

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:	:	
	:	
CO-OPERATIVE LEGISLATIVE COMMITTEE,	:	
RAILROAD BROTHERHOODS IN THE STATE OF	:	DOCKET No. C-00019522
PENNSYLVANIA, <i>ET AL.</i>	:	
	:	
v.	:	
	:	
GEORGE F. BAKER, RICHARD C. BOND, JERVIS	:	
LANGDON, JR. AND WILLARD WIRTZ, TRUSTEES	:	
OF THE PROPERTY OF THE PENN CENTRAL	:	
TRANSPORTATION COMPANY, DEBTOR	:	

***INITIAL PREHEARING CONFERENCE MEMORANDUM OF
THE PENNSYLVANIA
STATE LEGISLATIVE BOARD,
UNITED TRANSPORTATION UNION***

And now comes the Pennsylvania State Legislative Board United Transportation Union (hereinafter "PSLBUTU"), the successor to the Co-Operative Legislative Committee, Railroad Brotherhoods in the State of Pennsylvania, and in conformity with paragraph 3 the Prehearing Conference Order issued in accordance with 66 Pa. C.S.A. Section 333 and 52 Pa. Code Sections 5.221-5.223 on or about January 20, 2010 by Administrative Law Judge Wayne L. Weismandel, files the instant Initial Prehearing memorandum and states as follows:

3. a.) On behalf of the PSLBUTU please enter the appearance of and place on the service list:

Irwin W. Aronson, Esquire
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3. b.) The PSLBUTU is the successor in interest to the Co-Operative Legislative Committee, Railroad Brotherhoods in the State of Pennsylvania being the product of the

merger of those designated Railroad Brotherhoods more than 35 years ago. As such, it is the successor to the Petitioner whose initial filing in 1973 gave rise to the Decision and Order of the Pennsylvania Public Utility Commission in 1973 and various successor orders of the Pennsylvania Public Utility Commission which are now the subject of review in the instant proceeding and it is possessed of precisely the same interest and standing previously held by its predecessor organizations, as the representative of the employees of the past and current operators of the Conway Rail Classification Yard, in Beaver County, Pennsylvania, in the instant matter.

3. c.) Counsel for the PSLBUTU is possessed of a scheduling conflict in another previously pending matter on February 11, 2010, which, as of the date of the instant submission, is neither alterable nor avoidable. As such, the PSLBUTU respectfully requests an alternative date for the proposed February 11, 2010 hearing date.

The PSLBUTU also notes that the subject Conway Rail Classification Yard is situated in Southwestern Pennsylvania and all of its fact witnesses reside and work in that region of the Commonwealth. As such, it is respectfully submitted that the hearings in the instant matter that has been raised by the Commission *sua sponte* be conducted, as has been the case with all proceedings associated with this docket since its inception in 1973, in the Pittsburgh, Pennsylvania region.

3. d.) Witnesses

i.) Seven individuals who are employees of the Norfolk Southern Railroad Company, represented by the PSLBUTU in various job classifications at the Conway Rail Classification Yard, and who, at present, have asked that their names and contact information not be revealed in advance so as to protect them from fear of potential reprisal and/or retaliation from their employer and/or its agents are expected to testify regarding unique local conditions that are present in and about the Conway Rail Classification Yard and the activities associated with all aspects of shoving operations in the rail classification yard that is the subject of the instant matter. Counsel for the PSLBUTU will be prepared to further discuss this at the pre hearing conference.

ii.) Any witnesses called and/or identified by other parties to the instant matter. Subject matter of the testimony of such witnesses will relate to the direct testimony of such witnesses as well as the general knowledge of such witnesses regarding shoving operations in the Conway Rail Classification Yard

3. e.) Issues and sub-issues

i.) Burden of proof and burden of going forward.

The PSLBUTU believes that both the burden of proof and the burden of going forward lies with the Commission that, *sua sponte*, determined to revisit the issue

of the status of its order regarding shoving operations in the Conway Rail Classification Yard. In the alternative, it is the position of the PSLBUTU that any interested party and/or intervenor in the instant proceedings that advocates a change in the status quo regarding the Pennsylvania Public Utility Commission Decision and Order regarding its narrow regulatory oversight of shoving operations in the Conway Rail Classification Yard, bears the burden of proof and the burden of going forward in its pursuit of a modification of the status quo.

- ii.) Does the current federal regulatory framework permitting the limited use of shovelights in rail classification yards, so completely occupy the field as to prohibit *any* state regulation of *any other aspects of shoving operations* in the Conway Rail Classification Yard regardless of previously identified unique local conditions present in that yard?

The PSLBUTU asserts that the current federal regulatory framework at issue in the instant matter does not occupy the field beyond the narrow regulation of the circumstances and limitations under which shovelights may be utilized and that the Pennsylvania Public Utility Commission continues to have the unabated obligation to regulate all aspects of shoving operations in the Conway Rail Classification Yard related to safety of the local yard conditions, safety of locally employed workers and vendors working in and about that rail classification yard, as well as the safety of the local community that is exposed to unique safety risks associated with proximity to shoving operations in the Conway Rail Classification Yard.

- iii.) Have any of the unique local conditions that gave rise to the current Decision and Order of the Pennsylvania Public Utility Commission been so materially modified as to render the current state regulatory framework associated with those unique local conditions associated with shoving operations in the Conway Rail Classification Yard subject to review or modification.

The PSLBUTU's position is that there have not been any material modifications to the unique local conditions that gave rise to the current, limited Commission oversight of the broad array of activities and local conditions associated with shoving operations in the Conway Rail Classification Yard that would justify a rescission or retrenchment of that limited oversight. Indeed, the PSLBUTU believes that significant changes in workload and work assignments of workers assigned to the Conway Rail Classification Yard justify heightened Commission scrutiny of the safety associated issues involved in all aspects of shoving operations in the Conway Rail Classification Yard, recognizing that the utilization of shovelights does not completely control the multiplicity of activities associated with shoving operations in the unique environment of the Conway Rail Classification Yard.

3. f.) The PSLBUTU anticipates offering, if deemed necessary and appropriate, oral and documentary evidence describing the various aspects of and activities associated with shoving operations in the Conway Rail Classification Yard and the unique local conditions associated with shoving operations in that yard.

Respectfully submitted,

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By _____
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COUNSEL FOR PENNSYLVANIA STATE
LEGISLATIVE BOARD, UNITED TRANSPORTATION
UNION

Dated: February 1, 2010

CERTIFICATE OF SERVICE

I, IRWIN W. ARONSON, ESQUIRE, hereby certify that I have this date caused a copy of the foregoing, Initial Prehearing Conference Memorandum Of The Pennsylvania State Legislative Board, United Transportation Union, to be served upon all parties of interest in this matter by placing the same in the United States First Class Mail, postage prepaid, addressed as follows:

Norfolk Southern Railway Corporation
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IRWIN W. ARONSON

Dated: February 1, 2010