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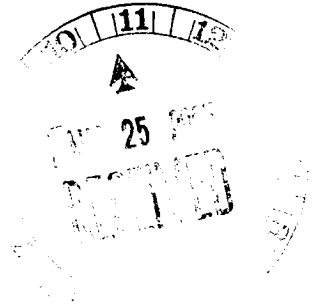
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UPS Next Day Air

August 24, 2005

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



Re: Finance Docket No. 34536

Dear Secretary Williams:

Pursuant to my conversation with a member of your staff, please find enclosed an original and ten (10) copies of a Redacted Version of United Transportation Union's Supplemental Petition to Revoke in the above-captioned matter. In accordance with prior Board orders, we have also enclosed a disk in WordPerfect format.

Thank you for your cooperation.

Sincerely,

ENTERED
Office of Proceedings

AUG 25 2005

Part of
Public Record

A handwritten signature in black ink, appearing to read "D. R. Elliott, III".

Daniel R. Elliott, III
Associate General Counsel

Enclosures

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

REDACTED PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34536

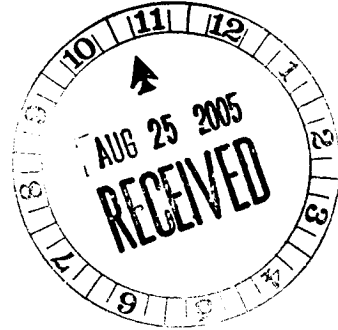
ENTERED
Office of Proceedings,

AUG 25 2005

Part of
Public Record.

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

UNITED TRANSPORTATION UNION'S
SUPPLEMENTAL PETITION TO REVOKE



ENTERED
Office of Proceedings

AUG 25 2005

Part of
Public Record.

Daniel R. Elliott, III
Associate General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107
Tel: (216) 228-9400
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United Transportation Union (“UTU”) respectfully submits its supplemental petition to revoke filed under seal in this proceeding. 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

On September 1, 2004, the Indiana & Ohio Central Railroad, Inc. (“IOCR”), a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. 1150.41 to operate under a lease from CSX Transportation, Inc. (“CSXT”) approximately 107 miles of rail line consisting of the Cincinnati Terminal Subdivision, between NA Tower, OH, milepost BB 7.5, and Oakley, OH, milepost BB 12.4, and the Midland Subdivision, between Oakley, milepost 12.4, and Columbus, OH, milepost BR 114.6. Notice of the exemption was served and published in the Federal Register (60 FR 58999) on October 1, 2004.

On September 13, 2004, the Brotherhood of Locomotive Engineers & Trainmen (“BLET”) filed a protest to the exemption notice. On September 15, 2004, the United Transportation Union filed a petition to revoke the exemption. UTU filed an amended petition to revoke on September 24, 2004, in which UTU also sought discovery from IOCR under 49 C.F.R. 1121 and 1114 to obtain all leases and other written arrangements between IOCR and CSXT that relate to the transaction described in IOCR’s notice of exemption. On October 1, 2004, IOCR replied to BLET’s protest and UTU’s petition to revoke and opposed UTU’s discovery request.

On November 5, 2004, UTU filed a motion to compel IOCR to produce the materials it requested with its amended petition to revoke. By letter filed November 15, 2004, IOCR responded to UTU’s motion to compel. By decision served on November 23, 2004, UTU’s motion to compel was granted. The November 23 decision also set a procedural schedule that provided the following:

(1) discovery must be completed by December 3, 2004; (2) UTU's supplement to its petition to revoke is due by December 20, 2004; and (3) IOCR's reply is due by January 3, 2005.

By motion filed December 17, 2004, UTU requested an extension of time until January 18, 2005, to supplement its petition to revoke. The extension request was found to be reasonable and was granted on December 21, 2004

On December 23, 2004, the Board also granted IOCR's request for a protective order.

SUPPLEMENTAL FACTS

REDACTED

Prior to these transactions, CSXT employees, some of whom are represented by UTU, provided service on the Midland Subdivision and Cincinnati Terminal Subdivision without the use of a third party carrier like IOCR. This work was all done subject to the UTU/CSXT collective-bargaining agreement. This work will now all be done by IOCR.

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. – BNRR. Co.*, 8 I.C.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. 322661 (STB served Feb. 21, 1996).

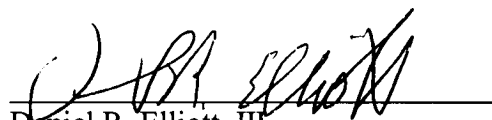
This case involves several unusual features which can only lead one to conclude the transaction is a device created merely to move a number of jobs out from under a collective-bargaining agreement (CSXT) onto a nonunion carrier (IOCR). The circumstances surrounding the transaction indicate that the transaction was not motivated by a desire of the parties to realize legitimate business goals. The IOCR was not a logical entity to be considered as the operator. IOCR was clearly used by CSXT to evade its collective-bargaining agreement responsibilities, 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,

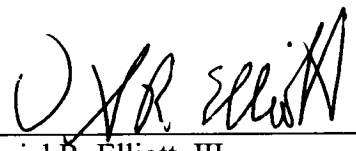


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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing United Transportation Union's Supplemental Petition to Revoke has been served this 23rd day of August, 2005 via first-class, postage pre-paid mail upon the following:

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



Daniel R. Elliott, III