibit 314, can you tell me, does this tell us the number of

Page 90

employees that are going to be affected and how?
MS. FLAHIVE WU: Objection. Lacks foundation. And compound.
THE WITNESS: Is Exhibit 314 the document referenced in Subparagraph D?
BY MR. EDELMAN:
Q. I believe it is.
A. Okay.
MS. FLAHIVE WU: I'll note for the record that Exhibit 314 is marked with handwriting of counsel and without the original file name.
MR. EDELMAN: There is no -- I printed this as it comes off of your work papers, so there is no other way of identifying it.
THE WITNESS: So, again, based -- based -- just looking at Exhibit 314, as I understand

Page 91

it, there is the title that says "Current Agreement Workforce Level at Potential Impacted Interchange Locations."
I'm sorry, Rich. I didn't prepare the exhibit.
BY MR. EDELMAN:
Q. Okay. Okay. All right. All right.
I'm now going to ask you some questions regarding the commitment applicants are making for career employment to craft employees.
Are you familiar with that commitment?
A. I am.
Q. Okay. Can you look at your verified statement, Exhibit 310.
Look at Paragraphs 13 and 14.
A. Okay.
Q. Why don't you read those so it will be more effective.
A. Thank you.

Page 92

Q. So you refer to applicants' commitment to craft employees can finish their careers with the merged carrier in some capacity subject to the usual -- quote, usual requirements for continued employment, including remaining fit for duty, maintaining necessary qualifications, meeting performance and conduct standards applicable to all employees, and accepting available work opportunities.
All right. What does "in some capacity" mean in that sentence?
A. That they will have jobs in some capacity.
Q. So is the commitment is not to a job in their current craft?
MS. FLAHIVE WU: Objection. Vague.
THE WITNESS: Not necessarily.
BY MR. EDELMAN:
Q. All right. So let me just -- to counsel's objection.

Page 93

Is there a commitment in applicants' plan for employees to continue their employment in their current crafts?
A. So there are letters of understanding with certain crafts who have wanted to enter into such agreements that discuss that specific -- that answer that specific question.
In general, "in some capacity" means "in some capacity."
Q. Meaning, not necessarily in the employee's craft?
MS. FLAHIVE WU: Objection. Asked and answered.
THE WITNESS: Not necessarily.
BY MR. EDELMAN:
Q. Okay. So -- and does the obligation to accept available work opportunities that you refer to require employees to take offered positions that might require them to relocate?
A. That is a potential, but

Page 94

that's also a potential that is contemplated in our CBAs and how the industry works.

Q. Well, did the CBAs normally require somebody to relocate from one carrier to another?

MS. FLAHIVE WU: Objection. Vague.

THE WITNESS: As you know, CBAs relate to a specific property. There are no provisions in either UP's or NS's current CBAs that would permit that.

BY MR. EDELMAN:

Q. So in the applicants' commitment to continued employment with a carrier post merger, would the carrier's commitment require an employee to relocate from a current work location to another work location?

MS. FLAHIVE WU: Objection. Vague.

THE WITNESS: I think it's

Page 95

a possibility. It's also a possibility that employees would have to protect certain work and exercise their seniority under their existing CBAs.

I also don't know what the terms of the implementing agreements that are yet to be negotiated are going to be.

BY MR. EDELMAN:

Q. In your statement, you refer to the usual requirements for continued employment, including remaining fit for duty, maintaining necessary qualifications, meeting performance and conduct standards.

Are there any other requirements for maintaining continued employment?

A. I wish I remembered that Latin phrase.

But -- but there could be. I don't -- I don't know that this list is exclusive or -- yeah.

Page 96

Q. Now, under the applicants' commitment to continued employment with the merged entity, are the -- are the obligations of employees and the obligations of the applicants under that plan, continued employment plan, offered by the carrier any different from the obligations of employees under the New York Dock conditions?

MS. FLAHIVE WU: Objection to form. Compound. And objection to the extent the question requires a legal analysis.

THE WITNESS: They -- they could be, I suppose.

BY MR. EDELMAN:

Q. Well, I'm just asking if you know. You're familiar with the New York Dock conditions, yes?

A. I am.

Q. Okay. Carriers come up with a proposed continued employment plan that is presented to the STB.

Page 97

So I'm just asking if the obligations for employees under the carriers' proposal differs from the requirements of New York Dock?

MS. FLAHIVE WU: Same objections.

THE WITNESS: So it -- it could. I mean, again, I'm not sure how to answer the question in the absence of the implementing agreement discussions that have yet to take place or in the absence of any other agreements that we may reach with unions that want to define this more specifically for their crafts.

BY MR. EDELMAN:

Q. Do you know if the applicants will take the position that an employee declining an offer under the continuation of employment plan will be ineligible for New York Dock dismissal benefits?

Page 98

MS. FLAHIVE WU:
Objection. Lacks foundation.
Calls for speculation.
THE WITNESS: I don't know if I can answer that now.
BY MR. EDELMAN:
Q. Now, which employees will this career continuation plan cover, those employed at the time the application was filed?
A. Is that the question?
Q. Yeah. Sorry.
A. So just one thing. You refer to it as a plan. I mean, we refer to it as a commitment --
Q. Fair enough. Okay. Sure.
A. -- so I just -- I don't want any --
Q. Okay. Let's do it this way.
Does the applicants' commitment to continued career employment apply to all employees who were employed at the time the

Page 99

[redacted]

Page 100

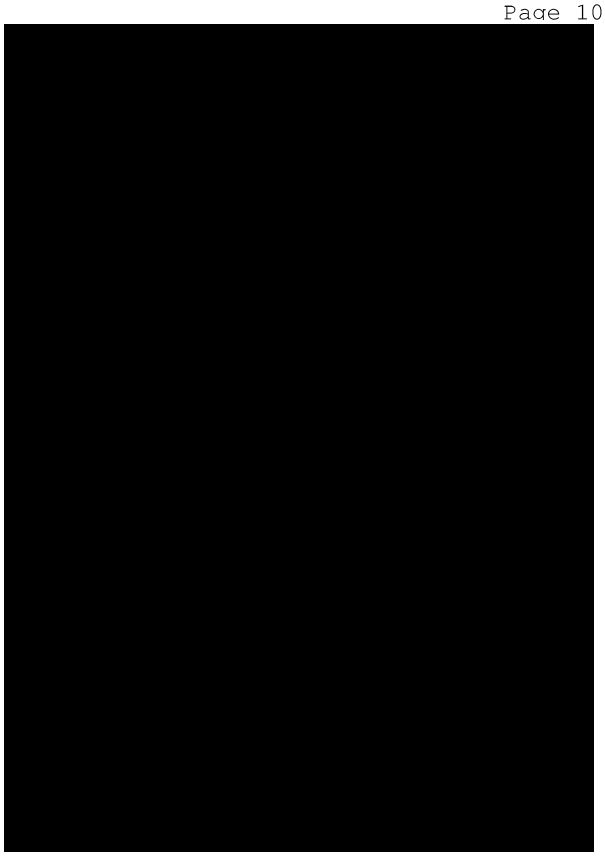
with a merged entity?
MS. FLAHIVE WU:
Objection. Lacks foundation.
You can answer if you can.
THE WITNESS: Oh. I don't -- I don't know that there's -- I understand it to be the same commitment. I don't --
BY MR. EDELMAN:
Q. All right. I'm going to show you Exhibit 320.
(Document marked for identification as Parkerson Exhibit 320.)

[redacted]

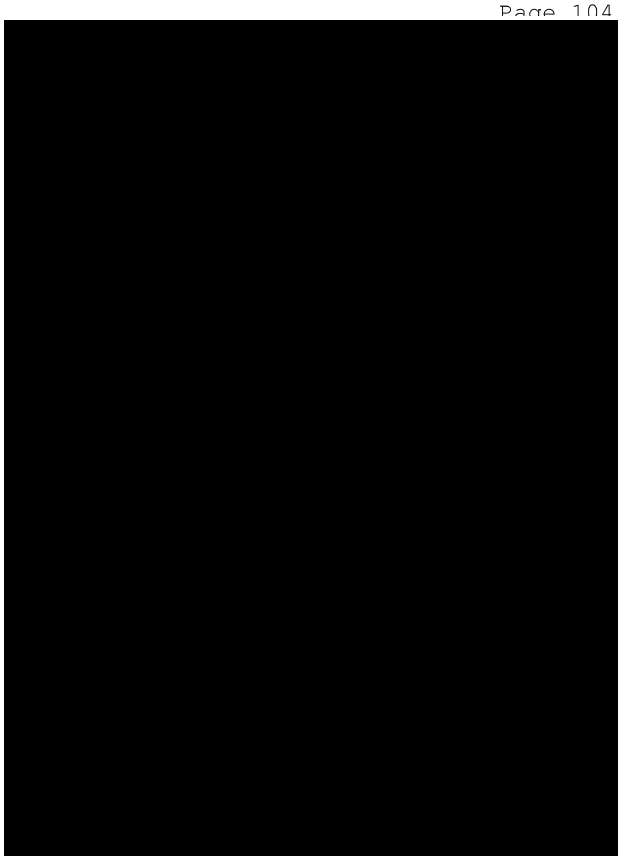
Page 101

[redacted]

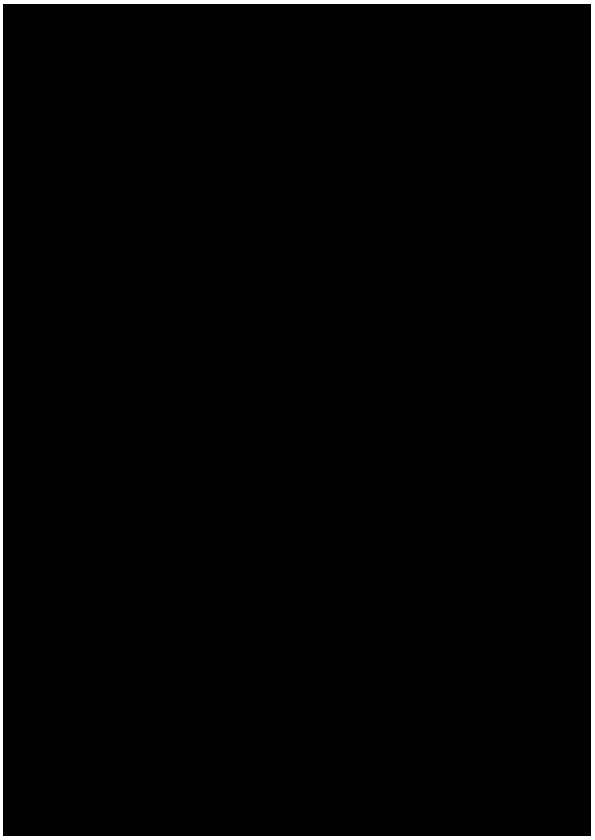
Page 102



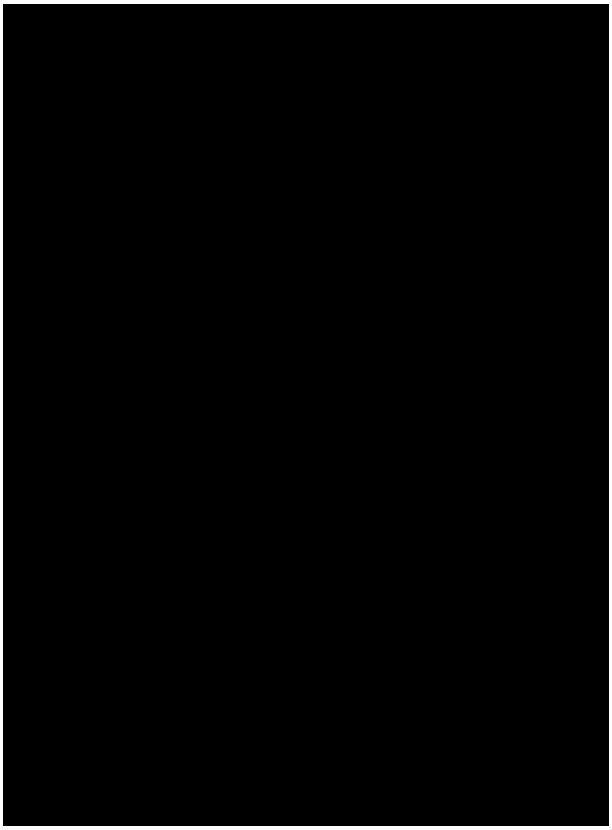
Page 104



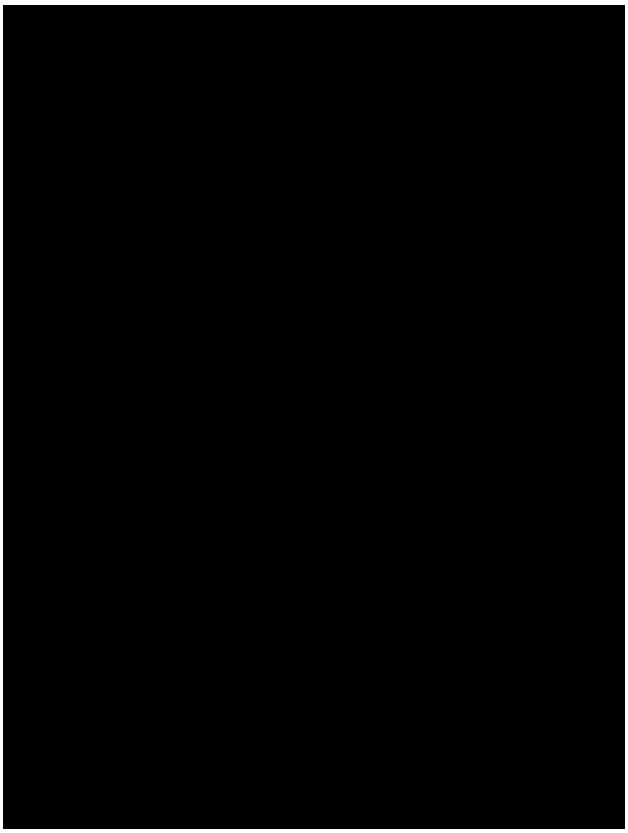
Page 103



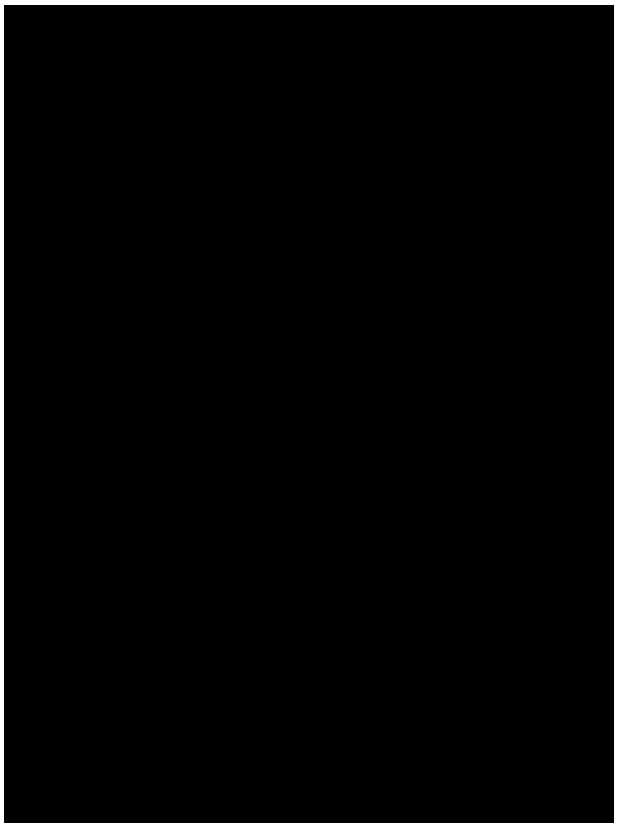
Page 105



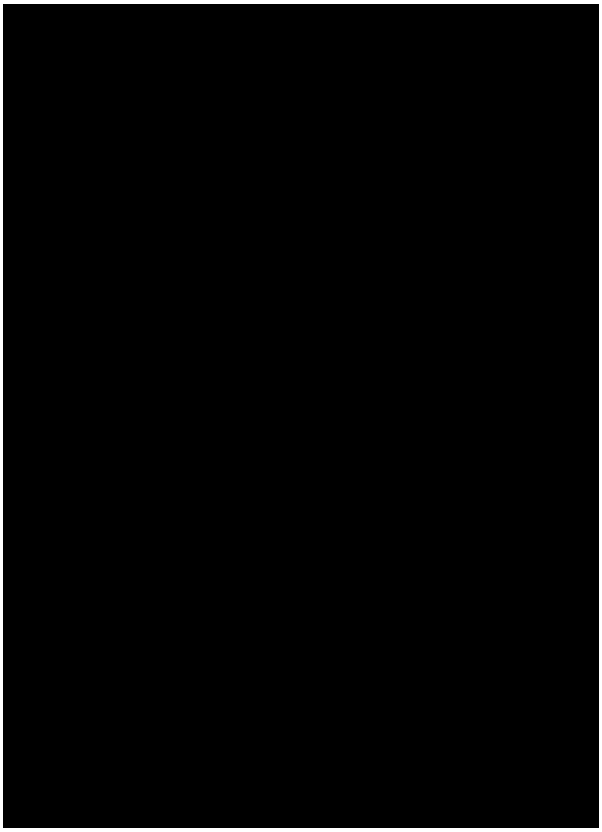
Page 106



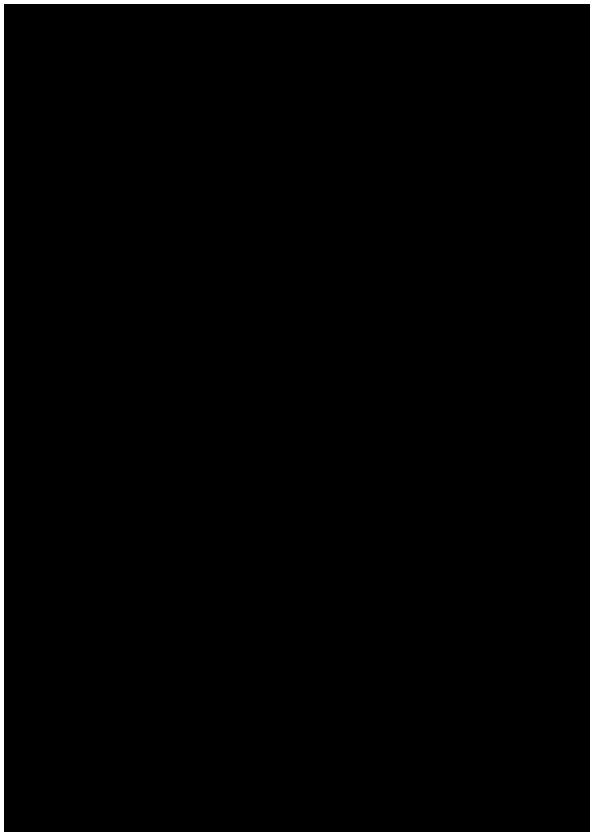
Page 108



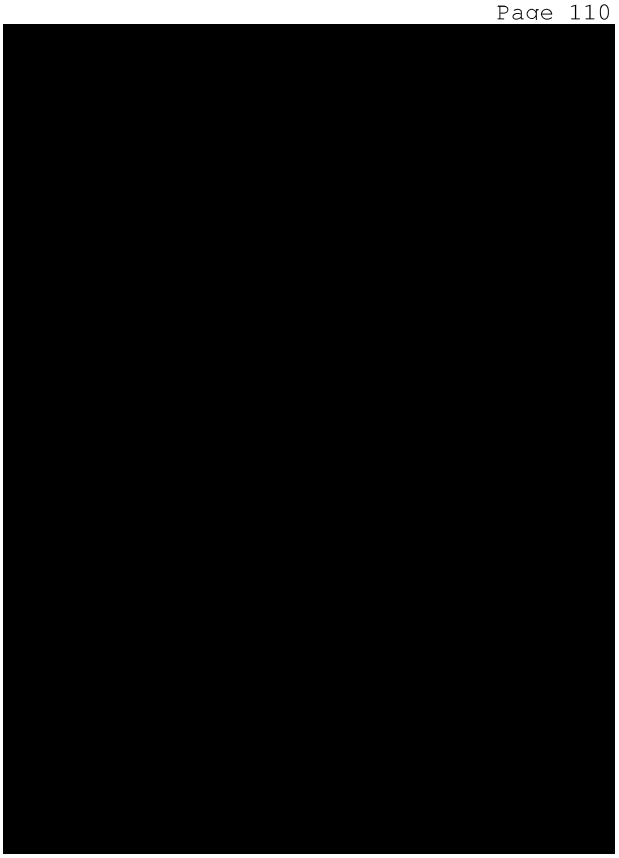
Page 107



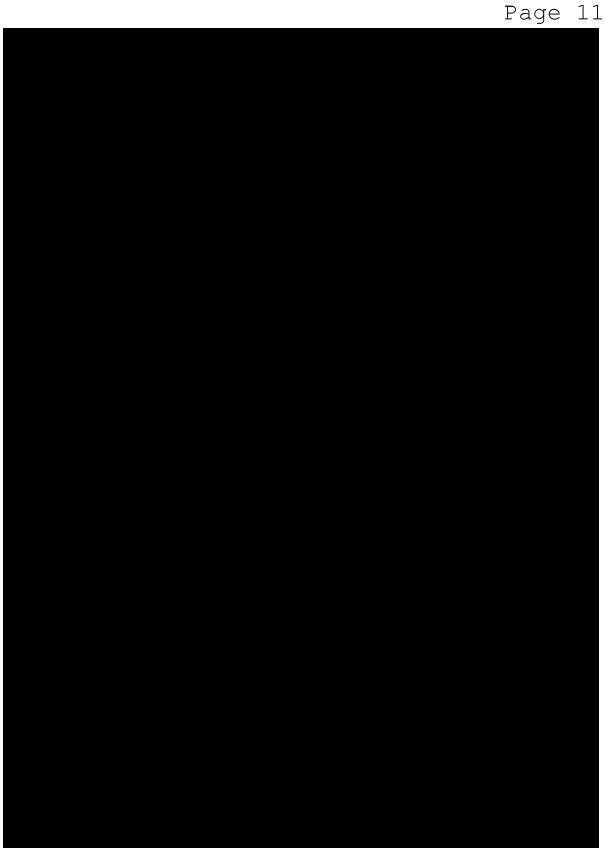
Page 109



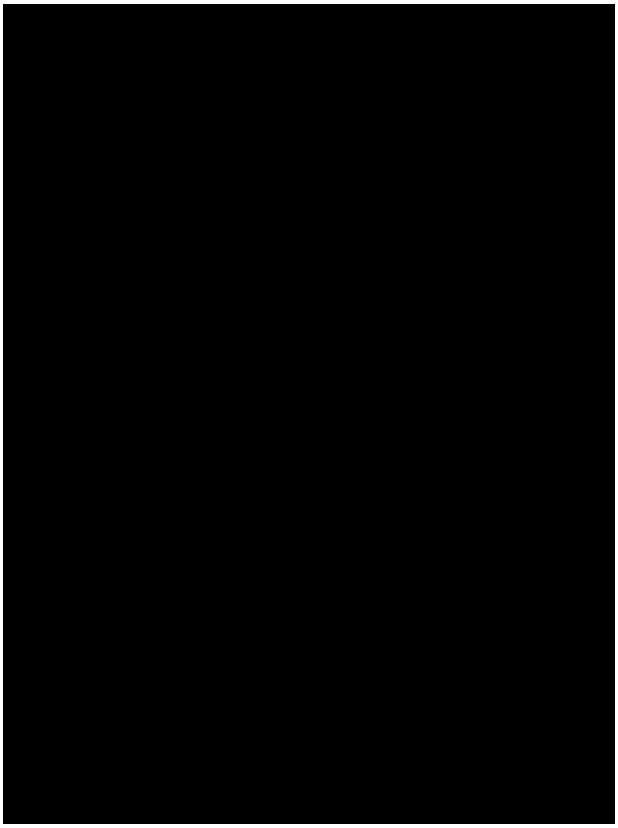
Page 110



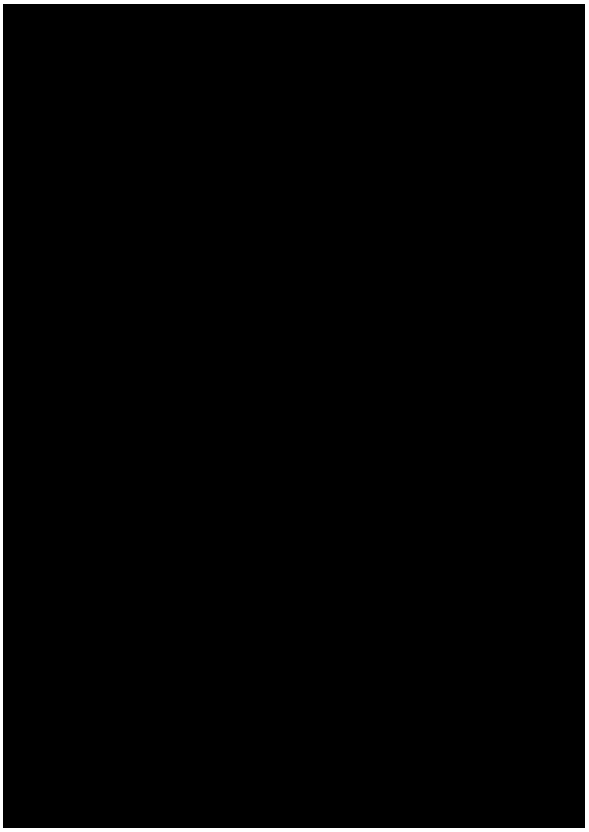
Page 112



Page 111



Page 113



Page 114

[redacted]

Page 116

[redacted]

Page 115

[redacted]

Page 117

[redacted]

Page 118

So are we saying the jobs-for-life commitment applies at the time of consummation of the merger to the employees employed at that time?
A. Generally --
MS. FLAHIVE WU: Objection to form.
THE WITNESS: Generally, yes.
BY MR. EDELMAN:
Q. But not necessarily to employees at the time the application was filed?
MS. FLAHIVE WU: Objection to form.
THE WITNESS: That is consistent with my understanding, yes.
BY MR. EDELMAN:
Q. And, again, at the time of this discussion, there were no plans for line sales or leases as part of the application?
MS. FLAHIVE WU: Objection

Page 119

to form. Lacks foundation.
THE WITNESS: That's my understanding. Yes.
BY MR. EDELMAN:
Q. And do you know if that is still the plan, that there are no plans for sales or leases in connection with the application?
A. I'm not aware of any.
Q. You're not aware of any plans to do that?
A. That's right.
Q. Okay.
MR. EDELMAN: Can we go off the record for a moment.
MS. FLAHIVE WU: Sure.
MR. EDELMAN: Okay.
THE VIDEOGRAPHER: Going off the record. The time is 10:03 a.m.
(Brief pause.)
THE VIDEOGRAPHER: We are on the record. The time is 10:03.

Page 120

MR. EDELMAN: All right. That's the end of my questions for the morning.
Thank you, Maqui.
I suggest we take a break so counsel can rearrange themselves and whether that would facilitate the next questioner.
MS. FLAHIVE WU: Thank you, Mr. Edelman.
THE VIDEOGRAPHER: Going off the record. The time is 10:04.
(Short break.)
THE VIDEOGRAPHER: We are on the record. The time is 10:18.

- - -

EXAMINATION

- - -

BY MR. McINERNEY:
Q. Good morning, Ms. Parkerson.

Page 121

A. Good morning.
Q. As -- as Rich mentioned, we know each other. So do you mind if I call you Maqui?
A. I don't.
Q. And you may address me as Josh, is fine, obviously.
All right. I have handed you -- or I'm handing you a document I've marked as Exhibit 324. And there is highlighting -- no, there's not. I'm sorry.
And this is Page 59 of the employee impact exhibit craft that was made public and filed with the STB by the applicants on July 27, 2026. This is just Page 59 of that.
(Document marked for identification as Parkerson Exhibit 324.)
BY McINERNEY:
Q. All right. Are you familiar with that employee impact exhibit?

Page 122

A. Generally, yes.
Q. Okay. I want to ask you about, if you go down -- well, I want to ask about what each of the columns means.
I think I understand job classification. For train crew, does that include both engine service employees and train service employees?
MS. FLAHIVE WU:
Objection. Compound.
THE WITNESS: It does.
BY MR. McINERNEY:
Q. Contains both.
And current location, is that just where those employees are located?
A. That's my understanding, yes.
Q. All right. And for positions abolished, 1, 2, 3, what does the 1, the 2, and the 3 stand for?
A. The year --
Q. Okay.

Page 123

A. -- in which the change would occur or could occur.
Q. And I have some questions. If we go down to -- let's go down to Memphis Tennessee_NS. Not -- it's in alphabetical order, so...
A. Yeah. Okay.
Q. Okay. And it indicates -- let's -- I'm sorry. Let's go to Memphis Tennessee_UP --
A. Okay.
Q. -- where in positions abolished it has 14 under Column 1, 14 under Column 2, 1 under Column 3.
A. Okay.
Q. Do you know which of those 14 are engine service employees as opposed to train service employees?
MS. FLAHIVE WU:
Objection. Lacks foundation.
THE WITNESS: I don't.
BY MR. McINERNEY:
Q. And then do you know, for those positions that are abolished, do

Page 124

you know which locations will receive the work that's being performed by those abolished jobs?
MS. FLAHIVE WU:
Objection. Lacks foundation.
Calls for speculation.
THE WITNESS: I don't.
BY MR. McINERNEY:
Q. And then also, if you look over one row above the Memphis Tennessee_UP, there's Memphis Tennessee_MS.
Do you see that row?
A. I do. I do.
Q. Okay. And then in that one, it has position created, and it has seven in Year 1, six in Year 2, and two in year -- I'm sorry -- two in Year 3.
Do you see that?
A. I do.
Q. Okay. Will -- are those positions created from the abolished jobs in the Memphis Tennessee UP -- underscore UP?

Page 125

MS. FLAHIVE WU:
Objection. Vague.
THE WITNESS: I don't know.
BY MR. McINERNEY:
Q. And if it's anticipated, back to Memphis Tennessee_UP, having -- just first year, 14 jobs abolished in the train crews in Year 1, is it anticipated that those employees who are having their jobs abolished will be required to transfer to a different location other than Memphis in order to maintain employment?
MS. FLAHIVE WU:
Objection. Lacks foundation.
Calls for speculation.
THE WITNESS: The expectation is that those employees would protect the seniority that's required under their CBAs, in the absence of another implementing agreement that said otherwise.

Page 126

BY MR. McINERNEY:
Q. Okay. And to your knowledge, is under the -- under the UP CBA, would that require the employee to relocate to a different city for work?
MS. FLAHIVE WU:
Objection. Vague.
THE WITNESS: I don't know.
BY MR. McINERNEY:
Q. Okay. Be the same answer under the NS agreement, you don't know?
A. I don't know.
Q. All right. You can put Exhibit 324 aside for a second.
I have a quick question on Exhibit 313.
A. Okay.
Q. On Exhibit 313 here, under the column labeled -- the column is not labeled. Under the column labeled "Years," but it has job classifications.
Do you see that?
A. Yes.

Page 127

[redacted]

Page 128

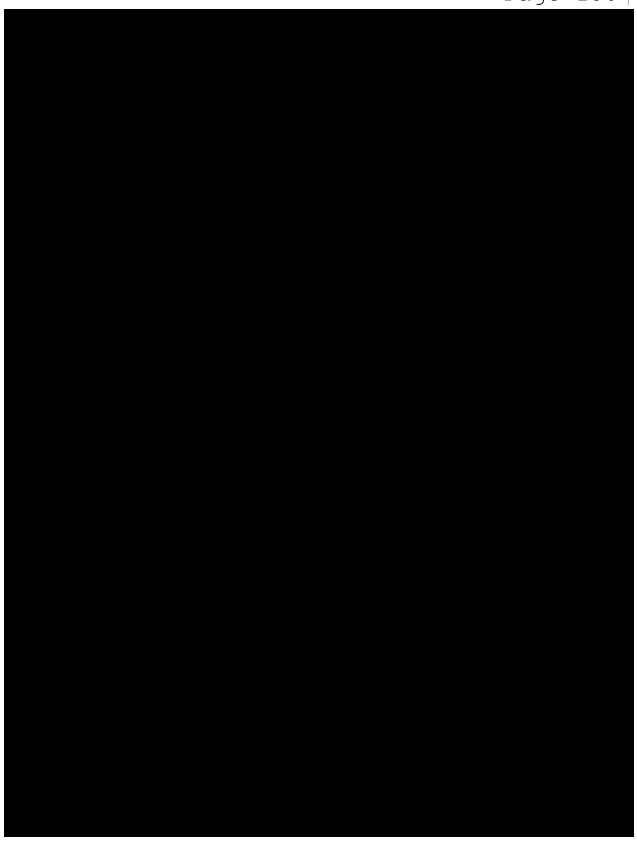
identification as Parkerson Exhibit 325.)
BY MR. McINERNEY:
Q. I'm going to hand you a document I'm marking as Exhibit 325.
Exhibit 325 was produced by the applicants. It is Bates-stamped as UP_0334671 through 0334672.

[redacted]

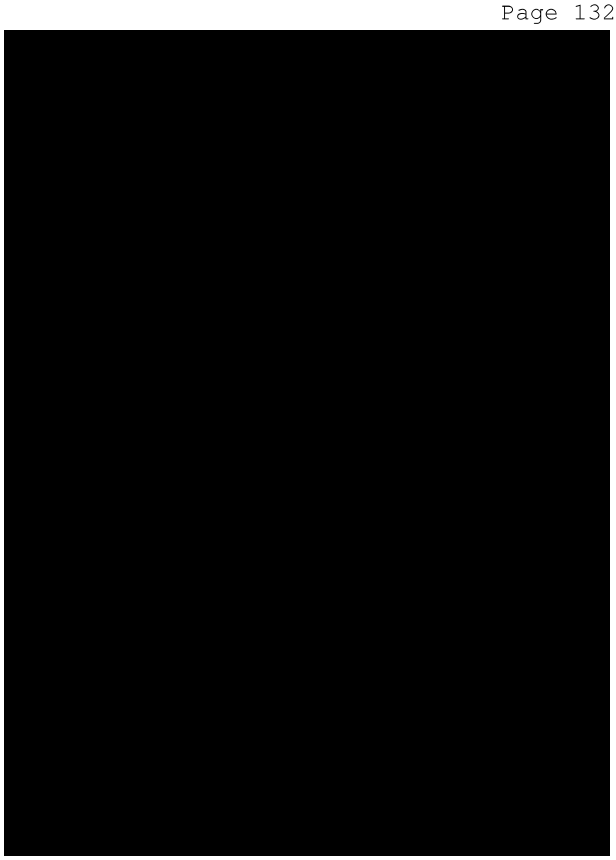
Page 129

[redacted]

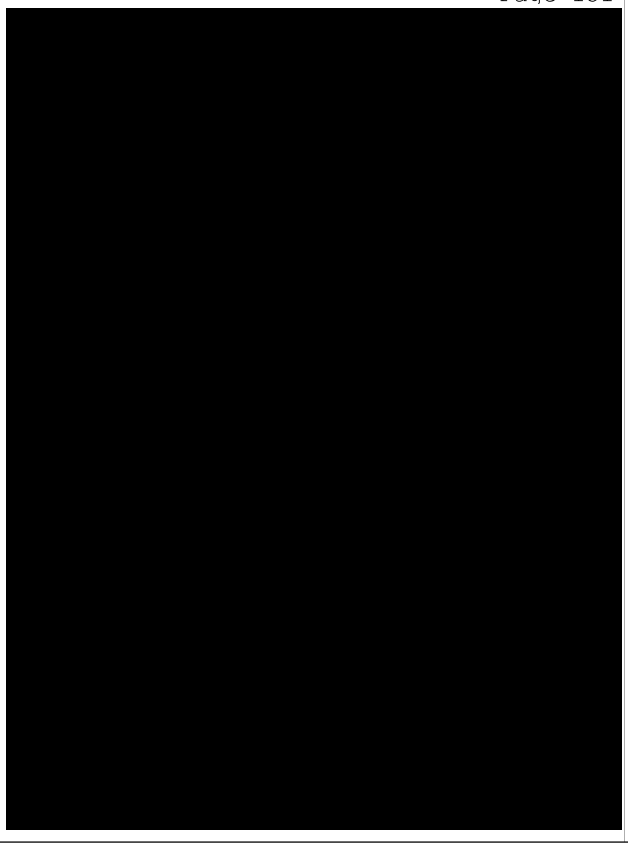
Page 130



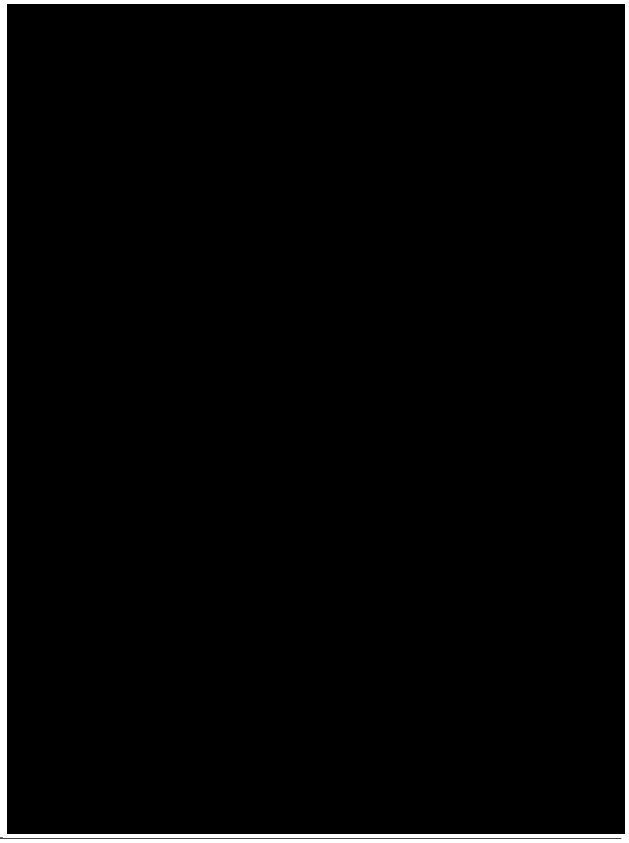
Page 132



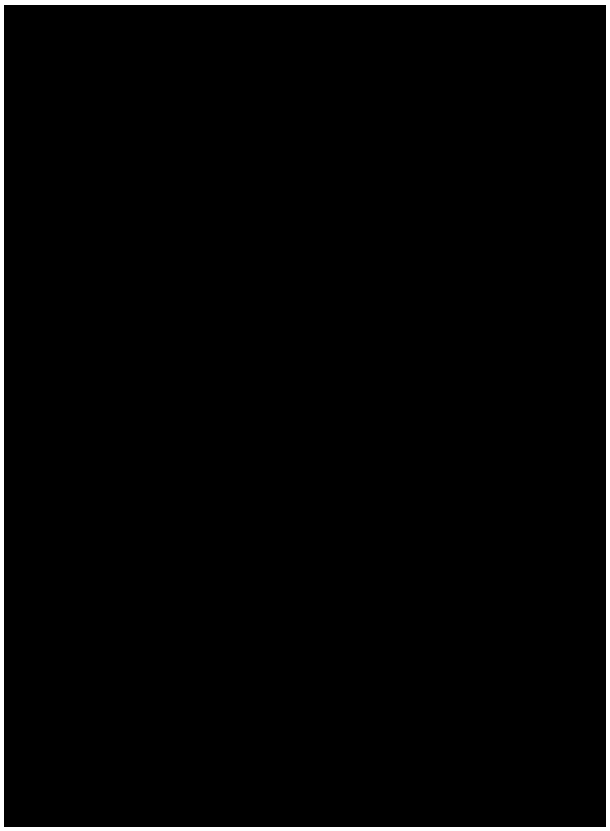
Page 131



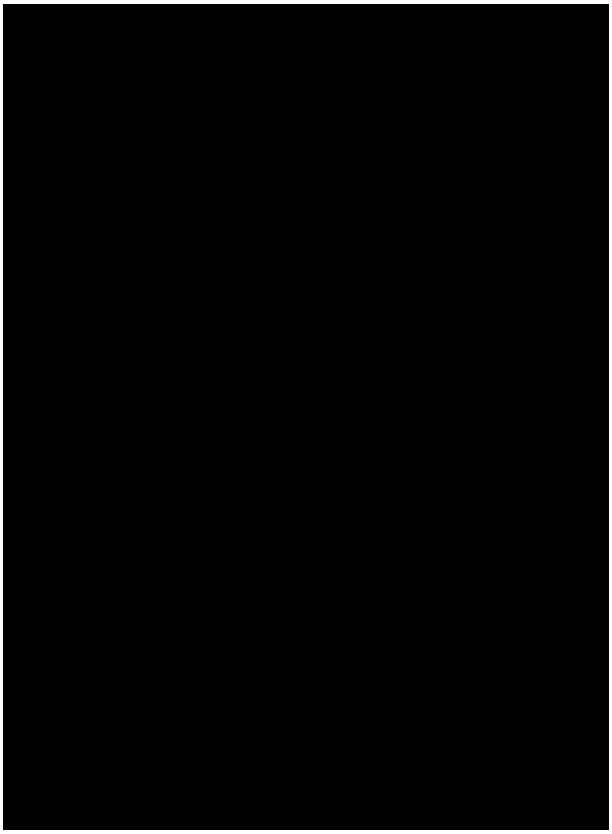
Page 133



Page 134



Page 135



Page 136



Q. Are you familiar with the -- you mentioned in your earlier testimony LOAs reached with other unions.

Are you familiar with the LOA that was reached with SMART and referenced in your verified statement?

A. I am.

Q. Okay. Under that LOA, are train service employees, represented by SMART-TD, was there a commitment to jobs in that particular craft, for life?

MS. FLAHIVE WU: Objection. Vague.

THE WITNESS: I'm happy to take a look at the language if you have it. But I do think that it refers to jobs in train, engine, or yard controller service.

BY MR. McINERNEY:

Q. So that -- so what you

Page 137

recall -- and I don't have it with me. But what you recall is it's in one of three crafts: train, engine, or yard controller?

A. That's my recollection. But, again, we can verify that with the document.

Q. Okay. And is -- to the best of your recollection -- and, again, is the commitment in the LOA with SMART-TD for employees who are employed as of the -- I think you called it the date of control. Is that what the commitment attaches to?

A. The date immediately prior to control, yes.

Q. And -- okay. Was the offer to jobs for life, in those same crafts that were granted to SMART, also extended to BLET?

MS. FLAHIVE WU: Objection. Vague.

THE WITNESS: I believe that it was, yes.

Page 138

BY MR. McINERNEY:
Q. And was that something you were involved in?
A. Yes.
Q. Okay. And who did -- who did you -- did you make that offer?
MS. FLAHIVE WU: Objection. Vague.
THE WITNESS: I can't recall who did, but the offer was made, is my recollection.
BY MR. McINERNEY:
Q. And do you recall who the offer was made to?
A. It would have been made to Mark Wallace.
Q. Do you know who the offer was -- do you know if that offer was made before or after the LOA with SMART?
MS. FLAHIVE WU: Objection to form. Compound.
THE WITNESS: I believe it was made before the LOA with SMART-TD.

Page 139

BY MR. McINERNEY:
Q. Has the offer to preserve jobs within specific crafts been made to any other unions besides SMART, which, obviously -- besides SMART and BLET?
MS. FLAHIVE WU: Objection. Vague and compound.
THE WITNESS: It has been, yes.
BY MR. McINERNEY:
Q. Okay. Is that offer to remain in specific crafts also contained in the agreements with NCFO, the LOA?
A. Yeah. I --
MS. FLAHIVE WU: Objection to form.
THE WITNESS: I don't recall. I don't think that it is.
BY MR. McINERNEY:
Q. Okay. What about with BRC?
MS. FLAHIVE WU: Objection to form. Vague.
THE WITNESS: I don't

Page 140

think that it is. If you have them, I'm happy to look at them.
BY MR. McINERNEY:
Q. I don't have these.
What about with IBB?
MS. FLAHIVE WU: Objection to form. Vague.
THE WITNESS: Again, my recollection is that it doesn't.
BY MR. McINERNEY:
Q. Okay. Well, I guess let me ask it this way.
Based on your recollection --
A. Yeah.
Q. -- is the offer to remain in particular crafts or classes -- and we went through them: engine, train service, yard controller. Is that only contained in the SMART-TD LOA and no other LOAs?
MS. FLAHIVE WU: Objection to form. Vague and compound.
THE WITNESS: So when --

Page 141

can you ask that question again. I'm sorry.
BY MR. McINERNEY:
Q. Sure.
I had asked you about the commitment to remain in particular crafts.
A. Yep, yep. Yep, yep.
Q. And you said you believe that to be in the SMART-TD LOA.
A. Yes.
Q. Are you aware of it in any other LOAs that the carrier has executed?
MS. FLAHIVE WU: Objection to form. Vague.
THE WITNESS: We had made that commitment to certain crafts. I believe it's in the most recent SMART-MD agreement. And, you know, the process is really understanding -- those craft-specific agreements address craft-specific concerns.

Page 142

So it could be in some and is not in others.
BY MR. McINERNEY:
Q. If an -- let's focus on the SMART-TD LOA.
A. Sure.
Q. If an employee who is, let's say, in train service at the time the merger is consummated, moves to a different craft that is not represented by SMART-TD, does that employee remain guaranteed for a job for life in that new craft?
MS. FLAHIVE WU: Objection. Lacks foundation. Incomplete hypothetical.
THE WITNESS: I don't know if that specific scenario was considered.
But the LOU -- we call them LOUs.
BY MR. McINERNEY:
Q. I thought you said LOA.
A. You know, that agreement

Page 143

[redacted]

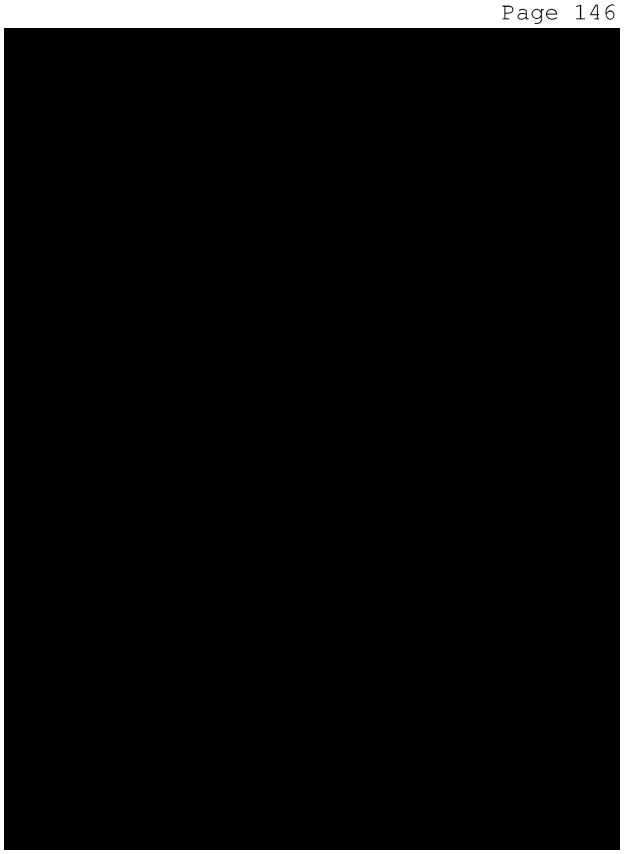
Page 144

BY MR. McINERNEY:
Q. So, again, the LOU -- is that what you called it, the LOU?
A. Yeah.
Q. Whatever.
The LOU with SMART-TD is -- in exchange for commitments, it says, "SMART-TD agrees to publicly support the transaction."
Do you remember that?
A. Yes.
Q. Were there any other commitments, besides what was written in the document, in order to obtain the commitments from UP?
MS. FLAHIVE WU: Objection to form.
BY MR. McINERNEY:
Q. Any other commitments from SMART. Sorry. In order to contain -- in order to obtain UP's commitment contained in the LOU?
A. No.
[redacted]

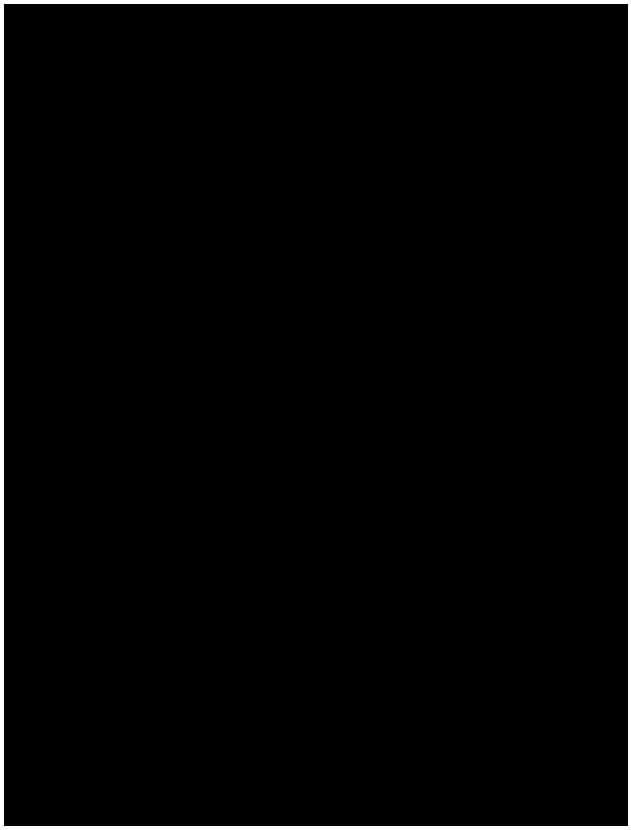
Page 145

[redacted]

Page 146



Page 147



Page 148



MR. McINERNEY: All right. Thank you. I don't have anything else.

THE WITNESS: Great.

MR. LANGE: Can we get five minutes? I want to make sure we're not duplicating.

THE VIDEOGRAPHER: Going off the record. The time is 10:45.

(Short break.)

THE VIDEOGRAPHER: We are on the record. The time is 10:55.

- - -

EXAMINATION

Page 149

- - -

BY MR. LANGE:

Q. Good morning, Ms. Parkerson. We have not met before today. My name is Erich Lange. I represent the IBEW. This is my colleague, Shiva Sethi.

We just took a break, but if at any time you need to take a break, let me know.

So Rich went over that you're currently the vice president of labor relations at Union Pacific?

A. That's correct.

Q. But you've also worked at northern -- Norfolk Southern; is that right?

A. I have.

Q. Generally speaking, are there any differences between how UP and NS approached labor relations?

MS. FLAHIVE WU: Objection to form. Vague.

THE WITNESS: We're

Page 150

different people, so yeah.
BY MR. LANGE:
Q. Were you involved in developing the operating plan the applicants submitted to the STB?
A. Generally. Not -- not specifically, though.
Q. But are you familiar with the operating plan?
A. I'm generally familiar with it, yes.
Q. All right. And were you involved in developing any of the work papers that support the application?
A. So I am aware of the work, yes.
Q. So you're familiar with it generally?
A. Generally, yes.
MS. FLAHIVE WU: Objection to form. Vague.
BY MR. LANGE:
Q. All right. I'm going to show you what's now marked as

Page 151

Exhibit 326, is what I believe we're on.
A. It's going to take a while to read this one.
(Document marked for identification as Parkerson Exhibit 326.)
MR. LANGE: Folks wanted the full. Not excerpted.
BY MR. LANGE:
Q. We're not going to go through the whole thing. Don't worry.
A. Good.
Q. All right. If you wouldn't mind just thumbing through that quickly. Not to rush you. Take all the time you need.
A. Okay.
Q. So is this the operating plan that applicants submitted to the STB in support of their amended application?
A. It appears to be.
Q. Okay. And so are you familiar with the differences between

Page 152

what applicants describe as the optimized and growth plans?
MS. FLAHIVE WU: Objection to form. Vague.
THE WITNESS: Generally.
BY MR. LANGE:
Q. All right. So in your own words, can you briefly describe the optimized plan.
A. So the optimized plan reflects what the system might -- the combined system might look like if you just took current state operations and made it one complete system.
Q. So the optimized plan does not account for any projected growth, correct?
MS. FLAHIVE WU: Objection. Lacks foundation. Vague.
THE WITNESS: That's my understanding.
BY MR. LANGE:
Q. If we could go to your

Page 153

verified statement, which I believe is Exhibit 310. And if we go to Page 5, Paragraph 9.
A. Okay.
Q. Do you see where, in Paragraph 9, it states, "The efficiencies described in the operating plan will reduce the number of positions required to perform certain functions by 1,156 jobs by the end of Year 3"? Correct?
A. Yes. That was the projection.
Q. All right. And is that projection made under the optimized plan?
A. I'm not sure.
Q. Okay. So the optimized plan in contrast to the growth plan -- are you familiar with the growth plan?
A. Generally.
Q. And the growth plan is based on the applicants' projected volume growth, correct?

Page 154

A. That's my understanding.
Q. Would it be fair to say that the growth plan is based on estimates?
MS. FLAHIVE WU: Objection. Vague. Lacks foundation.
THE WITNESS: It is a model.
BY MR. LANGE:
Q. What is that model based on?
MS. FLAHIVE WU: Objection. Lacks foundation. And vague.
THE WITNESS: I couldn't tell you what the assumptions are.
BY MR. LANGE:
Q. There are many ways the growth plan could fail, correct?
MS. FLAHIVE WU: Objection. Lacks foundation. Calls for speculation.

Page 155

MR. LANGE: I'll be more specific. I can be more specific.
BY MR. LANGE:
Q. The projections in the growth plan would not come to fruition if demand were to fall, correct?
MS. FLAHIVE WU: Objection. Lacks foundation.
THE WITNESS: Well, I'm assuming you mean demand for specific UP services or demand for traffic, in general.
I mean, I -- an answer would depend on which one you meant.
BY MR. LANGE:
Q. If there's another COVID-19 global pandemic, would the growth projections -- strike that. Let me start over.
If there's another global pandemic, for example, is it possible that the growth projections would not come to fruition?
MS. FLAHIVE WU: Objection. Lacks foundation. Calls for speculation.
THE WITNESS: My understanding is that the assumptions underlying the growth plan do not contemplate a COVID-like event.
BY MR. LANGE:
Q. Okay. Go back to Paragraph 10 of your verified statement.
A. Yep.
Q. All right. And in there it says that applicants anticipate adding a net 1,171 craft jobs by the end of Year 3, correct?
A. Yes. Yes.
Q. Is that estimate based on projections in the growth plan coming to fruition?
A. My understanding is that that estimate is based on the output of the model.

Page 156

Page 157

Q. Did the applicants run models for both the optimized and growth plans?
A. Yes.
MS. FLAHIVE WU: Objection. Compound.
THE WITNESS: Sorry.
BY MR. LANGE:
Q. The answer was yes?
A. Yes.
Q. So you don't know if your statement in Paragraph 10, that applicants anticipate they will add a net 1,171 craft jobs by the end of Year 3, is -- you don't know whether that statement is based on the model for the optimized plan or the growth plan?
A. Not for certain.
Q. Okay. Are there any anticipated new jobs created under the optimized plan?
A. I'm not -- I'm not sure how to answer that question.
The exercise, the output of

Page 158

the model, was that there would be a certain number of jobs created as a result of the model, I guess. I don't --

Q. Okay. Can we go back to Paragraph 9 of your verified statement.

A. Sure.

Q. Do you see where you state, quote, "Right at the top, there will be a few opportunities to add craft jobs by insourcing work that is currently being contracted out."

Do you see that?

A. I do.

Q. All right. So you used the word "opportunities."

Does that mean that the carrier will insource work?

A. So based on our knowledge at the time, when the application was developed, there were opportunities identified of work that could be insourced that is currently outsourced.

Q. Okay. So you just said

Page 159

"could be insourced."

A. That's right.

Q. So it might be insourced but not a guarantee?

MS. FLAHIVE WU:
Objection.

BY MR. LANGE:

Q. Just asking for clarification.

A. That's correct.

MS. FLAHIVE WU: Objection to form.

BY MR. LANGE:

Q. Okay. You also said "a few opportunities." How many is a few?

A. I believe the opportunities are described in the application.

Q. So do you know what specific work is currently being contracted out that can be insourced?

A. So I don't know -- I don't know how all of Norfolk Southern does its work. But I understand that there are certain things, like production

Page 160

wheel sets, maybe, maybe that's a good example, that might be suitable for insourcing.

There are also differences in the way that we do certain work that could lead to opportunities to insource that work as well.

And to the extent that we gain scale from the combined entity, that would only improve the case for insourcing.

Q. So to clarify, the statement on insourcing work applies to the combined entity?

A. That's correct.

Q. Okay. So do you know what specific crafts would see jobs added if work was insourced?

MS. FLAHIVE WU:
Objection. Lacks foundation.

THE WITNESS: So that -- that would really be driven by the work that's contemplated. Generally, mechanic -- I mean,

Page 161

wheel sets, that's mechanical work. That's how I...

BY MR. LANGE:

Q. All right. So I want to circle back to some of the job reductions we just talked about.

Some of the job reductions, specifically in the mechanical department or the shop crafts, will be realized through shop closures, correct?

MS. FLAHIVE WU:
Objection. Lacks foundation.

THE WITNESS: So I'm not sure I can answer that question.

BY MR. LANGE:

Q. All right. Can we go to the operating plan, Paragraph 455.

A. Sure. Page 455?

Q. Paragraph 455.

A. Oh, sorry.

Q. There's multiple page numbers. I thought it would be easier to do the paragraph numbers.

A. Okay.

Page 162

Q. Are you there?
A. Yeah, I am.
Q. Okay. Perfect.
The second sentence of Paragraph 455 says, "In total, UP/NS will relocate positions from four locomotive shops where operations will be idled, consolidated, or reduced."
One, Decatur, Illinois.
Two, Fort Wayne, Indiana.
Three, Inman/Atlanta, Georgia.
And, four, Louisville, Kentucky.
"By curtailing these four facilities, the combined railroad can eliminate the associated overhead, partially offset by an increase in overhead at the facilities to which the employees are relocated."
Did I read that accurately?
A. Yes.
Q. So is UP/NS going to close shops in Decatur, Fort Wayne, Inman, and

Page 163

Louisville?
MS. FLAHIVE WU: Objection. Lacks foundation.
THE WITNESS: So based on the outputs of the model, the thinking, based on the knowledge that we knew at the time, that we created the application, NS identified four locations where operations could be idled, consolidated, or reduced.
BY MR. LANGE:
Q. Do you know if that final decision has been made regarding whether to close any of those four shops?
A. I don't think that it has.
Q. Do you know when that decision would be made, if at all?
MS. FLAHIVE WU: Objection to form.
THE WITNESS: I don't know.
BY MR. LANGE:
Q. Do you know who would make

Page 164

that decision?
A. Ultimately, our chief mechanical officer would have the responsibility for determining system capacity and where to allocate that capacity.
Q. All right. And then it also says, in Paragraph 455 -- just reading again, it seems to contemplate that employees from those four facilities would be relocated; is that right?
A. They could be.
Q. Do you know to which shops they would be relocated?
MS. FLAHIVE WU: Objection to form. Lacks foundation.
THE WITNESS: I don't know. But those are topics that would likely be addressed in an implementing agreement discussion, to the extent that work was transferred.
BY MR. LANGE:

Page 165

Q. Are there any plans to reopen shops that are closed or identified for curtailment?
MS. FLAHIVE WU: Objection to form. Lacks foundation.
THE WITNESS: I don't know.
BY MR. LANGE:
Q. All right. So going back to your verified statement. Just to make sure we're all looking at the same thing, Paragraph 10. One follow-up on this.
A. Okay.
Q. Applicants anticipate they will add a net 1,171 craft jobs by the end of Year 3?
A. I see that. Yep.
Q. Are any of those net new mechanical jobs that the applicants anticipate will be created by the end of Year 3, will any of those jobs be created in locations where shops will be closed?

Page 166

MS. FLAHIVE WU: Objection. Lacks foundation.
THE WITNESS: I don't know.
BY MR. LANGE:
Q. All right. If we can go to Exhibit 313.
A. Okay.
Q. At the bottom it's handwritten, "Craft Employee Impact Report."
And I believe you previously testified that you're familiar with this document?
A. Yes.
Q. All right. I'm looking at the row that says, "Locomotive mechanical."
A. Okay.
Q. And then all the way over, just for the record, it says, "Total positions abolished."
Is that just the total of positions abolished, one, two, and

Page 167

three, on the left?
A. Yeah.
MS. FLAHIVE WU: Objection to form. Vague.
THE WITNESS: Yes. That's my understanding.
BY MR. LANGE:
Q. And the "Total positions created" column, that's the positions created, one, two, and three, just totaled?
MS. FLAHIVE WU: Same objections.
THE WITNESS: Yes.
BY MR. LANGE:
Q. And "Total positions transferred," same thing for positions transferred, one, two, and three?
MS. FLAHIVE WU: Objection to form.
THE WITNESS: Yes.
BY MR. LANGE:
Q. All right. So in the locomotive mechanical row, it says 81

Page 168

total positions will be abolished, correct?
MS. FLAHIVE WU: Objection.
The document -- document does not state what is in the question.
BY MR. LANGE:
Q. Well, according to this document, will 81 total positions in the locomotive mechanical craft be abolished?
A. So, I mean, will they be? I don't know. Could they be? That's what the model says. Yes.
Q. Is the model modeling what could happen or is it a model that the applicants plan to use?
MS. FLAHIVE WU: Objection. Vague and compound.
THE WITNESS: I think the model tells us what the resulting traffic flows could be, using that -- whatever the

Page 169

relevant traffic base that was used for the model.
You know, we still have CBAs and our jobs-for-life commitment. And so operating decisions are going to have to be made in light of those commitments which are going to exist.
BY MR. LANGE:
Q. So in the -- let's switch to the "Transfer" column.
A. Okay.
Q. Do these estimates assume that all workers who are transferred will accept the transfer?
A. I don't know.
Q. In your experience at NS, I believe, then KCS, right?
A. Yep.
Q. And then UP?
A. Yep.
Q. How often do mechanical craft employees accept transfers?

Page 170

MS. FLAHIVE WU:
Objection. Vague.
THE WITNESS: I don't know.
BY MR. LANGE:
Q. If employees do not accept transfers, do the applicants have plans to hire new employees at those locations where positions are transferred?
MS. FLAHIVE WU:
Objection. Lacks foundation.
THE WITNESS: To the extent that there is work that needs to be performed by those positions, yes.
BY MR. LANGE:
Q. I think we've been over this, but just to clarify.
Applicants anticipate the operations will be fully integrated by the end of Year 3, right?
A. That -- that is the exercise that is required for the modeling, yes.

Page 171

Q. All right. So if we can go to the operating plan, Page 178, and then it is Paragraph 376, which is Page 178.
So 378 says, "Following the merger, UP/NS will evaluate the mechanical needs of the combined network, during which time the combined railroad will continue maintenance operations at most existing locations. The combined railroad's evaluation of mechanical needs will be based on operational flow and could result in additional consolidation or rationalization of existing mechanical facilities to best support the combined railroads' traffic service."
Did I read that correctly?
A. Yes.
Q. What, specifically, do the applicants mean by "consolidation and rationalization"?
MS. FLAHIVE WU:
Objection. Lacks foundation.

Page 172

THE WITNESS: My understanding is those are words that indicate allocation of capacity.
BY MR. LANGE:
Q. Could it involve shop closures?
MS. FLAHIVE WU:
Objection. Lacks foundation.
THE WITNESS: It could. It could also indicate the creation of positions at specific facilities.
BY MR. LANGE:
Q. Okay. And then regarding the carriers' "evaluation of mechanical needs," do you know what specific factors applicants will consider in their evaluation?
A. I don't.
Q. Do you know who would know?
A. It would be our -- ultimately, our chief mechanical officer.

Page 173

Q. So you don't know if that evaluation will continue beyond the end of Year 3?
MS. FLAHIVE WU:
Objection. Lacks foundation. Calls for speculation.
THE WITNESS: We are always evaluating what our mechanical needs are.
BY MR. LANGE:
Q. I think I only have a few more questions. I don't want to beat a dead horse with the jobs-for-life commitment, but just a few more questions on that.
A. Sure.
Q. Does the jobs-for-life commitment apply even if a union doesn't agree to an LOU?
A. There is a general commitment in place, yes.
Q. Will employees be required to move or relocate to maintain their employment if a shop is closed?

Page 174

MS. FLAHIVE WU: Objection. Lacks foundation. Calls for speculation.
THE WITNESS: I don't know we can really require anything. Ultimately, employees are going to have to make certain choices, and we are open to working with our unions to address concerns. I mean, relocation is part of the rail industry.
BY MR. LANGE:
Q. Does the jobs-for-life commitment include any protections or severance if an employee doesn't take an opening at a different shop?
MS. FLAHIVE WU: Objection. Vague and compound.
THE WITNESS: The jobs-for-life commitment provides a job for an impacted employee.
BY MR. LANGE:

Page 175

Q. And I think you were -- do you recall talking with Mr. McInerney about the SMART-TD?
A. Yeah.
Q. And then we also talked about other agreements. LOUs, I think they are called?
A. Yes.
Q. Yes. And that whole conversation about whether a craft worker is guaranteed a position within their craft.
Do you recall that?
A. Yes.
Q. Do you recall that --
A. Yes.
Q. So to be clear, unless the LOU provides otherwise, a craft worker is not necessarily guaranteed a position in their craft, correct?
MS. FLAHIVE WU: Objection to form. Vague.
THE WITNESS: That is consistent with my

Page 176

understanding. But I don't think that their grand plan's that, hey, we can put anybody anywhere. I mean, that's -- from a training perspective, that doesn't make a lot of sense, right.
BY MR. LANGE:
Q. Is the jobs-for-life commitment conditioned on the projections in the growth plan being realized?
A. It's not.
Q. Under the jobs-for-life commitment, will craft workers be subject to involuntary furlough?
A. Assuming that they continue to maintain -- meet the usual requirements for employment, the jobs-for-life commitment provides craft employees with a job for the life of their working careers. Craft employees.
Q. So they are or are not subject to involuntary furlough?

Page 177

MS. FLAHIVE WU: Objection to form.
THE WITNESS: I think they are not. I should say to the extent that -- a commitment is for a job for life. Yeah.
BY MR. LANGE:
Q. All right. And then I just have a few more questions on how the integration might work --
A. Sure.
Q. -- between the two systems.
So you are aware that Union Pacific and Norfolk Southern have different labor relations policies, right?
A. I am, yes.
Q. And more specifically, they both maintain different performance and conduct standards, right?
A. I -- I don't know what theirs are, but -- I don't know that they are the same as ours. Yeah.
Q. Will the combined entity

Page 178

maintain the same labor relations policies and practices that currently exist at UP and NS shops, respectively?
MS. FLAHIVE WU: Objection. Lacks foundation.
THE WITNESS: So we've committed to maintaining existing CBAs and -- except to the extent changed by implementing agreements.
And when I say CBAs, I mean the express and the implicit provisions that make that up.
BY MR. LANGE:
Q. Right. Sure.
So do you know of any Union Pacific policies or practices that the combined entity plans to adopt or implement systemwide after the merger?
MS. FLAHIVE WU: Objection to form. Vague.
THE WITNESS: That's a pretty general statement. Are

Page 179

there specific policies?
BY MR. LANGE:
Q. Are there any specific labor relations policies or practices that the combined entity plans to adopt or implement, systemwide?
A. I think we plan on adopting good principles of labor relations for the combined entity.
We want to work with our unions. We want to comply with our obligations under the CBAs that are relevant and the jobs-for-life commitment.
Q. So policies will be implemented pursuant to implementing agreements; is that right?
MS. FLAHIVE WU: Objection. Lacks foundation.
THE WITNESS: I'm sorry. Say that again. I'm sorry.
BY MR. LANGE:
Q. So will labor relations policies be implemented according to

Page 180

implementing agreements? Is that your testimony?
MS. FLAHIVE WU: Same objection.
THE WITNESS: No. I mean, there's certain amount of management discretion that applies in -- in a collectively bargained environment.
BY MR. LANGE:
Q. So with respect to that management discretion that you just testified to, who within the combined entity will determine which policies or practices apply to which locations?
MS. FLAHIVE WU: Objection to form. Lacks foundation.
THE WITNESS: So with respect to labor relations, it will be whoever is running labor relations for the combined entity.
BY MR. LANGE:
Q. Will that be you?

Page 181

A. I hope so.
MR. LANGE: That's all I have.
THE WITNESS: Good.
MR. LANGE: Thank you.
MS. FLAHIVE WU: Do you want to go off the record to shuffle?
THE VIDEOGRAPHER: Going off the record. The time is 11:22.
(Short break.)
THE VIDEOGRAPHER: We are on the record. The time is 11:26.
- - -
EXAMINATION
- - -
BY MS. SAM:
Q. Hi, Ms. Parkerson. My name is Phoebe Sam. I'm from Sullivan & Cromwell, and I represent CPKC in this matter.
A. Great. Hello.

Redacted

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY

--CONTROL--

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

Highly Confidential
Pursuant to the Protective Order

VIDEOTAPED DEPOSITION

The DEPOSITION OF GRANT JANKE, taken on behalf of the BURLINGTON NORTHERN, at the Law Office of Kutak Rock, 1650 Farnam Street Omaha, Nebraska on the 1st day of September, 2026 at 8:05 a.m. CT

EXAMINATION
BY MR. EDELMAN:
Q. Good afternoon, Mr. Janke. My name is Rich Edelman.
For your information, I represent a group of unions that are participating in the STB proceeding as the "Allied Rail Unions," and those are the Brotherhood of Maintenance of Way Employees Division IBT, Brotherhood of Railroad Signalman; SMART Mechanical, which is sheet metal workers; Machinists District 19, and Transportation Communications Union.

A. Okay.
Q. For purposes of the questions I ask, I have some documents to ask about. I don't have that many. I thought I would just give everybody a packet so we can look at them when they are available.
MS. REPORTER: Do you want me to mark as 97?
MR. EDELMAN: No. These are separately numbered. Is that okay?
Can we go off the record?
MR. KELLY: Can we go off the record for a second?
THE VIDEOGRAPHER: The time is 1:53 p.m. We are off the record.
(Recess taken.)
THE VIDEOGRAPHER: The time is 1:55 p.m. We're going back on the record.
BY MR. EDELMAN:
Q. The first exhibit I am going to actually talk about is your verified statement, which is already Exhibit 85. I am going to do a little setup.
Your statement, Paragraphs 11 through 12, refers to applicants' assertions that they are going to invest in their infrastructure, such as adding

sidings, lengthening sidings, adding parallel track to handle potential increased traffic, discusses capital investments, including projects to increase capacity on main lines, yards, and it refers to about a billion dollars to be spent to enable growth traffic plan volumes, right?
A. I see that.
Q. Now, I would like you to look at Exhibit -- I guess will now be 97. This is my Exhibit Q.
MS. REPORTER: I don't know if we need to go off the record, because the Internet stopped. Can we go off the record?
THE VIDEOGRAPHER: The time is --
MS. REPORTER: It is back on. I'm sorry. Am I marking this?
MR. KELLY: I understand that is Exhibit 97 about to be passed to the witness.
(Document marked Exhibit 97 for identification.)
BY MR. EDELMAN:
Q. Do you recognize this document?
A. I do recognize the document.
Q. This is your work paper titled Capital

Page 234

Investments: Summary of Capital Plan?
A. Yes.
Q. And it shows investments, the sort of the second main line, siding extensions, yard bypasses, yard track expansions, and double tracking, correct?
A. It includes the projects that were identified. And I think you are referencing the Type column; is that correct?
Q. Yes.
A. Yes.
Q. So my first question is this: Does more infrastructure generally require more inspection and maintenance?
MR. KELLY: Objection and foundation.
THE WITNESS: You would need to ask the experts responsible for doing the inspections.
BY MR. EDELMAN:
Q. Well, haven't you been a railroader for 34 years?
A. I have never --
MR. KELLY: Objection, form.
You can answer the question before you.
THE WITNESS: I have not worked in the field. So I am not going to speculate on the number

Page 235

of inspections required.
BY MR. EDELMAN:
Q. Do you know if increased traffic on railroad causes increased wear and deterioration that requires additional inspection and maintenance?
MR. KELLY: Objection, foundation, incomplete hypothetical.
MR. EDELMAN: This time I just asked do you know.
THE WITNESS: I don't know the specifics of how inspections change as a result of the things you mention.
BY MR. EDELMAN:
Q. Do you know if applicants are planning how to perform construction, inspection, and maintenance on the additional infrastructure that's referenced in your verified statement and on this work paper?
A. You said do I know how they are going to perform the work?
Q. Whether applicants are planning how they will perform the construction, inspection, and maintenance of the additional infrastructure.
MR. KELLY: Object to form.

Page 236

THE WITNESS: I don't know the specifics of how they will go about doing that.
BY MR. EDELMAN:
Q. I didn't ask how they would do it. I asked do you know whether.
Are applicants planning for how they will do construction, inspection, and maintenance on increased infrastructure?
MR. KELLY: Object to form, asked and answered.
THE WITNESS: I don't understand your question.
BY MR. EDELMAN:
Q. All I am asking is if you know whether applicants are planning for how to do the inspection, maintenance on increased infrastructure. The answer may be no.
MR. KELLY: Objection to form.
Let's make sure one person is speaking at a time.
THE WITNESS: I have not been part of any of those conversations about inspection and how that would take place.

Page 237

BY MR. EDELMAN:
Q. I would like you to look at your verified statement, Paragraph 9, which refers to benefits and costs during the three years leading to full integration.
So it is applicant's plan to have -- be fully integrated and have the transaction implemented with the workforces fully integrated by the end of year 3?
A. That is the assumption.
Q. I would like you to look at Paragraph 57 of your statement. Paragraph 57 refers to plant reduction and costs and, among other things, discusses moving work from NS's headquarters in Atlanta to UP's headquarters in Omaha; is that correct?
A. That's written there.
Q. And today you said there would be an updated calculation on that; is that correct?
MR. KELLY: Object to form.
THE WITNESS: The updated calculation would be on the number in Line 2, which is the one-time employee costs.
BY MR. EDELMAN:
Q. What assumptions, if any, were made about

Page 238

how many clerical employees in Atlanta will move to Omaha?
MR. KELLY: Object to form, foundation.
THE WITNESS: I don't know the specific -- I know that there are a -- in the errata that we will be filing, there will be a hundred -- the calculation is based off of 188 clerical employees being relocated. I do not know where they are coming from.
BY MR. EDELMAN:
Q. Well, your statement says they are coming from Atlanta to Omaha, right?
MR. KELLY: Object to form, vague.
BY MR. EDELMAN:
Q. So Paragraph 57 refers to the NS headquarters, right?
A. I am reading it, but I don't know if there are all 188. I can't sit here and under oath tell you that all 188 are coming from the headquarters. That would have probably -- that would have been in Mike Matya's employee report that he filled out.
Q. Where is that document?
A. It's the -- it was part of the filing.

Page 239

It would have been with McKee's statement.
Q. McKee's statement?
A. Yes.
Q. When you did a calculation of relocation costs -- sorry, let me go -- did you do a calculation of how much NS -- the applicant's going to spend on relocation costs?
MR. KELLY: Object to form, vague as to "you."
THE WITNESS: We used an assumed number, yes.
BY MR. EDELMAN:
Q. And did you -- in making that calculation, were there any assumptions made as to how many employees -- how many employees would accept relocation and how many would not?
A. Not that I am aware of.
Q. Are you familiar with the New York dock employee protections?
A. I have heard of it, yes.
Q. In Paragraph 57 you refer to labor protection costs. Is that what you're referring to?
MR. KELLY: Object to form.
THE WITNESS: What line are you on here?

Page 240

BY MR. EDELMAN:
Q. Third line.
A. I would have to go back and look at the calculations to make sure I understand what's meant by labor protection costs.
Q. I am not asking the amount. I am asking when you are referring to labor protection costs there, are you referring to the New York dock employee protections imposed in Class I mergers?
MR. KELLY: Object to form, foundation.
THE WITNESS: I don't know the answer to that without looking at the work papers.
BY MR. EDELMAN:
Q. Were any assumptions made about how many clerical employees' jobs in Atlanta would be abolished?
MR. KELLY: Object to form.
THE WITNESS: I did not -- I do not know.
BY MR. EDELMAN:
Q. When you calculated the costs and savings on relocating clerical employees from Atlanta to Omaha, were -- did you calculate the cost of dismissal allowances for employees?
MR. KELLY: Object to form, foundation.

Page 241

THE WITNESS: I would want to look at the work paper to make sure that I don't -- that I get you the exact right answer.
BY MR. EDELMAN:
Q. I am going to refer you now to what I have as ARU Exhibit 1, which I guess becomes 98. Sorry, Exhibit I, ARU Exhibit I becomes 98, that one.
(Document marked Exhibit 98 for identification.)
BY MR. EDELMAN:
Q. Do you recognize that document?
A. I do.
Q. And what is that?
A. This was the one-time expenses associated with transfers for what we included in the original filing.
MR. KELLY: Sorry, just for one second, Counsel.
There is some handwriting at the bottom of this document.
MR. EDELMAN: That's mine.
MR. KELLY: The handwritten portions are from counsel?
MR. EDELMAN: Yes, on each one of these,

Page 242

because since they are not -- some of these work papers are not -- sometimes don't have any labeling on the top, they're just Excel spreadsheets, I wrote what they are on them.

THE WITNESS: So this is what was used to calculate the one-time transfer expenses associated with mechanical and engineering employees included in the original filing.

BY MR. EDELMAN:

Q. And is this the paper that's going to be updated?

A. It is.

Q. And that will include the costs for clerical?

A. It will.

Q. Now, in Paragraph 57 of your statement, you refer to a $172.8 million one-time employee relocation cost. How was that calculated?

A. So the 172 million reflects one-time employee relocation costs plus separation payments plus labor protection costs. That's -- the combined of those three adds up to 172 million. There's --

Q. Are you finished?

A. I was going to say, there is a work paper

Page 243

that outlines that number.

Q. I would like you to look at what I have as ARU Exhibit H, which I guess becomes 99.

MR. EDELMAN: Again, the handwriting on this is mine.

MR. KELLY: Maybe we can short-circuit, because I don't want to interrupt you.

For each of the work papers you have printed out that you will show him, if there's handwriting included, it is counsel's?

MR. EDELMAN: Correct.

MR. KELLY: Thank you.

(Document marked Exhibit 99 for identification.)

BY MR. EDELMAN:

Q. Do you recognize this document?

A. I do. I do. I am just struggling to read it.

Q. This is the way you guys produced it. I just printed it.

A. I recognize it.

Q. So, is this the document that you are referring to that would provide the inputs for Exhibit 98?

Page 244

MR. KELLY: Object to form.

THE WITNESS: This doesn't -- if you look at -- if you look at -- I don't know the best way to do this. If you look at this second to last section -- I am going to call this a section -- and you look at the line above Subtotal Personnel, it's called Agreement Transfer Allowance Synergy. If you look there and you go across, you see the [redacted] and the [redacted] in Year 2, and those numbers correspond to Exhibit 98.

BY MR. EDELMAN:

Q. Okay. Thank you.

Just so the record is clear, you are reading from 99. Okay.

A. I am reading from 99 and referencing 98.

Q. Great. Thank you.

So how were these numbers calculated without making assumptions for how many employees would actually choose to relocate and how many would choose to separate?

MR. KELLY: Objection, foundation.

THE WITNESS: That is a number that was given to us that we used as an input.

Page 245

BY MR. EDELMAN:

Q. And from whom would you have received that?

A. That would have been from McKee's team.

Q. I would like you to look at your verified statement again, Paragraph 19.

A. Which paragraph?

Q. Nineteen. And this paragraph describes projected cost savings as a result of efficiencies that would be achieved by the combination of the two carriers, and you say these are public benefits, because the savings will allow UP and NS to compete more aggressively and increase resources available for reinvestment and innovating and improving service quality for customers.

Is that a fair paraphrase?

A. That's what it says.

Q. Okay. With whom will this competition be with?

MR. KELLY: Object to form.

BY MR. EDELMAN:

Q. In other words, you say compete -- that allow UP-NS to compete more aggressively. With whom?

A. As I indicated earlier, if we have a

Page 246

lower cost structure, that gives us a better chance to win traffic over to our railroad, so that could be truck, that could be another form of competition.
Q. I am sorry. Could be --
A. That could be truck or some other transportation mode.
Q. Is rail one of those modes?
A. Rail is a transportation mode.
Q. And how will those savings allow UP-NS to compete more aggressively?
A. If we have a lower cost structure that will potentially allow us to enter markets that we otherwise could not serve in a competitive manner.
Q. So, for example, there are shippers today who choose not to use rail, but you are suggesting with a lower cost structure, you might be able to get those shippers as customers; is that the suggestion?
A. I am not -- you would have to ask the shippers how they make those choices.
Q. I mean, you just said a lower cost structure would allow you to enter other markets. What did you mean by that, then?
A. If we have a cost structure that allows us to provide a service to a customer that provides a

Page 247

sufficient return, then we potentially have the ability to win business, and so that is -- we have potential to win that business.
Q. So in having the lower cost structure to create the potential to win business, are you suggesting that customers would be more interested in coming to you because prices are lower?
MR. KELLY: Objection, form, foundation.
THE WITNESS: Customers would be interested in coming to us if we provide a quality product at a competitive price.
BY MR. EDELMAN:
Q. So the reduced savings don't necessarily lead to quality service, do they? They lead to the price, correct?
MR. KELLY: Objection, foundation, form, incomplete hypothetical.
THE WITNESS: Can you repeat that?
BY MR. EDELMAN:
Q. So you said -- you just said to me that customers might be attracted if we provide a quality service at a lower price; is that fair?
MR. KELLY: Object to --

Page 248

BY MR. EDELMAN:
Q. To what you said?
MR. KELLY: Object to form.
THE WITNESS: I said at a competitive price.
BY MR. EDELMAN:
Q. A competitive price. Okay.
So is the cost savings -- I don't know, let's break it up. Is the cost savings a component of quality service, or is it the price?
MR. KELLY: Object to form.
THE WITNESS: I would say it's a package. Service is whether or not you are delivering a product in the time frame the customer expects, and the cost is they are paying for that.
BY MR. EDELMAN:
Q. So the efficiencies, how to -- that will make you more competitive, impact the quality or the price?
MR. KELLY: Object to form, foundation, incomplete hypothetical.
THE WITNESS: Just because you are efficient doesn't mean that you don't have a quality product.

Page 249

BY MR. EDELMAN:
Q. I understand that.
A. We have probably our lowest cost structure we ever have, and our performance is better than it has been historically.
Q. I understand the position, but I guess I am just trying to figure out how the lower -- the cost savings relate to competition.
MR. KELLY: Object to form.
You can wait for a question.
THE WITNESS: I --
MR. KELLY: Wait until a question is posed.
BY MR. EDELMAN:
Q. So how do cost savings make you more competitive?
A. If we have a lower cost structure, that will potentially allow us to compete for different parts of the business that we cannot compete for with the higher cost structure.
Q. With regard to your statement that the cost savings will allow the merged carrier to reinvest in innovating and improving service quality, is there anything you are aware of that would require the

Page 250

merged carrier to actually reinvest?
MR. KELLY: Objection to form, vague.
THE WITNESS: Repeat the question.
BY MR. EDELMAN:
Q. Sure.
So if the merged carrier accrues cost savings by virtue of the merger, is there any commitment by the merged carrier to pass those -- to invest those savings in innovation and improving service quality?
A. Not that I am aware of.
Q. Mr. Congdon asked you a question about whether the head count reductions are public benefits as savings passed on to customers.
Do you recall that?
A. Yes.
Q. Is there any commitment by the applicants to actually pass those cost savings from head count reductions on to customers?
MR. KELLY: Objection, foundation, form.
THE WITNESS: That's not something that I make the decision on.
BY MR. EDELMAN:
Q. Are you aware of the applicants

Page 251

committing in this application to pass cost savings from head count reductions on to customers?
A. I am not.
Q. Are you aware of anything stopping applicants from using cost savings for stock buybacks and executive compensation?
MR. KELLY: Objection, foundation, calls for speculation.
MR. EDELMAN: I am just asking if he is aware of anything stopping them from using the cost savings for stock buybacks and executive compensation.
THE WITNESS: I am not --
MR. KELLY: Same objections.
THE WITNESS: I am not aware.
BY MR. EDELMAN:
Q. In Paragraphs 41 and 42 of your statement, you refer to intermodal gate technology and gate inspection technology ramps.
What functions are those?
MR. KELLY: Object to form, vague.
THE WITNESS: In and out of intermodal ramps, there is a system that allows you to efficiently enter and exit those facilities in order to understand what boxes are coming in, what boxes are

Page 252

leaving, and it's that technology that would be installed.
BY MR. EDELMAN:
Q. So what is the gate inspection technology?
A. It's a proprietary system that Union Pacific has developed.
Q. I mean, so is it something that reads cars as they go -- as they exit the facility?
A. Yes.
Q. So it, like, reads a UPC code or some equivalent to that?
A. Well --
MR. KELLY: Objection, foundation.
THE WITNESS: You need to ask the tech team for exactly what it reads, but it can tell you what box, the box number that comes in, the box number that leaves. I can't tell you if it is like a UPC code.
BY MR. EDELMAN:
Q. That's fair. I get it. A little glib of me.
And in Paragraph 42, you refer to NS using, I guess, contractors. So it's just saying that

Page 253

currently, NS uses contractors to do this somehow?
A. For the ramps that we contemplated, they use contractors to do that work is my recollection.
Q. Not employees?
A. That is my -- I would like to see -- if I could see the work paper, I could tell you with 100 percent certainty.
Q. My next couple of questions are going to take a little setup.
MR. EDELMAN: We are up to No. 100? So this is the one that is marked ARU Exhibit D.
(Document marked Exhibit 100 for identification.)
BY MR. EDELMAN:
Q. Now, these are Union Pacific's responses to interrogatories served by the allied rail unions --
A. Okay.
Q. -- as you can see from the title on the front page. I would like you to now -- in response to Interrogatory No. 1, which is on Page 2. And Interrogatory No. 1, we asked about the operating plan and the proposed plans to consolidate nine locomotive shops at current interchange points in Chicago, Kansas City, St. Louis, New Orleans, and said that 534 shop

craft jobs would be affected.

We asked which shops would be consolidated, which would be closed, which will receive additional work. We asked for numbers in each craft that would be affected by being reduced or being added to.

Union Pacific's response at Pages 3 through 4 there refer to your work paper, which is as Mech_Eng Synergies.xls. Tab Mech Intch. and that is ARU Exhibit M, which I guess we are up to 101.

(Document marked Exhibit 101 for identification.)

THE WITNESS: Yes.

BY MR. EDELMAN:

Q. And do you recognize Exhibit M as one of your work papers?

A. I do.

Q. Now, looking at this, are you able to tell me which shops will be consolidated?

MR. KELLY: Object to form.

THE WITNESS: I cannot tell you the specific shops. I cannot tell you the specific shops.

BY MR. EDELMAN:

Q. Well, I -- okay. Looking at this, can

you tell me which shops will be closed?

MR. KELLY: Object to form, foundation.

THE WITNESS: This page does not have specific shop information.

Q. So since Exhibit M identifies numbers of workers at particular shops currently and then numbers at shops post-merger integration, are you able to tell

me which shops will be -- have reduced employment, which ones will have increased employment?

A. I am sorry, but I don't know the specific shops in each of those locations. I know the numbers by city, and that's what I know.

Q. So looking at Exhibit M, you can't answer the questions I posed in that interrogatory, you yourself, not the company?

A. If you are asking specific shops, I do not -- I am not familiar --

Q. Using Exhibit M, if you look at Exhibit M, can you answer those questions?

A. I personally cannot.

63rd Street Yard in Chicago; yards in Des Moines, North Kansas City, and Wentzville. And the interrogatory asks about where work will be moving from and where work will be moving to.

And Union Pacific's response from Page 7 to Page 8, there is a reference to your work paper Mech_Eng Synergies.Xlsx., Tab Yard Curtailment.

MR. KELLY: Object.

BY MR. EDELMAN:

Q. And I can show you, what are we up to, 103?

MS. REPORTER: Yes.

(Document marked Exhibit 103 for identification.)

BY MR. EDELMAN:

Q. 103, which is ARU Exhibit J.

A. Okay.

MR. KELLY: Object to form as to the characterization of the document.

Go ahead.

BY MR. EDELMAN:

Q. Now, this document -- do you recognize this?

A. I do.

BY MR. EDELMAN:

Q. I would like you to look at what is our Interrogatory No. 3, which is on Exhibit 100. It's on Page 6. And this talks about yard curtailments at Oliver Yard, New Orleans; Luther Yard in Kansas City;

BY MR. EDELMAN:

Q. So is that in each one of those yards, then?

MR. KELLY: Object to form, vague.

THE WITNESS: You can see on the right, the second from the right-hand column, the estimated number of FTEs at each one of those yards. It's the Est. FTE, and it references the 9, which ties back to

page -- where was it? It was in here somewhere.
Yes, page -- Exhibit 100, Page 7, underneath UP Response, subsection B: Applicants will reduce a total of nine track maintenance positions in locations where applicants plan to consolidate yards.
BY MR. EDELMAN:
Q. So the specific locations are in this Est. FTE column that adds up?
MR. KELLY: Object to form.
THE WITNESS: In the Est. FTE column, those would be head counts, and the locations would be the rows.
BY MR. EDELMAN:
Q. And so this number -- total number nine and the individual numbers that sum up to nine are the backup for this response --
A. Yes.
Q. -- to the interrogatory?
A. Yes.
Q. Okay. Thank you.
MR. EDELMAN: That's all I have.
MR. KELLY: Let's go off the record.
THE VIDEOGRAPHER: The time is 2:37 p.m. We are off the record.

Page 1

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY

--CONTROL--

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

Highly Confidential
Pursuant to the Protective Order

VIDEOTAPED DEPOSITION

The DEPOSITION OF JOHN TURNER, taken on behalf of the BURLINGTON NORTHERN, at Baird & Holm, 1700 Farnam Street, Nebraska, on the 2nd day of September, 2026, at 8:03 a.m., CT.

(Recess taken.)
THE VIDEOGRAPHER: Time is 3:05 p.m. We are back on the record.
EXAMINATION
BY MR. EDELMAN:
Q. Good afternoon, Mr. Turner. My name is Richard Edelman. I am counsel for a number of unions participating in this proceeding as the Allied Rail Unions. And you will actually know who they are. They are the Brotherhood of Maintenance of Way Employees division; Teamsters; Brotherhood of Railroad Signalman; SMART Mechanical; IM Machinists District 19; and Transportation Communications Union.
A. Okay.
Q. And the Transport Workers Union of America. I'm going to be referring to your verified statement, Exhibit 110. I'm going to try to walk through parts of it. Under this part, it's called Labor Plan. I would like you to -- so that starts on Page 122. I'm going to refer --
A. Is that Page 974?
Q. Yes. Correct.
A. Okay.

Q. And I'm going to refer to Paragraphs 260 and 264. In Paragraph 260, in discussing the labor plan, you describe the applicants' commitment that craft employees can finish their careers with the merged carrier in some capacity, subject to what, quote, usual requirements for continued employme including remaining fit for duty, maintaining necessary qualifications, meeting performance and conduct standards applicable to all employees, and accepting available work opportunities.
And I am quoting from Paragraph 260.
A. Okay. Can I take a minute -- you are --
Q. Absolutely.
A. 260 and 264, is that what you want to talk about?
Q. Yes.
A. Can I take a second?
Q. Absolutely.
A. 264, right?
Q. Uh-huh.
A. Okay. I have read them. What's your question?
Q. What does the "finishing their careers with a merged carrier in some capacity" mean in thi

context? What does "some capacity" mean?
A. What line is that again? I just want to make sure I have the full context here. Is that in 260?
Q. Yes.
A. Is it 260 or 264?
Q. 264, "some capacity."
A. Sorry.
Q. No, that's okay.
A. Ask your question again.
Q. What does "some capacity" mean in this context?
A. It's broad. It could mean that they have an opportunity -- they choose to take an opportunity to work in a different craft.
Q. So the commitment is not necessarily that they will continue in their same craft.
A. Not necessarily.
Q. And what does the cited obligation to accept available work opportunities as a condition of career continuation require employees to take offere position in crafts -- does it require them to take a position in another craft?
A. Are you referring to -- I don't see that

Page 282

part in 264. Are you referring to another paragraph, by any chance?
Q. Let me ask this: In 260 it says that the employees may continue and finish their careers subject to the usual requirements for continued employment.
What are those?
A. I don't have a -- I don't have a list of those.
Q. What did you intend when you wrote that?
A. Exactly what's here. It is the usual requirements for continued employment.
Q. In terms of the carrier's commitment. So it's in some capacity need not be in their current craft, correct?
A. Yes, or they could -- or some employees may choose to become managers like I did.
Q. And does the commitment potentially require them to relocate?
A. Potentially.
Q. Are you familiar with the STB's New York Dock conditions that are imposed in Class I mergers?
A. I know what it is, but I am hardly an expert.

Page 283

Q. In Paragraph 261, your statement says: Applicants will seek implementing agreements through the customary New York Dock procedures.
So that's what you are talking about, right?
A. Yes.
Q. And it says -- the last sentence in 261 says: Applicants will seek implement agreements through the customer New York Dock procedures as necessary to permit achievement of the transaction's public benefits.
What did you understand the word "necessary" to mean in that context?
A. What was needed to achieve the transaction's public benefits.
Q. So in your mind there, was "necessary" mean what was required or?
A. I think that's largely fair.
Q. So not, say, advantageous or convenient?
MR. ROSENTHAL: Objection, vague.
MR. EDELMAN: I don't think so.
THE WITNESS: I don't know that there is a difference in my mind.

Page 284

BY MR. EDELMAN:
Q. Between advantageous and necessary?
A. We are trying to unlock the public benefits. They seem like the same to me in this context.
Q. Well, do you think there is a difference between the word "desirable" and the word "necessary"?
A. I mean, I know that by the strictest definition there is a difference.
Q. Okay. So in here, did you mean "desirable" or did you mean "required"?
MR. ROSENTHAL: Objection, vague.
THE WITNESS: Exactly what I wrote in the document, what's necessary to unlock the public benefits.
BY MR. EDELMAN:
Q. And I am asking what "necessary" means to you.
A. What's needed to unlock the benefits that we have put in our plan.
Q. In Paragraph 260, when you refer to obtaining implement agreements necessary to permit the service enhancements and public benefits --
A. Where are you --

Page 285

Q. 260.
A. -- referring to? Yeah, I know it's in 260, but --
Q. First sentence.
A. Okay. First sentence. So say that again.
Q. Obtaining implementing agreements necessary to permit the service enhancements and public benefits made possible by the transaction.
Were you referring to the enhancements and benefits identified in the revised application?
A. Yes.
Q. I would like you to look at Paragraph 263. The first sentence: Say with respect to the clerical and dispatching crafts, applicants will seek implementing agreements to support integration of systems and operations and relocate and clerical and dispatch functions from Atlanta to Omaha.
Do you see that?
A. You skipped over some sections here.
Q. Okay. Basically.
A. Yes.
Q. How will the positions in Atlanta be cut?
MR. ROSENTHAL: Objection, vague, lacks

Page 286

foundation.
THE WITNESS: I don't understand the question.
BY MR. EDELMAN:
Q. Well, if positions are no longer going to be in Atlanta and there will be positions in Omaha, how will the positions in Atlanta cease to be positions performing the clerical work there?
MR. ROSENTHAL: Objection, lacks foundation, calls for speculation.
THE WITNESS: I'm struggling with -- I want to answer the question.
BY MR. EDELMAN:
Q. How does the railroad normally eliminate jobs?
MR. ROSENTHAL: Objection, lacks foundation.
BY MR. EDELMAN:
Q. Well, you worked as a conductor when your job was abolished. What did they do?
A. They would serve a bulletin or a notice.
Q. And it would be an abolishment notice, right?
A. Right.

Page 287

Q. So the jobs in Atlanta will have to be abolished, and then jobs will have to be posted in Omaha, correct?
MR. ROSENTHAL: Objection, lacks foundation, calls for speculation.
THE WITNESS: The mechanism on how you get there, I'm not entirely sure how we will get there. I think that needs to be ironed out.
BY MR. EDELMAN:
Q. In the railroad industry, when you cut a job, you abolish a job, correct?
A. Yes. If we were going to abolish a job on the Union Pacific today, that's how we would do it. But these are pretty different circumstances.
Q. And if you create a job in the railroad industry, you post a job, right, or bulletin a job, correct?
A. Generally, yes.
Q. Okay. I would like you to look at the Craft Employee Impact Summary, Table 15.
A. Where are you?
Q. Page 979 in the lower right.
A. Table 15?
Q. Yes.

Page 288

A. Okay.
Q. Now, to your knowledge, the current employees of Norfolk Southern, clerical employees in Atlanta, they don't have the right to bid on jobs in Omaha, do they, right now?
A. I don't believe so.
Q. To the extent that positions -- shown on this chart, you refer to positions transferred.
Do you see that?
A. I do.
Q. So in -- the positions are going to have to be abolished in Atlanta before they are transferred, the work is transferred to Omaha, correct?
MR. ROSENTHAL: Objection, lacks foundation, calls for speculation.
THE WITNESS: I'm not sure. We'll have to figure that out in the implementing agreement.
BY MR. EDELMAN:
Q. This is a chart that you sponsored. It's got positions abolished, positions created, positions transferred. You can't transfer a job without abolishing it first, right?
MR. ROSENTHAL: Objection, lacks

Page 289

foundation, calls for speculation.
THE WITNESS: I'm not entirely sure on what that exact process will be.
BY MR. EDELMAN:
Q. Well, let me ask this.
Could the work performed in Atlanta be transferred to Omaha without the merger and without a New York Dock implementing agreement?
MR. ROSENTHAL: Objection, lacks foundation, calls for speculation.
THE WITNESS: Transfer work for the NS to Omaha?
BY MR. EDELMAN:
Q. Yes.
A. Before the merger?
Q. It couldn't happen today. It couldn't happen without the merger and without a New York Dock implement agreement, correct?
A. There wouldn't be a reason to.
Q. And you couldn't do it, in fact, right?
MR. ROSENTHAL: Objection.
THE WITNESS: You're talking about absent a merger?

Page 290

BY MR. EDELMAN:
Q. Yes.
A. I guess not. There wouldn't be a need for the jobs either.
Q. So you have got positions abolished, created, transferred. You have talked about doing New York Dock implementing agreements. Do you know if the merged carrier will treat the employees whose jobs are abolished in Atlanta as dismissed employees under the New York Dock conditions?
A. I don't know.
Q. Well, in here you have talked about using the New York Dock conditions to transfer jobs, right? So do you know whether or not the employees whose jobs are abolished in Atlanta, that whether the merged carrier will treat them as dismissed employees?
MR. ROSENTHAL: Objection, asked and answered.
THE WITNESS: As I mentioned, I'm not an expert on the New York Dock. We have people that are. I'm not.
BY MR. EDELMAN:
Q. And who would that be?
Can I ask Ms. Parkerson that question?

Page 291

Would you assume she would know the answer to that?
A. I think she might.
Q. Do you know whether the merged carrier will take the position that clerical employees of Norfolk Southern holding positions in Atlanta who decline to relocate to take new positions in Omaha will be ineligible for New York Dock dismissal benefits?
A. I don't know.
Q. Could you look at Paragraph 275, please?
A. Okay.
Q. Here, you talk about 187 clerical positions being transferred to Omaha.
Did the applicants do any projection or make any assumptions about how many of the NS clerical employees from Atlanta will relocate to Omaha?
MR. ROSENTHAL: Objection, lacks foundation.
THE WITNESS: I don't know the answer to that question.
BY MR. EDELMAN:
Q. Do you know if there were -- applicants prepared a document that was a statement of the transfer allowance costs that the merged carrier would

Page 292

have, and this is in Mr. Janke's work papers. And it has costs there associated with relocating employees.
Did the applicants make any assumptions about how many employees would relocate when they came up with a dollar figure for the cost of relocating?
MR. ROSENTHAL: Objection, lacks foundation.
THE WITNESS: I'm not sure what finance did with that.
BY MR. EDELMAN:
Q. Well, it's funny, because finance wasn't sure what anybody else did either yesterday.
Did the applicants make any assumptions or projections about whether clerical employees whose jobs in Atlanta were being eliminated would be eligible for New York Dock dismissal allowances when they did a calculation of the expenses associated with employee protections?
MR. ROSENTHAL: Objection, lacks foundation.
THE WITNESS: I don't know.
BY MR. EDELMAN:
Q. Do you know if anybody provided information to Mr. Janke when he did calculation of

Page 293

relocation costs and calculation of expenses as to whether people would relocate or be eligible for dismissal benefits?
A. I don't know.
Q. I would like you to look at Paragraph 263 of your statement. And the sentence at the bottom of the page, Page 975, it says: When the combined company consolidates some or all of these functions, it will serve notice under Section 4 of the New York Dock conditions and obtain any necessary implementing agreements to support the relocations or process standardizations, for example, adopting a new uniform -- a uniform crew calling process.
So here you are actually referring to the New York Dock implementing agreement process, right?
A. Yes.
Q. Okay. So you don't know whether or not any determination was made as to assumptions were made about whether people would be transferred or dismissed under New York Dock?
MR. ROSENTHAL: Objection, asked and answered.
THE WITNESS: I don't.

Page 294

BY MR. EDELMAN:
Q. And then the next sentence says: Beyond three years after the merger, as applicants continue to evaluate automation, economies of scale, and/or efficiency opportunities related to the transaction, including elimination of redundant processes and procedures, the combined entity will obtain any necessary implementing agreements.
Why would the applicants be doing that beyond three years after the merger?
A. Why would we be looking at --
Q. Why would you be attaining implementing agreements more than three years after the merger?
A. There is a lot of things as you go through here that you are not entirely sure how that's going to play out. And you need to finish the integration, and technology changes very quickly.
Q. Well, let's start with the finishing -- isn't the carriers' plan for the merger to be -- and the workforces to be fully integrated after three years?
A. Yes.
Q. So why would you be serving New York Dock notices for implementing agreements after three years?

Page 295

MR. ROSENTHAL: Objection, asked and answered.
THE WITNESS: I answered it, I think.
BY MR. EDELMAN:
Q. You did? What was the answer?
A. Because technology changes very quickly, and as you finish the implement -- the implementation, different things might come up.
Q. What does technology have to do with the merger?
MR. ROSENTHAL: Objection, vague.
THE WITNESS: We are implementing a lot of new technology as part of the merger.
BY MR. EDELMAN:
Q. But you can implement technology without a merger. You know, you're doing automatic track inspection today. You don't need a merger to do that, do you?
A. No.
Q. So technology is not enabled by a merger, is it?
MR. ROSENTHAL: Objection, argumentative.
THE WITNESS: It could.

Page 296

BY MR. EDELMAN:
Q. How is technology enabled by a merger?
A. You get technology from each of the companies that are better than the ones that you have.
Q. Are you familiar with applicants' committed gateway pricing plan?
A. I know that it exists.
Q. And are you aware that the carriers' commitment to the committed gateway pricing plan is just for the oversight period following the merger?
A. I believe that's what we wrote, yes.
MR. EDELMAN: What exhibit number are we up to?
MS. REPORTER: 117.
THE WITNESS: I have 116 the last one.
BY MR. EDELMAN:
Q. Do you know who Katherine Novak is?
A. I do.
Q. What's her position?
A. General director of -- I don't know the exact title -- interline or joint facilities, passenger ops. She has got a varied group of things she is involved in.
MS. REPORTER: This will be 117.

Page 297

(Document marked Exhibit 117 for identification.)
BY MR. EDELMAN:
Q. 117, this is an excerpt from the verified statement of Ms. Novak. This is from an earlier version. I didn't have the later version with me, but I don't imagine it changed any.
MR. ROSENTHAL: You don't have -- Counsel, you don't have the whole version of this?
MR. EDELMAN: I don't. I'm just going to ask -- I'm just going to ask about one part of it.
MR. ROSENTHAL: So you are going to --
MR. EDELMAN: I'm going to ask him about a specific statement in it.
MR. ROSENTHAL: I'm just going to object to questioning the witness from an incomplete document, but --
MR. EDELMAN: Go ahead.
BY MR. EDELMAN:
Q. So I would like you to look at page -- it says 330 on the bottom right here.
A. Okay.
Q. Paragraph 45 says: Committed gateway pricing will remain in place until the end of the

Page 298

oversight period in this proceeding unless extended by the board.

Is that your understanding of what that commitment is, too?

A. That's what is written here.

Q. I would like you to look at Paragraph 49 here, next page. Last sentence, Paragraph 49: However, absent a finding by the board during the oversight process that the program is necessary to address service disruptions from service integration or demonstrated loss of indirect competition, it is appropriate for the program to sunset after a reasonable period.

Do you see that?

A. That's what's written there.

Q. If this major proposal by the carrier is limited to the oversight period, how is it that the applicants would be seeking implementing agreements and changes to collective bargaining agreements through New York Dock process after the end of the oversight period?

MR. ROSENTHAL: Objection, vague, calls for speculation, lack of foundation, and I think misrepresents what the document says.

Page 299

THE WITNESS: I think I answered the question.

BY MR. EDELMAN:

Q. Well, so, Ms. Novak says it's reasonable for the committed gateway pricing program to sunset.

And I am asking you, then, why would the carrier be looking for implementing agreements beyond the oversight period?

MR. ROSENTHAL: Objection, lacks foundation, calls for speculation.

THE WITNESS: I think I answered the question.

BY MR. EDELMAN:

Q. How?

A. I think it's on the record. You asked the question.

Q. Can you humor me? Tell me again why is that -- if the gateway pricing commitment ends at the end of oversight, why changing collective bargaining agreements through New York Dock would go on past oversight?

MR. ROSENTHAL: Objection, lacks foundation, calls for speculation.

THE WITNESS: Committed gateway pricing

Page 300

is different than an implementing agreement.

BY MR. EDELMAN:

Q. Okay. I would like you to look at Paragraph 267.

A. At Page 977?

Q. Yes.

A. Okay.

Q. You say: Applicants project they will need to fill 1,173 additional craft jobs within the three years after the companies consolidate to support this anticipated merger growth.

Do you see that?

A. I do.

Q. And then if you look at the table on Page 979, Table 15, it's a column to the right. It says Net Positions?

A. Yes.

Q. And at the bottom in bold is the number 1,173.

Do you see that?

A. I do.

Q. So is that the projected net plus positions the applicants intend to have?

A. It is.

Page 301

Q. So is that 1,173 positions net plus above the number of positions before the announcement of the merger or after consummation of the merger after the STB approves?

A. I don't know that I know the exact answer of that question, but, obviously, we don't have -- it would be when we take over operating control of the company.

Q. I guess what I am asking is what is the baseline from which 1,173 is net plus? Is it the baseline at the time that you take over and merge the two carriers, or is the baseline from when the merger was announced?

A. It's based on the base plan that we put in our application.

Q. But what is the -- what are you using as the framework for the employment number that 1,173 is plus of?

MR. ROSENTHAL: Objection, vague.

THE WITNESS: I don't remember.

BY MR. EDELMAN:

Q. Well, applicants have assumed an 8 percent per year attrition rate for both carriers, which is likely to be 16 percent over two years. So

Page 302

if we take the number of employees in July of '25 before the merger was announced and if we assume that we are talking two years to get this all done, that's 16 percent fewer employees than were there in July of '25.

So is the 1,173 above the reduced by 16 percent, or is 1,173 plus from where things started before the merger was announced?

MR. ROSENTHAL: Objection, vague.

THE WITNESS: Can you point to me in this document where the 8 percent is? Because I don't believe that it's 8 and 8 and you add them together. I believe that that was a combined attrition rate of 8 percent total.

BY MR. EDELMAN:

Q. It's not. It's 8 percent per year. It's in the Parkerson declaration. But --

A. You're talking about it's a couple of years.

Q. 8 percent per year is the number that the applicants have put in various places for what they anticipate is the attrition in the workforce.

A. Right. But that attrition in most cases gets backfilled, right?

Page 303

Q. Well, that was my next question.

Do you anticipate that Union Pacific will backfill positions as they are attrited out while the application is pending?

MR. ROSENTHAL: Objection, lacks foundation, calls for speculation.

MR. EDELMAN: No, it is not. He just said he anticipated they are going to backfill.

BY MR. EDELMAN:

Q. So I'm asking, are you going to backfill?

MR. ROSENTHAL: Objection, lacks foundation, calls for speculation.

THE WITNESS: I said I'm assuming that they backfill. I don't know. Market conditions determine workload, right? So I don't know what -- if us or the NS as separate entities will make the decision to backfill all those jobs or not.

BY MR. EDELMAN:

Q. Sitting here today, do you know what the 1,173 net plus is net plus of?

A. Off of the base plan that we put in the application.

Q. And what is the -- what is the base plan relative to employment? So there is an employment number in the base plan?

Page 304

A. I can't remember if there was an employment number in there.

Q. All I am looking for is how you took -- what 1,173 is above someplace, some number, a number -- there are numbers of employees.

A. I can't remember where we set this baseline net of those things.

Q. Okay. So this 1,173 is off of the base plan, not the optimized plan?

A. It should be off the base plan.

Q. And not -- and not off the growth plan?

MR. ROSENTHAL: Objection, vague.

THE WITNESS: The growth plan is what informs this 1,173.

BY MR. EDELMAN:

Q. So how does the growth plan relate to the base plan?

A. The base plan is based on 2023 transportation plan and workload at that time.

Q. So --

A. And our T3 is the growth plan over that three years.

Q. So then are you saying that the 1,173 is

Page 305

plus of the employment numbers in 2023?

A. I am not entirely sure where they set that baseline for some of these crafts. I'm not entirely sure.

Q. So this net position number, is this predicated on the growth plan?

A. That's what we project in three years as part of our growth plan, yes.

Q. So if you -- and what is the optimized plan relative to the growth plan? Is it less or more?

MR. ROSENTHAL: Objection, vague.

THE WITNESS: I think we show some reduction in the short term before the growth starts, yes.

BY MR. EDELMAN:

Q. Reduction in what?

A. Some positions like clerical positions. There's a few of those.

Q. Could you -- so what is the optimized plan?

A. That is when we go through the transportation plan and try to make it better than the current separate plans.

Q. So does the optimized plan result in a

Page 306

reduction in employment?
MR. ROSENTHAL: Objection, calls for speculation.
THE WITNESS: Overall?
BY MR. EDELMAN:
Q. Yes.
A. I don't believe so, no.
Q. Okay. Looking at Table 15, how does transfer differ from positions abolished and positions created?
A. Ask the question again.
Q. You have three columns: Positions Abolished, Positions Created, Positions Transferred. So I understand positions are abolished somewhere and positions are created somewhere else.
How does positions transferred differ from those two categories?
MR. ROSENTHAL: Objection, lacks foundation.
THE WITNESS: They would be jobs moved to other locations.
BY MR. EDELMAN:
Q. If you are retaining work but relocating it, don't you have to abolish the jobs in order to

Page 307

relocate the positions?
MR. ROSENTHAL: Objection, lacks foundation, calls for speculation.
THE WITNESS: I know the word "abolished" has a technical meaning in your world. I understand the point that you're making. The purposes of this document are part of a service assurance plan and an application to the STB. So trying to clearly lay out some jobs will go away, some jobs will be added, and some jobs will be transferred.
BY MR. EDELMAN:
Q. I mean, I know you are saying this is -- is a technical word meaning in my world, but this is a section titled Labor Plan, right?
A. It is, yes.
Q. On this table -- see, it says "Signal maintainers" in the left?
A. I see that.
Q. Okay. Does that include all signalmen, such as signal construction gangs, signal tech people, and communications workers?
MR. ROSENTHAL: Objection, lacks foundation.
MR. EDELMAN: How does it lack

Page 308

foundation? I'm asking him --
BY MR. EDELMAN:
Q. It says signal maintainers. I'm asking who is included in it.
A. I don't know.
MR. ROSENTHAL: Objection, lacks foundation.
THE WITNESS: I don't remember the exact definition that we used for signal maintainers.
BY MR. EDELMAN:
Q. Is this supposed to encompass all persons in the signal craft for both carriers?
MR. ROSENTHAL: Objection, lacks foundation.
THE WITNESS: I don't remember.
BY MR. EDELMAN:
Q. You know that there were signalmen who maintained signal systems, there are signalmen who construct, right?
A. I do.
Q. So if you use the word "signal maintainers," you can understand why I am asking are signal construction people missing here?
A. I understand your point.

Page 309

Q. Do you know the answer?
A. I don't know the answer to that exact -- that exact definition.
Q. Okay. Do you see the category of track maintenance?
A. I do.
Q. Is that intended to include all maintenance of way workers?
MR. ROSENTHAL: Objection, lacks foundation.
THE WITNESS: As I sit here, I don't remember the exact definition of all those.
BY MR. EDELMAN:
Q. So, I mean, for example, bridge and building workers are maintenance of way workers. In this chart, are they represented under Track Maintenance?
MR. ROSENTHAL: Objection, lacks foundation.
THE WITNESS: I don't remember how those individuals got rolled up into this table exactly.
BY MR. EDELMAN:
Q. Applicants have said they will invest in their infrastructure, such as adding sidings,

Page 310

lengthening sidings, adding parallel track, increasing capacity of the yards and main lines.
Does more infrastructure like that require more inspection and maintenance?
MR. ROSENTHAL: Objection, calls for speculation, incomplete hypothetical.
THE WITNESS: Ask the question again.
BY MR. EDELMAN:
Q. When you -- does additional infrastructure require additional inspection and maintenance work on infrastructure?
MR. ROSENTHAL: Objection, calls for speculation, incomplete hypothetical.
THE WITNESS: It could.
BY MR. EDELMAN:
Q. I mean, 200 miles of track requires more maintenance than -- more maintenance workers than 100 miles of track; is that correct?
MR. ROSENTHAL: Objection, calls for speculation. Incomplete hypothetical.
THE WITNESS: There is a lot -- there is a lot of things that go into what you need for people.
BY MR. EDELMAN:
Q. So a thousand miles of track, does it

Page 311

require the same amount of workers as a hundred miles of track?
A. It depends.
Q. How long have you been in this business?
A. Since 1997.
Q. Does increased traffic on a line increase wear and tear on the infrastructure such that more inspection and maintenance is required?
A. It could.
Q. Do you know if applicants are planning for how they are going to perform this construction of the new sidings and extra main line and yard capacity and how they will maintain the additional infrastructure?
A. That's part of the integration planning, yes.
Q. You are planning for that.
Do you know if that means an increase in the number of maintenance of way employees and signalmen?
A. I don't know specifically, no.
Q. Your statement at Paragraph 269, second sentence: Applicants concluded that UP and NS each currently has sufficient qualified employees in the

Page 312

appropriate locations to operate both railroads.
Do you see that?
A. What paragraph are you in again?
Q. 269, second sentence.
A. Yes, I see that.
Q. Do you feel that Union Pacific currently has enough signalmen to handle regular signal inspection, maintenance, repair, and trouble calls?
A. I believe so.
Q. Are you aware that Union Pacific has reduced its signal workforce by 30 percent since 2018?
A. I don't remember that percentage, no.
Q. Are you aware that it has reduced its signal workforce since 2018?
A. I don't think I was aware of that.
Q. Does UP have any less infrastructure now than it did in 2018?
MR. ROSENTHAL: Objection, lacks foundation.
THE WITNESS: Ask the question again?
BY MR. EDELMAN:
Q. Does Union Pacific have any less infrastructure now than it did in 2018?
MR. ROSENTHAL: Objection, lacks

Page 313

foundation.
THE WITNESS: What do you mean by "infrastructure"?
BY MR. EDELMAN:
Q. Less track.
A. I don't believe so.
Q. Are you aware that Union Pacific has tried to impose a requirement that signal maintain a 30 percent -- 33 percent weekend availability when that's not contractually required, and that a signal manager threatened signalmen with contracting out work if they didn't maintain a 33 percent weekend availability?
A. Was I aware of that?
Q. Yes.
A. No.
Q. Would that be a situation that suggested a lack of adequate signal staffing?
MR. ROSENTHAL: Objection, vague, calls for speculation, lack of foundation.
THE WITNESS: I would need more context to understand that.
MR. EDELMAN: I don't have anything further.

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY
—CONTROL—
NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN
RAILWAY COMPANY

UNION PACIFIC'S RESPONSES AND OBJECTIONS TO INTERROGATORIES IN ALLIED RAIL UNIONS' FIRST SET OF DISCOVERY REQUESTS TO UNION PACIFIC

MICHAEL L. ROSENTHAL
DEREK LUDWIN
JAMES J. O'CONNELL
LAURA FLAHIVE WU
KEVIN M. KELLY
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000

CHRISTINA B. CONLIN
JAMES B. BOLES
TONYA W. CONLEY
JENNIFER L. GALER
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

Attorneys for Union Pacific Corporation and Union Pacific Railroad Company

July 20, 2026

Pursuant to 49 C.F.R. Part 1114 and other applicable rules and authority, Union Pacific Railroad Company and Union Pacific Corporation (collectively, "Union Pacific"), through undersigned counsel, respond as follows to the Interrogatories in the Brotherhood of Maintenance of Way Employes Division/IBT; Brotherhood of Railroad Signalmen; International Association of Sheet Metal, Air, Rail and Transportation Workers-Mechanical Division; International Association of Machinists and Aerospace Workers District #19; and Transportation Communications Union/IAM (collectively "Allied Rail Unions" or "ARU") First Set of Discovery Requests ("Requests"). Union Pacific responded to the document request on July 1, 2026. Union Pacific's responses and objections to the Requests are based on Union Pacific's present knowledge, information, and belief. Union Pacific reserves the right to supplement or amend these Responses and Objections at any time as circumstances may require.

GENERAL RESPONSES

The following General Responses apply to each of Allied Rail Unions' Requests:

1. Union Pacific is conducting a reasonable search for information and documents responsive to ARU's Requests. Where Union Pacific states that it will produce documents, Union Pacific will conduct a reasonable search for responsive, non-privileged documents, subject to the specific and general objections stated below.

2. Production of information or documents does not necessarily imply that the information or documents are relevant to or admissible in this proceeding and is not to be construed as waiving any of the general or specific objections stated below.

3. Union Pacific's responses and objections to these Requests are based on Union Pacific's present knowledge, information, and belief. Union Pacific reserves the right to rely upon facts, documents, or other evidence that it may develop or that may subsequently come to its attention; to assert additional objections; and to supplement or amend these responses at any time as this proceeding continues.

INTERROGATORIES AND RESPONSES

INTERROGATORY NO. 1

The Operating Plan put forward by Applicants in their Amended Application states that the merged carrier will consolidate nine locomotive shops in locations that are current interchange points for UP and NSR: shops in Chicago, Kansas City, St. Louis, and New Orleans; and that 534 shop craft worker jobs will be affected (see Amended Application Vol. II at 696-697).

a. Which shops will be consolidated?
b. Will any of those shops be closed? If so, which ones will be closed?
c. Which shops, if any, will receive additional work and workers?
d. Please provide the number of Machinist, Sheet Metal Worker/Pipefitter, Boilermaker, Shop Supervisor, and Clerical/Material Handler/Storekeeper positions that will be abolished at each shop that will be closed or reduced, and the number of Machinist, Sheet Metal Worker/Pipefitter, Boilermaker, Shop Supervisor, and Clerical/Material Handler/Storekeeper positions that will remain at each shop that will be closed or reduced?
e. Please provide the number of Machinist, Sheet Metal Worker/Pipefitter, Boilermaker, Shop Supervisor, and Clerical/Material Handler/Storekeeper positions that will be created at, or added to, shops that will receive additional work.

Union Pacific Response:

Subject to and without waiving the below objections and its General Objections, Union Pacific responds that this Interrogatory appears to cite the "Shop Consolidation & Rationalization" section in Applicants' initial Application, filed on December 19, 2025. *See* App., Vol. 2 at 696. In responding,

Union Pacific will refer to the "Shop Consolidation & Rationalization" section in Applicant's Amended Application, filed on April 30, 2026, which refers to nine "mechanical shops" "located at interchange points between the UP and NS networks," which "currently employ 534 mechanical employees." *See* Am. App., Vol. 2 at 818. Union Pacific further responds to each subpart of this Interrogatory as follows:

a. The nine mechanical shops referenced in the Amended Application are listed in the workpaper "Mech_Eng Synergies.xlsx," Tab "Mech Intchg."

b. Union Pacific has not determined whether consolidation of yards will result in the shops being closed at this time.

c. The mechanical shops where work may be consolidated are listed in the workpaper "Mech_Eng Synergies.xlsx," Tab "Mech Intchg."

d. The estimated number of employees affected are identified in the workpaper "Mech_Eng Synergies.xlsx," Tab "Mech Intchg."

e. The estimated number of employees that will work at the consolidated yards can be derived from the workpaper "Mech_Eng Synergies.xlsx," Tab "Mech Intchg."

Union Pacific objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, or other applicable privilege. Union Pacific further objects to this Interrogatory as overly broad and unduly

burdensome to the extent it asks Union Pacific to respond on behalf of Norfolk Southern and requests information that is not in Union Pacific's possession, custody, or control. Union Pacific further objects to this Interrogatory to the extent it seeks materials that are publicly available or otherwise readily available or accessible to ARU from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the Amended Application, Operating Plan, and accompanying workpapers filed with the Surface Transportation Board and which are accessible to ARU through the proceeding. Union Pacific further objects to this Interrogatory to the extent it purports to require Union Pacific to provide information in a form not kept in the regular course of business or to conduct a special study or to undertake anything more than a reasonable search for responsive information.

INTERROGATORY NO. 2

The Operating Plan put forward by Applicants in their Amended Application states that the merged carrier will "idle" the Portsmouth backshop and that 16 positions at the Portsmouth backshop will be transferred (see Amended Application Vol. II at 698).

a. To which shops will the merged carrier transfer those 16 positions?
b. How many positions, and which positions, will be transferred to each such shop?

Union Pacific Response:

Subject to and without waiving the below objections and its General Objections, Union Pacific responds that this Interrogatory appears to cite to pages in Applicants' initial Application, filed on December 19, 2025. In responding, Union Pacific will refer to the corresponding sections in

Applicant's Amended Application, filed on April 30, 2026. Union Pacific further responds that it will offer the 16 employees the opportunity to transfer to other locations with a car facility that have openings, with the specific locations to be identified based on need at the time of transfer. Union Pacific has not determined how many positions, and which positions, will be transferred to any specific facility at this time.

Union Pacific objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, or other applicable privilege. Union Pacific further objects to this Interrogatory as overly broad and unduly burdensome to the extent it asks Union Pacific to respond on behalf of Norfolk Southern and requests information that is not in Union Pacific's possession, custody, or control. Union Pacific further objects to this Interrogatory to the extent it seeks materials that are publicly available or otherwise readily available or accessible to ARU from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the Amended Application, Operating Plan, and accompanying workpapers filed with the Surface Transportation Board and which are accessible to ARU through the proceeding.

INTERROGATORY NO. 3

The Operating Plan put forward by Applicants in their Amended Application states that the merged carrier will engage in yard "curtailments" at Oliver Yard in New Orleans, Luther Yard in Kansas City, 63rd Street Yard in Chicago; and at Yards in

Des Moines, North Kansas City, and Wentzville (see Amended Application Vol. II at 692).

a. What do applicants mean when they say that a yard will be "curtailed"? Do applicants mean closures? Reduced use? Or something else?
b. Will there be any reduction in Maintenance of Way positions at any of those yards? If so, what will be the reductions in Maintenance of Way positions at each of those yards?
c. Will there be any reduction in Signalmen positions at any of those yards? If so, what will be the reductions in Signalmen positions at each of those yards?

Union Pacific Response:

Subject to and without waiving the below objections and its General Objections, Union Pacific responds that this Interrogatory appears to cite to pages in Applicants' initial Application, filed on December 19, 2025. In responding, Union Pacific will refer to the corresponding sections in Applicant's Amended Application, filed on April 30, 2026. Union Pacific further responds to each subpart of this Interrogatory as follows:

a. "Yard Curtailment" refers to the reduced use of certain network switching yards after merger and relocation of non-local work to other yards.

b. Applicants estimate they will reduce a total of nine track maintenance positions in locations where Applicants plan to consolidate Union Pacific and Norfolk Southern yards. *See* Am. App., Vol. 2 at 983; *see also* Workpaper "Craft Employee Impact Report.xlsx, Tab "Craft Impact Detail Impacted," Row 22 to Row 27. The yards from which work will be shifted, including the estimated number of positions affected, are identified in the

workpaper "Mech_Eng Synergies.xlsx," Tab "Yard Curtailment."

c. Union Pacific does not project any change in signal maintainer positions as an impact of the proposed transaction. *See* Am. App., Vol. 2 at 979.

Union Pacific objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, or other applicable privilege. Union Pacific further objects to this Interrogatory as overly broad and unduly burdensome to the extent it asks Union Pacific to respond on behalf of Norfolk Southern and requests information that is not in Union Pacific's possession, custody, or control. Union Pacific further objects to the statement that Luther Yard is in Kansas City – it is in St. Louis. Union Pacific further objects to this Interrogatory to the extent it seeks materials that are publicly available or otherwise readily available or accessible to ARU from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the Amended Application, Operating Plan, and accompanying workpapers filed with the Surface Transportation Board and which are accessible to ARU through the proceeding.

INTERROGATORY NO. 4

The Service Assurance Plan put forward by Applicants in their Amended Application states that the merged carrier will make capacity improvements on main lines, yards and terminals (see Amended Application Vol. II at 771-813).

a. Will the merged carrier increase its Maintenance of Way forces in order to accomplish those capacity improvements?
b. Will the merged carrier increase its Signal forces in order to accomplish those capacity improvements?
c. If there will be increases in Maintenance of Way and Signal forces, what will be the increase in Maintenance of Way positions? And what will be increase in Signal positions?
d. If there will be increases in Maintenance of Way and Signal forces, how do Applicants plan to accomplish the capacity improvements described in the Application?

Union Pacific Response:

Subject to and without waiving the below objections and its General Objections, Union Pacific responds that this Interrogatory appears to cite to pages in Applicants' initial Application, filed on December 19, 2025. In responding, Union Pacific will refer to the corresponding sections in Applicant's Amended Application, filed on April 30, 2026. Union Pacific further responds to each subpart of this Interrogatory as follows:

a. The merged carrier will adjust positions based on projected capacity improvements consistent with current operating practices.

b. The merged carrier will adjust positions based on projected capacity improvements consistent with current operating practices.

c. Any change in positions will be determined based on project scope and work to be completed.

d. Union Pacific directs Allied Rail Unions to its responses to the other subparts of this Interrogatory.

Union Pacific objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product

doctrine, common interest privilege, or other applicable privilege. Union Pacific further objects to this Interrogatory as overly broad and unduly burdensome to the extent it asks Union Pacific to respond on behalf of Norfolk Southern and requests information that is not in Union Pacific's possession, custody, or control. Union Pacific further objects to the Interrogatory's reference to "capacity improvements on main lines, yards and terminals" as overly broad because it appears to encompass numerous projects across the combined network without reasonable limitation by location or project. Union Pacific further objects to this Interrogatory to the extent it seeks materials that are publicly available or otherwise readily available or accessible to ARU from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the Amended Application, Service Assurance Plan, and accompanying workpapers filed with the Surface Transportation Board and which are accessible to ARU through the proceeding. Union Pacific further objects to this Interrogatory to the extent it purports to require Union Pacific to provide information in a form not kept in the regular course of business or to conduct a special study or to undertake anything more than a reasonable search for responsive information.

INTERROGATORY NO. 5

The Employee Impact Exhibit in the Amended Application refers to work at a number of locations that Applicants say will be transferred from current locations to new locations resulting in transfers of positions from current locations to new locations (see Amended Application Vol. II at 860, 862-863, 864-865).

a. State whether, in relation to the planned transfers, positions at current

locations will be abolished in accordance with applicable collective bargaining agreements before new positions are created in locations to which work will be transferred.

b. State whether Applicants will take the position that employees whose positions are abolished in connection with work being transferred to other locations, and whose seniority prior to STB approval of the merger does not extend to the locations to which the work is transferred, are not dismissed employees entitled to dismissal benefits or separation benefits under the "New York Dock" conditions (New York Dock Ry., 360 I.C.C. 60).

Union Pacific Response:

Subject to and without waiving the below objections and its General Objections, Union Pacific responds that this Interrogatory appears to cite to pages in Applicants' initial Application, filed on December 19, 2025. In responding, Union Pacific will refer to the corresponding sections in Applicant's Amended Application, filed on April 30, 2026. Union Pacific further responds to each subpart of this Interrogatory as follows:

a. Applicants intend to follow existing collective bargaining agreements, as modified through implementing agreements reached through the New York Dock process, to address merger-related transfers of work and the effects of such transfers on employees. Any required implementing agreements will be in place before such merger-related transfers occur. The precise number and sequence of transfers will depend on the needs of service as the transaction is implemented.

b. Employees who are adversely affected by such transfers will be eligible for protective benefits as provided in the New York Dock

conditions, as augmented by any supplemental commitments made by Applicants, and subject to the requirement that they accept available employment.

Union Pacific objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, or other applicable privilege. Union Pacific further objects to this Interrogatory as overly broad and unduly burdensome to the extent it asks Union Pacific to respond on behalf of Norfolk Southern and requests information that is not in Union Pacific's possession, custody, or control. Union Pacific further objects to subpart (b) to the extent it calls for a legal conclusion regarding the interpretation, meaning, scope, or application of collective bargaining agreements, implementing agreements, labor-protective conditions, or the New York Dock conditions, including the application of those legal standards to hypothetical or future facts. Union Pacific further objects to this Interrogatory to the extent it seeks materials that are publicly available or otherwise readily available or accessible to ARU from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the Amended Application, Employee Impact Exhibit, and accompanying workpapers filed with the Surface Transportation Board and which are accessible to ARU through the proceeding.

INTERROGATORY NO. 6

Identify any employees of UP or NSR, or consultants or contractors for UP or NSR, who answered these interrogatories or were consulted in responding to these interrogatories, and identify which interrogatory or interrogatories they answered or were consulted on.

Union Pacific Response:

Subject to and without waiving the below objections and its General Objections, Union Pacific responds that these Responses and Objections were prepared by counsel with assistance from Union Pacific personnel as necessary to provide information within Union Pacific's possession, custody, or control.

Union Pacific objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, or other applicable privilege. Union Pacific further objects to this Interrogatory as overly broad and unduly burdensome to the extent it asks Union Pacific to respond on behalf of Norfolk Southern and requests information that is not in Union Pacific's possession, custody, or control. Union Pacific further objects to this Interrogatory to the extent it requests information regarding Norfolk Southern employees or consultants that is not in Union Pacific's possession, custody, or control.

INTERROGATORY NO. 7

Identify any documents consulted or referred to in Applicants' responses to these interrogatories.

Union Pacific Response:

Subject to and without waiving the below objections and its General Objections, Union Pacific directs Allied Rail Unions to the information

provided in the Amended Application and accompanying workpapers, including the Operating Plan, the Service Assurance Plan, and the Employee Impact Exhibits, filed with the Surface Transportation Board in this proceeding on April 30, 2026.

Union Pacific objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, or other applicable privilege. Union Pacific further objects to this Interrogatory as overly broad, unduly burdensome, and disproportionate to the needs of this proceeding to the extent it seeks identification of every Union Pacific document reviewed, consulted, or considered directly or indirectly in connection with the preparation of the responses to these Interrogatories.

GENERAL OBJECTIONS

Union Pacific's General Objections, as set forth herein, are to be considered objections to each of the specific Discovery Requests (including subparts) that follow. These general objections are not exhaustive and, where appropriate, Union Pacific will also state specific objections. Union Pacific's objections shall not waive, limit, or prejudice any objections that it may later assert.

1. In providing these responses, Union Pacific reserves all objections as to competency, relevancy, materiality, authenticity, and admissibility of the use of any information requested in ARU's Requests and in any responses or productions Union Pacific may provide thereto, in any subsequent proceeding, or further proceedings in

this matter. To the extent that Union Pacific provides responsive information or documents, Union Pacific does not concede that such information is relevant, material, or admissible into evidence, and any such production is not intended to waive any of Union Pacific's objections to any of ARU's Requests.

2. Union Pacific objects to each and every Discovery Request as unduly burdensome, to the extent it seeks discovery of information, documents, or communications that are available or accessible to ARU as an interested party through the application and accompanying workpapers submitted in this proceeding.

3. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein to the extent they purport to impose upon Union Pacific burdens or duties that are greater than, or otherwise conflict with, the requirements or the permissible scope of discovery under 49 C.F.R. Part 1114, Subpart B, or under other Surface Transportation Board rules or precedents or are not proportional to the needs of the above-captioned proceeding and impose an undue burden on Union Pacific.

4. Union Pacific objects to each and every Discovery Request requesting that Union Pacific produce "all" responsive documents, communications, or information as unduly burdensome to the extent it requests that Union Pacific engage in an unreasonably broad collection and review in order to identify each and every document that may possibly be responsive. For those Requests to which it is obliged to respond, Union Pacific will produce such responsive documents or information as

it is able to locate or identify in a reasonable search and which are not otherwise subject to an applicable privilege or other protection.

5. Union Pacific objects to the Discovery Requests and to each Definition, Instruction, and Request contained therein to the extent they seek the production of documents prepared in connection with, or information relating to, possible settlement or mediation of this or any other proceeding, in whole or in part.

6. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein that request information, documents, or communications that are: (a) already in the possession of ARU; (b) publicly available or otherwise readily available or accessible to ARU from other sources; (c) unreasonably cumulative or duplicative of documents already in ARU's possession, custody, or control; or (d) otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific.

7. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein as unduly burdensome to the extent they seek production from the files of all current and former Union Pacific employees, including those who are not reasonably likely to possess non-duplicative relevant documents. Unless specifically stated otherwise, by stating that it will produce documents responsive to these Requests, Union Pacific represents that it will produce documents from files most likely to contain materials responsive to the Request without undue burden.

8. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein as unduly burdensome to the extent they purport to require Union Pacific to conduct a special study or to undertake anything more than a reasonable search for responsive information. In responding to ARU's Requests, Union Pacific will conduct a reasonable search of those accessible files in its possession in which information responsive to ARU's Requests, as limited by Union Pacific's Objections, is likely to be located.

9. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein to the extent they purport to prohibit Union Pacific from redacting information that might reveal Union Pacific's commercially sensitive or long-term corporate strategies and is not relevant to this proceeding. Union Pacific will redact any such information, and reserves the right to redact any non-responsive information, from otherwise responsive documents produced to ARU.

10. Union Pacific objects to the production of, and is not producing, documents or information subject to any attorney-client privilege, work-product doctrine, or other applicable privilege or protection. Union Pacific reserves the right to redact privileged information from materials that it produces in response to the Requests. Any production of privileged documents or information is inadvertent and should not be deemed as a waiver of any privilege. Union Pacific reserves all rights under applicable law, including the Protective Order entered in this case, to demand

or require the return of all copies thereof and non-use by ARU or by any other person or entity in this or any other proceeding.

11. Union Pacific objects to the production of documents that constitute or disclose confidential, proprietary, or commercially or competitively sensitive information. Union Pacific will produce such information, if not otherwise objectionable, designated "Confidential" or "Highly Confidential," subject to the terms of the Protective Order entered in this case on August 5, 2025 (Decision No. 1). Union Pacific reserves the right to seek additional protections as needed.

12. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein to the extent they seek or may result in the use, disclosure, or dissemination of any confidential, proprietary, or commercially or competitively sensitive information produced in response to the Discovery Requests for the purpose of training, fine-tuning, evaluating, or otherwise interacting with artificial intelligence (AI) models or systems in a manner that violates the terms of the Protective Order entered in this case. This objection includes, but is not limited to, any use of such materials in connection with large language models (LLMs), machine learning algorithms, or generative AI tools, regardless of whether such use is direct or indirect, manual or automated, or anonymized or de-identified. Union Pacific does not consent to the use of any of its discovery materials for purposes unrelated to this proceeding, including but not limited to AI training.

13. Union Pacific objects to ARU's Definition A defining "Document" to the extent it is overly broad, unduly burdensome, and seeks to impose obligations broader than those imposed by 49 C.F.R. Part 1114. Union Pacific specifically objects to Definition A as unduly burdensome and as seeking information that is not proportional to the probative value the information sought may have in this proceeding to the extent that it would require production of draft electronic communications, electronic meeting invites, meeting change or cancellation notices, text messages, communications by or with internet-connected applications (other than emails), electronic messages (other than emails), and communications. Union Pacific further objects to Definition A to the extent it requests any "oral record" and purports to require production of material that was not reduced to writing. Union Pacific is not searching for and will not produce these categories of "Documents."

14. Union Pacific objects to ARU's Definition E defining "Applicants" to mean "[Union Pacific] and [Norfolk Southern Railway Co.]" to the extent it is vague, overly broad, unduly burdensome, and seeks to impose obligations broader than those imposed by 49 C.F.R. Part 1114. Union Pacific specifically objects to Definition E as overly broad and unduly burdensome to the extent it asks Union Pacific to respond to a request on behalf of Norfolk Southern and requests information that is not in Union Pacific's possession, custody, or control.

15. Union Pacific's Responses and Objections are based upon information presently known to it. Union Pacific reserves the right to rely upon facts, documents, or other evidence that may develop or that may subsequently come to its attention;

to assert additional objections; and to supplement or amend these responses at any time as this proceeding continues.

Respectfully submitted,

/s/ Laura Flahive Wu
MICHAEL L. ROSENTHAL
DEREK LUDWIN
JAMES J. O'CONNELL
LAURA FLAHIVE WU
KEVIN M. KELLY
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000

CHRISTINA B. CONLIN
JAMES B. BOLES
TONYA W. CONLEY
JENNIFER L. GALER
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

Attorneys for Union Pacific Corporation and Union Pacific Railroad Company

July 20, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of July, 2026, the foregoing document was served by first-class mail or email on all parties of record in this proceeding, the Secretary of Transportation, the Attorney General of the United States, and Administrative Law Judge Jenifer Soulikias.

/s/ Charlotte R. Krovoza

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 36873

UNION PACIFIC CORPORATION, ET AL.
—CONTROL—
NORFOLK SOUTHERN CORPORATION, ET AL.

NS'S RESPONSES AND OBJECTIONS TO THE SECOND SET OF INTERROGATORIES OF THE ALLIED RAIL UNIONS AND BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

Pursuant to 49 C.F.R. Part 1114 and other applicable rules and authority, Norfolk Southern Corporation and Norfolk Southern Railway Company (together, "Norfolk Southern" or "NS"), through undersigned counsel, respond as follows to the Second Discovery Requests of the Allied Rail Unions and Brotherhood of Locomotive Engineers and Trainmen ("ARU/BLET") ("Requests"). NS's responses and objections to these Requests are based on NS's present knowledge, information, and belief. NS reserves the right to supplement or amend these Responses and Objections at any time as circumstances may require.

GENERAL RESPONSES AND OBJECTIONS

NS incorporates by reference the General Responses and Objections contained in NS's Responses and Objections to ARU/BLET's First Discovery Requests. Those General Responses and Objections are to be considered objections to each of the specific discovery requests that follow. NS sets forth the following additional Geneal Responses and Objections:

1. NS objects to the definition of "Documents" or "documents" to the extent they are overlay broad, vague, ambiguous, and inconsistent with those same terms as defined in ARU/BLET's First Discovery Requests.

SPECIFIC RESPONSES AND OBJECTIONS

In addition to its General Objections (which apply in full to each and every Request without further enumeration), NS sets forth Specific Objections and Responses to each Interrogatory below. NS preserves all of its General Objections set forth above, and none of the following Specific Objections shall waive its General Objections. Nor shall any of NS's Specific Objections limit the scope, breadth, generality, or applicability of those General Objections.

INTERROGATORY NO. 1

Applicants' most recent Employee Impact Report projects a net increase of 1171 craft jobs for the merged company three years after consummation of the proposed merger (Turner Verified Statement Table 15),

a. Is the net increase of 1171 jobs above 41,839 craft jobs identified on the Craft Employee Summary and Table 1 of the Parkerson Verified Statement showing numbers as of September 15, 2025? Or is the projected net increase above the number of jobs existing at the time of consummation of the merger?

b. Is the net increase of 1,171 craft jobs referred to in the Parkerson Verified Statement (¶10) and Turner Verified Statement Table 15 based on traffic volume under Applicants' "Optimized Plan" or under Applicants' "Growth Plan"?

c. Explain how the model utilized by Applicants to project post-merger employment determined the overall size of the post-merger workforce, and the number of post-merger employees for each rail craft.

Response:

NS objects to the extent the Interrogatory seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, expert work product, or other applicable privilege or protection. NS further objects to the extent this Interrogatory is duplicative of information already reflected in the Amended Application and accompanying verified statements and workpapers and can be obtained by less burdensome means. NS further objects to the extent the Interrogatory asks NS to respond on behalf of Union Pacific or seeks information outside NS's possession, custody, or control.

Subject to and without waiving these objections or the General Objections, NS directs ARU/BLET to the Amended Application and accompanying workpapers filed with the Surface Transportation Board on April 30, 2026, including the Verified Statements of John Turner and Parkerson. NS further directs ARU/BLET to Union Pacific's response to this Interrogatory.

INTERROGATORY NO. 2

Applicants represented that they intend to make a number of capital investments including projects to increase capacity of the main lines and yards, do Applicants acknowledge that more infrastructure requires more inspection, maintenance and repair of that infrastructure?

Response:

NS objects to this Interrogatory to the extent it assumes that additional infrastructure necessarily requires increased inspection, maintenance, and repair without regard to the nature and use of that infrastructure. NS further objects to the extent this Interrogatory is duplicative of information already reflected in the

Amended Application and accompanying verified statements and workpapers and can be obtained by less burdensome means. NS further objects to the extent the Interrogatory asks NS to respond on behalf of Union Pacific or seeks information outside NS's possession, custody, or control.

Subject to and without waiving these objections or the General Objections, NS directs ARU/BLET to Union Pacific's response to this Interrogatory.

INTERROGATORY NO. 3

Applicants project that traffic on the merged lines will increase after the proposed merger, do Applicants acknowledge that increased traffic on infrastructure increases wear and deterioration of the infrastructure and thus requires more inspection, maintenance and repair of that infrastructure?

Response:

NS objects to this Interrogatory to the extent it assumes that increased traffic necessarily results in increased wear and deterioration of infrastructure or additional inspection, maintenance, and repair requirements. NS further objects to the extent this Interrogatory is duplicative of information already reflected in the Amended Application and accompanying verified statements and workpapers and can be obtained by less burdensome means. NS further objects to the extent the Interrogatory asks NS to respond on behalf of Union Pacific or seeks information outside NS's possession, custody, or control.

Subject to and without waiving these objections or the General Objections, NS directs ARU/BLET to Union Pacific's response to this Interrogatory.

INTERROGATORY NO. 4

Are applicants presently planning for how they will perform the construction, inspection maintenance and repair of their infrastructure based on their projections for increased traffic on that infrastructure? If so, what plans have Applicants made for performance of the construction, inspection maintenance and repair of their infrastructure given the projected increased traffic on that infrastructure?

Response:

NS objects to this Interrogatory because it is unduly burdensome and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. NS objects to the extent the Interrogatory seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, expert work product, or other applicable privilege or protection. NS further objects to the extent this Interrogatory is duplicative of information already reflected in the Amended Application and accompanying verified statements and workpapers and can be obtained by less burdensome means. NS further objects to the extent the Interrogatory asks NS to respond on behalf of Union Pacific or seeks information outside NS's possession, custody, or control.

Subject to and without waiving these objections or the General Objections, NS directs ARU/BLET to Union Pacific's response to this Interrogatory.

INTERROGATORY NO. 5

Are applicants presently planning for how they will perform the construction, inspection maintenance and repair of the additional infrastructure resulting from the planned capital investments? If so, what plans have Applicants made for perform the construction, inspection maintenance and repair of the additional infrastructure?

Response:

NS objects to this Interrogatory because it is unduly burdensome and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. NS objects to the extent the Interrogatory seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, expert work product, or other applicable privilege or protection. NS further objects to the extent this Interrogatory is duplicative of information already reflected in the Amended Application and accompanying verified statements and workpapers and can be obtained by less burdensome means. NS further objects to the extent the Interrogatory asks NS to respond on behalf of Union Pacific or seeks information outside NS's possession, custody, or control.

Subject to and without waiving these objections or the General Objections, NS directs ARU/BLET to Union Pacific's response to this Interrogatory.

INTERROGATORY NO. 6

Applicants have said that most or all of the functions performed by clerical employees represented by the Transportation Communications Union in NSR's headquarters in Atlanta, GA will be relocated to UP's headquarters in Omaha:

a. Will the employees whose jobs are abolished in Atlanta be treated as "dismissed employees" under the New York Dock conditions (New York Dock Ry., 360 I.C.C. 60)?

b. Will Applicants take the position that clerical employees holding NSR positions in Atlanta prior to consummation of the proposed merger, whose NSR seniority did not allow them to bid for positions in Omaha, who decline to relocate and take new positions in Omaha will be ineligible for New York Dock "dismissal allowances"? [ARU/BLET are not asking for an interpretation of the Act or of the New York Dock conditions, or the reasoning behind any position Applicants may take, ARU/BLET only seek

to know whether Applicant will take the position inquired about in this interrogatory]

Response:

NS objects to this Interrogatory because it is unduly burdensome and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. NS objects to the extent the Interrogatory seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, expert work product, or other applicable privilege or protection. NS further objects to the extent this Interrogatory is duplicative of information already reflected in the Amended Application and accompanying verified statements and workpapers and can be obtained by less burdensome means. NS further objects to the extent the Interrogatory asks NS to respond on behalf of Union Pacific or seeks information outside NS's possession, custody, or control.

Subject to and without waiving these objections or the General Objections, NS directs ARU/BLET to Union Pacific's response to this Interrogatory.

INTERROGATORY NO. 7

In calculating projected relocation costs and employee protection costs in connection with the planned transfer of clerical work from Atlanta to Omaha:

a. Did the Applicants make any projections, assumptions or estimates as to how many employees from Atlanta will transfer to Omaha? If so what were those projections, assumptions or estimates?

b. Did the Applicants make any projections, assumptions or estimates as to how many of those employees from Atlanta would be eligible for dismissal allowances? If so what were those projections, assumptions or estimates?

Response:

NS objects to this Interrogatory because it is unduly burdensome and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. NS objects to the extent the Interrogatory seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, expert work product, or other applicable privilege or protection. NS further objects to the extent this Interrogatory is duplicative of information already reflected in the Amended Application and accompanying verified statements and workpapers and can be obtained by less burdensome means. NS further objects to the extent the Interrogatory asks NS to respond on behalf of Union Pacific or seeks information outside NS's possession, custody, or control. NS further objects to the extent the Interrogatory would require NS to create a special study or analysis.

Subject to and without waiving these objections or the General Objections, NS directs ARU/BLET to Union Pacific's response to this Interrogatory.

INTERROGATORY NO. 8

The Operating Plan put forward by Applicants states that the merged carrier will consolidate nine locomotive shops in locations that are current interchange points for UP and NSR: shops in Chicago, Kansas City, St. Louis, and New Orleans; and that 534 shop craft worker jobs will be affected.

a. Which shops will be consolidated?

b. Which shops, if any, will receive additional work and workers?

c. What number of Machinist, Carmen, Shop Supervisor, and Clerical/Material Handler/Storekeeper positions will there be at shops that will receive additional work?

d. Will Applicants take the position that employees at the nine locomotive shops in Chicago, Kansas City, St. Louis, and New Orleans, prior to consummation of the proposed merger, whose seniority did not allow them to bid for positions in either NSR or UP shops, who decline to relocate if that requires a change in their places of residence will be ineligible for New York Dock "dismissal allowances"? [ARU/BLET are not asking for an interpretation of the Act or of the New York Dock conditions, or the reasoning behind any position Applicants may take, ARU/BLET only seek to know whether Applicant will take the position inquired about in this interrogatory].

Response:

NS objects to this Interrogatory because it is unduly burdensome and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. NS objects to the extent the Interrogatory seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, expert work product, or other applicable privilege or protection. NS further objects to the extent this Interrogatory is duplicative of information already reflected in the Amended Application and accompanying verified statements and workpapers and can be obtained by less burdensome means. NS further objects to the extent the Interrogatory asks NS to respond on behalf of Union Pacific or seeks information outside NS's possession, custody, or control.

Subject to and without waiving these objections or the General Objections, NS directs ARU/BLET to Union Pacific's response to this Interrogatory.

INTERROGATORY NO. 9

Applicants have projected that by the end of the third year after consummation of the proposed merger, they will have abolished 928 "train service" positions and created 1649 "train service" positions for a net increase of 721 "train service" positions without distinguishing among engineer, conductor and yard positions,

a. Will the "train service" employees whose jobs are abolished be treated as "dismissed employees" under the New York Dock conditions?

b. Will Applicants take the position that "train service" employees whose jobs are abolished and who decline to relocate to take new positions if taking the new positions will require them to change their places of residence will be ineligible for New York Dock "dismissal allowances"? [ARU/BLET are not asking for an interpretation of the Act or of the New York Dock conditions, or the reasoning behind any position Applicants may take, ARU/BLET only seek to know whether Applicant will take the position inquired about in this interrogatory]

Response:

NS objects to this Interrogatory because it is unduly burdensome and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. NS objects to the extent the Interrogatory seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, expert work product, or other applicable privilege or protection. NS further objects to the extent this Interrogatory is duplicative of information already reflected in the Amended Application and accompanying verified statements and workpapers and can be obtained by less burdensome means. NS further objects to the extent the Interrogatory asks NS to respond on behalf of Union Pacific or seeks information outside NS's possession, custody, or control.

Subject to and without waiving these objections or the General Objections, NS directs ARU/BLET to Union Pacific's response to this Interrogatory.

/s/ Matthew J. Warren
RAYMOND A. ATKINS
CARRIE C. MAHAN
MATTHEW J. WARREN
ALLISON C. DAVIS
MARC A. KORMAN
Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005
(202) 736-8000

JASON M. MORRIS
JOSEPH H. CARPENTER IV
THOMAS E. ZOELLER
HANNA M. CHOUEST
T. MATTHEW LOCKHART
Norfolk Southern Railway Company
650 W. Peachtree Street NW
Atlanta, GA 30308

Attorneys for Norfolk Southern Corporation and Norfolk Southern Railway Company

Date: November 16, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November, 2026, a copy of the foregoing "NS's Responses And Objections To The Second Set Of Interrogatories Of The Allied Rail Unions And Brotherhood Of Locomotive Engineers And Trainmen" was served by email or first class mail on the service list for Finance Docket No. 36873.

/s/ Matthew J. Warren
Matthew J. Warren

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY
—CONTROL—
NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

UNION PACIFIC'S RESPONSES AND OBJECTIONS TO ALLIED RAIL UNIONS' AND BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN'S SECOND SET OF INTERROGATORIES

MICHAEL L. ROSENTHAL
DEREK LUDWIN
JAMES J. O'CONNELL
LAURA FLAHIVE WU
KEVIN M. KELLY
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000

CHRISTINA B. CONLIN
JAMES B. BOLES
TONYA W. CONLEY
JENNIFER L. GALER
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

Attorneys for Union Pacific Corporation and Union Pacific Railroad Company

November 16, 2026

Pursuant to 49 C.F.R. Part 1114 and other applicable rules and authority, Union Pacific Railroad Company and Union Pacific Corporation (collectively, "Union Pacific"), through undersigned counsel, respond as follows to the Interrogatories in the Second Discovery Requests of the Allied Rail Unions (Brotherhood of Maintenance of Way Employes Division/IBT; Brotherhood of Railroad Signalmen; International Association of Machinists and Aerospace Workers District #19; Transportation Communications Union/IAM; and Transport Workers Union of America) and the Brotherhood of Locomotive Engineers and Trainmen (collectively, "ARU/BLET"), served October 30, 2026 ("Requests"). Union Pacific's responses and objections to the Requests are based on Union Pacific's present knowledge, information, and belief. Union Pacific reserves the right to supplement or amend these Responses and Objections at any time as circumstances may require.

GENERAL RESPONSES

The following General Responses apply to each of Allied Rail Unions' Requests:

1. Union Pacific is conducting a reasonable search for information and documents responsive to ARU/BLET's Requests. Where Union Pacific states that it will produce documents, Union Pacific will conduct a reasonable search for responsive, non-privileged documents, subject to the specific and general objections stated below.

2. Production of information or documents does not necessarily imply that the information or documents are relevant to or admissible in this proceeding and is not to be construed as waiving any of the general or specific objections stated below.

3. Union Pacific's responses and objections to these Requests are based on Union Pacific's present knowledge, information, and belief. Union Pacific reserves the right to rely upon facts, documents, or other evidence that it may develop or that may subsequently come to its attention; to assert additional objections; and to supplement or amend these responses at any time as this proceeding continues.

INTERROGATORIES AND RESPONSES

INTERROGATORY NO. 1

Applicants' most recent Employee Impact Report projects a net increase of 1171 craft jobs for the merged company three years after consummation of the proposed merger (Turner Verified Statement Table 15),

a. Is the net increase of 1171 jobs above 41,839 craft jobs identified on the Craft Employee Summary and Table 1 of the Parkerson Verified Statement showing numbers as of September 15, 2025? Or is the projected net increase above the number of jobs existing at the time of consummation of the merger?

b. Is the net increase of 1,171 craft jobs referred to in the Parkerson Verified Statement (¶10) and Turner Verified Statement Table 15 based on traffic volume under Applicants' "Optimized Plan" or under Applicants' "Growth Plan"?

c. Explain how the model utilized by Applicants to project post-merger employment determined the overall size of the post-merger workforce, and the number of post-merger employees for each rail craft.

Union Pacific Response:

Subject to and without waiving the below objections and its General Objections, Union Pacific responds to each subpart of this Interrogatory as follows:

a. The projected net increase of 1,171 craft jobs is measured against the number of active craft employees of both railroads as of September 15, 2025.

b. The projected net increase of 1,171 craft jobs is a combination of both the Optimized Plan and the Growth Plan. Positions abolished reflect the operating efficiencies identified in the Optimized Plan, and positions created reflect the additional operations required to handle the merger-related traffic growth projected in the Growth Plan, phased in over the three years following consummation. *See* Verified Statement of John Turner at ¶ 269.

c. The methodology Applicants used to project post-merger employment is described in the Verified Statement of John Turner, Am. App. Vol. 2, pages 978–985, and the workpapers cited therein, including "Road Crew FTE Impacts by Yard.xlsx," "Yard-Local FTE Impacts by Yard.xlsx," and the "Craft Employee Impact Report.xlsx." For example, with respect to Train Crew positions, the Amended Application explains that Applicants projected post-merger employment by developing a projected relationship between employees and activity levels (i.e., daily crew starts or daily cars processed), and applying that relationship to location-specific projections of activity levels

under the Operating Plan's Optimized Plan and Growth Plan. *See* Am. App. Vol. 2 at 978; workpaper "Road Crew FTE Impacts by Yard.xlsx," Tab "Process Notes."

Union Pacific objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, or other applicable privilege. Union Pacific further objects to this Interrogatory as overly broad and unduly burdensome to the extent it asks Union Pacific to respond on behalf of Norfolk Southern and requests information that is not in Union Pacific's possession, custody, or control. Union Pacific further objects to the phrase "most recent Employee Impact Report" as vague and ambiguous; Union Pacific construes it to refer to the employee impact projections in the Amended Application filed April 30, 2026, and the accompanying Verified Statements and workpapers. Union Pacific further objects to subpart (c) as overly broad and unduly burdensome to the extent it asks Union Pacific to provide a narrative explanation of a methodology that is already described in the Amended Application and reflected in workpapers, and to the extent it seeks the reasoning or mental impressions of counsel or consulting experts. Union Pacific further objects to this Interrogatory to the extent it seeks materials that are publicly available or otherwise readily available or accessible to ARU/BLET from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by

accessing the Amended Application, the Verified Statements of John Turner and Maqui Parkerson, and accompanying workpapers filed with the Surface Transportation Board and which are accessible to ARU/BLET through the proceeding. Union Pacific further objects to this Interrogatory to the extent it purports to require Union Pacific to provide information in a form not kept in the regular course of business or to conduct a special study or to undertake anything more than a reasonable search for responsive information.

INTERROGATORY NO. 2

Applicants represented that they intend to make a number of capital investments including projects to increase capacity of the main lines and yards, do Applicants acknowledge that more infrastructure requires more inspection, maintenance and repair of that infrastructure?

Union Pacific Response:

Subject to and without waiving the below objections and its General Objections, Union Pacific responds that inspection, maintenance, and repair requirements for any particular element of rail infrastructure depend on a variety of factors, including but not limited to the type, design, size, age, and condition of the asset, traffic levels and mix, and applicable regulatory requirements. Union Pacific will inspect, maintain, and repair new and existing infrastructure in accordance with applicable Federal Railroad Administration requirements and its current practices.

Union Pacific objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, or other applicable privilege. Union

Pacific further objects to this Interrogatory as overly broad and unduly burdensome to the extent it asks Union Pacific to respond on behalf of Norfolk Southern and requests information that is not in Union Pacific's possession, custody, or control. Union Pacific further objects to this Interrogatory as an improper request for admission framed as an interrogatory, and to the extent it seeks Union Pacific's agreement with ARU/BLET's generalized characterizations rather than facts within Union Pacific's knowledge. Union Pacific further objects to this Interrogatory as vague, ambiguous, and calling for speculation, including with respect to the undefined phrases "more infrastructure" and "more inspection, maintenance and repair," because maintenance needs vary by asset and project and the Interrogatory is not limited by location, project, or time period. Union Pacific further objects to this Interrogatory to the extent it mischaracterizes the Amended Application. Union Pacific further objects to this Interrogatory to the extent it seeks materials that are publicly available or otherwise readily available or accessible to ARU/BLET from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the Amended Application, Service Assurance Plan, and accompanying workpapers filed with the Surface Transportation Board and which are accessible to ARU/BLET through the proceeding.

INTERROGATORY NO. 3

Applicants project that traffic on the merged lines will increase after the proposed merger, do Applicants acknowledge that increased traffic on infrastructure

increases wear and deterioration of the infrastructure and thus requires more inspection, maintenance and repair of that infrastructure?

Union Pacific Response:

Subject to and without waiving the below objections and its General Objections, Union Pacific responds that the effect of increased traffic on infrastructure wear, and the resulting inspection, maintenance, and repair requirements, depend on a variety of factors, including tonnage, train types, speed, track and asset condition, and capital improvements made to the affected infrastructure. Union Pacific will adjust inspection, maintenance, and repair activities based on actual conditions and traffic levels, consistent with applicable regulatory requirements and its current practices.

Union Pacific objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, or other applicable privilege. Union Pacific further objects to this Interrogatory as overly broad and unduly burdensome to the extent it asks Union Pacific to respond on behalf of Norfolk Southern and requests information that is not in Union Pacific's possession, custody, or control. Union Pacific further objects to this Interrogatory as an improper request for admission framed as an interrogatory, and to the extent it seeks Union Pacific's agreement with ARU/BLET's generalized characterizations rather than facts within Union Pacific's knowledge. Union Pacific further objects to this Interrogatory as vague, ambiguous, and calling for speculation, including with respect to the undefined phrases "increased

traffic," "wear and deterioration," and "more inspection, maintenance and repair," and because it is not limited by line segment, asset type, or time period. Union Pacific further objects to this Interrogatory to the extent it mischaracterizes Applicants' traffic projections in the Amended Application. Union Pacific further objects to this Interrogatory to the extent it seeks materials that are publicly available or otherwise readily available or accessible to ARU/BLET from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the Amended Application, Operating Plan, and accompanying workpapers filed with the Surface Transportation Board and which are accessible to ARU/BLET through the proceeding.

INTERROGATORY NO. 4

Are applicants presently planning for how they will perform the construction, inspection maintenance and repair of their infrastructure based on their projections for increased traffic on that infrastructure? If so, what plans have Applicants made for performance of the construction, inspection maintenance and repair of their infrastructure given the projected increased traffic on that infrastructure?

Union Pacific Response:

Subject to and without waiving the below objections and its General Objections, Union Pacific responds that Applicants' plans for the post-merger network, including projected capital investments and their anticipated employee impacts, are described in the Amended Application, including the Operating Plan, the Service Assurance Plan, and the Employee Impact Exhibit, and the accompanying workpapers. As stated in Union Pacific's Response to ARU/BLET's First Set Interrogatory No. 4, the merged carrier will

adjust positions based on projected capacity improvements consistent with current operating practices, and any change in positions will be determined based on project scope and work to be completed.

Union Pacific objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, or other applicable privilege. Union Pacific further objects to this Interrogatory as overly broad and unduly burdensome to the extent it asks Union Pacific to respond on behalf of Norfolk Southern and requests information that is not in Union Pacific's possession, custody, or control. Union Pacific further objects to this Interrogatory as overly broad, unduly burdensome, and disproportionate to the needs of this proceeding to the extent it seeks "plans" for all construction, inspection, maintenance, and repair across the combined network without reasonable limitation by location, project, craft, or time period. Union Pacific further objects to this Interrogatory as premature and calling for speculation to the extent it seeks detailed post-merger implementation plans that have not been developed and that cannot be finalized prior to Board approval and consummation of the transaction. Union Pacific further objects to this Interrogatory as vague and ambiguous, including with respect to the phrase "construction, inspection maintenance and repair." Union Pacific further objects to this Interrogatory to the extent it seeks confidential, proprietary, or commercially sensitive information, which Union Pacific will provide, if at all,

only subject to the Protective Order. Union Pacific further objects to this Interrogatory as duplicative of ARU/BLET's First Set Interrogatory No. 4. Union Pacific further objects to this Interrogatory to the extent it seeks materials that are publicly available or otherwise readily available or accessible to ARU/BLET from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the Amended Application, Operating Plan, Service Assurance Plan, and accompanying workpapers filed with the Surface Transportation Board and which are accessible to ARU/BLET through the proceeding. Union Pacific further objects to this Interrogatory to the extent it purports to require Union Pacific to provide information in a form not kept in the regular course of business or to conduct a special study or to undertake anything more than a reasonable search for responsive information.

INTERROGATORY NO. 5

Are applicants presently planning for how they will perform the construction, inspection maintenance and repair of the additional infrastructure resulting from the planned capital investments? If so, what plans have Applicants made for perform the construction, inspection maintenance and repair of the additional infrastructure?

Union Pacific Response:

Subject to and without waiving the below objections and its General Objections, Union Pacific directs ARU/BLET to its Response to Interrogatory No. 4 above. Union Pacific further responds that the planned capital investments are described in the Service Assurance Plan in the Amended Application, and that construction, inspection, maintenance, and repair of

resulting infrastructure will be performed consistent with applicable collective bargaining agreements and current practices.

Union Pacific objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, or other applicable privilege. Union Pacific further objects to this Interrogatory as overly broad and unduly burdensome to the extent it asks Union Pacific to respond on behalf of Norfolk Southern and requests information that is not in Union Pacific's possession, custody, or control. Union Pacific further objects to this Interrogatory as overly broad, unduly burdensome, and disproportionate to the needs of this proceeding to the extent it seeks "plans" for all capital projects across the combined network without reasonable limitation by location, project, craft, or time period. Union Pacific further objects to this Interrogatory as premature and calling for speculation to the extent it seeks detailed post-merger implementation plans that have not been developed and that cannot be finalized prior to Board approval and consummation of the transaction. Union Pacific further objects to the undefined phrase "additional infrastructure" as vague and ambiguous. Union Pacific further objects to this Interrogatory as unreasonably cumulative and duplicative of Interrogatory No. 4 and ARU/BLET's First Set Interrogatory No. 4. Union Pacific further objects to this Interrogatory to the extent it seeks confidential, proprietary, or commercially sensitive information, which Union Pacific will provide, if at all, only subject

to the Protective Order. Union Pacific further objects to this Interrogatory to the extent it seeks materials that are publicly available or otherwise readily available or accessible to ARU/BLET from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the Amended Application, Service Assurance Plan, and accompanying workpapers filed with the Surface Transportation Board and which are accessible to ARU/BLET through the proceeding. Union Pacific further objects to this Interrogatory to the extent it purports to require Union Pacific to provide information in a form not kept in the regular course of business or to conduct a special study or to undertake anything more than a reasonable search for responsive information.

INTERROGATORY NO. 6

Applicants have said that most or all of the functions performed by clerical employees represented by the Transportation Communications Union in NSR's headquarters in Atlanta, GA will be relocated to UP's headquarters in Omaha:

a. Will the employees whose jobs are abolished in Atlanta be treated as "dismissed employees" under the New York Dock conditions (New York Dock Ry., 360 I.C.C. 60)?

b. Will Applicants take the position that clerical employees holding NSR positions in Atlanta prior to consummation of the proposed merger, whose NSR seniority did not allow them to bid for positions in Omaha, who decline to relocate and take new positions in Omaha will be ineligible for New York Dock "dismissal allowances"? [ARU/BLET are not asking for an interpretation of the Act or of the New York Dock conditions, or the reasoning behind any position Applicants may take, ARU/BLET only seek to know whether Applicant will take the position inquired about in this interrogatory]

Union Pacific Response:

Subject to and without waiving the below objections and its General

Objections, Union Pacific responds that the *New York Dock* conditions and applicable arbitration precedent govern the extent to which the applicable protective conditions require employees to relocate to remain eligible for dismissal allowances. Union Pacific will comply with its obligations under *New York Dock* as well as applicable collective bargaining agreements and implementing agreements. Union Pacific further states that this Interrogatory fails to specify whether it is intended to address Union Pacific's "position" in labor negotiations, or in arbitration or other proceedings. Union Pacific has not decided what position it will take with respect to the scenarios described in the Interrogatory, including because the implementing agreements that may be applicable in such situations have not yet been negotiated. As to several organizations representing Union Pacific employees, Union Pacific already has negotiated agreements that limit the extent to which employees are obligated to relocate to remain eligible to receive dismissal allowances. Further agreements with some or all organizations, including implementing agreements, also may affect the obligation of employees to relocate to remain eligible for dismissal allowances.

Union Pacific objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, or other applicable privilege. Union Pacific further objects to this Interrogatory as overly broad and unduly burdensome to the extent it asks Union Pacific to respond on behalf of Norfolk

Southern and requests information that is not in Union Pacific's possession, custody, or control, including information regarding the seniority rights of Norfolk Southern employees in Atlanta. Union Pacific further objects to the Interrogatory's characterization of what "Applicants have said" as vague and to the extent it mischaracterizes the Amended Application. Union Pacific further objects to this Interrogatory, notwithstanding ARU/BLET's bracketed statement, because whether an employee is a "dismissed employee" or is eligible for a "dismissal allowance" calls for a legal conclusion regarding the interpretation, meaning, scope, or application of collective bargaining agreements, implementing agreements, labor-protective conditions, or the New York Dock conditions, including the application of those legal standards to hypothetical or future facts. Union Pacific further objects to this Interrogatory as premature and calling for speculation because such determinations depend on individual employee circumstances and on implementing agreements to be negotiated or arbitrated under Article I, Section 4 of the New York Dock conditions, and to the extent it seeks to elicit Union Pacific's negotiating positions in advance of that process. Union Pacific further objects to this Interrogatory as duplicative of ARU/BLET's First Set Interrogatory No. 5(b).

INTERROGATORY NO. 7

In calculating projected relocation costs and employee protection costs in connection with the planned transfer of clerical work from Atlanta to Omaha:

a. Did the Applicants make any projections, assumptions or estimates as to how many employees from Atlanta will transfer to Omaha? If so what were those projections, assumptions or estimates?

b. Did the Applicants make any projections, assumptions or estimates as to how many of those employees from Atlanta would be eligible for dismissal allowances? If so what were those projections, assumptions or estimates?

Union Pacific Response:

Subject to and without waiving the below objections and its General Objections, Union Pacific responds to each subpart of this Interrogatory as follows:

a. Union Pacific directs ARU/BLET to the workpaper "Craft Employee Impact Report.xlsx," Tab "Craft Impact Detail," which shows the positions transferred including positions from Atlanta, Georgia to Omaha, Nebraska. The cited Tab reflects 186 TCU agreement members being transferred to Omaha, Nebraska.

b. Union Pacific has not identified any projections, assumptions or estimates as to how many of the employees referenced in subpart (a) would be eligible for dismissal allowances. Union Pacific directs ARU/BLET to the Workpaper "Labor Synergy Summary," Tab "Transfer Allowance" for projected transfer allowances.

Union Pacific objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, or other applicable privilege, including

projections, assumptions, or estimates prepared by or at the direction of counsel. Union Pacific further objects to this Interrogatory as overly broad and unduly burdensome to the extent it asks Union Pacific to respond on behalf of Norfolk Southern and requests information that is not in Union Pacific's possession, custody, or control. Union Pacific further objects to the phrase "planned transfer of clerical work from Atlanta to Omaha" to the extent it mischaracterizes the Amended Application. Union Pacific further objects to subpart (b) to the extent it calls for a legal conclusion regarding eligibility for benefits under the New York Dock conditions. Union Pacific further objects to this Interrogatory to the extent it seeks confidential, proprietary, or commercially sensitive information, which Union Pacific will provide, if at all, only subject to the Protective Order. Union Pacific further objects to this Interrogatory to the extent it seeks materials that are publicly available or otherwise readily available or accessible to ARU/BLET from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the Amended Application, Employee Impact Exhibit, and accompanying workpapers filed with the Surface Transportation Board and which are accessible to ARU/BLET through the proceeding. Union Pacific further objects to this Interrogatory to the extent it purports to require Union Pacific to provide information in a form not kept in the regular course of business or to conduct a special study or to undertake anything more than a reasonable search for responsive information.

INTERROGATORY NO. 8

The Operating Plan put forward by Applicants states that the merged carrier will consolidate nine locomotive shops in locations that are current interchange points for UP and NSR: shops in Chicago, Kansas City, St. Louis, and New Orleans; and that 534 shop craft worker jobs will be affected.

a. Which shops will be consolidated?

b. Which shops, if any, will receive additional work and workers?

c. What number of Machinist, Carmen, Shop Supervisor, and Clerical/Material Handler/Storekeeper positions will there be at shops that will receive additional work?

d. Will Applicants take the position that employees at the nine locomotive shops in Chicago, Kansas City, St. Louis, and New Orleans, prior to consummation of the proposed merger, whose seniority did not allow them to bid for positions in either NSR or UP shops, who decline to relocate if that requires a change in their places of residence will be ineligible for New York Dock "dismissal allowances"? [ARU/BLET are not asking for an interpretation of the Act or of the New York Dock conditions, or the reasoning behind any position Applicants may take, ARU/BLET only seek to know whether Applicant will take the position inquired about in this interrogatory].

Union Pacific Response:

Subject to and without waiving the below objections and its General Objections, Union Pacific responds as follows:

a. The workpaper "Mech_Eng Synergies.xlsx," Tab "Mech Intchg," provides the locations where shops may be consolidated. Integration planning is ongoing, and Union Pacific has not yet determined which specific shops in the locations identified may be consolidated.

b. Because integration planning is ongoing, Union Pacific has not determined which shops, if any, will receive additional work and workers.

c. Because integration planning is ongoing, Union Pacific has not determined which shops may receive additional work and the number of Machinist, Carmen, Shop Supervisor, and Clerical/Material Handler/Storekeeper positions there will be at such shops.

d. Union Pacific directs ARU/BLET to its Response to Interrogatory No. 6 above, which applies equally to employees at the mechanical shops.

Union Pacific objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, or other applicable privilege. Union Pacific further objects to this Interrogatory as overly broad and unduly burdensome to the extent it asks Union Pacific to respond on behalf of Norfolk Southern and requests information that is not in Union Pacific's possession, custody, or control. Union Pacific further objects to this Interrogatory to the extent it mischaracterizes the Operating Plan, which does not state that 534 jobs "will be affected." Union Pacific further objects to subparts (a) through (c) as unreasonably cumulative and duplicative of ARU/BLET's First Set Interrogatory No. 1, to which Union Pacific has already responded. Union Pacific further objects to subpart (d), notwithstanding ARU/BLET's bracketed statement, because it calls for a legal conclusion regarding the interpretation, meaning, scope, or application of collective bargaining agreements,

implementing agreements, labor-protective conditions, or the New York Dock conditions, including the application of those legal standards to hypothetical or future facts, and as premature because such matters will be addressed through implementing agreements negotiated or arbitrated under Article I, Section 4 of the New York Dock conditions. Union Pacific further objects to this Interrogatory to the extent it seeks materials that are publicly available or otherwise readily available or accessible to ARU/BLET from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the Amended Application, Operating Plan, and accompanying workpapers filed with the Surface Transportation Board and which are accessible to ARU/BLET through the proceeding. Union Pacific further objects to this Interrogatory to the extent it purports to require Union Pacific to provide information in a form not kept in the regular course of business or to conduct a special study or to undertake anything more than a reasonable search for responsive information.

INTERROGATORY NO. 9

Applicants have projected that by the end of the third year after consummation of the proposed merger, they will have abolished 928 "train service" positions and created 1649 "train service" positions for a net increase of 721 "train service" positions (without distinguishing among engineer, conductor and yard positions,

a. Will the "train service" employees whose jobs are abolished be treated as "dismissed employees" under the New York Dock conditions?

b. Will Applicants take the position that "train service" employees whose jobs are abolished and who decline to relocate to take new positions if taking the new positions will require them to change their places of residence will be ineligible for New York Dock "dismissal allowances"? [ARU/BLET are not

asking for an interpretation of the Act or of the New York Dock conditions, or the reasoning behind any position Applicants may take, ARU/BLET only seek to know whether Applicant will take the position inquired about in this interrogatory]

Union Pacific Response:

Subject to and without waiving the below objections and its General Objections, Union Pacific directs ARU/BLET to its Response to Interrogatory No. 6 above, which applies equally to train service employees.

Union Pacific objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, or other applicable privilege. Union Pacific further objects to this Interrogatory as overly broad and unduly burdensome to the extent it asks Union Pacific to respond on behalf of Norfolk Southern and requests information that is not in Union Pacific's possession, custody, or control. Union Pacific further objects to this Interrogatory to the extent it mischaracterizes Applicants' train service employee projections in the Amended Application. Union Pacific further objects to this Interrogatory, notwithstanding ARU/BLET's bracketed statement, because it calls for a legal conclusion regarding the interpretation, meaning, scope, or application of collective bargaining agreements, implementing agreements, labor-protective conditions, or the New York Dock conditions, including the application of those legal standards to hypothetical or future facts. Union Pacific further objects to this Interrogatory as premature and calling for speculation because such determinations depend on individual employee circumstances and on

implementing agreements to be negotiated or arbitrated under Article I, Section 4 of the New York Dock conditions, and to the extent it seeks to elicit Union Pacific's negotiating positions in advance of that process. Union Pacific further objects to this Interrogatory as duplicative of Interrogatories Nos. 6 and 8(d) and ARU/BLET's First Set Interrogatory No. 5(b). Union Pacific further objects to this Interrogatory to the extent it seeks materials that are publicly available or otherwise readily available or accessible to ARU/BLET from other sources or otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific, including by accessing the Amended Application, Employee Impact Exhibit, and accompanying workpapers filed with the Surface Transportation Board and which are accessible to ARU/BLET through the proceeding.

GENERAL OBJECTIONS

Union Pacific's General Objections, as set forth herein, are to be considered objections to each of the specific Discovery Requests (including subparts) that follow. These general objections are not exhaustive and, where appropriate, Union Pacific will also state specific objections. Union Pacific's objections shall not waive, limit, or prejudice any objections that it may later assert.

1. In providing these responses, Union Pacific reserves all objections as to competency, relevancy, materiality, authenticity, and admissibility of the use of any information requested in ARU/BLET's Requests and in any responses or productions Union Pacific may provide thereto, in any subsequent proceeding, or further

proceedings in this matter. To the extent that Union Pacific provides responsive information or documents, Union Pacific does not concede that such information is relevant, material, or admissible into evidence, and any such production is not intended to waive any of Union Pacific's objections to any of ARU/BLET's Requests.

2. Union Pacific objects to each and every Discovery Request as unduly burdensome, to the extent it seeks discovery of information, documents, or communications that are available or accessible to ARU/BLET as an interested party through the application and accompanying workpapers submitted in this proceeding.

3. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein to the extent they purport to impose upon Union Pacific burdens or duties that are greater than, or otherwise conflict with, the requirements or the permissible scope of discovery under 49 C.F.R. Part 1114, Subpart B, or under other Surface Transportation Board rules or precedents or are not proportional to the needs of the above-captioned proceeding and impose an undue burden on Union Pacific.

4. Union Pacific objects to each and every Discovery Request requesting that Union Pacific produce "all" responsive documents, communications, or information as unduly burdensome to the extent it requests that Union Pacific engage in an unreasonably broad collection and review in order to identify each and every document that may possibly be responsive. For those Requests to which it is obliged to respond, Union Pacific will produce such responsive documents or information as

it is able to locate or identify in a reasonable search and which are not otherwise subject to an applicable privilege or other protection.

5. Union Pacific objects to the Discovery Requests and to each Definition, Instruction, and Request contained therein to the extent they seek the production of documents prepared in connection with, or information relating to, possible settlement or mediation of this or any other proceeding, in whole or in part.

6. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein that request information, documents, or communications that are: (a) already in the possession of ARU/BLET; (b) publicly available or otherwise readily available or accessible to ARU/BLET from other sources; (c) unreasonably cumulative or duplicative of documents already in ARU/BLET's possession, custody, or control; or (d) otherwise obtainable in a more convenient, less burdensome, or less expensive manner than from Union Pacific.

7. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein as unduly burdensome to the extent they seek production from the files of all current and former Union Pacific employees, including those who are not reasonably likely to possess non-duplicative relevant documents. Unless specifically stated otherwise, by stating that it will produce documents responsive to these Requests, Union Pacific represents that it will produce documents from files most likely to contain materials responsive to the Request without undue burden.

8. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein as unduly burdensome to the extent they purport to require Union Pacific to conduct a special study or to undertake anything more than a reasonable search for responsive information. In responding to ARU/BLET's Requests, Union Pacific will conduct a reasonable search of those accessible files in its possession in which information responsive to ARU/BLET's Requests, as limited by Union Pacific's Objections, is likely to be located.

9. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein to the extent they purport to prohibit Union Pacific from redacting information that might reveal Union Pacific's commercially sensitive or long-term corporate strategies and is not relevant to this proceeding. Union Pacific will redact any such information, and reserves the right to redact any non-responsive information, from otherwise responsive documents produced to ARU/BLET.

10. Union Pacific objects to the production of, and is not producing, documents or information subject to any attorney-client privilege, work-product doctrine, or other applicable privilege or protection. Union Pacific reserves the right to redact privileged information from materials that it produces in response to the Requests. Any production of privileged documents or information is inadvertent and should not be deemed as a waiver of any privilege. Union Pacific reserves all rights under applicable law, including the Protective Order entered in this case, to demand

or require the return of all copies thereof and non-use by ARU/BLET or by any other person or entity in this or any other proceeding.

11. Union Pacific objects to the production of documents that constitute or disclose confidential, proprietary, or commercially or competitively sensitive information. Union Pacific will produce such information, if not otherwise objectionable, designated "Confidential" or "Highly Confidential," subject to the terms of the Protective Order entered in this case on August 5, 2025 (Decision No. 1). Union Pacific reserves the right to seek additional protections as needed.

12. Union Pacific objects to each and every Discovery Request and to each Definition, Instruction, and Request contained therein to the extent they seek or may result in the use, disclosure, or dissemination of any confidential, proprietary, or commercially or competitively sensitive information produced in response to the Discovery Requests for the purpose of training, fine-tuning, evaluating, or otherwise interacting with artificial intelligence (AI) models or systems in a manner that violates the terms of the Protective Order entered in this case. This objection includes, but is not limited to, any use of such materials in connection with large language models (LLMs), machine learning algorithms, or generative AI tools, regardless of whether such use is direct or indirect, manual or automated, or anonymized or de-identified. Union Pacific does not consent to the use of any of its discovery materials for purposes unrelated to this proceeding, including but not limited to AI training.

13. Union Pacific objects to ARU/BLET's Definition A, defining "Document" to the extent it is overly broad, unduly burdensome, and seeks to impose obligations broader than those imposed by 49 C.F.R. Part 1114. Union Pacific specifically objects to Definition A as unduly burdensome and as seeking information that is not proportional to the probative value the information sought may have in this proceeding to the extent that it would require production of draft electronic communications, electronic meeting invites, meeting change or cancellation notices, text messages, communications by or with internet-connected applications, electronic messages (other than emails), and communications. Union Pacific further objects to Definition A to the extent it requests any "oral record" and purports to require production of material that was not reduced to writing. Union Pacific is not searching for and will not produce these categories of "Documents."

14. Union Pacific objects to ARU/BLET's Definition E defining "Applicants" to mean "[Union Pacific] and [Norfolk Southern Railway Co.]" to the extent it is vague, overly broad, unduly burdensome, and seeks to impose obligations broader than those imposed by 49 C.F.R. Part 1114. Union Pacific specifically objects to Definition E as overly broad and unduly burdensome to the extent it asks Union Pacific to respond to a request on behalf of Norfolk Southern and requests information that is not in Union Pacific's possession, custody, or control.

15. Union Pacific objects to ARU/BLET's Instructions B and C to the extent they purport to require Union Pacific to state the "factual grounds" for each objection, to identify all persons to whom privileged material has been communicated, or to

identify all documents that constitute, contain, or reflect privileged information, as unduly burdensome and as seeking to impose obligations broader than those imposed by 49 C.F.R. Part 1114. Union Pacific further objects to ARU/BLET's Instruction F defining "refer to" or "relate to" to mean "any reasonable connection . . . whether that connection is direct or indirect" as vague, overly broad, and unduly burdensome.

16. Union Pacific's Responses and Objections are based upon information presently known to it. Union Pacific reserves the right to rely upon facts, documents, or other evidence that may develop or that may subsequently come to its attention; to assert additional objections; and to supplement or amend these responses at any time as this proceeding continues.

Respectfully submitted,

/s/ Laura Flahive Wu
MICHAEL L. ROSENTHAL
DEREK LUDWIN
JAMES J. O'CONNELL
LAURA FLAHIVE WU
KEVIN M. KELLY
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000

CHRISTINA B. CONLIN
JAMES B. BOLES
TONYA W. CONLEY
JENNIFER L. GALER
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

Attorneys for Union Pacific Corporation and Union Pacific Railroad Company

November 16, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November, 2026, the foregoing document was served by first-class mail or email on all parties of record in this proceeding.

/s/ Charlotte R. Krovoza