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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

THOMAS R. McMILLEN, JUDGE  
UNITED STATES DISTRICT COURT

IN THE MATTER OF )  
 )  
CHICAGO, MILWAUKEE, ST. PAUL ) IN PROCEEDINGS FOR THE  
AND PACIFIC RAILROAD COMPANY, ) REORGANIZATION OF A  
 ) RAILROAD  
Debtor. )  
 ) NO. 77 B 8999

MEMORANDUM IN SUPPORT OF SORE'S MOTION  
FOR AN ORDER FOR SPECIAL NOTICE ON CERTAIN MATTERS

The association to Save Our Railroad Employment ("SORE") has today moved the Court for leave to intervene in these proceedings pursuant to 11 U.S.C. Rule 8-210(c). SORE seeks permission to intervene, in part, so that it may submit a plan of reorganization in these proceedings proposing that debtor's Western Lines be reorganized as a separate operating entity.

By this companion motion, SORE requests that the Court enter an Order directing the Trustee to give notice to SORE on certain matters. SORE makes this request in order to ensure that the reorganization plan it intends to submit is not foreclosed as a viable option by events that may occur during the interim period that will elapse during consideration and approval of an appropriate reorganization plan. Actions such as sales of real property on the Western Lines, abandonments, sales or like transactions reducing the number of locomotives or freight

cars available for service on the Western Lines, opening of new gateways affording competitors traffic routings on debtor's western lines, pulling up tracks, and reducing the personnel or equipment assigned for service on the Western Lines, if permitted to occur in the future, could irreversibly erode the revenue base, physical assets, and competitive position necessary to ensure that reorganization of debtor's Western Lines into a separate operating entity remains a viable option available for consideration by the Interstate Commerce Commission and, ultimately, by the Court.

SORE does not seek, at this time, an Order restraining the Trustee from taking any of the enumerated actions. Applicant asks simply that before any of the enumerated actions are taken SORE be given notice adequate to permit it an opportunity to be heard.

#### ARGUMENT

##### I.

#### SORE SEEKS TO SUBMIT A PLAN PROPOSING OPERATION OF DEBTOR'S WESTERN LINES AS A SEPARATE OPERATING ENTITY

Applicant has sought leave to intervene in these proceedings so that it might take positions on reorganization plans proposed by the Trustee, and others, that bear upon the fate of debtor's Western Lines and also so that SORE itself may put forward a reorganization plan for consideration in these proceedings.

SORE has as of this date already completed a fairly detailed viability study of debtor's Western Lines. This study, which is based upon information assembled by the debtor's management, and which employs extremely conservative assumptions about future traffic opportunities, clearly indicates that debtor's Western Lines can be reorganized as a viable operating entity. (Affidavit of J. Fred Simpson ("Simpson"), ¶ 15).

Debtor's Western Lines typically involve much longer hauls and greater revenue contributions per car to the company, are subject to less intense competition from truckers, are ideally situated to share in the steadily growing movement of grain, coal, timber and other basic commodities from the Mid-West and Plains states to the North Coast ports. Thus, debtor's Western Lines which SORE seeks to reorganize have much healthier long-term prospects than do debtor's Mid-Western lines. (Simpson Affidavit, ¶¶ 18, 19.)

Moreover, there are persuasive additional reasons for accomplishing a reorganization of the Milwaukee in a manner that preserves operations in its Western Lines. The services provided by debtor's Western Lines are crucially important to the economies of the western states, where shippers and many wage-earners depend upon the railroad's continued services. (Simpson, ¶ 19.) It is unthinkable that national transportation and energy policy would permit debtor's transcontinental lines, built of the finest quality, heavy gauge steel, to be pulled up and sold for scrap

value at a time when construction of one mile of new railroad track typically costs in excess of one million dollars. This is particularly the case when rehabilitation of existing track normally can be accomplished for considerably less than 1/10th of that figure.

For these reasons, among others, SORE seeks to submit a formal plan proposing reorganization of the debtor's Western Lines as a separate, and viable, operating entity, in which SORE's members are prepared to assume a significant ownership interest.

## II.

### DEBTOR'S REVENUE BASE, COMPETITIVE POSITION, AND AVAILABLE PHYSICAL ASSETS ARE THREATENED BY SERIOUS DETERIORATION DURING THE REORGANI- ATION PERIOD

The number of locomotives and freight cars assigned to and in service on debtor's Western Lines has plummeted during the reorganization period. Specifically, the Milwaukee is today running an average of only one train per day in each direction on its Western Lines, as compared to the 2.5 trains per day in each direction that the carrier was averaging approximately five months ago! (Simpson, ¶ 26.) The number of employees presently assigned to debtor's Western Lines is apparently not adequate even to operate the reduced power and cars presently in service on those lines. (Simpson, ¶¶ 26, 27.) Personnel assigned to maintenance duties, and tools and materials necessary for maintenance work, have also diminished significantly on the Western Lines during the reorganization period. (Simpson, ¶ 9.)

All indications are that the situation on the Western Lines has been allowed to deteriorate to the point where the Milwaukee's revenue base, competitive position and physical assets are substantially inferior to the conditions that prevailed on those lines as of the time debtor's petition in these proceedings was approved a little over one year ago. Shippers have been subjected to steadily curtailed, and increasingly unreliable, service on the Milwaukee's Western Lines. These conditions have, in turn, caused a loss of important traffic, including automobile shipments, time-sensitive shipments by freight forwarders, and a considerable volume of export-import traffic moving via the Port of Seattle, that traditionally moved on the Milwaukee's Western Lines. Some of this lost traffic has now been placed on other railroads, primarily the Burlington Northern and the Union Pacific, thus reducing competition. (Simpson, ¶ 21.)

This trend, if it is allowed to continue, will result in a de facto erosion of the Milwaukee's position on its Western Lines to such an extent that the opportunity to reorganize those lines as a viable and separate operating entity may be lost forever. (Simpson, ¶¶ 25, 28.) Such erosion and loss of opportunity is entirely inconsistent with the intent, purpose, and, indeed, the mandate of, § 77 of the Act.

Moreover, the Trustee has made a number of recent public announcements to the effect that, although a reorganization plan has not yet been prepared, a determination has been made that debtor's Western Lines should be either sold or abandoned. (See

Exhibits A-D, and pp. 4 - 7 of SORE's "Memorandum In Support of SORE's Motion To Intervene", also filed today.)

The Trustee also has indicated interest in negotiating sales of key portions of the Milwaukee's Western Lines. There are indications that he is prepared to contemplate opening new gateways that would afford competitor railroads traffic routings on debtor's Western Lines, thus reducing competition. (Simpson, ¶¶ 22-24.) Any of these actions, if carried out, would have devastating, and irreversible, effects upon the Milwaukee's competitive position and revenue base on its Western Lines.

### III.

THE NOTICE ORDER REQUESTED BY SORE WILL  
ENSURE THAT ALL OF THE COURT'S REORGAN-  
IZATION OPTIONS ARE PRESERVED

The Order requested would require that SORE be given notice before any actions, including nine particular actions, may be taken by the Trustee that would adversely effect the Milwaukee's revenue base, physical assets, or competitive position on its Western Lines. The significance of each of the enumerated actions to the viability of the Milwaukee's Western Lines is discussed in detail in the Simpson Affidavit. (Simpson, ¶¶ 20-28.) Each is alike in one respect: Any of these actions could trigger such an irreversible erosion of the Milwaukee's competitive position as a transcontinental carrier that the option, now available, of reorganizing those lines as a separate operating entity would be destroyed before any of the participants to these proceedings, including the Trustee, have even submitted a re-

organization plan.

Such a development would, of course, frustrate the basic purpose of these proceedings. It has been held repeatedly that § 77 proceedings differ from the usual bankruptcy in that, in view of the public's interest in uninterrupted rail service, the protection of § 77 affords a debtor railroad from its creditors is expressly conditioned upon the road being operated as a regularly functioning carrier during the reorganization period in a manner that preserves it for rehabilitation:

It is manifest that a considerable period of time must necessarily elapse before a satisfactory and proper plan can be worked out and receive the requisite approval. During that period the railroad company must be operated by the trustees under the supervision and control of the court in the public interest and for the protection of the private interests involved, and to that end such expenditures must be made as are reasonably necessary to preserve and protect those interests and maintain the integrity of the railroad, so that it may be turned over to the reorganized company as a going concern. Sec. 77 contemplates that the reorganized road shall be a living, not a dying, railroad enterprise. To permit the competitive position of the road to be lost during the period of reorganization would greatly endanger the future earnings upon which the plan is to be largely based and out of which the reduced fixed charges are to be paid.

Van Schaick v. McCarthy, 116 F.2d 987, 993 (10th Cir. 1941). See generally, 5 Collier on Bankruptcy, § 77.02 at pp. 478-79 and n.6 (citing cases). See, also, In re Penn Central Transportation Co., 467 F.2d 100, 103 (3rd Cir. 1972) ("Section 77 reflects a normally paramount public interest in the uninterrupted operation of American railroads while potentially fruitful efforts at

financial reorganization and rehabilitation proceed under judicial supervision."); Atlantic Coast Line Railroad Co. v. St. Joe Paper Co., 216 F.2d 832, 836 (5th Cir. 1954) ("The desire to provide a ready remedy for the overhauling of a railroad's financial structure without impairing its primary responsibilities as a regularly functioning carrier was one of the principal reasons for the enactment of § 77.").

Affording SORE the requested notice would not bar the Trustee from ultimately taking the enumerated actions. It would ensure that, consistent with the Act, before irreversible steps are taken, the consequences bearing on continued operation may be analyzed and, if necessary, called to the Court's attention.

#### CONCLUSION

For these reasons, SORE respectfully moves that an order be entered pursuant to 11 U.S.C. rule 8-210(d) directing the Trustee to give SORE special notice before taking any of the enumerated actions. Such an order will help ensure that all of the Court's reorganization options are preserved during the time that must elapse before a satisfactory plan is formulated and approved.

DATED this 7<sup>th</sup> day of February, 1979.

Respectfully submitted,

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