BEFORE PRESIDENTIAL EMERGENCY BOARD NO. 242

PRESENTATION OF
AMERICAN TRAIN DISPATCHERS ASSOCIATION;
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES/IBT;
BROTHERHOOD OF RAILROAD SIGNALMEN; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS;
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS;
JOINT COUNCIL OF CARMEN, COACH CLEANERS AND HELPERS;
NATIONAL CONFERENCE OF FIREMEN AND OILERS, SEIU;
AMERICAN RAILWAY AND AIRWAY SUPERVISORS ASSOCIATION-MAINTENANCE OF EQUIPMENT; AMERICAN RAILWAY SUPERVISORS ASSOCIATION-MAINTENANCE OF WAY

NMB Case Nos. A-13340, A-13080, A-13185, A-13125, A-13098, A-13330, A-13370, A-13395, A-13435

STATEMENT OF JOEL M. PARKER
INTERNATIONAL VICE PRESIDENT
TRANSPORTATION•COMMUNICATIONS INTERNATIONAL UNION

Professional Background

I have been an International Vice President of the Transportation•Communications International Union ("TCU") since 1991 and Special Assistant to the President since 2004. I was the principal adviser to TCU's International President in the last three national freight negotiations and lead negotiator in a number of local rail negotiations.

I have also served as the elected spokesman of several labor bargaining coalitions, including the Amtrak C-2 Coalition, the ten-craft Metro-North Labor Coalition, and during this bargaining round the Amtrak Shopcraft Coalition, which is comprised of the International Association of Machinists and Aerospace Workers ("IAM"), the International Brotherhood of Electrical Workers ("IBEW"), and the Joint Council of Carmen ("JCC"), consisting of TCU and the Transport Workers Union ("TWU"). I also was a lead rail labor negotiator in the negotiations with the national rail carriers that led to the deal that became the basis of the Railroad Retirement and Survivors' Improvement Act of 2001.

I have testified at Presidential Emergency Board ("PEB") 222 (Amtrak Joint Council of Carmen) and PEB 240 (Metro-North Labor Coalition). In addition, I have testified before Section 7 arbitration boards involving Amtrak and the National Carmen and Clerks.

I started my railroad career in 1973, as an employee of Amtrak, and for the seven years prior to becoming an International Vice President of TCU, was the General Chairman with chief representation responsibility for the clerical craft and class on Amtrak. I was directly involved in negotiating the last three agreements with Amtrak

covering that craft, including the 2003 agreement. I was also directly involved in the negotiations of the 2003 On-Board Service Agreement and the 2003 Product Line Supervisors Agreement.

Introduction

I am testifying on behalf of all nine crafts that are before this Board: the Amtrak Shopcraft Coalition, comprised of the IAM, IBEW, and JCC; the Passenger Rail Labor Bargaining Coalition ("PRLBC"), consisting of the American Train Dispatchers Association ("ATDA"), the Brotherhood of Maintenance of Way Employees/IBT ("BMWED"), the Brotherhood of Railroad Signalmen ("BRS"), the National Conference of Firemen and Oilers, SEIU ("NCFO"); and the American Railway Supervisors Association ("ARASA")/TCU Maintenance of Equipment and Maintenance of Way employees.

These nine bargaining units represent 6,729 members on Amtrak.

Eight of the nine bargaining units served Section 6 Notices on Amtrak in 1999; the ATDA served in 2000, as they concluded bargaining for the previous round in March, 2000. Following unsatisfactory direct negotiations with Amtrak, each of the organizations invoked mediation between 1999 and 2005. In almost eight years of bargaining, no genuine progress toward a voluntary settlement of these disputes was made, leading the Mediation Board to conclude that mediation had failed on October 18, 2007.

While this fruitless process was continuing, each of the Unions negotiated two agreements with the national freight railroads, for the period January 1, 2000 through December 31, 2004, and January 1, 2005 through December 31, 2009.[1]

The Unions before you have not had an agreement with Amtrak since January 1, 2000, and this "round of bargaining" has now lasted for what are essentially two rounds.

We come before you when there is unprecedented wide public support for passenger rail. Amtrak ridership and revenues are both at record highs. At a time when oil prices are reaching record highs and the political instability of many oil-producing regions is apparent, the benefits of fuel-efficient trains are increasingly clear. As gasoline prices soar, more travelers are electing to travel by Amtrak. Ex. 39, at 13.[2] The airline industry continues to be in turmoil prompting Congress to hold hearings on legislation for minimum rights for air travelers. Amtrak estimates that as a result of its operations, almost eight million cars have been removed from the road, and air congestion has been eased by the elimination of 50,000 airplanes each year. *Id.* at 15.

It is also a time when the political consensus for support of Amtrak has never been greater. The Senate recently overwhelmingly passed an $11.6 billion authorization bill with wide bipartisan support.

---

[1] The IAM's tentative agreement for the period 2005-2009 failed ratification. ARASA does not participate in national bargaining, but instead bargains property by property. In this period ARASA reached two agreements with the involved national freight railroads, following the economic pattern of the national freights.

[2] All exhibits cited herein may be found in the separately-bound volumes of exhibits submitted by the JCC, IBEW, and IAM.

Employee productivity by any measure has greatly increased. Though carrying more passengers, Amtrak's unionized work force has declined by 26% during this bargaining round.

Against this background of record-setting revenue, ridership, employee productivity and bipartisan Congressional support, Amtrak's failure to negotiate contracts with the overwhelming majority of its unionized workforce can only be understood as a deliberate strategy to stall negotiations. For eight years Amtrak has unwaveringly pursued a radical negotiating course, insisting on sweeping work rule concessions in addition to major changes to the health and welfare plan agreed to with the freight carriers, which we have offered to Amtrak. Throughout, Amtrak has refused to even discuss a fair back pay resolution.

The Bargaining Dispute

The Unions in the nine crafts before you are not alone. Four other Amtrak unions not before this Board – the United Transportation Union ("UTU"), the Brotherhood of Locomotive Engineers ("BLE"), the Sheet Metal Workers International Association ("SMWIA"), and the International Brotherhood of Boilermakers ("IBB") – are still in bargaining for contracts that opened January 1, 2000. Fully 70% of Amtrak's unionized workforce are one month away from their eighth year without a contract. (The other 30% reached agreements for the period 2000 through 2004, but are going into their fourth year without a contract for the ensuing period.)

Each of the Unions here has negotiated agreements with the national freight carriers, regional and short line freights, and commuter carriers during this eight year period. With one exception these agreements were made without the benefit of Emergency Board recommendations.

Not only are the involved Unions before you demonstrably able to make agreements, but they have made freight agreements covering this period for their members with the same responsibilities and training as their members employed by Amtrak. These agreements provide a guideline for a settlement today. So why are we in front of this Board, when there are agreements in place providing a blueprint for the resolution of this dispute?

The answer is that Amtrak has taken a position in these negotiations at odds with its own bargaining history and the pattern established by the national freight agreements covering this period. From the start of bargaining in this round, Amtrak has insisted that it would not enter an agreement unless the unions were willing to make sweeping, major rule concessions though no such concessions were made in the national freight agreements. Other witnesses will speak on the details of Amtrak's concessionary demands. Suffice it to say that Amtrak seeks major changes in the seniority rules, contracting out provisions, and job classification rules that have been in place since its inception and remain in place on the freight carriers.

Further, Amtrak has taken the view that its employees are not entitled to any back pay for this period. Any general wage increase should, in Amtrak's view, be applied only

prospectively, after the new contract is ratified. While employees on all other carriers have received wage increases during the last eight years, Amtrak maintains that the involved unions' members are entitled to none, except for the paltry $1.71 an hour in COLA's that Amtrak was required to pay by the previous agreements. These COLA's under the prior agreement are to be offset against future negotiated wage increases. This $1.71 an hour amounts on average to less than one percent a year, which is unacceptable on its face and not consistent with the national freight pattern. While Amtrak has offered a $4,500 signing bonus, this bonus represents a small fraction of the back pay rightfully owed to these workers after eight years without a wage increase.

It is this combination of unyielding demands for rule concessions, and the refusal to recognize the back pay obligations to the involved workers, which has put us in front of this Board. Amtrak has taken this stance at the same time that it has significantly increased its ridership and revenue, and while employee productivity has soared. As explained by economist Tom Roth and other witnesses, these productivity gains were made in spite of the minimal capital investment Amtrak has made. According to Amtrak, its workers should be rewarded for their increased productivity by receiving no wage increases for the last eight years and giving up work rules that have protected them since Amtrak began its operations.

The Role Of "Pattern"

The primary factor in all prior PEB decisions is the settled rail contracts in the same round. Here not only are all other rail contracts in this round resolved except for the

UTU and IAM, but as we demonstrate below, Amtrak has historically relied on the freight carrier national agreements as the basis for its settlements. The reliance on such critical comparisons has been determined by prior PEBs as being necessary to prevent the "destabilization of parity arrangements and established relationships." Ex. 17, PEB 220 Report, at 5-6 (May 28, 1992).

Numerous Emergency Boards have relied on the "pattern" concept to reject union efforts to "leap frog" over wage settlements made earlier in the same round. These decisions support this Board's rejection of Amtrak's efforts to now seek a deal more to its liking than what the unions negotiated with the freight carriers over the last two rounds. The game of "leap frog" should be out of bounds for both parties.

PEB 176 emphasized the role of patterns:

> Late settlements above a pattern earlier established penalize employees involved in the earlier voluntary negotiations. This is destructive of the broader system of collective bargaining in the industry.

Ex. 13, PEB 176 Report, at 8 (Nov. 2, 1969).

The converse is equally true. Late settlements below an earlier established pattern are similarly destructive of collective bargaining in the industry.

The goal of a PEB is to make recommendations which can form the basis for settlement and thereby avoid an interruption in service that would be caused by a strike. As noted by Professor Benjamin Aaron in discussing Section 7 interest arbitrations in *The Railway Labor Act at Fifty*, "[t]he importance of arriving at an award that is within the

limits of acceptability of both sides cannot be overstated." Charles M. Rehmus, editor, *The Railway Labor Act at Fifty*, 1976, at 148.

This sentiment is equally applicable to Presidential Emergency Boards. The objective has been commonly articulated by stating that PEBs should recommend the settlement that the parties would have made had they been able. PEB 234 stated its goal this way: ". . . we deem it vital to the nation and to the parties to report our conclusions as to how the bargain should have been structured had the parties been successful in their 1995 bargaining." Ex. 23, PEB 234 Report, at 3 (Sept. 21, 1997). A Board in making its recommendations should adhere to the criteria the parties themselves have used in the past to make agreements.

Here, there can be no doubt that Amtrak settlements have been based since its inception on the national freight carrier agreements in the same round, and, as found by PEB 234, those agreements set a pattern for Amtrak. Indeed, as found by PEB 230, a carrier can be bound by a pattern established by agreements with other carriers. Ex. 22, PEB 230 Report (June 23, 1996). In that case the agreements based on PEB 219's recommendations were found to be a pattern for a settlement with Conrail that did not participate in that Board.

We have patterned our proposal on those agreements reached in two rounds of hard bargaining with the National Carriers' Conference Committee. Our proposal calls for wage increases, including back pay, and, as will be discussed by Dan Biggs, changes

to the health and welfare plan that mirror those made to the national health and welfare plan, but no rule concessions and no rule improvements.

Our willingness to forego rule improvements is based on our acceptance of this pattern principle, and not our view that such improvements cannot be justified. Other witnesses will testify about the work rule improvements sought by the unions on Amtrak when this round began. We are willing to take these off the table in order to follow the freight pattern. But if this Board were to reject our position that Amtrak's agreements are to be patterned on the freight agreements and enters the thicket of rules for each of the crafts involved herein, then our demand for rule improvements must be considered along with Amtrak's quest for concessions. These improvements include increases in vacation and other leave provisions, strengthened job security, 401(k) matching contributions, and higher differentials. We are willing to forego these only in return for a settlement patterned on the freight agreements.

Commuter Carriers

Before discussing the importance of the freight settlements, I want to note that historically rail worker wages on commuter railroads have been significantly higher, currently averaging $3.00 to $5.00 per hour more than Amtrak wages, though commuters on average cover a far smaller percentage of their operating cost with revenue – 47.2% for commuters compared to 77.7% for Amtrak. The higher commuter wages reflect the higher responsibility of employees charged with the transportation of passengers rather

than freight, and the fact that employees with those skills are valued more highly by the commuter railroads.

One example demonstrates this point. In 2003 a new carrier, the Massachusetts Bay Commuter Railroad ("MBCR"), successfully bid on providing commuter service in Boston. MBCR replaced Amtrak, which had declined to submit a bid. MBCR's work force was composed of approximately 1,500 former Amtrak employees who had previously provided this service. Within a few months of taking over from Amtrak, MBCR entered its first collective bargaining agreements. These agreements gave the former Amtrak employees 21.7% in general wage increases over a five-year period. The former Amtrak employees fortunate enough to become employed by MBCR received these increases at a time when the Amtrak employees before you had not received an increase since 1999. Although doing the identical work as they did before, these MBCR workers enjoyed significant increases merely because the employer changed from Amtrak to a commuter operator, reflective of the larger truth that Amtrak workers are paid significantly less than their counterparts in the commuter and freight rail industry.

The commuters' employees have the same functions and training as Amtrak's. Indeed, while primarily an inter-city carrier, Amtrak provides commuter service in Connecticut, Maryland, Pennsylvania, Virginia and California, making it a major commuter carrier as well. Not only do some of Amtrak's employees work directly in commuter service, but there is a high degree of integration between Amtrak and the commuter railroads.

It is commuters' higher wages, and not the wages of the freight carriers, which we believe should properly be the model for Amtrak wages. Notwithstanding, we recognize the historic relationship with freight carriers, and we are not asking the Board to ignore those relationships. Indeed, our case is based on that well-established relationship. Amtrak should not be permitted to reject that relationship here and seek major rule concessions not in place on the freight carriers, without making up the wage disparities between it and the commuter carriers. If the freight agreements are not the pattern, then the starting point on wages is for Amtrak to reach parity with the commuters.

National Freight Agreements

I now turn to the relationship of Amtrak agreements to those on the Class I freight carriers. Emergency Board recommendations have traditionally been based on the standard that employees with comparable responsibility should receive comparable pay. The responsibilities and classifications of work for Amtrak have been the same as the Class I freights, and there has been a clear relationship between their wages.

When Amtrak was carved out of the freight carriers in 1971, its initial work force came from those carriers, and Amtrak paid the wage rates established by them. In 1976 Amtrak acquired the Northeast Corridor from Conrail, and the affected Conrail employees assumed positions on the Amtrak roster with the same wages as previously earned. Through the 1980's, wage increases, benefits, and rate changes on Amtrak were implemented through stand-by agreements that followed national bargaining on the freight railroads.

However, in agreements reached in 1981, both Conrail and Amtrak deferred the first 12% of the total wage increases agreed to by the other freight carriers for that round. In 1984, Conrail agreed to restore the 12% deferral; Amtrak never did. So from 1985 through 1992, Amtrak workers lagged national freight rates by 11.5%. (In the 1984 round, Amtrak wage increases again mirrored the national freight pattern; however, the 12% deferral was still in effect.)

In 1991, PEB 219 set the basis for freight wage increases for the period July 1, 1988 through December 31, 1994. Amtrak unions resisted the application of PEB 219 principally because its report did not contain a catch-up increase to account for the 12% wage deferral. Ultimately, the dispute between Amtrak and the ATDA, BLE, BMWE, IAM, IBEW and JCC was referred to PEB 222. PEB 222 then considered the relevance of PEB 219's recommendations in resolving the 1991 round of bargaining. Ex. 19, PEB 222 Report (May 28, 1992). At the time PEB 222 considered its recommendations, Amtrak had already reached wage agreements that did not follow the PEB 219 pattern with unions representing more than 50% of its work force. As a result the Board concluded that Amtrak had taken itself out of the PEB 219 pattern "at least as to wages." *Id.* at 9. Because, unlike the instant matter, Amtrak had reached agreements covering the entire period of that round of bargaining with unions representing 50% of its work force, "the possibility of a '*destabilizing*' effect between those bound by the PEB 219 recommendations and others gaining a better wage benefit [was] not present." *Id.* (emphasis added).

Interestingly, Amtrak's proposal before PEB 222 increased wages by a higher percentage than recommended by PEB 219 to the freights. The difference between Amtrak and those unions participating in PEB 222 was over the amount by which Amtrak's increases should exceed the freights. The higher wage increases recommended by PEB 222 represented an effort to make up for the 12% wage deferral negotiated in 1981. While PEB 219 recommended a 10.3% cumulative wage increase over 6.5 years, PEB 222's recommendation, based on the Amtrak pattern, was for cumulative increases totaling 21.8%.

The next PEB involving Amtrak, PEB 234, issued its decision on September 21, 1997. It dealt with the issue of whether the freight agreements based on the recommendations of PEBs 227, 228 and 229, which issued in May 1996, were to be a basis for a settlement on Amtrak. Amtrak had urged that the Board adopt its proposal for a wage freeze with only COLA adjustments through 1998. Amtrak argued, as it does here, that its funding levels made it impossible for it to match the freight pattern. The Board rejected this proposal, noting that it would not impose a wage disparity with the "usual comparators" – namely, "the historic relationship between Amtrak and the freight industry BMWE employees" – from which Amtrak employees might never recover. Ex. 23, PEB 234 Report, at 7-8. Instead, the Board looked to the BMWE freight settlements to craft a wage recommendation that provided increases in the same amount, and granted at the same time as the freight increases, thereby categorically rejecting Amtrak's claim that it was "not tied to any freight pattern." *Id.* at 5.

As held by PEB 222 and PEB 234, in the absence of negotiated Amtrak agreements creating their own pattern, the appropriate pattern upon which this Board should base its recommendations is the freight contracts for the comparable period. To fail to do so would, in the words of PEB 222, have a "destabilizing" effect on historical bargaining relationships.

The wage increases established by the Class I freight contracts in national bargaining for the non-operating crafts for this period are set forth below:

10/01/01	.27 cent COLA roll-in in
06/30/02	2.5%
07/01/02	3.5%
07/01/03	3.0%
07/01/04	3.25%
07/01/05	2.5%
07/01/06	3.0%
07/01/07	3.0%
07/01/08	4.0%
07/01/09	4.5%

Moratorium through 12/31/09.

These wage increases in the freight agreements were not accompanied by any rule concessions.

Our wage proposal is patterned on the national freight settlements and is designed to afford Amtrak employees the same increases, at the same time, as the freight agreements, as set forth below:

Current COLA - eliminate the balance of the total accrued COLA of $1.44 per hour payable as of July 1, 2007 B i.e., existing hourly rates are reduced by $1.44.

06/30/02	.27 cent COLA roll-in
07/01/02	6.087%[3]
07/01/03	3.0%
07/01/04	3.25%
07/01/05	2.5%
07/01/06	3%
07/01/07	3%
07/01/08	4%
07/01/09	4.5%

Moratorium through 12/31/09.

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

Like the freight settlement upon which it is patterned, our proposal to Amtrak does not include any rule concessions but does include significant cost-saving provisions for employee health and welfare plans.

Amtrak's Proposal

Amtrak has offered wage increases that are not based on historic, long standing relationships with freight agreements – but rather cobbled together from agreements from unions representing approximately 30% of its members for the period 2000 - 2004, and a tentative agreement it reached with the Brotherhood of Locomotive Engineers ("BLE") that was overwhelmingly rejected by the BLE membership.

[3] The 6.087% on July 1, 2002, is equivalent to the National Freight Agreement which called for 2.5% on June 30 and 3.5% on July 1, 2002.

PEB 230 rejected the claim that agreements with 40% of the unionized work force constituted a pattern. Ex. 22, PEB 230 Report. And agreements covering a five-year period certainly do not constitute a pattern for a ten-year period. Nor has any PEB held that a rejected contract is a pattern for other unions, particularly when the rejected agreement covered operating employees who are compensated in an entirely different manner than non-operating employees with totally different work rules. Amtrak's fantasy pattern also contains sweeping rule concessions and no back pay.

Amtrak has offered the unions involved herein the following prospective wage increases:

> Within 30 days of ratification, $.75 COLA rolled into base. On date of signing, apply the following wage increases:
>
> 3.5%, 3%, 3%, 2.5%, 2.0%, 1.5%, and 2.0%.
> 04/01/08 1.5%
> 10/01/08 3.5%
> 10/01/09 3.5%
> Moratorium through 10/01/10.

Comparing The Proposals

The total compounded wage increase under our proposal is 35.2%, while the total under Amtrak's is 34.4%, a difference of 0.8%. Using a weighted average rate for the nine crafts before this Board, our proposal results in a final average hourly rate of $25.06; Amtrak's proposal results in a final average hourly rate of $24.90. The difference is 15 cents per hour.

While these differences might not seem large, there are three major differences between the two proposals.

First, they cover different contract durations. Our proposal has a moratorium through December 31, 2009. Our last proposed wage increase is July 1, 2009, and the next contract would open for changes on January 1, 2010. Our proposal covers ten years, and its duration is exactly the same as the National Freight Agreements. Amtrak's proposal would extend the contract an additional nine months until September 30, 2010, with no wage increases in the final year. There is no pattern for Amtrak's proposal.

The second major difference is that Amtrak does not offer back pay. The first wage increase under Amtrak's proposal does not go into effect until 30 days after contract ratification, and employees would receive no wage increases during the prior eight-year period. Our proposal is patterned on the National Freight Agreements, and our proposed wage increases go into effect at the same time as the increases under those agreements. The average loss to employees by delaying the time their wage increases go into effect is approximately $12,800.

The third major difference is that under our proposal if a new contract is not reached by July 1, 2010, employees would begin receiving a Harris COLA until a new contract is reached. Amtrak's proposal does not provide for a Harris COLA. A Harris COLA is a down payment on future wage increases. Unlike a real COLA, a Harris COLA will be offset against future wage increases. Its purpose is to provide employees

cost of living increases during the protracted period of rail negotiations. This is the single area where Amtrak proposes to follow the national freight pattern and we do not.

Amtrak's contracts have traditionally lagged behind national freight agreements, often by several years, though the eight years involved herein is unprecedented. Amtrak employees should not be expected to go years without even the pittance of a COLA. Amtrak should not have any reasonable objection to the Harris COLA, since it is offset against wage increases when a new contract is reached.

Amtrak's proposal, while providing almost the same total wage increase as ours, contains a triple whammy for employees. No back pay to make up for the eight years since employees last enjoyed a wage increase at the front end of the contract, no wage increases during the final year of the contract, and no Harris COLA adjustment after the contract becomes amendable. Amtrak's new bargaining tactic of refusing back pay, if adopted, will "tip the balance of power" in future bargaining decidedly against employees by enabling Amtrak to freeze labor costs during extended negotiations for a new contract.

Back Pay

Under Amtrak's proposal, employees receive no back pay for eight years. Wage increases are only to become effective after new contracts are ratified. Under Amtrak's concept of bargaining, it lays out its demands, never wavers, and the employees are to be punished for any delay by the unions in capitulating to those demands by forfeiting back pay.

In its weekly publication of November 21, 2007, Amtrak proudly articulated its tactics as follows: "Since the Railway Labor Act is designed to have a long drawn out process for negotiations, Amtrak determined that the principle of no back pay would serve as an incentive for labor and management to reach an agreement sooner rather than later." Ex. 11. Amtrak does not explain how the refusal of back pay gave it an incentive to make an agreement sooner rather than later. After eight years of not wavering from its initial position, it is apparent that this tactic gave no such incentive to Amtrak.

Finally, Amtrak makes clear that, having announced its policy of no back pay, it was under no obligation to budget for making such payments; and since it failed to budget for such payments, the unions must, in its view, agree to forfeit back pay. We do not accept the logic of this position which makes the Carriers' budgeting process the determining factor in collective bargaining.

While Amtrak has offered a $4,500 signing bonus, this amount is only a small percentage of the back pay that would be owed to our members under the freight pattern.

Amtrak's position on back pay represents a radical departure from the norms in traditional rail bargaining. Along with Amtrak's insistence on sweeping work rule concessions, Amtrak's stance on back pay posed the single greatest obstacle to a negotiated settlement. For more than six years, Amtrak opened every bargaining session with the announcement that it would not even talk about wage increases predating the signing date. In 2007, Amtrak came up with its signing bonus offer, but still insists there will be no wage increases predating the date of signing.

This position is at total odds with the historical norm in rail bargaining, whether it is on Amtrak, national freights, or major commuters. While the amount of retroactivity has varied from contract to contract, one principle has not varied: unions that sign later receive wage increases (or their monetary equivalent) back to the start date established by the first signing union.

Let's first look at the Class I freight carriers. They have historically provided those unions entering an agreement, after the pattern was set by others, the same wage increase on the same date as the unions setting the pattern.

After the wage pattern for the freight carriers was established by PEB 219, three PEBs dealt with the timing of wage increases of others, for whom the PEB 219 pattern was deemed to apply.

PEB 220 rejected the freight carriers' efforts to deny back pay to the IAM which had declined to enter the pattern settlements agreed to by the other rail unions in that round. The Board found that the IAM members were entitled to the same increases *to become effective on the same date as set forth in the prior agreements*. The Board stated that it saw "no reason why the IAM should suffer any loss of retroactivity simply because it declined to participate in the proceedings before PEB 219, which it had the legal right to do." Ex. 17, PEB 220 Report, at 9. Similarly, this Board should not deny Amtrak employees back pay because their unions exercised their legal right to decline to capitulate to Amtrak's demand for sweeping concessions.

In PEB 221 involving Conrail, the BMWE sought to achieve a wage settlement higher than PEB 219's recommendations. The Board rejected this effort, recommending that the parties adopt the same wage increases "and time schedule" as recommended by PEB 219. Ex. 18, PEB 221 Report, at 12.

Further, in PEB 234 which also involved Amtrak, the Board, over Amtrak's objections, recommended the freight carrier settlement which included wage increases on the dates they became effective under that settlement, resulting in back pay. PEB 234 specifically cited Amtrak's "*tradition of matching the duration and expiration dates of freight industry agreements*." Ex. 23, PEB 234 Report, at 7 (emphasis added).

We seek the same results here. The wage increases of the national freight settlement should be given to Amtrak's employees in the same amount, on the same date, as called for under those settlements.

Finally, it should be noted that in PEB 240, involving the most recent dispute to go before a Board, the Coalition of labor organizations therein received the same wage increases, *at the same time*, as the increases provided in the "pattern" agreement between Metro-North and ACRE. Ex. 24, PEB 240 Report, at 10.

Amtrak's proposal to substitute a signing bonus for actual back pay is not only woefully inadequate but is also internally inequitable, and needlessly divisive to employees. Signing bonuses traditionally are in addition to back pay settlements, or to cover short periods where differences in rates and hours worked would not lead to significant individual disparities between employees. Their inequities are profound,

however, if applied to a period of long duration, as is the case here. There can be no equitable rationale for a settlement that pays the same amount to employees regardless of rates of pay or overtime hours worked.

A lump sum signing bonus does not account for the fact that wage rates for the crafts before you can vary by as much as $12 per hour between the lowest and highest rated jobs. Nor does a lump sum signing bonus account for widely different amounts of overtime worked. While a lump sum may be appropriate in situations where these variables are not as significant, it is an inequitable means to provide for eight years of back pay.

Under Amtrak's proposal, an employee could have worked full time in seven straight years – 2000 through 2006 – and receive zero signing bonus. Alternatively, an employee hired in 2006 with only one year's seniority would receive the full bonus.

Further, Amtrak's proposal would deny the signing bonus to those not having an active employment relationship. Under Amtrak's proposal, in order to receive the $4,500, an employee must have an employment relationship as of the date of the agreement, and must have worked 2,000 or more straight time hours during the period July 1, 2006 through June 30, 2007, or have "retired or died subsequent to the beginning of the calendar year used to determine the amount of such payment."

The Coalition back pay proposal is internally equitable. Back pay will be tied to the individual employee's actual hours worked and rate of pay. Employees who retired or dependents of employees who died during the retroactive period would receive the correct

prorated amount for the time they worked. Amtrak's stall tactics should not be rewarded by depriving employees who retired or died during the eight year bargaining period of any back pay.

Moreover, Amtrak's argument that it cannot afford the Unions' back pay proposal is inconsistent with its treatment of its own management. Beginning in 2003, Amtrak has raised salaries for its management by 17.5%. Earlier this year, Amtrak announced plans to increase most management salaries by another 10%, but this plan was put on hold after a firestorm of criticism from Amtrak unions. Since FY 2004, Amtrak has granted management increases based on Federal Government Pay Adjustments as published by the U.S. Office of Personnel Management and signed by the President of the U.S. as an Executive Order.

There was nothing to prevent Amtrak from budgeting funds in expectation that labor contracts would eventually be resolved. Amtrak cannot now be rewarded and its employees penalized due to its failure to budget prudently.

Ability To Pay

Amtrak will no doubt argue that Congress will not fund any back pay liability. But a management that was honest with Congress would have advised that back pay would be owed for this period and began budgeting for that purpose. Instead, Amtrak has tried to transfer the back pay owed its employees to their bottom line. This approach was explicitly rejected by PEB 234:

> Fair and reasonable labor costs are as integral a part of the budget picture as payment of the prevailing rates for power, equipment, supplies and the like. Labor costs should not be considered a residual element of funding dependent upon the availability of remaining money or be temporarily suppressed to present an unduly rosy view of Amtrak's costs.

Ex. 23, PEB 234 Report, at 3.

PEB 234 reached this conclusion at a time when the outlook for Amtrak's survival was bleakest. Performance was suffering, and both the Clinton Administration and Congress favored a phase-out of Amtrak's entire operating budget. This stands in stark contrast to today, when Amtrak is enjoying unparalleled success, whether the measure is performance or political support.

We recognize that Congress is not irrelevant to the outcome of these matters. We are simply saying that Congress, when called upon, is fully capable of speaking for itself.

As found by PEB 234 in considering a dispute involving Amtrak, the Board should not base its recommendation on speculation over future Congressional funding:

> Our obligation is to recommend a fair and equitable package of compensation for maintenance of way employees, and then leave to the funding authorities the issue of whether or not they wish to fund that package. We cannot, in good conscience, shirk that responsibility to the parties and to the collective bargaining process by surrendering to what might be characterized as political expediency.

Ex. 23, PEB 234 Report, at 6.

Indeed, PEB 234 concluded that it had an obligation to Congress to base its recommendations on traditional criteria of pay equity, not what it deemed was politically feasible:

> It is our charge and responsibility to determine the equitable terms and conditions of employment for BMWE employees based on the record and judged by the standard of people receiving comparable pay for comparable work. *Congress must be informed of considerations of equity in labor costs rules and conditions, if it is to make realistic judgments on continuing funding for Amtrak.*

Ex. 23, PEB 234 Report, at 3 (emphasis added).

PEB 234 is not an outlier. Its findings on this score are consistent with a long line of PEB and public sector interest arbitration decisions standing for the proposition that a public entity's relative willingness or lack thereof to fund the costs of an agreement should not be a consideration for an interest arbitration board. *See* Ex. 25.

PEB 226 rejected Metro-North's claim that its anticipated reduction in governmental subsidies was a basis to deny the wage claims of its employees. Ex. 20, PEB 226 Report. In an earlier decision by PEB 37, issued on May 29, 1946, the Board concluded that the Hudson and Manhattan Railroad Company, a publicly subsidized carrier, should pay the prevailing wage rates: "The employees should not be expected to sacrifice a part of their pay to serve the general public interest any more than vendors of steel rails, or tickets or railway cars." Ex. 25, at 42. Similarly, this Board should not expect Amtrak workers to earn less than their railroad industry counterparts simply because Amtrak is, and always will be, subsidized to some degree.

Amtrak is not a failing enterprise in which its employees are to be asked to accept lower wages to assure its survival. Amtrak provides a public benefit and it is for Congress, not this Board, to determine whether that benefit justifies its funding at a

sufficient level to assure that its employees are to be paid wages on parity with those set by the market place in negotiations with the freight carriers.

This Board, through its recommendations, should let Congress know the fair labor cost of employing a skilled and dedicated work force. It is then for Congress, not this Board, to decide whether to provide the funding to assure that Amtrak can pay such wages.

Amtrak's Work Rule Demands

From the day bargaining began, Amtrak announced that it would not make an agreement unless the Unions agreed to a long list of major rule concessions. In seven years, Amtrak has not taken a single rule demand off the table, and instead has kept adding new ones.

We will present other witnesses to discuss in detail why specific Amtrak proposals are unacceptable. My testimony will focus on the larger picture of why recommendation of any of Amtrak's proposals at this late juncture will in all likelihood guarantee a strike. All nine crafts remained steadfast against these demands for now going on eight years of bargaining, even in the face of no prospect of release and Amtrak's tactic of trying to starve out a settlement by refusing to offer any back pay. There is no way that, now, with a release in hand, our unions will suddenly about face and agreed to demands that we universally see as unwarranted and punitive.

As we have already noted, PEBs strive to fashion recommendations that will lead to voluntary settlements. PEB 222 stated the idea as follows: "We think it would be

unrealistic and a costly exercise in futility for all concerned if our total recommendations did not take into consideration, as a critical ingredient, their acceptability by the parties." Ex. 19, PEB 222 Report, at 83. All the Unions before this Board have demonstrated that they will not voluntarily agree to Amtrak's work rule agenda.

During the last two rounds of national freight bargaining, labor and management voluntarily reached agreements that called for annual wage increases for employees, in return for significant cost shifting and cost controls in the health insurance plan. The agreements that were voluntarily reached contained major cost containment measures and a formula for employees to make significant contributions for health costs. Under these agreements freight employees went from no employee monthly contributions to a formula that provides for monthly contributions of 15% of the carriers' overall medical costs. Employees today pay $166 a month, and the contribution is likely to rise to $200 a month by the end of the contract. In addition, co-pays and deductibles and were also increased. In light of these dramatic changes to the health and welfare plan, the national carriers dropped all demands for rule changes.

The unions on Amtrak propose to follow that national pattern: wage increases identical to those agreed to with the national carriers, changes to the health insurance plan identical to those agreed to with the national carriers, and, again exactly as in the national pattern, no rule improvements or concessions.

Amtrak takes a radically different approach. It seeks all the cost containment measures achieved by the national freight carriers (which, as stated above, we are

prepared to deliver). But unlike the freight carriers, Amtrak seeks approximately 15 rule concessions from each craft herein, including subcontracting, use of part-timers, restrictions on seniority rights, and the obliteration of craft lines. And it seeks a deal on health insurance that is, in a variety of ways, inferior to that forged with the national freight carriers.

Many of Amtrak's proposals strike at the most fundamental protections contained in our agreements.

PEBs have long rejected proposals of the magnitude that Amtrak seeks as too destabilizing of the fundamental labor-management bargain. As PEB 222 wrote in rejecting Amtrak's proposal to allow bargaining unit work defined by the BMWE scope rule to be performed by other crafts at management's discretion, *"If Amtrak were allowed to assign work traditionally assigned to the BMWE craft to other craft, and if Amtrak were allowed to assign the work of other crafts to the BMWE, at its discretion, the craft lines of all of the affected labor organizations would be destroyed."* Ex. 19, PEB 222 Report, at 65 (emphasis added). That is precisely what would happen here if Amtrak succeeded in achieving its scope and classification of work proposals.

The rail unions before you have already made major concessions in the freight negotiations, and we have offered those concessions to Amtrak. We have no intention of rewarding Amtrak for its bargaining tactics by making additional rule concessions.

For the most part, Amtrak's rule demands resemble Amtrak's original Section 6 Notices. During bargaining Amtrak has never explained why the current rules were

inadequate for its needs – though they are the same as, or more flexible than, similar rules on the freight carriers and most commuters. Amtrak comes to this Board eight years after serving its Section 6 Notices without having provided labor with the most basic information about its proposals and without having engaged in any real bargaining over its concessionary demands. Indeed, several major demands now on the table were added by Amtrak very recently.

Presentations to PEBs are not meant to be a substitute for negotiations. Rather, the PEB is to look at the history of bargaining to search for an acceptable recommendation. Where there has been no meaningful bargaining on issues, PEBs have simply declined to make recommendations. It is untenable for this PEB to make recommendations on concessionary demands where there has been no real bargaining.

The reason there has been no meaningful bargaining on rules lies with Amtrak's basic bargaining tactics. As already noted, Amtrak came to the table with a list of concessionary demands from which it never wavered and hoped that by refusing back pay it would force its employees to concede. This tactic hasn't worked, and it should not be rewarded by this Board.

Other witnesses will speak about the specific concessions sought from their crafts. I will comment on two features of Amtrak's demands.

First, it must be emphasized that Amtrak's assurance in its proposal that no existing employees on the date of the agreement will be furloughed, "as a result of rules changes herein, except as noted" is illusory if not downright deceptive. Exs. 8-10.

Among its proposals exempted from this promise is the one on contracting out. Current employees may, under Amtrak's proposal, be furloughed as the result of contracting out, notwithstanding Amtrak's apparent promise to the contrary. This would represent a major change to all nine Unions' current rules, which provide at the very least that contracting out cannot occur if it results in furlough of existing forces.

Second, one of the most egregious bad faith proposals by Amtrak in its long list of demands was its recently added proposal that early retirees should have to make monthly contributions for health insurance. This demand suddenly appeared after six years of bargaining. The National Freight Agreement has no such contribution requirement for retirees.

I want to discuss this demand in depth, as the reasons for its unfairness may not be obvious to persons unfamiliar with recent railroad history.

I was a lead negotiator in 1999 of a deal reached by rail labor and the railroad industry to seek legislation to reform the railroad retirement system. It was ultimately agreed that the benefits accruing from such reform legislation would be split evenly by the parties -- 50% in the form of reduced railroad retirement taxes for the railroads, and 50% in the form of increased benefits and future railroad retirement tax cuts for the employees.

In appraising the relative values, the parties agreed that in order to achieve a 50% benefit for each side, one item would be improved that was outside the legislative arena. That item was early retirement medical insurance coverage, a negotiated rather than

legislated benefit. As part of its 50% value, the railroads agreed to annually increase the benefit cap by the rate of medical inflation, and to provide coverage at age 60 instead of 61 while holding employee contributions at zero.

The reform legislation was passed as the Railroad Retirement and Survivors' Act of 2001. As a result of its passage, Amtrak and the other railroads have enjoyed railroad retirement tax cuts to the tune of 4%, a savings worth billions of dollars to the industry. For Amtrak to propose denigrating the early retirement benefit while enjoying the fruits of quid pro quo railroad retirement tax cuts is unconscionable.

The normal justification for work rule concessions is demonstrated shortfalls in productivity. Yet Amtrak workers have compiled a productivity record second to none. According to Amtrak, between 2000 and May 2007, union-represented jobs were cut by approximately 26%. During that same period, management jobs were reduced by only 3%.

The Class I freight railroads, operating under more restrictive rules, have not been hindered from recording record profits and performance.

Crucial to this discussion is the fact that work rule changes are historically negotiated on a quid pro quo basis. The Unions have made a conscious and painful decision to eschew seeking rule improvements, because to do otherwise would amount to cherry-picking the national pattern. It is not that we do not see the need to improve Amtrak working conditions -- for example, vacations and other time off provisions have not been improved for decades, protection against contracting out and transfers of work

are weaker on Amtrak than in most rail contracts, rate differentials stand to be increased. Recommendation of any of Amtrak's work rule proposals would necessarily open the door to traditional quid pro quo rules bargaining, which, after almost eight years of no progress, would almost certainly not result in a voluntary agreement during the 30-day cooling-off period.

Finally, in keeping with our conviction that the national freight pattern must serve as the basis of settlement, we are accepting the dramatic changes to health insurance embodied in those agreements. A later witness will detail the magnitude of those changes. Suffice it to say that most companies in America would be more than satisfied to achieve similar changes to health insurance coverage.

The national pattern represents a careful balance of the employees' need to increase compensation and the carriers' desire to control health cost inflation. Amtrak's proposal would radically upset that balance, and as such, is unacceptable.

There Is No Amtrak Internal Pattern

Amtrak has been able to make one agreement covering the entire ten year period – an agreement with the Fraternal Order of Police ("FOP"). That agreement covers less than 200 members, whose responsibilities are more comparable to municipal police officers than to Amtrak employees performing traditional railroad duties. The FOP is not a national rail organization, and its settlements have never been referred to by either Amtrak or rail labor as pattern for anything.

Finally, the Amtrak Police agreement contains unique provisions where significant numbers within the unit will be promoted to much higher paying categories, with percentage increases far higher than those received by the rest of the unit. The Amtrak Police agreement cannot be considered a pattern for the 70% of Amtrak's unionized workers whose disputes are before this Board.

Amtrak will perhaps point to the three agreements it made in 2003 and 2004 as somehow constituting an internal pattern. Those agreements were with TCU Clerks, the Amtrak Service Workers Council ("ASWC") representing On-Board Service Workers, and ARASA Product Line Supervisors.

I was one of the negotiators for all three of those agreements.

Those agreements went through December 31, 2004. They do not cover the period 2005 through 2009. All three crafts involved have been stalled in negotiations for the current round going on three years.

Those agreements cannot serve as a pattern for the 70% of employees who have not settled for the first five years, because of their uniqueness.

Each of the three agreements involved traditional quid pro quo bargaining over work rules. None of the changes Amtrak achieved remotely approached the magnitude of what Amtrak is seeking from our coalition unions – there were no equivalent concessions

to Amtrak's demand for composite mechanic, contracting out rights,[4] early retiree medical contributions, or the host of other far-reaching demands.

There were concessions, to be sure. But each concession was tied to what the union believed to be an equivalent craft-specific improvement.

For example, the clerical craft achieved its longstanding demand for a guaranteed extra board and the on-board services craft achieved its longstanding demand to cap unpaid down time on layovers. In a classic example of quid pro quo bargaining, Amtrak achieved some limitations on seniority in its crew calling office, but, in return, the union achieved a 30% increase in base pay, superior management sick leave and vacation entitlements, and limited job protection. Contrast this with what Amtrak seeks here: sweeping restrictions on seniority without any concomitant increase in pay or benefits.

PEB 234 had an almost identical situation facing it. BMWE was before it for the bargaining round beginning January 1, 1995. TCU Clerks and ASWC had already reached agreements with Amtrak covering part of that round, specifically for 1995 and 1996. PEB 234 ignored those agreements, and instead recommended BMWE's proposal to follow the national freight pattern from January 1, 1995 through December 31, 1999.

Conversely, when PEB 222 found an internal pattern existed on Amtrak in agreements covering 50% of its workforce, one of its chief rationales was concern about

---

[4] In fact the agreements resolved Amtrak's Section 6 demands, which were similar to what Amtrak has proposed to our coalition, by establishing a non-binding study committee to explore *insourcing* as well as outsourcing.

the potential destabilizing effect of having two different wage patterns on Amtrak. That would not be the case here. The agreements Amtrak reached in 2003 and 2004 provide identical wage increases to that of the national pattern we are proposing through December 31, 2004. There would not be two separate wage patterns on Amtrak. (The half percent shortfall in ending wage rates under Amtrak's proposal stems from its departure from the national wage pattern during the second five year period.) What would occur, however, under Amtrak's proposal to withhold back pay is the destabilizing result that its employees would receive much less total compensation over the ten year contract period than the national freight employees, also represented by these unions, who perform the same functions and are required to have the same skills.

Further, the Board should be aware that certain rules are unique to particular crafts, and even the same change in a work rule will affect each of the crafts differently. Therefore, it is very difficult to claim a pattern based on rules. The best example of the different impact of rule changes is the unratified BLE agreement, which Amtrak has relied upon to establish its fantasy pattern.

In that agreement the BLE accepted Amtrak's demand to delete a contract provision on subcontracting work that had previously been in statute and was removed from the law and placed in the agreements of all crafts. The provision prohibited Amtrak from contracting out any work if any employees were to be furloughed as a result. This seeming concession by the BLE was illusory. As explained by the BLE general chairman in a letter to his membership during the ratification process, the removal of this language

would have no effect on the BLE since its agreement with Amtrak already contains a strong "position and work" scope rule, which prohibits any contracting out, whether or not it results in furloughs. *See* Ex. 51.

Amtrak sought this meaningless change in the BLE agreement so that it could seek the same concession from other crafts that, unlike the BLE, do not enjoy similar protection against subcontracting. In short, a meaningless rule concession by the BLE, in an unratified agreement, does not a pattern make.

We urge this Board not to wade into the thicket of what were very complicated, give-and-take negotiations that took almost four years to finalize. The Board cannot assume that a rule concession in one craft has equal value to the same rule in another craft. Each of the three agreements contain what one would expect in voluntarily negotiated agreements – each side gave a little – each side compromised a little – to get an agreement. These agreements cannot be considered a "pattern" for the unsigned unions.

Conclusion

In conclusion, I would like to emphasize several basic points.

1. There has been a well-established relationship between the agreements on the freight carriers and Amtrak.

2. The Unions' proposal is patterned on the freight agreements over two rounds reflecting the wage, health and welfare changes, and status quo on rules found therein.

3. If this Board were to abandon the national freight agreements as a pattern, it should recommend that Amtrak's wages be patterned on those paid by the commuters.

4. Amtrak's demand that there be no back pay for eight years is unprecedented.

5. In the past, wage increases for Amtrak have generally gone into effect at the same time as wage increases on the freight carriers.

6. Amtrak's and freight carriers' efforts to deny back pay have previously been rejected by PEBs.

7. The Unions have offered significant health plan cost containment measures and employee contributions agreed upon with the National Freight Carriers in the last two rounds of bargaining.

8. Amtrak seeks major rule concessions that will never be voluntarily agreed to by the involved Unions.

9. Amtrak's strategy of insisting on sweeping rule concessions and no back pay is designed to reward it for not compromising in negotiations.

10. Amtrak's strategy is contrary to the pattern concept which is designed not to reward either side for intransigence as well as to promote equity between employees in different crafts.

The proposal we have placed before you is modest and consistent with historic relationships between existing agreements. We respectfully urge its adoption.