

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**UNITED STATE DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

UNITED TRANSPORTATION UNION,  
GENERAL COMMITTEE OF  
ADJUSTMENT GO-386, J.D. Fitzgerald,  
General Chairman,

Plaintiff,

v.

BURLINGTON NORTHERN SANTA FE  
RAILROAD COMPANY, a Delaware  
corporation; and LONGVIEW SWITCHING  
COMPANY, a Washington corporation,

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**NATURE OF THE ACTION**

1. This is an action brought by United Transportation Union, General Committee GO-386 ("UTU"), J.D. Fitzgerald, General Chairman, against Burlington Northern Santa Fe Railroad Company ("BNSF") and Longview Switching Company ("LSC") to redress violations of the Railway Labor Act, 45 USC §151 et. seq. ("RLA") for failure to bargain with and

1 recognize UTU and for unilateral implementation of changes in working conditions. UTU  
2 seeks declaratory and injunctive relief.

3 **JURISDICTION AND VENUE**

4 2. This Court has jurisdiction of the asserted claims pursuant to 28 USC §§1331  
5 and 1337 and has jurisdiction to grant the declaratory and injunctive relief requested pursuant  
6 to 28 USC §§2201 and 2202. Venue is appropriate in this District because UTU, BNSF and  
7 LSC all maintain offices and do business in this District and because all of the actions  
8 complained of took place in this district.

9 **PARTIES**

10 3. UTU is a railway labor organization that represents, for purposes of collective  
11 bargaining, the craft and class of unionized BNSF operating employees, other than its railroad  
12 engineers within the meaning of the RLA, 45 U.S.C. §§151, Sixth and 152, Ninth.

13 4. Defendant BNSF is a Class I railroad subject to the jurisdiction of the Surface  
14 Transportation Board ("STB") and is a carrier as that term is defined in §1, First of the RLA, 45  
15 U.S.C. §151, First.

16 5. Longview Switching Company ("LSC") is a switching company not subject to  
17 the jurisdiction of the STB but is a carrier as that term is defined in §1, First of the RLA, 45  
18 U.S.C. §151, First. It is an operating subsidiary of BNSF.

19 **FACTS COMMON TO ALL CLAIMS**

20 6. In and prior to July, 2006, UTU was the designated representative of all crafts  
21 and all classes of operational employees of BNSF with the exception of engineers. BNSF and  
22 UTU were parties to a labor agreement made pursuant to the RLA. The agreement covered all  
23 crafts and all classes of operational employees of BNSF with the exception of engineers.

1           7.       In and prior to July, 2006 UTU was the designated representative of all crafts  
2 and all classes of operational employees of LSC with the exception of engineers. LSC and  
3 UTU were parties to a labor agreement made pursuant to the RLA. The agreement covered all  
4 crafts and all classes of operational employees of LSC with the exception of engineers.

5           8.       LSC is an alter ego of BNSF in that BNSF shares half ownership of LSC and  
6 has common management with LSC.

7           9.       The labor agreements between BNSF and UTU and between LSC and UTU  
8 covered and addressed all terms and conditions of employment affecting all crafts and all  
9 classes of operational employees employed by BNSF and LSC with the exception of engineers.

10          10.       Pursuant to 45 USC §151, et. seq., employers in general and BNSF in particular  
11 may not unilaterally change the terms and conditions for employees covered under agreements  
12 made pursuant to the RLA.

13          11.       Pursuant to 45 USC §151, et. seq., prior to making changes in wages, hours and  
14 working conditions for employees covered under agreements made pursuant to the RLA,  
15 employers in general and BNSF in particular must bargain with the designated representative of  
16 those employees.

17          12.       Prior to July, 2006 BNSF and UTU bargained for and achieved agreements  
18 making changes in the existing labor agreements relating to switching limits and/or rule  
19 changes and have also bargained on the broad scope issue of whether to divest a portion of the  
20 railroad or retain it through agreed productivity improvements.

21           A.       Switching Limits. In early 2006 UTU and BNSF came to an agreement  
22 extending terminal switching limits in the Portland, Oregon/Vancouver,  
23 Washington terminal ten (10) miles North to Ridgefield, Washington.

1 B. Broad Scope Bargaining. On four occasions BNSF and UTU have  
2 bargained about whether to divest or convey trackage rights

3 1. In 1987 Burlington Northern and UTU bargained about cost  
4 savings on the Oregon Electric and Astoria branch lines. BNSF  
5 decided not to sell the lines.

6 2. In 2002 BNSF leased part of its Oregon Electric Subdivision to  
7 Portland and Western Railroad Company. The scope of  
8 bargaining began with the question of whether to lease the line.  
9 UTU and BNSF came to an agreement regarding terms for  
10 displaced workers and operations for Oregon Electric main line  
11 traffic maintained by BNSF crews between Portland and Albany,  
12 Oregon.

13 3. On May 3, 2004 BNSF and UTU bargained to keep the Kalispell,  
14 Montana branch as part of BNSF but the agreement was voted  
15 down by the local members.

16 4. On June 2, 2004 the UTU general committee for former AT&SF  
17 lines agreed to terms to keep a Texas branch line in the  
18 corporation.

19 13. The actions of the parties created a prior course of dealings and an implied  
20 contract to bargain for changes in wages, hours and working conditions, including the effect of  
21 trackage rights agreements on all crafts and all classes of operational employees of BNSF with  
22 the exception of engineers, and an implied agreement to bargain all facets including whether to  
23

1 sell or lease depending on cost savings, operations and implementation terms resolving changes  
2 in wages, hours and working conditions.

3 14. Prior to July, 2006, pursuant to the terms of the labor agreements between UTU  
4 and BNSF and LSC, LSC had no trackage rights on BNSF owned rail lines in and around the  
5 city of Longview, WA but did have simple interchange rights at Longview Junction yard.

6 15. On or about July 27, 2006 BNSF, without bargaining with UTU, unilaterally  
7 implemented the LSC trackage rights agreement on BNSF rail lines by transferring work to  
8 LSC crews in Longview Junction Yard. BNSF cancelled BNSF jobs that on July 26 were  
9 engaged in that switching.

10 16. The unilateral implementation set forth above was a change in terms and  
11 conditions of employment for some or all crafts or some or all classes of operational employees  
12 of BNSF represented by UTU and covered by the labor agreements set forth above.

13 17. The unilateral implementation set forth above had little, if any transportation  
14 purpose.

15 **COUNT ONE**

16 18. Plaintiff repeats and realleges paragraphs 1 through 17, inclusive, as though  
17 fully set forth herein and incorporates the same by this reference.

18 19. Where an alter-ego conveyance is a "shell" trackage rights agreement and  
19 appears to have little transportation purpose a unilateral implementation threatens the over-  
20 riding RLA policy of maintaining labor peace. It is, as a matter of law, a violation of 45 USC  
21 §152, First, Third, Fourth and Seventh.

22 20. While the alter-ego transaction may be consummated, in order to foster the RLA  
23 purpose of maintaining labor peace, the implementation must comply with RLA processes.





**COUNT THREE**

1  
2 1. A Declaratory Judgment that there was an implied agreement to bargain over  
3 changes in wages, hours and working conditions between BNSF and UTU that applied to the  
4 transfer of trackage rights from BNSF to LSC.

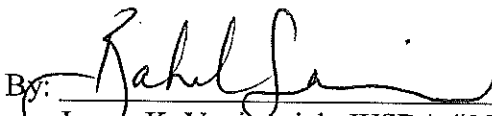
5 2. A Declaratory Judgment finding that unilaterally implemented changes in  
6 wages, hours and working conditions by BNSF and/or LSC violated 45 USC §152, First, Third,  
7 Fourth and/or Seventh.

8 3. Injunctive relief ordering that neither BNSF nor LSC unilaterally implement any  
9 changes in wages, hours or working conditions without first bargaining with UTU.

10 4. Such other and further relief as this Court may deem appropriate under the  
11 circumstances.

12  
13 DATED this 3<sup>rd</sup> day of August, 2006.

14 ROSSI, COX, VUCINOVICH, P.C.

15  
16 By:   
James K. Vucinovich, WSBA #29199  
Bahareh Samanian, WSBA #33165

17 ATTORNEYS FOR PLAINTIFF

18 &

19  
20 David Straton, OSBA #88106  
86 W 36th Ave  
Eugene, OR 97405  
21 Phone: 541-343-3929  
Email: dstraton@mindspring.com  
22 (Pro Hac Vice Admission pending)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

David Hollander, OSBA #78245  
Hollander, Lebenbaum & Gannicott  
1500 SW First Avenue, Suite 700  
Portland, OR 97201  
Phone: 503-222-2408  
email: david@hollanderlaw.com  
(*Pro Hac Vice* Admission pending)

ATTORNEYS FOR PLAINTIFF