

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
WAYNE L. WEISMANDEL
ADMINISTRATIVE LAW JUDGE

IN RE:	:	
	:	
PENNSYLVANIA STATE LEGISLATIVE BOARD,	:	
UNITED TRANSPORTATION UNION	:	DOCKET No. C-00019522
	:	
v.	:	
	:	
NORFOLK SOUTHERN RAILWAY COMPANY	:	

SUMMARY OF ARGUMENT

In a January 14, 2010 Order of the Pennsylvania Public Utility Commission this matter was referred for expedited hearing to the Office of Administrative Law Judge. In issuing that Order the Commission stated that, “[T]he fundamental issue to be determined is whether our 1973 Order is preempted by the federal regulation at 49 CFR §218.99 which will require an examination of 49 CFR §218.99 in its entirety, whether any local safety or security hazard exists warranting additional State regulation, whether the 1973 Order is incompatible with federal law, and any other relevant issues . . .”

The Federal Railroad Safety Act, 49 U.S. C.A. §§20101, et seq. is preemptive of state and local laws, regulations, orders or standards related to railroad safety in a generalized sense. There are two exceptions to the total federal preemptive reach in this area of the law. First, the State and its administrative agencies such as the Pennsylvania Public Utility Commission are permitted to adopt or continue to enforce any law, regulation or order related to railroad safety unless and until the federal government prescribes a regulation or issues an order covering the subject matter of the state requirement completely. The PSLB UTU respectfully submits that the current federal

statutory and regulatory framework do not cover the same subject matter of the Commission's Order of 1973, as amended in 1974, with respect to the requirement of having a trainman guiding a shoving or pushing movement of a lengthy draft of railroad cars by riding on the leading end of a shoving movement in the Conway Railroad Yard in Beaver County, Pennsylvania.

Assuming, arguendo, that the federal regulatory framework is deemed to have a preemptive effect with respect to the 1973 Order of the Commission in the instant matter, the second exception to federal preemption in the area of railroad safety matters contemplates that a state may, nonetheless, adopt or continue to enforce additional or more stringent laws, regulations or orders related to railroad safety or security when the law, regulation or order is necessary to eliminate or reduce an essentially local safety or security hazard, is not incompatible with a law, regulation or order of the United States, and does not unreasonably burden interstate commerce. The PSLB UTU respectfully submits that, based on the totality of the record evidence secured at the hearings of February 18 and 19, 2010, make it clear that there are a multiplicity of local safety hazards existing at and about the Conway Railroad Yard which, individually, and more importantly taken as a whole, comprise a local safety and security hazard which requires the continuation of the existing 1973 Order, as amended, to regulate that local safety hazard in the fashion that has existed since 1973 which is neither incompatible with federal law nor unreasonably burdens interstate commerce. Those uniquely local conditions include the geography and topography of the unique parcel of land known as the Conway Railroad Yard in Beaver County, Pennsylvania, the weather conditions which present themselves at the Conway Yard, the proximity of the Conway Railroad Yard to

residential communities, schools, vital natural resources and commercial establishments, the modification of the operation of the Conway Railroad Yard from its designed and intended use two hump operation with separate Eastbound and Westbound activities into a one hump railroad yard with no separation of the Eastbound and Westbound activities and the substantially increased workload imposed upon the remaining yardmasters whose ranks have been slashed by at least 60% subsequent to the conversion of the Conway Yard from a two hump to a one hump operation without a concurrent slashing of 60% of the traffic in the Conway Railroad Yard.

As such, the federal regulatory framework does not preempt the existing 1973 Commission Order and, even assuming, arguendo, that one could argue such general preemption, the unique local safety conditions at the Conway Yard are such that the preemption cannot be considered total as the local safety and security hazards permit the continuation of the existing Order as consistent with recognized federal statutory exemptions to total federal preemption in the area of railroad safety.

In order to assure a more broadly based platform of safety and security in the undertaking of shoving movements in the Conway Railroad Yard the PSLB UTU suggests that the 1973 Order of the Commission be enhanced to require that the operator of the Conway Railroad Yard take all appropriate steps necessary to clear tracks in the Yard that are adjacent to any track on which a shoving movement is to be made. PSLB UTU respectfully further suggests, with respect to shoving movements made in the Conway Yard, that the existing 1973 Commission Order be modified so as to require that a conforming caboose or shoving platform with appropriate lighting be required to be coupled to the leading end of every shoving movement in the Conway Yard in order

to provide a firm standing surface for a yard employee to stand in order to guide the shoving movement.

Respectfully submitted,

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By _____
IRWIN W. ARONSON
PA REG. NO. 36921

Dated: March 4, 2010

CERTIFICATE OF SERVICE

I, IRWIN W. ARONSON hereby certify that I have this date caused a copy of the foregoing Summary of Argument to be served upon parties of interest in this matter by serving a copy via email to each of the following:

The Honorable Wayne L. Weismandel
Administrative Law Judge
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Dated: March 4, 2010