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

This Agreement made March 21, 2001 by and between the labor organizations listed in Attachment A hereto, and the Class I Carriers listed in Attachment B hereto, is intended to set forth standards to be applied by such Carriers 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. The term "Major Transaction" as used in this Agreement and for the purposes herein only will also include a lease, grant of trackage rights and/or contract to operate by one or more Class I Carrier(s) of all or substantially all of its/their track and/or operations to another carrier or non-carrier in one or more transactions. This Agreement does not apply when a Carrier is not seeking to override or modify Collective Bargaining Agreements in such circumstances.

The term "Organization" when used in this Agreement shall include any signatory organizations whose members are involved in a transaction covered by this Agreement.

The term "Carrier" when used in this Agreement shall include any signatory carrier involved in a transaction covered by this Agreement.

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 benefits 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.

8. The parties to the Agreement agree to actively support "clean" legislation re-authorizing the Surface Transportation Board while opposing provisions or amendments which would change adversely the regulatory structure applicable to the railroads, provided that such legislation includes provisions adopting this Agreement.

9. It is understood that this Agreement does not address proposals pending before the Surface Transportation Board regarding employee relocation and severance pay.

Consolidation or Coordination

1. A consolidation or coordination is an operational change necessary to unify, consolidate, merge or pool, in whole or in part the facilities or any of the operations or services previously performed by two or more rail Carriers (or former rail carriers) through such separate facilities.

A consolidation or coordination under this Agreement or the Washington Job Protection Agreement of 1936 does not include changes such as the imposition of a system-wide collective bargaining agreement and/or the creation of system-wide gangs not otherwise permissible under current collective bargaining agreements.

A modification to seniority district size shall not 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. Moreover, 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.

If a carrier proposes a consolidation or coordination of seniority districts, the carrier(s) must prove that its proposal is operationally justifiable and will provide a demonstrable public transportation benefit in the context of the demonstrable impact that change would have upon employees affected by the consolidation or coordination. Should the arbitrator determine that the change in seniority district size is operationally justifiable, yet will cause harm to the employees not otherwise remedied by application of the imposed protective conditions, the arbitrator has jurisdiction to fashion terms and conditions to ameliorate the harm. Such terms and conditions shall not change in any way the labor protective conditions applicable to the transaction involved. The decision of the arbitrator shall be final and binding upon the parties, provided, however, that the award shall not require the carrier to implement the proposed transaction but shall be accepted by the parties as the terms and conditions which shall be met by the carrier if and when such transaction is implemented.

The definitions of "consolidation" and "coordination" are intended to apply only to the operational changes contemplated by this Agreement and are not intended to change the definition of "coordination" or "consolidation" in the Washington Job Protection Agreement of 1936 or any other protective arrangement or agreement between the parties signatory to this Agreement.

2. Where the work subject to a Consolidation or Coordination is covered by two or more collective bargaining agreements, the Organization(s) 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. The Carrier(s) shall be permitted to attend the arbitration in order to answer questions presented by the arbitrator; however the

Carrier(s) shall not have the status of a party to the proceeding and will not be permitted to file a written submission or present argument to the arbitrator.

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 meet and confer in good faith to resolve the inconsistencies. For the purposes of this paragraph, an "inefficiency" shall not include an arrangement between Organizations providing for a single representative, including multiple Organizations, under a single collective bargaining agreement. If the involved Organizations fail to resolve the inconsistencies within the time frame for negotiations contained in the New York Dock conditions, the arbitrator shall resolve such inconsistencies by choosing the agreement provision(s) 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 in a worse position regarding their compensation.

5. The collective bargaining agreement selected by the Organization(s) or arbitrator may only be modified to the extent that the selected agreement does not permit employees subject to it to perform work throughout the "consolidated" or "coordinated" territory.

6. Provisions relating to the integration of seniority rosters involved in the "consolidation" or "coordination" shall be by agreement between the involved Carrier(s) and Organization(s) with disputes to be resolved by the arbitrator. The Carrier(s) will give deference to an integration plan devised by the Organization(s) so long as (1) it will not be a violation of law or present undue legal exposure; (2) it would not be administratively burdensome, impractical or costly; and (3) it would not create an impediment to carrying out the "consolidation" or "coordination." If the Carrier(s) do not accept an integration plan devised by the Organization(s) on one of the grounds listed above, the Carrier(s) must establish its/their objection in arbitration by clear and convincing evidence. Train Service Rosters and Engine Service Rosters shall not be consolidated with each other.

Transfer of Work

1. A "transfer of work" is defined as an operational change where work, positions and/or employees are transferred from one location to another location more than 30 miles away (including, but not limited to the transfer of the inspection and/or repair of rolling stock and

maintenance of way work equipment between shop facilities where such work is performed) in a manner not otherwise permitted under existing collective bargaining agreements.

2. In the case of a "transfer of work" as set forth above, 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 the integration of seniority rosters involved in the "transfer of work" shall be by agreement between the involved Carrier(s) and Organization(s) with disputes to be resolved by the arbitrator. The Carrier(s) will give deference to an integration plan devised by the Organization(s) so long as (1) it will not be a violation of law or present undue legal exposure; (2) it would not be administratively burdensome, impractical or costly; and (3) it would not create an impediment to carrying out the "transfer of work." If the Carrier(s) do not accept an integration plan devised by the Organization(s) on one of the grounds listed above, the Carrier(s) must establish its/their objection in arbitration by clear and convincing evidence. Train Service Rosters and Engine Service Rosters shall not be consolidated with each other.

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, 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 as part of the implementing agreement process pursuant to Article I, Section 4 of the New York Dock Conditions (or counterpart provisions contained in other statutory-based labor protective conditions that may be applicable to a Major Transaction):

1. To ensure a uniform payroll system, including uniform system-wide practices regarding dates for the payment of wages. A Carrier shall have one opportunity (per Major Transaction) to exercise this right. The changes to be implemented pursuant to this paragraph must be based upon provisions contained in a collective bargaining agreement applicable to employees on a portion of such Carrier's system.

2. To provide for uniform crew calling practices for operating craft employees with respect to the following;
    a. stand call time (no change to standard call rules for interdivisional service;
    b. standard procedures for displacements (notice and period for exercise);
    c. standard pool adjustment rule (frequency);
    d. standard bid periods for vacancies;

e. standard mark off/mark up times for rest days, personal leave, vacation, etc.;
f. method of communication.

The changes to be implemented pursuant to this paragraph must be based upon provisions contained in a collective bargaining agreement applicable to employees on a portion of such Carrier's system. In the case of item "f' above, if there is an existing rule on the Carrier's system providing for use of an alternate number(s) to contact an employee where such number(s) is provided by the employee, such rule shall be incorporated in the provision(s) selected by the Carrier.

3. To allow cars, locomotives and other equipment to be repaired, maintained and/or utilized throughout the combined system.

Dispute Procedures

All disputes are to be resolved in accordance with Article I, Section 4 of the New York Dock conditions (or counterpart provisions contained in other statutory-based labor protective conditions that may be applicable to a Major Transaction).

Review Procedures

Prior to adoption of this Agreement by an Act of Congress, the signatory parties will jointly petition the Surface Transportation Board to enact a regulation providing that the award of an arbitrator under this Agreement shall be treated as a final decision of the Board. Thereafter, 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

The Agreement is enforceable in any United States District Court in whose jurisdiction the involved Carrier operates.

ATTACHMENT A
[Signatures Omitted]

Brotherhood of Locomotive Engineers

Brotherhood of Railroad Signalmen

Sheet Metal Worker International Association

Carmen Division of Transportation Communications International Union

International Brotherhood of Electrical Workers

International Brotherhood of Boilermakers and Blacksmiths

Brotherhood of Maintenance of Way Employes

International Association of Machinists

Transportation Communications International Union

Transport Workers Union of America

National Conference of Firemen and Oilers, SEIU

ATTACHMENT B
[Signatures Omitted]

Burlington Northern and Santa Fe Railway Company

The Kansas City Southern Railway Company

Union Pacific Railroad Company

CSX Transportation, Inc.

Norfolk Southern Railway Company

Canadian Pacific Railway