

# BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

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March 23, 2009

The Hon. John Conyers, Jr., Chairman  
House Judiciary Committee  
2426 Rayburn HOB  
Washington, DC 20515-2214

The Hon. James L. Oberstar, Chairman  
House Transportation and Infrastructure Committee  
2365 Rayburn HOB  
Washington, DC 20515-2308

Dear Chairman Conyers and Chairman Oberstar:

This letter pertains to the Railroad Antitrust Enforcement Act of 2009 ("the Act"), which has been introduced in the Senate as S. 146 and in the House of Representatives as H.R. 233. The Brotherhood of Locomotive Engineers and Trainmen, a Division of the Teamsters Rail Conference ("BLET"), represents over 56,500 men and women, and 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. As such, the BLET and its members would be significantly and negatively impacted by enactment of the Act. Accordingly, we oppose passage of this legislation, for the reasons stated herein.

For nearly a century and a quarter, disputes between shippers and rail carriers have been subject to the exclusive jurisdiction, originally, of the Interstate Commerce Commission ("ICC") and, for more than a decade, of the Surface Transportation Board ("STB"), who have statutory responsibility for national rail transportation policy as established by the Congress. The railroad industry has played a central role in the development of the nation's economy and transportation under ICC/STB oversight. While carriers, labor and shippers have not been uniformly satisfied with all processes and decisions of ICC/STB, we believe that this oversight has served its public purpose well, as evidenced by the industry's renaissance over the past decade.

As we stated last year in comments in STB Ex Parte No. 677 — the "common carrier obligation" docket — shippers should have prompt and inexpensive access to a process for redress when a carrier abuses its market power. History has shown that STB is the appropriate venue for adjudicating such disputes. For example, on May 19 of last year, the STB announced a decision that it said will require Union Pacific Railroad to grant an estimated \$30 million in rate reductions and

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reparations in a maximum-rate case brought before the Board by Kansas City Power & Light Co. *See* STB Docket No. NOR-42095 (May 16, 2008 Decision).

More recently, the STB found that BNSF Railway had market dominance over the shipment of coal from the Powder River Basin to the Laramie River Station power plant, and awarded the Western Fuels Association and the Basin Electric Power Cooperative rate reductions and reparations that could total \$345 million. *See* STB Docket No. NOR-42088 (February 17, 2009 Decision). Given these circumstances, we believe any argument that the STB is asleep at the switch lacks credibility.

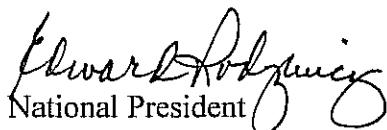
As proposed, the Act would essentially vest federal juries with jurisdiction parallel to and contemporaneous with that of STB. This would severely undermine STB oversight, because the Act would provide that “[i]n any civil action against a common carrier railroad ... the district court shall not be required to defer to the primary jurisdiction of the Surface Transportation Board.” The Act also could lead to forum shopping by shippers. Moreover, the treble damages rule would apply in such cases, which could create havoc for the economic stability of our members and their families.

The nation is in a very fragile state. Our economy is in a shambles, and our dependence upon foreign oil threatens both our national security and the global ecology. Indeed, the gravity of these threats has moved the railroad industry, once again, to the center stage of America’s transportation system. Billions of dollars of public funds have been appropriated to improve and expand passenger rail service, and the freight rail industry continues to invest record amounts in infrastructure and capacity improvement, despite the current state of the economy.

The industry is positioned to respond in this manner because of the balanced statutory and regulatory scheme in the transportation industry that has existed for nearly three decades. If passed into law, the Act would severely disturb that balance. A short-term gain for some shippers could result in crippling the industry just as the nation’s dependence on railroads becomes critical.

To the extent the Congress believes that the ability of STB to vigorously oversee the railroad industry should be strengthened, we strongly urge you to sit down with the railroads and the shippers and work out the necessary reforms. The BLET supports such a plan of action because it would address legitimate grievances shippers may have without jeopardizing the stability of the industry. Unfortunately, the Act would have the opposite effect. Under these circumstances, we have no option but to oppose passage.

Sincerely,

  
National President

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cc: The Hon. Nancy Pelosi, Speaker of the House  
The Hon. Lamar Smith, Ranking Member, House Judiciary Committee  
The Hon. John L. Mica, Ranking Member, House Transportation and Infrastructure Committee  
The Hon. Henry C. Johnson, Jr., Chairman, House Subcommittee on Courts and Competition Policy  
The Hon. Howard Coble, Ranking Member, House Subcommittee on Courts and Competition Policy  
The Hon. Corrine Brown, Chairwoman, House Subcommittee on Railroads, Pipelines, and Hazardous Materials  
The Hon. Bill Shuster, Ranking Member, House Subcommittee on Railroads, Pipelines, and Hazardous Materials  
Matthew K. Rose, Chairman, President and CEO, BNSF Railway  
E. Hunter Harrison, President and CEO, Canadian National Railway  
Fred Green, President and CEO, Canadian Pacific Railway  
Michael J. Ward, Chairman, President and CEO, CSX Transportation  
Michael R. Haverty, Chairman and CEO, Kansas City Southern Railway  
Charles W. Moorman, Chairman, President and CEO, Norfolk Southern Railway  
James R. Young, Chairman, President and CEO, Union Pacific Railroad  
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All BLET General Chairmen  
All BLET State Legislative Board Chairmen

EWR:tap