



**Statement of Leonard Parker  
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**Before the House Subcommittee on Railroads, Pipelines and  
Hazardous Materials**

**Hearing on**

**Railroad and Hazardous Materials Transportation Programs:  
Reforms and Improvements to Reduce Regulatory Burdens**

**April 7, 2011**

The Brotherhood of Railroad Signalmen is highly supportive of development of High Speed Passenger Rail, expansion of Inter-City Passenger Rail, and expansion of commuter rail service. This is a long time coming and we are pleased that the Congress and the Administration have recognized that rail is an under-utilized resource that can be used to provide safe, efficient, effective and environmentally sound passenger transportation. But, it is important to recognize that safe and effective passenger rail transportation depends on highly skilled, professional railroad workers, many of whom, especially Signalmen, are certified to perform various forms of railroad work.

#### **A. INTERCITY PASSENGER RAIL SERVICE AND HIGH SPEED RAIL WORK MUST BE DONE BY RAIL CARRIERS USING RAILROAD WORKERS**

Railroad work involves unique skills and training and sometimes special certifications; this is certainly true if Signal work. Consequently railroad work on the major freight railroads, Amtrak and the major commuter lines is performed by railroad workers in the traditional crafts recognized by the NMB. Professional railroad employees have a proven record of accomplishment of successful work on joint-owned commuter rail systems. Furthermore, professional railroad employees were responsible for the operating, dispatching, construction, rehabilitation and upgrading of freight lines and signal systems used in commuter passenger service throughout the United States and especially in the Northeast. Railroad workers operate and maintain the major commuter rail systems -MBTA, MetroNorth, LIRR, NJ Transit, SEPTA, METRA.

For the same reasons, work on new High Speed Rail operations and expanded Inter City Passenger Rail operations should be done by railroad workers. Certainly the persons who do work for the highest speed passenger operations (whether train movements and control, track and signal work, equipment work or administrative work) should be no less skilled and no less qualified than the persons who do such work involved with the movement of things. The ability of entities that do work connected to High Speed Rail operations to hire qualified employees to perform that work will depend on those entities being rail carriers because rail workers will not accept jobs with entities that are not rail carriers since railroad workers who leave carrier employment lose substantial, vested Railroad Retirement benefits, and the rights and protections provided under other Federal Railroad laws.

There are some who want to enter the railroad industry and to perform work on railroad lines, but who seek their own economic advantage by attempting to perform railroad work without being "rail carriers" under the Federal railroad laws and by using workers who do not have the rights and benefits mandated by the Federal railroad laws. This race to the bottom must be resisted.

While certain small commuter railroads have engaged in the "unbundling" of railroad work among multiple contractors who are not rail carriers, this unfortunate practice is not followed on any of the major freight railroads, major commuter railroads or Amtrak. All of those entities recognize that integrated railroad operations in a single carrier operator employing

railroad workers to perform traditional railroad work is the safest and most effective and efficient method of railroad operations. That same approach should be used for High Speed Rail and expanded Inter City Passenger Rail operations; the unbundled model should be rejected. Multiple non-rail carrier entities simply cannot provide the most skilled and fully certified rail workers. Additionally, safety is compromised in such a model. When one entity is responsible for overall operations it has a much greater incentive to operate as safely as possible and to get quickly to the cause of an accident when one occurs in order to prevent a recurrence. When multiple entities are involved in separate aspects of rail operations, there are incentives for each of them to focus only on its own responsibilities and to rely on someone else to do what is necessary in overlapping areas. And when there is an accident it is likely that the contractors responsible for train movements, the signal system, the track and the maintenance of the equipment will blame each other. That incentive is eliminated when one entity is responsible for the entire operation.

As the Federal government encourages and helps fund the promotion of High Speed and expansion of Inter City Passenger rail transportation, it should make sure that it is providing real rail transportation that employs real rail workers, not "knock-off" rail transportation that utilizes imitation rail workers. To the extent that Amtrak is used to provide new service, such service will be real rail service using real rail workers; but whoever provides the new service they must be rail carriers who employ workers covered by the Federal railroad laws. Talk of "privatizing" the Northeast Corridor or Intercity Passenger rail service ignores recent history. The current private freight railroads once provided passenger service too. Freight and passenger service were not separated, passenger service was part of the common carrier obligation. However, the freight railroads were dramatically losing money on the passenger service and could not continue to provide that service. Amtrak was created because the private sector could not provide passenger rail service; the freights were relieved of their common carrier obligations for passenger service in return for allowing Amtrak to operate on their lines. Intercity passenger service is provided by Amtrak not because the government sought to provide this service, but because the private sector was unable to do so.

The PRIIA requires that Federal High Speed Rail and Intercity Passenger Rail grants must be conditioned on requirements that operators on federally improved rail infrastructure will be rail carriers under the Interstate Commerce Act and all statutes that adopt that definition of rail carrier, including the Railway Labor Act, Railroad Retirement Act and Railroad Unemployment Insurance Act. A rail line, the right of way, the signal system and the shops necessary for maintenance of locomotives and rail cars are all components of rail infrastructure and work on and for those components must be performed by railroad workers. The PRIIA also provides that collective bargaining agreements applicable on a railroad whose right of way is being used will remain in full force and effect; and that the rights, privileges and benefits of railroad workers be preserved. This is a mandate that the employees who perform work related to High Speed Rail and Intercity Passenger Rail supported by Federal funds must be railroad workers covered by the RLA, RRA, RUIA and FELA. This mandate should be continued.

## **B. RAILROAD WORK, INCLUDING OPERATIONS AND INFRASTRUCTURE IMPROVEMENTS ON EXISTING RAILROAD LINES AND SIGNAL SYSTEMS AND**

## **OTHER FACILITIES MUST BE PERFORMED CONSISTENT WITH EXISTING COLLECTIVE BARGAINING AGREEMENTS.**

Virtually all of the work and operations envisioned by various plans to expand intercity passenger rail work and for high speed rail service will be done on track, structures and/or rights-of-way, using signal systems and other facilities and structures of existing rail carriers-either freight railroads or Amtrak. Those carriers, and the track, rights of way, signal systems facilities and structures they own, are covered by collective bargaining agreements between the carriers and the various rail unions, including BRS, that provide covered employees with rights to perform work within the scope of those agreements, and that may regulate the use of contractors to perform such work. Congress and the Administration should ensure that long standing rail collective bargaining agreements are protected and that those who seek their own profit will not be able to do so by undercutting or undermining those agreements. Indeed, these are binding contracts between the railroads and rail unions that have been in effect for decades and they are entitled to due respect as intercity passenger rail service and high speed rail service is expanded. The freight railroads and Amtrak are statutorily obligated to comply with their agreements with the rail unions; federal funds should not be allowed to be used to facilitate evasion of those agreements and federal programs should not encourage others to negate or undermine those agreements.

## **C. BUY AMERICAN REQUIREMENTS SHOULD BE CONTINUED**

The PRIIA states that DOT may not approve a grant for a High Speed Rail or Inter City Passenger Rail project unless “the steel, iron, and manufactured goods used in the project are produced in the United States.” This is an important requirement and a basic premise of federal funding for rail projects-to create jobs for Americans. Strong Buy American requirements are essential to development of High Speed Rail and expansion of Inter City Passenger Rail.

## **D. WHEN STATES, STATE AGENCIES AND OTHER STATE ENTITIES ACQUIRE RAILROAD LINES THAT WILL STILL BE USED FOR INTERSTATE RAIL TRANSPORTATION THOSE ACQUISITIONS SHOULD BE GOVERNED BY THE INTERSTATE COMMERCE COMMISSION TERMINATION ACT AND ALL WORK ON AND FOR THOSE LINES SHOULD BE DONE BY RAIL CARRIERS USING RAILROAD WORKERS**

The Interstate Commerce Commission Termination Act gives the Surface Transportation Board jurisdiction over transportation between states and within states “as part of the interstate rail network,” by rail carriers, and over their “routes, services and facilities.” 49 U.S.C. §10501 (a)(2) and (b)(1). The STB’s jurisdiction includes “the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State.” 49 U.S.C. §10501(b)(2). Its jurisdiction “is exclusive” and the remedies the ICA provides “with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.” 49 U.S.C. §10501(b). While the ICA now exempts provision of

mass transportation service by local government authorities and their contractors from STB regulation, it does not exempt non-mass transportation activities from STB regulation, and certainly does not exempt state and local governments from STB jurisdiction over acquisitions of portions of the interstate rail system. Additionally the ICCTA expressly states (49 U.S.C. §10501(c)(3)) that the other railroad laws that use the ICA definitions still apply to local governments; so even with respect to mass transportation activities, a local government authority or its contractor is subject to the federal railroad laws applicable to railroad workers such as the RLA, FELA and Railroad Retirement.

The ICCTA expressly provides that a person that is not already a carrier may not construct or acquire a railroad line without STB approval (49 U.S.C. §10901(a)), and a rail carrier may abandon a rail line or discontinue service on a line only with STB approval. 49 U.S.C. §10903(a)(1). The Act defines "Railroad" as including the road used by a rail carrier as well as track, roadbed, bridges, switches, and spurs used or necessary for transportation; and "transportation" includes locomotives, cars and equipment "related to movement of passengers or property or both by rail", as well as services related to that movement. Section 10102(6) and (9). Since "railroad" is defined as all of the physical assets that constitute a railroad, and since a railroad line is simply a portion of a railroad; if "railroad" is defined as including track, switches, spurs, and roadbed, a "railroad line" is necessarily comprised of track, switches, spurs, and roadbed. Accordingly, when any person (including a State entity) acquires a railroad line that is part of the interstate rail system that will continue to be used for interstate rail transportation, that acquisition may be accomplished only after STB approval under Section 10901, or pursuant to STB exemption from such approval (where the STB still has jurisdiction over the line and the transaction). Under Board rules, a State entity that acquires a railroad line and assumes responsibility for the line is a carrier, unless it contracts with a carrier or carriers for it or them to perform all railroad responsibilities. While Section 10502 of the Act allows the STB to exempt a transaction from prior Board approval (subject to a petition to revoke the exemption), the transaction and the acquiring entity are still subject to Board jurisdiction.

Despite the language of Section 10901, in recent years the STB has allowed acquisitions of railroad lines to go forward without Board approval or exemption under Section 10901. In these transactions states and other public authorities buy active rail lines from freight railroads but the freight railroads retain permanent, exclusive "operating easements" for freight operations on the lines. So these lines are still used by the freight railroads for interstate freight transportation, but the public entities begin commuter rail operations as intra-state operations with non-rail carrier operators, and non-rail carrier companies doing locomotive and equipment maintenance, dispatching and maintenance of the line and its signal systems, even though the line is still being used by the freight railroad (and sometimes Amtrak) for interstate rail transportation. Typically, the public entity brings in an independent contractor or contractors to perform the railroad work. In these arrangements, the operator and/or other contractors used to maintain the line and signal system used by the commuter operator and the freight railroad, and to maintain the commuter rail trains, are not carriers and their employees are not railroad employees; they are not covered by RLA, FELA or Railroad Retirement.

Under ICCTA, STB has no jurisdiction over a public entity owning/operating an intrastate line used only for intrastate transportation. But the STB has jurisdiction over transfer of a portion of a railroad that is within one state by is still used for interstate traffic. Section 10901. The STB has devised a process to negate its own jurisdiction and authority over pieces of the interstate rail system used for interstate rail transportation. Under this process, application for the transfer of the line is filed with STB under Section 10901, but dismissal is sought on basis that there is no real transaction since the selling freight carrier retains an "operating easement" for continued freight service over the line. STB then dismisses the application based on its decision in *State of Maine* 8 I.C.C.2d 835, 1991 WL 84430 (I.C.C.) and subsequent cases. A railroad line is then acquired by the State without STB approval or exemption, and the Board cannot regulate the State's use or maintenance of the line or its future disposition of the line. Additionally, public entities use Federal Transit Act funds to acquire and/or modify and upgrade the lines for commuter passenger operations, but freight employees are not covered by "13(c)" protections so the employees affected by the transfers have no protection at all, even though Federal funds are used to acquire and/or substantially upgrade the lines.

The *State of Maine* line of cases is based on made-up standard that States and State entities that acquire the physical assets of railroad lines are not actually acquiring railroad lines because they are not acquiring the freight service operating rights. There is no statutory support for this. States that acquire rail lines that are part of the interstate rail system and will continue to be used for interstate rail service require STB authorization or exemption for the acquisitions. Under Section 10901. This line of cases is predicated on a definition of "railroad line" that is at odds with the ICCTA. Since Railroad is defined in the Act as the physical assets of a railroad, and a "railroad line" is a portion of a railroad, it is contrary to the Act for someone to acquire the physical assets of "railroad line" without STB approval or exemption on the premise that there has been no acquisition of a railroad line, just acquisition of the physical assets of the railroad line.

These sorts of transactions are not only contrary to the Act, they raise a number of problems for the interstate rail system, for railroad workers and for safe and effective rail operations, such as:

1. What responsibility will the public owner have for line? What regulation and oversight will apply to the line? Who will the commuter rail operator be? Will it be a railroad? Will its employees be covered by railroad statutes?
2. What happens to employees? What rights do they have? They would want to follow their work, but there is no mechanism for them to do so. Also if the work goes to non-rail contractors then employees won't want to go because they will lose railroad retirement rights by severing their "present connection" with the industry. The employees will not have "13(c)" rights even if federal transit money is used because the DOT takes the position that freight workers are not transit workers so if they are affected by a line conveyance accomplished with transit money, the freight workers will not be protected

3. Contractors cannot hire qualified, professional, licensed/certified railroad employees. Safety suffers because line is not operated by skilled, professional railroad workers.

4. Other safety issues-Freight, Amtrak and commuter trains will run on same line, but who is ultimately responsible for line? What happens in the event of an incident or other safety problem-who is responsible and who has incentive to improve safety? The line is part of interstate operations, but ownership of line is not with a rail carrier and federal railroad statutes are not applicable. When a single carrier operator is responsible for train movements; maintenance of the track, right of way and signal system, and maintenance of the locomotives and rail carriers, it has a powerful incentive to maintain safe, efficient and quality operations because all responsibility ultimately runs to that carrier. But under the model where there is one contractor for train movements, another for maintenance of way, one for signal work, another for maintenance of locomotives and cars, one for railroad clerical work, and another for dispatching, there are real incentives for each to minimize its responsibility and leave concerns to the other contractors. In the event of an accident, one can easily imagine the operator whose engineer was driving the train blaming the signal contractor, or the maintenance of equipment operator who inspected the air brakes; or one or more of them blaming the maintenance of way contractor for poor track maintenance, or all of them might pointing their fingers at each other. Instead of determining what went wrong to prevent a recurrence, there will be a blame-game and years of litigation.

5. What is the long term impact on Railroad Retirement system? As employees are pulled out of the system, as "railroads" are being run without railroad workers, there will be lesser contributions to the RR Retirement fund.

6. Federal monies are being used to deprive railroad employees of rights and benefits

7. Balkanization of rail system-After World War I, the ICA was amended and the ICC was given more powers because the war made it apparent that the country had a patchwork rail system; existing patterns of ownership, connections and responsibility were not conducive to an effective and efficient national system. When entities that own right of way and trackage in the middle of the interstate rail system are not carriers, when the STB has no authority over the entities that own track used in heavy interstate freight and intercity passenger movements, when a state agency that owns a line of railroad could walk away from the line with the STB powerless to act, there is danger to our rail system. Our rails system suffers when rail lines cease to be owned by responsible carriers subject to STB oversight and regulation, and where interstate passenger rail operations become a mere hodgepodge of unrelated entities who do not care about a unified whole.

However, the STB has reaffirmed the reasoning of *State of Maine* line of cases noting that the rule is of longstanding (over 60 decisions-all of which were *ex parte*, none of which actually adjudicated the issue of STB jurisdiction), and because the policy expressed in those cases was deemed to encourage development of commuter rail systems (without regard for the

many problems with this approach just outlined). Regardless of whether Board's reasoning is good policy, it is contrary to the language of the Act. However, the Court of Appeals for the D.C. Circuit recently affirmed the Board's approach, concluding that "railroad line" is not defined in the Act (though "railroad" is), that there was substantial body of Board decisions applying this approach (albeit *ex parte* decisions) and the Board is due deference in its interpretation of the statute. These decisions make it all the more necessary that the legislation be enacted to ensure that the STB will continue to have jurisdiction over lines of railroad that are used for interstate rail transportation, that such lines are not conveyed without STB approval or exemption from approval under Section 10901, and that the railroad work on such railroad lines will be performed by rail carriers using railroad workers covered by the Federal railroad laws.

## **E. CONCLUSION**

The Brotherhood of Railroad Signalmen and all of its members look forward to development of high speed rail, and expansion of intercity passenger rail and commuter rail service. And we believe that the federal government should support development of each form of passenger rail transportation. But the railroad work must be done by rail carriers using railroad workers covered by the federal railroad laws, work on existing railroad lines and signal systems and other facilities must be performed consistent with existing collective bargaining agreements, buy American requirements should be continued and state and state agency acquisitions of railroad lines that will still be used for interstate rail transportation should be governed by the interstate commerce commission termination act with all work on and for those lines done by rail carriers using railroad workers.

**COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**  
*Truth in Testimony Disclosure*

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Pursuant to clause 2(g)(5) of House Rule XI, in the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include: (1) a curriculum vitae; and (2) a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness. Such statements, with appropriate redaction to protect the privacy of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

**(1) Name:**

*Leonard Parker Jr*

**(2) Other than yourself, name of entity you are representing:**

*Railroad Signalmen (BRS)*

**(3) Are you testifying on behalf of an entity other than a Government (federal, state, local) entity?**

YES

**If yes, please provide the information requested below and attach your curriculum vitae.**

NO

**(4) Please list the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by you or by the entity you are representing:**

*Leonard Parker Jr*  
\_\_\_\_\_  
Signature

*04-06-2011*  
\_\_\_\_\_  
Date

**Leonard Parker**  
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Leonard Parker began his service with the Norfolk and Western Railroad as Signal helper, traveling construction gang April 1972. Promoted by bid bulletin to assistant signal Maintainer Petersburg Virginia. 1973 again promoted to Signal Maintainer Lamberts Point, Norfolk Virginia 1974. Norfolk and Western Railroad merged with Southern Railroad becoming Norfolk Southern Railroad. Elected to Vice President, local chairman, and president of local union. Served as Assistant General Chairman, General Committee of the Norfolk Southern General Committee.

Selected by the President of the Brotherhood Railroad Signal National Union as Legislative Representative. Promoted to Legislative Director 2000 and current serves in that position. 37 years railroad and union service. He is a political activist in the union and community.

Serving as President of NAACP chapter in Norfolk Virginia, civic league president, precinct captain. He has served in various positions in local government. Presently lives in Spotsylvania Virginia, commute to Washington DC office. Deacon 30 years (COGIC) Church of God in Christ, presently Deacon Mt Zion Baptist Church Spotsylvania Va.