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BEFORE THE SURFACE TRANSPORTATION BOARD

IBEW, IAM - 2

In the Matter of:

STB Finance Docket No. 35147 (Sub-Nos. 1-3)

**NORFOLK SOUTHERN RAILWAY COMPANY, PAN AM RAILWAYS,
INC., ET AL. - JOINT CONTROL AND OPERATING/POOLING
AGREEMENTS - PAN AM SOUTHERN LLC**

**COMMENTS OF
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS
AND
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**

The International Association of Machinists and Aerospace Workers ("IAMAW") and the International Brotherhood of Electrical Workers ("IBEW") neither support nor oppose the STB's granting the Applicants authority to proceed with the transactions they propose. Instead, we submit these Comments to stress the need that the highest level of employee protection be imposed by the Board as a condition of approval of all aspects of the transactions.

What the applicants have put before the Board are a series of entirely interrelated transactions, none of which can happen if any of which is not approved. The applicants (Norfolk Southern Railway Company ("NS"), Pan Am Railways, Inc. ("PARI"), and two PARI subsidiaries (Boston and Maine Corporation ("B&M") and Springfield Terminal Railway Company ("ST")) explain that they intend to form a new carrier (Pan Am Southern LLC ("PAS")) which will be jointly controlled by NS and B&M. PAS will then acquire B&M's lines - 437 miles of track - and contract with ST to, "at least initially," conduct the operations over those lines using ST's employees. They hope to accomplish the deal in this order: create PAS as a non-carrier, have non-carrier PAS acquire the lines in a transaction that is exempt from labor protection requirements (and consequently become a carrier), then have PAS contract with ST to maintain the PAS lines and equipment and operate over the lines with ST's own employees just

as ST does now over those lines. The kicker is that there is no fixed term to PAS's contract with ST. It appears to be terminable at any time. While the applicants say that ST will be required to "act in accordance with its then-current collective bargaining agreements as if the Assets were an integral part of the Springfield Terminal railroad network," and that "the same employees would be performing the same work under the same agreements *for the foreseeable future*," that italicized term is not defined.

In response to discovery requests from other unions, the Applicants say that there are no "limitations or restrictions" on what "the foreseeable future" is. They told the United Transportation Union ("UTU") and the Brotherhood of Locomotive Engineers and Trainmen ("BLET") "There are no documents specifically defining the words 'foreseeable future' in the referenced statement, and there are no documents 'relating to' those words other than the referenced Railroad Operating Agreement, which was included in the Application." Response of NS, PARI, B&M, and ST to UTU's and BLET's Request for Documents, p. 5. The Applicants responded to the Brotherhood of Maintenance of Way Employees ("BMWE") and the Brotherhood of Railroad Signalmen ("BRS") that other than the Railroad Operating Agreement and the LLC Agreement, neither of which define or place any parameters on "the foreseeable future."

[t]here are no other agreements or understandings between or among the parties as to when or under what circumstances or situations PAS may change the operator of the PAS lines from Springfield Terminal to any other entity. There are no other limitations or restrictions on the decision of PAS to change the operator of its lines from Springfield Terminal to any other entity and no other procedures or processes that PAS must utilize, or any notices that must be given by PAS, if it seeks to change the operator of its lines from Springfield Terminal to any other entity other than may be imposed by the Interstate Commerce Act.

Response of NS, PARI, B&M, and ST to Interrogatories and Requests for Production of Documents Propounded by the BMWE and BRS, p. 4.

In their Opposition to the motion filed by the BLET and the UTU to have the transaction declared "significant," the Applicants stated (p. 4-5)

In this case, there clearly would be no basis for concluding that the element of the

Transaction by which PAS will be established to acquire and operate the PAS lines was structured for the purpose of avoiding labor protection, in view of the fact that, as noted in the Board June 26, 2008 decision, under the agreements described in and included with the Application, "the same employees would be performing the same work under the same agreements for the foreseeable future" [Fn omitted] There would also be no basis for concluding that any of the Applicants will, post-Transaction, operate PAS as its alter ego That PAS will exist and operate as an entity separate and distinct from other rail carriers is ensured by the Transaction agreements, which will infuse substantial capital into PAS, most of which will be expended on specific projects to improve PAS infrastructure, and will also give Norfolk Southern and Pan Am equal and joint control of PAS, thereby precluding either from operating PAS as its alter ego

That the employees, many of whom lived through the turmoil of the 1980s when Pan Am (*nee* Guilford Transportation) used the ICC's processes to try to devastate their agreements and their union representation, have a right to be skeptical about vague assurances cannot be denied Certainly the employees welcome a situation where their existing agreements would remain intact and greater work opportunities will be the product of a Board-approved transaction But the Applicants reluctance to be more specific about what they foresee for the future or how long they consider the "foreseeable future" to be gives us pause

There are hundreds of ST employees who would be affected should the Applicants' true intention be simply to get Board approval and then, after a brief breathing spell, have PARI shut down ST and/or have PAS terminate the contract with ST and take over the operations itself with self-imposed substandard wages and working conditions The Board cannot overlook the fact that B&M and ST remain wholly-controlled subsidiaries of PARI and that PAS could pull the plug on the agreement with ST virtually at will ¹

The Applicants say they expect the Board to impose the New York Dock conditions on those parts of the transaction that are subject to 49 U S C 11323 But that refers only to the

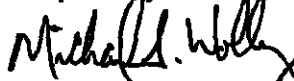
¹ Because the acquisition transaction is structured in a way that permits NSR, an acknowledged carrier, to veto any decision of PAS - the acquisition agreement contains no provision for breaking a deadlock between the two - the Board should also examine whether Section 10901 is even a proper vehicle for approval of the acquisition This circumstance warrants a finding that the "person" here seeking approval to "acquire a railroad line or acquire or operate an extended or additional railroad line" is *not* "a person other than a rail carrier" (49 U S C § 10901 (a)(4)) and so is *not* exempt from labor protection conditions

events other than the creation of PAS and its acquisition of the B&M lines. Because of the unusual nature of this transaction, and the history of the non-NS players in the transaction, we ask that the Board act to ensure that PARI does not use this transaction as a device to undermine the existing relations between ST and its employees. Make the Applicants live up to their written statements by directly precluding any and all of the Applicants (not just PARI, on its own or with NS's acquiescence) from operating PAS as an alter ego. Translate the Applicants' vague assurance of a "foreseeable future" into a binding commitment by requiring that the Applicants not use the Section 10901 exemption as a tool for destroying the ST collective bargaining agreements and otherwise avoiding labor protection.

Further, the Board should apply New York Dock to every aspect of the transaction, including the PAS acquisition. If the Applicants are honest in what they say, that will not impact them whatsoever while it would assure to the employees the security and stability that the NYD conditions were created to deliver.

Finally, we ask that if the Board approves the transactions, it further conditions its approval by requiring that if a change in operators occurs, that the new operator assume all ST employees and maintain and continue to honor all collective bargaining agreements covering those employees until it secures changes in the agreements pursuant to the New York Dock implementing agreement process or through bargaining under the Railway Labor Act.

Respectfully submitted,

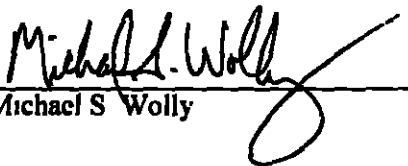


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CERTIFICATE OF SERVICE

This is to certify that a copy of the attached Comments was served on all parties of record by first class mail, postage prepaid, this 11th day of August 2008


Michael S Wolly

BEFORE THE SURFACE TRANSPORTATION BOARD

IBEW, IAM - 3

In the Matter of:

STB Finance Docket No. 35147 (Sub-Nos. 1-3)

**NORFOLK SOUTHERN RAILWAY COMPANY, PAN AM RAILWAYS,
INC., ET AL. - JOINT CONTROL AND OPERATING/POOLING
AGREEMENTS - PAN AM SOUTHERN LLC CORPORATION -
CONTROL - EJ&E WEST COMPANY**

NOTICE OF COMPLIANCE WITH ORDER OF SERVICE

This is to certify that the International Association of Machinists and Aerospace Workers and the International Brotherhood of Electrical Workers have served all parties of record with all of their prior filings in this proceeding as required by the Board ¹

Respectfully submitted,

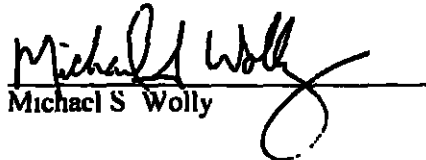


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CERTIFICATE OF SERVICE

This is to certify that a copy of the attached Notice was served upon all parties of record by first class mail, postage prepaid, this 11th day of August 2008



Michael S. Wolly

¹ Service occurred on August 11 rather than August 4, 2008, because the Board's Order was received by counsel while he was away on vacation. Service is being made on the day he returned to the office.