



Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference—International Brotherhood of Teamsters

NATIONAL DIVISION

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DON M. HAHS
National President

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November 27, 2006

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

Re: STB Finance Docket No. 34797, New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway – Construction, Acquisition and Operation Exemption – In Wilmington and Woburn, MA

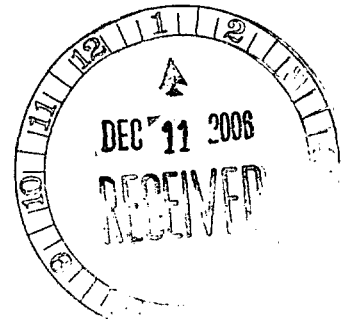
Dear Secretary Williams,

On June 12, 2006, the Board served an Order in the above-referenced matter soliciting comments from interested parties “on what activities would normally be associated with transloading [of construction debris and non-hazardous solid waste] and thus would be part of rail transportation” for purposes of preemption under 49 USC § 10501(b). These comments are submitted by the Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference of the International Brotherhood of Teamsters (“BLET”), which is the duly designated and recognized collective bargaining representative for the craft or class of Locomotive Engineer employed on all Class I railroads. BLET also represents operating and other employees on numerous Class II and Class III railroads and, therefore, the Board’s preemption determination may significantly impact our membership.

As many other parties have noted, the actions of the Board — as well as its predecessor, the Interstate Commerce Commission — in making preemption determinations is well-rooted in nearly a century and a quarter of railroad industry history. From the team tracks of the late Nineteenth Century to modern intermodal, automobile and bulk distribution yards, rail transportation has been far more than mere point to point movement of freight, and is no less so today. In our view, the term “rail transportation” also clearly encompasses transloading of construction debris and non-hazardous solid waste — the “cargo” that is involved in the instant matter.

Because of shifting markets for the disposal of waste, particularly construction debris and contaminated soils, both volumes of traffic and distances moved have dramatically increased. Indeed, it is our understanding that the transportation of waste from the Northeast to the Midwest has grown so significantly that nearly half of at least one railroad’s business involves such transportation. Thus, while the ultimate question in this proceeding is a narrow one, we urge the

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Board to carefully craft its decision to avoid unintended consequences that are contrary to the long history of preemption and an outcome that is not in the public interest.

We concur with the core position of the Association of American Railroads; namely, that the Board should focus its inquiry on the question of whether the activity is “transportation” by a “rail carrier” as those terms are defined in the Interstate Commerce Act, instead of whether the activity could occur even absent rail transportation. We also urge — as The New York, Susquehanna and Western Railway Corporation has done — that the Board reject adopting a “bright-line” rule or other proposals to narrow preemption advocated by some commenters.

To do otherwise would, in our view, severely hamper the industry and act to the detriment of BLET members. It is undeniable that the exercise of preemption powers by ICC/STB since the mid-1880s has been a fundamental element in shaping the railroad industry’s current configuration. To narrow preemption at this time — whether by promulgation of a “bright-line” rule or other “one-size-fits-all” requirement concerning construction debris and non-hazardous solid waste — would trigger three negative results.

First, the railroad industry would be placed in a harshly non-competitive position because of limitations on its ability to adapt infrastructure, as compared to other transportation modes. Second, individual railroads would be forced to comply with what certainly would be a plethora of differing, if not contradictory, standards that are the product of local or regional politics instead of national transportation policy. And, third, the Board would soon find itself deluged with petitions proposing and promoting all variety of other means to narrow preemption in other areas.

It is precisely the exercise of preemption on a broad scope that has prevented this sort of balkanization in the past, and has created the basis for productivity in moving freight that is second to none. Furthermore, given that cross-country rail transportation of spent nuclear fuel and high level radioactive waste will increase dramatically in the coming years, the need for a reaffirmation of preemption is as great now as ever before.

As the Board knows, the BLET has consistently supported strict, aggressive oversight of the industry. Indeed, we have not hesitated to criticize what we believe are abuses and excesses that have arisen since the Staggers Act became law, particularly with respect to non-carriers and exemptions. Accordingly, we strongly urge the Board to continue to apply established principles of preemption and resist the temptation to split hairs in an endless exercise of identifying every conceivable subtask that currently is involved in the transloading of construction debris and non-hazardous solid waste.

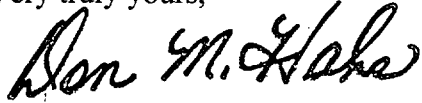
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Very truly yours,

A handwritten signature in cursive script, reading "Don M. Hake". The signature is written in dark ink and is positioned below the text "Very truly yours,".

National President

cc: John P. Tolman, Vice President and National Legislative Representative
Brian P. Gallagher, Member BLET Division 752
Thomas A. Pontolillo, Director of Regulatory Affairs