

BEFORE THE SURFACE TRANSPORTATION BOARD

IBEW, IAM, ATDA, NCFO - 2

In the Matter of:

STB Finance Docket No. 35087

**CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK
CORPORATION – CONTROL – EJ&E WEST COMPANY**

COMMENTS OF IBEW, IAM, ATDA, NCFO

The International Brotherhood of Electrical Workers (IBEW), the International Association of Machinists and Aerospace Workers (IAM), the American Train Dispatchers Association (ATDA), and the National Conference of Firemen & Oilers - SEIU (NCFO) offer the following comments regarding the control application:

Each of these labor organizations represents employees who would be affected should the control application be granted. The IBEW represents both the EJ&E and the CN electricians. The IAM represents both the EJ&E and CN machinists. The NCFO represents 4 hostlers working for EJ&E in Joliet, IL, and CN's hostlers and shop laborers. ATDA does not represent EJ&E train dispatchers, but it does represent CN train dispatchers who could be affected should a broader train dispatching consolidation occur as a result of the transaction.

On January 3, 2008, CN amended its Labor Impact Summary. Insofar as the employees represented by these unions are involved, the carrier predicts that the transaction, if approved, will cause the following changes:

<u>EJ&E Positions</u>	<u>12/06</u>	<u>Transfer to CN</u>	<u>Transfer to Gary Ry.</u>	<u>Abolish</u>
Electricians - Loco	17	6	5	6
Electricians - Engineering	1	0	1	0
Machinists	32	27	8	(3)
Dispatchers	14	14	0	0
Hostlers	10	4	2	4

The carrier's Summary states as for the positions shown to be abolished, it believes "that most reductions will be accomplished through attrition."

These unions requested additional information from both CN and EJ&E via discovery.

Specifically, the two carriers were asked to:

1. Identify by name and work location every employee working under collective bargaining agreements with any of these unions whom you believe may be affected by approval of the transaction, specifically those employees referred to in the CN-EJ&E Labor Impact Exhibit which is Attachment B to the Application.
2. Identify by name and work location every employee not presently working under collective bargaining agreements with any of these unions whom you believe will be transferred to a location where he/she will be covered by collective bargaining agreements with any of these unions.
3. Identify by employee name(s), union, and carrier file number, any and all pending outstanding claims and disciplinary appeals filed against EJ&E under collective bargaining agreements between EJ&E and any of these unions and/or Section 3 of the Railway Labor Act and describe how you intend to dispose of or otherwise address these claims and appeals should the acquisition be approved.

In addition, they were asked to produce all seniority rosters covering the employees represented by these unions who would be affected by the transaction. Neither CN nor EJ&E produced the requested information.

CN and GTW have pled ignorance. Attachment A. They say the "Applicants have not yet specifically identified the particular employees working under collective bargaining

agreements with the Unions who would be affected” and do not “know which employees of EJ&E, if any, may be affected.” Response to Interrogatory No. 1. They say they can’t even produce their own seniority rosters covering the employees who would be affected and they “do not have seniority rosters for employees of EJ&E represented by the Unions who might be affected by the Transaction.” Response to Document Request No. 1.

EJ&E has taken the position that it has no obligation to respond on the ground that it is not a party to this proceeding. See Attachment B. As a “person permitted or directed by the Board to participate in a proceeding,” EJ&E certainly is a party under the Board’s rules. Nevertheless, it says that if so deemed, it would merely “incorporate by reference and adopt the Applicants’ responses/objections to the Discovery Requests.” Id.

Taken together, these responses are quite remarkable. The Applicants are able to state how many EJ&E employees will be affected by Board approval of the transaction and in which crafts they work. All of these union-represented workers are listed on seniority rosters. Plainly, the carriers know on which rosters all potentially affected employees are carried. Still, neither the Applicants nor EJ&E will produce those rosters so at least the potential group which would include the affected employees can be identified.

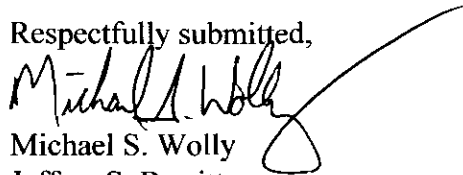
As for the unions’s request that the Applicants state how they intend to treat pending EJ&E contract claims and disciplinary appeals, again they plead ignorance: “Applicants do not have the information requested”. Response to Interrogatory No. 3. While they say they “anticipate that if there are such claims and appeals they would be addressed on the merits in the regular course of handling such matters pursuant to the Railway Labor Act or such applicable

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agreements,” this response is ambiguous. The Applicants do not represent that they will succeed to EJ&E’s position and be responsible for payment of those claims and implementation of any requested remedies if the claims/appeals are deemed to be valid.

Therefore, based on the information available, these unions can neither support nor oppose the Application. The Board should require the Applicants and EJ&E to produce the requested information as a condition of its consideration of the Application. Then, should the Board approve the transaction, it should condition its approval on the assurances that (a) the collective bargaining agreements covering these unions’ members working for both Applicants and EJ&E remain intact absent agreement with the unions otherwise, (b) that the Applicants will succeed to EJ&E’s contractual obligations vis-a-vis pending contract claims and disciplinary appeals, and (c) that the employees the unions represent receive nothing less than full New York Dock protection.

Respectfully submitted,



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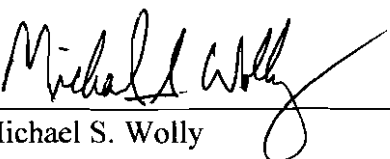
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Attorney for IBEW, IAM, ATDA, NCFO

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CERTIFICATE OF SERVICE

This is to certify that a copy of the attached Comments was served upon all known parties of record by first class mail, postage prepaid, this 25th day of January 2008.



Michael S. Wolly

ATTACHMENT A

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35087

CANADIAN NATIONAL RAILWAY CORPORATION
AND GRAND TRUNK CORPORATION
– CONTROL –
ELGIN, JOLIET & EASTERN WEST COMPANY

**APPLICANTS' RESPONSE TO INTERROGATORIES AND REQUEST FOR
PRODUCTION BY INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, INTERNATIONAL ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, AMERICAN TRAIN DISPATCHERS
ASSOCIATION, AND NATIONAL CONFERENCE OF FIREMEN & OILERS**

Applicants¹ respond to the interrogatories and requests for production of documents by the International Brotherhood of Electrical Workers, the International Association of Machinists and Aerospace Workers, the American Train Dispatchers Association, and the National Conference of Firemen & Oilers ("the Unions") served January 7, 2008, as follows:

GENERAL OBJECTIONS

The following general objections are made with respect to all of the interrogatories and document requests, as appropriate.

1. Applicants object insofar as the discovery requests seek information in a form not maintained by Applicants in the regular course of business or not readily available in the form requested, on the ground that such documents or information could only be developed, if at all, through special studies, which the Board does not ordinarily require and which Applicants object to performing.

¹ Applicants are Canadian National Railway Company and Grand Trunk Corporation. Elgin, Joliet and Eastern Railway Company and EJ&E West Company are not Applicants.

2. Applicants object insofar as the discovery requests seek the production of documents or information that includes confidential or sensitive commercial information, including information subject to disclosure restrictions imposed by law, in other proceedings, or by contractual obligation to third parties, and that is of insufficient materiality to warrant production here even under the Board's protective order. In some cases Applicants may redact confidential information that is not itself to be produced (*e.g.*, on relevance or other grounds) but is in a document containing information that is within the scope of production being made.

3. Applicants object insofar as the discovery requests are overbroad and unduly burdensome in seeking documents or information prepared in the routine course of day-to-day business, as opposed to studies, reports, analyses and the like.

4. Applicants object insofar as the discovery requests seek production of documents prepared in connection with, or information relating to, possible settlement of this or any other matter or controversy.

5. Applicants object insofar as the discovery requests seek the production of readily available public documents or information, including but not limited to documents in public files at the STB, the Securities and Exchange Commission, a court, or any other government entity, or that have appeared in newspapers, professional journals, internet sites, or other public media.

6. Applicants object insofar as the discovery requests seek the production of information or documents that are reasonably obtainable by the Unions from their own files or are otherwise in their possession, custody or control.

7. Applicants object insofar as the discovery requests are vague and ambiguous, or are unduly broad and burdensome in that they seek information regarding plans that are in progress, ongoing, or otherwise not complete.

8. Applicants object insofar as the discovery requests seek the production of information subject to the attorney-client privilege, the work product doctrine and/or the joint or common interest privilege.

9. Applicants object to the definition of “you” as including EJ&E and EJ&EW, as they are not Applicants and are companies independent of Applicants.

INTERROGATORIES

Interrogatory No. 1

Identify by name and work location every employee working under collective bargaining agreements with any of these unions whom you believe may be affected by approval of the transaction, specifically those employees referred to in the CN-EJ&E Labor Impact Exhibit which is Attachment B to the Application.

Response

Without waiving any objections, and subject to the General Objections stated above, Applicants respond as follows:

Applicants have not yet specifically identified the particular employees working under collective bargaining agreements with the Unions who would be affected by STB approval and the parties’ closing of the Transaction. Nor do Applicants know which employees of EJ&E, if any, may be affected. If the Transaction is approved by the Surface Transportation Board and closed by the parties, Applicants anticipate that they will address employment effects on employees represented by the Unions through the process outlined in the Application and previously followed by Applicants in implementing prior acquisitions, and in accordance with the process established under

New York Dock – Control – Brooklyn Eastern District Terminal, 360 I.C.C. 60, *aff'd sub nom. New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979). As with implementation of prior acquisition transactions, Applicants will work with representatives of the employees to address impacts on employees and/or on applicable agreements.

Interrogatory No. 2

Identify by name and work location every employee not presently working under collective bargaining agreements with any of these unions whom you believe will be transferred to a location where he/she will be covered by collective bargaining agreements with any of these unions.

Response

Without waiving any objections, and subject to the General Objections stated above, Applicants respond as follows:

Applicants do not know of any employees not presently working under collective bargaining agreements with the Unions who will be transferred to a location where they will be covered by collective bargaining agreements with the Unions.

Interrogatory No. 3

Identify by employee name(s), union, and carrier file number, any and all pending outstanding claims and disciplinary appeals filed against EJ&E under collective bargaining agreements between EJ&E and any of these unions and/or Section 3 of the Railway Labor Act and describe how you intend to dispose of or otherwise address these claims and appeals should the acquisition be approved.

Response

Without waiving any objections, and subject to the General Objections stated above, Applicants respond as follows:

Applicants do not have the information requested about “claims and disciplinary appeals filed against EJ&E” under collective bargaining agreements or the Railway

Labor Act. Requesters presumably have such information as to appeals filed with respect to their members. Applicants anticipate that if there are such claims and appeals they would be addressed on the merits in the regular course of handling such matters pursuant to the Railway Labor Act or such applicable agreements.

DOCUMENT REQUESTS

Document Request No. 1

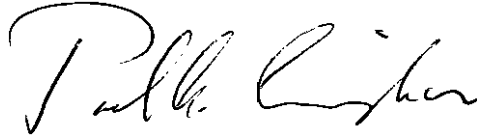
Produce all seniority rosters covering the employees represented by these unions who would be affected by the transaction.

Response

Without waiving any objections, and subject to the General Objections stated above, Applicants respond as follows:

See response to Interrogatory No. 1. Applicants have not identified which such employees represented by the Unions would be affected by the Transaction. Applicants do not have seniority rosters for employees of EJ&E represented by the Unions who might be affected by the Transaction.

Respectfully submitted,



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*Counsel for Canadian National Railway Company
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January 23, 2008

ATTACHMENT B

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January 22, 2008

Re: Canadian National Railway Corporation and
Grand Trunk Corporation--Control
--EJ&E West Company
STB Finance Docket No. 35087

ZPK &W

JAN 23 2008

RECEIVED

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BY FEDERAL EXPRESS

Gentlemen:

We represent Elgin, Joliet & Eastern Railway Company ("EJ&E") and EJ&E West Company ("EJ&EW").

We were served with Interrogatories and Request for Production of Documents on January 8, 2008 in behalf of International Brotherhood of Electrical Workers ("IBEW"), International Association of Machinists and Aerospace Workers ("IAM"), American Train Dispatchers Association ("ATDA") and National Conference of Firemen & Oilers ("NCFO") (jointly, "Discovery Requests"). The Discovery Requests reference the above control application and docket number. We understand that similar Discovery Requests were served on Canadian National Railway Company ("CN") and Grand Trunk Corporation ("GTC") (jointly, "Applicants"), the Applicants in the above proceeding.

It is the position of EJ&E and EJ&EW that they are not parties to the above proceeding and therefore are not required to respond to the Discovery Requests. We understand that the Applicants have filed responses/objections to the Discovery Requests and have made the distinction that we are raising here, *i.e.*, that CN and GTW are the Applicants in the above proceeding and that EJ&E and EJ&EW are not Applicants.

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The regulations promulgated by the Board succinctly define a "party" as follows:

Party means a complainant, defendant, applicant, respondent, protestant, intervener, or petitioner in any proceeding, or other persons permitted or directed by the Board to participate in a proceeding....

49 C.F.R. §1101.2(d)

Neither EJ&E or EJ&EW are included within the aforesaid definition and therefore cannot be considered parties to the proceeding.

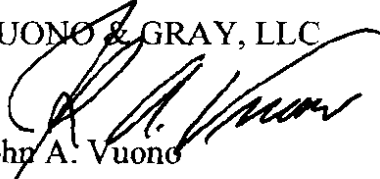
The relevant discovery regulations are clearly applicable only to parties, as defined above, and an entity which is not a party to a Board proceeding is not required to respond to discovery requests. *See* 49 C.F.R. §1114.26 (Written Interrogatories to Parties); §1114.27 (Request for Admission); and 1114.30 (Production of Documents, etc.).

As noted, the Applicants have or will submit responses/objections to the Discovery Requests. In the unlikely event that EJ&E and EJ&EW are determined to be parties to the above proceeding and, as a result, are required to respond to the Discovery Requests, EJ&E and EJ&EW hereby incorporate by reference and adopt to the extent relevant the Applicants' responses/objections to the Discovery Requests.

As the IBEW and IAM are aware, the EJ&E has had a long history of cooperating with the IBEW and with IAM in advancing their mutual interests. Notwithstanding the legal position taken by EJ&E and EJ&EW herein, they stand willing to cooperate with IBEW and IAM, as they have done in the past, in a reasonable manner.

Sincerely yours,

VUONO & GRAY, LLC


John A. Vuono

CW/59850

cc: Parties of Record

BEFORE THE SURFACE TRANSPORTATION BOARD

IBEW, IAM, ATDA, NCFO - 2

In the Matter of:

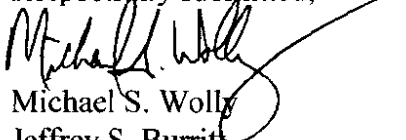
STB Finance Docket No. 35087

**CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK
CORPORATION – CONTROL – EJ&E WEST COMPANY**

CERTIFICATE OF SERVICE OF IBEW, IAM, ATDA, NCFO

This is to certify that all pleadings filed by the International Brotherhood of Electrical Workers (IBEW), the International Association of Machinists and Aerospace Workers (IAM), the American Train Dispatchers Association (ATDA), and the National Conference of Firemen & Oilers - SEIU (NCFO), including this Certificate of Service, have been served on all parties of record.

Respectfully submitted,



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