

Revised Standards for Preemption of Collective Bargaining Agreements for Transactions Initiated Pursuant to Section 11323 of the Interstate Commerce Act

This agreement between UTU and the signatory Class I Carriers is intended to set forth standards to be applied by Class I railroads and the involved labor Organizations when the Carriers seek to override or modify Collective Bargaining Agreements in the implementation of consolidations, mergers, and acquisitions of control (“Major Transactions”) pursuant to Section 11323 of the Interstate Commerce Act. This agreement does not apply when a Carrier is not seeking to override or modify Collective Bargaining Agreements in such circumstances.

Conditions

1. The procedures set forth herein will be prescribed by statute and not as a condition imposed and administered by the Surface Transportation Board, or any successor agency. The terms of this agreement will become null and void when enacted into law. However, pending enactment of such statutory language, the Class I railroads signatory to this agreement agree to be bound by its terms and conditions as they relate to any notices served pursuant to either protective conditions voluntarily reached by the parties or imposed by the Surface Transportation Board in the approval of a “Major Transaction” where the applicant Carriers are seeking to override or modify an existing Collective Bargaining Agreement.
2. The terms of this agreement when enacted in statutory form will not be subject to the current exemption provision in the Interstate Commerce Act, 49 U.S.C. Section 11321(a), or any future exemption provisions, and the parties will agree on appropriate statutory language to that effect. Until enactment of such statutory language, the Class I carriers signatory to this agreement agree that they will not assert such exemption authority.
3. Except as provided in paragraph 4 below, the procedures set forth in this agreement will apply to any notice for an implementing agreement by any carrier party that seeks to override or modify Collective Bargaining Agreements, whether under existing merger, control or acquisition authority or any such authority sought or granted in the future by the STB or any successor agency.
4. The procedures set forth herein do not apply to any implementing agreements established prior to the date of this Agreement as a consequence of voluntary negotiations or arbitration pursuant to protective conditions imposed by the ICC or STB. Such implementing agreements will be conclusive and continue in effect as to all issues resolved, including provisions for procedures to be used in subsequent consolidations, coordinations or transfers of work and/or employees. Such provisions, however, shall not be used to change any Collective Bargaining Agreement unless specifically provided therein. A list of implementing agreements containing provisions that provide for changes in Collective Bargaining Agreements is attached as Addendum A. If an implementing agreement is, by oversight, not listed in Addendum A, it will subsequently be added to the list, although the carrier has the burden of showing that such addition is appropriate.

5. This agreement only addresses the current authority of the STB to override or modify collective bargaining agreements in implementing issues for major transactions. This agreement is not intended to alter or change the substantive provisions of existing protective benefit agreements or in any way address or restrict the authority of the STB to impose protective conditions in major transactions.
6. The provisions of this agreement shall not deprive a Carrier of any right to take any action allowed under any applicable existing or future Collective Bargaining Agreements, nor shall the Organization be deprived of asserting that no such right exists, all subject to any dispute resolution mechanisms provided in such agreements or under the Railway Labor Act itself.
7. This agreement will not bar the parties, by mutual agreement, from addressing any matter contained in this agreement in an alternative manner.

Consolidation or Coordination

1. A Consolidation or Coordination is a change that unifies, consolidates, merges, or pools, in whole or in part, the facilities, equipment, or employees of two or more rail Carriers (or former rail carriers), or any of the operations or services performed by such Carriers. A Consolidation or Coordination does not include a "Transfer of Work".
2. Where the work embraced by a Consolidation or Coordination is subject to two or more Collective Bargaining Agreements, the Organization may choose (from among those two or more agreements) which Collective Bargaining Agreement will apply to the Consolidation or Coordination. If the union fails to select a single Collective Bargaining Agreement within the time frame for negotiations contained in the New York Dock conditions, the single agreement to apply shall be determined by the Arbitrator. In making such determination, the arbitrator shall choose the agreement most beneficial to the employees involved as to rates of pay, rules and working conditions, including crew consist agreements.
3. In situations where the Collective Bargaining Agreements chosen by two or more Organizations contain inconsistent provisions that would create inefficiencies in the operation, which did not exist previously, the Organizations involved shall coordinate their choices to eliminate such inconsistencies. If the involved Organizations fail to do so within the time frame for negotiations contained in the New York Dock conditions, the Arbitrator shall resolve such inconsistencies. In making such determination, the arbitrator shall choose the agreement most beneficial to the employees involved as to rates of pay, rules and working conditions, including crew consist agreements.
4. For purposes of determining compensation protection, an Organization's selection of a Collective Bargaining Agreement with lower wage rates shall not be treated as a decision by affected employees to "voluntarily" place themselves on lower rated positions.
5. The Collective Bargaining Agreement selected by the Organization or Arbitrator may only be modified as follows:

- a) Work Jurisdiction Rules shall be subject to modification only to the extent that the selected agreement does not permit employees to perform work throughout the Consolidated or Coordinated territory.
- b) Seniority District/Territory Boundaries shall be subject to modification as necessary to permit the Consolidation or Coordination. Such modification shall not, however, cause employees who were in service on the effective date of the Consolidation or Coordination to lose their seniority date on any territory where they previously held seniority and they shall be permitted to exercise such seniority. However, employees cannot be forced to a new location until they exhaust all seniority at their home location. Nothing in this agreement shall be deemed to change the obligations of an employee to exercise seniority for purposes of protective benefits.
- c) Provisions relating to seniority of all employees involved in the Consolidation or Coordination shall be integrated by agreement between the involved Carrier(s) and Organization(s) with disputes to be resolved by the Arbitrator. Train Service Rosters and Engine Service Rosters shall not be consolidated with each other. [Applicable to Operating Crafts Only.]

Transfer of Work

1. A Transfer of Work is where work and/or positions (and/or employees) are transferred from one location to another.
2. In the case of a Transfer of Work, the Collective Bargaining Agreement applicable at the location to which the work, positions, and/or employees are to be transferred will apply to the transferred work, positions, and/or employees.
3. Provisions relating to seniority of employees who transfer to the new location in connection with a Transfer of Work shall be integrated by agreement between the involved Carrier(s) and Organization(s) with disputes to be resolved by the Arbitrator. Train Service Rosters and Engine Service Rosters shall not be consolidated with each other. [Applicable to Operating Crafts Only.]

System Wide Issues

The Parties recognize that terms of Collective Bargaining Agreements applicable to a portion of a Carrier's system may give rise to operating incompatibilities or may be inconsistent with the establishment of uniform system-wide administrative procedures. Accordingly, notwithstanding any of the preceding provisions or conditions, where Collective Bargaining Agreements interfere with the Carriers' right to take the following actions, those agreements may be changed by the Carrier in the following limited circumstances:

1. to ensure a uniform payroll system, including uniform system-wide practices regarding dates for the payment of wages and/or direct deposit of paychecks;
2. to provide for uniform crew calling practices;
3. [other identified situations to be determined for each other involved craft.]

Dispute Procedures

All disputes are to be resolved in accordance with Section 4 of the New York Dock conditions.

Review Procedures

The award of an Arbitrator under this agreement shall be subject to review by the United States Court of Appeals for the District of Columbia under statutory provisions and standards applicable to review of agency adjudications.

Enforcement

This agreement is enforceable in any United States District Court in whose jurisdiction the involved Carrier operates.

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