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Robert A. Scardelletti, *International President*

LEGAL DEPARTMENT

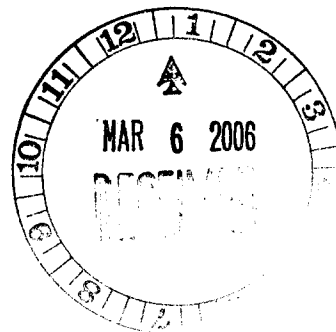
Mitchell M. Kraus, *General Counsel*

Robert A. Scardelletti, II, *Assistant General Counsel*

March 6, 2006

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MARCH 6 2006

2/5/22/8/



VIA MESSENGER

Surface Transportation Board
Attn: STB Ex Parte No. 647
1925 K Street, NW
Washington, DC 20423-0001

Re: STB Ex Parte No. 647

Gentlemen:

Enclosed please find an original and ten copies of the Comments of the Rail Labor Division, Transportation Trades Department, AFL-CIO, in the above-referenced matter.

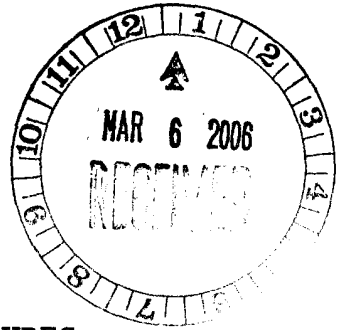
Very truly yours,

Mitchell M. Kraus
General Counsel

MMK:fm

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Ex Parte No. 647

CLASS EXEMPTION FOR EXPEDITED ABANDONMENT PROCEDURES
FOR CLASS II AND CLASS III RAILROADS

COMMENTS OF THE RAIL LABOR DIVISION,
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO

The Rail Labor Division (RLD) of the Transportation Trades Department (AFL-CIO) submits these comments, pursuant to the Board's order of January 19, 2006, Advance Notice of Proposed Rulemaking (Notice) regarding the above-captioned petition for a class exemption. Written and oral testimony have previously been given by the RLD and the United Transportation Union (UTU).¹ This testimony is incorporated herein by reference.

In its prior testimony the RLD and UTU opposed granting of the class exemption. We will not burden the record by repeating the reasons for that opposition but offer these additional thoughts in response to the concerns raised by the Board in its January 19, 2006 Notice.

¹The United Transportation Union has subsequently rejoined the RLD, which is composed of the following other labor organizations: American Train Dispatchers Association; Brotherhood of Railroad Signalmen; International Association of Machinists and Aerospace Workers; International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; Sheet Metal Workers International Association; Transportation Communications International Union; Transport Workers Union of America.

The Notice recognizes that, in passing the ICC Termination Act, Congress rejected a proposal to abandon the traditional balancing test previously used by the ICC in considering abandonment petitions and explicitly required that STB continue using that test. 49 U.S.C. 10903(d). Petitioners are, therefore, requesting this Board through a class exemption to abandon the balancing test mandated by Congress after it rejected a similar legislative proposal. Given this legislative history, it is questionable whether the Board has the authority to grant the requested exemption. At a minimum, Petitioners carry a heavy burden to demonstrate that the request for a broad class exemption is supported by a pressing need serving a legitimate transportation goal.

What is noteworthy about the Petition is the attempt to substitute rhetoric for facts, and that the rhetoric makes little practical sense. Petitioners' central argument is that Class II and III carriers, after making a determination that a line will need to be abandoned, purposefully allow service to deteriorate and raise prices so that shippers are forced to use other modes of transportation. This planned loss of shippers is, according to Petitioners, necessarily designed to meet the Board's balancing test for abandonment. The loss of shippers during the delay between the time when Class II and III carriers first decide to

abandon a line and the actual filing for abandonment results in it being impossible for anyone to revive the line.

It is noteworthy that Petitioners have offered no facts in support of this theory. Significantly, neither in their written testimony, nor in response to questions from the Board members at the August 31, 2005, hearing, were Petitioners able to explain how the abandonment balancing test prevented Class II and III carriers from selling lines they no longer wish to operate without first purposefully planning their deterioration. There is no regulation that would limit such sales for the NLV or any other price. In short, Petitioners' request for a class exemption is not supported either by facts or a theory that can withstand common sense scrutiny.

In addition, and as previously explained by the RLD and the UTU, there is a significant concern that the Petitioners' class exemption could be used by Class I carriers to avoid labor protection, for which it would otherwise be responsible. Class I carriers could sell a failing line to a Class III carrier with few or no employees with the understanding that the Class III carrier would, in turn, abandon the line. That transaction would not be subject to labor protection under existing procedures. The Class III carrier with few if any employees could then abandon the line with the result that affected Class I carrier employees would lose

the labor protection to which they would have been entitled had the Class I carrier abandoned the line.

During the hearing the Board members asked whether a waiting period restricting a Class III carrier's ability to file for abandonment after the purchase of a line from a Class I carrier would alleviate this problem. Petitioners as well as the RLD and UTU indicated a willingness to consider this idea. In its Notice, the Board specifically asked for comments on the merits of a holding period and the length of that holding period.

The RLD proposes that, in the event an exemption is granted, a waiting period of at least three (3) years would be appropriate during which any Class III carrier taking advantage of the exemption would have to refrain from filing for abandonment. Such a waiting period should be sufficient to prevent Class I carriers from using the abandonment procedures as a means to avoid labor protection.

In summary, RLD continues its opposition to a class exemption for the reasons stated above as well as in its and the UTU's prior testimony. In the event the Board were to grant an exemption, we respectfully submit that the Board should require that any Class III carrier must operate a line acquired from a Class I carrier for a period of three (3) years before being eligible to file a petition for abandonment.

Respectfully submitted,



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On behalf of the Rail Labor Division

Date: March 6, 2006

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Comments of the Rail Labor Division, Transportation Trades Department, AFL-CIO, has been served this 6th day of March, 2006, via first-class mail, postage prepaid, upon the following:

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