

PAUL C. THOMPSON
International President

RICK L. MARCEAU
Assistant President

DAN E. JOHNSON
General Secretary and Treasurer

212453

**united
transportation
union**



14600 DETROIT AVENUE
CLEVELAND, OHIO 44107-4250
PHONE: 216-228-9400
FAX: 216-228-0937
www.utu.org

LEGAL DEPARTMENT

CLINTON J. MILLER, III
General Counsel

• KEVIN C. BRODAR
Associate General Counsel

• ROBERT L. McCARTY
Associate General Counsel

• DANIEL R. ELLIOTT, III
Associate General Counsel

UPS Next Day Air

November 4, 2004

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001
(202) 565-1674



Re: Finance Docket No. 34536

Dear Mr. Williams:

Please find enclosed the original and ten copies of United Transportation Union's Motion to Compel for filing in the above-captioned matter. In accordance with prior Board requirements, we have enclosed a disk in WordPerfect format.

Thank you for your cooperation.

Sincerely,

Daniel R. Elliott, III
Associate General Counsel

Enclosures

cc: C. J. Miller, III, General Counsel

ENTERED
Office of Proceedings

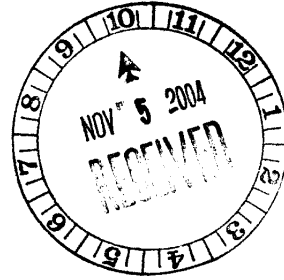
NOV 5 2004

Part of
Public Record

212 453

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34536



**INDIANA & OHIO CENTRAL RAILROAD, INC
- ACQUISITION AND OPERATION EXEMPTION -
CSX TRANSPORTATION, INC.**

**UNITED TRANSPORTATION UNION'S
MOTION TO COMPEL**

ENTERED
Office of Proceedings

NOV 5 2004

Part of
Public Record

Daniel R. Elliott, III
Associate General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107
Tel: (216) 228-9400
Fax: (216) 228-0937

United Transportation Union ("UTU") respectfully moves the Board pursuant to 49 C.F.R. § 1114.31 to compel Indiana & Ohio Central Railroad Inc. ("IORC") to produce various materials requested by UTU on September 23, 2004. To this date, IOCR has failed to respond to the request.

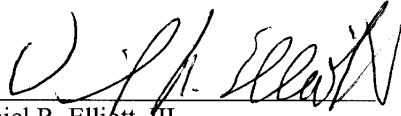
On September 1, 2004, IOCR filed its Notice of Exemption under 49 C.F.R. § 1150.41. UTU filed a Petition to Revoke on September 15, 2004. On September 24, 2004, UTU filed an amended Petition to Revoke based on new information it received from various employees on CSX Transportation, Inc. ("CSXT"), along with a document request to IOCR pursuant to 49 C.F.R. §§ 1121 and 1114 (attached hereto). On October 1, 2004, IOCR responded to UTU's Petition and noted in the section entitled Preliminary Matter that it is refusing to comply with the simple discovery request made by UTU because it claims UTU had waived its right to take any discovery whatsoever in this proceeding.

This result regarding the waiver of discovery suggested by IOCR in its Reply would clearly be contrary to the Board's regulations which allow a Petition to Revoke an Exemption to be filed at any time. *See* 49 C.F.R. § 1121.4(f). This regulation does not prohibit the same party from filing a second Petition to Revoke in the same proceeding. Since this second filing is not prohibited, it therefore follows that a request for discovery can be made in the second filing in accordance with Section 1121.2. This result would support the policy behind the Board's allowance of petitioners to revoke to file at any time because new information hidden by a petitioner for an exemption may surface at a later date, since if anything inappropriate was transpiring, this petitioner would certainly not be drawing anyone's attention to the matter.

While UTU is certainly not accusing the IOCR of doing anything improper here, UTU has a difficult time understanding why the carrier is being so secretive and uncooperative in this proceeding where UTU's request is only for items mentioned in the Petition for the Exemption.

Based on the foregoing discussion, this motion to compel should be granted.

Respectfully submitted,

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

Daniel R. Elliott, III
Associate General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107
Tel: (216) 228-9400
Fax: (216) 228-0937

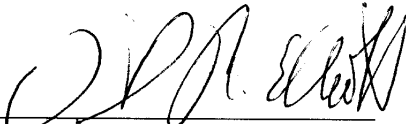
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing United Transportation Union's Motion to Compel has been served this 4th day of November, 2004 via first-class, postage pre-paid mail upon the following:

Gary A. Laakso, Esquire
Vice President Regulatory Counsel
Indiana & Ohio Central Railroad, Inc.
5300 Broken Sound Blvd., N.W., 2nd Floor
Boca Raton, FL 33487
(561) 994-6015

Louis E. Gitomer, Esquire
Ball Janik, LLP
1455 F Street, N.W., Ste. 225
Washington, DC 20005
(202) 638-3307

Gordon MacDougall, Esquire
1025 Connecticut Ave., N.W.
Washington, DC 20036



Daniel R. Elliott, III