

October 11, 2002

Re: Proposed merger between Metro North and Long Island Railroads

The information contained in this memo comes from numerous documents covering many thousands of pages. It comes from several decisions from more than one government agency. We cannot provide you with any single document to support the following information.

Before any merger of these two railroads can take place, it is my understanding that it will require a change in state law. It is expected that the merger will be sold as a money saving effort.

It is standard that after a merger goes into effect, and more than one union represents the same craft, that one of the unions representing the craft on a railroad petitions the National Mediation Board (NMB) to hold a runoff election between the two unions currently holding a contract. Both the airline and railroad industries come under the Railway Labor Act and the Federal Aviation Administration (FAA) plays a similar role as the STB. There have been mergers in the airline industries that have involved national and independent unions. Each union goes into the process before the regulatory bodies fighting on behalf of their members. In some of those cases, the final seniority integration follows the action known as the stapling of the seniority rosters. In other words the independent union's seniority roster was stapled to the bottom as an addition to the seniority roster of the national union. Following this procedure, the jobs were bulletined. The bids come in seniority order from the new seniority roster allowing the members of the national union to pick the best assignments of the merged property. Because of the merger there was a reduction in the total number of jobs. When all of the bidding on the airline was completed, the workforce was reduced with the results being the members of the independent union got the lowest and worst jobs and experienced 100% of the layoffs (reference United Airlines/Empire Air merger and American Airlines/TWA merger). There is no history in the airline industry of the reverse being true. Quite simply put, because the members were in an independent union at the time of the merger, they experienced all the losses.

There is no parallel at this time in the railroad industry. It would be expected that because of the similarities between the railroad and airline industries, that the airline industry cases could be pointed to as setting precedent in this situation. The longer the delay in settling whatever differences between the bargaining units of the independent union and the national union plays in favor the national union. In the instances where the independent union quickly affiliated or merged with the national union, then the national union was required to act in the interest of both bargaining groups. They are required to make the effort to treat all of their members in the craft equally because they are all represented by the same union. When this has happened in the airline industry, no "bottom stapling" has taken place. Otherwise, the unions must compete to carry out their responsibilities. Unions are required by their constitutions and the Taft-Hartley Act, the Landrum Griffin Act and numerous rules and regulations at the Department of Labor to act in the best interest of their members. To do otherwise subjects the union and its leaders to civil act and fines and possible criminal action against the leadership. Most union constitutions that contain merger provisions that set up guidelines to direct that union in how to carry out that responsibility and equally protect all members being merged. Otherwise, the unions compete and the advantage appears to be for the national union every time.