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JUN 13 2007 BEFORE THE SURFACE TRANSPORTATION BOARD

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TRANSPORTATION BOARD**

In The Matter of:

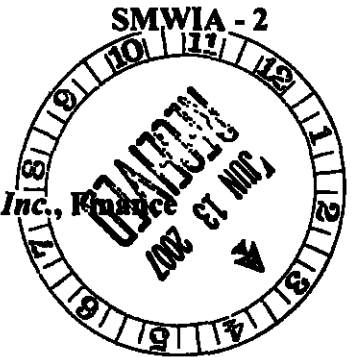
CSX Corp. - Control - Chessie Sys., Inc. and Seaboard Coast Line Indus., Inc., et al.
Docket No. 28905 Sub No. 29

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION

and

CSX TRANSPORTATION, INC.

**Dispute Arbitrated Pursuant to Article 1, Section 11 of the *New York Dock* Protective
Conditions**



**PETITION OF
SHEET METAL WORKERS INTERNATIONAL ASSOCIATION
TO REVIEW DECISION OF AN ARBITRATION COMMITTEE
ACTING PURSUANT TO THE *NEW YORK DOCK* CONDITIONS**

**ENTERED
Office of Proceedings**

JUN 13 2007

Public Record

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**PETITION OF
SHEET METAL WORKERS INTERNATIONAL ASSOCIATION
TO REVIEW DECISION OF AN ARBITRATION COMMITTEE
ACTING PURSUANT TO THE *NEW YORK DOCK* CONDITIONS**

This Petition is filed pursuant to Section 1115.8 of the Board's Regulations. 49 C.F.R. § 1115.8. On May 17, 2007, an Arbitration Committee acting pursuant to Article I, Section 11 of the *New York Dock* Conditions¹, issued its decision in a dispute between CSX Transportation ("CSXT") and the Sheet Metal Workers International Association ("SMWIA") over whether a collective bargaining agreement the union negotiated with the carrier applied to roadway mechanics employed at Richmond, VA. for whom the union is the exclusive collective bargaining representative. The Committee was divided 2-1, with Neutral Member Arbitrator Lynette A. Ross siding with the Carrier Member to comprise the majority; the Employee Member filed a dissent. The Award and Dissent is Attachment A hereto.

The dispute was presented to the Committee because CSXT maintained that despite SMWIA's undisputed designation as the representative for certain employees, a *New York Dock* implementing agreement stripped from those employees the right to have SMWIA bargain on their behalf and limited SMWIA's role to handling grievances. The Committee upheld the carrier's position, despite no provision in the agreement in which the union relinquished any of its representative authority, disavowal by the other union involved of any intent to represent these employees in bargaining, and evidence that the carrier had negotiated an agreement with yet another union in which relinquishment of that union's bargaining rights was explicitly provided. The Committee's action was not authorized by the governing Implementing Agreement or the *New York Dock* conditions, nor was it necessary to the transaction originally

¹ *New York Dock Ry --Control--Brooklyn Eastern Dist*, 360 I.C.C. 60, 84-90 (1979) ("*New York Dock*" or "*NYD*"), *aff'd sub nom New York Dock Ry v United States*, 609 F.2d 83 (2d Cir. 1979).

authorized by the Interstate Commerce Commission.² Further, the Award constitutes egregious error. Accordingly, we ask the Board to set aside the Award.

The Parties

1. CSXT is a corporation engaged in the interstate transportation of freight by rail. It is a "carrier" as defined in the ICC Termination Act of 1995 ("ICCTA").

2 SMWIA is the exclusive collective bargaining representative for employees of CSXT employed in the craft or class of sheet metal workers, including those occupying positions as roadway mechanics.

The Events Leading to the Arbitration

Negotiation of the Implementing Agreements

3. On August 3, 1987, CSXT served SMWIA and the International Association of Machinist and Aerospace Workers ("IAM") with notice of its intent to coordinate the work of CSXT's Engineering Department (M of W) Mechanics employed on the former Chessie System, into several facilities SMWIA and IAM both represented such mechanics on the former Chessie System. CSXT and the two unions reached a Memorandum of Agreement on December 9, 1987, identified as "CSXT Labor Agreement No. 1-229-87" (SMWIA Arb. Ex. 5) ("the 1987 Implementing Agreement"), implementing this coordination. Article I provided for "dovetail[ing] the seniority of the employees on the separate district seniority rosters into a consolidated seniority district roster... known as the former 'Chessie System' seniority roster...."

² CSX Corp - Control - Chessie Sys , Inc. and Seaboard Coast Line Indus , Inc . Finance Docket No. 28905.

Article V of the Agreement provided, inter alia:

A. All agreements currently in effect covering the Engineering Department (MofW) Mechanics employed upon the former Chessie System (B&O and B&OCT) Carriers are hereby abrogated and upon the effective date of this agreement all such Mechanics will be subject to the former C&O Chesapeake District Agreement, including all amendments thereto, and all other agreements, understandings, practices, and other contractual arrangements currently in effect for those C&O Chesapeake District Engineering Department (MofW) Mechanics.

B The provisions set forth herein and agreed upon are meant to supersede similar provisions in the current C&O Chesapeake District Agreement as that agreement existed immediately prior to the effective date of this agreement. In the event that any provision of this agreement conflicts with a provision of the existing agreement the provisions of this agreement will apply. Where no such conflict exists the applicable provisions of the C&O Chesapeake District Schedule Agreement (including the MofW Supplement thereto, as amended) and all other agreements remain in full force and effect.

This Implementing Agreement also included a number of side letter agreements. In Side Letter No 11, the parties agreed that

all IAM/SMWIA represented employees currently holding positions (and those subsequently filling positions) in the Maintenance of Way (Engineering) Department on the former C&O, B&O, and B&OCT carriers will, as a result of this agreement, become employees of the former C&O Railway Company and be subject to all agreements, including amendments thereto, *in effect* between the IAM and the former C&O *as of the date of the coordination*

(Emphasis added) Side Letter No. 12 provided that “[t]he incumbent mechanic will continue his present union affiliation and representation status should he be awarded a position in the coordinated operation.” In other words, each union would continue to represent its own members, just as it always had previously, but the agreement they would be administering, and that would govern the employees’ terms and conditions of employment, would be the IAM/C&O agreement that was in effect at that time.

4. In 1992 the Carrier notified SMWIA, IAM, and the Brotherhood of Maintenance of Way Employes (“BMWE”), which also represented some CSXT Engineering Department

mechanics at a different location. of its desire to once again coordinate its Engineering Department (M of W). The carrier and the three unions entered into an agreement, referred to as "CSXT Labor Agreement No. 12-126-92" (SMWIA Arb Ex. 6) ("the 1992 Implementing Agreement"), which governed the coordination of all of the Engineering Department's equipment repair work into a single location, a former RF&P facility. (Art. V, p. 6). It also coordinated the seniority rosters of its Roadway Mechanics represented by SMWIA, IAM, and BMWE. into the "CSXT Engineering Department Mechanics Roster," (Art. II, pp. 2-3), and extended the *New York Dock* protective conditions to the affected Roadway Mechanics (Art. I, pp. 1-2). The Agreement also provided that the Engineering Department Equipment Repair Work would thereafter be performed under the IAM and former C&O Railway Company Agreement (Chesapeake District, reprinted June 1, 1969) ("1969 Agreement") (Art. III, p. 3). The 1969 Agreement is the same agreement that covered employees represented by the IAM and SMWIA since the 1987 Implementing Agreement became effective

Furthermore, the 1992 Implementing Agreement provided, at Article X ("Representation"), p. 12.

A. The incumbent Roadway Mechanics represented by the IAM&AW, BMWE, and SMWIA, will continue their present union affiliation and representation status in the coordinated operation unless changed by applicable law.

B. Any settlement of a claim or grievance with any of the General Chairmen or designated representatives involving a C&O (Chesapeake District) Agreement Rule will not constitute an interpretation binding on the IAM&AW General Chairman of the C&O Committee.

Finally, Article XI, Section G (p. 13), stated "[t]his Agreement shall be construed, for all intent and purposes, as a separate Agreement between CSXT Transportation, the B&OCT, the RF&P, and each of the Organizations signatory hereto."

Post-Implementing Agreement Events

5. At the same time as the parties entered into CSXT Labor Agreement No. 12-126-92, CSXT and the IAM negotiated a new system agreement, signed on September 7, 1994 ("1994 IAM System Agreement"). SMWIA Arb. Ex. 7. Neither SMWIA nor BMWIE were signatories to that Agreement.

6 Through a letter agreement between CSXT and SMWIA, dated August 9, 2001 (SMWIA Arb. Ex. 8), the parties agreed to change the CBA that applied to, and that SMWIA was administering for, SMWIA members from the 1969 Agreement to the 1994 IAM System Agreement:

[T]he controlling agreement regarding Roadway Mechanics, currently referred to in Article III as the IAM&AW former C&O Railway Company Agreement (Chesapeake District, reprint June 1, 1969) will be replaced with the Agreement between CSXT Transportation, Inc., and its Employees represented by the [IAM&AW] (District No. 19) effective October 1, 1994.

7. On January 16, 2006, CSXT entered into an agreement with the BMWIE (SMWIA Arb. Ex. 9), in which BMWIE also agreed that its members would be covered by the 1994 IAM Agreement, which would replace the 1969 Agreement. Unlike the SMWIA's letter agreement, however, BMWIE's agreement also provided that "[t]he BMWIE recognizes that it will not be party to any future negotiations concerning the IAM&AW Agreement (District 19) dated October 1, 1994." In consideration for this agreement, CSXT provided, inter alia, that BMWIE-
represented

Mechanics will receive the same pay, including any skill or pay differentials currently or subsequently provided mechanics covered under the IAM&AW National Agreement, the October 1, 1994 IAM&AW Agreement, *or any subsequent agreement or arrangement effecting the IAM&AW mechanic's pay rates.*

(Emphasis added)

8. The next round of collective bargaining between SMWIA and CSXT began on November 1, 1999, when the National Carriers' Conference Committee ("NCCC") notified SMWIA that "for the 2000 wage, rules and benefits round of collective bargaining" CSXT intended to bargain with other carriers "on a concerted basis with respect to their employees represented by [SMWIA]." NCCC included a notice to SMWIA of the issues that CSXT intended to address in that bargaining. SMWIA Arb Ex. 1.

9 On December 15, 1999, SMWIA responded to NCCC and served on CSXT, through NCCC, SMWIA's Section 6 proposals for concurrent handling with the Carrier's notice. Among SMWIA's proposals was a 7% annual wage increase for all employees represented by SMWIA. SMWIA Arb. Ex. 2.

10. On January 6, 2000, CSXT confirmed its intent to bargain on a multi-carrier basis with SMWIA for all of the CSXT employees represented by SMWIA. SMWIA Arb. Ex. 3.

11. Neither CSXT nor SMWIA excluded any of the employees represented by SMWIA from their Section 6 notices or their subsequent bargaining.

12. On April 4, 2005, SMWIA arrived at a new national wage and rules agreement with the NCCC, acting as CSXT's bargaining agent. (SMWIA Arb. Ex. 4). The agreement specifically described the effect it would have on wages and terms and conditions of employment of employees whom SMWIA represents:

ARTICLE VII - GENERAL PROVISIONS

Section 2 - Effect of this Agreement

(a) The purpose of this Agreement is to fix the general level of compensation during the period of the Agreement, and to settle the disputes growing out of the notices dated November 1, 1999 and served upon the organization signatory hereto by the carriers listed in Exhibit A on that date, and

notices dated on or subsequent to November 1, 1999, served by the organization upon such carriers. This Agreement shall be construed as a separate agreement by and on behalf of each of said carriers and their employees represented by the organization signatory hereto, and shall remain in effect through December 31, 2004 and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

Id. CSXT was one of the participating carriers referred to as being listed on Exhibit A. There is no provision in the 2005 agreement limiting its application to only certain of CSXT's employees represented by SMWIA.

13. SMWIA demanded that CSXT apply the terms of the April 4, 2005, national agreement to the roadway mechanics employed at Richmond, just as the carrier had to its other employees represented by SMWIA. The carrier refused, arguing that these employees are covered only by agreements negotiated between CSXT and IAM.

14. Thereafter, retired IAM General Chairman J.A. Coker, and retired IAM General Chairman R.L. Elmore, both of whom negotiated and signed the 1994 IAM System Agreement for the IAM, wrote to SMWIA General Chairman Larry Crawford, that the IAM did not consider itself to have been bargaining for any SMWIA-represented workers in any post-1992 bargaining. They stated:

At the signing of the CSXT Labor Agreement, No. 12-126-92 it was not the intent of the IAM&AW to include the SMWIA represented roadway mechanics in the negotiation of wages and benefits of the IAM&AW contract negotiations. As with the previous historical agreements and practices each Organization negotiates wage and benefit packages for their respective members.

See SMWIA Arb. Exs. 11 and 12. Current IAM General Chairman Ron Fink confirmed in a letter to SMWIA General Chairman Crawford that this is his understanding too. SMWIA Arb. Ex. 13.

15. General Chairman Crawford shared this information with the carrier, but CSXT still refused to apply the terms of the 2005 SMWIA Agreement to SMWIA members employed at CSXT's Maintenance of Equipment (Engineering) Department at the Carrier's shop facility in Richmond, Virginia and employed as field mechanics across the property.

The Proceedings Before the Section 11 Committee

16 Unable to resolve their differences, the parties agreed to establish both a Section 11 Committee and a Public Law Board ("PLB") that would conduct a joint hearing and issue a single award. Arbitrator Lynette Ross was selected by the parties to serve as the neutral member of both the PLB and the Section 11 Committee. The parties agreed on the contract interpretation question to be presented to the PLB³, but they were unable to agree as to the question to be presented to the Section 11 Committee. SMWIA Arb. Submission, Appendix A. Therefore, each party presented its own *NYD* question

The SMWIA presented the following question:

Is the Carrier correct in denying the Sheet Metal Workers employed under the CSXT Labor Agreement No. 12-126-92 the wage increases that were negotiated under the Sheet Metal Workers International Association's National Agreement through negotiations with the National Carriers Conference Committee signed on May 4, 2005?

The Carrier asked the Committee to decide

Is CXT correct that, pursuant to the New York Dock implementing agreement designated CSXT Labor Agreement No. 12-126-92, the wage and related adjustments to be applied to roadway mechanics are those adjustments that have

³ Has the Carrier violated the April 4, 2005 national agreement between SMWIA and the National Carriers Conference Committee, including CSXT, by not applying the wage increases and benefit changes contained therein to Roadway Mechanics employed by CSXT and represented by SMWIA? In deciding this question, the Board shall have jurisdiction to interpret and apply the 1993 New York Dock implementing agreement known as CSXT Labor Agreement No 12-126-92 insofar as it applies to employees represented by SMWIA.

been subsequently agreed to in national bargaining between CSXT and the IAM instead of such changes agreed to by CSXT and SMWIA?

Id

17. The Committee voted 2-1 to sustain the Carrier's position. The majority of the Committee held that "with respect to Article III(A), if the parties had intended to restrict the scope of the 1969 IAM-C&O Agreement to cover only work practices, then they would have negotiated limiting language to that effect [and] that if the parties had intended that the wage provisions contained in the SMWIA and BMWI Agreements should apply to the roadway mechanics under their representation, then language providing for that situation would also have been crafted " Award at 22. The majority determined that there was "no language which reflects intent by the parties that the IAM Agreement would be applied in a limited fashion, i.e., for the narrow purpose of 'work rules only' " Id. at 21-22. According to the majority,

Article V(C) [of the 1969 IAM Agreement], which addresses the applicable rate of pay for employees holding shop positions, states, in pertinent part, "Shop Mechanics will be paid on an hourly basis...in accordance with the schedule Agreement " (Emphasis added.) When Article III(A), specifying the implementation of the 1969 IAM-C&O Agreement, is read in conjunction with Article V(C), there is clear support for the Carrier's position that the 1993 *Implementing Agreement unequivocally unified the mechanics under a single collective bargaining agreement*

Id. at 22.

The Committee held further that the language contained in Article X(A) only provides "that the SMWIA may continue to represent roadway mechanics from the standpoint of union affiliation [and] does not accord the SMWIA the broader representation right to negotiate wages for the roadway mechanics covered by the IAM Agreement, as established through Article III(A)." Id. at 23. The result of this analysis was a conclusion that "the economic terms contained in the 2005 SMWIA National Agreement. are not applicable to the SMWIA-

represented roadway mechanics employed in the Carrier's coordinated operation." Id. at 23-24.

18. Arbitration Committee Employee Member Crawford dissented

because the majority has gone well beyond its jurisdiction and eliminated the right of the employees who chose SMWIA to be their representative to have SMWIA bargain wages and benefits for them. Instead, despite clear language in the Implementing Agreement to the contrary, the majority reached the unjustified and disturbing conclusion that by agreeing that basic terms in a schedule agreement between the carrier and the IAMAW would apply to the sheet metal workers as well, SMWIA gave up the right to ever again negotiate improvement in any of those terms, or the wages and benefits, of the employees that SMWIA retains the right to represent.

Dissent at 1. Crawford pointed out that

the award deprives these employees of their RLA-protected right to choose whichever representative they want and substitutes the IAMAW for the SMWIA for collective bargaining purposes over the objection of both the SMWIA and the IAMAW. This was beyond the Board's jurisdiction and conflicted with both the language the parties adopted in the implementing agreements and the parties' time-honored practice under those agreements.

Id. He further pointed out that language in Article X - "The incumbent Roadway Mechanics represented by the IAM&AW, BMWE, and SMWIA will continue their present union affiliation and representation status in the coordinated operation unless changed by applicable law" - meant that only a change in the law would change how the SMWIA representation status would be altered and that no change in the law to that effect had ever occurred. Id. at 2.

He pointed out that a prior arbitration award confirmed that only SMWIA, not IAM, could change the underlying rules agreement insofar as it applied to SMWIA-represented employees and that the implementing agreement confirmed the understanding of the parties that the on-property agreements would be deemed "separate agreements" between each union and the carrier subject to interpretations that would be binding only on the union with which an interpretation were to be reached Id. at 3.

Finally, Employee Member Crawford stated (at 3):

What CSXT sought when it entered into the bargaining over the implementing agreement was a uniform set of rules that would apply to the roadway mechanics SMWIA agreed to that by adopting as its own the same rules set out in the IAMAW agreement; but SMWIA did not by that agreement foreclose itself from ever again seeking to change any of those rules. Similarly, it never relinquished the right to bargain over changes in its members' wages and benefits

ARGUMENT

THE COMMITTEE EXCEEDED ITS JURISDICTION AND COMMITTED EGREGIOUS ERROR WHEN IT ABOLISHED SMWIA'S COLLECTIVE BARGAINING RIGHTS

The Applicable Standard of Review

The Board has described the standard of review applicable to *New York Dock* arbitration awards as follows:

Under 49 CFR 1115.8, the standard for review of arbitration decisions is provided in Chicago & North Western Tptn. Co -Abandonment, 3 I.C.C 2d 729 (1987) (Lace Curtain), aff'd sub nom. International Broth. of Elec. Workers v. ICC, 862 F.2d 330 (D.C. Cir 1988). Under Lace Curtain, we accord deference to arbitrators' decisions and will not review "issues of causation, calculation of benefits, or the resolution of factual questions" in the absence of egregious error. Review of arbitral decisions has been limited to "recurring or otherwise significant issues of general importance regarding the interpretation of our labor conditions." Id. at 736 We generally do not overturn an arbitral award unless it is shown that the award is irrational or fails to draw its essence from the imposed labor conditions or it is outside the scope of authority granted by the conditions.

The Burlington Northern and Santa Fe Railway Company - Petition for Review of Arbitration Award, STB Finance Docket No. 32549 (Sub No. 24) (September 24, 2002).

This case presents a "significant issue[] of general importance regarding the interpretation of [the Board's] labor conditions." As described in detail below, the Award must be set aside because, by depriving SMWIA of its full representative authority and binding SMWIA-represented members to agreements negotiated by another employee organization, to

which they do not belong and which owes no obligations to them, over their objection, the Award fails to draw its essence from the *New York Dock* conditions. Because the conditions give the Committee no jurisdiction to limit a duly-designated collective bargaining representative's bargaining authority, the Committee's Award permitting CSXT to dishonor its national wage agreement with SMWIA exceeded the Committee's jurisdiction. Furthermore, if the Award is deemed to be a "resolution of [a] factual question," the Committee committed an egregious error.

The STB has recognized that "existing law .. provides that RLA procedures apply to modifications of rates of pay and rules (i.e., matters which are outside the scope of modification to CBA's which can be made by an implementing agreement) " *CSX Corporation--Control--Chessie System, Inc. and Seaboard Coast Line*, Finance Docket No. 28905 (Sub-No. 26), 1996 WL 203539 (April 15, 1996). By its decision, the Committee refused to honor an agreement that SMWIA negotiated with CSXT under the procedures of the RLA to cover all of CSXT's employees for whom SMWIA is the duly-designated representative. Instead, by applying to the SMWIA's members a wage agreement that IAM negotiated solely for IAM's members, the Committee awarded to IAM the right to act as collective bargaining representative for the group of roadway mechanics heretofore represented by SMWIA.

But the Committee was without the authority to make such an award. The sole authority to determine what organization is entitled to act as collective bargaining representative for a group of carrier employees is reserved to the National Mediation Board ("NMB"). By its award, the Committee improperly usurped authority that belongs solely to the NMB. The Committee did not find that this result was necessary to effectuate the transaction that was originally approved by the ICC

**Questions Concerning Employees' Rights to Choose Their Representatives
Are Beyond the Jurisdiction of a *NYD* Section 11 Committee**

When there is a dispute amongst a carrier's employees as to who should be their representative, Congress has specifically authorized the National Mediation Board ("NMB") – and only the NMB -- to designate which organization properly serves as the collective bargaining representative for any group of carrier employees. Section 2, Ninth of the Railway Labor Act states:

If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter.

45 U.S.C. §152, Ninth. As the Supreme Court emphasized over 60 years ago, Congress gave the NMB the sole authority to make this determination precisely because it is of such crucial importance:

[Section 2, Ninth] was introduced into the Act in 1934 as a device to strengthen and make more effective the processes of collective bargaining. . . . Commissioner Eastman, draftsman of the 1934 amendments, explained the bill at the congressional hearings. He stated that whether one organization or another was the proper representative of a particular group of employees was 'one of the most controversial questions in connection with labor organization matters.' Hearings, Committee on Interstate & Foreign Commerce, House of Representatives, on H.R. 7650. 73d Cong. 2d Sess. P. 40. He stated that it was very important 'to provide a neutral tribunal which can make the decision and get the matter settled.'

Switchmen's Union of North America v National Mediation Board, 320 U.S. 297, 302-03 (1943).

Here, the employees long ago designated SMWIA, and CSXT and its predecessor roads have long recognized SMWIA, as the exclusive representative of the Engineering Department employees at issue in this case. Pursuant to that designation and recognition, SMWIA has served as the employees' representative for all purposes, including both contract negotiation and contract administration.

The only way for an organization's status as statutory representative to be changed is through an NMB representation proceeding or for the organization to surrender its status voluntarily. See, e.g., *IAM v. Alitalia Airlines*, 600 F. Supp. 268, 275 (S.D.N.Y. 1984), *aff'd* 753 F.2d 3 (2nd Cir. 1985). A *New York Dock* Arbitration Committee has no authority to alter that status. Thus, the Section 11 Committee had no jurisdiction to make any changes in SMWIA's status as the roadway mechanics' statutory representative. Yet that is precisely what it did. By ruling that SMWIA may only represent its members in grievance handling, and that only the IAM is empowered to negotiate a wage agreement for the SMWIA members, the Committee eviscerated SMWIA's representative status, reducing the union from a full representative to something far less. This is not an action warranted by *New York Dock* or the ICC's approval of the CSXT transaction some 25 years ago, which is the authority on which CSXT relied to undertake the transaction that led to the current dispute.

The Committee's holding is also inconsistent with this Board's ruling in *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company - Control and Merger - Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company*, STB Finance Docket No. 32760 (Sub-No. 22) (Arbitration Review) 1997 WL 351468 (June 26, 1997). There, the union asserted that a *NYD* arbitrator had wrongly determined who from the

union would represent the employees in future bargaining. The Board held that the arbitrator could not have meant to dictate who would be the representative in future bargaining for the employees affected by the transaction because that was beyond his power. "Plainly, the arbitrator did not purport to, nor could he, dictate representation for future bargaining purposes." Just as the Board confirmed that a *NYD* arbitrator may not direct who is the employee's representative, so too should it confirm that a Section 11 Committee may not limit the authority of an acknowledged union representative or restrict the subjects that such representative may raise in bargaining.

**The Section 11 Committee's Award is Not Consistent
with the Implementing Agreement.**

The Implementing Agreement recognizes the continuing representative status of SMWIA for all purposes, without limitation. It provides "The incumbent Roadway Mechanics represented by the IAM&AW, BMW, and SMWIA, will continue their present union affiliation and representation status in the coordinated operation unless changed by applicable law." See p. 5. *supra*. And the IAM has definitively stated that it has no intent or desire to collectively bargain as the SMWIA members' representative or otherwise on their behalf.

Section 2. Fourth of the RLA guarantees employees "the right to organize and bargain collectively *through representatives of their own choosing*." 45 U.S.C. §152, Fourth (emphasis added). The group of roadway mechanics at issue in this matter chose the SMWIA as their representative to bargain collectively for them; they did **not** choose the IAMAW. The Committee's award, however, ignores the choice made by these employees. It strips them of their RLA-guaranteed right to choose whichever representative they want and substitutes the

IAMAW for the SMWIA for collective bargaining purposes over the objection of both the SMWIA and the IAMAW

RLA Section 2, Ninth contains no limits on the authority of a duly designated employee representative. Rather, an organization duly designated to be the “representative” of a group of carrier employees has the right and the duty to collectively bargain on behalf of those employees over what the terms of an agreement will be as well as to represent them in disputes over what the terms of an agreement mean and how they should be applied. Section 1, Sixth states “The term ‘representative’ means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.” 45 U.S.C. §151, Sixth. There are no limitations in that definition.

When CSXT and SMWIA served their respective Section 6 notices on each other, they initiated a dispute “concerning rates of pay, rules, or working conditions.” Such disputes are settled through the procedures established in Section 6 45 U.S.C. § 156. That Section requires that “carriers and representatives of the employees shall give at least thirty days’ written notice of an intended change in agreements affecting rates of pay, rules, or working conditions” and requires further that the “representatives of the parties interested in such intended changes” must meet in conference regarding the proposed change to collective bargaining agreements within 30 days. Id. Thus, an organization designated as a “representative” pursuant to the RLA is expressly authorized to represent the employees in collective bargaining.

SMWIA’s roadway mechanic members did not authorize IAM to represent them in that collective bargaining, nor did CSXT limit its bargaining proposals to all SMWIA members

except the roadway mechanics. The resulting 2005 Agreement did contain exclusions and exceptions⁴, but not as to the roadway mechanics.

The Award in this case improperly stripped SMWIA of its statutory authorization. Pursuant to the Committee's decision, SMWIA – despite explicit recognition in the implementing agreement that SMWIA is and will continue to be the duly designated representative of certain of the roadway mechanics – has been barred from negotiating with the carrier concerning their "rates of pay, rules, or working conditions." This startling ruling goes well beyond anything contemplated by the ICC when the transaction was approved and the *NYD* conditions were imposed. This kind of change by a Section 11 Committee has ramifications well beyond this dispute. It presents a significant question of broad importance that this Board should address and correct.

The Committee considered the implementing agreement language regarding continuing representative status to be insufficient to preserve the right to represent in all respects:

It simply provides in plain verbiage that the SMWIA may continue to represent roadway mechanics from the standpoint of union affiliation. The existing language does not accord the SMWIA the broader representation right to negotiate wages for the roadway mechanics covered by the IAM Agreement, as established through Article III(A), we hold.

Award at 23. This conclusion constitutes egregious error. It deprives the contractual phrase "representation status" of universally-accepted meaning. Indeed, the Committee's award removes that phrase from the Implementing Agreement altogether.

The Committee's decision thus does not find its basis in the actual language of the

⁴ For example, Side Letter No. 5 provides that certain health insurance provisions "are not applicable to employees covered by the Agreement who reside in Canada." And certain railroads limited their participation to certain issues. SMWIA Arb. Ex. 4.

Implementing Agreement. To the contrary, the Committee was able to reach its decision only by ignoring one of the specific terms that the parties chose to include in the Agreement. "It is axiomatic in contract construction that an interpretation which tends to nullify or render meaningless any part of the contract should be avoided because of the general presumption that the parties do not carefully write into a solemnly negotiated agreement words intended to have no effect." *John Deere Tractor Co.*, 5 LA (BNA) 631, 632 (Updegraff 1946) Its decision had "the effect of nullifying a part of the language agreed upon by the Parties, and would in effect delete it from the Contract, and thus the arbitrator is powerless to do " *Maritime Service Committee, Inc.*, 49 LA (BNA) 557, 562 (Scheiber 1967)

The Committee cloaks its holding with the statement that the agreement language "is straightforward and clear." Award at 23. But in fact, the Committee has invented a diminution in representative rights that Article X in no wise contemplates. There certainly is nothing in the "clear" language of the Agreement that said the limits imposed by this award were either stated or implied. In fact the opposite is clear. Article X clearly stated that the representation status that existed before both the 1987 and 1993 agreements (both contain the same language) were implemented would remain in effect "unless changed by applicable law." No law has changed the representation of the SMWIA members. The Committee did.

As dissenting Employee Member Crawford observed:

The sheet metal workers are not members of the IAMAW and don't vote on what IAMAW negotiates. So, by this Award, they have been deprived of the right to have any input into what is negotiated vis-à-vis the wages and benefits that will apply to them and they have no say as to when and how the agreement that governs them is changed

The record reflects that the other union party to the 1992 Implementing Agreement - BMWE - did, by separate understanding after the Implementing Agreement became effective,

surrender the collective bargaining aspect of its role as representative. Certainly if the Implementing Agreement had already accomplished that, there would have been no need for CSXT to negotiate something further to achieve it. In the case of SMWIA, the Carrier never negotiated a similar surrender. The Arbitration Committee did not even address this distinction.

Other record evidence also shows that CSXT well knew how to negotiate a term that would have limited SMWIA's "representation status" to handling claims and grievances. The Carrier had done just that with other unions in prior coordinations. In an implementing agreement CSXT reached with the Brotherhood Railway Carmen and the Transport Workers Union of America, both of which represented carmen on Conrail, to coordinate carmen's work following the Conrail acquisition, the Carrier and those two unions agreed that, thereafter, for purposes of collective bargaining, BRC alone would represent the carmen. CSXT Arb. Ex. TT. 16-17. Unlike that situation, CSXT here chose to enter into an Agreement with no such provision to limit SMWIA's representative activities.

Further proof comes from CSXT's Side Letter Agreement with the IAM that the IAM system agreement that was under negotiation at that time, if ratified, "[would] replace the [1969 IAM Agreement] for IAM&AW represented employees working under [the] coordination." SMWIA Arb. Ex. 6. It obtained no such Side Letter with SMWIA up front. Only after the IAM agreement was amended did the Carrier obtain SMWIA's consent to apply the changes to its members (SMWIA Arb. Ex. 8), and then only after losing an arbitration in which the Carrier asserted it did not need SMWIA's consent to apply IAM-negotiated changes. SMWIA Arb. Ex. 14.⁵

⁵ In Case 1 Award 1, PLB 6387 (Muessig) rejected CSXT's contention that changes the IAM
(continued. .)

Additional evidence that the Committee erred grievously comes from Subsection B of Art. X of the Implementing Agreement ("Any settlement of a claim or grievance... will not constitute an interpretation binding on the IAM&AW."). This provision further demonstrates the parties' recognition that each of the unions retained the autonomy to take whatever positions they respectively wanted without prejudicing a different position by the other

Further evidence of the Committee's flawed analysis is this:

The significance of the August 9, 2001 letter (signed on August 23, 2001) is heightened by the fact that, chronologically, the SMWIA and CSXT made that agreement after the NCCC and SMWIA had exchanged their Section 6 notices (Org. Exhibits 1, 2 and 3) and, presumably, while the bargaining for the 2005 Agreement was already under way. Moreover, a careful reading of the SMWIA's December 15, 1999 response to the NCCC's Section 6 Notice, of November 1, 1999, reveals no proposal by the SMWIA to amend CSXT Labor Agreement No. 12-126-92 in any manner whatsoever.

Award at 24. Despite its earlier holding that SMWIA surrendered the right to bargain wages for these employees in 1993, the Committee chides the union for not including in its Section 6 Notice a proposal to change this particular agreement. But it is obvious that SMWIA's Section 6 Notice sought to change *all* existing agreements applicable to all SMWIA-represented workers, just as the Carriers' notice was intended to amend all of those same agreements to effect the changes the carriers sought. Despite the Committee's assertion that it engaged in a "close reading of the April 4, 2005 Mediated Agreement between the NCCC and SMIWA [which] revealed that the CSXT and SMWIA undertook no changes to the 1993 Implementing

⁵(...continued)

made to its agreement were binding on SMWIA. (SMWIA Arb. Ex. 14). In that situation, the PLB pointed out that no party to the 1992 implementing agreement could effect a change that applied to any other without that other party's consent. CSXT's failure to obtain SMWIA's consent to the anticipated IAM changes prevented the Carrier from applying them to the SMWIA-represented workers. The Committee simply ignored this contrary authority.

Agreement," the 2005 Agreement actually provides for all wage agreements governing SMWIA-represented workers to be amended to increase those workers' wages by the percentages described.

In the end, the Committee's Award creates the anomalous result that employees may not enjoy the increases in wages and benefits that their union bargains on their behalf and precludes their union from attempting to negotiate changes to agreement provisions that they deem should be altered due to changed circumstances. It frees the Carrier to turn its back on their elected representative, despite the requirements of the Railway Labor Act that all disputes affecting them be resolved expeditiously in conference with their representative. The agreement no longer is "separate" between them (through their representative) and the Carrier. The Committee has made it an agreement between them and their Carrier which only some other representative can change.

The record clearly demonstrates the truth in the observation of the dissenting Committee member:

What CSXT sought when it entered into the bargaining over the implementing agreement was a uniform set of rules that would apply to the roadway mechanics. SMWIA agreed to that by adopting as its own the same rules set out in the IMAW agreement: but SMWIA did not by that agreement foreclose itself from ever again seeking to change any of those rules. Similarly, it never relinquished the right to bargain over changes in its members' wages and benefits.

The Committee's failure to accept this is fatal to its holding.

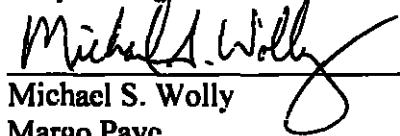
REQUEST FOR RELIEF

What the Committee did in this case was to trample the SMWIA-represented employees' right to have their designated representative continue to exercise the full authority of an RLA

representative. This result was not necessary to the transaction originally approved by the ICC, was not consistent with the express language of the implementing agreement or the subsequent conduct of the parties in the intervening decade, and turned on an egregiously erroneous view of the facts. Under the *Lace Curtain* standard of review, this is precisely the kind of arbitration committee action that should not stand

For these reasons, SMWIA respectfully requests that the Board review and reverse the award issued by the Committee. CSXT should be directed to apply the wage increases that SMWIA negotiated with the Carrier to the employees on whose behalf this claim was presented.

Respectfully submitted,



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Margo Pavc

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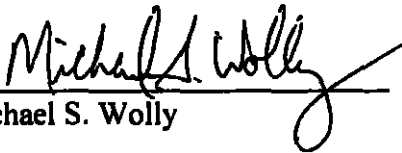
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Attorneys for SMWIA

VERIFICATION

I, Michael S Wolly, declare under penalty of perjury that the facts set forth in the Petition are true and correct. I served as counsel for SMWIA in the *New York Dock* arbitration proceeding that resulted in the award that SMWIA seeks to have reversed and I therefore certify that I am qualified and authorized to file this pleading.

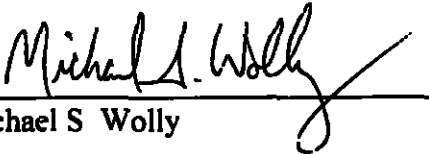
/s/ 
Michael S. Wolly

Dated: June 13, 2007

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Petition was served upon counsel for CSX Transportation, Inc.. at the following address by first class mail, postage prepaid this 13th day of June 2007:

Ronald M Johnson
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Ave NW
Washington, DC 20036

/s/ 
Michael S Wolly