

TABLE OF CONTENTS

	Page
INTRODUCTION	1
I. HISTORY OF THE DISPUTE.....	8
A. BMWED	8
B. BRS.....	10
C. ATDA	11
D. NCF&O.....	11
E. The formation of the PRLBC	12
II. STATEMENT OF POSITION	14
A. The historical relationship between Amtrak and freight agreements	16
1. <i>Wages</i>	16
2. <i>Health and Welfare Benefits</i>	19
3. <i>Other Benefit Changes</i>	22
4. <i>Work Rules</i>	22
B. The wage increases and their retroactivity agreed upon in national freight agreements are reasonable; Amtrak’s retroactivity stance is unreasonable	25
C. No work rule changes should be recommended as a part of a settlement.....	32
1. <i>Work rule proposals common to each PRLBC affiliate</i>	34
a) Amtrak’s subcontracting proposal	34
b) Amtrak’s “no furlough” proposal	36
c) Overtime pay rules.....	37
d) Modification of discipline rules	38
e) Payments to employees being withheld from service.....	38
f) Time claims	49
g) Extension of probationary period	39
h) Holiday pay rule	40
i) Payroll reform.....	40

2.	<i>BMWED specific work rule proposals</i>	41
	a) Status quo restoration	41
	b) Temporary vacancies	41
	c) Modification of Rule 89	41
	d) Modification of rule 90	41
	e) Change assembly point rule	42
	f) Rules related to shift changes	42
3.	<i>BRS specific work rule proposal - Modify Rule 34</i>	43
4.	<i>ATDA specific work rule proposals</i>	44
	a) 15 minutes of pay for transfers	44
	b) Elimination of training pay	44
	c) Creation of new sick leave tier	44
	d) Handling of safety issues	44
	e) Lock-ins for Assistant Chief Dispatchers	44
5.	<i>NCF&O specific work rule proposals</i>	45
	a) Elimination of bank time rule	45
	b) Lock in for special training and special projects	46
	c) Reduction of rates for utility workers	46
	d) Rules pertaining to part-time employees	46
	CONCLUSION	47
	CERTIFICATE OF SERVICE	48

INTRODUCTION

This pre-hearing brief is submitted on behalf of four Organizations, American Train Dispatchers Association (“ATDA”), Brotherhood of Maintenance Way Employees Division/IBT (“BMWED”), Brotherhood of Railroad Signalmen (“BRS”), and National Conference of Firemen and Oilers (“NCF&O”). For the purposes of negotiations with the National Railroad Passenger Corporation (“Amtrak”) and these proceedings, these Organizations have grouped themselves under the banner of the Passenger Rail Labor Bargaining Coalition (“PRLBC”), which serves as their “representative” for purposes of §§ 1, Sixth and 2, Third of the Railway Labor Act, 45 U.S.C. §§ 151, Sixth and 152, Third.

Like other Organizations before this Board, the PRLBC Organizations have been unable to reach agreements with Amtrak on any bargaining agreement issue since negotiations commenced in 1999. After these Organizations completed negotiations and ratified an agreement in 2007 with the Class I freight railroads covering the period January 1, 2005 through December 31, 2009, the PRLBC offered to settle this long drawn out dispute on the terms agreed upon in that agreement and the preceding national freight agreement covering the period January 1, 2000 through December 31, 2004. Both agreements reflected voluntary compromises made by sophisticated negotiators in the historically relevant market. Both agreements had been made without being influenced by or requiring an arbitration, presidential emergency board or work stoppage.

Amtrak declined PRLBC’s offer without discussion. Instead, Amtrak revised its offer to the PRLBC Organizations following the 2007 national freight settlement to

include every concession employees had made in the two freight agreements, but exclude key parts of the two national freight agreements advantageous to employees. In addition, Amtrak continued to insist upon a laundry list of proposed work changes, practically all of which the freight carriers had originally proposed, but had been unable to obtain in good faith negotiations with these Organizations.

This Board was established by Executive Order to investigate these bargaining disputes and the similar disputes between Amtrak and five additional Organizations. This Board has the unprecedented task of recommending a settlement that will span an entire decade. Most of it is retroactive. While the Railway Labor Act contemplates an “almost interminable” re-negotiation process, *Detroit & Toledo Shore Line R.R. Co. v. United Transp. Union*, 396 U.S. 142, 149 (1969), as Presidential Emergency Board 225 (1994) opined, “[s]ix years of collective bargaining agreement instability exceeds even the Railway Labor Act’s prescription for “purposely long and drawn out bargaining.” (p. 50) The fact that this dispute has gone unresolved for eight years is unconscionable.

From the perspective of these Organizations, Amtrak’s approach to bargaining has been a “take-it-or-leave-it” ultimatum intended to avoid making agreements for the last eight years. Over the course of eight years, there have been virtually no substantive discussions between Amtrak and these Organizations regarding any bargaining issues. Since these Organizations formed the PRLBC in August 2007 to coordinate their bargaining on common issues, hopeful that would spur negotiations, Amtrak’s responses were the addition of new rule proposals in November 2007 and refusals to even be in the same room with these Organizations to discuss the meaning, purpose and justification for any of their rule proposals and other bargaining demands. In that regard, the proceedings

before this Board promise at least some progress. For the first time in eight years, these organizations will finally hear directly from Amtrak an explanation of and rationale for its draconian work rule proposals and hear its justifications for insisting that its employees be the worst compensated workers with the lowest benefits and most onerous working conditions in the railroad industry.

These Organizations expect Amtrak to pursue before this Board its unrealistic bargaining goals that cannot be voluntarily attained. The Amtrak bargaining “principles” written in stone for eight years not only demand submission to a laundry list of rule proposals that would dramatically and adversely affect both workers’ pay and quality of life, but would also inexplicably require Amtrak workers to contribute the same amount as freight workers for inferior health insurance and welfare benefits.

Amtrak’s wage proposal to date is fairly described as punitive. It insists its employees be punished for their Organizations’ failure to surrender to Amtrak’s demands by denying retroactive pay for the eight years of past wage increases Amtrak has offered. Except for the paltry Harris COLA increases of approximately one percent per annum Amtrak workers have received since 2000, its stance on retroactivity is a poorly disguised wage freeze for as long as Amtrak can delay reaching agreements under the Railway Labor Act’s almost “interminable” re-negotiation procedure. According to Amtrak, retroactive pay will not be paid despite its offer of wage increases throughout the bargaining period because it unilaterally declared in 2002 the “principle of no back pay [to] serve as an incentive for labor and management to reach an agreement sooner rather than later and did not provide for backpay in its budget.” (11/21/07 issue of *Amtrak This Week*, Ex. 2)

Amtrak's explanation is specious. The refusal to agree to retroactive pay is a powerful incentive to management not to reach an agreement. Amtrak's bargaining tactics over the past eight years of insisting upon rule changes it knew these Organizations could never accept and would never be ratified by their memberships and avoiding substantive, give and take discussions about them confirm that fact. Amtrak's alleged failure to include them in its budget, in addition to also being unilateral, cannot be reconciled with the fact that it concedes its workers are entitled to wage increases and has offered them throughout both bargaining periods. Can Amtrak seriously contend that it bargained in good faith, offering wage increases for eight years, but never providing for them in its budget? What would have happened to Amtrak's budget if the Organizations had accepted Amtrak's offer? What did Amtrak do with the budgeted funds to pay for the increases it offered?

The Organizations, in stark contrast to Amtrak, do not propose to this Board their initial and unattainable bargaining demands, although that is the typical approach taken by parties in past Presidential Emergency Board proceedings. By not doing so, the Organizations do not concede that their initial demands could not be justified and they will return to them if reason fails to prevail. For example, the evidence will show that although Amtrak's employees are responsible for the safe transportation of passengers, surely the most valuable commodity, Amtrak workers have never enjoyed anything even close to the pay, benefits and working conditions of their peers working for other passenger rail carriers. For historical rather than equitable reasons, Amtrak's workers' wages and benefits have, since 1971 when Amtrak was carved out of the freight railroads by Congress to preserve a national passenger rail system, always been patterned upon the

wages, benefits and work rules negotiated in national freight agreement bargaining. Here, Organizations' witnesses once again will present the facts establishing a historical relationship between the wages, benefits and work rules of Amtrak and freight agreements. The most recent Presidential Emergency Board involving Amtrak found these same facts persuasive in recommending a wage package consistent with "the historic relationships between Amtrak and freight industry BMW employees." (PEB 234, p. 7 (1997))

These Organizations know how to make agreements that their members will ratify. Among other agreements, they have voluntarily negotiated and ratified two five-year agreements covering the period January 1, 2000 through December 31, 2009 with the National Carriers' Conference Committee ("NCCC") of the National Railway Labor Conference which cover more than 73,500 represented employees on all Class I freight railroads. Consistent with the thirty-year historical relationship between Amtrak and freight agreements, the Organizations submit that these agreements, established in the marketplace through good faith and hard bargaining with managers of railroads, which apply to employees performing identical work to Amtrak employees, are the best evidence of a reasonable and fair product of give-and-take, good faith negotiations, and should be recommended by this Board to be the fair compromise agreement in this case. The Organizations' proposal is submitted herewith as Exhibit 1.¹ The Class I freight railroads have enjoyed unprecedented prosperity during this decade with these

¹ Exhibits referenced herein ("Ex.") are separately bound and contained within Passenger Rail Labor Bargaining Coalition Exhibits. The Summary Statements of Thomas Roth ("Roth Summary Statement" and "Roth Summary Statement-Meal Allowance") are separately bound and submitted herewith. The written statements of others cited herein ("____ Statement") are separately bound and contained within Witness Statements On Behalf Of Passenger Rail Labor Bargaining Coalition.

agreements in place. The evidence will show that Amtrak is similarly experiencing its most successful performance since its creation. Amtrak does not face a financial crisis. There is no justification for an eight-year wage freeze and draconian work rule changes.

Amtrak does not completely ignore the historical bargaining relationship between it and the freight industry or dispute the comparability of the workers' jobs. It stipulated to job comparability before Emergency Board 234 and entered into agreements with these Organizations consistent with Emergency Board 234's wage recommendation. In fact, Amtrak's proposal to this Board adopts wholesale every single concession made by the Organizations in their freight agreements. Yet, as we demonstrate below, and through the testimony of witnesses, Amtrak unjustifiably seeks to "leap frog" these "pattern" agreements it acknowledges by omitting most of the employee benefits in them and by adding additional concessions the NCCC sought in the negotiations, but was unable to obtain.

The Organizations respectfully submit that their departure in these proceedings from the traditional approach to Presidential Emergency Board proceedings of proposing all initial demands contained in Section 6 notices, choosing instead to urge solutions that have met the test of the marketplace, is more consistent with this Board's pragmatic purpose. Emergency Board 234 (1997), involving Amtrak and the BMWED, the organization which took the lead in the parties' 1995 round of bargaining, described its "perceived function" this way: "[W]e deem it vital to the nation and to the parties to report our conclusions as to how the bargain should have been structured had the parties been successful in their 1995 bargaining." (p. 3) Presidential Emergency Board 222 (1992), which also involved Amtrak, likewise concluded that "it would be unrealistic and

a costly exercise in futility for all concerned if our total recommendations did not take into consideration, as a critical ingredient, their acceptability by the parties.” (p. 83) By offering agreements applicable to workers performing the same jobs which are the finished product of bargaining negotiations between indisputably knowledgeable parties in the relevant market, the Organizations believe their position in these proceedings is honest to this Board’s purpose.

To assist the Board, these and the other Organizations will present the written statement and testimony of Joel M. Parker, who will testify about past Amtrak agreements and the history of the dispute which brings us here. He will describe the principal differences between the national freight agreements which provide the basis of the Organizations’ position in this proceeding and Amtrak’s proposal. The comprehensive testimony of Thomas R. Roth, a labor economist, will establish the historical relationship between the wages of freight and Amtrak workers and demonstrate that Amtrak not only does not have a labor cost problem, but has in fact enjoyed soaring labor productivity over the past eight years and record financial performance. TCU Secretary-Treasurer Daniel Biggs, who, for eleven years, has been Labor Chairman of the administrative oversight committee for Amtrak’s negotiated health and welfare plans and also serves on the labor-management committee which oversees the health and welfare plan for employees of the freight railroads, will testify to the historical relationship between the benefit plans of Amtrak and the freight carriers. His evidence will prove that Amtrak’s proposal unabashedly “cherry-picks” the freight agreements’ health and welfare provisions and proposes without justification that Amtrak provide inferior benefits for its employees, while insisting they contribute the same amount for health

insurance coverage as freight employees. Donald Griffin, Esq., the BMWED's Research Director, will explain that Amtrak's proposed changes to the subcontracting work rules in place for decades cannot be justified by Amtrak's legal argument that Congress has directed that Amtrak eliminate them in collective bargaining. Other Organization representatives will, in written and oral statements, briefly respond to the numerous rule changes Amtrak seeks on the basis of the limited information about them Amtrak has shared with the Organizations.

This brief will try to provide a road map and overall perspective to the Organizations' presentation. It will demonstrate that the national freight agreements' arms-length, good faith bargaining resulted from an integrated compromise of extreme positions of both management and labor on wages, benefits and work rules, comparable to the extreme proposal made by Amtrak here.

I. HISTORY OF THE DISPUTE

A. BMWED

BMWED served Amtrak with a Section 6 notice on November 1, 1999. Direct bargaining with Amtrak quickly stalled and the NMB assumed jurisdiction over the dispute on April 7, 2000. Amtrak did not serve its Section 6 notice until June 12, 2000, two months after the parties entered mediation. The parties participated in approximately eighteen days of mediation between May 12, 2000 and July 2, 2003. Despite strong objections from the BMWED, the NMB suspended mediation between August 2001 and April 2003. When meetings did take place, negotiations were frustrated in several respects. For example, Joseph Bress, Amtrak's Vice President for Labor Relations and lead negotiator, did not attend, leading the BMWED to believe that Amtrak's bargaining

team did not have the authority or intention to make an agreement. Amtrak did not engage in the type of bargaining or discussions at these meetings that typically lead to the settlement of disputes. Additionally, Amtrak repeatedly rejected BMWED's proposal to model the Amtrak agreement on the freight agreement, consistent with the recommendations of Presidential Emergency Board 234.

On July 8, 2003, the BMWED requested that the NMB proffer arbitration and release the parties if arbitration was not accepted. This request was not granted. On May 7, 2004 Amtrak insisted that the BMWED accept the wage terms of the agreement signed by TCU on behalf of its clerks. The BMWED bargaining team explained that Amtrak's work rule proposals to the BMWED were far more concessionary than those agreed to by TCU and that the health and welfare agreement modifications would negatively impact BMWED members far more than the clerks because of the differences in job duties. The BMWED once again proposed modeling the settlement on the national freight agreement, but Amtrak again rejected this proposal.

No progress was made after May 7, 2004. There was only one mediation session scheduled between May 2004 and September 2006. BMWED made several offers to Amtrak to send the dispute to binding arbitration. On May 5, 2005 the BMWED offered to use any person appointed to a Presidential Emergency Board in the prior 20 years as an arbitrator. The BMWED made a similar offer of arbitration again on December 8, 2006. Every arbitration offer was rejected by Amtrak. Finally, on April 24, 2007 the BMWED once again made a proposal to model the Amtrak settlement on the two previous voluntary national freight settlements. This approach was rejected by Amtrak.

B. BRS

BRS served its Section 6 notice and proposal on Amtrak on December 18, 1999. During the approximately ten meetings held with Amtrak between January 5, 2000 and July 19, 2001, it became apparent that direct negotiations were failing to progress. The BRS requested mediation on August 10, 2001. The BRS then engaged in three mediation sessions with Amtrak on September 27, 2001, October 15, 2001 and October 16, 2001. It was apparent that Amtrak had no inclination to engage in the type of bargaining needed to reach a voluntary settlement. As with the BMWED, Joseph Bress did not attend the negotiations.² The BRS requested a proffer and release on December 16, 2002. That request was not granted.

Incredibly, no significant mediation sessions were held between 2003 and July 2007. A limited number of meetings were held outside of mediation, including one on March 19, 2003 and one on June 16, 2003. Despite the extended recess from mediation, the NMB would not agree that mediation had failed. On February 23, 2005, BRS International President Dan Pickett once again requested a proffer and release. Once again, the NMB would not release the parties. Amtrak and the BRS met three times in 2007, including a mediation session on February 21, 2007. Amtrak insisted upon terms inferior to those BRS agreed to with the NCCC, including sweeping work rule changes, making settlement impossible.

² Bress did not attend any mediation sessions until 2007.

C. ATDA

ATDA served its Section 6 notice on Amtrak on December 26, 2000.³ An initial meeting with Amtrak was held on January 11, 2001. More than ten months later, on November 15, 2001, Amtrak served its Section 6 proposal on BRS.

ADTA did reach a tentative agreement with Amtrak on September 1, 2004. ATDA President McCann signed the agreement because he believed that, after four years of bargaining, his members should have the opportunity to vote on Amtrak's offer. The agreement failed ratification by a vote of 84 to 38.

ATDA requested mediation following the failed ratification vote on November 5, 2004. Mediation sessions were held on January 26, 2005, March 30 and 31, 2005 and December 7, 2005. In each session, Amtrak refused to make any substantive changes to the agreement that failed ratification. In fact, bargaining regressed when Amtrak pulled certain provisions of the tentative agreement off the table. On July 21, 2006, ATDA requested that the NMB proffer arbitration and release the parties. Amtrak opposed the request. NMB did not proffer arbitration.

On August 16, 2007, a meeting was held at which Amtrak made a proposal that included only those portions of the TCU and national freight agreements that were advantageous to the carrier. No progress was made at that meeting.

D. NCF&O

NCF&O served a Section 6 notice on Amtrak on December 16, 1999. The parties held an initial meeting on January 18, 2000. Amtrak responded with a Section 6 notice of its own on June 12, 2000.

³ ATDA's Section 6 notice was served later than the other Organizations because ATDA and Amtrak did not reach agreement for the prior round of bargaining until March 2000.

Very few bargaining meetings occurred from 2000 to 2003. At a September 11, 2003 meeting, Amtrak insisted NCF&O agree to the terms of the TCU agreement. Its September 11, 2003 proposal did not contain any proposal regarding subcontracting. No progress was made in negotiations thereafter. NCF&O requested the services of the NMB on May 9, 2005. The parties engaged in mediation on August 30, 2005 and November 3, 2005 to no avail. On June 11, 2007, NCF&O asked for a proffer and release from mediation.

E. The formation of the PRLBC

During the period negotiations with Amtrak were stalled, each of the PRLBC Organizations reached voluntary agreements with the Class I freight rails in two separate bargaining rounds. In the second national freight agreement round, a group of seven Organizations including BMWED, BRS, ATDA and NCF&O, formed the Rail Labor Bargaining Coalition (“RLBC”). The RLBC successfully concluded a voluntary agreement with the multi-freight carriers’ representative, NCCC, and these Organizations signed individual agreements with the NCCC effective July 1, 2007.

Since the creation of the RLBC had been successful in concluding a voluntary agreement in a relatively short period of time, BMWED, BRS, ATDA and NCF&O believed that formation of the PRLBC to coordinate bargaining and negotiate with Amtrak on their behalf on common issues might help break the impasse that had then existed for more than seven years. PRLBC was created on August 23, 2007.

PRLBC was not able to make any progress of any kind on an agreement with Amtrak. Amtrak refused to bargain with PRLBC. The NMB finally proffered arbitration

and released the PRLBC affiliates and the five other Organizations before this Board on October 31, 2007.

The NMB scheduled four separate public interest mediation sessions during the “cooling off” November 2007 period to discuss individual contracts between Amtrak and ATDA, BMWED, BRS and NCF&O. At each mediation session, Amtrak refused to meet face-to-face with PRLBC bargaining teams or participate in any substantive discussions or negotiations through the mediators. Proposals were exchanged via the mediators. Amtrak’s proposal to the Organizations incorporated its original Section 6 notices and added even more proposals for changes in work rules. (Exs. 2-5) Through their representative, the Organizations presented a stripped-down proposal based on the national freight agreements, which abandoned many of the wage and benefit improvements they had earlier proposed. That proposal is also recommended to this Board and provides as follows:

- (1) **Duration** - Ten years commencing January 1, 2000 with a moratorium through December 31, 2009.
- (2) **Current Harris COLA** - \$.27 paid under the Harris COLA provision as of January 1, 2001 is incorporated into basic rates pay effective June 30, 2002; the balance of the total accrued COLA of \$1.44 per hour payable as of July 1, 2007 is eliminated *i.e.* current hourly wage rates are reduced by \$1.44.
- (3) **General Wage Increases** -
 - July 1, 2002 - 6.087%⁴
 - July 1, 2003 - 3.0%
 - July 1, 2004 - 3.25%
 - July 1, 2005 - 2.5%
 - July 1, 2006 - 3.0%
 - July 1, 2007 - 3.0%
 - July 1, 2008 - 4.0%
 - July 1, 2009 - 4.5%

⁴ 6.087% is the mathematical equivalent of the 2.5% increase on June 30, 2002 plus the 3.5% increase on July 1, 2002 of the national freight agreement.

(3) **Retroactivity** - The general wage increases shall be paid retroactively with such payment reduced by the sum of all cost-of-living adjustments paid since July 1, 2002 plus employee health insurance contributions paid under the national freight agreement.

(4) **Future COLA** - The existing Harris COLA provisions shall be continued in the event a successor agreement(s) is not reached before July 1, 2010.

(5) **Future Health Insurance Contributions** - Amtrak employees will make the same contribution as required under the national freight agreement.

(6) **Health and Welfare Benefit Levels**- Adopt the same medical plan changes, ancillary benefit plans (*e.g.*, vision and off-track vehicle insurance) and increases in Supplemental Sickness, as called for under the national freight agreement.

(7) **Meals, Lodging and Travel Expense** - Increase payments under existing agreements and policies by 20%,

II. STATEMENT OF POSITION

It is the position of these Organizations that the entire “packages” negotiated between them and the NCCC in two five-year agreements covering the period January 1, 2000 through December 31, 2009 should be recommended by this Board. These agreements evidence the applicable, real-world compromise solutions reached in the relevant market by good-faith bargaining. These agreements were not influenced by recommendations of an Emergency Board or work stoppages; nor were they the product of a neutral arbitrator’s opinion of a “fair” and balanced deal. They were agreed to by sophisticated negotiators well versed in the economics and working conditions of railroad workers who perform jobs identical to those performed by Amtrak workers.

The PRLBC Organizations submit that it would not be useful to evaluate the compromises on wage increases and their retroactivity, benefit cost containment reforms, and the amount of employee contributions to pay for health insurance benefits within the freight agreements in isolation. They must be viewed as part of packages including

concessions by both labor and management to leave work rules basically unchanged in both agreements, which were significant departures from their respective initial positions. After all, rule changes which alter agreements affecting hours worked or the receipt of overtime pay, for example, impact an employee's compensation just like wage increases, their retroactivity and employee contributions to fund benefits. To "cherry-pick" features of a comprehensive agreement to come up with a proposal for a different agreement, as Amtrak does, ignores the reality of collective bargaining.⁵ The slang expression for this reality is "all money is green." Presidential Emergency Board 219 (1996) put it this way: "[T]he recommendations regarding wages which follow must be read in conjunction with the rules and Health and Welfare changes which are discussed elsewhere in this report, which changes will have a profound impact upon both the wages and the working conditions of the employees." (p. 64)

The PRLBC's position before this Board, in addition to being consistent with marketplace reality, is supported by the following indisputable conclusions established by the evidence they will present: (1) Amtrak's wages, benefits and rules have historically been patterned upon those negotiated in national freight agreements; (2) the wage increases and their retroactivity agreed upon in those agreements are reasonable by any measure and Amtrak's "retroactivity" stance is unreasonable; (3) the cost containment and employee contribution concessions made by the Organizations in those agreements far outweigh the limited benefit improvements made and, if applied to Amtrak workers,

⁵ As explained below, the Organizations do propose two features for an Amtrak agreement which appear in the freight agreements for 2000-04, but not in the most recent agreement with the NCCC: continued maintenance of the Harris COLA provision in the Amtrak agreement applicable to the post-amendable bargaining period for a successor agreement (*infra* at p. 26-7); and modest improvements to BMWED's meal and travel allowances (*infra* at p. 22).

result in significant monetary benefits to Amtrak that the carrier does not currently enjoy, as well as establish a framework for addressing the ever increasing cost of health insurance in future agreements; and (4) Amtrak does not have a compelling need to change work rules that have always existed on the property and would adversely impact both the quality of life and compensation of its workers. We now turn to an overview of the facts that will be established supporting these conclusions.

A. **The historical relationship between Amtrak and freight agreements**

1. *Wages*

With regard to wages, including the issue of retroactivity, the historical relationship between the Amtrak and national freight agreements is especially compelling. In Presidential Emergency Board 234 (1997), Amtrak argued that a wage freeze was necessary, “that endorsing the alleged freight pattern might spell the end of Amtrak,” “Amtrak is not tied to any freight pattern, and has never rigidly adhered to freight compensation rates and rule changes.” (p. 4, emphasis added) The wage dispute before PEB 234 “cover[ed] issues of actual wages, lump sum allowances and COLA, as well as retroactivity.” (p. 7, emphasis added) Based on evidence summarized on page 7 of its report, which will be again presented and updated in detail to this Board (Roth Summary Statement at 19-23), PEB 234 concluded there were “historic relationships” between Amtrak and freight industry employees existing since Amtrak was carved out of the freight railroads in 1971 to create a national passenger rail system, and that the wage provisions of the national freight agreement, including retroactivity, should be “recommend[ed] ... as a fair and reasonable set of conditions that are consistent with those of employees performing comparable work for freight railroads.” (p. 7, 8)

The last agreements entered into by Amtrak and the Organizations followed this recommendation and were coterminous with the national freight agreements. Amtrak's current proposal seeks to change this practice by extending its agreement nine months beyond the term of the national freight agreement.⁶ This change would provide another wage freeze for Amtrak employees in 2010 that, if accepted, will again cause them to fall behind their peers working for the freight carriers and relegate Amtrak workers to a new lowest rung on the wage ladder of railroad workers.

Amtrak can be expected to argue again that Presidential Emergency Board 222 (1992) established the principle that Amtrak would not always be bound by the national freight agreement pattern because it concluded that an Amtrak internal "pattern" regarding wages existed by reason of voluntary agreements Amtrak had made with organizations covering 60 percent of its workforce by the time PEB 222 made its recommendations. It is important to understand, however, that the dispute which led to PEB 222 involved the amount of wage increase in excess of the national freight agreement that was appropriate because of a temporary wage deferral that had existed on Conrail and Amtrak in the 1980's. Since a majority of employees had settled for

⁶ It may be that Amtrak actually proposes that the new agreement could continue for an indefinite period thereafter. The Amtrak proposals made in writing to the PRLBC affiliated Organizations in November 2007 proposed a "Term of New Agreement" "[t]hrough September 30, 2010 and continuing until the parties reach the new Agreement." (Exs. 2-5, p. 1) Because of Amtrak's refusal to participate in discussions with the PRLBC, the intended meaning of Amtrak's proposal had to be requested in writing. In response to the PRLBC's question whether Amtrak's proposal intended that a new agreement would last in perpetuity until changed, Amtrak's reply was deliberately unenlightening. Amtrak said "[t]he Agreement will continue in effect consistent with the provisions of the agreement and the Railway Labor Act." (Ex. 27, p. 1; Ex. 28, p. 2) Since the Organizations have not been able to even flush out the intended meaning of this Amtrak "continuing" term proposal, much less negotiate about it, this Board should not address it.

increases that made up for the prior deferral and re-established wage parity with freight employees, PEB 222 concluded that stable labor relations and the public interest would be damaged if competition among unions for supremacy of benefits was recommended. (p. 15) Accordingly, PEB 222 recommended wage increases in 1992 far in excess of the congressionally imposed recommendations of PEB 219 for the freights to re-establish parity with freight employees. (Roth Summary Statement, p. 21-23) Regardless, as explained below in the discussion of the reasonableness of the Organizations' wage proposal independent of the freight agreements, there is no Amtrak "internal pattern" agreement established by the "TCU deal" Amtrak proposes for the period January 1, 2000 through December 31, 2004. It has no deal of any kind to allegedly establish a "pattern" for the period January 1, 2005 through December 31, 2009.

While Amtrak may consider the temporary differences between Amtrak and freight wages existing for limited periods of time as evidence that it has not "rigidly" adhered to the freight pattern, the historical data presented by the Organizations' labor economist Thomas Roth is compelling evidence to the contrary. Despite periodic differences over a quarter century between 1975 through 2000, BMWED, BRS and Shopcrafts' cumulative wage increases under the national freight agreements are within a range of 3 percent or less difference than Amtrak's cumulative wage increases. (*Id.*, p. 22)

Amtrak itself describes its negotiation "principles" to Amtrak employees to include "[a] raise similar to the freight raise." (Ex. 34) The indisputable point is that, with respect to wages, Amtrak agreements have historically been linked to national

agreements the Organizations have negotiated with the NCCC for employees performing identical work.

2. *Health and Welfare Benefits*

The Organizations' witness Daniel Biggs will offer written and oral testimony to establish that both the history of Amtrak's agreements and its current health and welfare proposals are based on the national freight agreements. From 1972 through December 31, 1996, Amtrak was a participating employer in the benefit plans established by the national freight agreements. A 1990 ruling by Special Board of Adjustment No. 1029 allowed Amtrak to withdraw from the freight agreements' health and welfare plans, but obligated Amtrak to provide the same level of benefits in its own plans. Amtrak finally pulled out of the national freight plan ("National Plan GA-23000") on January 1, 1997, and established its own identical medical, prescription drug, life and AD&D plans ("AmPlan"). It also established a mirror image of the national freight agreements' retiree medical plan. In 1997, Amtrak continued to be a participating employer in the freight dental and supplementary sickness plans.

Mr. Biggs will further testify that before the current eight-year bargaining impasse with Amtrak, AmPlan and National Plan GA-23000 benefits were virtually identical. When changes were made to the National Plan in the national freight agreements covering the period January 1, 1996 through December 31, 1999, Amtrak and all but one of its unions agreed to identical changes to AmPlan in 2000.

Most significantly, Amtrak currently proposes not only that all cost containment measures included in the past two national freight agreements be incorporated in Amtrak's plans, but that employee monthly contributions for health and welfare benefits

be increased from zero for the employees represented by these Organizations to \$166.25, the current amount contributed by freight employees under the current national freight agreement. The national freight agreement establishes a formula for automatic annual increases up to an agreed cap during the term of the agreement which Amtrak also proposes. The cost containment and employee contribution concessions made by the Organizations in those agreements far outweigh the limited benefit improvements made and, if applied to Amtrak workers, result in significant monetary advantages to Amtrak it does not currently enjoy, as well as establish a framework for addressing the ever increasing cost of health insurance in future agreements.

Inexplicably, Amtrak seeks these dramatic concessions from the Organizations, while proposing that not all of the negotiated benefit improvements in the National Plan be implemented and some negotiated benefits be decreased. Particularly offensive is Amtrak's proposal to establish an early retiree monthly medical benefit contribution of \$50, renege on an agreement made with the Organizations during negotiations leading to the enactment of the Railroad Retirement and Survivor's Improvement Act of 2001 which has saved Amtrak millions of dollars in reduced Railroad Retirement taxes.

While the Organizations are willing to accept all of the concessions made regarding benefits, cost containment and employee contributions in the past two national freight agreements as part of their package proposal to this Board, they will not commit their members to pay the same amount for benefits as freight employees for inferior coverage. Amtrak seeks to "leap over" the difficult and complicated negotiated changes to the national freight plans by "cherry-picking" the concessions made by the

Organizations, but does not include negotiated benefit improvements and decreases existing benefits common to AmPlan and the national freight plans.

Amtrak should not be permitted to accept the concessions it likes from the national freight agreements, seek additional concessions to its advantage, and then reject all of the benefit improvements that were negotiated during the past two rounds of national freight bargaining. Amtrak proposes that the following health and welfare benefit provisions be inferior to those in the national freight agreement plans: pre-Medicare retiree medical benefits, opt-out incentives for employees, emergency room co-pays, cochlear implant hearing benefits, extended coverage for sick and disabled, life and AD&D benefits, vision care benefits, and supplemental sickness plan provisions. It is absolutely unacceptable to the Organizations to accept these inferior provisions in exchange for payments by Amtrak workers equal to freight workers. Amtrak should be required to rejoin the national freight welfare benefit plans before subjecting its employees to inferior benefits at higher cost. This negotiating demand of Amtrak further supports a finding that its bargaining “principles” to date have been intended to avoid making agreements with the Organizations.

The Organizations, in conformity with the retroactivity provisions of the national freight agreements’ wage and employee benefit contribution increases, have proposed as part of their package that employee contributions also be applied at the freight agreements’ levels retroactively to January 1, 2000, which dramatically reduces the retroactive back pay owed the employees by Amtrak for wage increases. This is consistent with their view that neither party can be permitted to benefit from the unconscionable eight-year period this dispute has festered. To reward delay by denying

retroactivity perverts the Railway Labor Act's concern for the public interest into a powerful incentive to frustrate and violate the primary requirement of Section 2 First of the Railway Act to make and maintain agreements. 45 U.S.C. § 152, First.

3. *Other Benefit Changes*

In addition to health and welfare plan benefits improved in the last two rounds of bargaining with the freight carriers which Amtrak would deny its employees, Amtrak's proposal would deny BMWED represented employees an increase of 20 percent in the per diem allowance for meal expenses paid to away from home workers under existing BMWED agreements or policies. An increase was agreed upon in the first concluded round of national freight agreements covering the period January 1, 2000 through December 31, 2004. BMWED proposes that a 20 percent increase be recommended by this Board.

There has been no increase in the per diem meal allowance for BMWED employees on the Amtrak property since 1997. The cost of dining out has risen 31.5 percent since December 1997. (Roth Summary Statement - Meal Allowance, p. 3) The freight carriers agreed to this improvement as part of the BMWED agreement signed in 2001. A recommendation the moderate percentage increase for the BMWED package be accepted by Amtrak seven years later is clearly reasonable.

4. *Work Rules*

The Organizations' witnesses will briefly testify that the significant concessionary rule changes proposed by Amtrak that impact workers' quality of life and compensation will not be voluntarily accepted or ratified by their memberships and do not exist on the freight carriers. To the limited extent that Amtrak has shared any details about its reasons

