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**Before the
Surface Transportation Board**

Finance Docket 34450

DEC 15 2003
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**PAV RAILROAD, INC. --
ACQUISITION AND OPERATION EXEMPTION --
ASSETS OF N&T RAILWAY LLC**

PETITION OF PAV RAILROAD, INC. FOR WAIVERS

EXPEDITED CONSIDERATION REQUESTED

**ENTERED
Office of Proceedings**

DEC 15 2003

**Part of
Public Record**

Communications with respect to this
document should be addressed to:

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Counsel for PAV RAILROAD, INC.

Dated: December 15, 2003

PAV Railroad and REP relating to the purchase of the assets of REP and its subsidiaries, including N&T. On November 7, 2003 PAV Railroad and REP entered into a contract to buy the assets of REP and its subsidiaries (the "PAV/REP Sale"). It is important to note that during the negotiation period and as early as October 6, 2003, the Union representing employees of N&T have been aware of the impending PAV/REP Sale and support the PAV/REP Sale. In fact, the Union went on record to support PAV Railroad's successful bid to become the bidder in the sale of REP pursuant to Section 363 of the Bankruptcy Code. See the letter of support from the United Steelworkers of America, AFL CIO attached hereto as Exhibit A.

The Court will enter the PAV/REP Sale Order on Monday, December 15, 2003, and it is anticipated that the PAV/REP Sale must be consummated on or before December 22, 2003. The Court has expressed a desire for the PAV/REP Sale to proceed on an expedited basis because certain fundamental customer contracts ("Customer Contracts") will expire at the end of 2003, and those contracts will not be renewed while REP is in bankruptcy. Failure to renew the Customer Contracts could result in: 1) REP and its subsidiaries including N&T, no longer being viable businesses; 2) The loss of thousands of jobs, including those at N&T; and 3) the possibility that N&T would have to cease operations. If the PAV/REP Sale is consummated, PAV Railroad plans to: 1) continue the operation of N&T; and 2) hire all of the employees that are currently working on N&T once the PAV/REP Sale takes place. See Declaration of Peter Schweinfurth attached as Exhibit B.

II. Argument

N&T is a railroad with projected annual revenues that exceed \$5 million. 49 C.F.R. § 1150.35 states in pertinent part:

Procedures and relevant dates--transactions that involve creation of Class I or Class II carriers.

(a) To qualify for this exemption, applicant must serve a notice of intent to file a notice of exemption no later than 14 days before the notice of exemption is filed with the Board, and applicant must comply with the notice requirement of § 1150.32(e).

(e) The exemption will be effective 21 days after the notice is filed. The Board, through the Director of the Office of Proceedings, will publish a notice in the Federal Register within 30 days of the filing.

See 49 C.F.R § 1150.35 (a)&(e). 49 C.F.R § 1150.42 states in pertinent part:

Procedures and relevant dates for small line acquisitions.

(e) If the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier's projected annual revenue, exceeds \$5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of applicant's intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so.

See 49 C.F.R § 1150.42(e). Therefore, under 49 C.F.R § 1150.35 (a)&(e) and 49 C.F.R § 1150.42(e) ("Notice Requirements") PAV Railroad would have to:

1. File a notice of intent to file a notice of exemption;
2. File its notice of exemption 14 days after it files its notice of intent;
3. Wait 21 days for the notice of exemption to become effective ("Effective Date"); and
4. Make sure it posted a notice of the PAV/REP Sale at the workplace of N&T's employees 60 days before the Effective Date.

The timeline proposed by the Court for the completion of the PAV/REP Sale does not provide PAV Railroad an opportunity to comply with the Notice Requirements. The only means possible for the PAV/REP Sale to be consummated and to avoid the loss of thousands of jobs, and the

possibility that N&T would have to cease operations is for the Board to waive the Notice Requirements.

The purpose of 49 CFR 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation. *See M & B Railroad L.L.C.--Acquisition and Operation Exemption—CSX Transportation, Inc.*, STB Finance Docket No. 34423 (Service Date: November 3, 2003); *The Canadian American Railroad Company--Acquisition And Operation Exemption--Green Mountain Railroad Corporation*, STB Finance Docket No. 33934 (Service Date: October 10, 2000); *Portland & Western Railroad, Inc.--Lease and Operation Exemption--Port of Tillamook Bay Railroad*, STB Finance Docket No. 33734 (Service Date: May 10, 1999). Furthermore, the notice requirements under 49 C.F.R § 1150.35 (a)&(e) also provide an opportunity for notice to employees and third parties regarding the PAV/REP Sale. Therefore, in part, the Notice Requirements serve as protection for employees and parties that are affected by a transaction.

In a traditional commercial transaction involving the acquisition and operation of a rail carrier the Notice Requirements make sense. However, in the instant action the Notice Requirements are impractical and detrimental to the ongoing operations of the lines now owned and operated by N&T, and to N&T's employees. In other words, adhering to the Notice Requirements would cause the very harm the regulations seek to prevent, *i.e.*, the employees would be not only unprotected but unemployed. Adherence to the Notice Requirements would potentially lead to a cessation of rail service to the detriment of shippers and employees alike. Simply put, in order for the PAV/REP Sale to

survive the Customer Contracts must remain in place. In order for that to happen the PAV/REP Sale must be consummated by December 22, 2003. If that happens the Customer Contracts will be renewed, PAV Railroad will continue the operation of N&T, N&T will remain a viable railroad, and all of the employees that are currently working at N&T will remain employed. The only way this can be accomplished is if this Board waives the Notice Requirements.

Moreover, in the instant action, the rail labor unions and employees who would be affected by the PAV/REP Sale have had "sufficient notice of the transaction before consummation." It is critical to note that the United Steelworkers of America, AFL CIO that represents the employees of N&T have weighed in on this issue as follows:

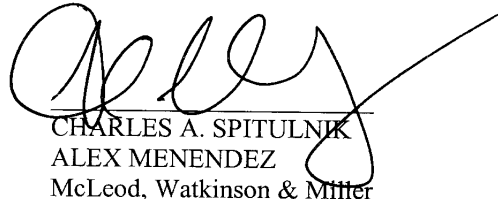
1. It has known of the potential sale of N&T since at least October 6, 2003 when N&T's parent company, REP filed for bankruptcy protection;
2. It has been in discussions with regarding the PAV/REP Sale;
3. It believes that the PAV/REP Sale will save the jobs of thousands of REP employees, including those employed by N&T;
4. It went on record to support PAV Railroad's successful bid to become the stalking horse bidder in the sale of REP pursuant to Section 363 of the Bankruptcy Code
5. It actively requests that this waiver request be granted because it believes it is in the best interests of the Union's members who are presently employed by N&T.

See Exhibit A. If the PAV/REP Sale is completed the Customer Contracts will be renewed and PAV Railroad plans to: 1) continue the operation of N&T; and 2) hire all of the employees that

are currently working on N&T. See Exhibit B.

In view of the foregoing, PAV Railroad submits that its Petition for Waivers should be granted.

Respectfully submitted,

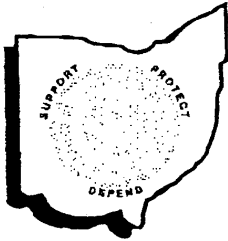
A handwritten signature in black ink, appearing to read 'CS', is written over a horizontal line.

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Counsel for PAV RAILROAD INC.

Date: December 15, 2003

EXHIBIT A



United Steelworkers of America

AFL-CIO-CLC

District 1 / Sub-District 2

4069 Bradley Circle, N. W.
Canton, Ohio 44718

Office: (330) 493-7721 • FAX: (330) 493-7870



David R. McCall, *Director*
Dan Winslow, *Assistant Director*
William J. Hocevar, *Assistant Director*

December 15, 2003

Dennis B. Brommer
Sub-District Director

Honorable Roger Nober, Chairman
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

RE: N&T Railroad Company LLC ("N&T")

Dear Sir:

I am the District 1 Director of the United Steelworkers of America, AFL-CIO (the "Union") and the Chairman of the Union's Negotiating Committee. We also represent the employees of ("N&T"). I understand that PAV Republic, Inc., or one or more of its affiliates ("PAV") has agreed to acquire the assets of N&T. Normally, the Surface Transportation Board ("STB") regulations would require PAV to provide 60 days notice to this Union before the transaction takes place. The Union has in fact been in discussions for some time with PAV who entered into a contract to buy the assets of REP and its subsidiaries on November 7, 2003, and believes that the PAV proposal will save the jobs of thousands of REP employees, including those employed by N&T. Accordingly, the Union does not object to PAV's request for waiver of the 60-day notice requirement and actively requests such waiver as it is in the best interests of the Union's members who are presently employed by N&T.

The Court will be issuing the Sale Order on Monday, December 15, 2003 and it is apprehended that it will indicate therein that the sale must be consummated on or before December 22, 2003. In my opinion, it is in the best interest of all the parties for this sale to go forward on an expedited basis due to the expiration of certain fundamental customer contracts at the end of 2003, which will not be renewed while REP remains in bankruptcy. Failure to renew such contracts could result in REP and its subsidiaries no longer being a viable business as a going concern and may result in the loss of thousands of jobs, including those at N&T. It is my understanding PAV plans to continue all of the employee positions at the railroad presently operated by N&T and to hire all of the employees that are currently working on N&T once the sale takes place.

Due to the foregoing facts and circumstances, I strongly believe that it is fundamental to the employees for the STB to waive the requirement of 60 days advance notice and I strongly support PAV's request for such waiver.

Thank you very much for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "D. McCall", written over a horizontal line.

David R. McCall
USWA District 1 Director

EXHIBIT B

**Before the
Surface Transportation Board**

Finance Docket 34450

**PAV RAILROAD, INC. - -
ACQUISITION AND OPERATION EXEMPTION - -
ASSETS OF N&T RAILWAY LLC**

**VERIFIED STATEMENT OF
PETER F. SCHWEINFURTH**

Peter F. Schweinfurth, under penalty of perjury, says:

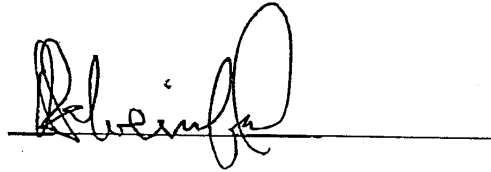
1. I am President and Secretary of PAV Railroad, Inc. ("PAV Railroad"), a Delaware corporation.
2. On October 6, 2003, N&T Railroad Company LLC's ("N&T") parent company, Republic Engineered Products LLC ("REP") filed for bankruptcy protection in the United States Bankruptcy Court for the Northern District of Ohio, Eastern Division (the "Court"), under Chapter 11 of the Bankruptcy Code.
3. Since September 2003 PAV Railroad and REP have had discussions relating to the purchase of the assets of REP and its subsidiaries, including N&T.
4. On November 7, 2003 PAV Railroad and REP entered into a contract to buy the assets of REP and its subsidiaries (the "PAV/REP Sale").

5. The Court will enter the PAV/REP Sale Order on Monday, December 15, 2003, and it is anticipated that the PAV/REP Sale must be consummated on or before December 22, 2003.
6. Upon information and belief if the PAV/REP Sale does not consummate before December 22, 2003 certain fundamental customer contracts ("Customer Contracts") will expire at the end of 2003.
7. Upon information and belief the Customer Contracts will not be renewed while REP is in bankruptcy.
8. Upon information and belief failure to renew the Customer Contracts could result in: 1) REP and its subsidiaries including N&T, no longer being viable business; 2) The loss of thousands of jobs, including those at N&T; and 3) the possibility that the N&T would have to cease operations.
9. However if the PAV/REP Sale is completed, PAV plans to: 1) continue the operation of N&T; and 2) hire all of the employees that are currently working on N&T once the PAV/REP Sale takes place.

VERIFICATION

I, Peter Schweinfurth, verify under penalty of perjury under the laws of the United States that the foregoing statement is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on December 15, 2003.

A handwritten signature in black ink, appearing to read "Schweinfurth", is written over a horizontal line.