BEFORE PRESIDENTIAL EMERGENCY BOARD NO. 242

TESTIMONY OF JOSEPH M. BRESS
AMTRAK VICE PRESIDENT, LABOR RELATIONS

I am the Vice President of Labor Relations for the National Railroad Passenger Corporation ("Amtrak"). I joined Amtrak in May 1996, after serving as the Director of the New York State Governor's Office of Employee Relations. A copy of my biography is attached as Exhibit 1 to this testimony.

Overview

My testimony today will address four basic subjects. First, I will identify the various unions that represent Amtrak's employees, including the unions that are before this Presidential Emergency Board ("PEB") and several that are not. Second, I will summarize this round of bargaining, which began in 2000. Amtrak is disappointed that negotiations with these unions have not been resolved over the course of the past eight years. It is important that you understand why this has happened. Third, I will identify the major issues in dispute in these negotiations. Although I will identify six issues, the parties are relatively close on four of them because they generally follow the pattern of the freight railroad agreements reached earlier this year. There are, however, two issues over which the parties remain far apart: retroactive pay and work rule reform. Both of these issues are a reflection of Amtrak's unique financial and political circumstances. Joe McHugh has described these unique circumstances in some detail, and the witnesses who follow me will elaborate on them. My role is to explain the fundamental impact of these unique circumstances on the issues in dispute before you. The fourth and final segment of my testimony today will review Amtrak's current proposals on each of the issues in dispute and explain the rationale for Amtrak's position on each issue.

Amtrak's Workforce and Unions

The vast majority of Amtrak's workforce is represented by a union. Out of a total workforce of 18,500, 16,000 employees are represented by a union. Headcount information for Amtrak's union-represented workforce is attached as Exhibit 2.

There are fourteen unions and two labor councils that represent Amtrak's employees, but only eight of these unions are in this PEB, representing nine crafts. These eight unions represent about 40% of Amtrak's 16,000 union-represented employees. The other 60% of Amtrak's union-represented workforce – over 9,000 employees – are not before this PEB but will be affected by the pattern that it sets. Some of the unions that are not before this PEB reached agreements with Amtrak through 2004, whereas others have voluntarily opted out of mediation and elected to pursue direct negotiations.

The eight unions that are in this PEB do not represent a logical craft grouping. They consist of two engineering crafts (the BMWE and BRS), some but not all of the shop crafts (the Sheet Metal Workers and the Boilermakers voluntarily opted out of mediation), one operating craft (the ATDA), and two supervisor groups (ARASA-MW and ARASA-ME). There are no train, engine, or on-board services employees in this PEB.

The BLET, the union that represents Amtrak's locomotive engineers, and the UTU, the union that represents Amtrak's conductors, are not before this PEB. Amtrak and the BLET reached a tentative agreement earlier this year, but ratification failed in part due to public opposition from some of the unions that are in this PEB. The BLET remains in direct negotiations with Amtrak, although those negotiations now await the outcome of this PEB. The UTU voluntarily opted out of mediation, and likewise awaits the outcome of this PEB. The BLET and the UTU together represent over 3,000 of Amtrak's key operating employees.

The TCU reached a pattern-setting agreement with Amtrak in 2003, which was effective through 2004. This pattern was followed by the ASWC and ARASA-OBS in agreements reached with Amtrak in 2004. Together, these three unions represent about one-third of Amtrak's union-represented employees. They remain in direct negotiations with Amtrak for the period from 2005 to the present, and the pattern established in this PEB will likely determine the outcome of those negotiations.

The Fraternal Order of Police ("FOP") is a non-traditional railroad employee craft. Therefore, although they reached agreement with Amtrak in 2007, it is not a pattern-setting agreement.

The unions that are in this PEB represent a well-compensated group of employees. Exhibit 3 to my testimony shows the average annual compensation of each craft that is before this PEB.

The History of the Freight Pattern

Historically, the bargaining patterns established by the freight railroads have been relevant but not controlling in Amtrak's negotiations. Much of that history predates my tenure at Amtrak. I have, however, reviewed that history during the course of my eleven years at Amtrak, including the statement of my predecessor, John Lange, to PEB No. 222. Mr. Lange's testimony to PEB 222 is attached as Exhibit 4 to my testimony.

As Joe McHugh explained in his testimony, Amtrak was chartered by Congress in 1971 to take over the unprofitable passenger operations of the freight railroads. Amtrak was required to take over employees from the freight railroads and adopt their collective bargaining agreements. Accordingly, Amtrak's labor agreements were patterned after the freight agreements for much of its early history. Then, in 1982, Amtrak departed from the freight pattern in response to pressure from the government to reduce its losses and to constrain burgeoning subsidies. The 1982 agreements provided for smaller wage increases than the freight industry agreements, as well as work rule relief.

Amtrak moved back toward the freight pattern in the 1984 round of bargaining, but departed again from the freight pattern in the 1988 round. Agreements were not reached in the 1988 round until 1991, when the ASWC and TCU established an internal Amtrak pattern that was later followed by ARASA, the BRS, the Sheet Metal Workers, and the Boilermakers. This internal Amtrak pattern included a $2,000 lump sum and general wage increases of 18% from 1991 through 1994, as well as significant changes in work rules and benefits. PEB No. 222 recommended this internal Amtrak pattern in the unresolved negotiations with the other unions, including the BMWE. The report of PEB No. 222 is attached as Exhibit 5.

In the 1995 round, PEB No. 234 recommended that the parties move back toward the freight pattern. The report of PEB No. 234 is attached as Exhibit 6. The settlement that was ultimately reached, however, provided only for 90% of the freight deal in terms of labor costs, and was counterbalanced by work rule changes that equaled 20% of the cost of the agreement.

Thus, the history of applying the freight pattern is mixed.[1] It has been followed in some rounds but not others. Internal Amtrak patterns, when they have been established, generally have been controlling, as in the 1988 round. Amtrak's political and financial circumstances also have required a deviation from the freight pattern, as in 1982 and 1997. Both of these considerations are present in the current round. As the following history of the current round will show, bargaining for much of the current round took place in the context of extraordinary

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[1] Amtrak anticipates that the unions may argue that bargaining patterns in the commuter railroad industry should be considered by this PEB in making its recommendations to resolve the present dispute. As this history reflects, however, the commuter railroad pattern has never been followed by Amtrak or any Amtrak PEB. This is because the commuter railroads have a different history, and a different funding and operating structure.

political pressure to not only reduce but end Amtrak's financial dependence on the federal government. This precipitated a financial crisis that threatened Amtrak's very existence. Meanwhile, an internal Amtrak pattern was established, based in part on the freight pattern but with important differences dictated by Amtrak's unique circumstances.

The History of the Current Round – 2000 through 2002

Entering the current round of bargaining, which began in January 2000, Amtrak was suffering the consequences of a hard lesson learned in 1997. Amtrak had entered into agreements first with the BMWE and then with the remaining unions in 1997 and 1998, based on the promise that two $85 million "get well" payments would be appropriated by Congress in order to pay for the deal. Those "get well" payments were never paid, however, and so Amtrak was stuck with a deal that it could not afford. The resulting $170 million shortfall helped precipitate a financial crisis that continued well into the current round. The crisis was so severe that Amtrak was forced to mortgage Penn station just so that it could make payroll in 2001, and nearly resulted in a bankruptcy filing in 2002. The Department of Transportation ("DOT") provided an emergency $100 million loan in order to keep Amtrak running through the weekend of July 4, 2002. One of the conditions of the loan agreement was a commitment by Amtrak to "seek the cooperation of all of its employees in achieving the substantial operating cost reductions needed to meet Amtrak's financial crisis." A copy of the June 28, 2002 Summary of Conditions for Direct Loan Agreement is attached at Exhibit 7.

During this difficult time period, the freight railroads established a pattern of wage increases in a series of settlements reached with the unions between 2001 and 2003. Copies of the freight railroads' 2001 agreement with the BMWE, 2003 agreement with the BLET, and 2003 agreement with the TCU (Clerks) are attached as Exhibit 8. David Gunn, Amtrak's

President at the time, met with various unions on December 10, 2002 in order to discuss the elements of a settlement that would follow the freight pattern of wage increases. President Gunn described five elements of this potential settlement, which reflected the tradeoffs that would be necessary given the severe financial and political pressures that Amtrak was facing at that time:

1. Wage increases equivalent to the freight pattern through 2004;
2. Health care cost containment;
3. Work rule reform;
4. No furlough of employees affected by work rule reform; and
5. No retroactive pay.

Some Amtrak unions decided to engage Amtrak on these terms, whereas some chose to resist. The BMWE, in a letter dated July 8, 2003, complained to the NMB about an Amtrak proposal that included "no retroactive wage increases whatsoever." A copy of this letter is attached as Exhibit 9. Several unions, including the BMWE, threatened to engage in a nationwide "political" strike on October 3, 2003 in order to protest the level of funding that Congress was appropriating to Amtrak. Copies of a September 2003 BMWE press release and a flyer announcing the October 3, 2003 strike are attached as Exhibit 10.

The TCU, meanwhile, reached an agreement with Amtrak, effective October 1, 2003. A copy of the 2003 TCU Agreement is attached as Exhibit 11. The ASWC and ARASA-OBS followed suit in 2004, reaching and ratifying agreements that followed the TCU pattern. A copy of the 2004 ASWC Agreement is attached as Exhibit 12 and the 2004 ARASA-OBS Agreement is attached as Exhibit 13. These three agreements covered one-third of Amtrak's union-represented workforce.

The ATDA and ARASA-MW reached tentative agreements in 2004 that followed the TCU pattern, but those tentative agreements were not ratified. A copy of the 2004 ATDA tentative agreement is attached as Exhibit 14 and the 2004 ARASA-MW tentative agreement is attached as Exhibit 15. Even though these tentative agreements were not ratified, they are an appropriate foundation for any recommended agreement with these unions now.

The terms of the TCU agreement reflect the five principles outlined by President Gunn in his meetings with the unions in 2002. It provided for general wage increases of 3.5% on October 1, 2003; 3% on July 1, 2004; and 3% on October 1, 2004. In addition, the TCU agreement provided that $0.75 of cost of living allowance ("COLA") payments would be rolled into the base rate of pay. These prospective wage increases, including the $0.75 COLA, were equivalent to the freight pattern established between 2001 and 2003. As President Gunn outlined in 2002, however, the TCU's wage increases were not paid retroactively.

Also consistent with the principles established by President Gunn in 2002, the TCU agreement included modifications to the health and welfare plan, such as plan design changes and employee cost sharing, that would help contain the rising cost of health care benefits. On the subject of work rules, a number of significant changes were made. I will not list all of these changes here, but they included:

- provisions for cross-training and elimination of work rules affecting the assignment of crew calling personnel;
- elimination of unassigned workers and the substitution of extra boards of employees who would be on call for additional assignments and vacancies;
- flexibility to schedule Saturday and Sunday as regular work days if there are demonstrable business reasons for doing so; and

- continuation of existing provisions for overtime only after 40 hours per week.

The TCU agreement was effective through December 31, 2004.

The Current Round – Through 2007

Negotiations for the period after December 31, 2004 did not progress until the freight railroads reached agreements with most of the unions in 2007. A copy of the freight railroads' 2007 agreement with the BMWE is attached as Exhibit 16. Many of the unions on Amtrak decided to pursue a strategy of waiting for political change, rather than compromising on the key issues of work rules and retroactive pay. Amtrak negotiated with the IBEW, the Sheet Metal Workers, and other unions based on the freight pattern, and reached a tentative agreement with the BLET in the summer of 2007. A copy of Amtrak's tentative agreement with the BLET is attached as Exhibit 17. Amtrak also reached agreement with the FOP in 2007 but, as I mentioned previously, the FOP is not a traditional rail union and so that agreement does not establish a pattern for the other unions. A copy of Amtrak's 2007 agreement with the FOP is attached as Exhibit 18.

The tentative agreement reached with the BLET does, however, establish an appropriate pattern for the other rail unions. It builds on the 2003 TCU agreement pattern, with prospective wage increases that are identical to those provided in the TCU agreement through 2004. The wage increases provided after 2004 are modeled after the freight agreements and are virtually equivalent to the freight agreements in the aggregate. This is true even though the wage increases provided by the freight railroads reflect a period of profitability, while Amtrak continues to suffer operating losses of several hundred million dollars each year.

In recognition of Amtrak's unique financial circumstances, the BLET's tentative agreement did not call for retroactive wage increases. Amtrak did, however, agree to provide a signing bonus of $4,500. This signing bonus was equivalent to 30% of the retroactive pay sought by the BLET, which was the extent of Amtrak's ability to provide a cash payout to its workers.

Like the freight agreements, Amtrak's tentative agreement with the BLET eliminated the Harris COLA permanently and included provisions to contain the rising cost of health care, including plan design changes and employee cost sharing provisions. These health care cost containment measures also reflect a continuation of the TCU agreement pattern.

Also like the TCU agreement, but unlike the freight agreements, the tentative agreement with the BLET provided for several significant work rule changes. This departure from the freight pattern was justified by Amtrak's unique financial circumstances and its mandate to reduce costs and improve productivity, as Congress has directed and as the DOT required as a condition of its 2002 loan agreement. The work rule changes in the BLET tentative agreement included:

- removing restrictions on subcontracting that would result in a furlough of Amtrak employees, with optional relocation benefits or a lump sum severance payment;
- modifying the rules regarding starting times to provide increased flexibility in scheduling yard crews; and
- changes to disciplinary and payroll procedures.

The tentative agreement would have been effective through September 30, 2010.

As the BLET explained in its ratification materials, this tentative agreement reflected a reasonable compromise given Amtrak's financial condition and the lack of political support for additional appropriations. The BLET's leadership faced harsh and public criticism from some of its members as well as from other unions, including in particular its affiliate the BMWE. But the leadership of the BLET confronted this criticism head-on, responding to the unrealistic expectation that the BLET or any other rail union could obtain full retroactive pay from Amtrak. General Chairman Mark Kenny, in a July 30, 2007 letter to all active BLET members on Amtrak, acknowledged that the funding for retroactive pay could only come from Congress: "Pure and simple, the fact of the matter is that payment of back pay would require a special Congressional appropriation to cover the cost." A copy of General Chairman Kenny's July 30, 2007 letter is attached as Exhibit 19 (the quoted language appears on page 4). General Chairman Kenny explained, however, that such a special appropriation – totaling between $150 million and $200 million – could not be obtained, even from the newly elected Democratic Congress:

> [E]ven though our continuing lobbying efforts of the past several years on Capitol Hill have made all the key leaders of Congress fully aware of the Amtrak contract stalemate; including the issue of retroactive pay, the Amtrak appropriations bill proposed in the House just last month, made no provision whatsoever for back pay for the fiscal year beginning this October. And ... the White House is already making it well known that it intends to veto the Amtrak bill when it arrives.

In a subsequent August 17, 2007 letter responding to an e-mail from a BLET member, General Chairman Kenny noted that there was no historical precedent for obtaining the amount of retroactive pay sought in this round: "the only other time any level of marginal retroactive pay on Amtrak property was achieved was in the 1988 Agreement, and those payments paled in comparison to [the] signing bonus payable in this round." A copy of this August 17, 2007 letter is attached as Exhibit 20 (the quoted language appears on page 7). In this letter, General Chairman Kenny reiterated that continuing to press for full retroactive pay was not only unrealistic, but a potentially destructive course of action:

> [I]f I or anyone on our bargaining team, or in all of Rail Labor for that matter, genuinely thought for one moment that full retroactive pay was a realistic expectation in today's political climate, I would not have brought this tentative agreement to the Membership for

> consideration. Furthermore, despite the impression of some of our Members who believe we can just vote no and go back to the table or to a PEB to achieve better than what is before us today, please understand that I remain solidly behind my unwavering conviction that we will not be successful in any such attempt and we pay a dear price and will suffer considerable financial consequences for such a decision if the tentative agreement is defeated.

Despite this call to reason, the BLET's tentative agreement was defeated as a result of the harsh public criticism from the BMWE and other unions in conjunction with low turnout by the BLET's membership. Amtrak and the BLET resumed direct negotiations in the wake of the failed ratification vote, but those negotiations are now on hold pending the outcome of this PEB.

The Issues in Dispute

As I stated at the outset of my testimony, there are six categories of issues in dispute between Amtrak and the eight unions before this PEB. These issues are: (1) prospective wage increases; (2) retroactive pay; (3) whether the elimination of the Harris COLA should be permanent or temporary; (4) health and welfare benefits; (5) work rule reform; and (6) the duration of the new agreement. Also as I stated previously, issues (1), (3), (4), and (6) are derived from the freight pattern, whereas issues (2) and (5) reflect Amtrak's unique financial and political circumstances as well as the principles set down by David Gunn in 2002. I will now explain Amtrak's position on each of these six issues. Copies of Amtrak's current proposals to each union and an index of these proposals are attached as Exhibit 21.

1. Prospective Wage Increases

Amtrak's proposal would provide prospective wage increases of more than 30% over the term of the agreement. A table illustrating the impact of Amtrak's proposed wage increases is attached as Exhibit 22. Amtrak's proposal mirrors the BLET tentative agreement, which incorporated the TCU agreement pattern for wage increases through 2004. The proposed wage increases are as follows:

- Effective date: $0.75 COLA rolled into the base rate of pay, plus 3.5%, 3%, 3% (the TCU agreement pattern), 2.5%, 2%, 1.5%, 2%;
- 1.5% on 4/1/2008;
- 3.5% on 10/1/2008; and
- 3.5% on 10/1/2009

Thus, under Amtrak's proposal, employees would receive a 17% wage increase, compounded, on the effective date of the agreement plus an additional $0.75 rolled into their base rate of pay. They would then receive an additional 8.5% in wage increases during 2008 and 2009. For cash flow reasons, Amtrak structured the wage increases in 2008 and 2009 differently than the freight pattern, but the wage increases in the aggregate are almost identical to the freight pattern – there is only a 0.5% difference for the period 2005 to the present. Amtrak is proposing these generous wage increases even though Amtrak's financial performance has been dramatically worse than that of the freight railroads since 2005. As I have stated previously, the freight railroads have enjoyed profitability during this time period while Amtrak has continued to suffer losses of four to five hundred million dollars annually.

2. <u>Retroactive Pay</u>

Given Amtrak's precarious financial condition, Amtrak simply cannot afford to pay these proposed wage increases retroactively, at a cost of $13,500 per employee, as demanded by the Passenger Rail Labor Bargaining Coalition ("PRLBC").[2] Amtrak has instead made a proposal that reflects the extent of its ability to pay: a $4,500 signing bonus in lieu of retroactive pay. This is the same proposal that was accepted by the BLET in its tentative agreement earlier this year.

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[2] The PRLBC is a coalition of four of the unions that are before this PEB: the BMWE, BRS, NCF&O and ATDA. A copy of the PRLBC's coalition agreement and addendum are attached as Exhibit 25.

It is important to recognize that retroactive pay is a bargaining convention. It is not an entitlement. Amtrak has never promised that employees will receive retroactive payments when an agreement is finally reached. The only promise that Amtrak has made is to provide COLA payments, which employees have received throughout this round in bargaining. In fact, Amtrak specifically informed the unions in 2002 that Amtrak would not agree to provide retroactive pay. This was one of the five key principles that President Gunn outlined for the unions in December 2002, in describing the parameters of an agreement that would follow the freight railroads' wage increases. Amtrak informed the unions again in 2003, when agreement was reached with the TCU based on the principles outlined by President Gunn.

Rather than heed these principles, the unions that are before this PEB chose to wait for political change in 2004.[3] Then, when that political change that did not occur, the unions continued to hold out for a better deal than the one reached by the TCU. The unions persisted in their refusal to discuss changes to work rules throughout this period, thereby depriving Amtrak of any productivity improvements during a period of extraordinary financial crisis. The unions' refusal to reach a settlement also has deprived Amtrak of any savings that could have been achieved by containing the growth in health care costs over this period.

Thus, while the unions claim that they have an equitable entitlement to retroactive pay, the equities cut the other way. The unions' failure to reach agreement over the past eight years, in the face of a clearly established bargaining pattern, has deprived Amtrak of cost savings and productivity improvements in one of the darkest periods in its entire history.

[3] The ATDA and ARASA MW reached tentative agreements in 2004 that followed the TCU pattern, but those tentative agreements were not ratified.

The equities ultimately must be judged in light of the bargaining pattern that has been established on Amtrak over the past eight years. That bargaining pattern unequivocally does not support the unions' argument for retroactive pay:

- 2003 TCU Agreement: no retroactive pay
- 2004 ASWC agreement: no retroactive pay; $400 signing bonus
- 2004 ARASA-OBS agreement: no retroactive pay; $400 signing bonus
- 2004 ATDA tentative agreement: no retroactive pay
- 2004 ARASA-MW tentative agreement: no retroactive pay
- 2007 BLET tentative agreement: $4,500 signing bonus in lieu of retroactive pay

Amtrak is proposing to follow this bargaining pattern by providing the same $4,500 signing bonus that the BLET negotiated earlier this year. This is more than the TCU, ASWC, and ARASA OBS received in 2003 and 2004, and it is more than the ATDA and ARASA MW – two of the unions that are before this PEB – agreed to in 2004. The $4,500 signing bonus is equivalent to 30% of the retroactive pay claimed by the unions, which is the most that Amtrak is able to pay. Amtrak simply is not willing to repeat the mistake of 1997 by agreeing to a deal without the funding to pay for it. To do so would be even more foolhardy because there is not even a promise of additional funding in this round. Congress and the Administration have made clear that there is no political support for a special appropriation to pay for the retroactive pay sought by the unions.

3. Elimination of the Harris COLA

The parties' dispute on this issue is one of degree. Amtrak has proposed to eliminate the Harris COLA permanently, consistent with the freight pattern and the BLET tentative agreement pattern. The unions, however, have proposed only to suspend the Harris COLA for the term of this agreement, and then restart in on July 1, 2010. Restarting the Harris COLA in 2010 is both unjustified and unwise. It is unjustified because it is inconsistent with the prevailing bargaining patterns. And it is unwise because the existence of the COLA payments now has helped to prolong the current bargaining dispute, and therefore it could be expected to have a similar effect in the next bargaining round if the unions' proposal were adopted.

4. Health & Welfare

Amtrak's position on health and welfare benefits are detailed in the testimony of Tom Rand, but I will briefly summarize it here. Consistent with the freight railroad pattern, the TCU agreement pattern, and the BLET tentative agreement pattern, Amtrak is seeking plan design changes and employee cost sharing in order to contain the rising cost of health care. Amtrak is seeking employee contributions of $166.25 per month, while employees' wage increases would be three to four times that amount under the terms of Amtrak's proposal.

5. Work Rule Reform

The pattern agreements on Amtrak have consistently included a variety of modifications to work rules. The 1997-1998 agreements with all unions, the 2003 TCU agreement, and the 2007 BLET tentative agreement all included substantial work rule changes. Work rule changes were also negotiated in the ASWC and ARASA-OBS agreements, and in the tentative agreements reached by the ATDA and ARASA-MW in 2004. Thus, Amtrak's work rule proposals to the eight unions that are before this PEB reflect a well-established bargaining pattern on Amtrak, a bargaining pattern that two of these unions (ATDA and ARASA-MW) have recognized in their tentative agreements. Moreover, other unions that are not before this PEB have agreed to work rules that grant the flexibility that Amtrak is now seeking from these unions. The Sheet Metal Workers and the Boilermakers, for example, have agreed to permit employees from other crafts to perform their work when they have been trained to do so. Amtrak is simply asking the other shop crafts to reciprocate on this issue.

I will not attempt to identify or discuss all of the various work rule changes in Amtrak's proposals to each of the unions that are before this PEB. William Crosbie will detail some of these changes in his testimony, and others are identified and submitted in Exhibit 21 to my testimony. As Mr. Crosbie will explain in more detail, there are two categories of proposals that are particularly important to Amtrak for the engineering crafts (the BMWE and BRS): (1) proposals to expand Amtrak's right to subcontract work and (2) proposals to schedule employees flexibly in order to perform work efficiently and during the times permitted by Amtrak's train schedules. There are also two categories of proposals that are particularly important to Amtrak for the mechanical crafts (the shop crafts): (1) proposals to assign employees flexibly across craft lines and (2) proposals to expand Amtrak's right to subcontract work when it is more cost effective to do so.

In addition to these key proposals, Amtrak has made a proposal regarding sick leave that is unique to the ARASA-ME craft. ARASA-ME supervisors use more sick leave than any other employee group on Amtrak. Therefore, Amtrak has proposed to delay short-term disability benefits from the second day of illness to the fourth day of illness, and to reduce the income replacement benefit to 70% from its current levels of 80% or 100% depending on the length of disability and the employee's years of service. This proposal would place the ARASA-ME supervisors on par with supervisors in the ARASA-MW unit. It would result in direct cost savings of approximately $200,000 plus an expected increase in productivity.

Amtrak also has made important proposals on payroll and hours issues that are applicable to most or all crafts. They include a proposal to pay overtime only after 40 hours in a workweek, in order to eliminate unnecessary costs and control absenteeism.[4] This proposal would save Amtrak between $400,000 and $500,000 annually as well as diminish absenteeism. These proposals also include a proposal to phase out the use of "bank time" by eliminating future accruals while permitting employees to use any "bank time" accrued to date. In addition, Amtrak has proposed to implement a more efficient payroll process, by providing for automatic direct deposit, bi-weekly pay, and the establishment of a Monday through Sunday workweek.

While the unions have opposed discussing changes to work rules for most of this round, collaterally the BMWE has proposed certain work rule changes relating to a consent decree in the *Thornton* Title VII litigation. A copy of this proposal is attached as Exhibit 23. As part of the consent decree in that case, certain work rule changes, such as in the area of training, were negotiated on a temporary basis for all employees (not just those employees involved in the litigation). Exhibit 24 is a copy of the *Thornton* interim agreement and procedural stipulation. BMWE has proposed to make these changes permanent and include them in the collective bargaining agreement. Amtrak is willing to accept this proposal as part of Amtrak's effort to achieve broader work rule reform through its proposals in this round.

6. <u>Duration/Moratorium</u>

Amtrak has proposed an agreement with a moratorium clause that would run through September 30, 2010. The unions, by contrast, seek an agreement that would run only until December 31, 2009. Amtrak's proposal is consistent with the BLET tentative agreement pattern, and it is also consistent with Amtrak's October – September fiscal year.

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[4] This proposal does not apply to the ARASA-MW craft because they already have agreed to this rule.

Summary of Amtrak's Proposal

Amtrak's proposal is a generous one, which pushes the limit of its financial ability to pay. It offers prospective wage increases that exceed 30% over the term of the agreement. Even though Amtrak continues to experience substantial operating losses, these wage increases are possible given Amtrak's current level of funding from Congress – a level of funding that is not expected to grow. Amtrak's wage proposal, together with its proposals to eliminate the Harris COLA and contain the rising cost of health care, are consistent with the freight bargaining pattern, adapted to meet Amtrak's cash flow needs, and they are also consistent with the internal Amtrak bargaining pattern established through the 2003 TCU agreement and the 2007 BLET tentative agreement.

Reasonable work rule reform and productivity improvements are essential given the Congressional mandate to make efficient use of the more than one billion dollars of taxpayer money that is appropriated to Amtrak each year. Amtrak has honored and adhered to this mandate through a series of agreements reached with various unions during this round of bargaining, including the TCU and the BLET. This is a bargaining pattern that has been followed in prior rounds as well, including the 1997 agreements reached after PEB No. 234 did not recommend any work rule changes. The Congressional mandate cannot be ignored.

Amtrak's proposal on the issue of retroactive pay also must be viewed in its true political context. It is no secret that Congress does not support additional funding to pay for retroactive pay. That is why the BLET negotiated the best deal it could. Yet, the unions in this PEB have refused to acknowledge this political reality and have prolonged this bargaining round in the hope that their political fortunes – and Amtrak's – would change. Their hopes have not materialized. Amtrak remains unable to pay the substantial retroactive pay sought by the unions, which would amount to approximately $13,500 for each union-represented employee or $156 million in total, as proposed by the PRLBC. The only way a payment of this magnitude could be made, even if this PEB recommended it, is through a special congressional appropriation. But, as the BLET recognized, even this current, labor-friendly Congress is not willing to make such an appropriation.

In an effort to resolve this round of bargaining, Amtrak reached a tentative agreement with the BLET in 2007 that stretched the limits of its ability to pay. That proposal, which would provide employees with a signing bonus of $4,500 in lieu of retroactive pay, has been extended to these eight unions. On behalf of Amtrak, I urge this Board to recommend this proposal as the most equitable solution to this dispute, within the limits of Amtrak's financial and political reality.

TESTIMONY OF JOSEPH M. BRESS – INDEX OF EXHIBITS

1. Biography
2. Union headcount information
3. Table showing average annual compensation of employees in PEB
4. Lange testimony to PEB 222
5. Report of PEB 222
6. Report of PEB 234
7. June 28, 2002 Summary of Conditions for Direct Loan Agreement
8. Freight Agreements: 2001 BMWE; 2003 BLET; 2003 TCU Clerks
9. BMWE July 8, 2003 letter to NMB
10. Sept. 2003 BMWE press release and flyer announcing October 3, 2003 "political" strike
11. 2003 TCU agreement
12. 2004 ASWC agreement
13. 2004 ARASA OBS agreement
14. 2004 ATDA tentative agreement
15. 2004 ARASA MW tentative agreement
16. 2007 BMWE freight agreement
17. 2007 BLET tentative agreement
18. 2007 FOP agreement
19. Kenny July 30, 2007 letter re: ratification of the BLET tentative agreement
20. Kenny August 17, 2007 letter re: ratification of the BLET tentative agreement
21. Amtrak's current proposals to each of the unions in the PEB and index
    A. ARASA – ME
    B. ARASA – MW

C. ATDA

D. BMWED

E. BRS

F. IAM

G. IBEW

H. JCC

I. NCF&O

J. All Craft index

22. Table showing impact of Amtrak's wage proposal on average rate of pay

23. BMWE proposal re: *Thornton*

24. *Thornton* interim agreement and procedural stipulation

25. PRLBC agreement and addendum