IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76102

The Kansas City Southern Railway Company
427 W. 12th St.
Kansas City, Missouri 64105

CSX Transportation, Inc.
500 Water Street
Jacksonville, Florida 32202-4465

Grand Trunk Western Railroad Company
17641 South Ashland Avenue
Homewood, Illinois 60430

Norfolk Southern Railway Company
Three Commercial Place
Norfolk, Virginia 23510-2191

Illinois Central Railroad Company
17641 South Ashland Avenue
Homewood, Illinois 60430

Union Pacific Railroad Company
1400 Douglas Street
STOP 0710
Omaha, Nebraska 68179

The Belt Railway Company of Chicago
6900 S. Central Avenue
Bedford Park, Illinois 60638

Plaintiffs,

v.

International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division
24950 Country Club Blvd., Ste. 340
North Olmstead, Ohio 44070-5333

Defendant.

§

Civil Action No. _____

VERIFIED COMPLAINT

Introduction

1. In this civil action, a group of railroads – including BNSF Railway Company ("BNSF"), The Kansas City Southern Railway Company ("KCS"), CSX Transportation, Inc. ("CSXT"), Grand Trunk Western Railroad Company ("Grand Trunk"), Norfolk Southern Railway Company ("NS"), Illinois Central Railroad Company ("IC"), Union Pacific Railroad Company ("UP"), and The Belt Railway Company of Chicago ("BRC") (collectively, "Plaintiffs" or the "railroads") – seek declaratory and injunctive relief under the Railway Labor Act ("RLA"), 45 U.S.C. § 151 *et seq.*, to require the defendant International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division ("SMART-TD") to engage in negotiations over the issue of train crew size and complement ("crew consist") during the parties' upcoming round of collective bargaining. SMART-TD has consistently refused to bargain over crew consist, asserting, among other things, that any proposals on this subject are barred by "moratorium" provisions in existing agreements. The railroads disagree with that interpretation, and maintain that any disagreement over the meaning of the moratoriums is a "minor dispute" subject to binding arbitration. In the meantime, the RLA obligates SMART-TD to exert every reasonable effort to reach agreement with each railroad on crew consist, and to do so on a craft-wide, system-wide basis.

Jurisdiction, Parties, and Venue

2. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1337. This case presents an actual controversy arising under 45 U.S.C. § 151 *et seq.*, within the jurisdiction of the Court pursuant to 28 U.S.C. § 2201(a).

3. Plaintiff BNSF is a common carrier by rail under the Interstate Commerce Act and a carrier as defined in § 1 First of the RLA, 45 U.S.C. § 151 First.

4. Plaintiff KCS is a common carrier by rail under the Interstate Commerce Act and a carrier as defined in § 1 First of the RLA, 45 U.S.C. § 151 First.

5. Plaintiff CSXT is a common carrier by rail under the Interstate Commerce Act and a carrier as defined in § 1 First of the RLA, 45 U.S.C. § 151 First.

6. Plaintiff Grand Trunk is a common carrier by rail under the Interstate Commerce Act and a carrier as defined in § 1 First of the RLA, 45 U.S.C. § 151 First.

7. Plaintiff NS is a common carrier by rail under the Interstate Commerce Act and a carrier as defined in § 1 First of the RLA, 45 U.S.C. § 151 First.

8. Plaintiff IC is a common carrier by rail under the Interstate Commerce Act and a carrier as defined in § 1 First of the RLA, 45 U.S.C. § 151 First.

9. Plaintiff UP is a common carrier by rail under the Interstate Commerce Act and a carrier as defined in § 1 First of the RLA, 45 U.S.C. § 151 First.

10. Plaintiff BRC is a common carrier by rail under the Interstate Commerce Act and a carrier as defined in § 1 First of the RLA, 45 U.S.C. § 151 First

11. Defendant SMART-TD is an unincorporated association and a labor organization as defined in the RLA. SMART-TD is the collective bargaining representative of the crafts or classes of conductors, brakemen, trainmen, and/or yardmen employed by the Plaintiffs, and also represents those employees in grievance and arbitration procedures under the RLA. Members of SMART-TD have performed and continue to perform work in this judicial district.

12. Defendant SMART-TD maintains a series of subordinate committees, called "general committees," that purport to represent employees on portions of the Plaintiff railroads, corresponding to the former properties of predecessor railroads that have since been

merged into the Plaintiffs' respective networks. There are between one and seven general committees on each of the Plaintiff railroads.

13. Venue is proper in this Court under 28 U.S.C. § 1391(b) because SMART-TD is a resident of, is found in or has agents within, or transacts its affairs in this judicial district, and the activities of the Defendant giving rise to this action occurred or have effects in this district.

Collective Bargaining Under the Railway Labor Act

14. The RLA imposes mandatory procedures to resolve labor disputes between railroads and their employees, including both collective bargaining disputes arising from efforts to create or modify agreements (known as "major disputes") as well as disputes over the meaning of existing agreements (known as "minor disputes"). *See* 45 U.S.C. §§ 151-60.

15. Bargaining over proposals to create a new agreement or change an existing agreement is initiated by the service of a written notice of proposed changes in rates of pay, rules, or working conditions pursuant to § 6 of the RLA (known as "§ 6 notices"). 45 U.S.C. § 156. The parties must then meet in conferences to try to reach agreement on the proposed changes and, if necessary, participate in mediation before the National Mediation Board ("NMB"). 45 U.S.C. §§ 152 First, 155 First.

16. If mediation fails, the NMB must proffer binding arbitration to the parties. 45 U.S.C. § 155 First. If both parties do not agree to arbitration, the President may appoint a presidential emergency board ("PEB") to investigate and report on the dispute. The parties may not resort to strikes, lock-outs, or other self-help until 30 days after the NMB terminates its services or, if a PEB is appointed, 30 days after it makes its report. 45 U.S.C. § 160. If a major dispute is not settled through these procedures and a strike or other self-help threatens to disrupt

interstate commerce, Congress has authority under the Commerce Clause of the U.S. Constitution to intervene and require further bargaining or impose a settlement.

17. Bargaining in the railroad industry can be national or local in scope. In national bargaining (also known as "national handling"), the railroads negotiate jointly as a multi-employer group, seeking an agreement that applies to all of them. For decades, national bargaining involving the major railroads has proceeded in a series of "rounds" that take place every five years. A round that covers proposals to change rates of pay, benefits, and work rules is known as a "national wage and rules movement." A national agreement that results from these negotiations typically contains a "moratorium" clause that bars the service of any additional § 6 notices on any topic until five years after the start of the round of bargaining.

18. In local bargaining, by contrast, an individual railroad negotiates for an agreement that will apply only to its own employees or on its own property. Local agreements may, but do not always, contain a moratorium on the service of additional § 6 notices. Local and national handling may proceed in tandem.

19. Railroad labor agreements typically do not have an expiration date, but rather persist unless and until modified in subsequent bargaining. As a result, each railroad is party to multiple agreements with each union, including both national agreements and local agreements (which often include legacy agreements negotiated by predecessor railroads acquired through mergers or similar transactions).

The History of Crew Consist Bargaining

20. Crew consist is one of the most contentious issues that has ever arisen in collective bargaining between the railroads and the unions that represent "ground service" personnel, which includes conductors, trainmen, switchmen, and brakemen. The phrase "crew

consist" refers to the number, complement, and work locations of ground service employees who work as part of a train crew. For decades, SMART-TD and its predecessors have consistently and vehemently opposed any proposals by railroads to change crew consist or to eliminate operating ground service positions due to technological change.

21. In the early days of the industry, train crews often comprised ten or more employees, including an engineer, conductor, fireman, and multiple brakemen (whose job was to set and release hand brakes). As technology improved, fewer crew members were needed. With the advent of air brake systems in the early 1900s, for example, there was no longer any need for brakemen. However, by the middle of the 20th century, most train crews were still comprised of at least five people, including at least two brakemen. The unions fought any proposals to reduce train crew size, arguing that employees with no tasks to perform were nevertheless still necessary for "safety" reasons.

22. It was not until the late 1970s and early 1980s – following multiple emergency boards, strikes, special arbitration panels, and a presidential railroad commission – that the railroads were able to secure agreements providing for the removal of the second brakeman (which, along with the contemporaneous elimination of fireman positions, reduced the standard train crew from five to three employees). These agreements provided that ground crew positions on each train would be reduced only through the process of "pure attrition" – meaning the elimination of jobs through death, retirement, resignation, acceptance of a voluntary severance, or other voluntary departure – and thereby avoided mass furloughs due to crew size changes. As a practical matter, this means that the transition to smaller crews happens gradually. There is a *de facto* protected class of employees – *i.e.*, those who were employed as of the date of the crew consist agreement – and as they leave the railroad, the jobs they held can be "blanked"

and the trains on which they worked can be operated with the smaller crew size. Over time, most crew consist agreements incorporated this concept of "pure attrition" as the basis for reduction of a crew from any one size to any smaller size.

23. In the late 1980s, the industry sought to reduce crew consist from three to two, arguing that there was no operational need for the remaining brakeman. The United Transportation Union ("UTU") – SMART-TD's predecessor – refused to agree. The matter was initially progressed in local handling by one railroad, the Chicago & North Western ("C&NW"), and was ultimately heard by Presidential Emergency Board No. 213, which recommended that the railroad be allowed to reduce crew size, with binding arbitration to set the particular terms. The union rejected those recommendations, but Congress subsequently imposed the recommendations as the parties' agreement. C&NW thereby gained the right to operate with just two employees – a conductor and an engineer – albeit subject to the caveat that forces could be reduced only through "pure attrition."

24. The changes at the C&NW were eventually replicated across the rest of the railroad industry. In the bargaining round that began in 1988, the industry sought the right to operate with a two-person crew or, in the alternative, a 20 percent wage reduction. UTU refused to discuss the issue, arguing that crew consist is a "local" matter and therefore not subject to bargaining on a multi-employer basis. Presidential Emergency Board No. 219 was appointed to make recommendation for settlement. The Board held that regardless of whether crew consist is a local or national issue, it required a resolution, and so adopted the same approach as PEB No. 213: the railroads were given a mechanism to achieve new crew consist agreements through binding arbitration on a property-by-property basis.

The Existing Crew Consist Agreements

25. Many of the crew consist agreements that came out of the arbitration processes following PEB No. 219 are still in place today, along with several similar agreements negotiated during the same time period. While the exact terms of these agreements vary from property to property, they all permitted the railroad to reduce the size of train crews – in most cases down to two employees, including one engineer and one conductor – in exchange for various benefits, such as additional compensation and protections from furlough. Each of these crew consist agreements carried forward the concept – established in the earlier agreements discussed above – that workforce reductions would be accomplished through "pure attrition," rather than through mass lay-offs or furloughs.

26. Of the dozens of crew consist agreements currently extant among the Plaintiff railroads, most (but not all) include a moratorium clause that bars service of proposals for changes in certain identified topics until after the attrition of all individuals who were working at the time the agreements were signed. The exact terms of these moratorium provisions vary among the different agreements, but a majority of them incorporate some version of the following language:

> The parties to this Agreement shall not serve or progress prior to the attrition of all protected employees, any notice or proposal for changing the specific provisions of this Agreement governing pure attrition, protected employees, car limits and train lengths, special allowance payments to reduced crew members, employee Productivity Fund deposits and the administration thereof. This will not bar the parties from making changes in the above provisions by mutual agreement.

27. The purpose of these moratorium provisions was to prevent the railroads from seeking to change the "specific" benefits or protections offered to protected employees in exchange for reductions in crew consist. Thus, these agreements prevent, for example, a railroad

from proposing to reduce the payments made to protected employees in subsequent rounds of collective bargaining. These moratoriums do not, however, prohibit railroads from making new proposals regarding other subjects, including the number, functions, or assignment of ground service personal on trains.

28. There are a total of six crew consist agreements that apply to portions of four of the railroads and which contain moratorium provisions that expressly reference "crew consist" or "crew size" or "consist of crews." However, those agreements do not prohibit proposals to move conductors from the cab of the locomotive to a different work location, or to establish more flexible roles for conductors, or to seek adjustments in wages or other compensation for any crews that do not operate with a single person in the locomotive cab.

The 2004-06 Litigation

29. In November 2004, several of the Plaintiff railroads served a § 6 notice seeking changes in crew consist. In particular, they proposed "consolidation" of the conductor and engineer positions along with a new rule allowing railroads to determine crew size based on operational needs. In the alternative, the railroads proposed a reduction in compensation such that "the compensation of the entire crew shall not exceed the compensation which would have been paid to the crew had crew staffing been determined by the railroad by the operational needs alone." This proposal was served by the multi-employer group in national handling, rather than by individual railroads.

30. In response, UTU refused to bargain over crew consist at either the national level or with individual railroads. It sued the railroads in federal court, seeking declaratory and injunctive relief. The union raised two primary objections to the crew consist proposal. First, it argued that it was not obligated to bargain over crew consist at the national

level because crew consist is a "local" issue. It relied on the case of *Brotherhood of R.R. Trainmen v. Atlantic Coast Line R.R.*, 383 F.2d 225 (D.C. Cir. 1967), which held that whether a union is obligated under the RLA to bargain over any particular subject in national handling turns on an "issue-by-issue evaluation of the practical appropriateness of mass bargaining on that point and the historical experience in handling similar national movements." *Id.* at 229.

31. Second, UTU claimed that the proposal was a repudiation of the local crew consist agreement moratorium provisions. More specifically, the union claimed that all of the crew consist agreements – except for the agreements with no moratorium clause at all – barred the service of any notice for changing anything in the agreements, not just the topics specifically listed in the moratorium provisions. It further argued that the reference to "pure attrition" should be read to mean the number of people in a crew, rather than the manner in which a reduced crew size could be reached (*i.e.*, through the gradual elimination of positions due to death, retirement, resignation, acceptance of a voluntary severance, or other voluntary departure). It argued that the railroads' position to the contrary was "not arguable" or "frivolous," thereby giving rise to a "major dispute" under the test set forth by the Supreme Court in *Consolidated Rail Corp. v. RLEA*, 491 U.S. 299 (1989) ("*Conrail*").

32. The railroads maintained that UTU was required to bargain over crew consist. In response to the union's *Atlantic Coast Line* argument, the railroads argued that regardless of whether crew consist *per se* is a topic that the union must discuss in national handling, the railroads' § 6 proposal included an alternative wage demand, which is certainly subject to mandatory national handling. The railroads also noted that while *Atlantic Coast Line*

concluded that national handling of crew consist proposals is not "obligatory," "such bargaining is certainly lawful."[1] 383 F.2d at 229.

33. In response to the union's reading of the local moratorium provisions, the railroads explained that they had a contrary interpretation, and that the issue was therefore subject to mandatory arbitration under *Conrail*. In particular, they noted that the moratoriums apply to only "any notice or proposal for changing *specific provisions* of [the] Agreement governing [a list of particular subjects]," not all proposals relating to crew consist. The railroads further argued that the term "pure attrition" refers to the prohibition on furloughing employees in order to reduce crew size, and therefore is not synonymous with the number of people on a crew.

34. On March 10, 2006, the federal court issued its decision on cross-motions for summary judgment. It held that UTU had no obligation to bargain over crew consist in national handling, but that the railroads' "alternative wage proposal is a valid proposal for a reduction in pay." *UTU v. Alton & S. Ry.*, 2006 U.S. Dist. LEXIS 13452 at *15-*18 (S.D. Ill. March 10, 2006). It therefore declined to "use its authority to enjoin bargaining on wages pending local resolution of crew consist issues." *Id.* The Court also declined to reach the issue of whether the railroads' proposals were barred by the moratorium provisions and/or whether the railroads were entitled to pursue proposals to change crew consist in local negotiations. Neither side appealed.

The Belt Railway Crew Consist Dispute

35. During the 2010 bargaining round, BRC made a proposal – in local bargaining – to revise its agreement with UTU in order to allow railroad discretion with respect

[1] The Plaintiff railroads are not presently contending in this action that their crew consist proposals are subject to obligatory national handling. However, they reserve the right to do so.

to crew consist. The BRC crew consist agreement contains the standard moratorium language quoted above in paragraph 26, and so does not bar proposals to change crew size. Nevertheless, UTU again refused to bargain over or otherwise address the issue, citing the moratorium language, including the "pure attrition" provision.

36. The BRC replied by offering to arbitrate the dispute over the meaning of that moratorium language. The UTU refused that as well, arguing that a railroad had no procedural path to bring the matter to arbitration. BRC therefore exercised its right under § 3 Second of the RLA to establish a procedural board of adjustment to settle the question of whether it was entitled to arbitrate the merits of the parties' dispute over the moratorium language. However, before that board was convened, the parties reached an agreement to withdraw the matter, with both sides fully reserving their rights. Accordingly, the dispute over interpretation of the BRC moratorium language remained unresolved.

Proposed Crew Size Regulations

37. The next conflict between the unions and the railroads over crew size arose not at the bargaining table, but in the context of proposed federal regulations to require minimum train crew staffing levels. On March 15, 2016, the Federal Railroad Administration ("FRA") issued a notice of proposed rule-making ("NPRM") in which it invited public comment on a proposed rule to require at least two employees in the cab of a locomotive, absent FRA approval. During the subsequent administrative proceedings, SMART-TD, along with the engineers' union, Brotherhood of Locomotive Engineers & Trainmen ("BLET"), submitted comments and testimony in support of a regulation to require two-person train crews. The unions argued, among other things, that one-person crews are unsafe.

38. In response, the railroad industry emphasized that there was no evidence demonstrating that two-person crews are safer than one-person crews. They noted that many rail operators – including Amtrak, European freight railroads, and several U.S. short line or regional freight railroads – have operated for many years with only one person in the cab, and that the safety record of these railroads is at least equal to two-person operations. The railroads also pointed out that new technology, including positive train control ("PTC") – a newly implemented technology that automatically slows or stops a train in case of certain human errors – also renders a second person in the locomotive cab unnecessary. In addition, the railroads argued that regulation of crew size would be inappropriate because crew size is and always has been a matter of collective bargaining.

39. On May 29, 2019, the FRA issued a notice withdrawing the crew size NPRM. 84 Fed. Reg. 24735 (2019). The agency stated, *inter alia*, that it found "no regulation of train crew staffing is necessary or appropriate at this time." *Id.* at 24737. It explained that "despite studying this issue in-depth and performing extensive outreach to industry stakeholders and the general public, FRA's statement in the NPRM that it 'cannot provide reliable or conclusive statistical data to suggest whether one-person crew operations are generally safer or less safe than multiple-person crew operations' still holds true today." *Id.* FRA therefore concluded that "each railroad is free to make train crew staffing decisions as part of their operational management decisions, which would include consideration of technological advancements and any applicable collective bargaining agreements." *Id.* at 24740.

40. SMART-TD issued a public statement in response to the FRA's withdrawal of the NPRM. In that statement, the union continued to oppose one-person crews, asserting that it is "shocking" that "FRA has chosen to subordinate the safety of BLET and

SMART-TD members, other railroad workers, and the American public to the interests of the nation's major railroads." SMART-TD also stated it did not "intend to let this development go unchallenged." Since then, SMART-TD has continued to advocate vigorously against one-person crews in a variety of forums.

The 2020 Round of Collective Bargaining

41. As the parties head into a new round of bargaining, the railroads and SMART-TD continue to disagree about whether crew consist can or should be subject to negotiation under the RLA.

42. The last round of national bargaining with SMART-TD began on November 1, 2014, resulting in a national agreement that bars the service of new proposals for change – in either national or local handling – until November 1, 2019. Accordingly, the new round of bargaining formally opens on November 1 of this year.

43. In the round of bargaining that begins on November 1, 2019, the Plaintiff railroads are serving both national and local § 6 notices proposing changes to rates of pay, rules, and working conditions. Without prejudice to the railroads' position as to whether the parties have a legal obligation to discuss crew consist in national handling, the railroads' national (multi-employer) § 6 notice will propose only voluntary discussions over changes in crew size or complement. To the extent SMART-TD declines to engage in such negotiations at the national table, the railroads in the multi-employer group are proposing adjustments in wages equivalent to the savings that would be realized through elimination of redundant or unnecessary train crew positions (similar to what they proposed in the 1988 and 2005 rounds of national handling). One of the Plaintiff railroads (CSXT, which is not part of the multi-employer group bargaining with SMART-TD except with respect to health care issues) is proposing its own wage

adjustment as an alternative to crew consist changes, paralleling the alternative wage proposal of the multi-employer group.

44. Each railroad's local § 6 notice proposes changes in, among other things, rules respecting or relating to crew consist, including a proposal to give each railroad discretion to operate trains with reduced crews and/or redeploy conductors from the locomotive to ground-based positions.

45. The railroads have, at the same time as the filing of this action, initiated the process outlined in § 3 of the RLA for arbitrating the parties' dispute over the moratorium language.

46. On information and belief – including the bargaining history outlined above, the BRC proceedings, the union's reaction to the recent withdrawal of the NPRM, and the parties' positions on unresolved issues in the 2004-06 litigation – SMART-TD continues to refuse to negotiate with the railroads over crew consist on either a local or a national basis. In particular, the union continues to interpose objections under the local crew consist moratorium provisions as a reason to refuse to engage in any substantive negotiations, and/or will otherwise seek to delay or derail negotiations out of a desire to not reach any agreement at all on crew consist.

47. On information and belief, SMART-TD refuses to bargain over crew consist pending arbitration of the parties' dispute over moratorium language.

48. To the extent that SMART-TD does bargain with any railroad over crew consist, it will, on information and belief, refuse to engage in such bargaining on a system-wide, craft-wide basis. In past rounds of bargaining, SMART-TD or its predecessors have, at various times and on various issues, argued that the subordinate "general committees" of the union each

retain an independent right to bargain for just the specific portions of modern railroad systems that correspond to former railroad properties on which each general committee formerly had jurisdiction. The union thereby attempts to fragment the bargaining process, refusing to appoint any representative with authority to bargain over the railroad's proposal for a system-wide, craft-wide agreement. In this case, that means that the railroads will be deprived of the opportunity to bargain for system-wide changes in crew consist.

49. The railroads will be unable to progress the bargaining in the face of SMART-TD's above-referenced tactics to delay or obstruct any negotiations over crew consist. By refusing to engage in negotiations over crew consist proposals, by its related refusal to bargain pending arbitration, by failing to bargain on a craft-wide, system-wide basis, and by otherwise seeking to delay or deny bargaining over crew consist, SMART-TD threatens to inflict irreparable injury on the Plaintiff railroads (and, indirectly, on the Plaintiffs' customers) by delaying or denying the railroads their statutory right to seek changes in agreements. Every day that the railroads are unable to obtain new agreements is another day that they are unable to realize the benefits of more efficient and productive operations, and there is no way for the railroads to recover those lost potential savings. Moreover, the railroads will suffer irreparable injury to the extent that the union's refusal to bargain undermines the railroads' ability to engage in effective bargaining on the full range of issues on the table. Because crew consist is such a critical issue, the railroads are unable to formulate comprehensive offers or accurately assess the value of any offers from SMART-TD while the bargainability of crew consist remains unresolved.

Count One

50. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations of paragraphs 1-49, above.

51. A "minor dispute" under the RLA includes any dispute arising out of the interpretation or application of the parties' collective bargaining agreements concerning rates of pay, rules, or working conditions. Such disputes must be resolved through conferences between representatives and/or mandatory arbitration by specialized boards of adjustment. 45 U.S.C. §§ 152 Sixth, 153. A railroad is entitled, pending arbitration, to proceed with its interpretation of the disputed agreement language so long as its position is "arguable." *Conrail*, 491 U.S. at 310.

52. The railroads' position that the existing moratoriums do not bar their crew consist-related proposals is at least "arguable," and thus any disputes between the parties regarding the application of local crew consist agreements to the railroads' new crew consist proposals are minor disputes and subject to the mandatory and exclusive procedures of §§ 3 First and Second of the RLA, 45 U.S.C. §§ 153 First, Second. Because SMART-TD denies that these are minor disputes, the railroads are entitled to a declaration under 28 U.S.C. § 2201(a) that the moratorium interpretation disputes are minor, and that the railroads are entitled to serve their notices pending arbitration.

Count Two

53. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations of paragraphs 1-52, above.

54. Section 2 Fourth of the RLA provides in relevant part that "[t]he majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter." 45 U.S.C. § 152 Fourth.

Thus, "the representative" must be a craft-wide representative. Likewise, § 2 Ninth of the RLA speaks of a single "representative" of each craft or class. It provides that when a union is certified by the NMB, "the carrier shall treat with *the representative* so certified as the representative of the craft or class for the purposes of [the Act]." 45 U.S.C. § 152 Ninth (emphasis added). In accordance with these provisions, both federal courts and the NMB have repeatedly held that, absent mutual agreement to the contrary, neither party may require the other to bargain for less than the entire craft across an entire railroad system.

55. SMART-TD's failure or refusal to engage in bargaining with any individual Plaintiff railroad on a craft-wide, system-wide basis violates the RLA. The railroads are entitled to a declaration under 28 U.S.C. § 2201(a) that SMART-TD is obligated to bargain on a craft-wide, system-wide basis, and/or an injunction requiring SMART-TD to bargain on a craft-wide, system-wide basis with each railroad.

Count Three

56. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations of paragraphs 1-55, above.

57. Under § 2 First of the RLA, railroad employees and the unions that represent them have a duty to "exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether rising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof." 45 U.S.C. § 152 First. Refusal to bargain over valid pending proposals is a *per se* violation of § 2 First of the RLA.

58. By refusing to bargain over the railroads' crew consist proposals because of objections based on the parties' existing moratorium provisions, SMART-TD is failing to exert every reasonable effort to make and maintain agreements as required by § 2 First of the RLA.

59. By refusing to bargain over the railroads' crew consist proposals pending arbitration of disputes arising under existing moratorium provisions, SMART-TD is failing to exert every reasonable effort to make and maintain agreements as required by § 2 First of the RLA.

60. By refusing to enter into either national or local handling over the railroads' crew consist proposals and/or the railroads' alternative wage proposals, SMART-TD is failing to exert every reasonable effort to make and maintain agreements as required by § 2 First of the RLA.

61. By refusing to bargain on a craft-wide, system-wide basis with each Plaintiff railroad, SMART-TD is failing to exert every reasonable effort to make and maintain agreements as required by § 2 First of the RLA.

62. The Plaintiff railroads are entitled to a judgment under 28 U.S.C. § 2201(a) declaring that SMART-TD is in violation of its obligation to exert every reasonable effort to make and maintain agreements with respect to disputes arising from or relating to crew consist, and/or an injunction requiring SMART-TD to exert every reasonable effort to make and maintain agreements with respect to disputes arising from or relating to crew consist, including the obligation to negotiate over crew consist pending arbitration over the disputed moratorium provisions.

WHEREFORE, Plaintiffs pray that this Court:

A. Issue a judgment declaring that

(1) the disputes alleged herein arising from or relating to the moratorium provisions of existing local crew consist agreements are minor disputes subject to arbitration under the exclusive and mandatory procedures of § 3 of the RLA, 45 U.S.C. § 153, and that, pending arbitration, the railroads are entitled to serve their § 6 notices regarding crew consist;

(2) SMART-TD is obligated to bargain on a craft-wide, system-wide basis; and

(3) the refusal or failure to discuss crew consist at either the national or local level, the refusal or failure to bargain pending arbitration of the moratorium disputes, and the refusal or failure to engage in craft-wide, system-wide bargaining over crew consist violate SMART-TD's statutory obligation to exert every reasonable effort to make and maintain agreements under § 2 First of the RLA.

B. Issue preliminary and permanent injunctive relief providing that

(1) SMART-TD must arbitrate the disputes alleged herein arising from or relating to the moratorium provisions of existing local crew consist agreements;

(2) SMART-TD must, pending the outcome of arbitration, engage in good faith negotiations with each Plaintiff railroad in local handling with respect to each railroads' crew consist proposal;

(3) SMART-TD must engage in good faith negotiations with the Plaintiff railroads in national handling and/or local handling over the railroads' alternative wage proposals;

(4) SMART-TD must bargain with each railroad on a craft-wide, system-wide basis;

(5) SMART-TD must exert every reasonable effort to make and maintain agreements with respect to disputes arising from or relating to crew consist.

C. Enter such other relief as the Court finds reasonable and proper including, without limitation, reasonable costs and attorneys' fees incurred in this proceeding.

Dated: October 3, 2019

Respectfully submitted,

/s/ Donald J. Munro

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Counsel for the Plaintiffs

VERIFICATION

I, Brendan M. Branon, certify under penalty of perjury that I am the Chairman of the National Carriers' Conference Committee, which represents the Plaintiff railroads in collective bargaining; that I am familiar with the matters stated in the foregoing Verified Complaint; and that the facts stated therein are true.

Executed on October 3, 2019

Brendan M. Branon

Brendan M. Branon