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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE No. 659



ENTERED
Office of Proceedings

PUBLIC PARTICIPATION IN
CLASS EXEMPTION PROCEEDINGS

Part of
Public Record

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 March 11, 2006, Notice of Proposed Rulemaking (Notice or NPRM), in favor of the above-captioned petition for a change to class exemption notice procedures. The RLD is composed of the following labor organizations: American Train Dispatchers Department, Brotherhood of Railroad Signalmen; International Association of Machinists and Aerospace Workers; International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; National Council of Firemen and Oilers SEIU; Sheet Metal Workers International Association; Transportation Communications International Union; Transport Workers Union of America; and United Transportation Union.

I. SUMMARY OF PROPOSED RULE CHANGES

The Board seeks to modify the procedures for the Ten Exempt Transaction Types, listed in the Notice, as follows: (1) Notice of the proposed transaction would be published in the Federal Register within 16 days of filing; (2) stay petitions would be due at least 7 days prior to the effective date of the exemption; and (3) the exemption, if not stayed, would take effect 30 days after the notice is filed.

These modifications are purely procedural. Nothing else about these class exemptions would be changed. The type of transactions qualifying for the class exemption would not change, nor would the regulations setting forth the information to accompany a notice of exemption. Petitions to revoke an exemption could still be filed at any time.

The Board also proposes similar changes to the notice requirements at 49 CFR part 1150 subparts D and E for transactions involving the creation of a Class I or Class II carrier. As set forth in the proposed regulations, the Board would modify the procedures at 49 CFR 1150.35 and 1150.45 as follows: (1) Notice of a covered transaction would be published in the Federal Register within 16 days of filing; (2) petitions for stay would be due no later than 14 days prior to the effective date of the exemption;¹ and (3) the exemption would take effect 45 days after filing. The 14-day advance notice of intent to file requirements currently in place would not change. As with the proposed procedures for the Ten Exempt Transaction Types, the proposed changes to 49 CFR 1150.35 and 1150.45 are purely procedural.

Only those class exemptions specifically referenced in the Notice would be affected by the NPRM, i.e., 49 CFR part 1150 subpart D; 49 CFR part 1150 subpart E; 49 CFR 1180.2(d)(1); 49 CFR 1180.2(d)(2); 49 CFR 1180.2(3); 45 CFR 1180.2(d)(4); 49 CFR 1180.2(d)(5); 45 CFR 1180.2(d)(6); 45 CFR 1180.2(d)(7); and 49 CFR 1180.2(d)(8). Other class exemptions—for example, those for exempt construction of connecting track (49 CFR 1150.36) and for exempt abandonments and discontinuances of service and trackage rights (49 CFR 1152.50)—would not be affected by this NPRM because they already provide for significantly longer notice periods.

¹As is the case now, replies to stay petitions filed under sections 1150.35 and 1150.45 would be due 7 days after the stay petition has been filed.

II. COMMENTS IN FAVOR OF PROPOSED RULE CHANGES

RLD favors the proposed rulemaking changes for the following reasons: (A) greater practical value procedurally, and (B) greater notice time for the employees to adjust.

A. Greater Practical Value Procedurally

Obviously, the extension of the notice periods to 30 and 45 days from the date notice is filed would provide any interested party adversely affected by an exempted transaction more time to review the filing. When these exempted transactions have taken place in the past under these shorter notice guidelines, the employees and their union representatives (where applicable) have sometimes not been fully apprised of the proceedings at the Board until after they have gone into effect. This failure to have adequate notice prohibits the RLD and its unions from having the opportunity to file a stay in transactions where the unions eventually discover false or misleading information or legal arguments against the consummation of the transaction. Moreover, even in those instances where the unions do find out about the transaction before it goes into effect, the union usually does not have sufficient time to investigate its concerns and adequately research the law. As a result, some of these pressed filings at the Board could be altogether eliminated or better presented with the proposed, longer notice periods.

An important point to note is that once a transaction goes into effect, it is difficult to reverse the chain of events which occur to the affected employees after the loss of their positions, whether through termination or bumping to a new job. The longer notice periods will give the RLD and its unions a better opportunity to stay a transaction before this irreparable harm takes place.

In addition, even in those instances where the transaction is proper under the law, the longer notice period gives the parties (the unions, seller and buyer) more time to talk amongst themselves to hopefully

work out some arrangements to help the adversely affected employees. As a result, these proposed changes clearly help to improve this already difficult process for the employees and unions involved.

B. Greater Notice

Most importantly, these changes would give the affected railroad workers more time to adjust to the transaction's adverse effect. This follows the basic purpose of the Worker Adjustment and Retraining Notification Act ("WARN"). 29 U.S.C. 2100 *et seq.* WARN protects workers, their families, and communities by requiring employers to provide at least 60 calendar days advance written notice of a plant closing and mass layoff affecting 50 or more employees at a single site of employment. Advance notice gives workers and their families some transition time to adjust to the prospective loss of employment, to seek and obtain other jobs, and if necessary, to enter skill training or retraining that will allow these workers to compete successfully in the job market. Employees entitled to notice under WARN include managers and supervisors, as well as hourly and salaried workers. WARN requires that notice also be given to employees' representatives, the local chief elected official, and the state dislocated worker unit.

Similarly, in this situation where there is a line sale, employees may have to move in order to exercise seniority on the selling carrier, seek new employment on the buying carrier, or make a career change. While thirty days is still a short period of time to make these types of decisions, it is still better than the present situation where by the time the employees find out about the transaction, it may already be time for it to go into effect. Accordingly, RLD favors the proposed rule changes because they will give these workers more time to adjust.

CONCLUSION

Based on the foregoing reasons, the RLD supports the proposed rule changes to the notice periods since they can do nothing but make this difficult transitional period smoother for the involved employees and their union representatives, and the Board.

Respectfully submitted,



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