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Gentlemen:

I am in receipt of a copy of an April 19, 2000 letter from UTU General Chairperson J. F. Holden to BNSF Vice President-Labor Relations John J. Fleps (copy enclosed, without enclosure) indicating that without the knowledge or consent of UTU, BNSF has apparently been permitting BLE representatives to represent conductors and trainmen on the former ATSF Coast Lines in claim/grievance handling and disciplinary matters on the property.

The *Landers* decision referred to in General Chairperson Holden's letter [*Landers v. Nat'l R.R. Passenger Corp.*, 485 U.S. 652 (1988)] says a carrier and operating union may agree to exclusive representation on the property by the union holding the contract [and, of course, such an "agreement" may be a practice from other case law, e.g., *Detroit and Toledo Shore Line R.R. v. UTU*, 396 U.S. 142 (1969); *Conrail v. Railway Labor Executives' Ass'n*, 491 U.S. 299 (1989)], without regard to the right of operating employees to alternate membership in the minority union to satisfy a union shop obligation of the union holding the contract contained in 45 U.S.C. § 152 Eleventh (c), unless the "usual manner" on the property has become that operating employees have a right to have the minority operating union handle on-property grievances and discipline matters. Minority union handling on the property does not become the "usual manner" unless it can be proven the union holding the contract actually knows about and voluntarily consents to such practice. See *UTU Local 31 v. St. Paul Union Depot*, 434 F.2d 220 (8<sup>th</sup> Cir. 1970).

The facts, as I understand them from General Chairperson Holden's letter, will not support the "usual manner" of on-property claim/grievance and discipline handling for ground service employees by the minority union, BLE, and BNSF should cease permitting BLE representatives to represent ground service employees in claim/grievance and discipline handling on the property.

Very truly yours,

  
Clinton J. Miller, III  
General Counsel

Enclosure