

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. EP -790

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Office of Chief Counsel
June 16, 2026
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Public Record

REVIEW OF REPLIES TO REPLIES

RAIL UNION COMMENTS

The Brotherhood of Locomotive Engineers and Trainmen, Brotherhood of Maintenance of Way Employees Division/IBT; Brotherhood of Railroad Signalmen; International Brotherhood of Boilermakers; International Association of Machinists and Aerospace Workers District #19; International Association of Sheet Metal, Air, Rail and Transportation Workers Mechanical Division; National Conference of Firemen and Oilers, 32BJ/SEIU; and Transportation Communications Union (“Unions”) submit these Comments in response to the Board’s May 13, 2026, notice of proposed rulemaking regarding “replies to replies.”

INTERESTS OF THE UNIONS

The Unions represent employees of all of the major rail carriers, including all of the Class I rail carriers. These Unions collectively represent Locomotive Engineers and Trainmen; Maintenance of Way (track, right of way, bridge and structures) workers; Signalmen; rail shop Boilermakers, Machinists, Sheet Metal Workers, Laborers, Fuelers and Hostlers, and Carmen; and Clerical workers. These Unions regularly participate in STB proceedings and have participated in proceedings in which one or more parties have sought leave to respond to the filing of another party that is denominated as a reply.

THE POSITION OF THE UNIONS

As the Board observed in its notice, while the Board's regulations generally prohibit the filing of a reply to a reply, the Board has often accepted them to ensure a complete record. But decisions to permit such additional filings are generally ad hoc and case specific, and there do not seem to be real guidelines that parties can look to in order to determine whether a supplemental filing might be accepted, or an objective standard for the Board to apply in considering requests for leave to submit a supplemental filing. The Unions therefore applaud the effort to bring some clarity and predictability to this area of practice before the Board and to promote perceptions that its proceedings are fair with parties treated consistently.

The Unions respectfully submit that part of the problem, and the reason for a perceived lack of consistency or standards, is that what the Board describes as "replies" are really oppositions, and what the Board describes as "replies to replies" are really replies. For example, a party, the petitioner, files a petition or motion with the Board, an opposing party then files an opposition, which the Board calls a reply, but really is an opposition to the motion or petition, and then any additional filing by the petitioner/movant would be considered a reply to a reply requiring permission for filing. As far as the Unions can tell, there is no published objective standard for whether the additional filing would be permitted. Often, the basis for a request for leave to file is that the additional filing will either respond to new evidence offered by an opposing party's reply (opposition), or submit new relevant evidence that only became available after filing of the original

petition/motion. In the Unions' experience, such requests are often granted. Sometimes, the request is to respond to a new argument put forward in the reply (opposition); in the Unions' experience, such requests may or may not be granted; and there does not appear to be much consistency in decisions on those requests. The Unions submit that this is a real problem in Board practice and it should be remedied as contemplated by the Board's notice.

The Unions begin with the observation that what the Board calls a reply really is an opposition and that a petitioner/movant can be disadvantaged when a party in opposition raises new facts or arguments that the petitioner/movant does not, under the rules, have the opportunity to address. A petitioner/movant cannot always anticipate evidence or arguments that might be raised by an opponent, but, under the current rules, the petitioner/movant may be unable to address the new facts or arguments. The federal courts (and many state courts) have recognized that a moving party should have the opportunity to respond to opposition evidence and arguments. Indeed, most courts allow reply briefs as a matter of course. *See, e.g.*, Fed. R. App. P. 27 (applicable to all courts of appeals); D.C. District Court Local Civile Rule 7.1; Eastern District of Virginia Rule 7(F); Eastern District of Michigan Rule 7.1; Southern District of Florida Rule 7.1(c); Northern District of California Rule 7-3.¹ The Unions submit that it is much more the norm to allow reply briefs as a matter of course, rather than to allow them only on motion for leave to file.

¹ In its Notice, the Board referred to differences in Local Rule regarding reply briefs, noting that the District of Massachusetts requires leave of the court to file a reply, and that other courts impose page limits. In the Unions' experience, the rule in the District of Massachusetts is anomalous; most courts allow reply briefs as a matter of course. Shorter page limits for reply briefs are not unusual.

The Unions also note that current Board standards are unclear. On the one hand, the Board's rules prohibit "replies to replies"; on the other hand, the Board often grants parties leave to make such filings. For practitioners, it is difficult to know when the Board would believe it appropriate to seek leave to file a "reply" to a "reply".² The Unions submit that the Board should modify its rules of practice to allow the filing of replies to oppositions as a matter of course, just as is done in the vast majority of Federal courts.

The Board's notice solicits comments as to whether there should be any limits on replies to oppositions. The Unions submit that if there are limits imposed on replies, it would be reasonable to limit reply submissions to responses to evidence and arguments first submitted in an opposition. It would also be reasonable to bar replies (or parts of replies) that simply re-argue points made in the petition/motion. As for page limits, it is typical in the Federal courts to limit replies to half or around half of the length of principal briefs; that seems to the Unions to be a reasonable limitation.

The Unions commend the Board for initiating reconsideration of its current rules of practice and urge the Board to allow replies to oppositions and provide guidance as to

² For example, in F.D. 36910 *Denver Transit Operators*, after the Brotherhood of Railroad Signalmen ("BRS") filed a motion to intervene, Denver Transit filed a "reply" in opposition, asserting that BRS should not be allowed to intervene because the union had been aware of the underlying Railroad Retirement Board proceeding for ten years because an individual who became represented by BRS provided evidence to the Retirement Board, and that individual later became a local representative of BRS represented employees in Denver but was not authorized to speak for BRS. That individual was not a BRS officer at the time of contact with the Retirement Board, and the Union itself and its officers never were aware of the Retirement Board proceeding. Was that an appropriate situation for BRS to seek leave to reply to the opposition to explain that the individual with knowledge of the Retirement Board proceeding was not authorized to speak for BRS and whatever knowledge that individual had should not be imputed to BRS? Under current Board practice, that is far from clear.

when replies may be submitted.

Respectfully submitted,

/s/ Richard S. Edelman

Richard S. Edelman

Aaron S. Edelman

Mooney, Green, Saindon, Murphy & Welch, P.C.

1620 Eye Street NW, Suite 700

Washington, DC 20006

(202) 783-0010

Redelman@MooneyGreen.com

Aedelman@MooneyGreen.com

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