



A bold voice for transportation workers

PROTECTING WORKERS AS PASSENGER RAIL IS EXPANDED

As states expand commuter rail and prepare for the implementation of high speed rail projects, these initiatives must create and sustain good jobs and comply with federal railroad statutes. We reject efforts by states and private sector operators to structure their operations with the deliberate goal of evading federal rail laws and the protections they afford to rail employees. Additionally, workers who perform construction work on these initiatives funded by the federal government must be covered by federal prevailing wage requirements.

Amtrak and other interstate passenger and freight carriers are covered by the Railway Labor Act, the Railroad Retirement Act, the Railroad Unemployment Insurance Act, the Federal Employer's Liability Act, and other related statutes. Taken together, these laws provide rail workers with collective bargaining rights, a retirement system, and unemployment, injury and disability compensation. Unfortunately, some providers of passenger rail are creating structures to essentially operate as non-rail carriers and thus evade coverage under laws designed by Congress to ensure safe railroads and adequate worker protections.

Specifically, several states have acquired parts of the interstate rail system from freights railroads to expand commuter rail operations. After the lines are acquired, a commuter rail agency provides passenger service while other railroads continue to operate on the line. While there is nothing inherently wrong with these transactions, too often they are used to create a legal fiction: that rail workers who perform the same jobs they did before the state acquired the line are no longer rail workers for purposes of federal law.

This means that a railroad signalman, for example, who has worked on the same line for a decade, would suddenly lose his or her retirement coverage, seniority, and contract rights simply because of a legal arrangement that has nothing to do with how the job is performed. These workers are still on the same rail line, using the same skills, applying the same training, and calling on their years of experience to make sure that train operations are safe. Yet under these arrangements they can lose their statutory and contractual protections.

These operating schemes are growing and have already been negotiated in several states. In New Mexico, the state acquired nearly 300 miles of line from the BNSF Railroad for a new commuter rail system. In Colorado, an agreement has been reached for the right to operate commuter rail service in Denver on Union Pacific and BNSF tracks. In Florida, the state Department of Transportation plans to acquire an existing freight line owned by CSX Railroad to operate SunRail commuter rail. In California, a private entity is attempting to acquire the San Benito line owned by Union Pacific. In each of these instances, key federal rail laws that ensure safety and protect workers will not apply. Commuter line acquisitions and operations do not have to work this way. In Massachusetts, the MBTA negotiated an agreement that does abide by the relevant rail statutes, proving that states can expand passenger service using trackage agreements without undermining the employees.

Schemes that reclassify rail workers are not only unfair, but they jeopardize the safety and efficiency of the passenger rail system the state is seeking to expand.

For a worker to maintain railroad retirement coverage, he or she must be employed by a rail carrier covered by the federal statute. When the employer's status changes and they are no longer considered a rail carrier, many experienced workers will seek alternative employment with a railroad to avoid a lapse in coverage. This of course results in a less experienced workforce that is new to the rail line and its operation.

Rail safety will also suffer on tracks where multiple contractors hire inexperienced workers at low rates of pay. Interstate railroads, which fall within the scope of the rail laws, operate under a system in which a single carrier operator holds responsibility over the railroad's train-sets, tracks and operations, including train movements, track maintenance, signal systems, locomotive maintenance, inspections and dispatching. This carrier has an incentive to maintain safe and efficient operations because it is accountable for the entire system. However, when these responsibilities are Balkanized, with several contractors in charge, each entity will minimize its costs and accountability will be difficult if not impossible to maintain.

The avoidance of federal statutes also creates an unfair competitive disadvantage for entities that bid to provide commuter rail service. Operators that abide by federal laws may have higher overhead costs because they meet more rigorous federal safety and employment standards. In contrast, those that avoid carrier status by operating outside of federal statutes may spend less on safety, salaries and pensions. We believe there should be a level playing field for bidders so that commuter rail contracts are decided on the basis of efficiency and quality rather than a race to the bottom, which increases the likelihood of rail accidents and erodes job quality.

Addressing this problem would not expand rail laws to transit operations. Nor would it apply if a rail carrier subcontracts construction work consistent with collective bargaining agreements and applicable prevailing wage requirements. Additionally, if a railroad line is removed from the interstate system, federal rail laws would not be applicable. But we must ensure that workers and carriers that are performing rail work are covered by the statutes that were specifically designed decades ago for the industry.

There is a better way to expand commuter and high speed rail. Congress and the Department of Transportation must ensure that federal rail statutes cover interstate rail lines and that operators using trackage rights agreements to operate over those lines abide by federal standards. We support the new investments being made in passenger rail but will oppose initiatives designed to do an end-run around key federal laws and worker protections.

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