

**BEFORE PRESIDENTIAL EMERGENCY BOARD NO. 242**

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**PRESENTATION OF  
JOINT COUNCIL OF CARMEN, COACH CLEANERS AND HELPERS,  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,  
AND INTERNATIONAL ASSOCIATION OF MACHINISTS AND  
AEROSPACE WORKERS**

**NMB Case Nos. A-13330 (JCC), A-13098 (IBEW), and A-13125 (IAM)**

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**STATEMENT OF GARY MASLANKA  
INTERNATIONAL VICE PRESIDENT  
TRANSPORT WORKERS UNION OF AMERICA**

## **Professional Background**

My name is Gary Maslanka and I am an International Vice President of the Transport Workers Union of America (“TWU”) and Director of TWU’s Railroad Division. I began my career in the railroad industry with the Penn Central railroad in October of 1974 and worked as a carman in both the Penn Central’s freight and passenger operations. In 1978, I was elected President of TWU Local 2020 with jurisdiction over TWU members employed at Conrail and Amtrak, among others. In 1998, I became an International Staff Representative for the TWU and in 2004 became the Director of the Railroad Division. In September 2005, I was elected International Vice President and continue to serve as Director of TWU’s Railroad Division. I have participated in several rounds of Section 6 negotiations with Amtrak including this one on behalf of the Joint Council of Carmen (“JCC”) comprised of the TWU and the Brotherhood of Railway Carmen, a division of the TCU.

In the course of my career I have had extensive involvement in rail safety issues and in the Federal Railroad Administration (“FRA”) rulemaking process. I serve as a member of the Railroad Safety Advisory Committee (“RSAC”) established by the FRA in 1996 as a collaborative group of various rail industry stakeholders to make cooperative recommendations on safety regulations to the FRA. Earlier in my career I assisted in drafting a procedures manual for Conrail compliance with Federal regulations. I have also conducted safety training at Conrail regarding hazardous materials and other safety related issues. I have testified before Congress on several occasions on rail safety and security issues.

**Amtrak's Demands For Drastic Work Rule  
Changes Are Totally Unnecessary**

Amtrak has maintained throughout this protracted eight-year process that it must have a long list of drastic work rule concessions from shop craft employees. They have unconscionably told our members that since their unions failed to agree to their drastic rule concessions Amtrak would, as a matter of principle, not agree to provide our members with the back pay they deserve. As we demonstrate below, most of Amtrak's proposed rule concessions are totally unnecessary and well beyond any on our Nation's freight railroads and most commuters. In addition, this Board should know that Amtrak's shop craft workforce is both skilled and highly productive. All of the crafts work together cooperatively under existing rules. There is simply no need for Amtrak's proposed radical departure from what are standard work rules and craft identification in the rail industry. Amtrak's proposals themselves are demoralizing to an already demoralized work group that has waited eight years for a new agreement. A work force that is doing more with less employees and with little respect from Amtrak for their hard work and sacrifice.

Amtrak's asserted rationale for most of the changes sought is cost-savings. Amtrak's claim lacks credibility. First, Amtrak has never presented us with cost-saving figures for many of its proposed changes. Second, under the best of circumstances, reliable savings estimates from work rule changes are difficult to come by and in Amtrak's case it is next to impossible. Government studies repeatedly have found Amtrak's accounting systems woefully inadequate, resulting in an inability to measure costs accurately.

As recently as October 2005, the General Accounting Office (“GAO”) criticized Amtrak for its continuing inability to produce accurate data on costs. According to GAO, “[w]ithout th[is] data, Amtrak has limited ability to understand or identify its corporate and units costs and to identify where potential cuts might be most effective.” See Ex. 35, Government Accountability Office, GAO-06-145, *Amtrak Management, Systemic Problems Require Actions to Improve Efficiency, Effectiveness, and Accountability*, at 104-28 (Oct. 2005)(“GAO Report”).<sup>1</sup> GAO specifically singled out Amtrak’s mechanical department, whose cost statistics for car and locomotive overhaul, inspection, and repair were found to be woefully inadequate. That agency indicted Amtrak’s reliance on dated information and its inability to integrate information from its payroll system, resulting in “unreliable” labor cost figures. *Id.* at 99.

In response to Amtrak’s long-standing accounting problems, the funding reauthorization bill recently enacted by the Senate mandates that Amtrak develop a new financial and cost-accounting system for its operations. See Ex. 29, S. Rep. No. 110-67, at 8 (2007). This new system will be reviewed by the Inspector General of the Department of Transportation, who is to report back to Congress on it. See Ex. 28, S. 294, 110th Congress, § 203(b) (2007). In addition, the bill requires Amtrak to submit a comprehensive report each year for the next five years, allocating revenues and costs. See *id.*, § 204. Plainly, the fact that Amtrak’s accounting systems now require Congressional monitoring speaks volumes

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<sup>1</sup> All exhibits cited herein may be found in the separately-bound volumes of exhibits submitted by the JCC, IBEW, and IAM.

regarding the continued unreliability of the Carrier's financial data. We submit that this Board should put no greater confidence in Amtrak's financial data than has the U.S. Senate.

A prime example of Amtrak's inability to accurately measure savings from work rule changes involves compensatory time which is known as "Bank Time." In bargaining for the last agreements between IAM, IBEW, and JCC, Amtrak proposed that employees bank up to 40 hours of compensatory time off in lieu of overtime pay. Amtrak estimated that its Bank Time rule change would save \$674,000 annually from the carmen craft alone. While Organizations agreed to the bank-time provision in that round of bargaining, in this round Amtrak has done an about-face and claims it must eliminate bank time because the costs of the program are too high. As this example illustrates, Amtrak does not have the ability to reliably predict whether or not a given work rule change will save or cost it money. We have no confidence in their projected savings calculations, nor should this Board.

Amtrak claims its proposed work rule changes will give it greater flexibility and efficiency. This is empty rhetoric. Amtrak has not and cannot make a case that it actually needs these changes. First, it has not used the flexibility it currently has under existing work rules. Second, Amtrak's work rules are similar to those on the freights which have achieved record levels of productivity and profitability, as well as most commuters. *See Ex. 43* (chart comparing Amtrak's work rule demands to current freight and commuter work rules). It is clear that it is not our work rules that hinder efficient performance and revenue growth, but rather Amtrak's mismanagement.

It needs to be emphasized that productivity at Amtrak has greatly increased largely because fewer employees are doing much more work. Amtrak's own records reveal that between 2000 and May 2007, shop craft union employment fell from 5,863 to 3,932 -- a 33% reduction.<sup>2</sup> In the same time period, ridership and revenues were up with five consecutive years of record-high ridership and 10 percent more ticket revenue this year than last. Amtrak itself acknowledges the increased productivity of its Mechanical Shop in its Fiscal Year 2006 Annual Report:

Mechanical Shop production and changes to efficiency in the Mechanical operation in FY 2006 contributed to the availability and reliability of Amtrak's fleet. Continuing a favorable trend since 2003, minutes of delay attributed to equipment issues were 13 percent lower than in FY 2005.

Furthermore, consolidation of locomotive and car preventive maintenance practices began in FY 2006, resulting in an annualized cost reduction of \$2 million and increasing equipment availability. As a result of mechanical production over the past several years, 55 percent of passenger cars and 93 percent of locomotives were in a state of good repair at the end of FY 2006. The Beech Grove, Ind., facility overhauled 178 passenger cars and 45 diesel locomotives. Combined, the Wilmington and Bear facilities located in Delaware completed overhauls on 17 electric locomotives and 85 passenger cars.

Ex. 38, 2006 Annual Report, at 13.

It is important to note that these productivity improvements were achieved safely. According to Amtrak's FY 2006 Annual Report, Amtrak achieved "the fewest number of on-

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<sup>2</sup> Overall, Amtrak union employment during that same period experienced a 31% decline, almost 7,000 union jobs cut from a base of 22,000. During that same period, management positions were reduced by only 3%.

duty employee FRA-reportable injuries ever recorded in Amtrak history.” *Id.* at 16. Thus, despite the fact that Amtrak shop craft employees work on some of the most outmoded, failing equipment in worldwide passenger railroading, substantial productivity gains have been made -- under the current work rules and we have done it safely.

Amtrak’s work rule demands are insulting to Amtrak workers and are wholly unnecessary. Amtrak’s initial Section 6 Notices to IAM, IBEW, and JCC included at least 15 work rule concessions, which have remained virtually unchanged even during the cooling-off period. Many of Amtrak’s proposals involve sweeping revisions in shop craft rules that are standard and long-established in the railroad industry. Amtrak’s proposals to utilize composite mechanic and to contract-out more of our work would radically alter traditional craft lines and long-standing job security protections. Amtrak has also demanded other significant changes such as a two-tiered wage system, increased use of part-time employees and reduced overtime pay, all of which are totally unacceptable to the Unions before this Board. In fact, the work rules that Amtrak seeks to implement are almost entirely unheard of within the railroad industry and none exist on the freights.

### **Composite Mechanic**

At the outset of negotiations, Amtrak presented IAM, IBEW, and JCC with a proposal to create a new classification for shop craft employees, which Amtrak euphemistically refers to as “cross utilization” or a “team environment.” In reality, as Amtrak’s proposal during the cooling-off period makes plain, Amtrak has dusted off its old demand that the Organizations agree to a “composite mechanic,” which numerous past PEBs have rejected. The composite

mechanic concept involves the elimination of traditional RLA craft and class distinctions. In essence, Amtrak seeks the authority to take drastic and wholly unnecessary measures, which include the assignment of mechanical and shop work to employees without regard to skill level, classification or work rules.<sup>3</sup> If Amtrak were to seriously undertake to implement such a rule, in my opinion it would require a massive commitment of time and resources to crosstrain and newly certify thousands of employees. Amtrak has neither the wherewithall nor the funds to engage in the costly and time-consuming effort that would be required.

Throughout the long history of the industry, railroad work has been performed on a craft basis. When Congress enacted the RLA in 1926, it incorporated traditional craft lines into the structure of the Act itself by requiring that union representation be determined on a

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<sup>3</sup> As stated in its November 20, 2007 proposal, Amtrak seeks the following with respect to its composite mechanic proposal:

Scope -- Modify all work assignment and jurisdiction rules and agreements to provide:

- a. Employee can do any work in/out of craft they are capable of doing; other crafts can do any JCC work they are capable of performing; training may be given as needed.
- b. A craft to craft ratio amongst shop craft unions will be established as of the date of the last signed shop craft settlement. Ratio will be reviewed around October 1 of each year or when a major event occurs. Amtrak will provide adjustments and JCC may review the adjustment as it involves them.
- c. Any scope claims which may exist are considered withdrawn. No scope or jurisdiction claims may be submitted in the future.

Exs. 8-10.



craft or class basis. Because of the RLA's mandate, past PEBs have uniformly rejected carrier attempts to obliterate craft lines by imposing the composite mechanic concept. The long, and unsuccessful, history of the composite mechanic proposal before past PEBs is fully set forth in our pre-hearing submission, and I will not repeat it here. Most significant for present purposes is Amtrak's last chapter in that long history -- the proceedings before PEB 222.

Amtrak made the same composite mechanic proposal before PEB 222 in 1992, as it now raises before this Board. PEB 222 found that Amtrak's proposal for a composite mechanic was "premature" because Amtrak had not fully implemented the incidental work rule. Ex. 19, PEB 222 Report, at 20 (May 28, 1992). Significantly, Amtrak has never fully implemented the recommendation of PEB 222 to utilize the incidental work rule as a viable alternative and therefore has no justifiable need for its current proposal.

The incidental work rule as it exists on Amtrak, as well as the freight carriers and many commuters, permits the Carrier to assign incidental work, including simple tasks, without regard for craft, as long as the time for the incidental work does not comprise a preponderant part of the total amount of work involved in the assignment. Work is defined as "incidental" when it involves the removal, replacing, connecting or disconnecting of parts and appliances such as wires, piping, covers, shielding and other appurtenances from or near the main work assignment in order to complete the assignment. Incidental work includes simple tasks that require neither special training or special tools. Simple tasks can also be assigned to any employee for a maximum of two hours per shift. In addition, Amtrak's

current rules allow for performance of mechanic work by any craft at locations where there is insufficient work to justify employing a mechanic of each craft.

Despite PEB 222's finding that Amtrak's composite mechanic proposal could only be evaluated in light of full implementation of the incidental work rule, Amtrak has largely failed to utilize the flexibility available to it under the existing rule but nevertheless demands more. There are numerous instances in which Amtrak managers could have, but have not, put the rule into practice. For example, work such as greasing and oiling, stripping out parts, and filling water tanks generally constitute simple tasks, and yet Amtrak does not consistently seek to apply the incidental work rule to such tasks.

Amtrak does not deny that it has failed to fully utilize the incidental work rule but claims it is too complicated for management to apply or will result in too many grievances over its application. Amtrak's position doesn't hold water. The fact is that the incidental work rule is the same rule currently followed on the freights and at most commuter railroads. In those few instances when Amtrak has applied the rule, grievances generally have not resulted. In fact, no grievances at all have been filed by the IBEW or the IAM concerning Amtrak's application of the rule. For the JCC, very few grievances have been filed concerning alleged violation of the incidental work rule as applied to the carmen craft, and most of those involved Amtrak's assignment of work to non-shop craft employees, who were not covered by the incidental work rule. For example, during a nearly 20-month period, three grievances were filed concerning supervisors/managers performing carmen work which does not implicate the incidental work rule; one case involved a bridge and building member of

the BMW performing carmen work; and only six cases involve grievances claiming members of other crafts exceeded the two-hour limitation on simple tasks or performed work that was not consistent with the definition of simple tasks in the rule. In any event, Amtrak cannot claim it has been stymied in its full utilization of the incidental work rule because of its fear of grievances. There have been precious few.

Amtrak simply has no excuse for failing to utilize the current rule which PEB 222 made clear was necessary before Amtrak's need for its drastic proposal could even be evaluated. Further, if the real problem is fear of grievances, then the parties could agree to expedited arbitration and joint time checks to resolve issues quickly, but we doubt Amtrak would consider such ideas.

At Metro-North, PEB 226 rejected that carrier's composite mechanic proposal under circumstances comparable to those at Amtrak involving the incidental work rule. That Board, like PEB 222 before it, emphasized the need to develop experience and information under the incidental work rule. The Board found that there had been "insufficient exchange of information between the parties on a direct negotiations level."

This is true particularly of the Carrier's proposals for composite mechanic classification and changes in the incidental work rule. These changes in work assignment, if implemented, would be of fundamental significance to the affected crafts. It follows that any such changes must be the product of extensive discussion and compromise. Until it can be demonstrated that the parties have together fully explored the complex questions involved in division of work among the crafts, the Board has no basis on which to make recommendations as to specific revisions in longstanding scope and related rules.

Ex. 20, PEB 226 Report, at 17 (Apr. 21, 1995). These findings of PEB 226 apply with equal force to the dispute before this Board.

Amtrak also argued before PEB 222 that adoption of its composite mechanic rule by its three smallest shop craft unions weighs in favor of application of that rule to all the shop crafts. PEB 222 found that argument wholly unpersuasive. The Sheet Metal Workers International Association (“SMWIA”), the International Brotherhood of Firemen & Oilers (“IBFO”), and the International Brotherhood of Boilermakers, Iron Ship Builders Blacksmiths, Forgers and Helpers (“IBBB”) had agreed to Amtrak’s composite mechanic proposal prior to PEB 222. At that time, those organizations in the aggregate represented 19% of all shop craft employees, as opposed to the IAM, IBEW, and JCC which together represented 81% of the shop crafts. These smaller unions agreed to the composite mechanic provision with certain protective language intended to guarantee that these unions would continue to represent close to their then-current proportion of shop employees, no matter how low the actual number of employees in their crafts dropped. Under these circumstances, PEB 222 easily dispensed with Amtrak’s pattern claim.

We find no pattern as a result of agreements on ‘work flexibility’ or ‘employee utilization’ programs with a few of the smaller crafts; they represent a very small part of the workforce, and it appears that implementation of their agreements will depend on similar arrangements with the major craft organizations.

Ex. 19, PEB 222 Report, at 20. The same circumstances found by PEB 222 exist today, except that SMWIA, IBFO, and IBBB now represent an even smaller portion of the shop

crafts, consisting of only 17%, of the total shop craft workforce. Accordingly, their adoption of the composite mechanic rule does not establish a pattern.

In addition, Amtrak's proposal ignores the unique training, skills and qualifications that form the basis of traditional craft or class designations in the railroad industry. Extensive apprenticeship programs exist for each of the skilled shop crafts. In addition to the required apprenticeship programs, Amtrak shop craft employees are governed by Federal regulations including the training, qualification and designation requirements found in 49 C.F.R. § 238 and are subject to disqualification for duty and even personal liability for violation of these regulations. *See Ex. 32, 49 C.F.R. § 209, et seq.* In recent years, shop craft work has become even more skilled, as knowledge of new and increasing complex technology is required. Amtrak has a special need for a high level of quality and expertise in maintaining its equipment. Unlike freight carriers, Amtrak's primary customer is the traveling public. We submit that the type of cross-utilization proposed by Amtrak would seriously jeopardize public safety by compromising the unique expertise and qualifications that are built into the current craft or class demarcations.

Currently, the shop craft employees work cooperatively and well under existing rules. Amtrak's proposal itself seriously undermines morale and will do nothing to enhance productivity. For all these reasons, this PEB, like so many others before, should reject Amtrak's proposal for a composite mechanic.

## Contracting Out

The current rule on Amtrak is that the Carrier may contract out work, provided that no employees are furloughed as a result. In its proposals to the Organizations during the cooling-off period, Amtrak demanded the following changes to the current rule:

Contracting Out - Eliminate any existing contracting out restriction. Provide that employees furloughed as a result of contracting will have an option for up to and including 1 year severance pay, or transfer with relocation, or remaining on furlough.

Exs. 8-10. Amtrak's demand for the essentially unfettered ability to outsource any or all of our work is a truly radical and upsetting proposal. Clearly, no other rail carrier, either freight or commuter, enjoys the ability to subcontract without restriction and no PEB decision supports Amtrak's request. Again Amtrak's proposal is a slap in the face to its employees who have been extremely loyal and productive under stressful circumstances.

Like composite mechanic, the issue of subcontracting has a long history before PEBs. In 1964, PEB 160 recommended proposals put forth by the shop craft unions' for certain restrictions on contracting out by the freights and protective payments for employees adversely affected by subcontracting. PEB 160's recommendation was based on it finding "that the public interest would be served by measures that would arrest the decline in railroad shop facilities." Ex. 12, PEB 160 Report, at 13 (Aug. 7, 1964) ("The national interest would be better served by maintaining the capacity of the railroad industry to keep its equipment in good working order and to expand its operations as needs require."). The national

freights and the shop craft unions largely adopted the recommendations of PEB 160 in their 1964 agreements.

In the negotiations leading to PEB 219 in 1991, the National Carriers' Conference Committee proposed the elimination of all restrictions on the contracting out of certain shop craft work. PEB 219 rejected their proposal.

After considering the voluminous evidence we cannot conclude that . . . all restrictions should be lifted. Although it has been a quarter of a century since the first subcontracting provisions were negotiated, the finding of Emergency Board 160 in 1964 are still applicable, namely, that the public interest would best be served by measures which would help to arrest the decline in railroad shop facilities and to maintain the capacity of the industry to keep equipment in good working order and expand its operations as needs require.

Ex. 16, PEB 219 Report, at 71-72 (Jan. 15, 1991); *see also* Ex. 21, PEB 228 Report, at 26 (June 23, 1996) (rejecting carrier proposal to remove all restrictions on the contracting out of mechanical work). We submit that, just as PEB 219 found no reason to get rid of the 1964 restrictions on subcontracting, there is no justification here for such a radical change in the status quo.

In fact, the 1964 agreement to this day remains in place on the national freights without substantial modification. The freight agreements prohibit contracting out except where the carrier lacks equipment or personnel to perform the work at a given location. The carriers must also give notice to the affected unions of the intent to subcontract work and attempt to reach agreement. If no agreement is reached, the matter may be processed to expedited arbitration. The original 1964 labor protective arrangements also remain in place, which provide a dismissal allowance of monthly payments equivalent to 60% of final average

monthly pay. This dismissal allowance can continue for as long as five years, depending on years of service. An employee eligible for a dismissal allowance also has the option of choosing to resign and accept a lump-sum payment of up to 12 months of pay. Subcontracting restrictions remain in place on the commuter railroads as well. For example, MBCR applies the same rule as Amtrak. On METRA, contracting out is prohibited unless the subcontractor pays prevailing wages. The bottom line is that Amtrak wants what no one else in the industry has -- the unrestricted ability to contract out work.

Amtrak strains in arguing to us that Congress' 1997 Amtrak Reform and Accountability Act mandates the contracting out of our work and justifies its unrelenting attack on our rules. In fact, the reform legislation requires no such thing. That fact is demonstrated by Amtrak agreements reached in 2003 and 2004. Those agreements only provide for the establishment of a labor-management committee to examine and consider the current restriction on subcontracting, as well possible areas for the insourcing of work. To date, no such committee meetings have been held. Thus, Amtrak cannot argue that it is required by the 1997 Act to obtain subcontracting concessions from these Organizations, when it did not obtain the same concession from other unions.

Amtrak's claimed need for an expansive subcontracting rule in order to achieve cost-savings and to improve efficiency is fictitious. As Amtrak's current President has stated, "outsourcing is no panacea." Ex. 49, Matthew L. Wald and Don Phillips, *Surprising Forecast for Amtrak: Growth*, N.Y. Times, Dec. 23, 2006. Given Amtrak's often unique equipment, its employees are best suited to maintain, repair and retrofit the railroad's fleet.



*See* Ex. 50, Bob Johnston, “This Ain’t Magic,” *Trains*, Oct. 2003, at 43 (“Outsourcing repairs is a magic bullet! say the consultants. But if Amtrak were to outsource, they’d be eating that bullet.”).

Shop craft employees have demonstrated to Amtrak management time and again that they are fully capable of performing certain work at a lower cost than a subcontractor. For example, employees at Amtrak’s Beech Grove facility have shown that they can perform certain paint work and car interior coating at substantial savings and with equal or superior workmanship. Nevertheless, Amtrak continues to demand that we who built this company and have helped it survive should give up our work to vendors. That should never be allowed to happen.

Moreover, Amtrak’s contracting out of our work will end up costing it more. This is not just my opinion. The GAO has harshly criticized Amtrak’s contracting practices, citing an unacceptably large number of contracts awarded without competitive bidding and poor record-keeping related to contracts. *See* Ex. 35, GAO Report, at 104-28. Is Amtrak’s proposal just an excuse to do more of the same?

Moreover, it is clear that many contractors are considerably less reliable than the Amtrak workforce. Shop craft employees have witnessed numerous examples of shoddy work done by subcontractors that had to be reworked by Amtrak forces. In addition, contractors’ employees are also not subjected to the same level of security screening, thus making Amtrak’s passenger equipment more vulnerable in a time of our country’s ever-increasing security concerns.

### Amtrak's Other Work Rule Demands

Amtrak's other work rule demands are no less extreme and unacceptable as those proposals related to composite mechanic and subcontracting rules. Past PEBs have similarly rejected many of Amtrak's other work rule demands, nevertheless Amtrak is pursuing those demands once again without justification.

**Mechanic B** - Mechanic B is another Amtrak proposal with a long and unsuccessful history. Amtrak proposes to "[e]stablish a new classification and rate of pay for semi-skilled/routine work" for new hires at 80% of the rate for journeymen. Exs. 8-10. This proposal amounts to the creation of a two-tiered wage system. Under such a system, new hires work side-by-side with more senior employees, but receive less pay for the same work. We submit that such a proposal is simply destructive, both in terms of lowered morale and productivity. Significantly, Amtrak made this same proposal before PEB 222. That Board rejected the Mechanic B classification, and this Board should as well.

**Part-Time Employees** - Amtrak is seeking from JCC work rules changes that would permit expanded use of part-time employees. Under the current rules, Amtrak may establish part-time positions at new locations and for new commuter services subject to approval from the affected Organization. With respect to the JCC, Amtrak can also establish part-time coach cleaner positions at new locations or existing locations subject to a 5% cap or at least one part-time position per location. Part-time is not more than 20 hours and not less than 15 hours. In the 1998 agreement, the parties also agreed to establish a labor/management

committee to study implementation of part-time employees at existing locations and for new work.

Amtrak now proposes to the JCC, the following:

Part Time - Provide for a limit of no more than 1 to 1 part time to full time ratio. Eliminate restrictions on establishing and utilizing part-time positions. Part-time positions will not be established if such would displace a full time employee.

Ex. 8. The agreements on the Class I freights do not provide for use of any part-time shop craft employees. The same is true of the major commuter rails with the exception of MBCR, which follows the current Amtrak rule. Moreover, Amtrak currently is not making use of the ability to employ part-timers as granted under the current JCC agreement. Nor has the Carrier worked with the Organization to formulate its proposal regarding part-timers as it committed to do under the 1998 agreement. For all these reasons, this proposal is wholly unreasonable and its adoption should not be recommended.

**Overtime** - Under existing agreements, involved employees receive overtime pay for work on holidays, rest days, or outside of regular bulletined hours. Amtrak proposes that overtime only be paid for hours worked in excess of 40 straight time hours in the work week. Paid vacation, holidays, jury duty, bereavement, training, paid personal leave and paid military leave would be credited toward the 40 hours when substituted for regular work hours. In essence, Amtrak seeks to reduce overtime for its unionized shop craft employees to the statutory minimum applicable to workers generally under the Fair Labor Standards

Act. The Unions simply cannot accept Amtrak's proposal that its union employees have no greater overtime benefits than at-will employees.

None of the freights have such a rule regarding overtime, nor do the commuters with the exception of SEPTA, which is an outlier in terms of work rules. PEB 222 rejected a similar proposal made by Amtrak to the BMW. This Board too should recommend withdrawal of Amtrak's overtime proposal.

**High Speed Rail** - After eight years of negotiations, during the cooling-off period, Amtrak proposed new restrictions on the roster for High Speed Rail ("HSR") for the first time. This continued expansion of work rule demands is unfortunately symptomatic of Amtrak's approach throughout the course of these negotiations. As the timing of Amtrak's proposal demonstrates, it has not been the subject of bargaining. For this reason alone, it must be rejected.

In addition, substantively the proposal is extreme and unnecessary. Amtrak seeks to strip employees who transfer into HSR of their position on the general seniority roster by requiring that such employees "be placed only on the HSR Roster." Exs. 8-10. Thus, if there was a reduction in force, such employees could no longer hold positions outside of HSR. Under the current HSR agreement, employees accepting HSR assignments are already "locked-in" to the position for 18 months in light of the specialized training needed for HSR. Any further restriction is unwarranted and will only serve as a disincentive for current employees to fill HSR positions.

Amtrak also unnecessarily seeks changes to the discipline and grievance procedures, restrictions on holiday pay, “lock-in” of work assignments, and an extended probationary period for new hires. Amtrak gave these items little or no emphasis during bargaining. Accordingly, I will not address them in detail. Suffice it to say that they constitute dramatic changes to existing agreements and fall well outside the normal rules for shop craft employees in the railroad industry. Amtrak has not sought to justify any of these demands, nor do we believe that any such justification is possible.

Lastly, the three agreements that Amtrak reached in 2003 and 2004 with certain unions do not constitute a pattern in terms of work rules. Those agreements only covered about half of the bargaining period that has elapsed for the Unions before this Board and only covered about 30% of the Amtrak workforce. Moreover, those agreements were unique. They did contain some modest work rule concessions, but as a quid pro quo for various work rule improvements. Suffice it to say that none of the concessions agreed to reach the magnitude of what Amtrak seeks here such as a composite mechanic rule, unrestricted contracting out, and seniority limitations.

Thus, if these agreements were to form the basis of a pattern for the Organizations before this Board, it would be necessary to replicate this give-and-take with each Organization receiving various improvements in exchange for relatively minor concessions. If the Board were to adopt such a pattern -- as opposed to the simple pattern of no work rule changes derived from the freights -- then the Organizations request the improvements contained in their original Section 6 Notices and outlined in Exhibit 52 accompanying our

submission. These improvements include such items as increased and expanded differentials, sick leave, matching 401(k) contributions, changes to vacation rules, among others. Indeed, recommendation of any of Amtrak's work rule changes would require recommendation of quid pro quo improvements.

### **Conclusion**

In conclusion, we greatly appreciate this opportunity to express the employees' frustration and disappointment at Amtrak's take-it-or-leave-it attitude during the eight years leading to the creation of this Board. Amtrak's bargaining posture throughout has been that unless these unions agreed to the drastic and we believe destructive work rule changes they proposed, our membership would suffer the loss of back pay. Amtrak's conduct cannot be rewarded by this Board. The terms of the national freight agreement which had no work rule changes, and with all of its faults, is acceptable to us. Amtrak's proposal will never be.