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UPS Next Day Air

214543

August 15, 2005

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K. Street, N.W.
Washington, DC 20423-0001
Tel: (202) 565-1674
Fax: (202) 656-9003

AUG 16 2005
RECEIVED

Re: Finance Docket No. 34505

Dear Mr. Williams:

Please find enclosed an original and ten copies of the Redacted Public Version of United Transportation Union's Supplemental Petition to Revoke for filing in the above-captioned matter. In accordance with prior Board requirements, we have also enclosed a disk in WordPerfect format.

Thank you for your cooperation.

ENTERED
Office of Proceedings

AUG 16 2005

Part of
Public Record

Sincerely,

Daniel R. Elliott, III
Associate General Counsel

Enclosures

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

REDACTED PUBLIC VERSION

AUG 16 2005

214543

BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34505

**EAST BROOKFIELD AND SPENCER RAILROAD, LLC
– LEASE AND OPERATION EXEMPTION –
CSX TRANSPORTATION, INC.**

**UNITED TRANSPORTATION UNION'S
SUPPLEMENTAL PETITION TO REVOKE**

**ENTERED
Office of Proceedings**

AUG 16 2005

**Part of
Public Record**

Daniel R. Elliott, III
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Attorney for United Transportation Union

United Transportation Union (“UTU”) respectfully submits its supplemental petition to revoke . After engaging in discovery, UTU asserts that the notice of exemption contains false and misleading information, and regulation of this transaction is necessary to carry out the rail transportation policy.

PROCEDURAL HISTORY

By notice of exemption filed on May 12, 2004, under 49 C.F.R. 1150.31, East Brookfield & Spencer Railroad, LLC (“EB&SR”) sought to acquire by lease from CSX Transportation, Inc., (“CSXT”) and to operate, approximately four miles of rail line and 270 feet of lead track in East Brookfield and Spencer, Worcester County, MA. The transaction was scheduled to be consummated on May 19, 2004.

On October 21, 2004, UTU filed a petition to revoke the exemption. UTU indicated in its petition that it intended to engage in discovery against EB&SR, and that it would supplement its petition to revoke upon the completion of discovery. On November 10, 2004, EB&SR filed a reply to UTU’s petition to revoke.

UTU also served on EB&SR its request for production of various documents on October 21, 2004. On November 12, 2004, in response to UTU’s document production requests, EB&SR requested a protective order under 49 C.F.R. 1104.14 with respect to documents produced in discovery in this proceeding. The Board issued the requested protective order in a decision served on November 18, 2004.

By petition filed on December 2, 2004, UTU requested an extension of time until December 20, 2004, to supplement its petition to revoke, which was granted. By a supplemental letter also filed on December 2, 2004, UTU stated that counsel for EB&SR concurred in the extension request, but, in light of the holiday season, sought an additional 10 days on top of the designated 15-day period to respond to UTU’s supplemental petition, which was also granted.

SUPPLEMENTAL FACTS

REDACTED

Prior to these transactions, CSXT employees, some of whom are represented by UTU, provided all service to three vehicle distribution centers in Westborough (“Chrysler”), Framingham, (“GM”), and Ayer (“Ford”), MA, without the use of a third party carrier like EB&SR. This work was all done subject to the UTU/CSXT collective-bargaining agreement. This work will now all be done by EB&SR.

ARGUMENT

Under 49 U.S.C. § 10505(d), the Board may revoke an exemption if it is found that regulation is necessary to carry out the rail transportation policy of 49 U.S.C. § 10101a. Labor interests may raise issues concerning the appropriate level of labor protection in a petition for revocation. *See* 49 U.S.C. § 10505(g)(2) and *Simmons v. ICC*, 900 F.2d 1023 (7th Cir. 1990). In addition, to the extent a party wishes to challenge the bona fides of a transaction, the Board retains the right to review the transaction to protect the integrity of its processes. *Minnesota Comm. Ry., Inc. – Trackage Exempt. – BN RR. Co.*, 8 IC.C.2d 31 (1991). The party seeking to revoke an exemption must meet its burden of proof by articulating reasonable, specific concerns to satisfy the revocation criteria. *Wisconsin Central Ltd.,--Exemption Acquisition and Operation–Certain Lines of Soo Line Railroad Company*, Finance Docket No. 31102 (ICC served July 28, 1988), and *Minnesota, supra*, at p. 35. *Accord, Norfolk Southern Railway Company–Trackage Rights Exemption – Norfolk and Western Railway Company*, Finance Docket No. 32661 (STB served Feb. 21, 1996).

This case involves several unusual features which can only lead one to conclude the transaction is a device created merely to move a number of jobs out from under a collective-

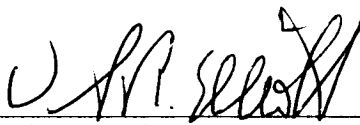
bargaining agreement onto a nonunion carrier. The circumstances surrounding the transaction indicate that the transaction was not motivated by a desire of the parties to realize legitimate business goals. The EB&SR was not a logical entity to be considered as the operator. EB&SR was clearly created for this transaction, one of many facts that make it like the transaction in *Sagamore National Corporation--Acquisition and Operation Exemption-- Lines of Indiana Hi-Rail Corporation*, Finance Docket No. 32523, et al. (ICC served Oct. 28, 1994).

REDACTED

CONCLUSION

Hence, the notice of exemption should be revoked.

Respectfully submitted,

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

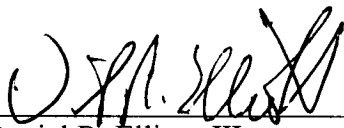
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Attorney for United Transportation Union

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing United Transportation Union's Petition to Revoke has been served this 15th day of August 2005, via first-class, postage pre-paid mail upon the following:

Betty Joe Christian
Steptoe & Johnson, LLP
1330 Connecticut Ave., N.W.
Washington, DC 20036



Daniel R. Elliott, III