

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36800

APPLICATION OF UNION PACIFIC RAILROAD COMPANY  
FOR MEDIATION UNDER 49 U.S.C. § 28502

Digest:<sup>1</sup> This decision directs Union Pacific Railroad Company (UP) and the Commuter Rail Division of the Regional Transportation Authority, d/b/a Metra (Metra) to engage in mediation relating to the use of three UP rail lines for Metra’s commuter rail service.

Decided: August 14, 2024

On July 31, 2024, Union Pacific Railroad Company (UP) filed an application for Board-sponsored mediation with the Commuter Rail Division of the Regional Transportation Authority, d/b/a Metra (Metra). (Appl. 2.) UP states that it operates Metra commuter trains on three UP rail lines<sup>2</sup> pursuant to a purchase-of-service agreement that will expire on September 30, 2024. (Id.) UP states that, since 2019, the parties have been negotiating a new arrangement for continued commuter rail service on the UP lines and “have made meaningful progress.” (Id. at 2-3.) However, UP states that the parties have not been able to agree on certain financial terms despite their “good faith negotiations over many years.” (Id. at 3.)

UP argues that mediation may help the parties reach an agreement and that 49 U.S.C. § 28502 permits Board-sponsored mediation where, as here, a rail carrier and public transportation authority have engaged in a reasonable period of negotiation but cannot reach an agreement concerning trackage use and related services provided by the rail carrier for purposes of commuter rail transportation. (Appl. 3-4.)

In an August 8, 2024 reply in opposition, Metra argues that UP’s application is premature. (Metra Reply 1.) Metra acknowledges that the parties “have engaged in good faith negotiations over several years” and “have made some progress in their discussions” about Metra’s continued commuter rail service on the UP lines. (Id. at 3-4.) But Metra claims that negotiations have stalled on certain critical issues because UP has not provided financial

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> The three lines are the North Line, the Northwest Line, and the West Line, all serving the Ogilvie Transportation Center in Chicago, Ill. (Appl. 2.)

information necessary for Metra to evaluate UP's proposal and request approval from its stakeholders. (*Id.* at 4-5.) Metra expresses concern that, unless and until such information is provided by UP, mediation would "become stalled at the outset." (*Id.* at 6.) In lieu of mediation, Metra asks that the Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC) provide informal assistance to the parties. (*Id.* at 7.) Nevertheless, Metra states that it "will participate fully and constructively" if the Board directs the parties to engage in mediation. (*Id.* at 8.)

On August 9, 2024, UP filed a reply<sup>3</sup> expressing disagreement with Metra's view of the reason why the negotiations have not yet reached a successful conclusion and reiterating its position that Board-sponsored mediation would be better suited to providing the "facilitation and focus needed to bridge the remaining gaps between the parties' positions" than more informal assistance would be. (UP Reply 2.)

Under 49 U.S.C. § 28502, "[i]f, after a reasonable period of negotiation, a public transportation authority cannot reach agreement with a rail carrier to use trackage of, and have related services provided by, the rail carrier for purposes of commuter rail passenger transportation," either party may apply to the Board for nonbinding mediation. The statute also provides that "[t]he Board shall conduct the nonbinding mediation in accordance with the mediation process" set forth in the version of 49 C.F.R. § 1109.4 in effect on the date of the statute's enactment. 49 U.S.C. § 28502; *see* 49 C.F.R. § 1109.4 (2008).

Both parties acknowledge that they have been engaged in good faith negotiations for several years but have yet to reach agreement on "critical issues." (Metra Reply 4; *see* Appl. 3.) Metra does not argue that this years-long negotiation period without a resolution does not constitute "a reasonable period" under § 28502, or that the statute is otherwise inapplicable here. Although Metra believes that informal assistance from OPAGAC would be more effective at this time, Metra also states that it "will participate fully and constructively" in Board-sponsored mediation if so directed. (Metra Reply 8.) Any lingering informational disputes could be addressed during that process.

Under the circumstances, the Board will order UP and Metra to engage in Board-sponsored mediation in accordance with the process set forth in 49 C.F.R. § 1109.4 (2008). *See* 49 U.S.C. § 28502; 49 C.F.R. § 1109.4(b) (2008) (requiring the Board to assign a mediator within 10 business days after a formal complaint has been filed).

The Chairman will appoint one or more mediators pursuant to 49 C.F.R. § 1109.3(a). Once appointed, the mediator or mediators will contact the parties to discuss the timing and logistics for conducting the mediation, and other matters. At least one principal of each party, who has authority to commit that party, shall participate in the mediation and be present at any session at which the mediator or mediators request(s) that the principal be present.

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<sup>3</sup> Although the Board's rules prohibit a "reply to a reply," 49 C.F.R. § 1104.13(c), the Board will accept UP's reply in the interest of compiling a complete record. *See, e.g., City of Alexandria, Va.—Pet. for Declaratory Ord.*, FD 35157, slip op. at 2 (STB served Nov. 6, 2008).

The mediation shall be completed within 60 days of the appointment of the mediator. 49 C.F.R. § 1109.4(e) (2008). The Board may extend mediation pursuant to mutual written requests of all parties to the mediation proceeding. Id. The mediation may be terminated prior to the 60-day period with certification of the mediator to the Board. Id. The mediator or mediators are instructed to inform the Board when mediation has ended, with or without a resolution.

It is ordered:

1. UP's reply is entered into the record.
2. The parties are ordered to engage in Board-sponsored mediation as described above.
3. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.