

BEFORE PRESIDENTIAL EMERGENCY BOARD NO. 242

Dispute Between

National Railroad Passenger Corporation

AND

Its Employees Representatives by the Brotherhood of  
Maintenance of Way Employees (BMWE), International  
Brotherhood of Electrical Workers (IBEW),  
International Association of Machinists and  
Aerospace Workers (IAM), Brotherhood of Railroad  
Signalmen (BRS), Joint Council of Carmen (JCC),  
comprised of the Transportation Communications  
International Union/Brotherhood Railway Carmen  
Division and the Transport Workers Union of  
America, American Train Dispatchers Association  
(ATDA), National Conference of Firemen &  
Oilers/Service Employees International Union the  
Brotherhood of Maintenance of Way Employees (NCFO),  
Transportation Communications International Union -  
American Railway and Airline Supervisors (ARASA)

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1127 Connecticut Avenue, NW.  
Washington, D.C.

Tuesday, December 11, 2007

The HEARING in this matter convened at  
approximately 9:00 a.m., pursuant to notice.

BEFORE:

- PETER TREDICK, ESQUIRE, Chairman
- IRA JAFFE, ESQUIRE, Member
- JOSHUA JAVITS, ESQUIRE, Member
- ANNETTE SANDBERG, ESQUIRE, Member
- HELEN WITT, ESQUIRE, Member
- NORMAN GRABER, ESQUIRE, Special Counsel
- EILEEN HENNESSEY, ESQUIRE, Special Counsel

1 APPEARANCES:

2 On behalf of AMTRAK:

3 THOMAS REINERT, JR., ESQUIRE  
4 DONALD L. HAVERMANN, ESQUIRE  
5 JONATHAN FRITTS, ESQUIRE  
6 Morgan Lewis & Bockius  
7 2099 Pennsylvania Avenue, NW., Suite 100  
8 Washington, D.C. 20006  
9 (202) 955-3000

7 On behalf of BMW/BRS/ATDA/NCFO:

8 ROLAND P. WILDER, JR., ESQUIRE  
9 STEFAN P. SUTICH, ESQUIRE  
10 STEVEN J. FEINBERG, ESQUIRE  
11 Baptiste & Wilder, PC  
12 1150 Connecticut Avenue, NW., Suite 500  
13 Washington, D.C. 20036  
14 (202) 223-0723

12 On behalf of IBEW/IAM/JCC:

13 JOSEPH GUERRIERI, JR., ESQUIRE  
14 CARMEN R. PARCELLI, ESQUIRE  
15 Guerrieri Edmond Clayman & Bartos, PC  
16 1625 Massachusetts Avenue, NW., Suite 700  
17 Washington, D.C. 20036-2243  
18 (202) 624-7400

16 On behalf of ARASA:

17 MITCHELL KRAUS, ESQUIRE  
18 Transportation Communications Union  
19 3 Research Place  
20 Rockville, Maryland 20850  
21 (301) 948-4910

22 \* \* \* \* \*

1 C O N T E N T S

2	WITNESS:	PAGE
3	Joe McHugh	89
4	Joseph H. Bress	140
5	William H. Campbell	221
6	Thomas O.S. Rand	269
7		343
8	James Gillula	306

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1 P R O C E E D I N G S

2 CHAIRMAN TREDICK: We're ready.

3 Please come to order. We're on the record  
4 now.

5 In case anyone is in the wrong  
6 place, this is a hearing before Presidential  
7 Emergency Board 242, which was created by  
8 Executive Order of President Bush effective  
9 December 1.

10 We've got a full schedule. So  
11 we're going to try to move right along.  
12 Before I ask counsel for appearances, I'd  
13 like to introduce the members of the Board.

14 On my far left here is Ira Jaffe.  
15 Next to Mr. Jaffe is Helen Witt. To my  
16 immediate right is Annette Sandberg. To her  
17 right is Joshua Javits, and to Mr. Javits  
18 right is Eileen Hennessey and to her right  
19 Norman Graber. Ms. Hennessey and Mr. Graber  
20 are special counsel to this Board.

21 Before, counsel, introduces  
22 themselves, I'd like to state a couple things

1 in terms of ground rules. First of all, this  
2 is not a public hearing. This is a hearing  
3 intended for parties and persons invited by  
4 parties. So if there are any representatives  
5 of the media or persons not associated with  
6 counsel or party, would you please leave the  
7 room now.

8 I don't see any takers. So I guess  
9 we're in business.

10 The other ground rule is in the  
11 terms of recording devices. We do not want  
12 these proceedings recorded except by the  
13 official reporter. So, please, if you have  
14 recording devices, turn them off.

15 And, finally, cell phones should be  
16 silenced. That's a rule that I guess applies  
17 every place now to any sort of a meeting.  
18 Please take off or silence your cell phones.

19 Without any further preliminary  
20 matters, would counsel please identify  
21 themselves and state who they represent.

22 MR. REINERT: I'm Thomas Reinert on

1     behalf of Amtrak. With me is Jonathan Fritts  
2     and Donald Havermann and Bill Herrmann on  
3     behalf of Amtrak.

4                   CHAIRMAN TREDICK: Thank you.

5                   MR. GUERRIERI: Yes. Joseph  
6     Guerrieri on behalf of the Shopcraft  
7     Coalition consisting of the Joint Council of  
8     Carmen, Coach Cleaners and Helpers, which is  
9     made up of the TWU and BRC members, the  
10    International Brotherhood of Electrical  
11    Workers, and the International Association of  
12    Machinists and Aerospace Workers.

13                   Seated to my right is Mitchell  
14    Kraus, General Counsel, Transportation  
15    Communications Union, and to his right, my  
16    partner, Carmen Parcelli of the law firm of  
17    Guerrieri, Edmond, Clayman & Bartos in  
18    Washington, DC.

19                   CHAIRMAN TREDICK: Thank you, sir.

20                   MR. WILDER: Roland P. Wilder, Jr.,  
21    Steven J. Feinberg and Stefan P. Sutich,  
22    Baptiste & Wilder of Washington, DC, on

1 behalf of the Passenger Rail Labor Bargaining  
2 Coalition, which consists of four  
3 organizations. The Brotherhood of  
4 Maintenance of Way Employees Division, IBT,  
5 the Brotherhood of Railroad Signalmen, the  
6 National Conference of Firemen and Oilers,  
7 affiliated with the SEIU and the ATDA  
8 representing the dispatchers.

9 CHAIRMAN TREDICK: Thank you, Mr.  
10 Wilder.

11 MR. KRAUS: Mr. Guerrieri already  
12 introduced me. I'm Mitch Kraus. I'm here  
13 today on behalf of the ARASA supervisors.  
14 There are two supervisory crafts in front of  
15 you. The supervisors of maintenance of way.  
16 Supervisors of maintenance equipment. Thank  
17 you, sir.

18 CHAIRMAN TREDICK: Thank you. Are  
19 there any other counsel who wish to enter an  
20 appearance? Thank you all. Let me also  
21 thank all counsel for their cooperation with  
22 what we know is a very tight deadline and



1 that, of course, is by reason of the deadline  
2 that the Board operates under. We also for  
3 purposes of this hearing have asked all  
4 counsel to identify their witnesses in  
5 advance and the time that they wish to allot  
6 to each witness.

7 We hope that we can adhere to those  
8 so we can again move along and conclude on  
9 time. There was a procedural letter, which  
10 included some of the things I just said,  
11 issued last week. We indicated in that  
12 letter that today would be opening statements  
13 and as I remember, Mr. Reinert, you're at  
14 bat.

15 MR. REINERT: Thank you, Chairman  
16 Tredick. Before I really start my opening  
17 statement, I have to make sure our technology  
18 works. So I am going to attempt to get the  
19 projector working.

20 We have provided books with  
21 PowerPoint presentations, which we're also  
22 going to project, and we'll be using them

1 with witnesses, as well my opening statement.  
2 I think we're online now, and counsel and all  
3 the Board members should have hard copies as  
4 well in case something goes wrong with the  
5 technology.

6 I am Thomas Reinert on behalf of  
7 Amtrak. I'm from the law firm of Morgan,  
8 Lewis & Bockius. Morgan, Lewis & Bockius has  
9 actually represented Amtrak since the 1970s.  
10 My senior colleague, Harry Risetto, who is  
11 lurking somewhere in the back, brought me  
12 into that representation many years ago, and  
13 we know much about Amtrak and its problems  
14 over the years.

15 Our legal team I'll introduce from  
16 Morgan Lewis. Jonathan Fritts and Don  
17 Havermann will be working with some of the  
18 witnesses today. It's a much larger legal  
19 team of people who have worked very hard to  
20 prepare this case in a short time.

21 From Amtrak legal team, General  
22 Counsel, Eleanor Acheson is not here yet.

1 She will be here later in the proceedings.  
2 Bill Herrmann, who is the Managing Director  
3 of -- Managing Deputy General Counsel,  
4 General Litigation. He recently got a  
5 promotion. It's a long title.

6 The Amtrak management team is  
7 behind me, and I'm going to do this in order  
8 of the witnesses' testimony. Joe McHugh is  
9 the Vice President of Government Affairs.  
10 Joe Bress is the Vice President of Labor  
11 Relations. Bill Campbell is the Chief  
12 Financial Officer. Bill Crosbie is the Chief  
13 Operating Officer, and Alex Kummant, last but  
14 not least, is President and CEO. You will be  
15 hearing from them all.

16 We also will have two experts  
17 testifying. Tom Rand from Kennedy & Rand  
18 Consulting will talk about health benefits.  
19 James Gillula from Global Insights, who will  
20 be talking about labor analysis, labor cost  
21 analysis.

22 I want to thank the Board members

1 for agreeing to participate to serve in this  
2 proceeding on short notice. I thank the PEB  
3 staff, Norman Graber and Eileen Hennessey,  
4 for their prompt action getting this arranged  
5 and their cooperation with counsel.

6 This is a very important  
7 proceeding. I want to begin by talking about  
8 the importance of this PEB process. Amtrak  
9 provides interested rail passenger service  
10 pursuant to its statutory organization. It  
11 is an important service. It is an important  
12 service throughout the country.

13 It's an important service through  
14 many corridors throughout the country, the  
15 West Coast, the Midwest corridor. It is  
16 particularly important in the Northeast  
17 corridor.

18 The purpose of this Presidential  
19 Emergency Board proceeding is to investigate  
20 a dispute that threatens central  
21 transportation service in an area of the  
22 country. The Northeast corridor certainly

1 meets that criteria.

2           Allow me to add a few personal  
3 notes. I'm 53 years old. I've lived my life  
4 in New York, Boston and metropolitan -- and  
5 Washington metropolitan area. I've never  
6 lived more than 25 miles from the Northeast  
7 corridor and I'm not alone. There are many,  
8 many people in this central corridor of our  
9 country and of our economy, and preserving  
10 that service is a major reason we're here.  
11 But I also want to talk about the interests,  
12 not just the public interests in that  
13 service, but the interests of Amtrak's  
14 employees.

15           It's obvious to all. We're here  
16 about rates of pay rules and working  
17 conditions, labor agreements. We're talking  
18 about people's livelihoods, very important to  
19 them.

20           I have a particular perspective on  
21 this because I grew up in a railroad family.  
22 My father was a locomotive engineer who

1 worked on the Northeast corridor. He began  
2 shoveling coal as a fireman in the steam  
3 engines on the Pennsylvania Railroad, went to  
4 the Penn Central, then went to Conrail.

5 He actually spent most of his  
6 career in passenger service, had an  
7 opportunity to go to Amtrak for the  
8 transaction, but chose Conrail because he  
9 thought the freights had a brighter future  
10 than passenger rail. He spent the late years  
11 of his life as a yard engineer in Sunnyside  
12 Yard setting up Amtrak trains.

13 The relevance of that to this  
14 proceeding is none of those railroads exist  
15 any more. They're all out of business. But  
16 for the Federal intervention to create  
17 Conrail and to create Amtrak, the economic  
18 status of my family would have been very  
19 different.

20 The most important rate and pay  
21 rule and working condition we deal with is  
22 just the existence of jobs. That's why the

1 interests of Amtrak's employees are  
2 inextricably linked with the existence and  
3 the success of Amtrak.

4           And during this last round of  
5 bargaining, the continued existence and  
6 success of Amtrak has been a key public issue  
7 and was not taken for granted and should not  
8 be taken for granted in this proceeding  
9 today. We hope to pursue that joint interest  
10 through this proceeding.

11           We have a very simple role in this  
12 process. We think this process is about  
13 providing information to the Board so that  
14 they understand the dispute. It's much less  
15 about persuasion and much more about  
16 adaptable and trying to give some background,  
17 some context, so you understand why we are  
18 here. Why we have been unable to achieve  
19 agreements.

20           In this particular dispute, the  
21 political, economic and operational context  
22 is particularly important. The negotiating

1 history is more than just what happened at  
2 the table. In fact, most of the most  
3 important things didn't happen at the table.  
4 We want to assist the Board in understanding  
5 that context. Understanding the issues that  
6 separate labor and management.

7 I've put up a quote from Henry  
8 David Thoreau, who actually hated the  
9 railroads, but he gave us a motto of  
10 "simplify, simplify." That should be the  
11 PEB's motto. I like the two simplifies  
12 because I view it in conjunction to each side  
13 of the table to get to the point and help the  
14 Board understand what's really going on.

15 Counsel have been introduced.  
16 You've seen the submissions. Very briefly, I  
17 want to review the union parties. Joe Bress  
18 will go through this in much greater detail  
19 in his testimony. These groupings really  
20 relate to the groupings of counsel.

21 The problem with this PEB or the  
22 initial problem is the particular



1 cross-section of unions you have before the  
2 Board really doesn't make any particular  
3 sense and it's more, quite frankly, an  
4 accidental grouping more than anything else.

5           You have the core of the  
6 shopcrafts, the IAM, IBEW and JCC represented  
7 by the Guerrieri firm, but you have other  
8 shopcrafts, sheet metal workers and IBB, who  
9 are not here, and one of the shopcrafts, the  
10 NCFO, is with the PRLBC.

11           You have the two important  
12 engineering crafts, the BMW and BRS, but  
13 they're also grouped with ATDA, which is the  
14 only transportation department union present,  
15 and then you have the two supervisors groups.

16           The unions who are present here  
17 represent about 40 percent of Amtrak's  
18 employees. Sixty percent of the represented  
19 employees are not here and it really includes  
20 the operating employees, the onboard service,  
21 the clerical.

22           And at the outset, those employees

1 have a very major interest in the outcome of  
2 this proceeding because we all know the  
3 relevance that can occur from internal  
4 patterns, and I think that's something the  
5 Board needs to think about in the course of  
6 this proceeding of the folks who are not here  
7 and their interests as well.

8 In an effort to simplify, I'm  
9 trying to come up with some themes and I've  
10 come up with what I call the five "P"s more  
11 accidental than anything else, but it helps  
12 me remember things.

13 Public and passenger. We're going  
14 to talk about Amtrak's unique identity. It  
15 is the only intercity public passenger  
16 railroad in the country.

17 The past. The past is a very  
18 important part of this proceeding. We have  
19 an eight-year bargaining round. We have a  
20 major issue of retroactive pay on the table.

21 You'll be hearing from both sides  
22 about patterns. We have, in our view,

1 internal patterns at Amtrak. I think both  
2 sides think there are external patterns  
3 involving freights, though we disagree about  
4 their impact, and then we're going to be  
5 talking about productivity. Work rule  
6 changes.

7           Let me focus first on the public  
8 nature of Amtrak. Amtrak is a private  
9 corporation under DC law, but it really is  
10 operating a public railroad and it really is  
11 a creature of the Federal government. It was  
12 created by Congress. It's owned by the  
13 Federal government.

14           Its boards members are appointed by  
15 the President. It's depending upon  
16 Congressional budgeting process for operating  
17 capital and actually debt budgets as well as  
18 mid-service budgets, and Congress has on many  
19 occasions intervened and actually set terms  
20 and conditions for Amtrak employees.

21           And I'm not talking about post-PEB  
22 process. I'm talking outside the PEB process

1 or any recommendation or any unresolved labor  
2 issues. We've had interventions on labor  
3 protection, subcontracting and other issues  
4 where Congress just said: This is what we  
5 want at Amtrak.

6 Amtrak is actually the only  
7 federally-controlled entity subject to the  
8 Railroad Labor Act. It is odd in that regard  
9 in that it's this quasi-public entity,  
10 quasi-Federal entity under a statute designed  
11 for private employers.

12 The only analog that I could think  
13 of is actually the US Postal Service, which  
14 is actually separate under the National Labor  
15 Relations Act, but that creates some perhaps  
16 uncertainty and some perhaps lack of reason  
17 in terms of how the processes work. We're  
18 under the Railroad Labor Act because we came  
19 out of the freights and that's a historical  
20 factor.

21 We're a passenger railroad. The  
22 business of Amtrak is moving passengers

1     intercity. This makes it very different from  
2     freight railroads. It's not involved in  
3     hauling freight. Its operation is different.

4             You'll hear its utilization  
5     locomotives, the types of cars it has. The  
6     congestion issues differ from the freights.  
7     It is also not profitable as the freights  
8     are, have been in recent years. That's a  
9     major difference.

10            We're actually much more like an  
11     airline. We compete with the airline  
12     industry. In fact, Amtrak is the eighth  
13     largest airline in this country. It has 5  
14     percent of the industry capacity of moving  
15     passengers intercity.

16            We're in the passenger business,  
17     and if you look at the airline industry,  
18     you'll see some interesting things these  
19     days. I'm going to make some references to  
20     the airline industry throughout this  
21     proceeding.

22            It's not something that has to be

1 central in the Board's deliberations. It's  
2 something you should take into consideration.  
3 It's no secret what happened in the airline  
4 industry in the eight-year period we are  
5 talking about for this bargaining round.

6 Post-9/11 it was a disaster. There  
7 were a hundred thousand jobs lost in that  
8 industry. There were multiple bankruptcies.  
9 There were wage reductions. There were  
10 pensions that were cut, and during the period  
11 of time, the Amtrak employees, as much as  
12 they may be unhappy with their conditions,  
13 did not suffer the consequences of the  
14 employees who compete in an industry that  
15 carries passengers intercity.

16 In preparing for this case, I did  
17 some research and Tom Roth, the labor  
18 economist for the union, is very good. We  
19 present his report here. He actually  
20 presented a report for Congress in 2003,  
21 which I found on the Internet and found very  
22 interesting, and contained in there was the

1 comparison to the freight industry, the  
2 commuter industry and the airline industry.

3           When I got the exhibits last week  
4 and went to look at his report this time,  
5 there's no reference to the airline industry.  
6 Clearly the reason for that is it's not a  
7 very pretty story for Amtrak employees to be  
8 looking at as a comparator, but it's part of  
9 the background of what occurred in the last  
10 eight years.

11           There are many things that happen  
12 in bargaining round. One of the things we  
13 did as part of our demonstrative exhibits, we  
14 have this fold-out, which is a bargaining  
15 round chronology.

16           We tried to give some events and  
17 some periods of labor agreements, and we put  
18 it on paper the Board members could write on  
19 because there are other events you may want  
20 to add to the chronology, but it was our  
21 effort to look at a very long bargaining  
22 round and to try to make some sense of it.

1                   You'll be hearing from Joe McHugh  
2                   about what went on politically, from Bill  
3                   Campbell about what went on financially, and  
4                   Joe Bress about what went on in the  
5                   bargaining as part of this chronology.

6                   If there's a criticism I would make  
7                   of the union submissions, they talk about the  
8                   bargaining table, but from their submissions  
9                   it all seems to occur in a vacuum. It was  
10                  not a vacuum.

11                  We began this decade still feeling  
12                  the effects of the 1997 agreement. They talk  
13                  about PEB 234. What we're going to talk  
14                  about is those agreements were never funded  
15                  by Congress and created a substantial  
16                  economic problem coming into this round.

17                  What you don't hear is that in FY  
18                  2000 and FY 2001, the operating subsidy that  
19                  Congress gave Amtrak was zero, nothing. This  
20                  led to a crisis in 2002 where Amtrak came  
21                  very close to going into bankruptcy.

22                  At the same time the 2002 freight



1 subsidies come down. So the parties are  
2 trying to figure out what to do with it. So  
3 that really led to 2003/2004 events where we  
4 entered agreements with some of our unions,  
5 TCU and ASWC, and all the unions who are here  
6 and complaining about retroactivity had  
7 opportunities in 2003 and 2004 to enter  
8 agreements, which they did not take.

9           And in 2003, October of 2003, they  
10 called a one-day political strike against  
11 Congress and the Administration. I know that  
12 concern is involved in the process and  
13 joining it, but at that time they were saying  
14 the culprit was the lack of Administration  
15 and Congressional funding for Amtrak, and the  
16 problem really wasn't Amtrak, the one that  
17 was doing the bargaining table, but our  
18 funding authority.

19           And you will hear the rest of the  
20 story that 2005 on, there has been greater  
21 stability politically, economically and  
22 operationally at Amtrak. A lot of work needs

1 to be done. In 2007, we then have the  
2 freight agreements and we tried to enter  
3 agreements with our unions.

4 We succeeded in getting a tentative  
5 agreement with the BLET, which we will talk  
6 about quite a bit, but, unfortunately, that  
7 failed ratification for reasons we'll review.

8 So, the first important question  
9 this Board should ask itself: Why have the  
10 last eight years of reopened agreements not  
11 resulted in a settlement? Well, there are a  
12 lot of reasons and you're going to hear them,  
13 and you're really going to need to understand  
14 them and part of this was what happened to  
15 freights.

16 The freight agreements didn't  
17 happen until 2002 and 2007. There was some  
18 wait in time involved with that. The unions  
19 had told us and so their work increases,  
20 while they demeaned them, those increases did  
21 give them some 9 percent increase during this  
22 period of time.

1           And in addition, they were not  
2     agreeing during that period of time to health  
3     care offsets, work rule productivity  
4     improvements, which other unions were  
5     agreeing to. So they had some economic  
6     incentive for delay.

7           Much of it was the political  
8     process and Amtrak's economics. Now, I would  
9     say the political process has not in the  
10    least been kind to Amtrak. That's not  
11    pointing fingers. It's just saying reality.

12           There was uncertainty. I mentioned  
13    years where we had no operating subsidy that  
14    made it very difficult to reach agreements  
15    because, quite frankly, money wasn't there.

16           We also had continuing union  
17    resistance to even talking about the issue  
18    productivity changes. We've heard nothing  
19    from the unions indicating they want to talk  
20    about that issue.

21           And there was a union political  
22    strategy to wait for political change. It

1 was waiting for every Congressional election,  
2 presidential election. Things are going to  
3 get better. We're going to get a better  
4 deal, and that took up much of the last eight  
5 years.

6 So, when we come here today,  
7 retroactivity pay is the major issue and  
8 you'll hear the unions say -- you know, this  
9 is a lot of money. Their demand has been  
10 13,500 for every employee by the PRLBC.

11 Mr. Roth in his reporting is now  
12 saying that number is 12,848. I think that's  
13 a little bit under 5 percent reduction. I  
14 suppose that's progress, but not much.

15 They will claim it's entitled.  
16 Retroactive pay, in our view, is not  
17 entitled. Nothing in the Railroad Labor Act  
18 requires retroactive pay. The contract  
19 doesn't require retroactive pay.

20 The interesting thing is during the  
21 status quo, the contract had a COLA provision  
22 that continues to operate. That's what the

1 parties bargained for. That's contractual  
2 entitlement.

3           What retroactive pay is is  
4 something that parties in negotiations either  
5 expressly often or impliedly agree will  
6 apply. You know, don't worry about the  
7 delay, we'll deal with it in retroactivity.

8           Well, here there was no reasonable  
9 expectation by the unions that they were  
10 going to get retroactive pay. The reason why  
11 is Amtrak sat down with them in 2002 and  
12 said, We don't have the money and we're not  
13 going to pay retroactivity.

14           So they were on notice. They've  
15 been on notice ever since the freight  
16 settlements came in in 2002. They decided  
17 not to make agreements and here we are today  
18 sitting with the bargaining demand from the  
19 unions that, you know, cost about \$150  
20 million, which is a great deal of money.  
21 It's not within the range to be affordable  
22 for Amtrak.

1                   And at base, this is a political  
2                   issue. At base, it's a political issue  
3                   because of the underlying grievance that led  
4                   to all this. Go back to 2002, 2003, 2004  
5                   when the unions were unhappy with what the  
6                   Administration and Congress was doing and  
7                   were calling a political strike to express  
8                   that unhappiness, and then you hear in 2007,  
9                   well, retroactive pay is entitled.

10                   They're really trying to undo  
11                   several years of Congressional budgetary  
12                   action and that should not be part of this  
13                   process.

14                   I want to talk about patterns, one  
15                   of our other major "P"s, and the parties  
16                   spend most of the time I think talking about  
17                   patterns. There is no dispute that Amtrak's  
18                   wages and benefits have historically been  
19                   related to the freight patterns.

20                   We view it as a load star reference  
21                   point when entering agreements. We look at  
22                   what the freights are doing. This goes back

1 to our history. Our employees came over from  
2 the freights. They came over from the  
3 freights because the freights couldn't make  
4 money in passenger service, but they came  
5 over from the freights.

6 And we've always looked to freight  
7 patterns and tried to adjust them according  
8 to our operation, according to our economics  
9 and circumstances, and that has become more  
10 and more important when you've got a  
11 profitable freight industry, and Amtrak is  
12 not a profitable corporation by any stretch  
13 of the imagination.

14 Now, what you hear from the unions  
15 on the freight pattern is basically: We, the  
16 unions, go negotiate with the freights, spend  
17 several years, make all our trade-offs, come  
18 back with a deal, and we give it to Amtrak  
19 and you're supposed to sign it.

20 That's not collective bargaining.  
21 That's not what the Fair Labor Act had in  
22 mind. There has to be bargaining. You may

1 reference the freight patterns, but you have  
2 to deal with Amtrak as Amtrak.

3 There's been some reference to the  
4 commuters. Reality is we haven't been tied  
5 to the commuters. They have a distinct  
6 history, distinct funding sources and  
7 operations.

8 I mentioned the airline industry  
9 because, as I said, it's our competitors and  
10 you look at the bankruptcies, the 10 percent  
11 plus wage reductions, the pension losses  
12 during this period, and you have to think  
13 about that.

14 In our view, the freights are up  
15 here, the airlines in terms of change over  
16 this period are down here, and the Board has  
17 to look at those two factors and think about  
18 where Amtrak should be.

19 There have been rail freight  
20 grievance during the last eight years. There  
21 was the 2002 freight agreement and the 2007  
22 freight agreement.



1                   What Amtrak does is look at the  
2                   general wage increases, looks at the health  
3                   and welfare packages, looks at the change in  
4                   COLA, which was eliminated, and we try to  
5                   take those factors into account in  
6                   formulating our economic package. It's a  
7                   stretch for us, but that's what we intend to  
8                   do.

9                   Against that background, there are  
10                  internal patterns at Amtrak. Now, much of  
11                  the union's submissions are attempts to try  
12                  to explain away the internal patterns, but  
13                  the reality is other unions have consummated  
14                  agreements in the last eight years and in  
15                  2003/2004, about 30 percent of our employees  
16                  were covered under new labor agreements.

17                  These unions had an opportunity.  
18                  They didn't succeed. Actually, two of them  
19                  did make tentative agreements. There was an  
20                  ATDA tentative agreement. There was an  
21                  ARASA-MW tentative agreement. They failed  
22                  ratification and those issues were not

1 resolved in further negotiations.

2           And we also raise the BLET 2007  
3 tentative agreement because it is the most  
4 recent evidence of what a union, a strong  
5 union that has often set patterns in this  
6 industry, did at the bargaining table.

7           The BLE tentative agreement, which  
8 we say set the pattern, provided general wage  
9 increases of over 30 percent. That was an  
10 extraordinary amount of increases. That is  
11 bringing COLAs into the base, a big Day One  
12 increase and then three-year pattern of  
13 increases.

14           The retroactive pay issue was  
15 settled with the BLET through a \$4500 signing  
16 bonus. You will hear about that. That was a  
17 compromise, and changes in health and welfare  
18 benefits were based on freights. You will  
19 hear testimony about how our plan differs  
20 from the freight plans and the differences we  
21 propose.

22           Quite frankly, while there are some

1 real differences, they're not overwhelming  
2 and there was limited work rule relief in the  
3 BLET agreement.

4 The BLET tentative agreement failed  
5 ratification. It failed ratification because  
6 of, in part, the active intervention of many  
7 of the unions before you.

8 A number of these unions, the BMW  
9 in particular, both affiliated with the  
10 Teamsters, the BLET and the BMW, lobbied  
11 very vigorously, face-to-face, Internet  
12 leaflet and all those things. They have free  
13 speech rights, that's fine, but they work  
14 hard to keep that tentative agreement from  
15 coming to fruition. And a substantial  
16 portion of the BLET employees just didn't  
17 vote, which is very surprising.

18 Unfortunately, after that failed  
19 ratification, Amtrak went back to the  
20 bargaining table to attempt to revise the  
21 deal. See what needed to be done to get to  
22 fruition.

1           The NAB made a decision to release  
2     the length of this process. In real world  
3     labor relations, that release basically  
4     prevented us from continuing those  
5     negotiations with the BLET to a successful  
6     conclusion.

7           The Board should focus on the BLE  
8     tentative agreement, and we have given you  
9     reams of paper, which I apologize. I don't  
10    expect you to read it all. There is  
11    something I really recommend you read, and  
12    it's the ratification materials prepared by  
13    the BLET. This is Bress Exhibit -- is  
14    subject Exhibit 19 and 20.

15           When those came out, I had seen  
16    them and actually I was minimally involved.  
17    I actually took those materials and  
18    distributed them around my office to lawyers  
19    who weren't involved in Amtrak because they  
20    were extraordinarily detailed and, quite  
21    frankly, a high level explanation for a  
22    bargain position by a union in very difficult

1 economic circumstances.

2           And you'll be hearing many things  
3 from us about what's real world in terms of  
4 Amtrak's economics and in Congress, and I ask  
5 the Board members. Read the BLET  
6 ratification materials because you'll see  
7 that that view of reality is not related to  
8 the management of Amtrak.

9           Amtrak's position in this  
10 proceeding is that the PEB should follow that  
11 BLET agreement as the basis for a pattern.  
12 No one practically thinks that your  
13 recommendations would be identical as no one  
14 thinks that in the world of pattern  
15 bargaining, everything is identical when  
16 dealing, of course, unions, but we really  
17 think that BLET tentative agreement does set  
18 a pattern of ranges, benefits and work rules.

19           I want to discuss productivity,  
20 which is a very important issue to Amtrak.  
21 Amtrak is under repeated express directives  
22 from the Congress and the administration that

1 because we're a publicly-funded railroad,  
2 because we're dependent upon an operated  
3 subsidy, every dollar we save comes out of  
4 taxpayer money and that really requires us to  
5 operate with a high level of efficiency.

6           There are -- the expectations are  
7 clear. You will hear the union witnesses try  
8 to deny it, but all you have to do is look at  
9 the legislation, look at the documents, look  
10 at the testimony, continuing to today that  
11 Congress expects Amtrak to operate  
12 efficiently and that's a pressure that  
13 doesn't exist on freights. We're just in a  
14 different game and a different source of  
15 revenues than the freights are.

16           Our push on work rules is not  
17 merely about saving taxpayer money. No.  
18 It's about performing work. It's about  
19 maintaining our service. It's about  
20 capability. We have very pressing capital  
21 demands.

22           We need to get work done and the

1 work rules that we are attempting to address  
2 are ones that either would keep us from  
3 getting work done or keep highly skilled  
4 employees from doing their work, spending  
5 time on other tasks that aren't their skills,  
6 having too many different crafts involved  
7 with particular functions.

8           These things impede our capability,  
9 they impede our service, and we need to  
10 address them. But the unions have turned a  
11 deaf ear on Amtrak's legitimate concerns in  
12 that area and, again, just saying at the  
13 bargaining table, well, the freights didn't  
14 do anything on work rules is not collective  
15 bargaining.

16           We've sought reasonable work rule  
17 reform and for eight years that dialogue has  
18 never really been held because they don't  
19 want to deal with it. Our proposals are an  
20 attempt to respond to the directions we've  
21 gotten from Congress and the Administration  
22 directed towards getting work done.

1           We provide protections if there are  
2 layoffs that result from these work rule  
3 changes, and we will go into some great  
4 detail through these, but I just want to  
5 summarize and, briefly, Bill Crosbie, our  
6 Chief Operating Officer, will talk to many of  
7 the work rules. Joe Bress will talk to  
8 others.

9           On subcontracting, for example,  
10 we're trying to deal things that aren't work  
11 functions. Like tree trimming, garbage  
12 removal, which we don't think we should be  
13 having skilled engineering and craft people  
14 perform.

15           We need flexible scheduling to deal  
16 with our traffic congestion. The Northeast  
17 corridor is an extraordinarily crowded piece  
18 of railroad. Our operating employees work  
19 with the passengers wanting to travel. Our  
20 engineering people should be working with  
21 passengers who don't want to travel.

22           We need craft flexibility on things



1 like an air conditioning unit. We don't  
2 think we need multiple crafts to do the  
3 repairs when you can have one person repair  
4 it at your home. These are not extraordinary  
5 efforts. They're just some common sense  
6 things. We want to get the work done.

7           So we proposed as our proposal to  
8 these people substantial wage increases, and  
9 there's a chart in our pre-hearing statement,  
10 there also is appended in the Bress  
11 declaration, that lays out those increases,  
12 bringing in COLA, giving additional increases  
13 Day One, additional increases over the three  
14 years you're above 30 percent.

15           Now, that's just unheard of  
16 crossing the street today. It's not in the  
17 airline industry. It's not in any  
18 quasi-public agencies. I mentioned the  
19 Postal Service. Last week Herb Fishgold  
20 issued an interesting arbitration award as  
21 part of that round. You go look at those  
22 settlements and interest arbitration awards.

1 We're not talking about 30 percent increases.

2 We're not even close to it.

3 We are playing catch-up. We  
4 recognize that. We're stretching financially  
5 to give those substantial wage increases. We  
6 move extraordinarily in 2007 to get to those  
7 increases. We moved extraordinarily on  
8 retroactive pay.

9 We'd be willing to pay \$4500 per  
10 employee in lump sum and what we got back in  
11 terms of movement from across the table was  
12 nothing. Full retroactivity, full freight  
13 pattern.

14 Amtrak stretched financially to  
15 make that proposal. You will hear from Bill  
16 Campbell in detail about that. We have to  
17 make all our projections on revenue. We have  
18 to get what we hope will be our Congressional  
19 subsidies to get there, but we can't go  
20 beyond it because the money is not there.

21 We had productivity changes for  
22 select work rules. We seek a three-year

1 duration to tie it into our principal year.

2           You'll hear some of our witnesses,  
3 including our Chief Executive Officer, Alex  
4 Kummant, talk about this time for Amtrak and  
5 it is a difficult time. Our traffic is up.  
6 Our revenues have improved from operation,  
7 and what's even better, there seems to be an  
8 emerging political consensus to provide us  
9 some continuity in funding, which we  
10 desperately need.

11           So, today you sit in a world that  
12 has much better opportunities than the world  
13 of 2002 to get comprehensive agreements with  
14 the ability to fund reasonable agreements  
15 over multiple years, and we even have  
16 prospects to grow.

17           You're going to hear about that as  
18 well because there are operations that we  
19 should be able to go out and bid for with the  
20 states to expand our operations, and the  
21 unions can get jobs out of that.

22           The real risk in this proceeding

1 goes to the unions overreaching economically  
2 and politically to attempt to get something  
3 that's just not there because they still feel  
4 aggrieved about what happened in 2000, 2001,  
5 2002.

6           Firstly, I don't envy this PEB  
7 task. This is an intractable dispute, long  
8 term, eight years. Some of the labor  
9 organizations before this Board might not  
10 really be interested in settlement. There  
11 are some veiled strike threats in the briefs.  
12 There are some not very veiled strike threats  
13 on their Internet Web sites.

14           There is still a grievance to what  
15 happened in terms of Congressional funding  
16 earlier in this decade and anger at the  
17 Administration and Congress, and part of that  
18 may be regret in terms of some of the  
19 decisions these unions made versus other  
20 unions, but they need to be held accountable  
21 for those decisions.

22           And the other part that makes this

1 intractable is the political and financial  
2 context. We've put a reasonable demand on  
3 the table that stretches our ability  
4 financially and politically, but there are  
5 recommendations this Board could come up with  
6 that we just can't afford and have no  
7 prospect of getting through a political  
8 process.

9           Now, the good news is the five of  
10 you. You are a very experienced Board and  
11 the buzz around town is that both parties did  
12 as well they were likely to do with such an  
13 experienced Board. I hope that's all  
14 correct. We're all counting on it.

15           But you've been around the block in  
16 the PEB process and in other disputes. We  
17 need recommendations that can lead these  
18 parties to settlement. We don't need  
19 recommendations that posture this dispute for  
20 someone else to decide. So we hope that this  
21 Board is willing to engage on these issues,  
22 try to get us to what is possible.

1                   On behalf of Amtrak, we are  
2                   prepared to assist the Board in whatever way  
3                   the Board deems appropriate to get to that  
4                   goal, and we wish you great good luck. Thank  
5                   you.

6                   CHAIRMAN TREDICK: Thank you, Mr.  
7                   Reinert, for a very helpful presentation and  
8                   for tipping us off about the buzz around  
9                   town. That's very encouraging to us.

10                  Do any Board members have any  
11                  questions or comments they'd like to pose  
12                  here? Sure, Mr. Javits.

13                  MR. JAVITS: Mr. Reinert, the  
14                  context or in thinking about a structure of a  
15                  recommendation, the Board's confronted with  
16                  the unions indicating that the freights  
17                  pattern is one that they desire, which  
18                  doesn't have many work rules. Amtrak  
19                  indicating that they're seeking work rules.

20                  Can you discuss a little bit about  
21                  the difference and what it is between  
22                  freights and Amtrak in the legal context?

1 That is, I am aware of some legal decisions  
2 with respect to restricting freights  
3 discussion or being a mandatory subject of  
4 bargaining.

5 Does that influence what the  
6 freight agreements have become and what --  
7 and any difference with Amtrak?

8 MR. REINERT: Well, one difference  
9 is the freight agreements they point to are  
10 the national agreements and national  
11 handling. So there is a line between what  
12 gets addressed in national handling and what  
13 gets addressed in local handling, and some  
14 work rules but not all work rules get  
15 addressed in national handling. And there  
16 have been disputes about that and litigation  
17 about that between the National Carriers  
18 Conference Committee and the Brotherhoods  
19 over the years, which I don't need to go in  
20 detail.

21 But then there is also local  
22 bargaining on some work rule issues. For

1 example, Mr. Crosbie will be talking about  
2 the subcontracting issues with the BMW. You  
3 will see that one of the exhibits that we put  
4 in is basically a local agreement between the  
5 CSXT and BMW on some work rule -- on some  
6 subcontracting issues with respect to certain  
7 types of services. Well, that was an issue  
8 that was never addressed in national  
9 handling.

10 When you come back to Amtrak, we  
11 have to address everything, national and  
12 local issues, at one time.

13 CHAIRMAN TREDICK: Any further  
14 questions by members of the Board?

15 Okay. Thank you again. It's now  
16 time for the unions opening statement. We  
17 had indicated in view of the fact that there  
18 are multiple unions and several lawyers that  
19 we were relying on you all to apportion your  
20 time in a way that is consistent with our  
21 allocated time.

22 MR. GUERRIERI: Yes, we did that,



1 Mr. Tredick, and we've arranged to have me  
2 do the opening and Mr. Wilder would do the  
3 closing.

4 CHAIRMAN TREDICK: Okay.

5 MR. GUERRIERI: So we've reached  
6 that combination with each other.

7 CHAIRMAN TREDICK: Thank you then.  
8 You may proceed as you wish.

9 MR. GUERRIERI: Thank you, Mr.  
10 Tredick, and I want to thank the Board and  
11 the National Mediation Board for allowing us  
12 this opportunity to finally, finally attempt  
13 to bring this dispute to its terminal point.

14 As you know, I represent the  
15 Shopcraft Coalition of the Joint Council of  
16 Carmen, as well as IBEW, the IAM, and I'm  
17 speaking on behalf of the other coalition as  
18 well, at least for purposes of the opening  
19 statement.

20 As this Board by now is well aware,  
21 this dispute has dragged on now for eight  
22 years. To hear -- to hear Mr. Reinert

1 describe it, we ought look outside of what  
2 went on at the bargaining table and somehow  
3 ignore the fact that absolutely no progress  
4 was made at the bargaining table. None.

5           There was no serious discussion of  
6 the work rules that Mr. Reinert today is  
7 telling you Amtrak so urgently needs. No  
8 proofs put to us, proffered to us of what it  
9 is that justifies the draconian measures that  
10 Amtrak puts before you today.

11           We've all been around the block.  
12 We've all been through negotiations and for  
13 collective bargaining to work, it has to be a  
14 give-and-take proposition.

15           You don't do as Amtrak did, which  
16 is come in on the very first day of  
17 bargaining, lay down five principles as if  
18 they were revealed truth etched in stone, and  
19 then claim that the unions are being  
20 recalcitrant because they won't capitulate.

21           For eight years our members have  
22 been without a pay increase, a regular wage

1 increase. Management has had wage increases,  
2 but our members have not. For eight years  
3 our members have waited for an agreement.

4           The very notion that somehow there  
5 was some political agenda whereby we were  
6 waiting to see if we could attain a better  
7 deal from Congress, frankly, is unworthy of  
8 Mr. Reinert. The fact of the matter is these  
9 units demanded release very soon after it  
10 became clear that Amtrak would not bend. It  
11 would not budge.

12           It would not in any way compromise  
13 the claims that they were making and demands  
14 that they were making to these unions for  
15 sweeping, sweeping rule concessions.

16           And it's also interesting to note  
17 that at no time during Mr. Reinert's piece  
18 did he ever say that the employees of Amtrak  
19 are some of the most highly skilled and  
20 efficient employees there are. In part  
21 because the ranks have been decimated. They  
22 have been doing far more with far less. That

1 isn't mentioned.

2           The other things that seems to be  
3 omitted from much of the submission that I've  
4 seen are Presidential Emergency Board  
5 decisions. Now, why is that? I submit to  
6 you it is because there are no decisions that  
7 support the notion that it is a failed  
8 tentative agreement of an operating craft  
9 that ought be applied to this diverse group  
10 of unions which have, except for the ATDA,  
11 little to do with the actual operation of  
12 locomotives.

13           There are no cases that say apply  
14 that as a pattern, but the cases that say  
15 apply, apply a pattern from the freights to  
16 Amtrak are legion.

17           It became clear to all of us that  
18 Amtrak's tactic here was to hold wage  
19 increases hostage in order to beat, if you  
20 will, the employees into submission, hoping  
21 they would capitulate, hoping they would put  
22 such pressure on their representatives that

1     somehow we would agree to eviscerate the work  
2     rules and literally obliterate traditional  
3     craft and class distinctions because that is  
4     what is being asked for here.

5             And to add insult to injury, they  
6     also say they want to contract. They want  
7     the unfettered right to contract out our  
8     work. This is what we've heard for the last  
9     eight years, but remember, too, that over the  
10    last eight years, there have been precious  
11    few meetings, almost, almost a handful, and I  
12    think it would be generous to say that any of  
13    these unions before you had even 25 days in  
14    bargaining over eight years, maybe a month.  
15    Let's call it a month of bargaining over  
16    eight years.

17            In addition, Amtrak had the  
18    audacity to sue one of the coalitions to  
19    prevent them from bargaining as a coalition.  
20    Threatening to hold up a release if they  
21    didn't -- if they didn't break up the  
22    coalition.

1                   Now, I've never seen that before  
2                   with a company that truly wanted to make a  
3                   collective bargaining agreement, but they did  
4                   this here and that was in the eighth year of  
5                   these already long and dragged-out  
6                   proceedings.

7                   The Supreme Court says that the  
8                   Railway Labor Act provides for an almost  
9                   interminable process, but in the 80 years of  
10                  the Railroad Labor Act -- more than 80  
11                  because it was passed in 1926 -- there's  
12                  never been, at least to my knowledge or my  
13                  experience, a dispute that has dragged on for  
14                  eight years.

15                  And, again, the Board has to look  
16                  for a reason, and it should not look to the  
17                  unions because the unions during this same  
18                  period of time had two rounds of successful  
19                  collective bargaining with the freights.  
20                  These same unions know how to make an  
21                  agreement.

22                  It is because Amtrak's -- of

1 Amtrak's political concerns that it not be  
2 held responsible for an agreement that would  
3 have to go back to Congress to justify that  
4 it took this position. Knowing full well  
5 that these unions would never, could never  
6 agree to gut their collective bargaining  
7 agreements in the manner that Amtrak has  
8 asked for here or/and has been rejected by  
9 every other Presidential Emergency Board that  
10 has ever reviewed their type of demands.

11 Composite mechanic, unfettered  
12 right to contract out work, the concept of no  
13 back pay. These are a first. The very notion  
14 that a failed collective bargaining agreement  
15 overwhelmingly rejected by the Brotherhood of  
16 Locomotive Engineers should be used as a  
17 benchmark for this Board to me is well beyond  
18 anything I have ever seen and certainly  
19 defies reason.

20 As we will show, basic notions of  
21 fairness and well-settled governing  
22 principles of PEB decisions, as well as the

1 examples we will give you of what happened in  
2 the marketplace when there truly was the give  
3 and take of collective bargaining. The best  
4 guide really to what is the market value of  
5 these men and women who work so hard for this  
6 company.

7           And that market value has been  
8 established in at least two rounds of  
9 bargaining on the freights. These people  
10 that we represent do work identical to that  
11 of employees of the freights. They're parts  
12 of the same union.

13           They -- as you know, Amtrak is an  
14 offshoot of freight railroads that once had  
15 passenger service. They have always been  
16 inextricably intertwined, both in the type of  
17 work they do, in the wages that they are  
18 paid, in the benefits that they obtain, but  
19 Amtrak wants to have this Board be the first  
20 to radically depart from that pattern  
21 principle.

22           In fact, they largely ignore it



1     except to throw out this BLE failed  
2     agreement. Our position I believe is quite  
3     straightforward. It is the national freight  
4     agreements with wage increases consistent  
5     with those agreements in identical amounts  
6     and with back pay for the pay increases that  
7     were due but not paid.

8             The health and welfare provisions  
9     of the freight agreements we are also urging  
10    be applied here. What Amtrak has done is to  
11    say, yes, we recognize that our plan is  
12    almost identical to the National Plan --  
13    national freight plan, but we want to  
14    cherry-pick that plan. We want you to give  
15    concessions, but we will not give you the  
16    same improvements that were negotiated in the  
17    health and welfare plans on the freights.

18            That's fundamentally unfair. That  
19    isn't bargaining, and we would also -- we  
20    would also request that there be no work rule  
21    changes. That was the quid for the quo in  
22    the national freight agreements. Obviously

1 we got less wages because we feel these rules  
2 are so important. Important to our members.  
3 And I should also add because -- and this is  
4 anecdotal, but I've talked to enough  
5 witnesses to know this to be true.

6           The work force at Amtrak,  
7 particularly in the shops, has been reduced.  
8 They are doing far more with far fewer  
9 employees. I think over the past seven  
10 years, they're down probably a third from  
11 where they were. It makes it incumbent on  
12 these shopcraft workers to cooperate with  
13 each other, to help each other and to get the  
14 job done, and they do that.

15           What Amtrak is suggesting by  
16 changing the usual order of things is to  
17 cause disruption and further demoralization  
18 of an already demoralized work force. You're  
19 asking people to do more with less, not get  
20 pay raises for eight years and feel totally  
21 disrespected by this company, and yet produce  
22 what they have produced, which is -- and I

1 think the numbers will show -- record  
2 productivity and record financial results for  
3 Amtrak.

4 Our testimony will be amply  
5 supported by the witnesses who we will be  
6 presenting to you today. Joel Parker is the  
7 elected head of the shopcraft coalition. He  
8 is also the TCU's International Vice  
9 President and assistant to the President of  
10 TCU, and he will testify on behalf of all of  
11 the unions before you today and he'll testify  
12 about the relevant bargaining history.

13 He'll explain our proposal and that  
14 it is based on the agreements reached in the  
15 last two rounds of freight negotiations.  
16 He'll speak to the role of pattern and  
17 particularly the historical application of  
18 the national freight patterns to Amtrak  
19 because they clearly have been in sync for  
20 almost 30 years now.

21 Daniel Biggs is the  
22 Secretary/Treasurer of the International

1 Association -- pard me -- the Transportation  
2 Communications Union, which incidentally is  
3 affiliated with the IAM, and for the last 11  
4 years he has been the chair of the Joint  
5 Medical Administration Committee, or JMAC,  
6 which oversees the Amtrak health and welfare  
7 plans.

8 He is also a member of the National  
9 Plan and meets with them, and he'll describe  
10 the historic pattern of parity in health and  
11 welfare as between Amtrak and the national  
12 freights.

13 Again, since Amtrak's inception, it  
14 has had the same medical health and welfare  
15 benefits as are afforded on the freights.  
16 That at some point -- I believe it was 1987  
17 -- Amtrak decided that it wanted to break out  
18 of the National Plan because it felt its  
19 experience with a younger work force would  
20 cause the premiums to be lower.

21 In fact, we opposed that. We went  
22 to arbitration and the Adjustment Board that

1 decided that arbitration case found that  
2 Amtrak, in fact, had the right to leave the  
3 National Plan, provided that it provide  
4 essentially identical benefits to Amtrak  
5 employees and that mirror image, if you will,  
6 of benefits has continued to this day.

7           So the national freight agreements  
8 and health and welfare plans and Amtrak's  
9 AmPlan, again, have been virtually identical.  
10 Amtrak's proposal tends to change that by,  
11 again, cherry-picking and asking for the  
12 concessions, but not offering the benefits  
13 that -- the increased benefits that have been  
14 afforded.

15           I want to speak briefly about the  
16 history of bargaining in this dispute, and  
17 let me just use one example because all of  
18 the crafts have had similar experiences.

19           Section 6 notices were served by  
20 the unions in 1999, at the end of 1999.  
21 Using the JCC as an example, on June 12,  
22 2000, Amtrak then served its Section 6

1 proposal, but did not set forth in that  
2 proposal opening a proposal for wage rates,  
3 but did demand health and welfare concessions  
4 and made at least 15 proposals for work rule  
5 changes.

6           While their proposals were vague,  
7 their requests for work rule concessions were  
8 indeed sweeping and, again, they wanted to  
9 eliminate traditional craft distinctions.  
10 They wanted to expand subcontracting.

11           They want wholesale changes in the  
12 process for bidding assignments, increased  
13 use of part time and a reduction in pay for  
14 some of our employees, at least the starting  
15 rates.

16           As time passed, Amtrak repeatedly,  
17 repeatedly told these unions that unless they  
18 ascribed to the sweeping work rule changes,  
19 there would be no wage increases. Certainly  
20 no back pay.

21           On September -- between March 2000  
22 and May 2003, there were a total of five

1 meetings between Amtrak and the JCC. Five in  
2 all. September 16, 2004 was the next  
3 meeting, but because of Amtrak's  
4 unwillingness to bend or budge on any of its  
5 -- any of its proposals, the JCC requested  
6 the services of the National Mediation Board.  
7 Requested mediation.

8 We had a mediation session on  
9 November 18th of 2004, but the mediator  
10 quickly concluded the parties were so far  
11 apart that further mediation meetings would  
12 be fruitless, and they were ultimately  
13 suspended.

14 A similar -- a similar account  
15 could be made for each of the unions before  
16 you. A handful of meetings, invocation of  
17 mediation, unsuccessful negotiations in  
18 mediation.

19 And in May of 2006, the shopcraft  
20 unions formed a coalition and on June 9th at  
21 a mediation session, the coalition offered to  
22 develop a proposal to Amtrak that it would

1 make confidentially. It did that on August  
2 29th of 2006, and Amtrak's response was they  
3 were simply underwhelmed.

4           Shortly thereafter, the unions  
5 again requested a proffer of arbitration, and  
6 a number of these unions had made this  
7 request on a number of different occasions  
8 earlier in this process. But, again, in July  
9 2000 session, another mediation session was  
10 held, but this time instead of moving the  
11 negotiations forward, Amtrak took further  
12 steps backwards by demanding that retirees  
13 contribute to health care coverage for the  
14 first time.

15           Again, we repeated our requests for  
16 a proffer of arbitration in '07. Finally in  
17 October 18th of 2007, the NAB proffered  
18 arbitration to the unions, which was  
19 declined. The cooling-off period began,  
20 which you're well aware, and meetings were  
21 scheduled, but they were fruitless as well.

22           On November 20th of 2007, Amtrak



1 did provide a written proposal to each union,  
2 but it was substantially identical to what it  
3 had done before. It proposed prospective  
4 wage increases only, and it extended the  
5 moratorium date to September of 2010, that  
6 is, extended from what the freights had  
7 agreed to.

8           Again, no back pay and a lump sum  
9 amount of \$4500, which the unions all believe  
10 is totally inadequate for what the employees  
11 have lost over this eight years.

12           Amtrak did emulate to some degree  
13 the health and welfare plan on the freights,  
14 but it demanded additional concessions and  
15 did not -- did not provide many of the  
16 benefits, as I mentioned before.

17           Our position today, as I've said,  
18 is straightforward. It is that any  
19 recommendation should be based on the class 1  
20 freight agreements. It is well settled that  
21 the role of this Board is to make  
22 recommendations which can form the basis for

1 a voluntary settlement, which will avoid an  
2 interruption of commerce caused by a strike,  
3 and the possibility of Congressional  
4 intervention to settle the terms.

5 Boards have said that a critical  
6 ingredient to any recommendation is its  
7 acceptability to the parties. I think my  
8 remarks and our briefing has made clear that  
9 Amtrak's proposal, which has remained the  
10 same since Day One, is absolutely  
11 unacceptable to the unions before you.

12 The freight agreements, which were  
13 hard fought, with all of their defects -- and  
14 there are many -- particularly the hard pill  
15 which we had to swallow, which were -- which  
16 involved employee contributions to health and  
17 welfare in a substantial amount, but we will  
18 take the bitter with the sweet because all of  
19 us here want an agreement.

20 After eight years, our members need  
21 an agreement to go on with their life. This  
22 is a service industry. Very much like the

1 airline industry in that regard, but when  
2 morale suffers, service suffers and that's  
3 inevitable, and that's what this company has  
4 caused by their recalcitrance in this case.

5 As the Board is well aware, the  
6 prevailing method for determining whether a  
7 pattern exists is to determine whether  
8 there's an external pattern or an internal  
9 pattern. We've argued I think that here  
10 clearly the external pattern is the freights.

11 One PEB after another has found  
12 that when the same group of employees make an  
13 agreement on a similar -- with a similar  
14 company -- in this case the freights -- that  
15 the pattern that developed through hard  
16 fought bargaining should be the pattern  
17 applied.

18 That the burden is on the party who  
19 seeks to break the pattern -- in this case  
20 Amtrak -- to show why there's inequity or why  
21 it is not rational to apply the pattern that  
22 has been established.

1                   That is Amtrak's burden. We've  
2                   looked at all their papers. We don't believe  
3                   they begin to scale that wall, and certainly  
4                   nothing I've heard thus far has changed my  
5                   view.

6                   Boards have also found that it is  
7                   destabilizing to allow leapfrogging by one  
8                   group trying to do better in the next  
9                   agreement or during a similar round of  
10                  bargaining than another group did.

11                  I suggest to you today that that  
12                  concept applies with equal force to the  
13                  companies as it does when it's used to quash  
14                  the demand for a better deal by unions and,  
15                  again, to depart from this pattern disturbs  
16                  labor relations not just at Amtrak but at  
17                  class 1 railroads as well.

18                  Again, Amtrak PEBs have  
19                  consistently looked to the pattern of  
20                  settlements on class 1 freights. You can  
21                  look at PEB 234, for example. Again, they  
22                  have frowned on leapfrogging. They have

1 found that unions who do it should be taken  
2 to task.

3 They have applied, as in the case  
4 of PEB 220 -- 230 -- I'm sorry -- that even  
5 Conrail that had not been party to the  
6 National Conference Committee negotiations  
7 would have that freight pattern applied to  
8 Conrail because to do otherwise would be  
9 unfair. To do otherwise would do violence to  
10 basic notions of fairness that called for  
11 applying the National Conference Committee  
12 pattern, the freight pattern.

13 Boards have looked to internal  
14 patterns to see what agreements have been  
15 reached by unions on that particular  
16 property, but none, none illuminate this  
17 dispute and certainly not this BLE rejected  
18 agreement or all of the other agreements that  
19 were rejected.

20 Indeed, that tends to prove our  
21 case, which is, if this Board is looking for  
22 an acceptable resolution, then you must look

1 to what is acceptable to unions generally,  
2 what has been acceptable. Their terms have  
3 not been acceptable, rejected overwhelmingly  
4 I think by 80 percent, and clearly our  
5 members feel the very same way.

6           There is no chance that an employee  
7 group would ratify the terms that Amtrak has  
8 put up as take it or leave it, but there were  
9 three agreements that were reached in 2003  
10 and 2004 which represent about 30 percent of  
11 Amtrak's work force. They were with the TCU,  
12 clerks side of the house, the Amtrak Service  
13 Workers Council representing onboard service  
14 workers, and the ARASA product line  
15 supervisors.

16           I submit to you, however -- and Mr.  
17 Parker will speak to this at length -- this  
18 does not establish an internal pattern. Why?  
19 First of all, the period it covers ended in  
20 12/31/05. It does not cover the entire  
21 period of time that either of our proposals  
22 would cover through 2009.

1                   But most importantly, each was the  
2 product of quid pro quo bargaining,  
3 traditional collective bargaining, which has  
4 not occurred here in any regard, particularly  
5 with regard to work rules. And none of the  
6 work rule concessions that were made -- and  
7 believe they were minor -- were anywhere near  
8 rising to the magnitude of what is being  
9 demanded today of Amtrak.

10                   There was no concession comparable  
11 to making a composite mechanic or the removal  
12 of all contracting out restrictions or  
13 requiring early retirees to make medical  
14 contributions or any of the other  
15 far-reaching demands. There were modest  
16 concessions and rule improvements in  
17 exchange.

18                   There is no way that this Board  
19 could apply that as a pattern to this  
20 dispute. Simply, simply no way.

21                   And I can also mention that both  
22 the GAO and the Senate have both found in

1 various studies -- and we supplied some of  
2 them to this Board -- that Amtrak's financial  
3 records, their ability to estimate cost  
4 savings, their woefully inadequate financial  
5 record-keeping and estimates of cost, give us  
6 no confidence whatever in the numbers that  
7 they have presented to this Board. None.

8 GAO has taken them to task  
9 repeatedly and particularly with regard -- in  
10 one case with regard to savings that they  
11 claimed that they were achieving in  
12 locomotive repair, keeping proper records of  
13 that.

14 They have also been criticized for  
15 no bid contracting and being very inefficient  
16 in the way they contract out work. Yet today  
17 they want you to accept on faith that they  
18 absolutely desperately need these changes,  
19 which are not in place at any of the freight  
20 railroads, and the freight railroads have  
21 done very well under existing rules. In fact,  
22 a more restrictive contracting out rule than



1 Amtrak is suggesting.

2 Oh, they will argue, they will  
3 argue that their contracting out provision  
4 provides protection for one year, severance  
5 or relocation if, if, the employee can show  
6 that his termination was a direct result of  
7 the contracting out, but the exception  
8 swallows the rule.

9 If every time, every time this were  
10 to occur, we had to get into an arbitration  
11 about whether, in fact, an employee deserves  
12 the one year, whether it was directly caused  
13 by this event or some other, is totally  
14 unnecessary and, in my view, totally  
15 inefficient.

16 The present rule they have is more  
17 than adequate to allow them the flexibility  
18 they claim they need. Again, the national  
19 freight pattern is the correct pattern to be  
20 applied in this instance.

21 It's important to note, again, that  
22 while Amtrak gives lip service to that

1 pattern, it extended the moratorium provision  
2 for about nine months without appropriate  
3 wage increases during that period of time.

4           And, again, Tom Roth will speak to  
5 you, hopefully tomorrow, regarding the  
6 economics and the tremendous efficiency of  
7 our work force with a 33 percent reduction in  
8 -- 33 percent reduction in the shopcrafts  
9 alone.

10           Again, a pattern must include back  
11 pay, however. To be a pattern -- and, again,  
12 the cases on this are legion -- to be a  
13 pattern, there must be identity of wage  
14 increases and the timing of those wage  
15 increases so as to be substantial identical.

16           And in cases where there has been a  
17 late siding, if you will, union, the pattern  
18 has nonetheless been applied to that union  
19 and back pay has been awarded.

20           In PEB 220, a carrier sought to  
21 deny back pay to the IAM, which had declined  
22 to enter a pattern settlement agreement that

1 had been agreed to by other rail unions in  
2 that round. And PEB 220 said they saw no  
3 reason why the IAM should suffer any loss of  
4 retroactivity simply because it declined to  
5 participate in the proceedings before PEB  
6 219, which it had the legal right to do.

7           Again, that Board did not deny back  
8 pay. This Board should not deny Amtrak  
9 employees the back pay that they have earned.

10           In the case of the Brotherhood of  
11 Maintenance of Way Employees, the PEB 221  
12 looked at their request for higher wages on  
13 Conrail than had been attained on the  
14 national carriers on freight carriers and  
15 rejected that claim.

16           We are saying that that principle  
17 applies with equal force to them as it does  
18 -- as it does to us, and the pattern has to  
19 include the same timing and amounts of  
20 increases as occurred on Amtrak.

21           And let me speak briefly to the  
22 argument that I have heard and will continue

1 to hear about Amtrak's publicly-funded status  
2 and how because Amtrak did not budget for  
3 these wage increases, which it had offered  
4 previous to this, that because it did not  
5 budget, it should not now be held responsible  
6 to pay them.

7 I believe he said it is not an  
8 entitlement. I have to wonder about Amtrak's  
9 accounting when they knew full well that  
10 during this entire period of time, all PEB  
11 decisions had found or most PEB decisions, I  
12 should say, had found an entitlement to back  
13 pay. Knowing full well that this agreement  
14 would be based on the national freight  
15 agreements that they did not account for  
16 that.

17 I think it speaks more to the way  
18 the finances are managed at Amtrak than their  
19 particular needs in this circumstance, but as  
20 PEB 234 found, that it is not the proper role  
21 for a Board to base or temper its decision  
22 based on what Congress may or may not do.

1           As that Board found, our obligation  
2           is to recommend a fair and equitable  
3           compensation for employees and then leave to  
4           the funding authority the issue of whether or  
5           not they wished to fund the package.

6           We cannot in good conscious shirk  
7           that responsibility to the parties and to the  
8           collective bargaining process by surrendering  
9           to what might be characterized as political  
10          expediency. We are not novices when it comes  
11          to the world of Congress and, again, I did  
12          not hear my friend speak to the fact that the  
13          employee groups have been instrumental every  
14          time authorization for further funding for  
15          Amtrak has come up on the Hill.

16          We have been there shoulder to  
17          shoulder, sometimes taking the lead. We are  
18          quite aware of the realities of the Hill, and  
19          we feel confident that if this Board should  
20          recommend the national freight agreement as  
21          the pattern, as it should, to these  
22          employees, then we can take it from there to

1 Congress. We have that confidence.

2           Again, Mr. Biggs will testify at  
3 length about the differences between Amtrak's  
4 proposal and our own with regard to the --  
5 with regard to medical benefits. I've spoken  
6 to that before, but I just want to emphasize  
7 and hopefully close that with regard to the  
8 national freight pattern, it is essential  
9 that it be looked upon as a package and an  
10 essential ingredient in that package, a  
11 critical element of that package is no work  
12 rule changes.

13           There will be testimony about how  
14 Amtrak has not in any way fully implemented  
15 the incidental work rule, which is  
16 flexibility that was given to it both by a  
17 PEB and later by agreement with the parties,  
18 an expanded incidental work rule.

19           They have not provided, at least  
20 not that I saw -- and maybe it will come  
21 today, but they have not shown what they were  
22 told they had to do, which is to make an

1 appropriate case that they have tried and  
2 they have failed to utilize or -- I'm sorry  
3 -- that the incidental work rule has failed  
4 in terms of giving them the flexibility that  
5 they need.

6           Our testimony and people on the  
7 shop floor will tell you that this has not  
8 been used effectively, has not been used at  
9 all by managers, and one excuse we get is,  
10 well, there will be too many grievances.

11           I can tell you that with regard to  
12 the IBEW and the IAM, there have been no  
13 grievances. With regard to the Joint Council  
14 of Carmen, there have been a few. Many of  
15 those deal with such issues as managers doing  
16 craft work, but, again, the GAO has roundly  
17 criticized Amtrak for its inability to  
18 provide accurate data on costs, on virtually  
19 costs of any kind.

20           And in the mechanical department,  
21 again, they failed to develop cost statistics  
22 for car and locomotive overhaul inspection

1 and repair, and the GAO found that Amtrak's  
2 efforts were hampered by its reliance on  
3 dated information and its inability to  
4 integrate information from its payroll  
5 system, resulting in unreliable labor cost  
6 figures.

7           The composite mechanic rule should  
8 also be looked at with a jaundiced eye.  
9 There is, again, no shown demonstrated need  
10 for that rule. As PEB 222 found, it would be  
11 premature because, again, Amtrak has not yet  
12 fully implemented the existing incidental  
13 work rule, yet comes before and says, oh, we  
14 have to have more.

15           We believe that's simply  
16 disingenuous, and, again, their demand is  
17 just too broad to serve as a basis for an  
18 agreement in the context of this case.

19           I just want to conclude by saying  
20 this. Again, we greatly appreciate the time  
21 and attention that this Board has and will be  
22 spending with us over the next few days. Our



1 members are placing full confidence and trust  
2 in this Board to issue a recommendation that  
3 we can all live with.

4           Again, I've said it before and I  
5 will say it again, that for the past 30  
6 years, Amtrak and these unions have coexisted  
7 peacefully, cooperatively and well. While  
8 management has come and gone, I think all of  
9 you know and Amtrak would concede, Amtrak has  
10 been something of a revolving door. These  
11 employees are here to stay.

12           They have given of their sweat  
13 equity to this company to maintain. We have  
14 done everything we can on the Hill to make it  
15 survive. We believe in our members. We  
16 believe in passenger service in this country.

17           We only ask that you apply  
18 traditional -- traditional patterns to this  
19 dispute and issue a decision that will be  
20 acceptable to the parties. Thank you.

21           CHAIRMAN TREDICK: Thank you, Mr.  
22 Guerrieri, for a very helpful statement and

1 I'm wondering if any Board members have any  
2 questions.

3 Mr. Javits.

4 MR. JAVITS: Mr. Guerrieri, a  
5 couple of particular questions. The SBA 1029  
6 -- I think it was the Zumas award -- held  
7 that Amtrak could change its plan but  
8 maintains -- but had to maintain the same  
9 benefits, same level of benefits, as I  
10 understand it. Did that award discuss  
11 contribution levels and, that is, the  
12 maintenance on contribution levels or any  
13 kind of uniformity, or was it just the  
14 benefit side?

15 MR. GUERRIERI: My -- my  
16 recollection of that case is that that really  
17 wasn't -- the contribution issue really  
18 wasn't one that was brought before the Board.  
19 What the unions demanded and I believe, if my  
20 recollection serves me, I think our firm was  
21 involved in that arbitration, but in that  
22 case, the critical issue and the one we were

1 raising with the Board is that Amtrak did not  
2 have the right to leave the national freight  
3 plan.

4           Indeed, we lost. The Board did  
5 find they had the right, but they had to keep  
6 the wages and benefits essentially identical  
7 and, thereafter, when it did go off on its  
8 own and formed AmPlan, those benefits were a  
9 mirror image of those on the freights. So  
10 they knew, too, that they had to maintain  
11 this parity with the freight system and the  
12 freight welfare funds.

13           MR. JAVITS: And on the issue of  
14 the difference in financial status between  
15 Amtrak and the freights and what  
16 consideration the Board should give to that  
17 difference in financial condition, there has  
18 been some history in emergency boards with,  
19 for instance, Southern Pacific some years ago  
20 Emergency Board providing for a lesser  
21 pattern in particular cases.

22           And it may be the exception rather

1 than the rule, but is the considerations that  
2 were given in that case to a carrier who was  
3 -- which was in financial difficulty, should  
4 that be a consideration of this Board?

5 MR. GUERRIERI: Well, I think it's  
6 apples and oranges. We have been through  
7 many rounds of negotiations, certainly on the  
8 airline side with the machinists and other  
9 unions, in which carriers weren't truly  
10 expensed and without substantial concessions  
11 from the employees, those companies would go  
12 under. We do not believe that this is the  
13 situation here.

14 Mr. Reinert compares this company  
15 to a post office when it suits him. At other  
16 times it is a standard traditional railroad.  
17 From our perspective, the issue of funding  
18 and funding this agreement is one within the  
19 province of Congress.

20 We recognize that, but we also  
21 recognize that with regard to the market  
22 value of what these employees do, which is

1 identical to what is done on the freight side  
2 and sometimes more complicated and more  
3 highly technical because of the systems for  
4 freight cars and freight locomotives -- I'm  
5 sorry -- rail cars and rail locomotive  
6 systems, that these employees are fully  
7 entitled to their value in the marketplace  
8 and that is without regard to the fact that  
9 Amtrak is, in part, federally subsidized.

10           Either we will get the money to  
11 fund such increases as are due and they were  
12 willing eight years ago to fund this  
13 certainly over time, and I understand what  
14 they're saying now, yeah, but we didn't -- we  
15 didn't budget for it.

16           And now -- I mean, to me this  
17 reminds me very much of the proverbial child  
18 who kills both parents and then throws  
19 himself on the mercy of the court and says  
20 he's an orphan. That's what they're doing.

21           (Laughter)

22           MR. JAVITS: One final question

1 before I feel like an orphan. The punt  
2 question, if you will, Mr. Reinert at the end  
3 of this presentation said, Board, please we  
4 need finality here, don't punt these issues  
5 to some other procedure. And yet, the work  
6 rules that were negotiated with TCU clerks  
7 and the other onboard services and the like  
8 were achieved through negotiations.

9 They're tricky questions. They're  
10 very complex questions, the work rules that  
11 Amtrak at least has raised and I presume the  
12 ones that were agreed to by the clerks and  
13 onboard services.

14 Do you have the same notion that  
15 Mr. Reinert does, that is, that this Board  
16 ought not punt to some other process which  
17 can really have time to look at these complex  
18 issues, which may go both ways, benefit  
19 employees and the carrier? Do you have the  
20 same notion that we ought not do that, but  
21 address them one way or another ourselves?

22 MR. GUERRIERI: We believe that the

1 demands being made here are so extreme and so  
2 clear on their face that there isn't any  
3 question that they should not be imposed.  
4 First of all.

5           Second of all, with regard to these  
6 rules, we did not come before you with a set  
7 of countervailing demands and a wish list of  
8 unattainable goals that we said to this  
9 Board, please, find a place in the middle;  
10 we'll be happy. We did not do that and we  
11 did not -- each union did not put before this  
12 Board its individual likes and dislikes about  
13 agreements.

14           We made certain that we came before  
15 you unified in our position, and that  
16 position is there should be no changes in  
17 these work rules and no other body or forum  
18 should be left to investigate further.

19           They have not made a case for it  
20 and from what I see in their pleadings, they  
21 have yet to make even the semblance of a case  
22 that there is a need for this extreme action,

1 which they are trying to impose on us today.

2 MR. JAVITS: That's all.

3 CHAIRMAN TREDICK: Thank you. Can  
4 we go off the record for a minute.

5 (Discussion off the record.)

6 CHAIRMAN TREDICK: We'll adjourn  
7 for 10 minutes. Thank you.

8 (Recess)

9 CHAIRMAN TREDICK: May I also  
10 remind everyone who checked their phone  
11 during the recess to please turn off your  
12 cell phone so we won't be interrupted.

13 Mr. Reinert, are you prepared?

14 MR. REINERT: We're prepared to  
15 call our first witness.

16 CHAIRMAN TREDICK: Okay. Counsel  
17 for the unions, are you prepared to?

18 MR. WILDER: Yes.

19 CHAIRMAN TREDICK: Mr. Reinert,  
20 call your first witness.

21 MR. REINERT: We call John McHugh.

22 Whereupon,





1 unique situation in which the company today  
2 finds itself, both financially and in its  
3 relationship with the Federal government.

4 As Mr. Reinert outlined in his  
5 opening statement, I will be followed by our  
6 panel of witnesses, who will speak on a  
7 variety of subjects, in part, our financial  
8 condition and our ability to pay. We will  
9 hear testimony as well on the history and the  
10 meaning of our labor situation. We will also  
11 talk about the need for work rule reform.

12 In a phrase, Amtrak is a unique  
13 organization and in describing it, it lies at  
14 the intersection of public policy and public  
15 policy and private enterprise. The situation  
16 has required us to be both students of  
17 history and economic realities. That's sort  
18 of the world we live in.

19 In both the economic and political  
20 senses, we are largely dependent on Congress  
21 and the policymakers within the Federal  
22 government, but it's largely Congress that we

1 are dependent upon. And it's important to  
2 remember -- and I'm going to touch on this in  
3 my testimony -- that 10 years ago, exactly 10  
4 years ago, a PEB decision brought Amtrak to  
5 the brink of economic and financial disaster.

6 And in sum, 10 years ago I would  
7 say this company was saddled with a labor  
8 settlement that it could not afford and five  
9 years after that, it came close to bankruptcy  
10 and near shutdown.

11 Now, the past five years have been,  
12 in my mind, a time of renewal and recovery.  
13 Sort of time to climb out of the mud pit of  
14 financial despair and an opportunity to begin  
15 a walk, I believe, toward a brighter future,  
16 but we should be cognizant that Amtrak walks  
17 perilously close to the margin of financial  
18 stability.

19 My presentation will be covered  
20 over the next 15 slides. My primary  
21 responsibility at Amtrak is to represent the  
22 company before Congress, the Federal

1 government where necessary, a host of state  
2 governments, other governmental entities and  
3 local governments.

4           As I said earlier and I think  
5 others have said, Amtrak is a rather unique  
6 entity. We were born of Congress and we  
7 remain a creature of Congress, and we will  
8 always be dependent on the Federal subsidy.  
9 It's important to understand our history to  
10 see why the subsidy is so important.

11           In what I cover over the next few  
12 moments here, I will talk about the last 10  
13 years, but I'm really going to focus on the  
14 last five years and I will make the case that  
15 the events of this period have brought us to  
16 our current situation.

17           It's been a period of many ups and  
18 downs and it's been fraught with financial  
19 problems, the need for Congressional and  
20 governmental intervention, and that has  
21 resulted in greater demands on the company in  
22 terms of its accountability and particularly

1 in its economy and requirements for more  
2 efficient operations.

3           You will find as well that the  
4 period 2002 to 2004 I think were a turning  
5 point in the company's -- in the company's  
6 position.

7           We are very much a unique corporate  
8 structure. I don't think there are any  
9 parallels. We look at this time and again  
10 with inquiries from Congress and other  
11 oversight panels, but there really is no  
12 other railway that parallels the way Amtrak  
13 has worked and the way we have evolved over  
14 the time we have been around.

15           We are structured like a private  
16 company, but the government owns it. We are,  
17 as Tom said in the opening statement, the  
18 only publicly-subsidized entity that conforms  
19 to the Railway Labor Act.

20           Congress appropriates our money  
21 each year to cover our capital and operating  
22 needs. We go each year with a request to

1 Congress for those needs, and Congress really  
2 on all matters about Amtrak are fairly  
3 deliberative but on the budgeting process,  
4 the appropriations process, they are very  
5 deliberative about delineating between our  
6 capital and operating needs.

7           And of the two, I think over the  
8 history of Amtrak, the capital money has been  
9 easier to come by, but there has been always  
10 the constant pressure on the part of our  
11 supporters and our detractors alike to reduce  
12 our need for operating support and to be more  
13 efficient in our operations.

14           It is the one constant theme that I  
15 would argue has been made about Amtrak over  
16 the period of time that we've been in  
17 existence and, as such, and all of us I guess  
18 watched the Washington environment, the  
19 budgeting process become a most unpredictable  
20 environment in which to sally forth each year  
21 in request of funds.

22           It is relevant I think just to

1 touch briefly on some of the early history of  
2 Amtrak, and it is a remarkable story, a  
3 remarkable success story. And it is, as  
4 others have said, born of the fact that it  
5 has been populated by people who are truly  
6 dedicated to the railroad.

7 Amtrak was created by Congress in  
8 1970 under the Rail Passenger Service Act.  
9 It began operations May 1st of 1971. It was  
10 brought about because the freight industry at  
11 that time was going through severe economic  
12 convulsions, and one of the more costly  
13 activities that they were engaged in was the  
14 operation of passenger trains.

15 The ICC for a period of time in the  
16 late '60s and early '70s were involved in  
17 hearing from the railroads their request to  
18 divest themselves of passenger operations.  
19 At some point, it became a hemorrhage and  
20 there was great fear that all passenger  
21 service would be lost in large parts of the  
22 country.

1           And so at some point, the idea was  
2           born to have an entity created to manage the  
3           passenger rail service in this country. In  
4           doing so, the Federal government set up  
5           Amtrak. Congress enacted it, set up by  
6           Federal government, and the Federal  
7           government continues to hold all the stock,  
8           the preferred stock of the company.

9           The railroads who participated in  
10          the creation of Amtrak gave Amtrak equipment.  
11          In some cases money. We inherited the labor  
12          agreements, the physical plant, and the  
13          employees from the predecessor railroads, but  
14          the Federal government still maintains strong  
15          ownership rights over the company and, in  
16          fact, even today our Board of directors is  
17          wholly picked by the President and confirmed  
18          by the Senate for their positions.

19          It was in many respect, that is,  
20          the creation of Amtrak, a 1970 style  
21          government bailout and it saved the rail  
22          passenger service, but it was born of



1 conflicting missions. There were some who  
2 thought Amtrak would be profitable or could  
3 be profitable. There were others who  
4 believed that it was really sort of the last  
5 gasp of the passenger train.

6 But one of the goals that was made  
7 clear early on if you go back and read the  
8 early history of Amtrak was that efficiency  
9 and economy of services was a major goal.

10 Congress and the FAR -- Congress  
11 and the DOT through the FAR, I should say,  
12 have really in the last few years paced the  
13 reform of Amtrak by limiting the availability  
14 of funds and requiring us over the last few  
15 years to get a grant agreement with them.

16 So, they continue to have strong  
17 oversight responsibilities born both of  
18 Congress and of necessity over Amtrak. We,  
19 as I said earlier, throughout the period,  
20 there has been the sort of should they be  
21 profitable, shouldn't they be profitable. It  
22 rings through in each of the major

1 reauthorizations bills that Congress passed,  
2 including the most recent one, 1997.

3 I'm going to talk a little bit  
4 about slide 4, the Amtrak Reform and  
5 Accountability Act of 1997. This was our  
6 last authorization and it really was the last  
7 big opportunity that Congress had a chance to  
8 really air out the issues over Amtrak.

9 It covered the period of '97  
10 through 2002 and it set policy at the time  
11 through that period. It was passed with  
12 overwhelming bipartisan support, but my  
13 colleagues on the labor side who represent  
14 their legislative interests will tell you  
15 that the overwhelming bipartisan support  
16 really masked the fact that it took three  
17 years and there was a lot of bitterness at  
18 the time over the debate to get a final  
19 agreed-to bill.

20 At the time, there were a number of  
21 new requirements that were added through that  
22 act to Amtrak. The central, I think the most

1 important piece, was the requirement that  
2 Amtrak achieve zero need for operating  
3 subsidy in the year 2002.

4           It also created this Amtrak Reform  
5 Council, which is noted on this. I should  
6 say, as I was going through this presentation  
7 one last time, it provided for a seven member  
8 Board with three nominees not confirmed by  
9 the Senate. That refers not to the new board  
10 of directors, which was also created in this  
11 act, but that is the 10 member ARC Board,  
12 which was created as a part of the Amtrak  
13 Reform and Accountability Act.

14           They were required to report  
15 regularly to Congress about Amtrak's ability  
16 to meet certain glide-path reductions on our  
17 operating needs. In 2002, they announced  
18 through a report that we would not hit  
19 operating self-sufficiency. It was also the  
20 same year that the legislation lapsed.

21           The bill also -- and I'll touch on  
22 this briefly along about slide 10 -- that the

1 legislation also addressed two major  
2 provisions in Federal law regarding work  
3 rules and contracting out.

4           Now, since then, we have lived year  
5 to year on the appropriations process, and  
6 it's been the appropriators who have filled  
7 in the role, somewhat reluctantly at times,  
8 for the authorizing committees. They're the  
9 ones each year that fill out the report and  
10 add or delineate new requirements for Amtrak.

11           Congress has wrestled over the past  
12 couple of years, primarily in the Senate,  
13 with a reauthorization bill. That's noted as  
14 S 294. It's the Lautenberg Lott bill, but  
15 that is a reauthorization bill that again I  
16 will touch on as I sum up my presentation.

17           Interestingly enough, 10 years ago  
18 it was passed. Really the authorization bill  
19 began in the House and ended in the Senate.  
20 This time it's taking an opposite track.  
21 It's beginning in the Senate and it's moved  
22 now to the House.

1                   1997 was an important year looking  
2 back. It's hard when you go through periods  
3 of time. You don't realize that you're  
4 living through critical moments until you  
5 have a chance to look back at them, but  
6 looking back now over 1997, it was an  
7 important pivotal year in the company's  
8 history. All years are important, but this  
9 one stands above most of the rest.

10                   Because three major events happened  
11 that year. Our reauthorization bill was  
12 coming to conclusion. During the summer of  
13 that year, the Senate passed through a tax --  
14 through a tax bill, the Taxpayer Reform Act,  
15 which gave Amtrak \$2.1 billion of capital  
16 money to bring the railroad up to state of  
17 good repair.

18                   At the same time, we were moving  
19 toward an impending crisis in our  
20 negotiations with labor and corollary to all  
21 this, we had a change in leadership. Both  
22 the Board and our CEO coming in December with

1 regards to the CEO being changed out and a  
2 new Board early in 1998.

3           The details, and I'll focus for a  
4 moment now on that, on the labor settlement  
5 that occurred in the latter part of 1997. It  
6 had culminated after months of negotiation  
7 between Amtrak and some of the unions. The  
8 leadership at the company at that time, our  
9 CEO, had taken the position that he would not  
10 sign any agreements that he could not afford,  
11 that he could not pay for, and this case was  
12 made to Congress as well.

13           At some point, I believe  
14 frustration arose between the parties in  
15 negotiation, and the unions went around  
16 management and went directly to our board of  
17 directors, who went to Secretary Rodney  
18 Slater, who was in addition to his role as  
19 Secretary of Transportation, was also a  
20 member of the board of directors. The  
21 Secretary of Transportation even till today  
22 still sits on the board of directors.

1                   And over a period of a few days, a  
2 deal was hammered out that was essentially  
3 forced on the company. The costs of that  
4 deal were about \$170 million and the  
5 Administration, in an effort to try to help  
6 Amtrak, committed through Secretary Slater,  
7 Secretary committed the Administration, I  
8 should say, to two what they called get well  
9 payments of \$85 million apiece over the next  
10 two fiscal years.

11                   What they would do, in other words,  
12 is add to the Amtrak budget request that the  
13 Administration would submit two \$85 million  
14 get well payments. That occurred, if my  
15 memory serves me correctly, in October and in  
16 November that year, we were told that the  
17 Administration would not be able to honor  
18 that request.

19                   And we were faced with a staggering  
20 \$170 million hole and it really began to  
21 accelerate. That act accelerated our fall  
22 into an economic abyss that finally bottomed

1 down in 2002, and that's an important piece  
2 of history I think. It's an important piece  
3 of history to Amtrak. It's an important  
4 piece of information to this Board, I would  
5 offer.

6 The outcome of the 1997 agreement  
7 was both expensive and, when coupled with the  
8 congressionally-mandated requirement to  
9 achieve operating self-sufficiency by 2002,  
10 it was nearly fatal. By then, Congress also  
11 did not come through on the funding.

12 During that period of time, we had  
13 to do everything we could to raise cash. We  
14 financed. We refinanced. We borrowed money.  
15 It culminated in the summer of 2001 where the  
16 company actually mortgaged Penn Station to  
17 generate enough cash to make payroll to get  
18 through the balance of the year.

19 That occurred in July and August of  
20 that year. It also was a period of time  
21 where great hope was placed in the future of  
22 Amtrak on the introduction of high speed



1 rail.

2           The 1990s were a period of great  
3 equipment procurement. The Acela deal was  
4 signed and even though it became more cost  
5 over time, the initial cost to the company  
6 was just north of \$650 million, all financed.  
7 We had also purchased 195 super liner cars  
8 for our long distance fleet at about 2 to 3  
9 million dollars a copy and that was all  
10 financed.

11           We had also begun and were in the  
12 midst of procurement of General Electric  
13 diesel locomotives. We finally bought a  
14 little bit over 200 of them, again, at 2  
15 million dollars a copy and all financed.

16           So, the company, which had begun  
17 that decade with zero debt when Graham  
18 Claytor left as CEO, had acquired \$4.2  
19 billion of debt by the end of the decade. We  
20 were headed toward an awful economic  
21 situation, and the agreement that was the  
22 \$170 million further exacerbated that

1 situation, if not brought it to a point of  
2 fatality.

3           As I've was noted before, in 2000  
4 we began a new round of negotiations as our  
5 agreements with our unions expired at that  
6 time. It was interesting to note on that  
7 last slide, if you didn't catch it, that in  
8 the fiscal year 2000, Amtrak received  
9 absolutely zero in operating support. We  
10 received a total of \$571 million in capital  
11 appropriations, but zero was for -- zero was  
12 for operating support.

13           The financial situation came to a  
14 head in 2002, and I was there during that  
15 time. Many of us -- some of us who were here  
16 were there. It was an awful, awful time and  
17 we had really run out of options. The sand  
18 was slipping through our fingers. No one  
19 would loan us any money. Many of us thought,  
20 even some of us who had been with the  
21 company, which was a fairly resilient  
22 organization, thought we were at the end of

1 the rug.

2 We had another change of leadership  
3 at that time. Our new CEO, David Gunn, was  
4 brought aboard and he faced a number of  
5 immediate issues, not the least of which was  
6 the fact that we were going to run out of  
7 money about six weeks after he came onboard.

8 It was for those reasons that he  
9 rented his apartment in Crystal City for the  
10 first six months because of the uncertainty  
11 of the situation. He also faced a  
12 deteriorating physical plant, a company that  
13 was heavily indebted and now paying about  
14 \$300 million of cash each year just to manage  
15 debt service. He was also out of salable  
16 assets, and we had by then laid off about 10  
17 percent of our management force.

18 The very first thing we did, we had  
19 to do, was to go cup in hand on bended knee  
20 to the DOT and ask for a loan. And, again,  
21 over a period of a few days, we were able to  
22 negotiate \$100 million loan, which

1 essentially tided us over for the balance of  
2 the fiscal year.

3 We also received appropriations  
4 from Congress to help -- to help us with that  
5 period to get through that period. We began  
6 -- we used that money for capital investment  
7 and restored, begin to rebuild deteriorating  
8 assets. It came with strings. It came with  
9 significant strings.

10 Prior to the loan, Amtrak would  
11 have to go to the DOT for permission to sell  
12 or to alter significantly the assets on the  
13 Northeast corridor because the Northeast  
14 corridor was owned by the Federal government.  
15 We have a long-term lease of that property,  
16 but everything else Amtrak was pretty much  
17 independent of DOT in making decisions.

18 With the loan came the condition  
19 that every sale we did, every purchase, every  
20 decision about service, whether it was to cut  
21 it or to add it, even a station, would have  
22 to be approved by the DOT. In a sort of

1 gross example of that, if I wanted to sell my  
2 desk at Union Station, you'd have to get  
3 permission from DOT to do so.

4           The loan came with significant  
5 costs to the company. But the next period of  
6 time actually began to brighten a bit and it  
7 was a key transition period for Amtrak.  
8 After we got past the initial near death  
9 experience in the summer of 2002, we began to  
10 -- we began to rebuild the property.

11           We worked very hard at a state of  
12 good repair program. Basic stuff. The  
13 repair and renewal of ties and rail. The  
14 improvement to catenary and to some of our  
15 signal systems, to our power generating  
16 sources. The basic nuts and bolts of running  
17 a reliable railroad.

18           We also decided at that time that  
19 we would not take on any new debt, and the  
20 company has not assumed any new debt during  
21 the period of time since that last experience  
22 in 2002.

1                   Much of the work that Mr. Gunn  
2                   undertook was designed to improve the  
3                   product, really to improve the reliability  
4                   because if you run a reliable service, you do  
5                   begin to shed operating costs. It's when it  
6                   begins to break down that the costs just  
7                   begin to pile up and roll over on each other.

8                   So, running a more efficient and a  
9                   more reliable railroad helped with the  
10                  customers because it improved on-time  
11                  performance, but it also improved the  
12                  reliability and cut operating costs. And it  
13                  was also, I would argue, that period, that  
14                  summer a real turning point in the company's  
15                  existence. Because I think at that time,  
16                  Congress, the Administration both really had  
17                  a chance to decide to change the whole  
18                  paradigm.

19                  We were so far down, so far down in  
20                  our fortunes that it would not have taken  
21                  much, I think, to radically change and spin  
22                  off Amtrak into something else. They decided

1 not to do that. They decided to give us  
2 another chance and we used that time wisely,  
3 I think, to begin to reinvest into the  
4 railroad and a lot of good work went into  
5 that.

6           It's much like the analogy of a  
7 heart attack victim being brought into -- an  
8 extremis being brought into the emergency  
9 ward. The first thing you don't do is order  
10 a heart transplant. You stabilize the  
11 patient. You get the patient stronger. You  
12 get the patient counseled and then if need  
13 be, you perform the more radical surgery.

14           That is sort of what the period of  
15 2002 to 2004 resonates in my mind. What is  
16 clear about that time and even through the  
17 period, although Congress was very interested  
18 in funding capital sources, there was still  
19 great pressure on the company to reduce our  
20 operating needs.

21           We heard that a lot during that  
22 period about the need to continue to show

1 good progress on keeping our operating and  
2 financial needs in order. The gentleman who  
3 made the opening statement for the unions  
4 talked about all the GAO reports.

5           During the time last 10 years,  
6 there have been no less than 44 GAO reports  
7 on Amtrak covering the gamut on so many  
8 different things. There had been a lot of  
9 oversight during this period. We were not  
10 for a lack of oversight. I don't think, with  
11 the possible exception of the assassination  
12 of John F. Kennedy, has anything been studied  
13 more than Amtrak in this city.

14           I'll talk for a moment now about  
15 sort of where we are in terms of our  
16 budgeting process because I think as you,  
17 after you hear all the testimony and have a  
18 chance to reflect on this, one thing is going  
19 to be important is to understand the  
20 budgeting process in Congress and sort of how  
21 we live and exist within that budgeting  
22 process.



1                   Because one of the -- as you heard  
2 through the testimonies this morning, one of  
3 the big issues will be retroactive pay and  
4 then what is -- how is that going to be paid  
5 for I guess would be another huge question  
6 before this Board.

7                   As we have said and we have already  
8 conceded wage increases and a signing bonus  
9 and we are not -- and you will hear more of  
10 this from the other witnesses who are in a  
11 much better position to explain this to  
12 concede anything more.

13                   In Washington, the same rule  
14 applies to leave and vacation -- vacation  
15 time. The same applies to the budgeting  
16 process. You either use it or you lose it.  
17 It's very hard for Amtrak to accumulate our  
18 financial reserve because it shows brightly.

19                   We report our financials to  
20 Congress, to the committees in Congress every  
21 month. They know exactly what our run rate  
22 is. They know how much money we expect to

1 have left over each year, and for the past  
2 few years, we, fortunately, have been able to  
3 show a cash on hand at the end of the year,  
4 which is something we had never done during  
5 the late '90s and early 2000, and that amount  
6 of money has ranged from 150 to nearly \$300  
7 million over some of the years.

8 Congress knows that and when they  
9 go make difficult decisions about funding  
10 Amtrak, you can bet for sure that that number  
11 is couched against what Amtrak really needs.

12 Amtrak goes up, as we did last  
13 year, and said we're going to need about \$1.6  
14 billion. Yet we have over 200 million in the  
15 bank. Congress says, they really don't -- it  
16 appears that they don't really need 1.6 if  
17 they have 200 million left. We're going to  
18 give them less and then it's played out.

19 Amtrak, believe it or not, in the  
20 transportation grouping of funding  
21 initiatives, we are the largest -- we are the  
22 largest discretionary account in that mix of

1 funding. Everybody else has either formula  
2 funding or other types of requirements born  
3 of Congressional legislation. We're the only  
4 discretionary funding and we fund out at 100  
5 percent.

6           So for every dollar that Congress  
7 appropriates to Amtrak, they expect it will  
8 be spent in the fiscal year it's  
9 appropriated. Highways bleed out at about 25  
10 percent. So, for every dollar they spend on  
11 Amtrak, that's three less they could spend on  
12 highway. That's how they view. That's their  
13 world and it's a very, very difficult world.  
14 They have a lot of orphans to feed up on the  
15 appropriations committee and we are a big  
16 mouth to feed each year because of the way in  
17 which we're structured.

18           It's very difficult to then hold  
19 money to -- it's very difficult to sort of  
20 accumulate money as a financial reserve  
21 without it having an effect on decreasing  
22 your appropriations for the next year.

1           It also runs the risk of having  
2       rescission, which is where Congress will  
3       actually go in, take money, what they  
4       consider to be unobligated and put it to  
5       something else that is more needy. We're in  
6       the same mix of funding requirements. Our  
7       subcommittees also funds the housing  
8       programs, which are also very needy.

9           If we did not have a financial  
10       cushion, we would not be able to start. We  
11       would be in desperate shape. So we have to  
12       sort of balance this, but it's a very  
13       difficult balancing act.

14           Now, as was stated a moment ago,  
15       the unions could go directly to Congress over  
16       the back pay issue, but I believe it would  
17       come at the expense of funding for Amtrak  
18       either the next fiscal year or the next few  
19       fiscal years.

20           My sense -- and this is, again, the  
21       result of numerous meetings on Capitol Hill  
22       -- is that there is no support for Congress

1 in providing back pay funding, especially  
2 viewed in the last three years of  
3 Congressional appropriations behavior.

4 I've been there 14 years and I've  
5 done the appropriations process for 14 years.  
6 There's been only two years where Congress  
7 actually finished the appropriations process  
8 on time the end of September and have begun  
9 the fiscal year October 1st.

10 We have been sometimes six months  
11 into the fiscal year following a continuing  
12 resolution. In one case a full year, and  
13 it's more than likely the way things are  
14 going, we may be on a continuing resolution  
15 for all of next year.

16 It is a very, very broken process.  
17 The only thing that's one certain about the  
18 appropriations process in my mind is it's  
19 uncertainty.

20 We mentioned a moment ago that  
21 there were a couple of -- that there were a  
22 couple of provisions in the '97 act that

1 Congress changed and, again, it raises I  
2 think in part to show the abiding and very  
3 ardent interest of Congress in all things  
4 Amtrak.

5           There were two provisions in  
6 Federal law that had existed since Day One of  
7 Amtrak that tied to our labor relationship.  
8 One was labor protection. The other was  
9 contracting out. Congress during the Amtrak  
10 Reform and Accountability Act directed us to  
11 take work rule reform and they removed  
12 certain provisions, these two provisions that  
13 were embedded in Federal law.

14           In the case of labor protection, we  
15 were directed to arbitrate, to hold  
16 arbitration to resolve the differences.  
17 During that time, the unions collectively  
18 arbitrated as one. The issues were  
19 relatively the same and the arbitration took  
20 over a year and a half before it was  
21 completed.

22           It was a long process and it didn't

1 resolve several aspects of contracting out.  
2 Joe Bress will speak to that, I think, in his  
3 testimony. Labor protection or rather  
4 contracting out was taken out of Federal law  
5 and placed into the individual contracts,  
6 subject to negotiation.

7           Throughout the period, the clear  
8 pattern of reduced funding in the years  
9 ahead, one of the key goals of Congress  
10 during that period was to -- was to not just  
11 improve productivity and efficiency, but they  
12 were trying in 1997 very much to make Amtrak  
13 look like a private organization.

14           Because of the its tenuous  
15 financial situation, it was the view held by  
16 many that if Amtrak was to die, it was to die  
17 far from the Federal threshold and reduce the  
18 responsibility and liability of the Federal  
19 government. That's what a large part of the  
20 1997 reauthorization tied to.

21           Now, moving ahead a bit to today, I  
22 talked just briefly about the two types of

1 subsidies that we receive. The operating  
2 subsidiaries, the capital subsidies. Each  
3 year we take to Congress our request our  
4 request for funding. We break it down along  
5 those categories.

6           There's a certain amount of detail  
7 that follows. There's significant more  
8 detail that we actually give the  
9 appropriations committee. The Administration  
10 also send to Congress their budget for  
11 Amtrak, and it's really between those book  
12 ends then that the Congress decides what  
13 Amtrak should receive.

14           It is a lot more difficult to get  
15 operating support than it is to get capital  
16 support, and to the extent that hearings  
17 become acrimonious, it is usually around the  
18 operating subsidy that Amtrak requests.

19           And there is constant, despite all  
20 of our education from everyone, including my  
21 colleagues in the room, there is still a  
22 belief held by some in Congress that Amtrak



1 should not receive any operating support,  
2 that the routes should be profitable, and if  
3 they're not profitable, they should be  
4 abandoned.

5           Even our allies, those who support  
6 us and would go to the mat for us, continue  
7 to hammer away at improving efficiencies and  
8 reducing costs. If you look back at some of  
9 the exhibits we have in the book that we  
10 provided to you will show you that throughout  
11 the last few years, particularly the last  
12 three years, the appropriations language has  
13 been laced throughout with savings reductions  
14 requirements, of reporting needs and such to  
15 force and focus us on higher levels of  
16 accountability.

17           It is true, I think, you know,  
18 eight, 10 years ago that the budgeting  
19 process at Amtrak was in a shambles. It  
20 wasn't -- we couldn't get our books signed by  
21 our accounting firms in 2001. It was  
22 ashambles. It has gotten much, much better

1 and it is much, much clearer and we have much  
2 greater oversight.

3 So the numbers that we present are  
4 heavily looked over, not just by Amtrak but  
5 by the Federal Railroad Administration, by  
6 the Department of Transportation's Inspector  
7 General, who provides a quarterly report to  
8 Congress on our success at meeting certain  
9 financial goals, by the General Accounting  
10 Office, and by the key committees that we  
11 report to in Congress.

12 Capital subsidies, of which we  
13 receive a greater portion in our Federal  
14 appropriations, tend to be easier to get  
15 because they are really investment funds and  
16 Congress understands that, and they  
17 understand I think that a railroad is a  
18 capital intensive industry requiring  
19 continuous improvement and continuous  
20 investment.

21 And the capital plans that we have  
22 submitted to the Congress through the FRA are

1 fairly detailed and fairly triaged, and I  
2 think Congress has a pretty good idea of what  
3 the needs of the company are investment-wise  
4 at a certain high level, not day-to-day, but  
5 at a high level have a pretty good  
6 understanding of that.

7 We are really continuing to chip  
8 away at state of good repair. We have made  
9 good progress on that. Our on-time  
10 performance on the Northeast corridor in  
11 particularly and too large to manage is  
12 evidence of that. We have also now begun  
13 really the big -- the big capital projects,  
14 such as bridge replacement on the north end.

15 We will march north to south on  
16 bridge replacements over the next decade and  
17 then at some point we'll have to tackle the  
18 issue of the tunnels in Baltimore and somehow  
19 some way in New York City. These are big  
20 multiyear expensive capital projects. We  
21 will also be required to bring all of the  
22 stations at which we stop into ADA

1 requirements by the year 2010.

2 That might be get pushed out a bit,  
3 and we are not responsible for every station,  
4 but it will be a sizable amount of capital  
5 investment over the next several years.

6 There's really only one pie for  
7 Amtrak, as I talked a moment ago, about the  
8 world we live in, the nature of our scoring  
9 and the fact that we're a discretionary  
10 account.

11 No matter how you -- no matter what  
12 you ask for, how you ask for it, it really  
13 comes from one pie. The idea that you can go  
14 get a supplemental to pay for anything,  
15 including back pay, would come at Amtrak's  
16 expense for its appropriations.

17 They see it as an Amtrak need and  
18 it comes at Amtrak's appropriations. Those  
19 are really unbridgeable. That is really an  
20 invisible issue as it pertains to Amtrak's  
21 appropriations.

22 We have spent really all this year

1 talking to Congress about the issues we have  
2 with our labor unions. This is not something  
3 that just sort of blew up when the NAB made  
4 its release on November 1st. We have had a  
5 number of meetings that we've had privately.  
6 We've had some meetings where the unions were  
7 represented in the meeting.

8 We have -- it is well-known the  
9 problem and the costs are also fairly  
10 well-known by Capitol Hill. What it would  
11 cost across the Board, both for what we put  
12 on the table and what would be required at a  
13 full back pay.

14 Congress has had one full budget  
15 cycle to deal with this problem, and the  
16 Congress that is here today is very  
17 sympathetic both to Amtrak and to the labor  
18 unions. In fact, in the meetings we have,  
19 there's painful discussions for them to go  
20 through because they want to support labor,  
21 they want to support Amtrak.

22 It's like asking, you know, to

1 choose between your mother and your wife for  
2 them. It's a difficult decision, but they  
3 have had one year to deal with it and they  
4 haven't dealt with it.

5           And what's happened, in fact, if  
6 you look at the FY 07 appropriations -- I'm  
7 sorry the -- FY 08 appropriations, which is  
8 currently pending and long overdue, Amtrak's  
9 operating support has actually decreased from  
10 last year to the next fiscal year from 485  
11 million to 475 million.

12           So, in many respects, not only have  
13 they not heard us, but they said, we'll see  
14 you and we'll lower you \$10 million, which  
15 does not in my mind fire up confidence about  
16 getting a higher number.

17           And I will tell you this. Having  
18 been up there just yesterday talking to our  
19 appropriators, I'm beginning to think that  
20 it's going to be better for Amtrak to be on a  
21 continuing resolution for all of next year  
22 because the number we have right now, it's

1 1.375. It's about \$75 million and it's all  
2 in capital. I'm sorry \$1.375 billion for  
3 this year, 75 million above last year's  
4 appropriations. The increase is an increase  
5 in capital.

6 That number I think can only go  
7 down if they actually hammer out an agreement  
8 because it's going to come at the expense of  
9 domestic discretionary spending, and we're  
10 going to be a part of that. If we stay and I  
11 think we could actually through an agreed --  
12 through an agreement to get a sort of  
13 get-out-of-town bill, I think we actually  
14 fall below the FY 07 level.

15 I truly believe that having talked  
16 with them now for the last of couple days,  
17 particularly last day, yesterday. It's a  
18 very unpredictable environment and if they  
19 don't get it done this week or early next  
20 week, they're going to leave town and I  
21 suspect this is going to churn away for a  
22 number of months in the new year. It makes

1 your job -- with all due respect, makes your  
2 job that much more difficult.

3           What is clear to me I think -- and  
4 I think it will be echoed by some of those  
5 that follow -- that there is a clear  
6 political consensus about the need that  
7 Amtrak should exist. You know, the question  
8 continues to be begged. Are we -- by them,  
9 not so much by us or by others in this room.  
10 Are we a public service or are we a private  
11 company with government owners?

12           There's a profound difference I  
13 think here, particularly around expectations.  
14 Not so much that they really want to find the  
15 answer that's around the expectations, but  
16 there are others who see that with rising  
17 fuel costs, with road congestion and just the  
18 abysmal experience of going through an  
19 airport, you know, climate issues and urban  
20 sprawl, that railroads, passenger railroads  
21 have to play a role in the future.

22           We're not going to be the be-all



1 end-all, but clearly we have a role to play.  
2 We have to be reliable and we have to be  
3 relevant in the markets that we serve, but we  
4 obviously have a role to play and there is a  
5 future for us down the road in that area.

6 S 294 is really in many respects  
7 the beginning of the walk toward that goal.  
8 S 294 which is, again, the Lautenberg Lott  
9 bill, which will soon be I guess just the  
10 Lautenberg bill when Senator Lott leaves the  
11 Congress, was passed in October of 2000. It  
12 passed this year in October and, again, just  
13 like most Amtrak bills, when they finally got  
14 to voting on it, it was passed with  
15 overwhelming support.

16 But there were about 40 amendments  
17 that were offered over the five days of  
18 debate that Congress and the Senate took to  
19 consider the Amtrak reauthorization bill. It  
20 authorizes about \$11.4 billion over six  
21 years. It's a six-year reauthorization, but  
22 it provides most of that money in capital.

1 It anticipates the need for procurement,  
2 ongoing state of good repair. It anticipates  
3 other investments the company would make in  
4 its infrastructure and rolling stock.

5 Really the new money here is money  
6 that would be given to the states for them to  
7 partner with the Federal government to begin  
8 the investment in rail quarters. This money  
9 would go through the -- presumably through  
10 the FRA for distribution to the states once  
11 the states have agreed to rail plan.

12 S 294 is an authorization bill.  
13 It's the architecture. Once it's done, they  
14 will have to go and seek the funding. The  
15 levels of funding envisioned by this bill are  
16 way above what the appropriations committee  
17 can do. So they'll have to find an  
18 alternative funding source, but that will be  
19 the next part of their quest here.

20 It is interesting, again, going to  
21 the conflicting mandate. There are three  
22 amendments offered to abolish long distance

1 routes. Three amendments to offer studies  
2 for new long distance routes. It does not  
3 provide a guaranteed multi-year funding  
4 stream, but it does provide at least some  
5 hope for states who want to invest in rail  
6 passenger service.

7           What is interesting about this bill  
8 is, despite the numbers, the operating number  
9 does go up initially, but, again, it's the  
10 escalator ride back down to a much lower  
11 operating need at the end of the six-year  
12 period.

13           In summing up my testimony today, I  
14 really thank you for your patience and  
15 indulgence. The current budget and Federal  
16 funding for '08 remain very much uncertain  
17 and they remain uncertain for the balance of  
18 calendar year '08. I told you what our  
19 appropriations level are. I think I've told  
20 you a little bit about the risks.

21           I have always I think made the  
22 point pretty clearly here that we live in a

1 very unpredictable and uncertain environment  
2 as it comes to appropriations.

3           We have not been like particles  
4 trapped in amber when it relates to our  
5 issues with labor and Congress. We have gone  
6 repeatedly to Congress to explain this issue.  
7 The unions have, too. Both parties have been  
8 up on the Hill. They, the Congress, know  
9 that this issue is coming. They would like  
10 to hope and think that we will solve the  
11 problem and it will not be brought back to  
12 them.

13           They know -- we also knew that with  
14 the change in leadership in Congress that  
15 this issue would likely come to a head about  
16 the time that it is coming to a head now, and  
17 yet despite all of this Congress has not  
18 provided any additional funds to provide for  
19 a labor settlement. In fact, our operating  
20 budget will likely be lower. It will be  
21 lower next year.

22           The current offer that we have put

1 on the table is at the outer bound of what we  
2 can pay at this time. We need to hit every  
3 target and every revenue projection that we  
4 have forecast for FY 08 to honor the  
5 obligations we put through the BLE agreement,  
6 through the BLE proffered deal.

7           There's not any more money in the  
8 pipeline and there's not some one-time thing  
9 that might happen that would deliver all of  
10 us. We -- our capital needs will also not go  
11 away. As I described, they will continue to  
12 increase. There are good investments.  
13 They're necessarily to run the railroads, but  
14 they will continue to go up.

15           We have one pie. Everything that  
16 is done for Amtrak comes out of that one pie.  
17 It's a question of how it is sliced by  
18 Congress.

19           And I hope that as you look back on  
20 the statement here that you remember and  
21 learn, hopefully, from the lessons of the PEB  
22 decision in 1997 that it was a leap of faith

1 that caused us grave financial problems going  
2 forward.

3 We're in a much better position  
4 now. Those of us who went through that 10  
5 years ago, we've been there, we've done that,  
6 and really hope we don't have to repeat that  
7 or put the company through that again.

8 Thank you very much for your time  
9 and attention and thank you very much for  
10 your service on the Board during this busy,  
11 busy holiday period.

12 CHAIRMAN TREDICK: Thank you, Mr.  
13 McHugh. Let me start down here and ask Mr.  
14 Javits if you have any questions.

15 MR. JAVITS: I suppose I do. You  
16 think that there would be special  
17 consideration by Congress in a situation  
18 where employees have not received any  
19 increases, aside from a minimal COLA in eight  
20 years in terms of subsidy? I understand your  
21 statement that, you know, there's one pie and  
22 they perceive it that way, but given the

1 unique circumstances of this, the situation  
2 we have, we are confronting here of eight  
3 years of no increases, which is you know,  
4 quite unusual, do you think there would be  
5 special consideration and special budgeting?

6 THE WITNESS: In the form of  
7 additional funds.

8 MR. JAVITS: Yes.

9 THE WITNESS: No, I don't think so.  
10 I think that the way in which the cost of --  
11 the cost of the war in Iraq and Afghanistan  
12 has so greatly stretched the budget.  
13 Domestic spending. They're falling off on  
14 domestic spending. Even Republican  
15 appropriators will tell you that they have  
16 fallen off and they need to make domestic  
17 spending, which is not -- this White House  
18 has not been willing to support.

19 The budget situation up there is --  
20 we've talked to them about this. We've asked  
21 them what their feelings would be about a  
22 supplemental next year, and they have told us

1 that it's just not going to happen. That's  
2 what we have heard from the staff and from  
3 some of the members that we have talked to.

4 We have not had any hope from the  
5 leadership and the committees that would have  
6 to deal with this that they would be able to  
7 come up with the money. I think they'd like  
8 to do it. It's not a question of -- it's not  
9 driven with malice. It's just the reality of  
10 the budget situation.

11 They don't have the funds to do it  
12 and I would argue, too, Mr. Javits that I  
13 think it would be hard -- I think it would be  
14 very hard for them to pass a supplemental  
15 just for that and to have the White House not  
16 veto it and, I mean, it's just -- it's more  
17 than just Congress agreeing to it. It's the  
18 Administration would have to agree to it,  
19 too, and so far, they have been successful on  
20 the funding bills with regard to sustaining  
21 their vetoes.

22 CHAIRMAN TREDICK: Any questions



1 here?

2 MS. WITT: I have.

3 CHAIRMAN TREDICK: Okay.

4 MS. WITT: Mr. McHugh, you  
5 mentioned that Senate bill 294 that passed in  
6 the Senate provides for -- and I quickly  
7 wrote down -- operating reform measures.  
8 What are some of the operating reform  
9 measures that it refers to?

10 THE WITNESS: Well, the S 294 in  
11 terms of the operating support actually has  
12 an operating level that's set higher than it  
13 is today. This operating -- the  
14 authorization for operating -- for funds for  
15 operating support begins higher, but it goes  
16 downward over the six-year period.

17 In terms of -- and we made this  
18 point, again, I'm going to at least just  
19 corollary to that answer to your answer. We  
20 made the point that we were concerned about  
21 the levels of operating, seeing what was  
22 coming forward here with the labor issue, and

1 we were told uncandidly that we would have to  
2 make some very, very difficult decisions.

3 They were not going to increase the  
4 operating level, even knowing that we would  
5 have new obligations born of labor  
6 agreements.

7 Largely, Ms. Witt, the operating  
8 requirements and reforms have been primarily  
9 in the appropriations bill and I didn't want  
10 to overstate the authorization bill. There  
11 is a continuing quest for operating  
12 efficiencies to run the system better, to get  
13 the system up to a state of good repair.

14 It's all designed to reduce the  
15 company's need for operating support. Where  
16 we've really had the really pointed  
17 directives have been through the  
18 appropriations where we have to reduce the  
19 subsidies that we pay for our food and  
20 beverage. Our service, unfortunately, does  
21 not cover its cost. We've been directed to  
22 reduce that level.

1                   They've looked at the cost to  
2                   running sleeper car service. Much of it  
3                   swirls around the long distance trains, which  
4                   are a favorite target of Congressional budget  
5                   cutters. It's in those areas that they're  
6                   looking for cost savings because they tend to  
7                   go toward the operating side. I hope that  
8                   answers your question.

9                   MR. JAFFE: A couple of questions.  
10                  You indicated that there are no reserves, Mr.  
11                  McHugh, in the Amtrak budget for retro pay or  
12                  something of that nature. Amtrak's current  
13                  proposal to provide \$4500 signing bonus, is  
14                  that in the budget somewhere or is that  
15                  something that would need to be taken care of  
16                  in some other way? That's the first  
17                  question.

18                  THE WITNESS: Well, I'm going to  
19                  ask if I can let Bill Campbell address that  
20                  question. He'll be following. He is really  
21                  far better at answering a question like that.  
22                  I would be getting a little deep.

1                   MR. JAFFE: Fair enough, and the  
2 others would probably piggyback on the  
3 answer. So I might as well hold them. Thank  
4 you.

5                   THE WITNESS: Thank you, Mr. Jaffe.

6                   CHAIRMAN TREDICK: Thank you again,  
7 Mr. McHugh.

8                   THE WITNESS: Thank you.

9                   CHAIRMAN TREDICK: Thank you  
10 especially for getting the testimony done  
11 within the allotted time. That really helps  
12 our process.

13                   THE WITNESS: Okay.

14                   CHAIRMAN TREDICK: Off the record  
15 for a minute.

16                                   (Discussion off the record.)

17                   CHAIRMAN TREDICK: All right. Our  
18 next witness is Mr. Bress.

19 Whereupon,

20                                   JOSEPH H. BRESS

21 was called as a witness and, having been first  
22 duly sworn, was examined and testified as follows:

1                   CHAIRMAN TREDICK:  You may proceed,  
2  Mr.  Bress.

3                   DIRECT EXAMINATION

4                   BY MR. REINERT:

5           Q     Mr. Bress, can you just begin by  
6  giving the Board some introduction about your  
7  background and your position, what you're  
8  going to testify about today?

9           A     First I'd like to say good morning  
10  to members of the Board and thank you for the  
11  opportunity to testify before you.

12                   I am the Vice President of Labor  
13  Relations for the National Railroad Passenger  
14  Corporation, which we commonly call Amtrak.  
15  I joined Amtrak in May of 1996 after serving  
16  as the head of the Governor's Office of  
17  Employee Relations in New York State.  That  
18  office was responsible for all the public  
19  sector negotiations in New York, as well as  
20  public employment policy.  A copy of my  
21  biography is attached.  If you have any  
22  interest.

1           My testimony today will be  
2           structured in four basic subjects. First I  
3           will identify the various unions that are --  
4           that represent Amtrak employees, including  
5           the unions that are before this Board, and,  
6           second, I will summarize the negotiating  
7           history of this round of bargaining, which  
8           began in 2000.

9           And I must say, we are  
10          disappointed, I personally as well, that we  
11          have not been able to resolve the course of  
12          our negotiations with all of our unions.  
13          Although we have with some.

14          Third, I will identify the major  
15          issues that separate the parties, and you've  
16          heard some of that already this morning. And  
17          although I will identify approximately six  
18          issues, four of them are generally following  
19          the pattern of the freight railroad and we'll  
20          talk about that.

21          There are two issues which do  
22          separate us and on which we remain far apart,

1 and you've heard those already, retroactive  
2 pay and work rule reform. Both of those  
3 issues are a reflection of our unique  
4 financial and political structure, and there  
5 are other witnesses who will follow me who  
6 will elaborate on our financial  
7 circumstances, as well as some of our  
8 operational challenges.

9 My role is actually to explain the  
10 fundamental impact of these unique  
11 circumstances and to describe to you our  
12 negotiations during this period. First you  
13 should know about Amtrak's union and the work  
14 force.

15 We have approximately 18,500  
16 employees. There are 14 unions and two labor  
17 councils which represent about 16,000  
18 employees. We have had a reduction in the  
19 number of employees in the company over this  
20 period of time.

21 Fifteen hundred employees were, in  
22 effect, eliminated from the company because

1 we lost a contract with the MBTA to run their  
2 service in Boston. As a result, those 1500  
3 employees went over to the new employer  
4 there.

5 We also lost some employees when we  
6 lost the Metro Link operating budget --  
7 operating -- operations of Metro Link, the  
8 operating craft, and we also lost the  
9 mechanical side of that as well in a separate  
10 bid. So, the number of employees have been  
11 reduced, but in at least half of the  
12 reduction, if not more, as a result of our  
13 losing business because our bids were  
14 considered to be too high against our  
15 competitors.

16 This Board covers only nine  
17 bargaining units. There are eight unions  
18 here. Those nine crafts represent  
19 approximately 6700 employees or about 40  
20 percent of our employees who are union  
21 represented.

22 Sixty percent are not before this



1 Board and of that 60 percent who are not  
2 here, over 9,000 employees, a third of them  
3 have entered into negotiating agreements from  
4 October 1st, 2003 to December 31, 2004.  
5 Their agreements, of course, the moratorium  
6 has ended and their agreements are open for  
7 negotiation from them.

8 Now, this particular complex of  
9 unions before you is not what I would call a  
10 logical craft grouping. You see that there  
11 are two engineering crafts, the maintenance  
12 of way and the signalmen who are -- who  
13 affect work on our infrastructure. There are  
14 four shopcraft unions. The firemen and  
15 oilers, the machinists, the electrical  
16 workers and the coach cleaners and the  
17 carmen.

18 There are some shopcraft unions  
19 that are not here and those would be the  
20 sheet metal workers and the boiler makers,  
21 and I'll discuss them in a moment. There's  
22 an operating craft, the only operating craft

1 that's here, which are the dispatchers and  
2 two supervisory crafts, the ARASA mechanical  
3 or maintenance of equipment and the ARASA  
4 maintenance of way employees. No train  
5 engine or onboard service employees are part  
6 of this Board.

7 Now, what happened to those unions  
8 who are not here. Going to several of those.  
9 We have the BLET. They represent the  
10 locomotive engineers. You've heard some  
11 about them this morning. I'll talk a little  
12 bit about them later. They reached a  
13 tentative agreement with Amtrak in August of  
14 2007, which failed ratification and we're in  
15 direct negotiations with them.

16 With that failed ratification, we  
17 met to try to clarify the agreement because  
18 of misinformation that had been passed out to  
19 the public through some of the fierce  
20 objections by some of the unions in this room  
21 to that agreement, but we never were able to  
22 complete that task since the National

1 Mediation Board proffered arbitration and  
2 moved toward a release.

3           The UTU voluntarily opted out of  
4 mediation just before the beginning of this  
5 summer. They were in mediation and there  
6 were rumors then that there might be a  
7 proffer and release, and the UTU decided that  
8 historically, as I understand at first, to  
9 withdraw from mediation so that it would not  
10 be part of this process.

11           In the fall, the sheet metal  
12 workers and the boiler makers also  
13 voluntarily opted out of mediation in order  
14 not to be proffered or released and to go  
15 through this process.

16           While one can conjecture all kinds  
17 of reasons for that, basically these two  
18 crafts do have a work rule that provides that  
19 any other craft -- craft represented employee  
20 of Amtrak who is trained to do work can do  
21 the work that their craft does. So that  
22 their issue with some of the work rule

1 conversation you've heard so far this morning  
2 does not exist.

3 In fact, even the firemen and  
4 oilers have that, who are here before you,  
5 have that capability in their agreements for  
6 other crafts to do some of their work.

7 The TCU reached what we call a  
8 pattern setting agreement and that was in the  
9 summer of 2003 in August and that date about  
10 August 5th, the first week of August, sort of  
11 correlates to some other things I'm going to  
12 say in terms of the timing of what was  
13 happening during that year and the year  
14 before.

15 That agreement with the ASWC  
16 agreement who are our onboard service  
17 employees. They are the ones who serve in  
18 the dining car, who do coach attendance and  
19 who also serve in the cafe cars reached  
20 agreement during that same period and so did  
21 the ARASA-OBS which became the ARASA product  
22 line supervisors, but through that

1 negotiation, their duties were changed. They  
2 were off the trains and in crew bases.

3 We did reach an agreement this past  
4 summer with the Fraternal Order of Police.  
5 Now, the FOP is a nontraditional --  
6 represents our Amtrak police, which is a  
7 nontraditional railroad craft. It's not a  
8 pattern setting agreement. I think we all  
9 agree on that point. However, we did reach  
10 agreement with them which met, which we'll  
11 talk about a little later, the five  
12 principles that were set in 2002 for our  
13 negotiations.

14 The unions that represent the  
15 employees who are before you are a  
16 well-compensated group of employees, and you  
17 can see this from this chart. And these are  
18 their salaries before what I will discuss  
19 would be the raises that would be applied to  
20 their salaries.

21 The railroad retirement is almost  
22 20 percent added on and there are other

1 benefit costs. Those other benefit costs are  
2 health, dental, vision, railroad  
3 unemployment, insurance and disability to add  
4 up to the total compensation in the last  
5 column.

6 Now, those salaries -- and you'll  
7 hear about this from a witness later -- will  
8 be increased and you'll see how they compare  
9 when that happens under the offer we have on  
10 the table in what I'm going to present to  
11 you.

12 Now, what is the history of the  
13 freight pattern? It is not a parallel  
14 pattern. It is not a pattern which Amtrak  
15 sits down and says, well, we'll do it every  
16 single time nor has it been done every single  
17 time. It's not controlling. It is relevant  
18 because we do have employees who do some of  
19 the same kinds or types of work but not in  
20 the same environment as the freights do.

21 And as is traditional between  
22 different corporations or employers,

1 employees who may do the same thing don't  
2 necessarily get paid the same in those  
3 different entities.

4 Much of the history of the freight  
5 pattern predates me, obviously. I've only  
6 been here for 11 years, but I have learned  
7 and reviewed some of this history. I've  
8 reviewed the statement before you in Exhibit  
9 4 that John Lange provided to the PEB number  
10 222.

11 As Joe McHugh explained to you in  
12 his testimony, Amtrak was chartered by  
13 Congress in 1971 to take over the  
14 unprofitable transportation of the freight  
15 railroad. The freight railroad weren't in  
16 the business of discontinuing a profitable  
17 business. At that time, the question of a  
18 continuation of passenger rail was at issue.

19 Amtrak was required to take over  
20 the employees of the freight railroads and as  
21 well as adopt their collective agreements.  
22 So, accordingly, Amtrak's labor agreements

1 were patterned after the freight agreements  
2 for much of its early history as a result of  
3 that requirement.

4           Then in 1982, Amtrak departed from  
5 the freight pattern, particularly on  
6 compensation, due to the cost pressures on  
7 the railroad at that time where, as you may  
8 hear, there was a 12 percent differential in  
9 between the raise that Amtrak employees  
10 received and those that the freights  
11 received. With Amtrak, of course, being on  
12 the lower side of that equation.

13           In 1982, Amtrak then moved back  
14 toward the rate pattern in compensation, but  
15 did not again follow the freight pattern in  
16 the 1988 round.

17           Now, what happened in 1988 was,  
18 again, discussions between Amtrak and its  
19 unions to look at the question of costs, work  
20 rule reform, and as well an appropriate  
21 raise. In 1998 -- when the agreements were  
22 reached in 1991, there was an internal Amtrak



1 pattern. That pattern was a \$2,000 lump sum  
2 payment with increases of 18 percent from  
3 1991 to 1994.

4 Now that 18 percent was a partial  
5 make-up of the loss of the 12 percent that  
6 occurred previously in negotiations that  
7 Amtrak had where we differed with the  
8 freights, but there were significant changes  
9 in work rules at that time as well.

10 Some of the shopcrafts, which I  
11 discussed earlier, in terms of others being  
12 able to do their work and other work rules as  
13 well. The report of that PEB 222, which  
14 recommended to the unions that went before  
15 it, that internal Amtrak pattern in the  
16 unresolved negotiations with those unions is  
17 attached as Exhibit 5. So, again, in that  
18 case, we had an internal Amtrak pattern. It  
19 was not a freight pattern and it had work  
20 rule and benefit reforms.

21 Now we move to 1995 and that's  
22 around where we start negotiating with the

1 unions, and I come in somewhere in the middle  
2 or near the end of that movie. And at that  
3 point, without being able to reach  
4 negotiation -- negotiated agreements, there  
5 is a release of the BMW and a march toward a  
6 Presidential Emergency Board.

7 Now, during those negotiations, the  
8 position of the company was they could not  
9 afford an increase without having work rule  
10 reform and health and benefit cost  
11 containment. What happened at that time was  
12 the freights came out with their agreement.  
13 Again, no work rules, but there were monetary  
14 provisions of raises for the freight  
15 employees.

16 When we went into PEB 234, we were  
17 awaiting Congressional authorization of the  
18 company and, as Joe McHugh indicated to you,  
19 in 1997, which was about -- which was after  
20 we reached an agreement with BMW after the  
21 PEB of that year that the authorization act  
22 went into effect in December of that year.

1                   So, going into the PEB, it was our  
2                   position since we didn't know what our  
3                   five-year projections for certainly  
4                   allocations would be, we did not know what  
5                   Congress would do in terms of authorization  
6                   of the company, that we couldn't be in a  
7                   position to actually offer an increase.

8                   And we felt going into the PEB at  
9                   that time before we got to negotiate what  
10                  work rule reform there should be and what  
11                  increase there should be, that we would take  
12                  a one-year freeze position with that Board  
13                  and we did.

14                  We asked the Board to do a one-year  
15                  freeze, stay in place until we get the  
16                  authorization act and know what our funding  
17                  is on so that we can then commence  
18                  negotiations.

19                  Now, as you may know, our fiscal  
20                  year is October 1 to September 30, which  
21                  coincides with the same fiscal year as the  
22                  Federal government. What PEB 234 came out

1 with as a result of the position of the BMW  
2 for the freight raises and for its own list  
3 of work rule reforms was the recommendation  
4 that Congress determine whether it wants  
5 Amtrak to exist or not and should provide  
6 those raises, and as to work rules, either go  
7 out and arbitrate them or the rest because we  
8 had presented none of our work rules at PEB.

9 The PEB didn't reject our work  
10 rules. It didn't reject any work rules that  
11 the BMW presented to it. What it said is,  
12 we're not going to deal with those. There's  
13 a funding issue here and the question is  
14 whether or not this company is going to  
15 exist. That's your issue, Congress.

16 That did not resolve the  
17 negotiations for us and it was not helpful,  
18 if I may assert, in getting us to a  
19 negotiated agreement, but we did get to a  
20 negotiated agreement with, I would say, the  
21 involvement of the Administration at that  
22 time. President Clinton was in office at

1 that time.

2           And we, again, did not follow the  
3 freight pattern. What we did was look at the  
4 freight settlement and agreed to do 90  
5 percent of those labor costs. In return for  
6 work rule changes, which would equal 20  
7 percent of the cost of -- the new cost of the  
8 agreement.

9           That was the thumb print that we  
10 set with the resulting agreement with BMW  
11 and that was the thumb print for all of the  
12 agreements that followed and we did reach  
13 negotiated agreements with all the unions  
14 after that.

15           So the history of applying the  
16 freight pattern is mixed. We've certainly  
17 looked to it in terms of salaries, but not in  
18 terms of the internal Amtrak patterns because  
19 those we established, we have followed  
20 consistently in having an Amtrak internal  
21 pattern where we've needed to improve our  
22 efficiencies and to make changes in health

1 and work rule -- health insurance and work  
2 rule reform.

3 Now we come to the present round.  
4 We opened the contracts basically to be  
5 amendable on January 1st, 2000. We're in a  
6 period of bargaining which had extraordinary  
7 political pressure not only to reduce, but in  
8 many cases to end our financial support from  
9 the Federal government.

10 This history I think needs to be  
11 looked at very carefully in terms of what  
12 happened as an overlay during that period of  
13 time from 2000 to 2002. I'm going to talk  
14 about the broken promise of get well payments  
15 in 1997, but I want to do that, but first by  
16 mentioning that there was a glide-path.

17 You've heard the word glide-path.  
18 A glide-path, if you can look at it, went  
19 like this, whatever down to zero, but the  
20 actual appropriations of Congress, which were  
21 supposed to be the glide-path numbers, that's  
22 what the glide-path was, you'll get these

1 operating funds were here and they were going  
2 under what the glide-path anticipated  
3 operating subsidy would be during that  
4 period.

5           And as Joe McHugh indicated to you,  
6 while in certain degrees the Administration  
7 or Congress indicate what they think we  
8 should be funded, we don't receive that  
9 funding.

10           The agreements that we reached in  
11 1997 when we reached agreement on the 10th  
12 floor of the Federal department of DOT were  
13 dependent upon the commitment made by the  
14 then Secretary of Transportation, Secretary  
15 Slater, that the administration would provide  
16 for two \$85 million get well payments. Two  
17 successive years.

18           Now, if you take a look at the  
19 glide-path that I drew, the 170 million was  
20 to take us back to the glide-path to help us  
21 to pay for these raises. And we even sat  
22 down and figured the calculation of costs

1 that the company would have to generate in  
2 addition to that money to assure that we  
3 could fund those raises.

4 We didn't get that money. The  
5 following year, it was determined by the  
6 Administration and Congress that we'll have a  
7 balanced budget. The \$85 million  
8 disappeared, as did the \$85 million in the  
9 next year of 2001. What did that mean to the  
10 company during a period when we're  
11 determining what to do in negotiations?

12 At the same time as this is  
13 occurring, you have to remember the freight  
14 railroads, which also had the moratorium on  
15 January 1st, 2000, were beginning their  
16 negotiations. And as I have learned  
17 historically, the unions at Amtrak normally  
18 wait for the freight negotiations to end to  
19 try to find out what that number is rather  
20 than having us be the head of the pack.

21 And part of that reason is because  
22 I think it's well-known that Congress funds



1 us and that the freight companies or the  
2 freight railroads are making money.

3 So, we move into 2001 and realize  
4 that we're not going to be able to make  
5 payroll by the end of that year period. The  
6 cash was out. And the question was how to do  
7 that, and the decision was made in that year  
8 to mortgage Penn Station in order to achieve  
9 the more than 300 or so whatever millions of  
10 dollars were necessary to make payroll that  
11 year.

12 So we mortgaged a capital asset to  
13 make operating costs because Congress did not  
14 provide the money, and there was no other  
15 place for us to get that money.

16 Now we move into 2002. The then  
17 President of Amtrak, George Warrington,  
18 leaves the company to go head up New Jersey  
19 transit and David Gunn comes in in May of  
20 2002, and the first thing that he notices in  
21 looking over the books is that we're going to  
22 be out of cash in July. There's no cash to

1 get us through the year.

2           While the company prepared in one  
3 half of itself to deal with the potential for  
4 entering bankruptcy, the other half of the  
5 company determined to deal with the  
6 Department of Transportation to obtain a loan  
7 to keep the company going to assure that we  
8 could get through the end of the year.

9           We did enter into an agreement  
10 where DOT loaned us the money, which we are  
11 paying or may have paid back by now, but it  
12 started at 25 million a year. We did not get  
13 money for operating that. Otherwise Congress  
14 would have appropriated.

15           One of the conditions of the loan  
16 was to seek the cooperation of our employees  
17 to achieve substantial operating cost  
18 reductions. Those very words are in the  
19 agreement needed to meet Amtrak's financial  
20 crisis. So we knew we had now from just the  
21 mere fact of existing and mortgaging to  
22 basically the Department of Transportation

1 our last pencil what we had to do in that  
2 commitment made to them.

3 Now, during this period as well,  
4 Congress later did provide, as you heard  
5 earlier, about a \$205 million operating  
6 budget, operating subsidy amount  
7 appropriation, which it did to make up for  
8 the zeros that had been in the operating  
9 budget before. So now we're going to get  
10 through that fiscal year.

11 But at the same time that we're  
12 going through this period, there are  
13 agreements reached by the freight railroads  
14 and the unions and those agreements, by the  
15 way, as you hear about the interminable time  
16 it takes on the Railroad Labor Act to reach  
17 agreements for companies that have the  
18 finances and profits to do it took till 2001,  
19 2002, '3, '4 and '5 to reach agreements with  
20 all of their unions that would go through the  
21 end of 2004.

22 As a result of our experience with

1 the failure to receive the two \$85 million  
2 get well payments, David Gunn met with the  
3 rail union chiefs at the transportation  
4 trades department of the AFL-CIO to discuss  
5 negotiations and the company's position on  
6 negotiations.

7 He presented five principles at  
8 that time before any agreements were reached  
9 in 2002. Those five principles and the  
10 agreement and the principles at that time  
11 were comparing ourselves to the freight  
12 agreements that had been reached up to that  
13 point. Not all but some of them that had  
14 been reached.

15 The wage increase would be  
16 equivalent to the freight pattern through  
17 2004. There would be health care costs  
18 containment. There had to be in order to  
19 reduce our health care costs and  
20 contributions where there had been none at  
21 that time. Health care costs are almost 25  
22 percent of our cost or 25 percent of payroll.

1                   Work rule reform to have  
2                   efficiencies in productivity that were  
3                   necessary in order to meet the Congressional  
4                   and Administration demand at that time to  
5                   improve our operating budget number, and from  
6                   that work rule reform there would be no  
7                   furlough of employees as a direct result of  
8                   those work rules.

9                   And the last point was no  
10                  retroactive pay and that was made clear in  
11                  December 2002. Those five principles were  
12                  basically clearly communicated to the unions  
13                  as to the position that the corporation was  
14                  taking in terms of its experience in the past  
15                  and its ability to continue and to grow in  
16                  the future.

17                  The no retroactive pay is a key  
18                  indication of two things. One, which Joe  
19                  McHugh told you about, our ability to carry  
20                  over funds and, secondly, commitments made to  
21                  provide us with money to get us through the  
22                  last agreement failed miserably and led us to

1 bankruptcy and as a company we were not going  
2 to do that again.

3 Now, the BMWWE recognized that we  
4 had taken this position because on July 8th,  
5 2003, they wrote to the National Mediation  
6 Board in one of the letters complaining about  
7 our position that our proposal included no  
8 retroactive wage increases whatsoever. That  
9 was true and the reasons for that I have  
10 indicated.

11 Secondly, the unions got together  
12 realizing that Congress was not appropriating  
13 the money to make us capable to do that or  
14 other raises for employees. The unions  
15 decided to engage in a nationwide political  
16 strike on October 3rd. As a result of court  
17 litigation, ultimately that was found to be  
18 an illegal act and did not occur, but that  
19 was another step taken by the unions.  
20 Clearly declaring that the issue here is the  
21 financial support to the company in its  
22 operating budgets.

1           As I think it's important to note  
2           that the operating budget is -- 90 percent of  
3           the increases in the costs of employees in  
4           the company is in the operating budget.

5           The TCU meanwhile reached an  
6           agreement with us, a tentative agreement in  
7           August of 2003, and when that agreement was  
8           reached, it was during this whole period when  
9           all these other things were going on. The  
10          dispatchers and ARASA-MW reached tentative  
11          agreements with us near the end of 2004.

12          And those were not ratified and  
13          those were reached and not ratified after we  
14          had reached similar agreements with the  
15          Service Workers Council and with the ARASA  
16          product line supervisors.

17          Now, those three agreements cover  
18          one-third of the work force. The dispatcher  
19          and ARASA-MW added more people but were not  
20          ratified, but all of those agreements, every  
21          single one of those agreements, followed the  
22          five principles set forth in December of 2002

1 by David Gunn.

2 And even though the dispatchers and  
3 the ARASA-MW maintenance of way union  
4 agreements were not ratified, we still  
5 believe that that reflects the appropriate  
6 agreements that should be recommended by the  
7 Board.

8 Now, what were the terms of the TCU  
9 agreement? The terms of the TCU agreements  
10 were to roll in the 75 percent COLA into base  
11 and then 3 and a half 3 and another 3 percent  
12 during that 15-month period. The roll-in of  
13 75 cents is almost 4 percent and that was the  
14 COLA at that time with the rest of the  
15 raises. It was equivalent to the freight  
16 agreement.

17 There was no retroactive pay. The  
18 Harris COLA was eliminated and then came to  
19 life again July 1, 1990 -- July 1, 2005,  
20 which is the period after the moratorium went  
21 into effect.

22 There was health care cost



1 containment and plan design change with  
2 contributions toward the premium by the  
3 employees, as well as contributions increased  
4 towards the co-pays for drugs and for  
5 emergency room visits, and there were work  
6 rule changes and there were meaningful work  
7 rule changes.

8           For example, looking at the first  
9 one, we did cross training and assignment  
10 reform for crew calling. Before there had  
11 been separate desks. This desk had different  
12 rules to call onboard service people. This  
13 desk is the conductors and the engineers. No  
14 desk did one train at a time.

15           We put the two together so that one  
16 person could crew a train, could crew them  
17 with all the people who were to work on that  
18 train. It was an efficiency that was worth  
19 we expected about \$2 million to the company.

20           We eliminated unassigned workers,  
21 which were difficult to assign, and created  
22 extra boards. We achieved flexibility for

1 weekend work where we needed it, at stations  
2 where the passengers were -- a theme that  
3 we'll have later on, that we should have  
4 employees at our stations when the passengers  
5 are there, not when they're not there. And  
6 we continued our overtime after 40 hours per  
7 week with that group.

8           That agreement went through  
9 December 31, 2004. Negotiations after  
10 December 31, 2004 did not progress for a  
11 number of reasons. Even though we had  
12 reached agreement with the ASWC and the ARASA  
13 product line supervisors through December 31,  
14 2004, with following the same principles,  
15 other unions did not decide to come in and  
16 follow that Amtrak pattern.

17           To the extent that two unions did,  
18 the dispatchers and the maintenance of way  
19 folks, we did not -- we reached tentative  
20 agreements under the principles, but they  
21 were not ratified. Now, what's been happening  
22 since all of that time?

1           What's been happening is that, in  
2           our view, as we move through 2004 to 2006,  
3           the unions are awaiting for political change.  
4           There's a presidential election. There's  
5           Congressional election. Will it change to be  
6           more favorable, and the point being is it  
7           more favorable to Amtrak to achieve funding  
8           that it otherwise is not achieving at that  
9           time? And when that didn't occur in 2004,  
10          well, maybe that will happen in 2006.

11           As to work rules, while there may  
12          be certain statements made to you about the  
13          discussion of work rules, I would say that  
14          there were discussions of work rules. We  
15          talked about them. The answers were no  
16          retroactive pay, no work rules, but we did  
17          talk about them. We did indicate what we  
18          needed. We did indicate why we wanted them.

19           We did indicate what they would  
20          need to be -- what they would achieve for the  
21          company, both in savings as well as in  
22          efficiencies. Not all rules necessarily were

1 going to result in major monetary savings as  
2 much as in major efficiency and that was  
3 important to the company.

4 Because we turned trains. We run  
5 passengers as said earlier. We don't carry  
6 coal and freight. Our trains run at higher  
7 speeds. They run throughout the country, and  
8 they have to be safe for not only our  
9 employees, but for our passengers as well.

10 During this period, we negotiated  
11 with the IBEW. We negotiated with the sheet  
12 metal workers. We negotiated with every  
13 organization in this room. We had private  
14 negotiations. Those negotiations about which  
15 we do not speak publicly. Even though many  
16 of the unions were in mediation and mediation  
17 sessions were not scheduled by the Mediation  
18 Board.

19 This past summer, we did reach an  
20 agreement with the Fraternal Order of Police.  
21 It's a unique agreement not applicable here,  
22 and then we reached a tentative agreement

1 with the BLET. That became the controversial  
2 agreement of the year for us.

3 To say that we didn't negotiate  
4 when we reached all of these agreements, some  
5 of which weren't ratified, does not seem to  
6 me to ring quite true, and to say that we  
7 didn't negotiate when we all know we had  
8 private sessions that we again do not speak  
9 of is not quite true.

10 With the BLET agreement, we were  
11 still building on the five principles, and in  
12 recognition of our unique financial  
13 circumstances, that agreement also did not  
14 call for retroactive wage increases.  
15 Although we did agree to wage increases now  
16 through 2010.

17 In February into March of this  
18 year, the freights did reach agreement with  
19 six unions, later with others. We modeled  
20 our agreement after that to try to get passed  
21 the 2004 end date for the prior agreement so  
22 that we did not have to close the books in

1 one round and start off 60 seconds later on  
2 the next, and we're making a proposal now all  
3 the way out to 2010.

4 The signing bonus of \$4500 was what  
5 we could financially afford. It was a  
6 recognition that we had gone on a period of  
7 time that there had been no retroactive pay,  
8 but that we would try to accommodate in some  
9 way a recognition of that factor to the  
10 employees.

11 The \$4500 is about one-third or 30  
12 cents to 33 cents on a dollar, depending on  
13 your organization, of what the back pay is,  
14 and when you think about the costs to the  
15 company, always add 20 percent to it. So  
16 that the \$4500 costs the company \$5400  
17 because of the contributions that the company  
18 makes for railroad retirement.

19 Those went into our calculations in  
20 terms of what we could do since we could not  
21 provide retroactive pay. We also entered  
22 into agreement on health care cost

1 containment. While the prior agreements with  
2 TCU had contributions towards health  
3 insurance, they were at a lower level.

4 Even though they did increase after  
5 on July 1, 2005 and after with the COLA they  
6 received, because we could keep up to half  
7 the COLA, if in fact health insurance went up  
8 that much or pieces of that have COLA, but  
9 the employee was still contributing.

10 In those 30 percent to 33 percent,  
11 those employees, the one-third of our  
12 employees were contributing at a lower level  
13 than we negotiated here because we had not  
14 negotiated an increase with them and because  
15 the freights had not yet negotiated an  
16 increase as they did in 2007.

17 And we had work rule changes. The  
18 work rule changes removed the restrictions on  
19 contracting out. So that we could contract  
20 out and offer an employee a choice, if that  
21 was necessary as part of the contracting out,  
22 of a year's severance or of a job that was

1 available, and even move them to an available  
2 job or the employee could elect to take  
3 severance if they desired. And we made  
4 changes in disciplinary and payroll  
5 processes.

6 Now, the moratorium which you heard  
7 something about, we had ended September 20,  
8 2010. Why did we do that? Did we pick an  
9 artificial date? No. December 31st is the  
10 end of the fiscal year for the freights.  
11 That is not our fiscal year and, as you heard  
12 earlier, in terms of planning for our ability  
13 to reach agreements and to have funding  
14 available to do that, we should operate  
15 according to our fiscal year.

16 So September 30th was a date that  
17 coincides with the end of the fiscal year,  
18 with the last raise being October 1st of  
19 2009.

20 Now, during this time, there was a  
21 lot of fierce antagonism, opposition and  
22 action against the BLET agreement. It



1 happened on the Web. It happened on blogs.  
2 It happened on the rails. It happened in  
3 crew bases. It happened in stations.

4 Mark Henney as the General Chairman  
5 put out a number of letters, which I would  
6 ask you to read because he does recognize  
7 what we recognize, that this agreement was  
8 reached within the context of a political and  
9 financial environment that is not welcoming  
10 to Amtrak's total operating costs as they  
11 presently exist or accepting of Amtrak's  
12 present work rule environment.

13 Why did it fail? It failed as a  
14 result of the fierce opposition to it, but  
15 also as a result of a low participation in  
16 the vote. There were 1250 engineers. Out of  
17 whom 400 did not vote.

18 I've been passed a note to request  
19 at this point whether we should have a lunch  
20 break before I continue.

21 MR. REINERT: We've got  
22 considerable testimony yet from Mr. Bress

1 going through the description of the -- our  
2 proposal, and we think it would be best, as  
3 much as we don't like to break witnesses it,  
4 would probably be best to do it now.

5 CHAIRMAN TREDICK: Okay. In  
6 accordance with your request, we will take a  
7 break. What do you suggest in terms of an  
8 hour, hour and a half?

9 MR. REINERT: Well, it's 1 -- it's  
10 12 now. I'd say 1:30 come back. Would that  
11 work for everyone?

12 CHAIRMAN TREDICK: Counsel? All  
13 right. We'll adjourn and resume at 1:30.

14 (Whereupon, at 12:00 p.m., a  
15 luncheon recess was taken.)

16  
17  
18  
19  
20  
21  
22



1 health and welfare, cost containment and  
2 reform, work rule reform and the duration of  
3 the moratorium.

4 Now, of these issues, if you look  
5 at one, three, four and six, they're derived  
6 not completely but from the freight pattern.  
7 The issues of two and five are circumstances  
8 that are Amtrak internal and as well deal  
9 with the principles set down by David Gunn  
10 for Amtrak in 2002.

11 Now I'll go through each of these  
12 and the copies of our current proposals, as  
13 well as the agreements which we did reach are  
14 attached as Exhibit 21.

15 The prospective increases, the wage  
16 increases incorporate 2003 TCU agreement  
17 pattern. So that repeating that, it's taking  
18 the 75 cent COLA and rolling it into base.  
19 Then three and a half, three and three. The  
20 2007 BLET tentative agreement generally  
21 follows the freight agreement in that regard.

22 On the effective date of the

1 agreement, which would have been, if it had  
2 been ratified, October 1st of this year,  
3 those raises by TCU would have gone in  
4 seriatim and then on top of them, two and a  
5 half percent, two plus one and a half percent  
6 and two percent, and then next April 1st it  
7 would be one and a half percent. Then  
8 10/1/2008 three and a half percent and  
9 10/1/2009 three and a half percent.

10 Now, the timing of the increase of  
11 the two and one and a half and two and one  
12 and a half for October 1 and April 1 were  
13 done in order to be adjusted for Amtrak's  
14 cash flow, but certainly do compound the  
15 wages of the employees as they are added.

16 And when you actually compound the  
17 wages we have on the table with the freight  
18 compounded wages, we're talking about a half  
19 a percent, the 6/10 of a percent difference.  
20 We're lower but that close in terms of our  
21 offer on the table.

22 And we also have to look back at

1 PEB 234 in that period when we had no money  
2 on the table. When the company's position  
3 was stay in place for a year, where the  
4 negotiations up to that point had been no  
5 money on the table. We need work rule  
6 reform. This is a very different time. We  
7 have put a considerable amount of money on  
8 the table.

9 A considerable amount to the point  
10 before we get to the rest of the proposals  
11 that in FY 10 we will be adding \$166 million  
12 to our budget for the cost of these raises.  
13 And remember where our operating budget is.  
14 As a subsidy from Congress, 475 is what they  
15 have this year, 485 is what we had last year,  
16 and this year will be anywhere from 122 to  
17 135, depending on what agreements come in  
18 during the year.

19 This is new money. This is not  
20 part of the normal operations of the company.  
21 This is a 34 percent wage increase when  
22 compounded and over the next three years

1 another additional 8 and a half percent.

2 Now we go to retroactive pay. We  
3 have put \$4500 on the table as a lump sum in  
4 lieu of retroactive pay. We recognize the  
5 difficulty of this issue and we moved to do  
6 that for the first time this year.

7 In fact, there was major movement  
8 made by the company in our negotiations this  
9 year because up until February, the positions  
10 that we had with the organizations at the  
11 table or in private discussions or in  
12 mediation was through December 31, 2004.

13 For the first time at the end of  
14 March, beginning of April through President  
15 Kummant's movement on this issue, we  
16 presented wages that were relative to the  
17 phrase through FY 10 or 2010.

18 The \$4500 we recognize is 30 to 33  
19 cents on the dollar for back pay, but we  
20 recognize that that is what is within our  
21 capacity to pay and that is within our  
22 capacity to project for the operating

1 subsidies that we anticipated that we would  
2 receive.

3           And let us not forget, which I'm  
4 sure that I don't, that one of our five  
5 principles was no retroactive pay. Now, I say  
6 it's 30 to 35 cents on the dollar because we  
7 know that you've been presented with  
8 materials that say that the retroactive pay  
9 on average is 12.9 to 13.5 and that's where  
10 we are.

11           We have made movement in  
12 negotiations overall this time. We've moved  
13 on salaries. We've moved on retroactive pay.  
14 We've moved on extending the agreement beyond  
15 what we originally negotiated through  
16 December 31, 2004. We've discussed work  
17 rules, which I'll get to in a minute, which  
18 has been a one-way discussion across the  
19 table, and we've talked about the duration.

20           But the important -- the important  
21 point to remember here I think is that  
22 retroactive pay is a bargaining convention.



1 It's not like the Harris COLA, which we  
2 agreed to in the agreement where the  
3 moratorium expired that we continue to pay a  
4 Harris COLA every six months to recognize  
5 what has been earlier described as an  
6 interminable period to negotiate under the  
7 Railway Labor Act.

8 It's not entitlement and certainly  
9 it has to be considered in context of  
10 everything that we have presented in terms of  
11 wage increases and costs to the company, and  
12 you'll hear more about that from our chief  
13 financial officer.

14 The only promise we made and the  
15 promise that we've delivered on is that we  
16 would do the Harris COLA, which  
17 parenthetically on January 1, 2008, we'll add  
18 16 cents, which will bring the Harris COLA  
19 percentage on top of salary to a little over  
20 9 percent from December 31, 1999 for those  
21 organizations that are in this room.

22 There has been no time during this

1 period that we have not asserted the five  
2 principles and the issue of no retroactive  
3 pay, but I would also remind you that while  
4 there has been no desire to deal with Amtrak  
5 on our work rule proposals, while that has  
6 gone on and there's an urging for retroactive  
7 pay from the organizations, we received no  
8 retroactive productivity and work rule  
9 improvement, assuming that comes out of this  
10 process.

11 We received no health care savings  
12 during that time and we won't even if there  
13 is offset a projected retroactive  
14 contribution to premiums because we won't  
15 have the savings from the health insurance --  
16 from the prescription drug co-pays. We won't  
17 have the savings from the doctors' increase  
18 in co-pays. We won't have the savings from  
19 the emergency increase in co-pays that will  
20 occur, and we won't have some of the savings  
21 that will -- you will hear about from another  
22 witness from the changes that we make in our

1 program for health care.

2 Thus, while the unions claim they  
3 have an inequitable entitlement to  
4 retroactive pay, the equities cut the other  
5 way. Failure to reach agreement over the  
6 past eight years in the face of a clearly  
7 established bargaining pattern, which we  
8 think was established when TCU agreed, ASWC  
9 agreed, ARASA product line supervisors  
10 agreed, the dispatchers agreed and the ARASA  
11 maintenance of way agreed. Even though those  
12 last two were not ratified.

13 Those -- that failure has resulted  
14 in our deprivation of cost savings. During  
15 one of the periods that I described to you  
16 before lunch is one of the darkest days in  
17 this company's history. One where I think  
18 that having only been here 11 years, but  
19 having talked to people who have been here  
20 much longer than that, was the first  
21 recognition that the company might have gone  
22 out of existence without the special loan

1 agreement that occurred that summer.

2           So if we look at the bargaining  
3 equivalence, the TCU agreement had no  
4 retroactive pay. The ASWC agreement had no  
5 retroactive pay, but had a \$4500 lump sum  
6 signing bonus. ARASA-OBS or product line  
7 supervisor agreement had no retroactive pay,  
8 but \$4500 signing bonus. The dispatcher  
9 tentative agreement, which failed  
10 ratification, had no retroactive pay, no  
11 bonus. Then the 2004 ARASA-MW tentative  
12 agreement had no retroactive pay.

13           The 2007 BLET tentative agreement  
14 was the first time and the company did move  
15 and talk to other unions, again, in private  
16 negotiations and later mediation. Private  
17 negotiations about which we do not speak.  
18 Put \$4500 on the table as a signing bonus in  
19 lieu of retroactive pay.

20           It has been made clear to me as  
21 well as to members of the Amtrak management  
22 and I believe has been communicated to union

1 representatives that Congress and the  
2 Administration have no political support for  
3 a special appropriation to pay for the  
4 retroactive pay sought by the unions, which  
5 would for us be an additional 156 to 200  
6 million dollars over our offer.

7           And let's not forget that with the  
8 \$4500 bonus and the raises we're talking  
9 about this year being 122 to 130 million  
10 dollars additional, 166 new money next year  
11 and the year after for the raises, not for  
12 improvements in operating, not for hiring new  
13 people, not for any of the operations in the  
14 company, other than to provide what we  
15 believe are fair and equitable raises for  
16 recruitment and retention in the context of  
17 our five principles.

18           We also moved to eliminate the  
19 Harris COLA at the end of the moratorium  
20 period. The freights did this. This is a  
21 disputed decree. First of all, it's clear  
22 that the Harris COLA was originally intended

1 to try to moderate the impact of the Railway  
2 Labor Act's intention almost to cause delays  
3 in negotiated agreements being reached, but  
4 it has not done that.

5           It didn't do it during the last  
6 round for Amtrak and it certainly hasn't done  
7 it for this round of Amtrak, and apparently  
8 the unions and the freights agreed it didn't  
9 do much to encourage them to come to quicker  
10 settlements there either since their  
11 settlements were two, two and a half years  
12 after their moratoriums ended as well. And  
13 we, as part of our recognition of the freight  
14 wage increases, have proposed removing the  
15 Harris COLA.

16           Now, health and welfare is an area  
17 where we've already made movement with three  
18 of the unions who reached agreements with us  
19 during the period of October 1st, 2003 to  
20 December 31, 2004. We sought plan design  
21 changes and employee cost sharing.

22           What we did in the BLET pattern was

1 to build on the TCU agreements for  
2 contributions toward the premiums and I  
3 should maybe put a footnote here. We really  
4 don't have premiums. When we left, as you  
5 heard earlier, the coalition of health  
6 insurance under the freight program GA 23000,  
7 when we left that program, we did not have an  
8 experience rating.

9 So we operate through a third party  
10 administrator and pay the bills as they come  
11 in. As that works because we cannot devise  
12 what our we'll call it premium in quotes is  
13 at the end of a normal year, December 31st,  
14 part of our proposal in terms of the  
15 contribution toward the premium is to delay  
16 six months so that any increase doesn't go  
17 into effect until July 1 of the following  
18 year. So that we can calculate what increases  
19 there are that occurred the year before.

20 But in order to start, we are  
21 framing it within the context of the freight  
22 contributions of 166.25 a month. That 166.25

1 a month based upon the immediate raise, not  
2 the 8 and a half percent that will come  
3 later, but the immediate raise that I  
4 indicated to you earlier that will go on the  
5 date of the implementation of this agreement  
6 would be one-third or one-quarter of the  
7 costs -- of the salary increase that the  
8 employees would receive.

9           So, for example, an employee will  
10 have 400 or \$500 more a month in cash after  
11 pay this premium and, of course, it depends  
12 on the unit of the organization because  
13 obviously salaries are different in different  
14 groups.

15           Now we go to the crux of where we  
16 haven't had what some would call an energetic  
17 exchange of positions on work rules, unless,  
18 unless that energetic exchange can be  
19 described as our describing our work rules  
20 and what we're seeking and the organization  
21 saying no.

22           Again, this was one of the five



1 principles, and the 1997/98 agreements with  
2 all the unions included work rule changes in  
3 order to meet what I call the 20 percent  
4 thumb print of savings against new money.

5 Work rule changes were negotiated  
6 with TCU during the December -- during the  
7 October 1st, 2003 to December 31st, 2004  
8 agreement, as they were with ASWC and  
9 ARASA-OBS and as they were with the  
10 dispatchers and with the ARASA maintenance of  
11 way. Even though those agreements were not  
12 ratified.

13 And I point out those agreements  
14 that were not ratified from the point of view  
15 that it is important to recall our principles  
16 were followed in all of these negotiations  
17 and that we did reach agreements.

18 Moreover --

19 CHAIRMAN TREDICK: Excuse me.  
20 Could I interrupt you for one second?

21 THE WITNESS: Yeah.

22 CHAIRMAN TREDICK: We have some

1 information that somebody may be transmitting  
2 live from these proceedings to the outside  
3 world. Is that correct? Is anybody doing  
4 that?

5 All right. Thank you. I'm sorry  
6 to interrupt.

7 THE WITNESS: That's okay. I  
8 didn't think the outside world would be  
9 interested in what I had to say.

10 (Laughter)

11 THE WITNESS: If we go back to  
12 older rounds, the sheet metal workers and the  
13 boiler makers, for example, have agreed to  
14 permit other craft people to do their work.  
15 That's why I suggested at the beginning of my  
16 testimony they may not be here because they  
17 don't have the quarrel with that rule.

18 And as the history shows already  
19 that I went over -- and I won't repeat --  
20 there have been work rule changes as part of  
21 our negotiations for a number of rounds of  
22 negotiations between Amtrak and the unions.

1                   Now, I'm not going to describe  
2 these work rules in detail. You have  
3 materials that are exhibits, and William  
4 Crosbie will detail some of these changes, I  
5 believe, tomorrow and others are identified  
6 in Exhibit 21 that you have.

7                   But it's important to note that  
8 what we are doing is there are several  
9 things. One of the themes we have is to have  
10 more efficiency and productivity through  
11 having work performed more efficiently and  
12 during the times that our train schedule  
13 permits.

14                   For example, in the engineering  
15 crafts, the old saw is we would like the work  
16 to be done when the trains aren't running  
17 than when they are and you will see a picture  
18 of that when that testimony comes forward.  
19 But the important point is that we want to be  
20 able to schedule at straight time employees  
21 on weekends and on other shifts without  
22 paying overtime to do that, which is where

1 we're restricted now.

2 We also want to expand our right to  
3 subcontract work, and the issue of  
4 subcontracting of work will be an issue that  
5 will be presented to you by both parties --  
6 all the parties before you?

7 In 1997 when the Authorization Act  
8 was passed, Congress directed us to do two  
9 things. They directed us to negotiate  
10 immediately labor protection, which they felt  
11 was, too, we'll call it rich at the time and  
12 contracting out.

13 Now, those two provisions were  
14 never in agreements with Amtrak at that  
15 point. They were statutory provisions.  
16 Labor protection was a law enacted by  
17 Congress and so was the provision that said  
18 that Amtrak shall not contract out if it  
19 would result in the furlough of an employee.

20 Congress repealed both sections of  
21 that -- of law which did that and took the  
22 section on law on contracting out

1 specifically and placed that into all the  
2 agreements and then directed the parties, the  
3 unions and Amtrak, to negotiate that  
4 provision during this round. That's why it  
5 has become a featured negotiated item during  
6 this round.

7           Now, while there's some debate  
8 about what we mean by contracting out, it is  
9 clear that contracting out, if it's more  
10 efficient for the company and does affect an  
11 employee, we give the employee the option.  
12 The option of a year's pay. The option of  
13 taking another job and we'll move them to it  
14 if it's not within the vicinity where they  
15 live. Or the option of taking a furlough,  
16 working elsewhere, waiting to be recalled.

17           It is different in the work rules  
18 that we have talked about primarily because  
19 it was directed by Congress that we negotiate  
20 this provision, and it was directed by  
21 Congress to do this within the context of  
22 that Authorization Act, which said we're

1     supposed to become more efficient and more  
2     productive as part of the intention Congress  
3     set forth in the opening of that  
4     Authorization Act.

5             There are lots of areas in  
6     subcontracting out in the engineering  
7     department where you'll hear William Crosbie  
8     talk about what we need to be able to do and  
9     what we shouldn't be doing with our  
10    employees. That is, we shouldn't be having  
11    arguments that our employees are doing the  
12    kind of tasks that divert them from the real  
13    work that make a difference in the state of  
14    good repair of our infrastructure rather than  
15    trimming trees or laying carpeting or  
16    painting a wall.

17            Now, there are also two categories  
18    of proposals that are important in the  
19    mechanical crafts and those go to assigning  
20    employees flexibly across craft lines. We  
21    haven't asked to eliminate the crafts. What  
22    we've asked to do is to be able to train

1 employees to do whatever work we can train  
2 them to do, regardless of whether it's in  
3 their craft.

4 Now, the fact of the matter is in  
5 some cases when the railroad was put together  
6 in 1971, some crafts performed work that  
7 other crafts performed in different areas and  
8 argue its their scope, even though they're in  
9 different areas and they're in different  
10 unions.

11 These different kinds of tasks,  
12 whether they're wheel trueing or whether  
13 they're hosteling locomotives or a number or  
14 litany of others that I could give to you,  
15 can be shared by crafts more efficiently than  
16 to have to have dedicated to them one craft  
17 as opposed to another within the scope, where  
18 it's more efficient for us to create a team  
19 that is accomplished to do these tasks.

20 We've promised that no employee  
21 would be furloughed as a result of this  
22 because as the efficiencies come in, there is

1 a potential that you could work with fewer  
2 people in a team environment, but we did not  
3 -- we did not eliminate a craft by doing  
4 this.

5 The fact that we did not eliminate  
6 a craft historically is that the sheet metal  
7 workers and boiler makers agreed to let other  
8 crafts to do their work and they exist as a  
9 craft, and they also agreed they would do  
10 work in other crafts as soon as we had the  
11 capability under our agreements to allow for  
12 that. And the firemen and oilers who are  
13 before you also have a similar provision.

14 We also believe it's important with  
15 this group of employees as well as to  
16 subcontract out, as I explained before, and  
17 you'll hear areas where that should and could  
18 be done. For example, car cleaning.

19 In regard to some other proposals  
20 that we have, we talked about sick leave that  
21 is unique to the ARASA maintenance of  
22 equipment group of craft, group of employees.



1 It's hard to explain the reasons for this  
2 because I don't have the reasons for it, but  
3 the ARASA maintenance of equipment or  
4 mechanical supervisors use more sick leave  
5 than any other employee group, including  
6 management in the company.

7 And we can give you the statistics  
8 on that, but I don't want to bore you by  
9 going into the pages I have here of showing  
10 you the comparisons, but if you desire, we  
11 can do that.

12 Therefore, we propose to delay  
13 their short-term disability. Because the way  
14 it works now is you get 10 days of sick  
15 leave, you move into short-term disability,  
16 after six months long-term disability. The  
17 first day is not paid. You start on the  
18 second day. We want to start paying on the  
19 fourth day and to reduce the short-term  
20 disability from 80 to 100 percent, depending  
21 on your years of service to 70 percent during  
22 the short-term disability period and then you

1 go into long-term disability.

2           This certainly would have an  
3 immediate cost savings to us of several  
4 hundred thousand dollars, but the more  
5 important point is that it would be an  
6 expected increase in productivity. And let's  
7 look at what this group of proposals is  
8 about. It's about people attending to  
9 perform work without our having to call other  
10 people in in order to pay them overtime to  
11 make the company more efficient.

12           And this is a group of these. It's  
13 the overtime proposal that we have, the sick  
14 leave proposal that we have, the bank time  
15 proposal I'll go into in a minute, and what  
16 we call a holiday bridge. They're all really  
17 under the category of having employees attend  
18 to perform work rather than calling others in  
19 to pay them overtime while these employees  
20 are out.

21           Now, what do I mean by that in  
22 terms of certain of these? We have a

1 proposal to pay overtime after 40 hours.  
2 That is with several groups that -- several  
3 of the crafts at Amtrak. TCU being one of  
4 them that I talked about before, and then we  
5 have bank time and I want to compare these  
6 two.

7 Bank time is under the Fair Labor  
8 Standards Act, with which you may be  
9 familiar, says that a public employer can  
10 take half an hour of the time and a half and  
11 allow an employee to put it in compensatory  
12 time and use that as time off.

13 In 1997 and '98, a union, not the  
14 company, a union proposed bank time in lieu  
15 of overtime after 40. Now, that proposal was  
16 put forward by the JCC, the coach cleaners  
17 and carmen, on the theory that it's under the  
18 FLSA. Our response was they work together  
19 overtime after 40 and bank time or  
20 compensatory time, but we compromised and we  
21 didn't do this piece. We did this piece.

22 What it has done has created for us

1 almost an impossibility in terms of  
2 attendance and backfilling for our people who  
3 take bank time because you can accrue it not  
4 simply to 40 hours, but if you use an hour,  
5 you can accrue another hour back to 40.  
6 You're up to 40, except in one group where it  
7 can go to 80, and then you continue to go  
8 back up and back up.

9           It has not worked. We agreed. We  
10 took a -- we'll say we can use it as a test  
11 pattern for ourselves where I would tell you  
12 with a degree of frankness that management  
13 was not clear this would work, but as all  
14 agreements go, we entered into an agreement  
15 to do this and we didn't do the overtime  
16 after 40.

17           They work together. This is an  
18 attendance issue, and in many cases when bank  
19 time is used by an employee, somebody else is  
20 called in and we pay them overtime.

21           We also have, when I was talking  
22 about looking at the issue of attendance as a

1 global issue, something we call the holiday  
2 bridge where you're supposed to work the day  
3 before and after a holiday in order to get  
4 paid for the holiday where you're not  
5 scheduled on the holiday.

6           And when you have bank time and  
7 when you don't have overtime after 40, you  
8 have people who will -- in essence, we've had  
9 people who will leave early on either the day  
10 before or after a holiday, which are  
11 particularly critical to us as a company, and  
12 get paid for the holiday.

13           We think it's got to be clear you  
14 have to work before and after that and that  
15 you can't use bank time to do that if that  
16 were to be continued as it has been. At the  
17 moment, there is no reason that bank time  
18 should be continued because the elimination  
19 of it does not result in a deprivation to an  
20 employee. The employee will be paid cash for  
21 that overtime.

22           Now, while the unions have opposed

1 discussing any changes to work rules this  
2 round, the BMWWE has proposed certain work  
3 rule changes that relate to a consent decree  
4 in what is called the Thornton Title VII  
5 litigation. That was litigation brought a  
6 number of years ago against the corporation  
7 based on race discrimination.

8 We entered into a consent decree  
9 with the plaintiffs in the BMWWE, and part of  
10 that consent decree had us apply temporarily  
11 certain work rules relating to training and  
12 jobs for all BMWWE-represented employees,  
13 regardless of whether they were a member of  
14 the class of the Title VII complaint. You  
15 have the Thornton interim agreement and the  
16 procedural stipulation as Exhibit 24 in your  
17 package.

18 BMWWE has proposed to make these  
19 changes permanent and to include them in the  
20 collective bargaining agreement. Amtrak is  
21 willing to accept that proposal as part of  
22 its total effort for broader work rule reform

1 through its proposals this round.

2           And lastly, we talk about the  
3 duration of the moratorium. I've sort of  
4 given you our position on that probably  
5 before lunch. We believe the moratorium  
6 should run through September 30, 2010.  
7 September 30 is the end of our fiscal year.

8           It allows us for planning because  
9 our budgets are put in -- our proposed budget  
10 is put into the Department of Transportation  
11 and to the Administration eight months before  
12 that, nine -- well, more, the end of the  
13 year, maybe 10 months before that to plan for  
14 FY 11, October 1, 2010.

15           Our fiscal year does not end when  
16 the freights end on December 31st and in  
17 terms of our planning and budgeting, you'll  
18 hear about some of our difficulties and  
19 you've already heard about in terms of  
20 obtaining Congressional support and the times  
21 we're under CR and the rest, continuing  
22 resolutions and the rest. This makes much

1 more sense in the fiscal planning and fiscal  
2 conservative basis for the company, and it  
3 doesn't in any way, in my judgment, adversely  
4 affect the employees because our raises, as  
5 you can see even going back to 1997, are  
6 based on an October 1st date.

7           So, to summarize, this is not like  
8 1997 where we came in and said, please,  
9 Board, let us stay where we are for a year.  
10 No raises, no work rule changes. We don't  
11 know where we're going to be over the next  
12 year.

13           We have put substantial wage  
14 increases on the table. We believe we've put  
15 a substantial lump sum payment in lieu of  
16 back pay since we cannot afford that. We  
17 believe that we've also done reasonable work  
18 reform and productivity improvement.

19           In a passenger rail company, which  
20 is very different from the freights, and has  
21 modernized equipment going into the future,  
22 technologically different, where even



1 Congress is debating high speed corridors in  
2 the country, where modernized equipment will  
3 occur, not built like the equipment during  
4 World War II or earlier based on the crafts.

5           And we believe that since Congress  
6 has made it clear to us -- certainly in terms  
7 of our conversations with staff and with the  
8 representatives in both houses -- that back  
9 pay is not a number that we're going to see  
10 from them, we are not in a position to  
11 willingly take the risk we did when we lost  
12 \$170 million over a commitment that was made  
13 to us by which we made an agreement.

14           I would recommend to this Board  
15 that that is an issue if Congress is going to  
16 do it that is left to Congress and not to a  
17 recommendation to the parties the Board to do  
18 anything with this issue.

19           You heard from me perhaps for  
20 longer than you desired. I would like to  
21 thank you for your patience in terms of my  
22 presentation and thank you for your service

1 on the Board.

2 CHAIRMAN TREDICK: Thank you, Mr.  
3 Bress. I think that was quite helpful to us.  
4 Let me see if anybody here has any questions.  
5 Mr. Javits.

6 MR. JAVITS: I guess a question  
7 would be given the complexity of some of the  
8 work rule proposals of Amtrak, I think you  
9 indicated that you explained your proposals  
10 to them, but why was there no back and forth  
11 on those proposals? Was it a refusal by the  
12 unions to even talk about them or could you  
13 even talk about them in a hypothetical  
14 fashion if we were to work out something here  
15 on work rules?

16 THE WITNESS: I think it's fair --

17 MR. JAVITS: There's no agreement  
18 until it's all done. Why was there nothing  
19 developed?

20 THE WITNESS: I think it's fair to  
21 say first that we attempted to do that. That  
22 we presented our work rules. I personally

1 presented them on a number of occasions.  
2 That we went through them perhaps more than  
3 anyone wanted to hear us go through them, but  
4 the response was: You don't need it. We're  
5 not going to agree to it. Unless you do back  
6 pay, we're not going to talk about them.

7           There was no response in terms of  
8 countering, in terms of trying to ameliorate  
9 perhaps our position and say, can you do this  
10 instead of that. There was no response.

11           Now, I would say to you, secondly,  
12 that I don't know whether that's strategic,  
13 you know, if you go back to something said  
14 earlier about, you know, PEB says that  
15 there's no dialogue on work rules. Well, my  
16 point is you can't have a dialogue if one  
17 party stands mute and you can't argue.  
18 Therefore, there was no dialogue.

19           MR. JAVITS: Okay. Thank you.

20           CHAIRMAN TREDICK: Ms. Sandberg.

21           MS. SANDBERG: I actually have a  
22 couple of questions. The first is, you say

1 that you don't want this pitched to Congress  
2 or you don't want to have to go ask Congress  
3 for the money this go around for the  
4 retroactive pay increase, but I think you  
5 said that the cost in 2010 is going to be 156  
6 million over your existing operating budget.  
7 So you're going to have to ask then.

8 THE WITNESS: Well, there's a  
9 difference that we're dealing with now. The  
10 166 million in 2010 is for this raise. We  
11 made a commitment to do this raise.

12 MS. SANDBERG: But you'll still  
13 have to ask Congress.

14 THE WITNESS: We'll have to ask  
15 Congress for that. Are we going to ask them  
16 now when it's for this year going to be 122  
17 or 130 million for us for another \$166  
18 million payment for a one-time payment?  
19 We're talking that's on top and we've been  
20 told clearly the answer to that is: You're  
21 not going to get that special appropriation.

22 The second point is, it goes back.

1 Because I experienced 1997. I was there when  
2 the commitment was made for two \$85 million  
3 payments, and I was also there when we were  
4 told we weren't going to get it. At that  
5 point, we didn't have the money for it.

6 The issue is simple. To plan for  
7 our future based upon increased revenues, our  
8 revenue projections. Hopefully if we have  
9 competitive work rules, our ability to  
10 compete in the marketplace for contracts that  
11 we lost to other vendors because we lost in  
12 Florida as well. We lost where we didn't  
13 have business where we competed, and our  
14 ability to see if Congress will do more for  
15 an operating budget.

16 But I will be clear with you. This  
17 is part of the fiscal planning the company  
18 knows it has to do. The question is at that  
19 point, we go year to year. We don't have a  
20 five-year budget like private corporations or  
21 five-year planning. Go year to year for  
22 Congress to determine what its funding amount

1 is.

2 Last year was 485 operating. This  
3 year originally the houses each passed  
4 separate bills for 485 and have now a  
5 combined bill out of committee for 475 and as  
6 we know, there is some we'll call it  
7 difficulty in getting the bills for all the  
8 budget bills to be approved, not only by  
9 Congress, but by the President.

10 To the point where we may be on a  
11 CR, continuing resolution, for the rest of  
12 the year and have 485, but we've planned.  
13 Within what Joe McHugh said to you and what  
14 you'll hear from William Campbell is that we  
15 have planned for all of our targets to be met  
16 because it's not a mixture just of the  
17 operating subsidy, which is part of our total  
18 budget, but the revenues that we gain.

19 If we hit our targets and obviously  
20 that is an issue, if we hit all our targets  
21 and we have our operating subsidy, then we  
22 can meet the raise this year and we have to

1 work on our budget for next year and the year  
2 after.

3 MS. SANDBERG: One additional  
4 question. I think that you said that the  
5 reason you felt compelled to do the  
6 subcontracting language was from the '97  
7 authorization?

8 THE WITNESS: Right. We were  
9 compelled to negotiate it. Our proposal is  
10 based on what is the for the best needs of  
11 the company, but we were directed. Prior to  
12 1997, there was a statutory provision that  
13 said that Amtrak could not contract out if it  
14 resulted in a furlough.

15 Congress repealed that in 1997, but  
16 inserted the exact language in it into every  
17 agreement we have between Amtrak and our  
18 organizations, and then directed all of us,  
19 all the organizations, all the unions and  
20 Amtrak, to negotiate that provision during  
21 our next Section 6 round, which is the one  
22 that we have been in for a period of time.

1 MS. SANDBERG: And they put that in  
2 the '97 authorization?

3 THE WITNESS: That's correct.

4 MS. SANDBERG: I don't see similar  
5 language in the Senate Bill 294. Is there a  
6 reason why?

7 THE WITNESS: No, it's not. Well,  
8 first, they haven't passed it. I can't tell  
9 you why they don't have that. But the law is  
10 on the books and that's the law we are  
11 following at this point. There has been no  
12 repeal of that provision of the '97  
13 Authorization Act.

14 MS. SANDBERG: Have you continued  
15 to answer to Congress about why you haven't  
16 been able to negotiate that provision?

17 THE WITNESS: We've been answering  
18 to Congress why we haven't reached  
19 agreements. I think that's more likely to  
20 it. We did reach an agreement on the BLET on  
21 the provision, which as you know was not  
22 ratified.



1 MS. SANDBERG: Thank you.

2 MR. JAFFE: Yes, I've got a few.  
3 With respect to the retro pay issue versus  
4 the \$4500 lump sum, I think you used a figure  
5 of about 156 million as the equivalent of  
6 full retro?

7 THE WITNESS: No, that's the  
8 additional amount over the cost of the 4500.

9 MR. JAFFE: That's the additional  
10 cost?

11 THE WITNESS: Yes.

12 MR. JAFFE: Okay.

13 THE WITNESS: And remember, the  
14 4500 to us is worth 5400 because of our 20  
15 percent retirement costs.

16 MR. JAFFE: Okay. So that the cost  
17 of the 4500 would then be approximately 70  
18 million, give or take?

19 THE WITNESS: The cost of -- give  
20 or take, approximately. Be over. When you  
21 get finished, it's around 200, over 200  
22 million for the total, if you did all back

1 pay.

2 MR. REINERT: Mr. Jaffe, our next  
3 witness will be presenting spreadsheets with  
4 the calculations on this.

5 MR. JAFFE: Fair enough. Just two  
6 brief ones then by way of follow-up, Mr.  
7 Bress. Thank you, Mr. Reinert.

8 I think you indicated in the course  
9 of some of the discussion that Amtrak had not  
10 had the benefit of retro on the health in  
11 terms of the additional savings that would  
12 come to the company.

13 THE WITNESS: I'm sorry. You mean  
14 -- let me clarify.

15 MR. JAFFE: Sure.

16 THE WITNESS: In our discussions on  
17 the Hill, we were told that when we informed  
18 staff and representatives of both houses at  
19 different times what the cost of retro was,  
20 in addition to what we had put on the table,  
21 we were told we were not going to get an  
22 appropriation for that kind of money in

1 addition to our normal operating subsidy.

2 MR. JAFFE: Fair enough. My  
3 question was a poor one. So I'll try and do  
4 it a little bit more fully. I think in the  
5 course of your testimony a few moments ago,  
6 you indicated, among other things, that a  
7 work rule change is obviously Amtrak would  
8 not get retroactive financial benefit from  
9 and then you said you lumped the health  
10 insurance in in terms of the change the same  
11 way.

12 Is it your understanding that the  
13 retro pay that's being sought by the unions  
14 in this case is one that appropriately  
15 credits the effect of the health insurance  
16 retro, so that if one does one, you get the  
17 benefit of the other as well?

18 THE WITNESS: Well, let me answer.

19 MR. JAFFE: Is the 13,000 number,  
20 give or take, one that includes a credit to  
21 Amtrak for the health is what I'm asking.

22 THE WITNESS: What I think I said

1 -- and if I didn't, what I meant to say -- is  
2 that, yes, the retro takes into effect the  
3 premium contribution of the employees that  
4 would have been made during that period. It  
5 does not take into effect the cost savings  
6 that could have been achieved or that would  
7 have been achieved.

8 MR. JAFFE: Got it now. Plan  
9 changes.

10 THE WITNESS: On the plan changes.

11 MR. JAFFE: Fair enough. And the  
12 only other question I have is in the context  
13 of the financial things and if you're not the  
14 right person, feel free to tell me that, too.

15 Have there been any significant  
16 changes in revenue as a result of the recent  
17 changes, for example, with respect to fuel  
18 price increases? In short, are you seeing  
19 many more people riding Amtrak as a result of  
20 gas prices becoming high?

21 THE WITNESS: I think I'll leave  
22 that to our chief financial officer.

1 MR. JAFFE: That works, too. Happy  
2 to hold it then. Thank you.

3 CHAIRMAN TREDICK: Thank you very  
4 much.

5 THE WITNESS: Thank you.

6 CHAIRMAN TREDICK: I think we're  
7 scheduled now to hear Mr. Campbell, if you're  
8 prepared to proceed.

9 Whereupon,

10 WILLIAM H. CAMPBELL  
11 was called as a witness and, having been first  
12 duly sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 CHAIRMAN TREDICK: Welcome, Mr.  
15 Campbell.

16 THE WITNESS: Good afternoon, Mr.  
17 Chairman, Board members.

18 CHAIRMAN TREDICK: Please proceed  
19 as you see fit.

20 MR. REINERT: I think we have the  
21 PowerPoint up now. I was just going to ask  
22 Mr. Campbell to introduce himself, give a

1 little bit about his background, what he will  
2 be speaking to us about today.

3 THE WITNESS: Good afternoon. My  
4 name is William Campbell and I'm the Chief  
5 Financial Officer for Amtrak. Previously I  
6 was the Assistant Secretary For Management  
7 and Chief Financial Officer for the US  
8 Department of Veterans Affairs. Before that  
9 for nine years, the Chief Financial Officer  
10 for the US Coast Guard. I have 20 years  
11 experience as a member of the Federal Senior  
12 Executive Service corps, and I've been  
13 directing large Federal organizations during  
14 that time.

15 BY MR. REINERT:

16 Q Can you just give us a brief  
17 overview of your testimony today, sir?

18 A Yes. What I'm going to do today is  
19 try to draw a picture and discuss a little  
20 bit more detail on what you've heard  
21 previously. Amtrak's unique financial  
22 structure, our past economic challenges and

1 try to put them in dollar and cents  
2 perspective, our current economic situation,  
3 our projected operating debt service and  
4 capital budget requirements, the potential  
5 impact of any labor settlements on the  
6 company, and Amtrak's inability to fund  
7 retroactive pay.

8 Q What's unique about Amtrak's  
9 financial situation?

10 A Well, a little bit what you heard  
11 earlier is that although a private  
12 corporation incorporated in the District of  
13 Columbia, Amtrak is for all intents and  
14 purposes a Federal entity, which poses  
15 numerous financial challenges for us.

16 We've been unprofitable since our  
17 inception, and Amtrak is heavily dependent  
18 upon Federal subsidies for our operating debt  
19 service and capital budgets and unlike a  
20 typical commercial firm, we are unable to  
21 retain funds year over year.

22 We're given just enough to make up

1 for our operating loss. That's an important  
2 thing to understand. Unlike appropriations,  
3 which are basically a plus, what we do when  
4 we get a grant or a subsidy, we are making up  
5 for a loss that we have incurred.

6           If we have too much cash on hand,  
7 it may jeopardize our following year's  
8 operating subsidy. Within the first two  
9 weeks of reporting onboard in May of this  
10 year, I went around, made the obligatory  
11 visits to the Office of Management and  
12 Budget, the US Department of Transportation,  
13 the Federal Railroad Administration and both  
14 the House and Senate staffs.

15           Uniformly I was warned that if we  
16 had too much cash on hand at the end of the  
17 year, we would jeopardize our subsidy.  
18 Consequently I received a second quarter US  
19 Department of Transportation IG report  
20 chiding us for the fact that we may only end  
21 up \$103.9 million cash at the end of the year  
22 based on our projections at that time.



1                   A company as large as Amtrak needs  
2                   about 150 to 175 million dollars of cash on  
3                   hand to remain solvent because we have a lot  
4                   of bills that are paid every day. Our cash  
5                   flow issues are tremendous and everything  
6                   comes out of this bucket of cash, and I'll  
7                   talk about that more as I go on.

8                   It's interesting that a second IG  
9                   report for the third quarter when I had gone  
10                  over and told them what our cash at the end  
11                  of the year would look like, where we could  
12                  have approaching \$300 million in cash because  
13                  we were trying to make a pot of money so that  
14                  we could pay up to \$108 million for this lump  
15                  sum payment that we were contemplating, they  
16                  then said to the Congress that we didn't need  
17                  as much money.

18                  Instead of needing 475 million the  
19                  following year, we only needed 390. So, in  
20                  Washington, as you probably know, no good  
21                  deed goes unpunished.

22                  Q       Can you tell us about the economic

1 impact of the 1997 Accountability Act?

2 A Well, before I do that, can I just  
3 finish? I was just getting a drink of water.

4 Q Okay.

5 A Our costs consistently exceed our  
6 revenues. This has been since the very  
7 beginning of the company. We have no  
8 accumulated cash. There isn't a lock box or  
9 any other device that holds money that we can  
10 use for these purposes.

11 We have no assets to sell. We own  
12 virtually nothing. We've hocked everything  
13 we had. Our only source of funding for our  
14 operating loss is our Federal subsidy, and  
15 the money that we're talking about for a  
16 labor settlement comes out of our operating  
17 subsidy. Every day we lose \$1.3 million and  
18 every month that is \$40 million that we go  
19 further in debt.

20 Q Now, let's turn to the 1997 act.

21 A Thank you. Our economic challenges  
22 as a result of the 1997 act. We had the

1 Congressional mandate to become  
2 self-sufficient by 2002 and that led to, let  
3 me call them, profound management decisions,  
4 such as taking on debt to pay for operating  
5 costs, which is one of the first things you  
6 learn as a first year business student not to  
7 do.

8           We increased our debt over that  
9 time by \$2.7 billion. As you heard from Joe  
10 McHugh earlier, in the very early days of  
11 Amtrak, it was virtually debt free, but in  
12 buying new equipment and then accumulating  
13 debt to pay operating costs between 1997 and  
14 fiscal year 2001, our debt total soared to  
15 approximately \$4 billion. From nothing to \$4  
16 billion in less than a decade.

17           Most of our trains were sold to  
18 generate about \$100 million in cash that was  
19 used for operations and then leased back to  
20 the company in fiscal year 2000. New York  
21 Penn Station was mortgaged at a high interest  
22 rate, I believe usurious interest rate, of

1 9.9 percent for \$300 million to make payroll,  
2 as you heard earlier.

3 This will cost the company and the  
4 taxpayers who are subsidizing our debt  
5 service \$660 million in total by the year  
6 2017 when we pay off the mortgage.

7 The tragedy of the September 11,  
8 2001 terror attacks have added increased  
9 security and operations costs, for which we  
10 have received virtually nothing. I will have  
11 a graphic later on that shows all of our  
12 sources of appropriations. There's a little  
13 tiny blue sliver at the top that's other  
14 subsidies other than the three that we've  
15 mentioned and in there, there are some  
16 Homeland Security funds. But as you can see  
17 compared to what it has cost us already, they  
18 are very, very small.

19 By 2002, we had exhausted our  
20 ability to borrow and only averted a July  
21 shutdown due to an emergency appropriation of  
22 205 million. Practically every asset is

1 encumbered with debt.

2 Financial institutions. We used to  
3 have a line of credit from Bank of America.  
4 Financial institutions have declined to give  
5 us lines of credits. I've been up to Wall  
6 Street within my first six weeks here. I  
7 have pounded the pavement. I have knocked on  
8 the doors. We are not deemed credit worthy.  
9 One individual once told me if we were  
10 publicly traded, they would short our stock.

11 Q Can you turn to the numbers now and  
12 explain the next slide?

13 A Yes. This slide illustrates the  
14 period of fiscal year 2000 through 2007. The  
15 FY 2007 has capped four years of improving  
16 revenue. However, we're not yet up to the  
17 2002 revenue point. You'll have to notice,  
18 we had a profound drop and now we are slowly  
19 working our way back up, but not quite to  
20 where we were in 2002.

21 Also, in spite of a \$285 million  
22 increase in our subsidy, if you look at 2002,

1 you'll see that we got an emergency  
2 supplemental appropriation of 205 million and  
3 then we get in 2007, 485. That's an increase  
4 of 285 million in operating subsidy, and yet  
5 we're only \$68 million better in operating  
6 loss than we were in 2002. The bottom line on  
7 all of this is we're not making up ground  
8 financially.

9 Q What does this slide show?

10 A Well, this puts in a graphic  
11 prospective the information that you saw  
12 previously, and this shows the operating  
13 results over the past eight years. Except  
14 for 2001, which was an anomaly because there  
15 were extensive accounting adjustments made to  
16 our books. Our overall performance if you  
17 look at it, look, concentrate on the  
18 operating loss, our overall performance has  
19 been remarkably consistent and poor.

20 If there was only one slide that  
21 you should take away from my presentation, I  
22 hope that this would be it because this

1 distills down to the fact that although we  
2 have gone through ups and downs and  
3 everything, we are still financially fragile  
4 and will remain so probably for many years to  
5 come.

6 Q Can you explain the next slide  
7 relating to appropriation?

8 A Yes. I alluded to this a little  
9 bit earlier. If you can look at the very  
10 top, you'll see a little tiny blue sliver,  
11 which are other special grants, and included  
12 in that is some of the monies that we've  
13 gotten from Homeland Security. It pales in  
14 comparison to what we have spent on trying to  
15 improve security in a terrorist environment.

16 This slide illustrates our Federal  
17 appropriations over the past five years, as I  
18 said. Our operating grant, if you can look  
19 at fiscal year '04 -- and this has been a  
20 recurring theme you've heard from the three  
21 previous witnesses that we kind of start okay  
22 and then what whatever funding -- is that we

1 kind of start off okay and then whatever  
2 funding we get trails off.

3           And if you'll notice that in fiscal  
4 year 04, we had 598 million and it has  
5 steadily shrunk and tentatively the fiscal  
6 year 08 funding of 475 continues that  
7 downward trend.

8           Our debt grant covers the majority,  
9 but not all of our debt service. We  
10 typically have to kick in cash from the  
11 company of between 10 and 20 million dollars  
12 a year. So we're grateful for the Federal  
13 subsidy, but we do have to pay money that  
14 could probably be better served growing the  
15 company.

16           Amtrak's capital grant has not ever  
17 been funded at the \$600 million per year to  
18 reach a state of good repair within 10 years  
19 as originally planned. And if you look at  
20 this and you look at the other information  
21 that we have to look at, I don't see us  
22 coming up to a state of good repair in our



1 engineering infrastructure till probably  
2 sometime in the 2020s.

3 To date the state of good repair,  
4 if you add up these figures, we have been  
5 underfunded about a little over a billion  
6 dollars on where we should have been to date.

7 This slide shows our current  
8 economic situation. We're stable, but we're  
9 operating at a loss. Management has  
10 undertaken some significant efficiencies  
11 since fiscal year 05 that have a projected  
12 cost avoidance. We have '06 and '07 already  
13 and we're projecting in '08 cost avoidance.  
14 The total is \$150 million through that --  
15 through this year. That's a remarkable  
16 occurrence, but I will tell you there's a  
17 couple of things you should take a way from  
18 this slide.

19 One is the low hanging fruit is  
20 gone. If you notice, there's a decreasing  
21 amount for the cost avoidance. It is getting  
22 more and more difficult to find things that

1 we can do that will reduce our costs and,  
2 therefore, reduce our loss and, therefore,  
3 our dependence on an operating subsidy.

4           Also, we have made good progress in  
5 reducing our debt from almost \$4 billion.  
6 We're very proud of the fact that after the  
7 past five years, we've reduced it down to  
8 just a hair under 3.3 billion. Although that  
9 is good progress, the remarkable thing to  
10 look at is that at this rate, it will take us  
11 two decades to be debt free, and I have other  
12 reasons that I'll go into later where I think  
13 that is not going to occur for a whole bunch  
14 of reasons.

15           Our system capacity requirements  
16 and the end of life for a lot of our  
17 equipment, I believe that we're going to need  
18 between 1 and 2 billion dollars of capital  
19 from some source to pay for the equipment  
20 that we will need in the future.

21           You cannot repair and remanufacture  
22 equipment indefinitely. I kept ships going

1 over 56 years at the Coast Guard, but I have  
2 to tell you. They cost a lot more than a new  
3 ship by the time you get finished.

4 Amtrak, you heard earlier, is the  
5 single largest discretionary item in the DOT  
6 budget. We are on order of magnitude larger  
7 than the entire appropriation for the Federal  
8 Railroad Administration and that makes us  
9 somewhat of a target.

10 When I was the Chief Financial  
11 Officer for the Coast Guard, I was an organ  
12 donor for Amtrak every year of around 20 to  
13 25 million dollars and had a profound dislike  
14 for the organization because of it. So when  
15 we go to the halls of the Department of  
16 Transportation, we're not always met by  
17 friends.

18 We remain heavily dependent upon  
19 the Federal capital debt service and  
20 operating subsidies to continue functioning.  
21 Our inability to either retain funds year  
22 over year or to get a more generous Federal

1 subsidy means that our most likely funding  
2 source for new equipment is through adding  
3 debt. Going into the capital markets like we  
4 did for Acela and some of the other equipment  
5 that you heard about earlier.

6 This will increase our debt service  
7 and perpetuate a vicious cycle. So, as I  
8 said, our prospects aren't -- aren't rosy.

9 Q Can you walk us through this income  
10 statement?

11 A Yes. This slide depicts our fiscal  
12 year 07 income statement. I'll approximate  
13 the figures. Our total operating revenue was  
14 a little bit over \$2.1 billion. Our expenses  
15 were approximately just a little bit under  
16 2.6 billion and we had a net operating loss  
17 of \$429 million.

18 I would say that the reason our  
19 operating loss was so favorable was that we  
20 had a lot of one time things that came to  
21 fruition that we're not going to have in the  
22 future.

1                   Our engineering folks and  
2                   operations folks were able to save about 4  
3                   percent on our cost for diesel fuel by  
4                   operating the diesel locomotives differently.  
5                   Those practices are now in place. We won't  
6                   be able to get an additional 4 percent next  
7                   year.

8                   I heard a comment earlier about the  
9                   prices of fuel and so forth. We had done  
10                  some things like have financial hedges on  
11                  fuel. We are doing financial hedges this  
12                  year for electricity for propulsion and for  
13                  utilities, but we have not been able to find  
14                  any financial hedges for fuel oil that are  
15                  attractive. In other words, we would lose  
16                  money on each transaction.

17                  There is a bit of a hedge, a  
18                  physical hedge built in. When the price of  
19                  gasoline goes up, we have found that there is  
20                  often a flocking to rail. However, I'm  
21                  looking at -- I believe that we will probably  
22                  see a 20 percent increase looking at the

1 markets.

2 I've been buying fuel since the  
3 Navy days and looking at the markets, we will  
4 probably spend at least 20 percent more than  
5 the \$2.10 a gallon for number 2 diesel fuel  
6 than we did last year, and we have calculated  
7 some of that in our budget.

8 So we try to look forward and take  
9 these things into consideration, but we are  
10 also just as likely to have a recession. And  
11 if that occurs, I am unsure of what effect  
12 that will have on the jewel in our crown,  
13 which is the Acela travel between Washington,  
14 Boston and New York that is done by  
15 businessmen.

16 In the businesses I've been in,  
17 when times get hard, the first thing that  
18 gets cut is travel. So, if I could project  
19 and read the future, I wouldn't be sitting  
20 here. I'd be sitting at the beach because  
21 I'd be well off.

22 (Laughter)

1           A     I would like you to note two things  
2     on this slide just in passing.  The  
3     passenger-related revenue from our company  
4     was about \$1.7 billion.  If you take the  
5     salary, wages and benefits, it's about \$1.6  
6     billion.  So if you add fuel and power that  
7     we need to run, the trains it's 1.9 billion.

8                     So we're, you know, we don't even  
9     cover our costs with our revenue.  Before you  
10    get into all the other things that we have to  
11    pay for.

12           Q     Okay.  What does the pie chart  
13    show?

14           A     Well, this is to give a more  
15    graphic illustration of where our money goes,  
16    and I'd like you to concentrate on the fact  
17    that our human capital costs are 64 percent  
18    of Amtrak's total costs and we do have --  
19    most of the other things, except for fuel and  
20    electric power, are fairly fixed.

21                     We don't have a lot of flexibility  
22    in where we can make adjustments.  Any

1 increase -- one of the other things I've  
2 noticed in doing my due diligence to come to  
3 the company, any increase in wages exerts  
4 pressure to raise salaries.

5           We hear -- the first thing I heard  
6 when the police settlement came was we have  
7 wage -- we have salary compression for the  
8 management team and that has, quite frankly,  
9 been historic through Amtrak. I would  
10 imagine that any settlement with a labor  
11 agreement will put pressure to raise  
12 salaries.

13           So I kind of look at this as one --  
14 one issue. We will -- have with any labor  
15 agreement, we will have raises overall for  
16 all of our human capital.

17           Q Explain these economic projections.

18           A Yes. I apologize. I know that I  
19 like numbers, but not everybody does, and  
20 let's look at the economic projections for  
21 the three years covered under this round of  
22 the labor negotiations that we've been



1 talking about.

2 Under the most generous of  
3 circumstances and we are meeting some  
4 physical limitations. So I don't know if  
5 these numbers will be possible, but we have  
6 projected a growth of a million passengers a  
7 year each and every year. That is built into  
8 our economic projections and it sets kind of  
9 the cornerstone for how we can pay for our  
10 settlement.

11 This significant increase in  
12 ridership will result in year over year  
13 increases of \$100 million in '07 to '08 in  
14 revenue for ridership, 53 million in '08 and  
15 '09 and 75 million in '09 to '10. So, on  
16 average, about \$75 million each year.

17 The salaries that are listed here  
18 are probably too low, as I talked to you  
19 earlier about the compression that we have  
20 seen. We will probably have an upward  
21 pressure on salaries, but the most  
22 troublesome part, and hopefully you will get

1 a clearer picture from one of the following  
2 witnesses, is on the benefit costs.

3 We are seeing extraordinary --  
4 we're not immune to what's in the market for  
5 health care, and we are seeing an  
6 extraordinary growth in even perhaps over the  
7 projections we have here, which are  
8 considerable.

9 So, based upon the prevailing  
10 increases in health care across the country,  
11 I believe personally that these figures that  
12 we have are very conservative and may go much  
13 higher.

14 Even with these caveats, our net  
15 operating loss will grow significantly in FY  
16 09 and FY 10. So, this basically shows that  
17 we're not -- like I said, we're not getting  
18 any better.

19 The next three slides I'd like to  
20 go over fairly quickly. Slide 12 here just  
21 illustrates that even with Amtrak's proposal  
22 because the numbers that this is based upon,

1 we're not getting any better financially. I  
2 would like to put your attention on the  
3 yellow bars that are below the line there.  
4 That shows our loss.

5           Next here we have the operating  
6 capital and debt service need of Amtrak for  
7 the next three years also. And as you can  
8 see, we have significant growth only in  
9 capital and some of this is from states and  
10 other partners that are putting money in.

11           So we are holding the line on debt,  
12 which is fairly fixed. We are losing ground  
13 in operating subsidy as far as I'm concerned  
14 because our costs for human capital go up  
15 each year and the only growth that we can see  
16 is in our capital.

17           I'd like to draw your attention on  
18 this slide to the operating loss figures. It  
19 is highly unlikely that we are going to  
20 receive more than \$475 million. So the first  
21 column shows basically our operating subsidy.

22           The other two columns next to --

1 the other two figures in that same row show  
2 our projected operating loss. I have gone to  
3 the Office of Management and Budget. They  
4 have told me that the President will probably  
5 support the same level of funding that he did  
6 this year, which is in the neighborhood of a  
7 total -- you have to remember. We got about  
8 1.3 billion, of which 485 million was  
9 operating. That they will only support about  
10 8 or 900 million dollars for FY 09.

11 We will put our legislative and  
12 grant proposal in in February. We will  
13 incorporate the projected labor increases  
14 into our request. So, in going to the Hill,  
15 I have asked specifically if there was any  
16 possibility to get -- I started off asking  
17 for a 100 million more in operating.

18 When I was rebuffed, I dropped it  
19 down to 50 and then I still got no -- I got  
20 no sympathy. I was told that it is what  
21 we're going to get. You know, we're going to  
22 get this. We need to get better. We're not

1 going to get any more money. So.

2 As I said, it's highly unlikely  
3 that we're going to receive more than 475.  
4 So we have to make up this difference  
5 somehow. Therefore, Amtrak will either have  
6 to reduce expenses by 84 million additional  
7 dollars in FY 09 and 97 million dollars in FY  
8 10. This will be extremely difficult.

9 On capital and strategic needs  
10 moving forward, between our state of good  
11 repair, the increased capacity improvements  
12 that we believe we will need and other  
13 emerging issues, Amtrak's capital needs will  
14 significantly increase over today.

15 In recognition of these  
16 requirements, the Senate recently authorized  
17 -- and I'd like to take a few minutes to  
18 explain the difference between authorization  
19 and money because I think some people,  
20 probably not the Board, but it would be good  
21 for some in the audience to understand the  
22 three card Monty game that's played with the

1 language used on the Hill.

2           The reauthorization from the  
3 Senate, we do not have a reauthorization bill  
4 with the House. We are in negotiations and  
5 discussions right now with House staff. They  
6 would like to move on it. We will probably  
7 have something by the spring, maybe sooner,  
8 but we in talking with them, this \$11.4  
9 billion. There shall be no money  
10 appropriated unless it is authorized.

11           That is a rule that is often broken  
12 in Washington, but the usual thing is you  
13 have to have an authorization in order to get  
14 an appropriation. The appropriation is where  
15 the money is, and we have -- so think of the  
16 authorization as a top line, a ceiling which  
17 you cannot breach.

18           There's a good bit of an example  
19 here because in S 294 it has figures for  
20 fiscal year 08. We have a conferenced bill  
21 with both the House and Senate for FY 08. So  
22 you can compare what the authorization said

1 to what we actually got.

2 The authorization for operating  
3 subsidy was \$580 million. That's pretty  
4 good. We could probably take care of all of  
5 our issues if we were to get appropriations  
6 at that level, but we're not going to because  
7 when you look at the appropriation bill, we  
8 get around 80 percent at 475.

9 When you look at capital, which we  
10 have told you has been easier for us to get,  
11 when you look at the bill for the  
12 authorization, it's at the \$813 million level  
13 and yet 600 million is what came out of the  
14 meat grinder that they make the appropriation  
15 with. So 75 percent. So, looking at the  
16 authorization, you have to realize that it is  
17 highly unlikely that you're ever going to get  
18 there.

19 I would say it's kind of like my  
20 the weight on my driver's license. It's a  
21 target to work towards, but it's hard to get  
22 to. So there are going to be comparable

1 shortfalls in future funding, and I don't  
2 believe that looking at the authorization as  
3 the likely figure is at all reasonable.

4 Q Let's turn now to costs of labor  
5 settlements. Can you explain what this slide  
6 shows?

7 A Well, this slide is rather  
8 straightforward, and it shows the cost of  
9 labor settlements for both the PEB unions and  
10 all Amtrak unionized employees, and we were  
11 asked to assemble it this way. We have the  
12 cost of a 1 percent wage increase for both  
13 categories, the PEB unions and the others.

14 We have the cost of 1 cent per hour  
15 in wage increases and, finally, the cost of  
16 each \$100 increment of retroactive pay.  
17 These figures are a little bit of an  
18 approximation. You can see the footnote at  
19 the bottom. These figures we're derived by  
20 dividing all of the actual FY 07 straight  
21 time by 2,088 hours, which is for straight  
22 time a labor year for Amtrak.



1 Q What does the next slide show?

2 A This slide projects the cost of the  
3 labor settlement over the three categories  
4 shown on the previous slide. So, each PEB  
5 union and all of the remaining Amtrak unions,  
6 it presents the total employees per union and  
7 the resultant costs. I'm sorry. Am I  
8 looking at the right one?

9 Q I'm sorry.

10 A I have to keep my eye on you.

11 Q Okay.

12 A All right. As you can see, the PEB  
13 unions make up approximately 40 percent of  
14 our work force. The important thing is that  
15 in coming up with a decision by the Board for  
16 this particular group, you have to realize  
17 that this will basically set the standards  
18 for all settlements. You have to take  
19 whatever you're going to do and multiply it  
20 by about 2.4 and that's going to be our total  
21 cost.

22 This slide depicts the economic

1 projections without any labor costs. In  
2 other words, this slide establishes a  
3 baseline or a level playing field so that we  
4 can compare the effect of any of the labor  
5 settlements that we're going to talk about.  
6 The Harris COLA, Amtrak's proposal and the  
7 labor organization's proposal against one  
8 another.

9 Slide 19. This slide graphically  
10 illustrates the high level data from the  
11 previous slide and I don't think it's worth  
12 going over it.

13 This slide, the salient point in  
14 this exhibit is that Amtrak's proposal is  
15 \$102 million, \$130 million and \$157 million  
16 over the Harris COLA for the next three  
17 years. These are substantial increases.

18 It's interesting to note that these  
19 increases will absorb and exceed the  
20 increased revenue generated during that  
21 period, which I said we were betting that we  
22 were going to have fairly smooth sailing and

1 growth.

2 For instance, if you look at FY 08,  
3 we thought the revenue would grow 100  
4 million. This will cost us 102. About \$2  
5 million. A large company like us should be  
6 able to find \$2 million somewhere. When you  
7 get out to '09, the difference is 77 million  
8 that we will have to come up with somehow  
9 through efficiencies, and then in 2010 it is  
10 82 million. This is a significant challenge.

11 This slide shows the impact of the  
12 PRLBC proposal above Amtrak's proposed  
13 settlement. As you can see, the union  
14 proposal has a significant impact on Amtrak's  
15 net operating loss. It has grown rather  
16 remarkably. The effective difference in  
17 wages is about 61 million higher each year  
18 than the Amtrak proposal.

19 Amtrak does not have the ability to  
20 fund the retroactive pay that the unions are  
21 seeking. It is highly unlikely that Amtrak  
22 can pay the additional wages that the unions

1 are seeking over ours. I think we -- I think  
2 we went to the wall when we came up with the  
3 figures that we established.

4 Just to explain STE, the term STE.  
5 Per STE means straight time employee. That's  
6 an equivalent so we can keep the math  
7 straight.

8 You need to understand that these  
9 figures could be significantly higher if the  
10 union gets what I understand is their request  
11 to have retroactive pay for employees that  
12 left Amtrak during this period.

13 Our proposal for a lump sum is  
14 based upon active employees today, and I  
15 understand that there could be a significant  
16 amount of people who have left the company in  
17 the interim period that would be covered, and  
18 those figures would be on top of what I'm  
19 showing you at this moment.

20 But even so, if you just take it  
21 and compare the figures as both being about  
22 15,400 employees, the total amount is

1 approximately \$250 million. It's assumed  
2 that the -- it is also assumed that unions  
3 that have prior settled wage increases would  
4 not receive retroactive pay and that would  
5 reduce this amount by \$93 million and bring  
6 us down to 156 over what we are proposing.

7 Amtrak has budgeted for its  
8 prospective lump sum payment of \$4500 per  
9 active employee plus tax and the prospective  
10 pay raise. Our ability to pay any settlement  
11 depends upon the amount and timing of our  
12 Federal subsidy payments.

13 We're currently under a continuing  
14 resolution which has adversely impacted our  
15 cash position. You've got to remember. We  
16 only have one checkbook. We only have one  
17 cash account. We pay everything out of that.  
18 We pay this out of that. We would pay for  
19 fuel. Everything comes out of it, and we  
20 believe that we have a budget that will pay  
21 for what we have proposed.

22 It may involve some timing. For

1 instance, I was prepared before the end of  
2 last fiscal year to pay our lump sum payment.  
3 That did not occur and our money is not  
4 uniform across the year.

5           It goes in cycles and it appears  
6 like farming. Things are rough in the  
7 winter. After the fiscal year starts, we  
8 start to hemorrhage cash and it's only when  
9 we get our appropriation, which we don't have  
10 yet, that we get an influx of money and then  
11 on a quarterly basis we get influx and  
12 towards the end of the year, the end of our  
13 fiscal year, we have accumulated cash. So,  
14 timing on any settlement will be critical  
15 with our ability to be good partners and pay.

16           Even under Amtrak's proposal, we  
17 will lose \$1.6 billion during the proposed  
18 agreement. The union's proposal seeks \$156  
19 million in retroactive pay. This would  
20 require a 33 percent increase in our Federal  
21 operating subsidy and like getting to my  
22 weight on my driver's license, this is not

1 going to happen.

2 Amtrak has no way to retain funds a  
3 year over year to reserve the funds. In  
4 between 2000 and 2007, we were unable to. In  
5 other words, Amtrak does not have any way to  
6 fund the retroactive pay sought under the  
7 PRLBC proposal.

8 In my opinion, granting the PRLBC  
9 retroactive proposal will precipitate another  
10 financial crisis in the next two or three  
11 years. Just like the 1997 labor agreements,  
12 these effects are long lived and take a  
13 while, but if we don't have enough money, we  
14 will eventually get in trouble.

15 We require about \$75 million -- we  
16 use \$75 million in cash every two weeks.  
17 It's prudent for us to have about 150 million  
18 on hand so that we can last a month, which is  
19 not an unreasonable amount of time.

20 Those conclude my prepared remarks.  
21 I'll be happy to answer any questions from  
22 the committee.

1                   CHAIRMAN TREDICK: Thank you, Mr.  
2 Campbell. Let me start down here with Mr.  
3 Jaffe.

4                   MR. JAFFE: Thank you. In terms of  
5 the cost for the lump sum payments, that's  
6 approximately 70 million?

7                   THE WITNESS: I thought that  
8 looking at the -- I had calculated it a  
9 little bit differently.

10                  MR. JAFFE: Okay.

11                  THE WITNESS: I am conservative. I  
12 had looked at the number of people on hand at  
13 the time that we were calculating it. There  
14 were just a few under 16,000. I believe it  
15 was 15,992. I took the 13,000 -- I took the  
16 \$4500 that we had offered and multiplied it  
17 by 1.1927, which adds the railroad retirement  
18 tax, and I thought it was in the neighborhood  
19 of \$95 million, but I can check that for you  
20 and get back to you if you require that.

21                  MR. JAFFE: Just so I understand,  
22 is that something that was in the budget for



1 last year and that you're retaining with a  
2 less than one year?

3 THE WITNESS: No, there was nothing  
4 -- there was nothing in the budget for last  
5 year.

6 MR. JAFFE: Okay.

7 THE WITNESS: There was nothing in  
8 the budget, but we had come up since the  
9 company had made a change in its approach to  
10 trying to resolve this, had come up with  
11 this. We had looked at what was within our  
12 capability and it was within our capability.  
13 As I said, we need about \$150 million.  
14 Towards the end of last year, we had cash on  
15 hand of about 250.

16 So we could have paid the lump sum  
17 and had enough cash so that we wouldn't get  
18 ourselves in trouble through the fiscal year.

19 MR. JAFFE: Okay. And so were  
20 those monies segregated on an interim basis  
21 in some way?

22 THE WITNESS: No, no. There is no

1 -- I explained earlier. There is no second  
2 income, no lock boxes.

3 MR. JAFFE: Nothing.

4 THE WITNESS: We have no separate  
5 accounts. There is only one account. Would  
6 it? If I could, I would like to get some  
7 type of legislative language or statute that  
8 would allow us to save up money year on year  
9 because normal companies have what's known as  
10 owner's equity.

11 They take the profits that they  
12 generate. They put a substantial part into  
13 owner's equity so that they can live through  
14 the bumps and turmoil that comes from time to  
15 time with a company that you're not  
16 expecting.

17 We could have something -- you  
18 mentioned earlier fuel. We could have some  
19 bizarre thing where our fuel costs go through  
20 the roof or our electrical costs. I live in  
21 Maryland. I'm a BG&E customer. My  
22 electrical rates, utility rates went up 72

1 percent this year.

2 Amtrak can't -- can't respond to  
3 that because we're in this straitjacket. We  
4 are not allowed to have any money and when we  
5 lose money, then we're given money by the  
6 Federal government to make it up, but we're  
7 not allowed to accrue any -- to retain any  
8 funds, which causes these problems. If we  
9 don't hit everything right on the  
10 projections, then we look like we're  
11 mismanaging.

12 MR. JAFFE: Fair enough. Thank  
13 you.

14 MS. WITT: You've been talking  
15 about the various sources of funds and how  
16 they change, but one thing I wish that I knew  
17 a little bit more about was the fare box.  
18 For example, how much of what Amtrak has  
19 comes from passengers and to what extent can  
20 the amount that you charge change so that you  
21 look a little bit more like a business --

22 THE WITNESS: Right.

1 MS. WITT: -- who passes the cost  
2 increases onto the customers?

3 THE WITNESS: Right. This is not  
4 an area that I'm responsible for, but I am  
5 knowledgeable about it and I hope that if I  
6 do not give you a correct answer, I will make  
7 sure that it is corrected.

8 My understanding is that unlike  
9 public transit, I came over here on the  
10 Metro. The Metro is subsidized 50 cents of  
11 every dollar in the fare box. In other  
12 words, a 1.80 ride somewhere, the governments  
13 that support Metro are making up one-half of  
14 that 90 cents.

15 On the other hand, there was just a  
16 benchmarking study that was done by VIA Rail,  
17 our sister organization in Canada, and we  
18 were in that comparison and we do remarkably  
19 well. I believe we're in excess of 80 cents  
20 on the dollar.

21 I believe that the last thing I saw  
22 on operating, we recover 86 cents of every

1 dollar that is spent on our transportation,  
2 our operating costs. So, in that regard, I  
3 think that we're a remarkable bargain. Can  
4 we get better? I hope so.

5 But when you look at the  
6 alternatives, you know, the people that we  
7 compete with for a lot of passengers receive  
8 very large subsidies in other ways, shapes  
9 and form through taxes from trust funds, you  
10 know, appropriations through trust funds and  
11 so forth.

12 So I think we have much to be proud  
13 of on our recovery. As far as generating  
14 more revenue, we have a very robust. We're  
15 getting complaints about raising our rates  
16 and in the past when we have raised our  
17 revenues -- I'm sorry. It's 76 cents that we  
18 recover and we've had two fare increases per  
19 year, and this is the first time that I know  
20 of where we have increased fares and we have  
21 not lost ridership.

22 Now, part of that is kind of a dual

1 -- a two-edged sword. One is the soaring  
2 costs of gasoline have gotten people. I take  
3 the MARC train to work. The parking lot is  
4 packed. The trains are packed.

5           The other thing is people don't  
6 like the way they're treated necessarily when  
7 they're going through airports and the delays  
8 on aviation, but can we -- can we depend upon  
9 those things always in the future? We think  
10 that we need to give better performance as  
11 far as on-time performance of our trains,  
12 better reliability. We want air conditioning  
13 and heating and ventilation systems that  
14 work. We want food that is good for our  
15 passengers that get meals and so we still  
16 have to work.

17           But I will say that I think we're  
18 doing a pretty good job. We'd like to do a  
19 better job, but you got to remember. There  
20 are sources and uses of funds. We know what  
21 the sources are. Basically our own revenue  
22 and our subsidies.

1                   The users are, if this costs me  
2     \$100 million for a settlement over and above  
3     what I thought I was going to spend, that's  
4     \$100 million I can't put into new equipment.  
5     That's \$100 million I can't put into  
6     something else, and so you have to balance it  
7     and it's really difficult.

8                   When you're losing money all the  
9     time, you don't have a lot of choices. When  
10    you're dependent upon the kindness of others  
11    like Blanche Dubois, you don't get a lot of  
12    influence over how things turn out.

13                  MS. WITT: Thank you.

14                  MS. SANDBERG: I have a question  
15    about your CR situation. You're currently  
16    under a CV and likely to be under one for  
17    some time?

18                  THE WITNESS: We've heard the 31st  
19    of March and then I heard that it may be the  
20    entire year as last year was.

21                  MS. SANDBERG: Right. So like  
22    every other Federal agency then, you only

1 receive funds for the period of the current  
2 CR?

3 THE WITNESS: Yes, that's why I  
4 have a cash flow problem.

5 MS. SANDBERG: And if you're able  
6 to settle this today, you would not be able  
7 to pay this \$4500 lump sum?

8 THE WITNESS: I might be able to  
9 because as of today, I believe I have about  
10 \$200 million. I'm anticipating a payment by  
11 the end of this month for additional monies.  
12 So.

13 MS. SANDBERG: You're close?

14 THE WITNESS: I am close. You  
15 know, I don't get a lot of sleep, you know,  
16 at night. I worry about this because we are  
17 in a tenuous position. We might, you know,  
18 if the -- if we get closer towards the end of  
19 the fiscal year because as I said, we do  
20 better, you know, it's kind of like farming.  
21 The crops come in towards the fall and things  
22 are good but during the winter -- it's really



1 rough.

2 MS. SANDBERG: Thank you.

3 MR. JAVITS: I would just maybe  
4 following up a little on that question. I  
5 take it Amtrak's got a severe cash flow  
6 problem as a general statement.

7 THE WITNESS: Yes.

8 MR. JAVITS: Spreading out payments  
9 such as retro over a period of time, even  
10 phased in within one fiscal year or phased in  
11 within over more than one fiscal year, is  
12 something that it would be more digestible to  
13 Amtrak if they had to do it?

14 THE WITNESS: Theoretically, you're  
15 correct, but from a practical purpose, if you  
16 take -- if you take the \$156 million and you  
17 put it over three years, let's say it's 50 --  
18 it's \$52 million a year. You add that to  
19 the, you know, you add that to the  
20 considerable amount that we're doing for  
21 wages 124, 144 and 166, it quickly becomes --  
22 we would just, as I said earlier, if we have

1 this kind of settlement we might be able to  
2 stumble along for a period of time, perhaps a  
3 year, maybe two years.

4 We may be forced into making really  
5 significant management decisions to keep  
6 ourselves afloat but eventually the chickens  
7 will come home to roost and by year three, it  
8 would be my prediction we would have a  
9 significant emotional event where we're going  
10 to be going out of business.

11 The first thing I learned in  
12 business school is don't run out of cash.  
13 This settlement, whether you cut it over a  
14 three-year period or you put it in one lump  
15 sum, is a use of cash that we can't recover.  
16 So the fact of making it more palatable by  
17 stretching it out while I said that's  
18 technically, theoretically doable, from a  
19 practical standpoint, I don't think that we  
20 would have the cash to do it.

21 MR. JAVITS: That is the total that  
22 the unions are seeking here --

1 THE WITNESS: Yes.

2 MR. JAVITS: -- you are describing?

3 THE WITNESS: Yes.

4 MR. JAVITS: Thank you.

5 THE WITNESS: If you add their wage  
6 difference on top of ours, which is another  
7 \$61 million a year, it gets even worse.

8 CHAIRMAN TREDICK: Thank you, Mr.  
9 Campbell. I suggest we take a break until  
10 about 3:15. Is that okay with counsel?

11 MR. GUERRIERI: Fine. Thank you.

12 CHAIRMAN TREDICK: Take a break  
13 until 3:15.

14 (Recess)

15 CHAIRMAN TREDICK: Please come to  
16 order. Thank you. Again, the normal  
17 admonition to turn your cell phones back off,  
18 please. Okay. Thank you.

19 Are we ready to proceed?

20 MR. HAVERMANN: Yes, we are.

21 CHAIRMAN TREDICK: Okay. Thank  
22 you.

1 MR. HAVERMANN: My name is Tom  
2 Havermann and I am Tom Reinert's partner in  
3 Morgan Lewis. I like to present Amtrak's  
4 next witness. Mr. Tom Rand.

5 CHAIRMAN TREDICK: Please.

6 MR. HAVERMANN: To discuss health  
7 benefit issues. Mr. Rand is a principal in a  
8 consulting firm of Kennedy & Rand Associates.  
9 Formerly the head of office of Aon Consulting  
10 here in the Baltimore Washington area. Mr.  
11 Rand has also testified as an expert witness  
12 in a number of labor contract interest  
13 arbitrations for the Postal Service.

14 He's testified before the  
15 President's commission on the Postal Service  
16 and served for a number of years on the  
17 United Mine Workers combined health fund  
18 between the period '92 and 2007 as a trustee  
19 of the fund, and that fund provides retiree  
20 medical benefits to at the outset over  
21 100,000 minors and dependents. So, Mr. Rand.

22 CHAIRMAN TREDICK: Mr. Rand, before

1 you start, we're swearing with witnesses.

2 THE WITNESS: Thank you.

3 Whereupon,

4 THOMAS O.S. RAND

5 was called as a witness and, having been first  
6 duly sworn, was examined and testified as follows:

7 DIRECT EXAMINATION

8 CHAIRMAN TREDICK: Welcome, Mr.  
9 Rand. Please proceed as you see fit.

10 THE WITNESS: Thank you. I  
11 appreciate this opportunity to talk with the  
12 panel today about a subject of considerable  
13 importance to the Postal Service and that's  
14 the subject of their health and welfare  
15 benefit plans and the cost of those plans.

16 Amtrak union employees receive  
17 their health and welfare benefits under a  
18 plan called AmPlan, which was a plan adopted  
19 by Amtrak in 1997, and I'll give the Board a  
20 little more information about that background  
21 momentarily.

22 I'm also going to talk about

1 Amtrak's proposal compared with the proposal  
2 of the Passenger Rail Labor Bargaining  
3 Coalition. That was the only proposal that  
4 we had in hand when we were preparing the  
5 written submissions to the Board. However,  
6 we've since received and have reviewed the  
7 other proposals, and they appear essentially  
8 the same from the other unions before this  
9 Board, with perhaps one minor difference.

10 Finally, I believe my testimony  
11 will demonstrate to the Board how the  
12 proposals that Amtrak has made with respect  
13 to AmPlan are entirely consistent with past  
14 practice and entirely reasonable, considering  
15 Amtrak's financial situation and the  
16 continuing need for cost containment  
17 vigilance with respect to these plans.

18 As the Board is aware, Amtrak is a  
19 creature of the Congress. It was created by  
20 an act of Congress in 1970. In the early  
21 years, it wasn't altogether clear that Amtrak  
22 was actually going to be operating railroad

1 functions, actually running a railroad.

2 In fact, the early business models  
3 included a model under which Amtrak might  
4 have acted as a manager and contractor and  
5 leased those operations from the freight  
6 rails, which had previously provided  
7 passenger rail service.

8 It became clear fairly early on,  
9 however, that that business model was not  
10 workable. When the freights decided they  
11 wanted to get out of the passenger rail  
12 business, they really wanted to get out of  
13 the passenger rail business. So there was no  
14 possibility of Amtrak entering into  
15 contractual arrangements that would have been  
16 satisfactory to proceed along those lines.

17 So, in the course of the next few  
18 years, after the Board of Incorporators  
19 created Amtrak in 1970, Amtrak continued to  
20 take on passenger rail operations from  
21 various freight lines that had previously  
22 undertaken those operations and in the

1 bargain, they took on union employees. And  
2 those union employees were then covered under  
3 a National Plan maintained for the freight  
4 plan industry under a joint agreement between  
5 the unions and the freight roads that made up  
6 part of that National Plan.

7           Nonetheless, even though that was a  
8 sensible approach to undertake at the outset,  
9 it became clear over time that those costs  
10 were increasing faster than any other labor  
11 cost within Amtrak and were reaching levels  
12 that made it very difficult to continue the  
13 arrangements as is.

14           My firm was then serving as the  
15 benefit consultant for Amtrak and in  
16 consultation with Amtrak, we began to review  
17 in 1987 the prospect of Amtrak's withdrawing  
18 from the National Plan and establishing its  
19 own separate plan.

20           The rationale behind that decision  
21 was very simple. In that first 15 years or  
22 so of operations, Amtrak's union labor



1 complement had grown from zero to over 20,000  
2 participants and had stabilized at that  
3 20,000 employee level.

4 Over that same period, the freight  
5 plan, by way of contrast, had seen  
6 participation in the plan drop by more than  
7 half. So there was the expectation that that  
8 effect on the average age of the covered  
9 participants would create a financial  
10 advantage to Amtrak if they set up their own  
11 separate plan separately experienced rated  
12 apart from the freight plan.

13 When Amtrak began discussions with  
14 the unions about that possibility, the unions  
15 objected and ultimately the matter went to  
16 arbitration before Arbitrator Nicholas Zumas  
17 in 1990.

18 Arbitrator Zumas, in fact,  
19 authorized Amtrak, found that Amtrak had the  
20 contractual right to withdraw from the  
21 freight plan, but he also laid down a  
22 standard that Amtrak has made every effort to

1 maintain over the years since the plan was  
2 established.

3 That standard was equivalency, not  
4 identical benefits to the freight plan, but  
5 benefits that were substantially equivalent  
6 to those provided under the freight plan.

7 Though Arbitrator Zumas reached  
8 that decision in 1990, Amtrak did not, in  
9 fact, establish this separate plan until 1997  
10 and there was a financial reason associated  
11 with that.

12 The National Plan at that time had  
13 accumulated substantial reserves. In other  
14 words, the premiums that the freight  
15 railroads, along with Amtrak, were paying  
16 into the plan had been in excess of what was  
17 required to pay claims and administrative  
18 expenses over that period.

19 So, the National Plan adopted  
20 procedures under which effectively those  
21 reserves were drawn down in the period after  
22 1990, and it was fair and reasonable for

1 Amtrak to remain in the National Plan because  
2 they had contributed substantially to the  
3 accumulation of those reserves. In fact,  
4 they probably contributed more than their  
5 fair share because of their different  
6 demographic characteristics and their covered  
7 work force.

8           In 1997, however, AmPlan was  
9 established and it was established under  
10 something called the Joint Medical  
11 Administrative Committee, or otherwise known  
12 as JMAC. JMAC is comprised of equal numbers  
13 of Amtrak management and labor  
14 representatives and is responsible for the  
15 administration and essentially the oversight  
16 of AmPlan for the union employees.

17           And as I'll show momentarily, while  
18 the benefit structure has been largely based  
19 on the National Plan, there's been a  
20 consistent pattern since 1997 of adjustments  
21 in benefits under AmPlan that have created  
22 some divergence from the benefits provided

1 under the National Plan.

2 At present, AmPlan covers  
3 approximately 16,000 employees and, as Mr.  
4 Bress and Mr. Campbell have previously  
5 testified, about 40 percent of that full  
6 complement are in the unions that are before  
7 this Presidential Emergency Board.

8 Over time while Amtrak has  
9 generally retained the national benefit  
10 levels, there have been different  
11 accommodations at different points in time to  
12 Amtrak's specific needs. Some of those  
13 changes have represented additional benefits  
14 to employees at additional cost to Amtrak,  
15 more generous benefits, and some have gone  
16 the other way, consistent with Amtrak's  
17 continuing desire to seek cost containment  
18 measures in this important area.

19 Here I've summarized some of the  
20 differences that have emerged over the years  
21 and I don't propose to read each of these to  
22 the Board, but I will describe some of what I

1 see as the key differences between AmPlan and  
2 the National Plan that have emerged since  
3 1997.

4 First of all, the emergency room  
5 copayment under the National Plan was \$30  
6 prior to the 2007 agreements, but with a  
7 provision that if the claimant could show  
8 proof that the emergency room visit was  
9 occasioned by an actual emergency and not  
10 simply for routine medical care, there was a  
11 \$15 refund.

12 AmPlan changed its benefit to  
13 provide a \$15 copayment across the Board.  
14 So, there was no need for this showing of  
15 proof and refund arrangement.

16 Another area involved childhood  
17 immunizations. Amtrak modernized the list of  
18 childhood immunizations that were covered  
19 under the plan in accordance with guidelines  
20 from the American Academy of Pediatrics and  
21 the Centers For Disease Control, and also  
22 removed the limitation that no childhood

1 immunization was available after age six,  
2 which was a part of the National Plan.

3 Amtrak also eliminated the maximum  
4 limitation for hospice care, which was a more  
5 generous benefit that was extended to  
6 Amtrak's employees, and then obviously the  
7 most important, and the Board through their  
8 own experience with medical plans understands  
9 how this works. There was never any  
10 prospect, in fact, it hasn't been the case  
11 over a very long period of time that  
12 employees in a particular time and place  
13 would have access to the same networks.

14 AmPlan was using different health  
15 care vendors, and in certain situations if  
16 you were an Amtrak employee and your hospital  
17 or your provider was in the network, you got  
18 a very different benefit from the benefit  
19 provided a freight road employee whose  
20 hospital or benefit provider wasn't in the  
21 network and vice versa.

22 In addition to those differences

1 that simply evolved over that period of time,  
2 certain differences were also incorporated  
3 into the 2003 agreements, which Mr. Bress  
4 talked about earlier with TCU, ASWC and  
5 ARASA-OBS. All of these are important and  
6 all of them are essentially reflected in  
7 Amtrak's proposal before this Board.

8           First, Amtrak in AmPlan changed the  
9 disability extension feature with the unions  
10 in these agreements. The old disability  
11 extension feature and the one which still  
12 applies to the unions before this Board  
13 provides that if an individual becomes  
14 disabled, he or she receives that extension  
15 until the end of the second year after the  
16 year in which the disability occurred.

17           So, the benefit duration or the  
18 extension duration is potentially very  
19 different. It can be as long as two years  
20 and 364 days and as short as two years and  
21 one day.

22           Under the agreement negotiated with

1 these unions in 2003 and 2004, that  
2 disability extension was changed to a uniform  
3 consistent limit of 24 months, regardless of  
4 the date that the disability occurred.

5 In addition, the freight plans had  
6 an opt-out payment of \$100 monthly and that  
7 opt-out payment has been around for a number  
8 of years. AmPlan has never had an opt-out  
9 payment and no opt-out payment was agreed to  
10 in the negotiations with those unions in 2003  
11 and 2004.

12 And then, finally, the  
13 contributions under those agreements were  
14 different from the freight plan agreements.  
15 The freight plan contributions were set at  
16 \$80 per month per employee. Under AmPlan,  
17 the contributions were set at an initial  
18 level of \$50 monthly, increasing later to \$75  
19 monthly and, as Mr. Bress has testified,  
20 adjusted based on what happens with the COLA.

21 I think this is a particularly  
22 important slide for the Board's information



1 because what it does is illustrate  
2 emphatically how rapidly medical care costs  
3 have grown under AmPlan and, of course,  
4 that's a problem that Amtrak shares with  
5 virtually every other employer in the United  
6 States.

7           We've shown here the progression in  
8 those costs expressed on a per participant  
9 basis from 1999 through the current year,  
10 through 2007 on an estimated basis.

11           At the beginning of that period in  
12 1999, Amtrak's total costs per employee per  
13 month were less than \$5500. Those costs have  
14 increased to over \$12,800 at the end of that  
15 period, which is a compound rate of increase  
16 over the period of more than 11 percent. And  
17 at that rate of increase, these costs double  
18 in less than seven years. So, approximately,  
19 every six and a half years.

20           So, this is an element of Amtrak's  
21 concern. It is why cost containment and cost  
22 containment vigilance is necessary. That's

1 especially the case because while at the  
2 beginning of the period Amtrak, in fact,  
3 received very substantial economic benefits  
4 by withdrawing approximately 50 to 60 million  
5 dollars over this 10-year period, at present  
6 the costs, given Amtrak's more recent decline  
7 in union participation between AmPlan and the  
8 National Plan, are approximately the same.

9           So, this is an area that Amtrak  
10 simply must, given its financial, situation  
11 remain in constant vigilance about.

12           I should also -- I should make one  
13 other point on this, too, and that is either  
14 under the PRLBC proposal or Amtrak's  
15 proposal, those costs will come down in 2008  
16 because both of those proposals entail very  
17 significant cost savings in the first year  
18 that they are adopted.

19           This slide is another slide I think  
20 that conveys important information to the  
21 Board. What we're showing here in the blue  
22 bar on the far left is the current annual

1 costs of medical benefits per employee, and  
2 we show those costs separately for those  
3 unions that have not reached settlements and  
4 the unions that settled in 2003 and 2004.

5 As the panel can see, those costs  
6 are approximately \$14,000 for the non-settled  
7 group versus somewhat less than that, closer  
8 to 11,000, a little more than \$11,000 for the  
9 settled groups. On average, the costs are the  
10 \$12,800 that were referenced in the previous  
11 slide.

12 We've compared those costs with  
13 costs reported by the Bureau of Labor  
14 Statistics for all private sector workers and  
15 we've separated those costs for BLS union  
16 costs and BLS nonunion costs.

17 We've also compared these costs  
18 with the FEHB plan. We included that  
19 comparison because that plan is often held up  
20 and I would suggest very often held up in  
21 this political season as a model plan for  
22 employer-provided health benefits.

1           In all three of those comparisons,  
2           the Board can see that the cost in the  
3           private sector generally and among Federal  
4           employees is considerably lower than what  
5           Amtrak is currently incurring, whether you're  
6           referencing the settled groups or the  
7           non-settled groups.

8           That generosity is reflected in  
9           part on plan cost, which is the data on the  
10          previous slide, but it's also reflected in  
11          the specific provisions of the plan.

12          In this table, which I don't  
13          propose to go through in any detail for the  
14          Board, the Board can see that with respect to  
15          the non-settled and settled benefits that  
16          Amtrak's benefits are at least equivalent to  
17          those plans that we've chosen for comparison  
18          and we've chosen two.

19          One is the FEHB Blue Cross Standard  
20          option plan. That plan, indeed, is the  
21          standard in the Federal system since it  
22          covers approximately half of all Federal plan

1 participants, and we've also compared those  
2 features with features under private sector  
3 plans as reported in two major surveys.

4           In every instance, the features of  
5 Amtrak's plan show that it's a generous plan  
6 compared with those comparisons and that it  
7 provides at least equivalent benefits in each  
8 of those areas.

9           This slide I think really gets us  
10 to the meat of the proposition that I believe  
11 is before the Board here. There, in fact, is  
12 a very nominal difference between the PRLBC  
13 proposals and Amtrak's proposals in terms of  
14 cost.

15           What we've shown here in the first  
16 bar is the cost of the current plan, and then  
17 we've shown in the next two bars the  
18 decrement to that cost that Amtrak will  
19 realize in the initial year of a new  
20 agreement under either the PRLBC or Amtrak's  
21 proposal.

22           Under either of those proposals,

1 the monthly contribution is exactly the same.  
2 \$166.25 monthly or approximately \$2,000 a  
3 year. Under the Amtrak proposal, the benefit  
4 reductions Amtrak is proposing are worth  
5 about 5.7 percent of the total cost.

6 The benefits in the PRLBC proposal,  
7 which follows the freight plan, are worth \$48  
8 per employee per month. It isn't much of a  
9 difference in terms of the impact on a  
10 particular employee, but the Board must keep  
11 in mind that these differences are spread  
12 over 16,000 employees, or at least the 6600  
13 that are the subject of this particular  
14 proceeding.

15 In the latter instance, that  
16 difference is worth \$1.7 million a year in  
17 cash expense to Amtrak. In the case of the  
18 entire complement of \$16,000, it's worth \$4  
19 million a year, and that difference will  
20 continue to grow because these health care  
21 costs will continue to grow. So that that  
22 spread will be \$21.17 into the first year,

1 but it will grow by that difference in health  
2 care costs in future years.

3 I should also point out that a  
4 portion of this difference is offset because  
5 Amtrak proposes to levy contributions on a  
6 different basis from the way those  
7 contributions are calculated under the  
8 freight plan, and I'll comment on that in  
9 more depth shortly.

10 This slide is just another way of  
11 graphically illustrating both this problem  
12 and where this problem will go without action  
13 by this Board and without these changes over  
14 the next five years. The green line shows  
15 where Amtrak's monthly cost per employee is  
16 expected to go in the period from 2008 to  
17 2012.

18 We show all plans net of employee  
19 contributions. There are virtually no  
20 contributions except -- in fact, there are  
21 none but for the settled groups in AmPlan  
22 currently, and this is really dealing with

1 these costs for the non-settled groups before  
2 this Board.

3 In the next two lines, the blue  
4 line and the orange line below, those  
5 represent the nominal difference expressed on  
6 a per employee per month basis, taking into  
7 account the giveback that is associated with  
8 Amtrak's more favorable method of computing  
9 employee contributions.

10 So those differences, again, while  
11 nominal in terms of the effect on a  
12 particular employee, are significant because  
13 the numbers of employees are what they are.

14 It's very simple to express the  
15 difference between Amtrak's proposal and that  
16 of the PRLBC. The PRLBC wants to return, in  
17 effect, to a reference point that hasn't been  
18 the reference point for AmPlan in many years  
19 and that is essentially as complete identity  
20 as possible with the freight plan.

21 Amtrak's proposal, on the other  
22 hand, proposes to largely follow and to honor



1 the initial objective set forth in the Zumas  
2 award of essential equivalency to the freight  
3 agreement plans, but with minor modifications  
4 to suit Amtrak's cost containment needs and  
5 to also continue consistency with past  
6 practice and to ensure consistency across  
7 Amtrak's population that's covered under  
8 AmPlan.

9           And this and the next two slides  
10 that I'm just going to comment briefly, and  
11 these illustrate for the Board the  
12 differences on essentially a  
13 benefit-by-benefit basis. And they also  
14 illustrate the point I made earlier that some  
15 of these differences are, in fact, beneficial  
16 to Amtrak employees, and we've highlighted  
17 those two areas in the green in this  
18 material.

19           Under Amtrak's proposal, the  
20 copayment for a visit to an urgent care  
21 center is more favorable than under the PRLBC  
22 proposal, which follows the freight plan

1 essentially to the letter.

2 In addition, there is a mandatory  
3 generic penalty associated with the operation  
4 of the freight plan prescription drug  
5 benefit, in the absence of a  
6 dispense-as-written note from the prescribing  
7 physician.

8 Amtrak has simply removed that  
9 dispense-as-written penalty from its  
10 proposal. Each of those areas represents a  
11 benefit to the employee and an additional  
12 cost to Amtrak.

13 The other areas, without going  
14 through them one by one, as the Board can  
15 see, none of them are particularly important  
16 in terms of the cost viewed in isolation and,  
17 in fact, in the aggregate, taking into  
18 account both the additional cost to Amtrak  
19 and the savings to Amtrak based on these  
20 other areas, the difference is only \$7.02 per  
21 month per employee in the medical plan area.

22 In the other areas that are covered

1 under AmPlan -- and those are these; health  
2 benefits, life and AD&D benefits, vision  
3 benefits and supplemental sickness benefits  
4 -- there are differences that essentially  
5 represents Amtrak's proposal, which is to  
6 maintain the status quo and those differences  
7 are roughly double the differences in the  
8 medical plan.

9 About two-thirds of the difference  
10 in this other area is maintaining the  
11 supplemental sickness benefit at current  
12 levels. In combination, the total additional  
13 savings to Amtrak if all of these proposals  
14 are adopted is \$21.17 per month per employee.

15 As I indicated earlier, some of  
16 that savings is going to be offset because  
17 Amtrak has proposed a different way of  
18 calculating the change in premium.

19 Under the freight plan agreement,  
20 that plan is a calendar year plan year and  
21 those agreements provide that the plan  
22 contribution, the employee contribution will

1 requirement will change each year on January  
2 1.

3 AmPlan has run its accounting for  
4 years on a July 1 to June 30th basis and  
5 that's, in part, to satisfy the budgeting and  
6 planning needs that are associated with  
7 Amtrak's September 30 fiscal year, which  
8 coincides with the Federal government's  
9 September 30 fiscal year.

10 In the first year, there's likely  
11 to be a slightly additive cost in Amtrak's  
12 method. What Amtrak's method will do is it  
13 will look retrospectively at past plan  
14 experience for the purpose of calculating the  
15 employee's share of the cost as those changes  
16 occur.

17 Basically what happens is that  
18 \$166.25, which is denominated for the first  
19 period, is then changed to 15 percent of  
20 most, but not all, of the AmPlan cost. So it  
21 will be calculated not just on medical cost,  
22 but on dental and vision and life and AD&D.

1           The freights have already announced  
2           their rates for the calendar year 2008. They  
3           have not announced the contribution rate, but  
4           the rate under the medical plan has changed  
5           only literally a few cents. Essentially  
6           they've had a flat year, which in all  
7           probability is another drawdown of reserves  
8           situation.

9           Amtrak is not going to be in that  
10          situation. Amtrak's costs are reflected in  
11          fully self-insured arrangements where they  
12          reflect the claims utilization, whatever  
13          that's going to be, and there's no premium  
14          that is actually paid into trust fund and set  
15          aside to fund these benefits.

16          So the expectation is that Amtrak's  
17          employees will actually pay about a dollar  
18          more per month spread over the entire year in  
19          contributions in the first year because the  
20          proposal is to change those contributions as  
21          of each July 1 in 2008, 2009 and 2010.

22          But given the fact that inflation

1 generally in health care costs should be the  
2 same under AmPlan and the freight plan,  
3 particularly given the fact that they are  
4 essentially the same now and that they  
5 provide essentially the same benefits, the  
6 expectation is that AmPlan employees will pay  
7 \$6.50 less in employee contributions in 2009  
8 than their counterparts covered under the  
9 freight plan and \$6.86 less compared with  
10 their counterparts in the freight plan in  
11 2010.

12           If I can turn very briefly to the  
13 justification for each of these differences  
14 that Amtrak has proposed compared with the  
15 PRLBC. It's very simple in the case of the  
16 urgent care copayment and the prescription  
17 plan dispense-as-written penalty. That  
18 provision will benefit Amtrak's employees  
19 compared with their counterparts in the  
20 freight plan.

21           In addition, it will ensure  
22 consistency in treatment between those unions

1 that have settled under the 2003 and 2004  
2 agreements and those unions that have not.

3 With respect to the emergency room  
4 copayments, the emergency room copayments are  
5 the same as are in the 2003/2004 agreements.  
6 They're the same in Amtrak's proposal that  
7 were in the 2007 tentative agreement with the  
8 BLET, and for that reason they will also  
9 assure consistency across AmPlan regardless  
10 of which union is the particular reference  
11 point.

12 With respect to the opt-out credit,  
13 I think this is a particularly important  
14 area. There's never been an opt-out credit  
15 in AmPlan. The freight plan has had an  
16 opt-out credit for many years.

17 Thus, there will be consistency  
18 across AmPlan in not adopting the opt-out  
19 credit that's part of the unions' proposal  
20 because of the fact that there is no opt-out  
21 credit with respect to those unions that  
22 settled in the 2003 and 2004 agreements.

1           In addition, this opt-out payment  
2           is a waste of money because it's an incentive  
3           that is no longer needed, if it ever was  
4           needed. The reason for that is that an  
5           employee who has redundant coverage -- and  
6           it's important for the Board to understand.

7           Under AmPlan, for an employee to  
8           opt out, they have to show evidence of other  
9           coverage. In fact, there are opt-outs now in  
10          the several thousand people that have -- that  
11          are in the settled plans just associated with  
12          the \$75 per month contribution that's in that  
13          plan.

14          Since the contributions are going  
15          to be \$166 or more under the new  
16          arrangements, that's 2,000 reasons a year why  
17          an employee who has redundant coverage and  
18          doesn't need that redundant coverage under  
19          AmPlan will elect to drop out of the plan.  
20          So, the additive \$1200 associated with the  
21          freight plan opt-out feature is completely  
22          unnecessary.



1                   With respect to the benefits  
2                   extension for disabled employees, there are  
3                   several issues that are associated with  
4                   there. First, the Amtrak proposal will  
5                   provide a consistent time limit for  
6                   disability extension, regardless of the date  
7                   of the disability.

8                   Second, it will restore consistency  
9                   with the vacation policy. Under Amtrak's  
10                  vacation policy, the way it is supposed to be  
11                  working, an employee who has unused vacation  
12                  at the end of the year is paid out that  
13                  vacation.

14                  So there should not be situations  
15                  where an employee gets a disability benefit  
16                  extension by virtue of a late vacation pay  
17                  payment, but in fact there have been such  
18                  instances in the past which creates the  
19                  potential for abuse and inconsistent  
20                  application of the vacation policy, which  
21                  Amtrak wants to remove and which has been  
22                  removed in those settlements in 2003 and

1 2004.

2           And then the final bullet is the  
3 one we've talked about earlier with respect  
4 to some of the other proposal issues to  
5 assure consistency across AmPlan, regardless  
6 of which union is involved.

7           With respect to the retiree  
8 prescriptions drug plans copayments and  
9 premiums, there are, I think, two important  
10 points for the Board to keep in mind.

11           First of all, in the freight plan  
12 since that plan has covered retired  
13 employees, there have always been two  
14 separate plans under two separate policy  
15 numbers and two separate negotiations in  
16 effect between the railroads and the unions  
17 with respect to those different benefits.

18           Amtrak has always had only one  
19 plan, AmPlan, for actives as well as  
20 retirees. So the proposal is to continue the  
21 existing arrangement. One plan with  
22 identical benefits for actives and retirees.

1 So the copayments would be the same for  
2 active and retirees.

3 Nonetheless, Amtrak has recognized  
4 in its proposal that its retirees, like other  
5 retirees, are on a fixed income and that's a  
6 lower income when they were active employees.

7 So Amtrak is proposing to make the  
8 contribution requirement to continue under  
9 AmPlan significantly lower than the  
10 contribution requirement of active employees.  
11 That contribution requirement will be \$50 a  
12 month compared with the 166.25 for actives.

13 And this is the last slide with  
14 respect to these justifications. All of  
15 these are what is referred to in the earlier  
16 material as other benefits, which is to say,  
17 other than the medical benefits plan.

18 What Amtrak is proposing with  
19 respect to each of these benefits is status  
20 quo. That is a proposal that reflects  
21 Amtrak's need for cost containment across  
22 these plans.

1           As I indicated earlier, these plans  
2 represent Amtrak's single fastest growing  
3 labor expense and that's something that they  
4 share with US employers generally, and they  
5 also reflect the fact that the 2003 and 2004  
6 agreements maintain status quo. So they  
7 ensure consistency across AmPlan  
8 participants.

9           Let me just briefly summarize for  
10 the Board. Over time as we've shown,  
11 differences have really evolved between  
12 AmPlan and the freight plan and that  
13 evolution has occurred through the  
14 administration of the plan by the JMAC or  
15 through collective bargaining, but there have  
16 been any number of differences that have  
17 occurred over that period of time, the last  
18 12 years since AmPlan was established in  
19 1997.

20           We believe, nonetheless, that the  
21 proposal respects the original objective in  
22 the Zumas award of maintaining essential

1     equivalency between Amtrak's benefits under  
2     AmPlan and the benefits provided under the  
3     National Plan and that's entirely consistent  
4     with past practice.

5             And, finally, we believe the  
6     proposal is reasonable. It does represent  
7     some modest cost containment compared with  
8     the PRLBC proposal, but we know for certain  
9     that this plan will continue to be very  
10    generous and very much more costly than plans  
11    provided elsewhere generally in the private  
12    sector. That concludes my remarks and I'm  
13    happy to entertain any questions.

14            CHAIRMAN TREDICK: Thank you very,  
15    very much for that presentation. Does anyone  
16    have any questions? Mr. Javits.

17            MR. JAVITS: Are retirees under the  
18    freight plan at what time?

19            THE WITNESS: I don't know what the  
20    retiree contributions under the freight plan  
21    are. I believe the retirees under the  
22    freight plan will not be contributing, but I

1 can get that answer and will have it for the  
2 Board before the end of the day.

3 MR. JAVITS: And how extensive is  
4 the Zumas award? Does it include more than  
5 the medical plan itself and go to --

6 THE WITNESS: No. The Zumas award  
7 -- and Mr. Havermann may want to comment on  
8 this or Mr. Reinert as well, but the Zumas  
9 award really was over the narrow issue of  
10 whether Amtrak could unilaterally withdraw  
11 from the freight plan. In other words  
12 whether union consent was required.

13 He found that union consent was not  
14 required, but he stipulated in his award that  
15 that finding was conditioned on maintaining  
16 essential equivalence to the benefits under  
17 the freight plan and that award covered the  
18 particular unions that were part of that  
19 proceeding in a particular time frame.

20 I'm not sure it's dispositive in  
21 terms of this Board, but it is a principle  
22 that Amtrak has attempted to honor over the

1 years.

2 MR. JAVITS: No, I'm asking how  
3 broad is the coverage. Hearing about that,  
4 it can be all over. He addressed those and  
5 stated --

6 THE WITNESS: Well, it was a  
7 package that included a number of benefits,  
8 but like other packages, some of those  
9 benefits have, in fact, changed over the  
10 years. And I can't say for sure whether  
11 either in 1990 when the Zumas award was  
12 actually promulgated or in 1997 when Amtrak  
13 withdrew, that all of those benefits were in  
14 the plan, but it's my understanding that  
15 most, if not all, of them were.

16 MR. JAVITS: Thank you.

17 MR. JAFFE: Just two minor. Well,  
18 two minor areas anyway. If we look at slide  
19 7 in your materials, Mr. Rand.

20 THE WITNESS: Right.

21 MR. JAFFE: It looks like there is  
22 a substantial difference between the annual

1 costs for the non-settled and the settled  
2 groups within Amtrak, and I was curious  
3 looking at it. Is there some simple  
4 explanation for that large difference?

5 THE WITNESS: Yeah, I think there  
6 is a simple explanation. A very small part  
7 of the difference would be the difference in  
8 the plan features. The difference in the  
9 plan features as we've demonstrated elsewhere  
10 are not all that material.

11 The major difference is that for  
12 accounting purposes, since you're running two  
13 separate plans, Aon Consulting, which is  
14 doing the consulting for the JMAC and for  
15 this plan, have separately identified those  
16 costs for the groups that settled in the 2003  
17 and 2004 settlements and the groups that have  
18 not. It in all probability just reflects  
19 different demographics.

20 The claims utilization in  
21 non-settled groups has been greater in recent  
22 years than in the settled groups, but it



1 doesn't reflect anything like that magnitude  
2 of difference in plan provisions.

3 MR. JAFFE: And the only other  
4 question I had: Is the feature that you're  
5 seeking in terms of \$50 per month retiree  
6 premium, is the principal goal to achieve  
7 additional revenue based on the number of  
8 retirees or is the principal goal one of  
9 having individuals not elect coverage or  
10 opt-out?

11 THE WITNESS: Well, actually under  
12 AmPlan, an individual is not going to be  
13 permitted to opt-out, unless they can show  
14 evidence of other coverage. So I would say  
15 in that context by far, the principal  
16 objective is simply to reduce costs by that  
17 \$600 per year to Amtrak.

18 MR. JAFFE: Fair enough. Roughly  
19 how many retirees are there as one does the  
20 math?

21 THE WITNESS: I don't know the  
22 answer to that question off the top of my

1 head, but I'll get that for the Board and  
2 have it to you by the end of the day session  
3 for today.

4 MR. JAFFE: Thank you very much.

5 CHAIRMAN TREDICK: Thank you very,  
6 very much.

7 THE WITNESS: Thank you.

8 CHAIRMAN TREDICK: Mr. Havermann,  
9 are you going to proceed?

10 MR. HAVERMANN: We're going to  
11 switch counsel.

12 CHAIRMAN TREDICK: Okay.

13 MR. REINERT: We're going to switch  
14 counsel to Jonathan Fritts and our next  
15 witness is James Gillula.

16 Whereupon,

17 JAMES GILLULA  
18 was called as a witness and, having been first  
19 duly sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 CHAIRMAN TREDICK: Welcome, Mr.  
22 Gillula, looking forward to your testimony.

1                   THE WITNESS: Thank you. Glad to  
2 be here.

3                   MR. FRITTS: Members of the Board,  
4 I am Jonathan Fritts with Morgan Lewis.

5                   BY MR. FRITTS:

6                   Q     Mr. Gillula, would you please  
7 describe your background and area of  
8 expertise?

9                   A     Certainly. I am a managing  
10 economist with Global Insight, Incorporated.  
11 Global Insight is an economic analysis and  
12 forecasting company with over 3,000 clients  
13 worldwide. I'm based here in the Washington,  
14 DC office.

15                   Global Insight was formed through a  
16 merger back in 2001 of a couple of companies.  
17 One of which I worked for prior to that.  
18 That being Data Resources, Incorporated, and  
19 I've been with DRI and Global Insight over  
20 the period of the last 23 years.

21                   I am a specialist in labor  
22 economics and demographic analysis. Over the

1 last 20 years, I've been involved in at least  
2 20 different consulting engagements that  
3 involve the preparation of wage and benefit  
4 comparability analyses.

5 That experience includes a lot of  
6 work in which I collaborated with leading  
7 academic labor economists. Among that  
8 experience is involvement in seven or eight  
9 different interest arbitrations for the US  
10 Postal Service, where we did wage and benefit  
11 analysis of different Postal Service employee  
12 groups.

13 Beginning in about 2001 and through  
14 2005, I was involved in a number instances of  
15 work in the airline industry, beginning with  
16 a couple collaboration with Professor Michael  
17 Watt, University of Pennsylvania for in the  
18 preparation of his testimony for a couple of  
19 President Emergency Boards. One being  
20 Northwest Airline Mechanics. Another being  
21 United Airline Mechanics, which a couple of  
22 the Board members may recall.

1           In addition to that, I've been  
2 involved in doing studies like this for  
3 virtually all of the major airlines as some  
4 of them went into bankruptcy and were  
5 involved in Section 1113 filings.

6           In addition to experience in the  
7 airline industry, I've done studies like this  
8 also in the auto parts supplier industry.  
9 More recently, again, largely involving  
10 Section 1113 filings of companies in  
11 bankruptcy and, again, done in collaboration  
12 with other academic labor economists.

13           In addition to that work, I've been  
14 the author of a number of other sorts of  
15 studies on labor economics in my work for  
16 Global Insight over the years, including work  
17 in the trucking industry and port operations  
18 and other areas. I've testified on three  
19 different occasions in interest arbitration  
20 for the Postal Service.

21           I have a bachelor's degree in  
22 Economics from Washington University in St.

1 Louis and MA and Ph.D. Degrees in economics  
2 from Duke University.

3 Q Dr. Gillula, what were you asked to  
4 do with respect to this PEB proceeding?

5 A I was asked to do a comparability  
6 analysis, a comparative analysis of the wages  
7 and benefits of the Amtrak employees that are  
8 represented by the nine unions that are at  
9 issue here before this PEB, and what I have  
10 done is to use the basics of the economic  
11 theory and methods that I have applied in  
12 many of the engagements that I just described  
13 to do a similar analysis for Amtrak's PEB  
14 employees.

15 Now, comparability analysis of a  
16 labor group like Amtrak employees from a  
17 theoretical standpoint involves making  
18 comparisons with workers elsewhere in the  
19 economy with similar skills and ability with  
20 roughly similar working conditions.

21 I'm aware that over the course of  
22 PEB proceedings over the history of Amtrak,

1 that Presidential Emergency Boards have been  
2 guided to a considerable extent by  
3 comparisons limited within the rail  
4 transportation industry, looking to the  
5 freights and others, but from a labor  
6 economic standpoint, the criteria of making  
7 comparisons to similar workers with similar  
8 skills and abilities in similar working  
9 conditions does not necessarily have to be  
10 limited to workers within the same industry.

11           Indeed, Amtrak for many of the job  
12 titles that it has to fill is competing with  
13 firms outside the rail transportation  
14 industry for those workers. Therefore, in my  
15 analysis, I'm using largely data on average  
16 wages of full-time private sector workers  
17 across the economy.

18           It's a comparison based on  
19 occupational wages, and as we'll see when you  
20 get to the detailed identification of workers  
21 by occupation, some of those occupations are  
22 indeed occupations that are largely rail

1 transportation occupations.

2 To the extent that that's true, the  
3 analysis is making a fairly direct comparison  
4 with workers within the industry. For other  
5 industries where the skills and abilities  
6 that Amtrak employees have are in use across  
7 a broader spectrum of the economy, we're  
8 capturing that need to reflect Amtrak's  
9 competing in labor market in a broader sense.

10 Q And what types of industries  
11 outside the rail industry --

12 A Well --

13 Q -- would this encompass?

14 A -- Amtrak's work force is primarily  
15 a blue collar work force and you'll find  
16 occupations from many of the Amtrak employee  
17 job titles across manufacturing,  
18 construction, utilities, as well as other  
19 transportation industries.

20 Q In performing your analysis, Dr.  
21 Gillula, what data set did you use for  
22 Amtrak's employees?



1           A     So, as I said, my analysis is  
2     focused at the level of the occupations of  
3     Amtrak employees. I did not do any separate  
4     analysis of wage comparability individually  
5     for any of the individual union groups. I  
6     received data from Amtrak on the wages and  
7     benefits of all of the employees represented  
8     by the nine PEB unions and essentially  
9     aggregated across occupation.

10                 Now, Amtrak has dozens and dozens  
11     of job titles. In order to conduct the  
12     analysis, we need to make a comparison with  
13     publicly available data sources on wages of  
14     comparable employees across the economy.

15                 To facilitate that, Amtrak  
16     personnel specialists looked at the job  
17     titles of the Amtrak jobs and based on their  
18     knowledge of those jobs, identified the  
19     Standard Occupational Classifications where  
20     Amtrak employees are classified.

21                 Now, the Standard Occupational  
22     Classification identifies approximately 800

1 different occupations. The exercise that the  
2 Amtrak personnel specialists went through  
3 identified the fact that Amtrak employees are  
4 classified in 32 different detailed SOC  
5 occupations.

6 For presentation purposes today, I  
7 present some groupings of those into four or  
8 five broad categories that the BLS uses for  
9 some summary data presentations. As I said,  
10 we'll some of these occupations are largely  
11 rail industry occupations. Others are  
12 occupations found across the economy.

13 Q Could you give us an example of a  
14 railroad industry specific classification?

15 A Well, you've got rail car  
16 repairers. You've also got rail track  
17 maintenance, repair equipment operators,  
18 things like that, that are very -- where most  
19 of the -- a majority of the employment is in  
20 the rail transportation industry.

21 Another case is cleaners of  
22 vehicles and equipment is an Amtrak job

1 classification that has a fairly large head  
2 count and that's an occupation that appears  
3 across the country as does welders for that  
4 example.

5 Q What data sets did you use for  
6 comparison purposes against the Amtrak  
7 employees?

8 A The Bureau of Labor Statistics  
9 actually has two separate data systems that  
10 it maintains and that produces published  
11 information on wages by occupation. One is  
12 the National Compensation Survey. This is an  
13 establishment survey, which is a very  
14 respected survey, because it generates  
15 important publications like the Employment  
16 Cost Index, which the Federal Reserve  
17 monitors fairly closely as it looks to  
18 employment cost trends.

19 It's also the source of publication  
20 of employer's cost for employee compensation,  
21 which is a primary data source for the cost  
22 of benefits. An important feature of the

1 National Compensation Survey is that the  
2 published data identify full-time workers  
3 within the private sector separately and  
4 that's the appropriate comparison for this  
5 sort of analysis.

6 The BLS also publishes -- maintains  
7 the Occupational Employment Statistic Survey.  
8 That survey effort, again,  
9 establishment-based survey that's focused  
10 more on gathering the employment by  
11 occupation but also publishes wage data.  
12 Shortcoming from our standpoint is that those  
13 wage data includes part-time workers.  
14 There's a single set of data that include  
15 part-time workers and some government  
16 employees.

17 The benefit of the OES is it has  
18 been collected on a consistent occupational  
19 basis using the latest Standard Occupational  
20 Classification for the last eight or nine  
21 years. Whereas, the National Compensation  
22 Survey has only recently switched to that

1 basis.

2 Q Moving from wage data to benefit  
3 cost data, what data sets did you use for  
4 purposes of comparing benefit cost?

5 A Here as I mentioned just a minute  
6 ago, it's employer's cost for employee  
7 compensation, which also comes out of the  
8 National Compensation Survey database, and my  
9 analysis of benefits is focused on the cost  
10 to the employer providing those benefits. I  
11 don't get into issues about the nature and  
12 characteristics of the plans, such as Tom  
13 Rand just testified about, and the  
14 calculation here is to express the cost to  
15 employers on a cost per hour work basis.

16 Now, in order to do the analysis, I  
17 asked the Amtrak financial and personnel  
18 folks to provide data that would facilitate  
19 measuring the cost to Amtrak of providing  
20 benefits on a comparable basis to the  
21 methodology used in the BLS employer costs  
22 for employee compensation.

1                   What I got was data for 2007 which  
2 identified the share of the total hours  
3 during a year that are work hours as opposed  
4 to paid leave hours for the employees in the  
5 nine PEB unions and information on the costs  
6 of providing the basic benefits.

7                   And here you've see I've grouped  
8 the benefits into three broad categories.  
9 Paid leave, which covers vacation, holiday,  
10 all forms of paid leave; insurance, health,  
11 life, if they had accident or disability  
12 insurance, that would be in there; and the  
13 third category I've identified as retirement  
14 plans and Social Security.

15                   The BLS data identifies Social  
16 Security as part of something called  
17 legally-required benefits. What I've done is  
18 taken that cost and grouped it together with  
19 the reporting in the BLS data that covers  
20 defined benefit and defined contribution  
21 pension plans for a single comparison of  
22 overall pension retirement costs against the

1 Amtrak plan.

2 Q Dr. Gillula, could you explain the  
3 information presented on this chart?

4 A The first thing I wanted to do is  
5 to develop the most current comparison of  
6 Amtrak's wages with wages of comparable  
7 employees economy-wide and that's what this  
8 demonstrates. The comparison is based on  
9 National Compensation Survey data for 2006.

10 What this chart shows is the  
11 average wage for the employees across the  
12 nine PEB unions. An average wage for  
13 comparable private sector workers. The  
14 difference -- and for reference purposes, a  
15 head count column on the side. The chart  
16 identifies five subcategories of employees  
17 here.

18 The analysis I did is at the level  
19 of the 32 categories that into which Amtrak  
20 employees were classified by the Amtrak  
21 personnel folks. Those data are in the  
22 report that I submitted. This is an

1 aggregate summary where we've averaged the  
2 employees within each of those groups to  
3 present the data across the four lines.

4 What you see is that the average  
5 wage in 2006 across all the Amtrak employees  
6 was \$19.94 based on National Compensation  
7 Survey data for full-time private sector  
8 employees. For mid 2006 the average private  
9 sector wage is \$20.41.

10 Now, that \$20.41 is calculated by  
11 extracting the average wage for each of the  
12 32 occupations and weighting them up with  
13 Amtrak's employment wage. So you have a  
14 comparable basis of making a comparison.

15 What this shows is that as of 2006,  
16 the Amtrak PEB employees had a wage deficit  
17 of 2.3 percent. That is, private sector  
18 wages were a little over 2 percent above the  
19 average wage for the Amtrak employees.

20 As you go through this chart,  
21 you'll notice some pretty striking  
22 differences in wage premiums for different



1 broad occupational groups, and I've  
2 referenced some of the relevant detailed  
3 occupations that are in here.

4           What this reflects is that Amtrak's  
5 wage structure is a little more compressed  
6 than the wage scale if you look economy wide.  
7 If you took the highest wage amongst the 32  
8 occupations that are identified in the study  
9 relative to the lowest across Amtrak  
10 employees, there's a gap, a difference of  
11 about 70 percent; whereas, the highest wage  
12 relative to the lowest across the private  
13 sector is a factor of about 3 or so.

14           So, and in general, what you see  
15 here is that in the somewhat more skilled  
16 crafts, the installation and repair, the  
17 Amtrak employees as of 2006 had a wage  
18 deficit; whereas, in somewhat less skilled  
19 crafts, they had a wage premium.

20           Q     Moving back to that chart for a  
21 minute, does that information reflect benefit  
22 costs?

1           A     No. This is purely a wage  
2 comparison and it's purely based on wages as  
3 of 2006. Certainly prior to the  
4 implementation of any Amtrak wage proposals.

5           Q     Now, could you explain this graph?

6           A     I know that the issue of wage  
7 change over time of the course of this  
8 contract is important to the Board as well.  
9 What I did is construct a time series  
10 analysis of the average wages of Amtrak  
11 employees relative to comparable employees  
12 over the course of the period from 2000 to  
13 2007.

14                     If we start with the Amtrak wage  
15 here, what you'll see in the 2006 column is  
16 the wage that I just reported of \$19.94 for  
17 2006 and the corresponding private sector  
18 wage there is the \$20.41 wage in 2006 that I  
19 just reported.

20                     I was able to construct a time  
21 series of the market wage of employees  
22 comparable to Amtrak PEB union employees by

1 using the Occupational Employment Statistics  
2 data because it's constructed on a consistent  
3 occupational basis over this entire period.  
4 In each year from 2000 to 2006, I calculated  
5 a weighted average of the published wages in  
6 the 32 occupational categories using Amtrak  
7 occupational wages in each case.

8 Now, that line from the  
9 Occupational Employment Survey actually would  
10 lie below the data point that I have from  
11 2006 from the National Compensation Survey,  
12 and the reason it lies below is because as I  
13 said before, the OAS includes part-time  
14 workers.

15 So I essentially shifted up the  
16 estimates over the entire time period to be  
17 consistent with the 2006 data point.  
18 Essentially increasing the entire time series  
19 by 4 percent to get a more appropriate  
20 comparison of comparable private sector  
21 workers.

22 The 2007 average wage for Amtrak

1 is, again, the average wage as reported from  
2 Amtrak for the first nine months of 2007.  
3 The 2007 data point for the private sector,  
4 again, the last detailed published  
5 occupational data for 2006, what I've done  
6 here what has been published by the BLS,  
7 which is much more timely, the Employment  
8 Cost Index.

9           So, no wage change over this period  
10 is reported in the Employment Cost Index from  
11 the BLS and I've used Employment Cost Index  
12 to estimate a comparable wage in 2007.

13           Now, what this chart shows is that  
14 at the beginning of this contract period that  
15 the average wage across the employees of  
16 Amtrak's PEB unions was about 8 to 9 percent  
17 above the average wage of comparable  
18 employees, full-time workers across the  
19 private sector.

20           Over the year, over the following  
21 two to three to four years as Amtrak's wage  
22 increases were limited to increases in COLA,

1 for the most part, you have very slow wage  
2 progression; whereas, wages obviously  
3 increased faster in the private sector.

4 By 2004, Amtrak's PEB employees  
5 were roughly at parity with comparable  
6 employees across the private sector. Again,  
7 in more recent years, the last three years,  
8 as the Amtrak wage increases, again, are  
9 limited largely to COLA additions to the  
10 basic wage and wages of comparable private  
11 sector employees have increased more rapidly,  
12 you have a wage deficit opening up.

13 And while that deficit was 2.3  
14 percent in 2006, as of 2007 it's  
15 approximately 4 percent.

16 Q The same question as the previous  
17 slide. Does this graph include benefit  
18 costs?

19 A It is a wage -- wage comparison  
20 and, again, either the data through 2007 is  
21 limited to estimates before any  
22 implementation of Amtrak wage proposals.

1           Q     Now, could you explain the  
2 information that's presented in this chart?

3           A     Well, here for the period  
4 2000-2007, I just duplicated what I've just  
5 shown you over the historical period, and  
6 what I've done is tried to illustrate the  
7 impact of Amtrak's wage proposal on the wage  
8 comparison of the Amtrak PEB employees with  
9 comparable employees economy-wide.

10                     The 2008 data point for Amtrak of  
11 \$23.81 reflects an assumption of an immediate  
12 14 percent increase in the wage as of January  
13 1st. Amtrak's wage proposal also involves  
14 subsequent wage increases I believe on April  
15 1st and the middle of the year and additional  
16 increase in 2009.

17                     So what I've done essentially to  
18 calculate an average wage for all of 2008 is  
19 look at what the wage level would be for the  
20 first three months of the year, the next  
21 three months and the final six months of the  
22 year, and so that reflects kind of a weighted

1 average of the wage proposal through 2008.  
2 And, similarly, the data points for 2009 and  
3 2010 reflect the further implementation of  
4 the wage increases Amtrak has proposed.

5           On the private sector side, what  
6 I've done is essentially project a continuing  
7 increase in the market wage of comparable  
8 employees. At the rate of increase that  
9 Global Insight projects for the overall  
10 private sector, ECI. Now, historically in  
11 recent years the ECIs in the occupational  
12 categories where the Amtrak employees are  
13 concentrated have grown somewhat more slowly  
14 than the overall ECI for wages.

15           So this I believe is an assumption  
16 that would reflect a little bit of catch-up  
17 there, given that it's the projection for  
18 overall -- the overall private sector. And  
19 what this chart shows is that the impact of  
20 Amtrak's wage proposals would be to reverse  
21 that wage -- that current wage deficit and  
22 the average wage of Amtrak PEB employees

1 would be about 10 percent above the wage, the  
2 average wage of comparable workers, full-time  
3 workers across the private sector and that  
4 that wage gap would largely be maintained  
5 over the course of the contract. And, again,  
6 this is an analysis of wages and does not go  
7 to the issue of benefits.

8 Q Could you explain the information  
9 that is presented in this chart?

10 A This is my attempt to look at a  
11 comparison of the cost of benefits to Amtrak  
12 workers and associated total compensation.  
13 As I said, I focused on these three broad  
14 categories of benefits. There are some other  
15 categories that fall into the legally  
16 required, which I did not include in my  
17 analysis.

18 What I have done here is attempt to  
19 do an analysis on a current basis bench  
20 marked to the average wage of the Amtrak PEB  
21 employees in 2007, which is the \$20.15 that I  
22 reported earlier.



1                   So, what this reflects is that  
2                   given the current incidence of benefit costs  
3                   for Amtrak's based on data for 2007, what the  
4                   cost of their paid leave is on a per hour  
5                   work basis and their insurance, which again  
6                   includes health insurance, life insurance and  
7                   all other forms and the railroad retirement  
8                   plan.

9                   The sum of those is a cost of  
10                  \$14.11 per hour, which when you add to the  
11                  \$20.15 wage, yields a total compensation cost  
12                  of \$34.26.

13                  Now, the benefits structure for  
14                  comparable workers starts with the average  
15                  wage of \$20.98. This is the market wage that  
16                  I have estimated previously. What we want to  
17                  do is see what the benefit costs for a worker  
18                  across -- a full-time worker across the  
19                  private sector would be where the worker is  
20                  earning the \$20.98, which is where we  
21                  identified the wage differential relative to  
22                  Amtrak's employees.

1           To do that, I used, as I described  
2 earlier, the BLS employer cost for employee  
3 compensation, the benefit structure for  
4 full-time workers in the broad occupational  
5 categories where Amtrak workers are  
6 concentrated, and the result as you can see  
7 is a total benefit cost of \$7.78 an hour,  
8 which when added to the wage is \$28.76.

9           So, what this analysis shows is  
10 that while currently Amtrak employees  
11 experience a wage deficit relative to  
12 comparable workers economy-wide, when you  
13 look at it from the standpoint of total  
14 compensation, they have a 19 percent wage  
15 advantage.

16           And this result is driven by a  
17 benefits premium at 81 percent. The Amtrak  
18 employees have a benefits advantage in every  
19 category, but as you can see, a big part of  
20 what's driving the result is the very rich  
21 health insurance plan that Amtrak employees  
22 have.

1           Q     Do any of these figures include  
2     Amtrak's proposals on wages and benefits?

3           A     No, this is a current analysis. I  
4     did not have the data to do an analysis of  
5     the impact of the full range of Amtrak  
6     proposals on both wages and benefits.

7           Q     Could you explain to the Board the  
8     significance of quit rate data?

9           A     The quit rate is really an  
10    important labor market indicator. You can  
11    gather data and do wage comparisons or total  
12    compensation comparisons, identify deficits,  
13    but the quit rate is also kind of a pulse on  
14    the labor market.

15                   Workers who feel that they could do  
16    better elsewhere in a job elsewhere in the  
17    economy often quit and take advantage of  
18    those opportunities. So, the quit rate is an  
19    important way of getting a reading on whether  
20    the wage and total compensation differentials  
21    that we identify can actually be  
22    characterized as wage or total compensation

1 premiums.

2           The quit rate is calculated as the  
3 number of voluntary resignations over the  
4 course of the year as a percent of the head  
5 count. Now, voluntary resignations exclude  
6 retirements and exclude people being  
7 discharged, and the point is to identify that  
8 subset of workers who are seeing better  
9 opportunities elsewhere.

10           The source of comparison for quit  
11 rates is another BLS data set called the Job  
12 Openings and Labor Turnover Survey. This is  
13 a survey that's been in existence now since  
14 2001. The BLS years ago used to collect quit  
15 rate data, but it stopped back in 1981 in a  
16 budget cut and there was a long hiatus but  
17 now we can do very substantive comparisons of  
18 quit rates using JOLTS data.

19           So, what we did is request and  
20 receive data from Amtrak which we're able to  
21 calculate quit rates on comparable basis  
22 today as reported in JOLTS.

1           Q     What did your analysis of the quit  
2 rate data show?

3           A     What you see is that the share of  
4 voluntary quits in the total work force for  
5 Amtrak PEB employees -- and, again, this  
6 analysis is not Amtrak wide but limited to  
7 just the nine employee groups -- has ranged  
8 fairly consistently between 2 to 3 percent  
9 over the seven-year period shown here.

10                   I should note that the 2007 figure  
11 in all cases is a figure extrapolated from  
12 nine months of data. We had nine months of  
13 data from Amtrak and from the JOLTS as well  
14 where we have essentially extrapolated the  
15 quits, too, on the assumption that they would  
16 continue at the rate for the first nine  
17 months.

18                   If you compare that fairly steady  
19 quit rate of 2 to 3 percent of Amtrak with  
20 the quit rate across the private sector,  
21 you'll see a rather stark contrast. Indeed,  
22 the US labor market experiences a substantial

1 amount of voluntary labor turnover on a  
2 consistent base business. It does some over  
3 the business cycle, but you can see that even  
4 in relatively good years of the last two or  
5 three years across the private sector is an  
6 excessive one and every four employees  
7 voluntarily leave their job.

8           If you narrow the analysis to the  
9 level of detail that JOLTS supports,  
10 transportation here as noted is the  
11 transportation warehousing and public  
12 utilities sector. So it's a little broader  
13 than transportation per se, but it's the  
14 lowest level of detail available from JOLTS.

15           And you can see that even if you  
16 narrow the comparison to as close a basis as  
17 possible, you have quit rates ranging from a  
18 low of 13.9 percent in 2003 and ranging 17 to  
19 19 percent in recent years.

20           What this analysis does is provide  
21 confirming evidence that the wage -- the  
22 total compensation premium that we have

1 identified in our total compensation  
2 analysis, that we can conclude that, in fact,  
3 Amtrak's PEB union employees do have a total  
4 compensation premium.

5 Q Can you explain the information on  
6 this chart and why you performed this  
7 analysis?

8 A In discussing the history of the  
9 PEB, past PEBs for Amtrak and in past  
10 presentations on wage comparability involving  
11 Amtrak employees, you know, I became aware  
12 that in some cases the union has presented  
13 evidence on the airline industry. There is  
14 some relevance there to the extent that as  
15 referenced earlier today the airline industry  
16 is in the passenger transportation business  
17 like Amtrak.

18 I think there's probably some  
19 further relevance from the standpoint of  
20 looking at a story of what happens within an  
21 industry that has been characterized by  
22 pattern bargaining in the past and

1 experiences financial difficulties and the  
2 airline industry of the last seven years, as  
3 I'm sure many of you know, is a case study in  
4 that.

5 We constructed this chart based on  
6 data from contracts. So it's essentially a  
7 wage scale comparison. The standard in the  
8 airline industry for analysis to look at top  
9 of scale wage rates. I've essentially  
10 averaged the top of scale wage rates across  
11 the airlines for each of these employee  
12 groups.

13 And then have constructed at the  
14 time series hour per hour or 75 hours yields,  
15 converted each to a wage index, so you can  
16 focus on the wage change over this period,  
17 and what you'll see is that between 2000 and  
18 2002, across the airline employee groups they  
19 continued to experience wage gains. In the  
20 case of mechanics, pretty substantial wage  
21 gains as a couple mechanic groups.

22 And, again, as the title notes,



1 this is across the seven major airlines,  
2 which includes the six legacy carriers.  
3 Southwest Airlines is in here and they helped  
4 to keep some of the lines up since they  
5 didn't -- they were some of the source of the  
6 problem as opposed to the recipient of the  
7 problem in the industry over this period.

8 In any event, you can see the wage  
9 trends following 2002. Two things really hit  
10 the airline industry hard. One, of course,  
11 in the aftermath of the 9/11 tragedy, a  
12 serious impact on air travel, but even more  
13 so, the increasing competition from low cost  
14 carriers that create a lot of pressure on the  
15 revenue of the carriers.

16 And these revenue and profitability  
17 pressures, as you know, resulted in the need  
18 to revisit wage increases that had been  
19 awarded to airline employee groups in the  
20 past. In a couple of cases, this involved  
21 bankruptcy proceedings and downward  
22 adjustment. In a couple of other cases, wage

1 concessions were the result and the airlines  
2 managed to escape bankruptcy.

3 In summary, the pilots experienced  
4 the biggest wage cut. They were 10 percent  
5 higher than their 2000 level in 2002, but  
6 fell to nearly 15 percent below in 2006  
7 before beginning to recover a little.  
8 Mechanics experienced a bit less of a  
9 decline.

10 The other three major airline  
11 groups -- the flight attendants and ramp  
12 service and customer service -- also  
13 experienced somewhat lower, somewhat smaller  
14 wage cuts than the pilots, but as you can  
15 see, virtually all of these employee groups  
16 over this period are only marginally better  
17 off than they were at the beginning of this  
18 period, which does stand in some contrast to  
19 the experience of the Amtrak employees, even  
20 though they were only limited to COLA wage  
21 increases over this period.

22 Q Dr. Gillula, could you just

1 summarize for the Board your key conclusions  
2 from your analysis?

3 A So what I found from this analysis  
4 is that at the beginning of this contract  
5 period, the average wages of the Amtrak  
6 employees across the PEB unions were about 8  
7 to 9 percent above the wages of comparable  
8 employees economy-wide. Currently as of  
9 2007, they're about 4 percent below as a  
10 result of the wage increases being limited to  
11 COLA increases over this period.

12 However, this wage deficit is  
13 offset by an 81 percent benefits premium that  
14 the -- on average that the Amtrak PEB union  
15 employees enjoy, which results in a total  
16 compensation -- a current total compensation  
17 premium in 2007 of 19 percent.

18 And the finding of a compensation  
19 premium is supported by the really low quit  
20 rates that we observe for Amtrak employees  
21 throughout this period. Amtrak's wage  
22 proposal will reverse the deficit in wages

1 and raise the average wage of the PEB  
2 employees to about 10 percent above  
3 comparable workers in 2008, and this gap  
4 should be maintained over the course of the  
5 contract period.

6 And I think all of this evidence  
7 leads to the conclusion that Amtrak should be  
8 able with the wage proposals that it has  
9 proposed to continue to attract and retain a  
10 highly qualified work force. Thank you.

11 CHAIRMAN TREDICK: Thank you, Dr.  
12 Gillula. Mr. Jaffe, do you have any  
13 questions?

14 MR. JAFFE: I'm in great shape.  
15 Thank you.

16 CHAIRMAN TREDICK: Any questions?

17 MR. JAVITS: Maybe just a question  
18 on the quit rates.

19 THE WITNESS: Sure.

20 MR. JAVITS: I suppose the pay and  
21 benefits aren't the only elements that go  
22 into that. Seniority, loyalty, geography,

1 other factors I assume would be relevant to  
2 quit rates. Did you check those?

3 THE WITNESS: Well, I think it's  
4 certainly true that when you think about it,  
5 the Amtrak employees are experiencing very  
6 slow wage gains over this period and getting  
7 to a point where they were even experiencing  
8 a wage deficit based on the information that  
9 we see that there's clearly something else  
10 there that's keeping them on the job.

11 I think probably a big part of it  
12 is the overall benefits package that they  
13 have. You really have to, you know, if we  
14 had the ability to do that total compensation  
15 premium back through time, I think you'd  
16 probably see a better explanation for why the  
17 quit rates have stayed where they were.

18 MR. JAVITS: And in your analysis,  
19 do the rail union -- rail employees have  
20 skills that are hard to transfer? I guess  
21 you touched on that briefly with the higher  
22 skill lower skills.

1 THE WITNESS: Right.

2 MR. JAVITS: I don't know if that's  
3 a clear correlation or not.

4 THE WITNESS: Yeah, I think in some  
5 of the occupations as I mentioned that are  
6 very specific to the rail transportation,  
7 that the appropriate comparison there and  
8 that the data I've used picked that up is  
9 within the skills in existence within the  
10 rail transportation industry, but for other  
11 occupations such as cleaners of vehicles and  
12 equipment, as I mentioned, welders, those are  
13 basic skills that are applicable really  
14 across the economy.

15 And you could think on the one  
16 hand, the importance of it is really the fact  
17 that Amtrak is competing in a labor market  
18 for those skills with firms from other  
19 industries. You can also think about this in  
20 the reverse in a dire scenario, where if  
21 Amtrak were to get in such severe financial  
22 situation that it had to cease operation,

1 where would these workers be going to find  
2 jobs when they go out into the economy.

3 Not all of them could go into the  
4 rail transportation industry. All of them  
5 have skills and abilities within their  
6 particular occupation which would permit them  
7 to find a job somewhere else in another  
8 industry, maybe not at the rate that they're  
9 earning currently, but their skills and  
10 abilities are applicable across the economy.

11 MR. JAVITS: Thank you.

12 CHAIRMAN TREDICK: Could we go off  
13 the record for a minute.

14 (Discussion off the record.)

15 CHAIRMAN TREDICK: Recalling Mr.  
16 Rand at the request of counsel.

17 Whereupon,

18 THOMAS O.S. RAND  
19 was recalled as a witness and, having been  
20 previously duly sworn, was examined and testified  
21 further as follows:

22 DIRECT EXAMINATION CONTINUED

1 THE WITNESS: Do I need to be  
2 resworn?

3 CHAIRMAN TREDICK: No, you're still  
4 under oath, sir.

5 THE WITNESS: Okay. Good. Thank  
6 you. I would assume so.

7 There are two questions that the  
8 Board raised that I did not have immediate  
9 answers to. One was the number of retired  
10 employees under AmPlan. That number as of  
11 the beginning of November was 813, but that's  
12 across the entire complement of 16,000  
13 retirees.

14 I don't have a separate breakdown  
15 for the nine unions that are part of this  
16 PEB, but it's reasonable to assume that it  
17 would be roughly proportional 40 percent of  
18 that number.

19 That number may strike the Board as  
20 somewhat low in relation to a complement of  
21 16,000, but there are reasons for that.  
22 First of all, you have to have 30 years, 360



1 months of railroad service in order to  
2 qualify and you have to have attained age 60.

3 In addition, the benefit only  
4 extends to the participant's 65th birthday.  
5 So that's why that number is relatively low  
6 compared with that entire complement.

7 The other question was whether  
8 there were any contributions required under  
9 the freight plans. There were no  
10 contributions required prior to the 2007  
11 agreements, and we assume there are no  
12 contributions required under the 2007  
13 agreements.

14 CHAIRMAN TREDICK: Any questions?

15 THE WITNESS: Thank you.

16 CHAIRMAN TREDICK: Thank you.

17 First of all, again, let me emphasize how  
18 much we appreciate the cooperation of counsel  
19 in adhering to the time suggestions that have  
20 been made.

21 Again, with the agreement of  
22 counsel, I think we're going to adjourn for

1 now. We'll resume tomorrow at 9 a.m. Any  
2 questions or comments from counsel? That's  
3 agreeable with everyone. Again, thank you  
4 very much. Good evening.

5 (Whereupon, at 4:40 p.m., the  
6 HEARING was adjourned.)

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