



U.S. Department of
Transportation
Office of the Secretary
of Transportation

General Counsel

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

December 21, 2007

Vernon A. Williams, Secretary
Surface Transportation Board
395 E St., S.W.
Washington, D.C. 20423-0001

Re: Finance Docket No. 35091

Dear Secretary Williams:

It has come to the attention of the United States Department of Transportation ("DOT" or "Department") that a party to the above proceeding may have attempted to improperly utilize railroad police authority. Pacific Unified Railroad Corporation ("Pacific") recently filed a Verified Notice of Exemption in the above docket, ostensibly to obtain trackage rights from another rail carrier. In response, the Union Pacific Railway Company ("UP") raised serious questions about the *bona fides* of Pacific as a railroad and its true intentions, and sought a stay in the effectiveness of the exemption until these questions are resolved. Verified Petition, filed December 13, 2007. Pacific subsequently sought to withdraw its notice, letter request filed December 18, 2007, and the Surface Transportation Board ("STB" or "Board") later permitted the withdrawal. Decision served December 21, 2007. Nonetheless, DOT's continuing responsibility for proper implementation of Federal law with respect to railroad police officers prompts us to submit this letter and to advise the Board of actions we are taking.

Federal law directs rail carriers wishing to designate employees as railroad police officers to comply with state commissioning requirements. 49 U.S.C. § 28101. ¹ Pursuant to applicable regulations, properly commissioned individuals may protect railroad employees and passengers, property, cargo, and rail movements vital to national defense. Id. The realities of interstate rail carriage prescribe that the authority of railroad police not be cabined by the boundaries of any one state. Id.

Unfortunately, the substantial power given to railroad police officers occasionally attracts those desiring to improperly use police authority. Sham railroads have reportedly been established to cover for illegal activities and to enable unqualified individuals to obtain law enforcement credentials.² Thus, UP's allegations that Pacific is not a

^{1/} DOT regulations implementing this provision specify that prospective railroad police officers must meet state "licensing requirements" and receive appropriate "training." 49 C.F.R. Part 207.

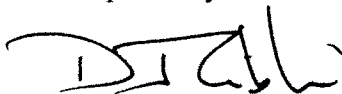
^{2/} See, e.g., "Phony Railroads: Their Ticket to Set Up Fake Forces," Chicago Sun-Times, January 9, 2006.

legitimate railroad, that one of its principals has a criminal history involving impersonation of a police officer, and that Pacific's true goal is to obtain state police authority without proper training or other applicable requirements, must be taken seriously.

DOT is and has been concerned about the abuse of railroad police authority. Earlier this year, in response to a Congressional mandate DOT sent to all States and the District of Columbia model legislation crafted to prevent the misuse of railroad police authority.³ The model legislation would require prospective railroad police officers to undergo background checks, submit fingerprints to the Federal Bureau of Investigation, and meet the minimum state qualifications for law enforcement officers. *See* enclosures. The draft bill also requires States to obtain written confirmation from the Federal Railroad Administration to verify that the entities proffering these individuals are actually railroads.

The serious questions raised about the legitimacy of Pacific warrant a strong response. The Board's accession to the withdrawal of Pacific's exemption notice is the proper legal course, but even more important to the public interest is the STB's commitment to be alert for similar pleadings by Pacific or its principals in the future. The Department intends to notify both Tennessee and California (to whom Pacific apparently applied for law enforcement authorization) of this situation, and to recommend that they refrain from commissioning any persons advanced by Pacific without an investigation and proper application of substantive law enforcement training.

Respectfully submitted,



D.J. GRIBBIN

cc: Robert T. Opal, Esq.
Gerald Lee

Enclosure

^{3/} Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, § 1526(b), 121 Stat. 452.

ENCLOSURE 1

Model State Railroad Police Commissioning Bill

A BILL

To amend [State Code], and for other purposes.

Be it enacted by [] legislature [State of] assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Railroad Police Commissioning Act".

SECTION 2. PURPOSE.

The purpose of this Act is to protect the public and railroad employees from the actions of individuals not legitimately serving as railroad police officers.

SECTION 3. AMENDMENTS TO RAILROAD POLICE LAWS.

(a) **AMENDMENT.**— Chapter [], [State General Laws], is amended by adding at the end the following new section:¹

"Sec. []. Railroad police commissioning

"(a) Definitions. In this section, 'railroad carrier' has the meaning assigned by 49 U.S.C. § 20102.

"(b) Commissioning of Railroad Police Officers. A railroad carrier may appoint an individual as a police officer of the carrier only after the [relevant State authority (e.g., Governor, Attorney General, Commerce Commission)] has commissioned the individual to act

¹ Alternative amendatory language should be inserted as appropriate. For example, if the legislation is going to replace existing State law, the amendatory language may read: "Section [] of Chapter [], [State General Laws] is repealed, and the following new section is added in its place:".

as a police officer for the carrier. The [relevant State authority] shall have the authority to withdraw any railroad police commission from an individual whenever the [relevant State authority] deems necessary. If the individual is still employed by the rail carrier at the time of revocation, the [relevant State authority] shall notify the rail carrier of the revocation.

“(c) Obligations of [relevant State authority].

“(1) An individual shall not be eligible for commissioning by the State as a police officer of a railroad carrier unless the [relevant State authority] has--

“(A) received written certification from an officer of the employing entity that the individual meets the minimum qualifications of subsection (d); and

“(B) received written confirmation from the Administrator of the Federal Railroad Administration that the employing entity is a railroad carrier as defined in subsection (a).

“(2) The [relevant State authority] shall not commission the individual as a police officer of a railroad carrier if the [relevant State authority] has not received:

“(A) the written certification required by subsection (c)(1)(A); or

“(B) the written confirmation required by subsection (c)(1)(B).

“(d) Qualifications of railroad police officers. Any individual appointed by a railroad carrier to act as a police officer of the carrier shall first meet the minimum qualifications established for [law enforcement officers *or* railroad police officers] under [State law] and, in addition, shall:

“(1) be an employee of the railroad carrier;

“(2) undergo and pass a background investigation that involves a query to the National Crime Information Center (NCIC) or equivalent organization;

“(3) have his or her fingerprints submitted to the Federal Bureau of Investigation for query; and

“(4) meet any other qualifications that the railroad carrier deems necessary in order to carry out the duties of a police officer for the carrier, provided such qualifications do not conflict with those standards established by State law.”.

(b) TABLE OF SECTIONS AMENDMENT.— The table of sections for Chapter [], [State General Laws], is amended by adding after section [] the following new item relating to section []:

“[]. Railroad police commissioning.”.

ENCLOSURE 2

Section-by-Section Analysis of Model State Railroad Police Commissioning Bill

Section 1 provides that the Act may be cited as the "Railroad Police Commissioning Act."

Section 2 provides that the purpose of the Act is to protect the public and railroad employees from the actions of entities that claim to be railroad carriers in order to establish and run a police force when the entities do not in fact provide railroad transportation.

Section 3 authorizes railroad carriers to appoint one or more individuals as railroad police officers only after the State has commissioned the individual(s) to act as police officer(s) for the carrier. This section also requires the commissioning State to confirm that the entity employing the individual applying to be commissioned as a railroad police officer is a railroad carrier under the Federal railroad safety laws and sets forth minimum qualifications that a person must meet in order to be eligible for State commissioning as a railroad police officer.

Section 3 is divided into four subsections, (a) through (d). Subsection (a) provides that for purposes of the Act, "railroad carrier" has the same meaning as that found in the Federal railroad safety laws, 49 U.S.C. § 20102. Under the Federal railroad safety laws, "railroad carrier" is defined as a "person providing railroad transportation." 49 U.S.C. § 20102(2).¹ The practical effect of subsection (a)'s definition of the term

¹ The provision at 49 U.S.C. § 20102(1) defines "railroad" to mean:

- (A) . . . any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including—
 - (i) commuter or other short-haul railroad passenger service in a

"railroad carrier" is to ensure that only entities recognized by the Federal Railroad Administration (FRA) of the U.S. Department of Transportation as actively engaged in providing railroad transportation are authorized to appoint railroad police officers. FRA is the Federal agency responsible for promoting railroad safety. 49 U.S.C. §§ 103, 20101, 49 C.F.R. § 1.49. This subsection is intended to provide a means to ensure that organizations which are not real railroads cannot employ railroad police.

Subsection (b) provides that a railroad carrier may appoint an individual as a railroad police officer only after the relevant State governmental authority has commissioned the individual to act as a police officer for the carrier. This subsection also provides that a commissioning State maintains the authority to withdraw a railroad police commission whenever the State deems necessary. It also requires that the State notify the railroad carrier of the revocation if the railroad carrier still employs the individual.

Subsection (c) requires that before a State commissions an individual to serve as a railroad police officer, the State must confirm that the individual being commissioned and the employing entity meet certain minimum qualifications. First, before a State may commission an individual as a railroad police officer, the State must receive written certification from an officer of the employing entity stating that the individual to be

metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(ii) high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but

(B) does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

commissioned meets the minimum qualifications set forth in subsection (d). Second, before a State may commission the individual, the State must confirm in writing with the Administrator of FRA that the employing entity is a "railroad carrier," as defined under the Federal railroad safety laws. Subsection (c) further provides that if either of these two conditions is not met, a State may not commission the individual as a railroad police officer.

Subsection (d) sets forth minimum qualifications for railroad police officers. Specifically, subsection (d) provides that any person appointed by a railroad carrier as a railroad police officer must (1) meet the minimum qualifications established for law enforcement officers under State law, or, alternatively, the minimum qualifications that the State has established for railroad police officers; (2) be an employee of the railroad carrier; (3) undergo and pass a background investigation that involves a query to the National Crime Information Center or equivalent organization; (4) have his or her fingerprints submitted to the Federal Bureau of Investigation for query; and (5) meet any other qualifications that the railroad carrier deems necessary in order to carry out the duties of a railroad police officer.