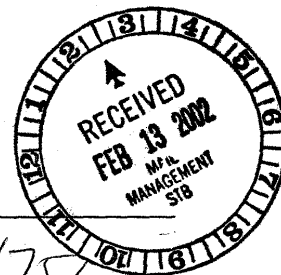


Before the
Surface Transportation Board



Finance Docket No. 34040

204756

RIVERVIEW TRENTON RAILROAD COMPANY-PETITION FOR EXEMPTION
FROM 49 U.S.C 10901 TO ACQUIRE AND OPERATE A
RAIL LINE IN WAYNE COUNTY MICHIGAN

ENTERED
Office of the Secretary
FEB 13 2002
Part of
Public Record

Finance Docket No. 33980

204757

RIVERVIEW TRENTON RAILROAD COMPANY-ACQUISITION AND
OPERATIONS EXEMPTION-CROWN ENTERPRISES

COMMENTS OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS
IN RESPONSE TO RECENT FILINGS OF
WAYNE COUNTY AND GRAND TRUNK WESTERN R.R.
AND RIVERVIEW TRENTON RAILROAD COMPANY

The Brotherhood of Locomotive Engineers ("BLE") hereby
responds to the recent filings of Wayne County and Grand Trunk
Western R.R. ("GTW") and Riverview Trenton R.R. Company ("RTRR")
in the above-referenced matters.¹ Upon review of the various

¹Although BLE intervened in these proceedings in June of 2001, and served all parties of record with copies of that notice, BLE's counsel was not served with any of the recent RTRR filings. See certificates of service for RTRR filings dated February 12, 2002 and January 30, 2002; several letters show that copies were sent to "all parties of record" but they were apparently sent only to the counsel on RTRR's service list. BLE did not become aware of the recent RTRR filings until its counsel received the Wayne/GTW February 8 reply to RTRR's January 30 filing. Although the omission of BLE's counsel from the service list was surely inadvertent, BLE's counsel did not become aware of the RTRR filings until February 12, 2002. These comments have been prepared as quickly as is possible.

filings, BLE respectfully submits that the Board should revoke the exemption in F.D. No. 33980; and either dismiss the petition for exemption or establish a procedural schedule in F.D. No. 34040 as is requested by Wayne County and GTW.

In its notice of intervention in these proceedings, BLE stated that after review of the initial filings in these cases, it had determined that its members who are engineers employed by the Grand Trunk Western R.R. and the Consolidated Rail Corp. were likely to be affected by the purported transaction that is at issue in these two Finance Dockets, particularly to the extent that RTRR may draw work away from one or both carriers. BLE further noted that, having experienced the abuse of ICC processes in certain exemptions from regulation under Sections 10901, BLE was concerned about the procedural and jurisdictional arguments that have been raised by the GTW and Wayne County.

BLE's concerns were only heightened by review of the recent filings by the other parties. In particular, BLE agrees with Wayne County and GTW that the exemption in F.D. No. 33980 should be revoked, and that the petition for exemption in F.D. No. 34040 should be dismissed because the notice of exemption was void *ab initio* since it contained false and misleading information, because the evidence before the Board demonstrates that the planned transaction is not a Section 10901 transaction and that Riverview Trenton is abusing the statute and the Board's

processes.

BLE's immediate interest here is to protect the jobs of its members. But BLE is also very troubled by the false and misleading information and abuse of the statute and the Board's processes.

For many years Rail Labor fought the ICC/STB notice of exemption procedures because of fears that statutory license could be invoked, and transactions could be effected, based on a mere notice with no public scrutiny and little consideration by the ICC/STB. In effect, parties who would normally have to obtain ICC/STB approval in public, adversary, proceedings could "write their own ticket" and act as if their actions had actually been approved by the Board as consistent with the public interest and the public transportation policies expressed in the Act. Rail Labor became even more concerned as carriers and newly formed entities began to use the exemption process and abuse ICC/STB procedures in Section 10901 cases, and other cases, where false and misleading information was submitted to obtain an exemption or ICC/STB approval when there was no legitimate public transportation purpose, but an intent to negate or diminish employee rights.

BLE notes that Rail Labor sounded the alarm on false and misleading filings in a number of cases where those warnings were initially ignored but were later validated. In two cases the

ICC and Courts ultimately recognized that there had been abuses of agency processes, but only after there was litigation, and actual and potential transportation problems. For example, Guilford Transportation Industries' presented a series of intra-corporate family lease transactions with its Springfield Terminal subsidiary as legitimate leases under notices of exemption. Rail Labor's objections were initially ignored, there was litigation, and there were disruptions of commerce and safety and efficiency problems and the Commission ultimately recognized that it had been misled. The Commission was required to deal with the problem after-the-fact, with a remedy that was not really adequate, but was deemed to be the best that could be done given the passage of time. Burlington Northern engaged in a pseudo-lease of its Northern Lines to BN's defunct subsidiary Winona Bridge. Rail Labor challenged that transaction as illegitimate and a device to use the ICA to evade Railway Labor Act processes. There were proceedings in two courts of appeals and it was ultimately held that BN's actions were violative of the RLA and a matter over which the unions could strike. In each of those cases, there was no legitimate transportation purpose to the transactions-ICC processes were used as a device to effect a labor relations goal. The results were actually damaging to the labor relations, adverse to rail service in the affected regions and injurious to public perception of the agency and to its

credibility as a fair and effective monitor of public transportation interests.

Rail Labor also asserted that the original Chicago-North Western-Dakota, Minnesota & Eastern transaction was not a legitimate transaction; those charges were ignored. However, Rail Labor's charges were validated years later when an attorney for the DM&E revealed that CNW had retained effective control of DM&E's finances. The Board did not find a way to deal with this problem retroactively, but surely the ICC's handling of the matter initially would have been different had the ICC then known what was later disclosed to the Board. Rail Labor challenged the Fox River Valley acquisition of its rail line, asserting that the transaction was really for the benefit of corporate affiliate Green Bay & Western; subsequently, Rail Labor produced a copy of testimony of FRVR's President from a State court proceeding in which he revealed that his verified statement to the ICC that the FRVR and GBW would be entirely separate was false and was made only to effect the acquisition in the manner desired by FRVR. Presumably, the ICC would have handled the FRVR transaction differently if it had not been misled by FRVR.

Given these experiences, BLE respectfully submits that the Board should not take lightly the issues raised by Wayne County and GTW as it did the issues raised by Rail Labor in the cases just described. There is no public transportation benefit

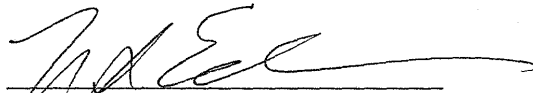
obtained when a party uses Board processes when the real goal is not a transportation goal. Additionally, there is harm to the Board and its long term ability to serve the purposes for which it was created when the Board allows its explicit or implicit approval to attach to a transaction when it is abused by a party's submission of false and misleading information and when its processes are invoked improperly.

In the instant case, the Board should revoke the notice of exemption and dismiss the petition filed by RTRR. Wayne County and GTW have demonstrated a serious pattern of significant deceptions, misleading statements and abuse of Board processes.² Wayne County and GTW have shown that RTRR has made false and misleading statements, that the corporate family has engaged in a series of transactions that were not fully described or accurately disclosed, that similar transfers of the line in question were handled in entirely different ways and that RTRR's description of its planned operations as interstate rail system common carrier operations is inconsistent with the description of similar operations of its corporate affiliates and does not on its face support invocation of Section 10901.

² It is especially troubling that RTRR has used the perfunctory notice of exemption process to obtain a court order barring Wayne County from going forward in eminent domain proceedings. And now it is seeking permanent injunctive relief from the court based on the notice of exemption without regard for the ultimate actions of the Board in these cases.

For all of those reasons, and given the history discussed above, BLE respectfully submits that the Board certainly should revoke the exemption in F.D. No. 33980; BLE further submits that the Board should either dismiss the petition for exemption, or establish a procedural schedule in F.D. No. 34040 to allow a complete investigation and assessment of this transaction.

Respectfully submitted,



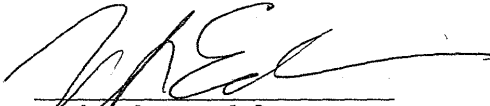
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Dated: February 13, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served copies of the foregoing, Comments of the Brotherhood of Locomotive Engineers in Response to Recent Filings of Wayne County and Grand Trunk Western R.R. and Riverview Trenton Railroad Company to the offices of the persons listed on the attached service list by First Class mail, except where overnight delivery is indicated.

2/13/02
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