

The Tacoma Rail Proposal to Expand Railroad Operations: A Rail Labor Coalition Analysis

Produced by

The Washington State Rail Labor Coalition (WSRLC):

Comprising:

The Brotherhood of Locomotive Engineers and Trainmen
A Division of the International Brotherhood of Teamsters
Washington State Legislative Board

United Transportation Union
Washington State Legislative Board

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Since summer 2005, Tacoma Rail, owned and operated by the City of Tacoma, WA, has participated in private negotiations with BNSF and Union Pacific (UP) railroads, two Class I US railroads serving Tacoma, WA, to expand Tacoma Rail operations. Tacoma Rail proposes to absorb the yard operations, locomotive servicing, and industry switching of BNSF Tacoma, and UP Fife yards. Tacoma Rail suggests this proposal will increase efficiency, maximize existing train capacity, expand rail capacity in Tacoma, and support economic development of Tacoma Rail and the Puget Sound region. BNSF suggests 40-70 employees will be impacted by this proposal. UP has not been able to determine the number of impacted employees. Washington State Rail Labor Coalition (WSRLC) has identified nearly 250 working families that are currently working for BNSF or UP railroads or work for companies that contract with BNSF and UP railroads in their Tacoma operations.¹ The actual number of working families that may be negatively impacted by this proposal will ultimately be determined by the Tacoma City Council.

The Washington State Rail Labor Coalition has prepared this document for the Tacoma City Council and other interested stakeholders, to highlight some of the concerns voiced by rail labor in Washington State. Tacoma Rail emphasizes the fact that BNSF initiated the proposal. Independent of the genesis of the proposal, the intended and unintended consequences for Tacoma and the region are the subject of this analysis.

The Washington State Rail Labor Coalition (WSRLC) is comprised of the Brotherhood of Maintenance of Way Division, IBT (BMWED), the United Transportation Union (UTU), and the Brotherhood of Locomotive Engineers and Trainmen (BLET.) Collectively, the coalition represents nearly 80% of rail labor in the State of Washington. This coalition represents operating and maintenance rail workers at Tacoma Rail, BNSF, and Union Pacific, as well as, Sound Transit, Amtrak and PSAP in Washington State.

The Washington State Rail Labor Coalition shares with the Port of Tacoma and the City of Tacoma a vision of growth for Tacoma and Pierce County that will provide economic development and jobs in a competitive world marketplace. The WSRLC however is extremely concerned about the proposed realignment of duties and operations of railroads serving Tacoma. In the current form, families impacted by this proposal will need to commute to Seattle, Everett, or Centralia, dislocating railroad families in those communities. Some families will have to move to Portland or Spokane causing ripples in those railroad communities. A few families report they will have no place to relocate to with a railroad job and will need to find work outside the industry. In all cases, these hardships will be inflicted on workers who have built and operated the rail network in Tacoma for 20, 30 even 40 years. WSLRC consolidates their objections for the stakeholders involved on behalf of these experienced and loyal builders of the economic power house that has placed Tacoma on a world stage in trade.

¹ It is important to note that the railroads are speaking of implementing their proposal in phases. The actual projection of effected working families depends on where the railroads proposal is in the process of implementation.

The objections voiced by railroad workers in Tacoma are based on legal, ethical and moral concerns identified by rail labor in Washington State. After discussing those concerns, WSRLC will provide alternatives to the proposed realignment that attempts to avoid the injustice upon nearly 250 railroad working families in King, Pierce, Thurston and Lewis counties that the Tacoma Rail, BNSF and Union Pacific proposal inflicts.

Legal Concerns of the Tacoma Rail operation and proposal

The legal concerns WSRLC has to the Tacoma Rail, BNSF and Union Pacific proposal focus on the transparency of the proposal and the process as well as Washington State limitations on a municipal corporation's operation of an "urban public transportation system."

The appropriate representatives from rail labor in Washington were not invited to participate in any discussions with the railroads that are advocating the proposed expansion of Tacoma Rail about the impacts to labor families of this proposal. Only bits and pieces have emerged from the shroud of secrecy surrounding this proposal. Even as management was hired by Tacoma Rail from BNSF during the negotiations to expand Tacoma Rail operations, local union leaders were led to believe there was no impending change in ownership or operation at Tacoma Rail, Union Pacific and BNSF at Tacoma, WA. Tacoma Rail's presentation on April 18, 2006, to Tacoma City Council and the Tacoma Public Utilities Board demonstrated how false those messages were between railroad management and local union leadership from those communications.

Washington State Rail Labor Coalition is concerned that if not the letter, at least the spirit, of RCW 36.60.020 requiring that all hearings be public and all persons affected by the changed rail district may have their objections heard, has been ignored.²³ WSRLC is concerned that the transparency of the municipal corporation has been shrouded in this process at the expense of Washington State citizens. In the current process, though Washington citizens from King, Pierce, Thurston, Kitsap and Lewis counties will be affected, there has been no opportunity to provide a venue for these citizens to input the process. This lack of inclusion in the process coupled with the Railroad's urgency to implement the proposal fostered the frustration that resulted in the demonstration in front of Tacoma City hall on April 4, 2006.

The lack of transparency has contributed to the second legal concern of the WSRLC: Does the proposal conform to existing Washington State law?

Upon examination of the proposal once it had become public, WSRLC is concerned that existing and proposed operations at Tacoma Rail do not conform to Washington State law. An examination of Washington law suggests that a municipal corporation may operate an "urban transportation system," i.e. a railroad (RCW

² This document is not intended to provide any legal interpretation of Washington State law.

³ Tacoma Rail appears to be an urban public transportation system of a municipal corporation, however, the extent of its expansion suggests state laws pertaining to a county rail district might at times also apply.

47.04.082), "...to any point or points not to exceed fifteen miles outside of its corporate limits..." (See RCW 35.84.060). Tacoma Rail currently operates its "Capitol Division" into Olympia, WA, a distance far in excess of fifteen miles from Tacoma city limits. In addition, Tacoma Rail operates its "Mountain Division" to Morton and Centralia, WA, in Lewis County going through Pierce and Thurston Counties. Not only does the Mountain Division operate to cities in Lewis county that exceed 15 miles from Tacoma, WA (RCW 35.84.060), it operates beyond the adjoining county (Thurston), a restriction found in RCW 35.92.060 limiting a city operated railway to its own county or an adjoining county.

In the current proposal, Tacoma rail suggests assuming operations for BNSF Tacoma, even though BNSF Tacoma includes Auburn yard in King County, an operation in excess of 15 miles from the corporate limits of Tacoma.

WSRLC does not understand how Tacoma City Council has expanded Tacoma Rail beyond the limits established by the Washington Legislature, nor does WSRLC understand how Tacoma Rail's proposal as currently defined respects the Revised Code of Washington. WSRLC asks the respective parties to explore the ramifications of an expansion that appears to be inconsistent with Washington State law. Does this confirm for a skeptical electorate that a level of government in Washington is acting beyond its mandate of the people? How does this demonstrate for the average citizen a "respect for the rule of law" necessary for a civil society to endure and prosper?

Beyond seeking an understanding of the legal aspects questioned above, there are ethical concerns about the Tacoma Rail proposal that rail labor asks the City of Tacoma to consider before moving forward to approve this expansion of Tacoma Rail operations.

Ethical Concerns of the Tacoma Rail operation and proposal

If the legal concerns discussed above are resolved, WSRLC is mindful of the Washington State Constitution prohibition on direct or indirect public funding of private enterprise.⁴ On April 18, 2006, Tacoma Rail gave a presentation that included taking over BNSF Tacoma operations as described above. When Tacoma Rail was asked where they would get their employees, BNSF interjected that part of the reason for this proposal was to overcome a shortage of employees at other locations in Washington State that BNSF was experiencing and therefore was not interested in BNSF employees following "their work" to Tacoma Rail.

The cost of training locomotive engineers, conductors, trainmen, maintenance and other railroad personnel is an imposing burden on railroads. Most schools in the US do

⁴ **WASHINGTON STATE CONSTITUTION ARTICLE VIII STATE, COUNTY, AND MUNICIPAL INDEBTEDNESS SECTION 7 CREDIT NOT TO BE LOANED.** No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

not educate in the skills necessary to operate trains. This lack of educational opportunity requires railroads to pay for all training of employees as the primary, if not the only, source of the educational opportunity. This specialized training has proven to be expensive in part because of the demands of the profession. If the Tacoma Rail proposal is implemented, it will need to hire and train people to replace the BNSF and UP employees that formerly did this work. Thus, BNSF would be able to shift those training costs to public entities and gain indirect monetary relief for its need to address a strategic failure to right size its operation to meet the demands of the marketplace.

WSRLC is also aware that many capital improvements to BNSF Tacoma have resulted from taxpayer's investment. The 509 overpass resulted in a major capital improvement to a portion of BNSF Tacoma yard. Sound Transit has and is currently paying many of the costs of capital in the current construction project to increase mainline capacity in Tacoma as well as between Tacoma and Everett, WA. Although the public funds are being invested to support improved passenger service, because of joint passenger/freight operations BNSF might arguably be receiving the greater benefit from these mainline improvements. Even with this use of public money in BNSF Tacoma, if Tacoma Rail takes over the Class I operations, significant capital expenditures are and will be necessary to meet the projected growth in Tacoma.

In order for Tacoma Rail to extend its manner of operation using trucks to expedite yard switching, BNSF Tacoma will require the addition of roads in various locations to facilitate the operation. Further, BNSF Tacoma yard was built in the early part of the 20th century. BNSF has not attempted to redesign the yard to meet the innovations in rail operations being experienced in the 21st century. This lack of vision will need to be paid for by whoever operates BNSF Tacoma yard over the next decade.

Tacoma Rail was up front in saying that the existing budget including capital outlay would not meet the needs of an expanded Tacoma Rail. Tacoma rail is currently budgeting for 2005-2006 \$35.4 million and projects revenues over this same period to be \$36.3 million. Tacoma Rail is providing a service for the railroads that can not be matched by privately owned transportation companies.

Private companies are required to provide a profit for shareholders even after all operations, maintenance, and capital investment are factored into the equation. Tacoma Rail is not providing to any shareholder a return on investment that matches capital expenditure like a private corporation. An indirect subsidy for BNSF and UP railroads already exists in their current relationship with Tacoma Rail since the return on investment and profit for shareholders have been eliminated from the pricing scheme. Without question, it is in the interest of BNSF and UP railroads to enlarge this subsidy and reduce employment responsibilities further in Tacoma, eliminate capital outlays in the Tacoma terminal and eliminate liabilities associated with railroad operations. This is certainly a template for corporate governance in the 21st century that benefits private industry.

Other industries have needed to export factories to developing countries to gain the business advantage that Tacoma Rail provides the Class I railroads. “Tax-sourcing jobs --- outsourcing operations from private to publicly financed corporations with the benefits still accruing to the private corporation,” is truly an “innovation” in management-labor relations in the US. While the American worker has toiled to overcome competition from workers in foreign countries with a marginalized standard of living, now American workers can be marginalized from their own democratic process and elected government.

Though this may appear rhetorical, the Washington Constitution was written at a time when large corporations and trusts had gained monopoly dominance of the marketplace. Washington citizens experienced this harm specifically from railroad corporations and directed their desire for a just and fair market place directly at railroads in the Washington Constitution.⁵

While it may arguably be legal for the city to form a public/private partnership with the Class I railroads in Tacoma, does that partnership include the spirit and intent written into the Constitution of Washington?⁶

⁵Washington State Constitution ARTICLE XII SECTION 13 COMMON CARRIERS, REGULATION OF. All railroad, canal and other transportation companies are declared to be common carriers and subject to legislative control. Any association or corporation organized for the purpose, under the laws of this state, shall have the right to connect at the state line with railroads of other states. Every railroad company shall have the right with its road, whether the same be now constructed or may hereafter be constructed, to intersect, cross or connect with any other railroad, and when such railroads are of the same or similar gauge they shall at all crossings and at all points, where a railroad shall begin or terminate at or near any other railroad, form proper connections so that the cars of any such railroad companies may be speedily transferred from one railroad to another. All railroad companies shall receive and transport each the other's passengers, tonnage and cars without delay or discrimination.

⁶ ARTICLE VII REVENUE AND TAXATION SECTION 1 TAXATION. The power of taxation shall never be suspended, surrendered or contracted away. All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only. The word "property" as used herein shall mean and include everything, whether tangible or intangible, subject to ownership. All real estate shall constitute one class: *Provided*, That the legislature may tax mines and mineral resources and lands devoted to reforestation by either a yield tax or an ad valorem tax at such rate as it may fix, or by both. Such property as the legislature may by general laws provide shall be exempt from taxation. Property of the United States and of the state, counties, school districts and other municipal corporations, and credits secured by property actually taxed in this state, not exceeding in value the value of such property, shall be exempt from taxation. The legislature shall have power, by appropriate legislation, to exempt personal property to the amount of three thousand (\$3,000.00) dollars for each head of a family liable to assessment and taxation under the provisions of the laws of this state of which the individual is the actual bona fide owner. [AMENDMENT 81, 1988 House Joint Resolution No. 4222, p 1551. Approved November 8, 1988.]

ARTICLE VIII STATE, COUNTY, AND MUNICIPAL INDEBTEDNESS SECTION 5 CREDIT NOT TO BE LOANED. The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation

ARTICLE XII CORPORATIONS OTHER THAN MUNICIPAL SECTION 8 ALIENATION OF FRANCHISE NOT TO RELEASE LIABILITIES. No corporation shall lease or alienate any franchise, so as to relieve the franchise, or property held thereunder, from the liabilities of the lessor, or grantor,

Moral Concerns of the Tacoma Rail operation and proposal

For BNSF and UP employees, the current proposal to eliminate jobs and close facilities is not new. BNSF and UP have a history in Washington State of making operating or strategic decisions that seriously impact communities and workers without any effort to mitigate or ease the impacts of those management prerogatives.

In the 1980's, BNSF spawned the Washington Central railroad in the Auburn to Pasco rail corridor. This dislocated workers in several Washington Communities.⁷ In the 1990's, BNSF merged this property back into the BNSF railroad. Many of the dislocated workers remained alienated from these communities due to the original spin-off and the subsequent process for merging the operation back. BNSF has subsequently spun-off portions of this line yet again. This line currently has the attention of railroad stakeholders as a possible corridor for increased railroad capacity in Washington. These strategic decisions seem to have resulted in short term gain for BNSF and long term consequences for railroad stakeholders.

In the early 80's, BNSF closed Auburn yard dismantling significant yard capacity and servicing facilities. Some of this capacity is currently being replaced piecemeal to provide storage for trains that cannot be moved by BNSF. Had enough parts of the yard remained intact, switching operations to relieve congestion would be possible at that location. Currently, switching operations are being shifted to and from distant locations because BNSF is unable to meet customer needs.⁸

In the past few years, BNSF has shifted servicing facilities from Tacoma to Hauser, ID, with accompanying environmental damage to the Spokane water supply. Now, BNSF suggests it is necessary to contract those services from Tacoma Rail. Again, these strategic decisions seem to have resulted in short term gain for BNSF and long term consequences for railroad stakeholders.

In this decade, BNSF, Tacoma Rail, and UP railroad have all negotiated agreements desired by management to reduce operations from 3 to 2 people in yard service. Some rail unions have objected on the grounds of safety, but no one has yet evaluated the impact on efficiency in rail operations of 2 man yard operations. Anecdotal information suggests that 3 yard jobs with 2 workers are required to accomplish the work of 2 yard jobs with 3 workers but the former requires increased equipment and yard capacity over the latter. Having said that, Tacoma Rail suggests that its negotiations

lessee, or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise or any of its privileges.

SECTION 16 PROHIBITION AGAINST CONSOLIDATING OF COMPETING LINES. No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a competing line.

⁷ Similar examples can be drawn from railroad worker experience of UP railroad in Washington State; the examples used in this section are not unique to a particular Class I railroad operation.

⁸Shifting car "classification" from location to location increases rail congestion.

leading to 2 man yard operations have provided efficiencies not enjoyed by the Class I operators thus fostering the need for the current proposal. Is it appropriate for government to provide for the railroads an advantage that compensates for their “errant” choices in negotiations with labor?

BNSF has stated a desire to eliminate vast portions of track throughout Washington, not just in Tacoma. Regardless of BNSF’s designs, Tacoma and Washington State can build a future of economic development in Washington that includes all citizens. From listening sessions in Eastern Washington held by the Washington Transportation Commission (WTC), many communities are suggesting that the strategic plan of BNSF does not take into account their economic development. In essence, WSRLC suggests that the Tacoma Rail proposal also fails to build a future of economic development that includes all Washington citizens.

From the early 80’s to the present, large portions of track have been eliminated by Class I operators. As the Washington Transportation Commission has currently been hearing from short-line operators, port districts, and shippers many short-lines are having difficulty meeting capital needs. Increasing the rail infrastructure moving from Class I operators to short-lines just as the State of Washington attempts to determine the extent of the problem experienced by rail operators in Washington is inconsistent with the process established by the legislature to address rail capacity needs in Washington. The urgency being hyped by railroad operators is counter-productive to a reasoned process to determine the proper function of government in rail operations in Washington State.

As demonstrated by the examples above, WSRLC suggests that the current immediate difficulties in Washington are largely a product of Class I management strategic and operating decisions. If those management prerogatives have resulted in capacity constraint should any arm of government---Federal, State, or Local---enter the market place to rescue Class I management from its own devices? The Washington Transportation Commission is currently mandated to gather information suitable for answering this question. Does not prudence demand that the results of that railroad capacity analysis be included in the decision making process of the City of Tacoma?

If Tacoma chooses to discount the above concerns, to protect the greater good of the community for example, should government ignore any mitigation for the damage to railroad workers as the railroads have historically done in Washington State?

Tacoma Rail suggests that the Surface Transportation Board (STB) will review the transaction and “may” [emphasis added] mitigate the effects the changes will impose on railroad workers. Federal law may provide worker protection when 2 or more Class I railroads merge or purchase each other’s lines. Federal law has fewer protections when rail workers are impacted by transactions between Class I and Class II railroads. There are virtually no mitigation requirements when a Class I sheds track to a short-line like Tacoma Rail. If Tacoma Rail were a for-profit operation, the extent of its current operations might reasonably be considered a Class II railroad; or at least the resulting operation from the Tacoma Rail proposal would create a Class II railroad with the

accompanying federal protections. It is not clear that relying on Federal law or decision makers in Washington, DC, will address the moral issues experienced by railroad workers in their own community in Tacoma, WA.

Morally, the City of Tacoma may act to mitigate the damaging effects for railroad workers in Tacoma from the Tacoma Rail proposal. Union leaders on all railroad properties involved have voiced a willingness to work with all the parties to justly address the concerns expressed by rail families in Tacoma.

Other Options to meet the Port of Tacoma and City of Tacoma needs

Alternatives to the existing proposal exist with differing consequences for the various stakeholders. Generally, they take two forms: decline to assume the additional rail responsibilities or assume the additional responsibilities but attempt to mitigate the damage to rail working families in Washington State.

If the City of Tacoma decides to decline to assume the increased responsibility for rail service in Tacoma there are numerous capital improvements both large and small that can mitigate bottlenecks to rail traffic in Tacoma. The Port of Tacoma, the City of Tacoma, Tacoma Rail and the Class One railroads are aware of a need to increase access over the Puyallup River. The conservative estimate of \$25 million for a new bridge is only one way to increase rail volume. Increasing volume of rail traffic over the Puyallup River may actually result in reduced velocity if other changes are not incorporated. In Tacoma, increased velocity can be accomplished with minor capital improvements along Lincoln Avenue for a fraction of the long term expense of the current proposal.

Without capital expenditure, it is possible to improve velocity from improved communication in the existing system. For over a decade, rail labor has attempted to convince rail management of the need for oversight of the rail territory surrounding “bull frog junction.” The railroads continue to rely on railroad operating rules for “other than mainline operation” that suit most yard or terminal operations but begin to fail when volumes reach the current or projected level experienced in Tacoma. While the railroads might argue that the Tacoma Rail proposal will address this issue; that is an assumption that the citizens of Tacoma and Pierce County can not afford to subsidize. These same professionals provided the strategic and operating decisions described above that provided short term gain and long term consequences in Washington State.

If the issue impacting service in Tacoma is truly a communication issue relocating that issue from the current “bullfrog” location to the mainlines in Tacoma, a junction point in Seattle, or at the border of Washington State just outside of Spokane, the problem will continue to exist. Velocity and volume will continue to be impacted by the communication boundary existing between the various railroad operations. Is Tacoma Rail prepared to embark on a course of expansion toward Class 1 rail operations with the commitment of a vast expenditure of public money to resolve a communication problem that can best be addressed without capital investment? It is possible to address this velocity issue for all the stakeholders’ benefit without the immediate expenditure of

capital or damaging railroad families. The railroad unions and individual railroad workers have been and are prepared to participate in that process.

These proposals require that Class I railroads be participating stakeholders in the economic development of Washington State. Themes emerging from the Washington Transportation Commission listening sessions in Eastern Washington suggest that the Tacoma experience of service from the Class I railroads is a statewide problem not a local issue. How great a burden should the citizens in King, Pierce, Thurston, Lewis, Mason and Kitsap Counties endure or subsidize to accommodate a Class I railroad that does not desire to include the economic development of Washington State communities but chooses to skim just the easy profits from the most lucrative import/export market?

Exploring the above alternatives would address the legal, ethical, and moral issues concerning rail labor in Tacoma, though they may not facilitate the strategic plan of the BNSF to shed portions of its rail operations in Washington. However, exploring these alternatives will avoid the accompanying costs of BNSF's strategic plan to Washington citizens and communities currently being voiced throughout Washington at the Washington Transportation Commission listening sessions.

It is possible that the City of Tacoma may identify reasons that contradict the experience of communities over the past 25 years and are currently being reiterated by shippers, ports, cities, politicians, bureaucrats, and rail labor.⁹ Should the City of Tacoma decide to facilitate the strategic plan of the Class I railroads, the WSRLC asks the city to include in that calculation, mitigation that addresses the negative impacts experienced by railroad workers.¹⁰

In the 1980's when the Class I railroads experienced an economic downturn with the rest of the US, the solution of railroad management was to cut employees and shed excess track. Now, 2 decades later as railroads experience unprecedented growth, their solution to meet that growth is to outsource jobs and shed track. Is it time to recognize that the enduring ambition in good times and bad for Class I railroads are to eliminate workers and reduce capacity? At what point do stakeholders reasonably suggest that the emperor has no clothes?

⁹ www.wtc.wa.gov

¹⁰ Washington State Constitution ARTICLE I DECLARATION OF RIGHTS SECTION 12 SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED. No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.