

PRESIDENTIAL EMERGENCY BOARD NO. 242

STATEMENT OF JED DODD

I am the General Chairman of the Pennsylvania Federation of the Brotherhood of Maintenance of Way Employees Division, International Brotherhood of Teamsters ("BMWED"). As General Chairman, I represent approximately 1250 Amtrak employees on the Southern District which extends from Washington D.C. to New York City and Harrisburg, Pennsylvania. BMWED represented employees on the Southern District construct and maintain tracks, bridges and buildings and electric traction systems. This is the 4th round of negotiations with Amtrak in which I have chaired the BMWED bargaining team.

OVERVIEW

The work rules the BMWED has with Amtrak are very similar to those on freight rails since the Amtrak agreement is derived from the freight agreements. No work rule changes were agreed upon in the two rounds of freight negotiations which covered the period of this dispute. I would also like to stress that both of these national freight bargains were reached voluntarily. I also served on the BMWED National Freight Bargaining Committee during these negotiations. Amtrak has not pointed to any reason why the work rules that it seeks to change through its proposals dated November 6, 2007 (attached as Exhibit A to this Declaration), should be different than on the freight lines. Accordingly, no work rule changes are appropriate in this round, and BMWED has not sought any.¹

¹ Consistent with the terms of the first national agreement in the 2000 - 2005 round, the BMWED seeks a modest increase in meal per diem payments, a benefit

Perhaps recognizing its proposals lack merit, Amtrak has been largely unwilling to discuss the need for its work rule proposals and how they would be applied on the property. Beginning in 1999 and carrying forward, it generally presented its work rule proposals to the BMWED as non-negotiable demands, leading to very few substantive conversations about the proposals over seven years. A review of Amtrak's Section 6 notice dated June 12, 2000 and its most recent proposal dated November 6, 2007 confirms that little to no progress has been made on work rule negotiations. Some proposals, such as Amtrak's proposal concerning subcontracting, have become more extreme. Other proposals, such as the one related to Rule 89 Gangs, were made for the first time in November 2007 and have not been discussed at all. Put simply, Amtrak has put little effort into persuading us that its desired work rule changes improve the safety or efficiency of Amtrak's operations.

Amtrak's current work rule proposals do not address specific problems but rather attempt to obliterate all reasonable restrictions on the scheduling and assignment of employees. These rules are needed to provide for minimum protection for quality of life since maintenance of way employees already are part of a 24 hours a day, 7 day a week operation. The current rules applicable to Amtrak's maintenance of way employees permit the Carrier to deploy adequate forces to cover operations at any time of the day or night and on weekdays and weekends. The rules proposals put forward by Amtrak would cause uncertainty among employees as to when they would work and rest during each workweek, but do nothing to increase Amtrak's ability to get workers on the job.

provided to employees who are required by the nature of their service to take meals away from their residences.

Many of Amtrak's proposed rule changes could affect the payment of overtime. Nothing in the work rules presently forces Amtrak to use overtime. The rules regulate only the use of overtime once Amtrak chooses to schedule employees for overtime. Granted, Amtrak does pay a substantial amount of overtime. That, however, stems from its inefficient staffing of the workforce, which will not be corrected by any of the rules changes it seeks. Amtrak has not identified how the work rules are to blame.

In the few instances in which it has articulated a rationale for its proposals, Amtrak has cited Congressional appropriation language calling for efficiencies. Nowhere has Congress mandated the types of rule changes Amtrak is seeking. The appropriations language states only that "the Corporation is directed to achieve savings through operating efficiencies including, but not limited to, modifications to food and service and first class service." 119 Stat. 2413. Indeed, that language really focuses on macro operational decisions by Amtrak – such as the complete discontinuance of food and beverage service and elimination of sleeping car accommodations on all trains. This language does not mandate the sweeping rules changes that have helped cause the impasse. Existing rules applicable to the BMWED-represented employees are flexible and permit Amtrak to operate efficiently.

Amtrak's proposals also do not show any trade offs for the employees that might incline the BMWED to accept its proposals. Taken as a whole, Amtrak's current work rule proposals would never be ratified by BMWED members even if agreed upon by the Union leadership.

Finally, with regard to some of Amtrak's proposals, the Carrier is wrongly asking this PEB to help it circumvent the terms of an Order of the United States District Court

for the District of Columbia when it asks the Board to recommend work rules concerning training, qualifications, assignment to positions and discipline. That order requires the parties to the lawsuit, including Amtrak and the Federation, to engage in negotiations with the assistance of a private mediator between November 2007 and February 2008 over the extent to which the injunctive terms of the Consent Decree that resolved a race discrimination class action brought by ten of the Federation's African-American members and the Federation shall be incorporated into the CBA. For approximately seven years, those terms largely have eliminated racial discrimination in training, qualifications and position assignments that was the pattern at Amtrak prior to the lawsuit. If the parties are unable to reach agreement in the mediated negotiations, the Federal Court will decide the issue. A recommendation by this Board would not be useful.

BMWED'S POSITION ON INDIVIDUAL AMTRAK PROPOSALS

1. No furloughs based on work rule changes

This proposal provides no actual employee protections because Amtrak also proposes to have unlimited subcontracting and unlimited furloughs under item 20. This type of empty proposal is symbolic of Amtrak's overall negotiating stance since bargaining began in 2000.

2. Payroll Changes

Amtrak's proposal regarding payroll changes does not merit the attention of the Board since it will not preclude agreement as long as appropriate arrangements are negotiated for employees who do not have bank accounts.

3. Establish General Training/Examination Rule

It is unclear what Amtrak is seeking with regard to item 3 of its proposal which proposes to establish a General Training/Examination rule. The parties currently have a training rule. Amtrak has not expressed with any specificity what it is seeking in this proposal. If Amtrak is seeking an unlimited ability to alter schedules with no notice to employees, this proposal is objectionable. In any event, this issue is subject to an Order of the United States District Court for the District of Columbia that seeks to eliminate race discrimination on Amtrak and should not be a subject matter of the Board's recommendation.

4. Emergency Force Reductions

Amtrak's fourth work rule proposal, regarding the restoration of the status quo following emergency force reductions, does not merit attention by the PEB because it will not preclude agreement between the parties if all other terms are agreed upon. This proposal merely clarifies my understanding of the present rule concerning emergency force reductions.

5. Temporary Vacancies

Under item 5, Amtrak seeks the ability to fill temporary vacancies with automatic bidders and limit the application of the rule to stabilize the workforce. Amtrak's intent is not clear. Amtrak currently has the ability to fill temporary vacancies and its proposal to limit the application of the rule is vague. The BMWED has previously expressed interest in a rule allowing employees filling vacancies to be automatic bidders provided that, Amtrak agrees to allow employees to have demand rights by seniority to fill open vacancies. It needs to be emphasized that our proposal did not limit Amtrak's current right to determine the staffing needs of its workforce. Amtrak

has rejected our attempt at compromise, which is consistent with Amtrak's overall refusal to engage in the give and take normally found in successful bargaining.

6. Amendment of Assignment Rule

Amtrak's proposed changes under item 6, if accepted, would allow it to change the shifts and geographic location of employees. Some employees' gross earnings would be reduced by implementation of the rule in certain situations. This issue is subject to an Order of the United States District Court for the District of Columbia that seeks to eliminate race discrimination on Amtrak and should not be the subject of the Board's recommendation. On its merits, item 6 is highly objectionable. This proposal would severely impact an employee's ability to bid and remain in a job while taking into consideration family issues such as child care. Amtrak has provided no justification for this change or what purported cost savings it hopes to achieve. Amtrak already has flexibility regarding forced assignments under Rule 18 and the training agreement and has not indicated why this flexibility is not sufficient.

7. Establish 3X12 Gangs with no rules on scheduling

Item 7 of Amtrak's proposal is highly objectionable. It is also vague since the establishment of gangs is complicated and requires intensive discussions. Amtrak has not adequately explained why additional gangs are necessary. This proposal could also amount to an earnings reduction for approximately 30% of BMWED represented employees making the agreement impossible to ratify. Without more, this proposal is objectionable because of the negative impact on the earnings and quality of life of employees.

8. Modify rules governing rest days

It is unclear what Amtrak is seeking in item 8, which seeks to modify rules to allow for weekend coverage, since current work rules already give Amtrak flexibility to provide for weekend coverage for all track production work. In addition, the current rules permit Amtrak to bulletin Saturday or a Sunday as a regular work assignment. If an operational need is demonstrated, Amtrak has even greater flexibility with respect to rest days and weekend coverage. Amtrak has never demonstrated that coverage on the weekends is lacking. It is seeking modifications to existing rules that are already extremely flexible and, if adopted, will greatly reduce the quality of life of the employees without the threshold requirement of having to show an operational need. Amtrak's current obligation to demonstrate an operational need is not unreasonable; indeed, what would be unreasonable is a recommendation that provides that Amtrak can disrupt the working lives of its employees on the mere whims of management. There is no basis to recommend adoption of this proposal.

In its Section 6 notice dated November 1, 2004 to the BMWED, the NCCC also sought the unlimited ability to determine employees' rest days. In reaching agreement with the RLBC, the NCCC gave up its demand.

9. Modify starting time rules

Amtrak has not expressed why it needs a change under item 9 to modify starting times for employees. Amtrak currently has flexibility under Rule 42 to schedule all workers on a 3 shift schedule with varying start and stop times. With respect to track production workers which comprise about 30% of the total workforce there is virtually no restriction on starting times.

In its Section 6 notice dated November 1, 2004 to the BMWED, the NCCC also sought the unlimited ability to determine employees' start and stop times. In reaching agreement with the RLBC, the NCCC gave up its demand. There is no basis for recommending adoption of this proposal.

10. Modify overtime rule only allowing for payment after 40 hours

Item 10, which proposes to pay overtime only after 40 hours of work, is highly objectionable. Taken with Amtrak's other demands, it would enable Amtrak to assign employees to work overly long shifts at odd hours with no additional compensation. If Amtrak does not want to pay overtime under the current rules, it simply can avoid asking employees to work double shifts or other overly long shifts. Additionally, PEB No. 222 considered this proposal and found that it should only apply to employees who work beyond 8 hours as a part of their normal shift. The current work rules are consistent with this recommendation. Finally, inclusion of this proposal in any settlement would also ensure that the agreement would fail ratification.

11. Modify Rule 89

Item number 11, which seeks to modify Rule 89, was only proposed recently. This proposal was not anticipated in Amtrak's Section 6 proposal. Since it has not been the subject of bargaining and since Amtrak has not attempted to justify it, it does not merit the attention of the Board. In any event, this rule is objectionable. It will significantly expand the geographic areas within which employees can be required to travel, negatively affecting their quality of life. The proposal will also allow the arbitrary transfer of work from one group to another potentially causing instability.

12. Modify Rule 90-B-C-D-E

Proposal item 12, which seeks to modify Rules 90-B, 90-C, 90-D and 90-E regarding production gangs, is also objectionable. These proposals will severely affect the quality of life of employees. Amtrak has not provided any operational reason why Bridge and Building employees or Electric Traction employees should be subject to the rules that apply to work gangs under Rules 90 B, C, D and E. It is also unclear how Amtrak defines "capital improvement work". Amtrak has provided no information, let alone an incentive, that would convince the BMWED to agree to this rule change. It is particularly perplexing that this proposal would be applied to Electric Traction gangs since Amtrak has never formed one despite having the ability to do so since 1997.

13. Modify rule on assembly points

Item 13 concerns a rule that Amtrak agreed to in 1997. This issue was also addressed in PEB No. 222. Changing it back is highly objectionable. Employees in travel status are currently required to assemble where they lodge. Change to this rule would allow Amtrak to appoint a different assembly point regardless of where employees are housed, which would cause substantial hardship to employees and greatly increase the working day with unpaid time. The current rule also encourages Amtrak to find lodging for employees near the job site. The Carrier has provided no rationale for a change to this rule.

14. Allow changes to shifts

Proposal item 14 would result in a wage reduction for employees. Accordingly, it is highly objectionable. Amtrak has provided no rationale for this proposal or the cost savings it seeks to achieve. It has not offered its employees anything in return for agreeing to this proposal. Again, this proposal would negatively affect an employee's

ability to schedule child care or deal with other family responsibilities. It should also be noted that the Brotherhood of Railroad Signalmen has a similar rule but that rule is self policing and used only in the event of actual operational need because it also requires payment of time and one-half for the new shift that is worked when a schedule is changed. Amtrak has proposed no such payment for BMWWE-represented employees.

15. Eliminate investigations for drug, alcohol and absentee cases

Under item 15 of Amtrak's proposal, the Company seeks to eliminate investigations with regard to alcohol and absentee charges. This issue is subject to an Order of the United States District Court for the District of Columbia that seeks to eliminate race discrimination on Amtrak and should not be addressed by the Board's recommendation. Regardless, the BMWED objects to this elimination of due process. This investigation represents the only mechanism to establish facts and test company assertions against a factual record prior to the issuing of discipline.

16. Eliminate payments during investigations

Item 16 is a rule that was modified in the 1997 round of bargaining. Comparable to Amtrak's rules covering supervisors and managers, the rule requires payment of employees taken out of service while the Carrier investigates whether the employee committed any infractions. Implementation of the rule has resulted in drastically more efficient investigation and trial processes. The rule also ended past gross abuses in which trials were unreasonably delayed by management with the result that innocent employees were held out of service without compensation for extended periods. In 1995, I wrote a letter to Amtrak's then President detailing how African American BMWED members had been disparately harmed by management's right to remove employees from service with

no pay. *See* PRLBC Exh. 10. In 1999, the National Railroad Adjustment Board vindicated the rights of one employee who was subject to outrageous delays in the scheduling of a hearing. *See* PRLBC Exh. 11. Since the rule was changed in 1997, these problems have been eliminated. Given the success of the rule, it must be retained. Amtrak has provided no credible rationale for changing this rule. Since it relates to discipline, this issue is subject to an Order of the United States District Court for the District of Columbia that seeks to eliminate race discrimination on Amtrak and should not be addressed by the Board's recommendation.

17. Allow management not to respond to time claims

Item 17, which seeks to eliminate the requirement for Amtrak to respond to claims, does not merit attention by the Board and is obviously unacceptable. Productive labor relations are fostered through communication between the parties. This would undermine relations between labor and management by allowing operational management at Amtrak to avoid all communication with the Union. Grievances are often resolved at the job level because of the threat of penalties if management ignores claims. The current rule provides an incentive for management to engage the Union whenever a claim or grievance is submitted in writing and should not be modified as Amtrak suggests.

18. Modify Holiday rule

Item 18 does not merit the Board's attention. The new rule proposed by Amtrak would require an employee to work an entire shift before and after a holiday in order to be paid for the holiday. This proposal represents Amtrak's attempt to compensate for a lack of managerial control. If Amtrak does not want employees to be released prior to

the end of an assigned shift on the day preceding or following a holiday, its supervisors can decline permission for employees to leave. Remarkably, the alleged "abuses" complained of by Amtrak all were based on excused absences. There is no basis for implementing this rule.

19. Extend probationary period

Amtrak's 19th work rule proposal is a new proposal that seeks to extend the probationary period. No discussions have taken place with respect to this proposal. Amtrak has provided no basis to extend the probationary period to 120 days, nor cited any circumstances or past problems that call for an extension of the probationary period.

20. Eliminate all rules on subcontracting

Item 20, which would allow for unlimited subcontracting of maintenance of way work, is the most objectionable of Amtrak's proposals. As a practical matter, the Union will never agree to unlimited subcontracting and no agreement doing so could ever be ratified. Therefore, any recommendation in favor of Amtrak's proposal and will derogate any framework for settlement that emerges from this proceeding.

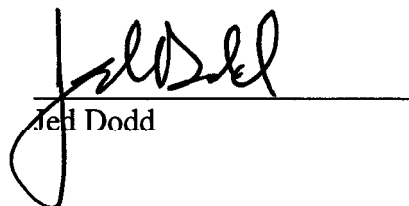
With respect to the merits of the proposal, Amtrak has no basis for seeking unlimited subcontracting. As a matter of history, in early 1987, I negotiated the current scope rule which governs subcontracting on this property. The parties agreed then to protect the core work of maintenance of way employees. Over ten years passed with no significant disputes over the scope provision or subcontracting. I was able to work with Amtrak management to ensure that unit work was protected while also ensuring Amtrak had the flexibility it needed.

During the status quo period, dating from 1999 to the present, Amtrak has attempted to ignore the plain language and intent of the scope rule by taking a more aggressive approach on subcontracting. This has led to some seven arbitrations over subcontracting since 2000. The Union has prevailed in all of the cases by showing that Amtrak was attempting to subcontract out core maintenance of way work.

Despite the recent disputes over subcontracting, Amtrak was able to subcontract numerous jobs that fall within the scope of the BMWED agreements without penalty. I have calculated that during the status quo period of 2000 through the present, Amtrak subcontracted approximately 170 projects on the Southern District alone. The cost of this subcontracting has ranged from as little as \$10,000 to over \$400 million. A list of the subcontracted jobs is contained in PRLBC Exhibit 12. In addition to the jobs contained in that list, I have been able to work out agreements that have provided for additional subcontracting of work. For example, I recently agreed to the subcontracting out of work in Sunnyside Yard in New York, which is part of the East Side Access Project. At no point are the operations of trains threatened by our current subcontracting rules. Amtrak has the right under the current scope rule to subcontract any and all work when emergency conditions threaten train operations.

Finally, Amtrak can provide no justification as to why it needs unlimited subcontracting. Any argument that Congress has mandated this flexibility is disingenuous. Public Law Board No. 6671, which is PRLBC Exhibit 13, rejected Amtrak's argument that the Amtrak Reform Act provided greater flexibility to subcontract. There is no mandate in this language to increase the use of subcontracting. Amtrak also cannot demonstrate that subcontracting is necessarily cheaper or more

effective than using Amtrak personnel. I submit that Amtrak personnel can usually accomplish jobs more effectively and cheaply than contract personnel who do not have the expertise of my BMWED members. I ask that the Board recommend withdrawal of Amtrak's proposal.



Ted Dodd