

BEFORE PRESIDENTIAL EMERGENCY BOARD NO. 242

Dispute Between

National Railroad Passenger Corporation

AND

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

VOLUME II

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

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

Wednesday, December 12, 2007

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

BEFORE:

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

1 APPEARANCES:

2 On behalf of AMTRAK:

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

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

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

12 On behalf of IBEW/IAM/JCC:

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

16 On behalf of ARASA:

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

22 * * * * *

1 C O N T E N T S

2	WITNESS:	PAGE
3	William Crosbie	6
4	Alexander Kummant	81
5	Joel Parker	104
6	Thomas R. Roth	185
7	Dan Biggs	308
8	William D. Pickett	351
9	George Francisco	372
10	Don Griffin	383

11

12

* * * * *

13

14

15

16

17

18

19

20

21

22

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

2 CHAIRMAN TREDICK: Good morning,
3 everyone. We're resuming the hearings before
4 Presidential Emergency Board 242. Again,
5 thank counsel for moving us along in
6 accordance with our agreed schedule. Please
7 again turn off cell phones if you have them
8 so we won't be interrupted by them. I
9 believe, Mr. Reinert, it's up to you right
10 now.

11 MR. REINERT: Yes. At this point,
12 Amtrak calls William Crosbie.
13 Whereupon,

14 WILLIAM CROSBIE
15 was called as a witness and, having been first
16 duly sworn, was examined and testified as follows:

17 CHAIRMAN TREDICK: Welcome, Mr.
18 Crosbie.

19 MR. REINERT: Mr. Chairman, members
20 of the board, we tend to modify our mode of
21 operation depending on comfort levels with
22 witnesses. And actually, Mr. Crosbie and I

1 are going to be in more of a conversation and
2 less of a presentation by him.

3 CHAIRMAN TREDICK: Proceed as you
4 wish.

5 DIRECT EXAMINATION

6 BY MR. REINERT:

7 Q Good morning, Mr. Crosbie. Can you
8 just begin by telling the PEB members about
9 your railroad industry background?

10 A Certainly. First, thank you for
11 the opportunity. It's a very important
12 subject we're going to deal with today. I'd
13 like to start by saying I've testified before
14 Congress on issues related to the operation
15 and often, we don't get into the meat of the
16 matter, which is what I call the rules of
17 engagement.

18 In terms of my background, 22 years
19 in railroading. Half of that is on the
20 freight side, half on the passenger side.

21 I started -- I signed on with
22 Canadian Pacific in 1985 as a laborer in the

1 signal department, a member of the BRS. Just
2 prior to that, I was a laborer with my
3 father's construction company and my primary
4 client was the railroads -- I worked while I
5 was going through engineering school, I
6 worked for the railroad, for Canadian Pacific
7 as a laborer. When I graduated, I signed
8 onto their headquarters in Montreal and from
9 there traveled both -- on both sides of the
10 border installing signal systems.

11 I designed, installed, commissioned
12 and tested signal systems for them. I also
13 worked in their operations and maintenance
14 department. I did a stint in one of their
15 back shops, St. Luke, and from there I worked
16 my way up in the railroad industry to
17 ultimately become Amtrak's chief operating
18 officer.

19 I joined Amtrak in '03, just as
20 they were coming out of the threat of
21 bankruptcy.

22 Q And do you have experience in urban

1 transit as well?

2 A I do have experience in urban
3 transit. I worked for the Toronto Transit
4 Commission for six years as their general
5 superintendent in the signals and electrical
6 communications department. Again, that's a
7 department, operations, maintenance, involves
8 capital, infrastructure.

9 I also, when I was there, I ran --
10 I ultimately ran the subway system for them.
11 I was in charge of the operation of the
12 underground.

13 Q And what are your responsibilities
14 at Amtrak as the chief operating officer?

15 A At Amtrak, I'm responsible for the
16 entire operation. The buck stops with me. I
17 basically represent, am here representing to
18 some degree, our customers as a voice for
19 them. Every day, we roll 305 trains, and
20 that takes, in terms of what's before you,
21 the infrastructure, track, signals,
22 electrical traction, and the -- obviously,

1 the mechanical crafts as well to deliver that
2 service. So I'm responsible for those
3 aspects.

4 I'm responsible for the police
5 department, the T and E, the train and engine
6 crews, ticketing and dispatching as well, as
7 well as some other departments such as
8 environmental health and safety.

9 Q Could you give us an overview of
10 what you're going to be speaking to the PEB
11 about today?

12 A Really, there's two key issues that
13 I want to talk about today, and that is the
14 need to get the work done, how we do that
15 work and how it impacts our service on a
16 day-to-day basis.

17 I'll talk about in the context of
18 two areas, the engineering craft and some of
19 the changes in the work rules that we want to
20 see changed in that area and in the
21 mechanical craft and how they relate to
22 getting what I will refer to a little later

1 on as the backlog of work completed. And in
2 doing that, how it relates to customer
3 service and the delivery of service every
4 day.

5 Q Could you give the board a brief
6 description of Amtrak's operations? And I'd
7 like you really to focus on the areas where
8 our engineering and mechanical crafts would
9 be working in the system.

10 A Certainly. First, I'd like to
11 start by making it very clear on the
12 Northeast Corridor, our operation is very
13 different than a freight operation. We have
14 -- in total, our total operation is 21,000
15 route miles, of which the NEC, the Northeast
16 Corridor, represents roughly 450. We have a
17 piece from Philadelphia to Harrisburg that we
18 own. 104, New Haven to 62 miles, and a piece
19 in Indiana, Michigan, around 100 miles, as
20 well as some track just around Chicago
21 proper, the station in Chicago, and New
22 Orleans.

1 Again, I want to emphasize the
2 operation on the NEC is vastly different than
3 a freight operation. In terms of our
4 facilities, we have a number of back shops:
5 Beech Grove, Indiana; Bear, Delaware; in
6 Wilmington, Delaware. We have 525 stations
7 that we operate. We own 46 of those, but
8 we're responsible for maintaining roughly
9 180, and platforms, around 400 of those.

10 In terms of equipment, we have
11 locomotives and coaches.

12 Q Where are the engineering employees
13 principally doing their work?

14 A The bulk of the work of course is
15 on the Northeast Corridor between Washington
16 and Boston and that's where the bulk of our
17 workforce is.

18 Q And the mechanical crafts, where
19 would they be repairing locomotives and cars?

20 A It would be basically the back
21 shops; Beech Grove currently for the P42
22 locomotives, Bear for our Amfleet I fleet.

1 The electric locomotives are repaired at
2 Wilmington, Delaware.

3 Q Turning to the Northeast Corridor,
4 can you just give us an overview of it from
5 the operational perspective?

6 A Northeast Corridor is North
7 America's most complex corridor to operate.
8 It's -- it is probably one of the most
9 complex in the world, in the top five.

10 You have an operation that has
11 commuters. We move roughly 750,000 commuters
12 every day. Those commuter trains operate at
13 60 miles per hour. We operate high-speed
14 train sets at up to 150 miles per hour and we
15 move annually 10 million people, which
16 represents roughly a half of our system
17 ridership. Intermixed with that, to add to
18 that complexity, we do run freight trains,
19 primarily at night, but we do run freight
20 trains.

21 There is no more complex corridor
22 than the northeast in North America, and I

1 would submit that it's probably one of the --
2 in the top five in the world.

3 Q Well, what is the daily traffic mix
4 like in terms of numbers of trains?

5 A In terms of numbers of trains, into
6 New York we'll run 1200 trains, 1,200 trains
7 a day. I want to introduce a term to you,
8 it's called headway. Headway is the time
9 between trains. We will drop to headways
10 through the tubes going into the tunnels
11 going into New York of 3 minutes between
12 trains. That type of headway you'll see in
13 subway systems, for example, but we're
14 operating that on an inner-city passenger
15 rail system, so extremely complex operation.

16 Q What are the expectations of
17 Amtrak's customers in the provision of that
18 service on the Northeast Corridor?

19 A We measure on-time performance 10
20 minutes within the public timetable. So if
21 the train arrives within 10 minutes, we
22 consider that on time. That's not a number

1 we just picked out of the air. We surveyed
2 our customers and that's what they told us
3 that's what they consider on time. So the
4 expectation is to deliver that system 10
5 minutes within the public timetable every
6 time.

7 Q And what about comfort?

8 A In terms of comfort, let me start
9 with the stations. Obviously, a good
10 experience from the station from the point
11 where you get your ticket to the time when
12 they take your ticket, you get onboard the
13 train. Onboard the trains in terms of our
14 mechanical crafts, which we'll talk about
15 today, it has to be a comfortable
16 environment. The HVAC or the
17 air-conditioning systems have to work, the
18 public address systems have to work, the
19 toilets have to work. That's what the
20 expectation is.

21 And I think we've all seen in the
22 last little while in the media that the

1 tolerance level for not delivering that is
2 growing very thin. We're seeing the
3 passenger Bill of Rights on the airline side,
4 and we are not immune to that happening to us
5 as well.

6 Q You mentioned that the Northeast
7 Corridor is different from a freight
8 operation. Can you just emphasize what
9 differences you see other than what you've
10 already described?

11 A Well, the union yesterday, the
12 unions yesterday submitted that, you know,
13 the freight agreements work for Amtrak and
14 that they match up with the operation. I
15 would submit that that is a gross
16 misrepresentation of our operation.

17 The freight operation is vastly
18 different. We are moving people. People
19 want to be moved during the primary rush
20 hours in the morning and the afternoon.

21 When you're moving packages, when I
22 worked at Canadian Pacific, we would take --

1 for example, we would take the entire plant,
2 all the tracks out of service during the day
3 and we would stop all the traffic to do the
4 maintenance on the track. You can't do that
5 in our operation. The expectation is it's
6 going to be there when they need it.

7 Q Let's turn to the issue of state of
8 good repair. Can you explain what's meant by
9 state of good repair?

10 A State of good repair is a term
11 that's thrown around, but one of the
12 analogies I'd like to draw for people is your
13 own automobile. You have a maintenance cycle
14 on your automobile. It's typically 5,000
15 miles, three months, depending on the
16 vehicle. And your expectation as an owner of
17 that vehicle is that it's not going to fail
18 in between the maintenance cycles and that
19 when you take it in for maintenance, that the
20 mechanics will catch anything that might fail
21 in between.

22 Our infrastructure and to some

1 degree our rolling stock, the equipment, is
2 in a state of disrepair because of deferred
3 maintenance. And you've heard others talk
4 about that. Mr. McHugh and to some degree
5 Mr. Bress yesterday.

6 For us, state of good repair is
7 getting our infrastructure and our rolling
8 stock to the point where there is no
9 failures, zero failures between maintenance
10 cycles. We are far from that. And we can
11 certainly show you a lot of data on the
12 failures that occur on a regular basis within
13 our system.

14 Q What will it take to get to a state
15 of good repair?

16 A We -- first let me start by saying
17 since '03, which is really when we kicked off
18 this program or initiative, we've invested
19 around 1.4 billion. So the money that
20 Congress has appropriated to us we have not
21 squandered. We've taken that money and we
22 have invested it and invested it wisely, and

1 one of the key measures of that is the
2 on-time performance. In '03, the on-time
3 performance on the Northeast Corridor was 56
4 percent, so 56 percent of the trains were
5 within 10 minutes. Today, the Acela, our
6 flagship, is bumping up against 90 percent,
7 and that is due to the investment of that --
8 those capital funds.

9 We have a backlog of 3 billion, so
10 we have basically looked after what I call
11 the low-hanging fruit.

12 The next piece is much more
13 difficult in terms of the backlog. It is
14 bridges, structures, things that will have a
15 very significant impact on the service we
16 provide.

17 Q Can you just, for example, show us
18 the type of infrastructure repair that's
19 going on on the track?

20 A This photograph shows you an
21 interlocking -- a turnout, basically, which
22 switches the train from one track to the

1 other. It's what they call a number 20
2 turnout. You get a little bit of technical
3 jargon this morning. It is capable of 45
4 miles per hour, so you can safely traverse
5 from one track to the other track at 45 miles
6 per hour. It has had deferred maintenance.
7 It is in a state of disrepair.

8 When we go in to replace that, we
9 replace it with a new turnout, in this case,
10 a number 32 and three-quarter. The most
11 important point here is that it's at 80 miles
12 per hour. So not only are we dealing with
13 the deferred maintenance and the state of
14 good repair issue, we are actually increasing
15 the capability of the plant or the
16 infrastructure.

17 Today, and for the most part, this
18 work is done during business hours. I'll
19 talk about that a little bit later in my
20 testimony. And it's done, as you can imagine
21 -- you can see in this photograph here, you
22 have a total of four tracks. If you take two

1 of these tracks out of service, you're
2 definitely going to have an impact on the
3 service plan that we've put forward to the
4 public.

5 Q How much investment will it take to
6 get to a state of good repair?

7 A As I mentioned earlier, we get
8 roughly 3 billion in backlog. In '07, we're
9 -- in terms of on the Northeast Corridor,
10 we're going to roughly invest 430 million.
11 In '08, another 550 million. And in '09,
12 another 550 million. As I mentioned, it's
13 roughly \$3 billion.

14 But one of the key concepts you
15 need to understand here is, as you're
16 progressing and if for some reason we don't
17 get the capital funds that we need, things
18 keep getting added to the list. So it's like
19 a bank account in terms of defendant
20 maintenance, is that if we can dig into it
21 and take away some of that deferred
22 maintenance without more being added at a

1 greater rate, we'll start to bring that under
2 control and to a lower level.

3 Q Let's turn to the equipment. Can
4 you describe Amtrak's locomotives and how
5 they compare to the freights?

6 A Again, I want to stress that our
7 operations is very different than the freight
8 side of the business. We have 497
9 locomotives. The chart that's shown here
10 shows what's called the utilization.

11 Utilization in this case is
12 measured in miles, and you can see some of
13 the freight railroads in terms of the mileage
14 they run annually with the service. 66,000,
15 say, for CSX. Or our P42 locomotives, we'll
16 run 165,000 miles on those. So in terms of
17 comparison with the freights, we have a much
18 tighter frame to what's called turn the
19 equipment, service it, inspect it, comply
20 with federal regulation and get it onto the
21 next train.

22 In the freight operation, they'll

1 have 4,000 locomotives in their operation and
2 it's less critical that if for some reason
3 they don't get to the maintenance on that
4 locomotive, the inspections, they just go
5 grab another one or the train doesn't go as
6 per the schedule. The packages don't get
7 delivered.

8 In terms of the cars, we have 1542
9 cars. Freight railroads don't have coach
10 cars. It's kind of obvious but I think it
11 needs to be stated. 73 percent of our cars
12 we've managed since '03 to get to a state of
13 good repair, overhauled them, remanufactured
14 them, rebuilt them. The replacement cost of
15 that fleet is in the order of \$5 billion if
16 we were to replace it.

17 The systems onboard -- this is one
18 of the big differences even within the fact
19 that they coach cars, passenger cars, is we
20 have HVAC systems, heating and ventilating
21 systems. We have toilets.

22 Q From your perspective as Amtrak's

1 chief operating officer, what is your
2 understanding of the political constraints
3 you're on with respect to your operation?

4 A We are under significant pressure.
5 And you can see in a number of appropriations
6 references to this and the law, the need to
7 become more efficient, provide that service
8 that we provide, that public service that we
9 provide, but do it more efficiently.

10 They are also saying in that, and
11 they've also said very loud and clear to us,
12 that -- do that, but also provide better
13 customer service. It's a very tall order
14 they've asked us to do. And you put it in
15 the context of the backlog of deferred
16 maintenance that we have, we are under
17 significant pressure.

18 Q What's going on in the passenger
19 operations around the country at this time
20 concerning who's doing the work, how it's
21 being done?

22 A Amtrak does not have a monopoly on

1 this business. There are a number of
2 competitors. Some of them are listed here.
3 There's Herzog, there's Bombardier, there's
4 Connex. And we compete with them for
5 services, commuter services.

6 A good example is the Coaster
7 service. In 1995, we had operated that
8 service, and when it came up for renewal, we
9 lost that bid on the basis of our cost
10 structure. It was too high.

11 Another example is the New Mexico
12 commuter operation. Same thing happened
13 there. We submitted a proposal, our costs
14 were not cost-competitive. We could not
15 compete with the private sector.

16 Q What does Amtrak need to do to be
17 able to compete better for these work
18 opportunities?

19 A We need to have some very specific
20 -- I know that the union has submitted that
21 the work rules are very complex. They are
22 not complex, what we're asking for. And

1 you'll see that hopefully in my testimony
2 today, but some very specific changes in our
3 work rules that will marginally make us more
4 competitive and be able to compete in the
5 industry.

6 I think one of the key measures
7 here in this slide is in '03, we had \$258
8 million in revenue from third-party
9 contracts, commuter operations. That has
10 shrunk to 115 million.

11 Q What is Amtrak seeking from the
12 unions concerning work rules?

13 A Before we get into the two areas of
14 engineering and mechanical and mechanical
15 shopcrafts, in general, as I said starting my
16 testimony, really what we're trying to do is
17 put the company in a better position to get
18 the work done, get that deferred maintenance
19 dealt with and do it in a manner that does
20 not impact the service, does not impact the
21 customer.

22 Today, if we take any track out of

1 service on the Northeast Corridor, there is a
2 direct impact. There's no question there's a
3 direct impact on service while that track is
4 being overhauled, maintained, whatever. And
5 the same holds true for the mechanical
6 shopcrafts as well in terms of turning
7 trains.

8 We don't have an abundance of
9 equipment. You saw that earlier in my
10 testimony. We have 497 locomotives, 1580
11 cars. We need every piece every day to roll
12 those 305 trains.

13 Q Can you first address, in the
14 engineering crafts, what is Amtrak seeking
15 concerning subcontracting reform?

16 A Well, I'll answer that by saying
17 what we're not seeking. We're not seeking to
18 subcontract out our core work. We have some
19 of the finest employees, skilled employees,
20 in the country in the railroad industry.
21 Track, signals maintenance, electrical
22 traction, bridges and structures. There's no

1 question there.

2 They need to be focused on the core
3 work, the core maintenance, replacement of
4 those pieces of those assets.

5 What we are looking to do is
6 subcontract out the noncore work. And that's
7 why I say this is not complicated, what we're
8 asking for. It's not something that -- I can
9 say it in one sentence. We want to
10 subcontract out the noncore work. The
11 noncore work, you'll see in a moment, is
12 things like brush cutting, tree trimming,
13 paving, lead abatement, underwater cable
14 inspection.

15 We don't want to contract out the
16 areas that are highly skilled, require highly
17 skilled, highly technical people.

18 Q Why is having the BMW and BRS
19 employees do this type of what you call
20 noncore work a problem for Amtrak?

21 A What happens is we have a set
22 workforce. You've heard me say we have a lot

1 of work to do. I got more work to do than --
2 on any given day. And what happens is -- a
3 good example would be brush cutting or tree
4 trimming or the collection of garbage along
5 the right-of-way -- is we have to take that
6 workforce away from the core work, say, track
7 replacement, signal maintenance, and have
8 them do those functions because, as you can
9 imagine, tree trimming, garbage collection is
10 a one-time -- somewhat one-time event,
11 hopefully, along the corridor, and it takes
12 them away from that.

13 And in one example, between -- in
14 New Jersey, we had a complaint from a
15 constituent in New Jersey where there was
16 some -- definitely some garbage along the
17 right-of-way that we need to clean up.
18 People tend to use us for some reason to dump
19 their refrigerators and other things along
20 our right-of-way. We had to take eight
21 workers away from the core work that we want
22 to do because we're not allowed to

1 subcontract that out and have them collect
2 that garbage.

3 And that resulted in, you know,
4 eight people not working on the core piece
5 for over a month. And you can imagine what
6 that does in terms of the backlog of trading
7 to get that backlog of deferred maintenance
8 done.

9 Q What is Amtrak's goal with its
10 subcontracting proposal?

11 A The goal, as I mentioned earlier,
12 is to take the workforce that's skilled,
13 knowledgeable, capable, focus them on
14 returning the infrastructure to a state of
15 good repair and to improve the capacity of
16 our network and to do it in a way that has
17 minimal impact on the service we deliver
18 every day.

19 Q Is Amtrak seeking to eliminate
20 engineering positions?

21 A That's not the intent. As the
22 chief operating officer, that is not my

1 intent. As I mentioned earlier, in my career
2 -- I've spent my career in this business. It
3 is certainly not my intent. Could it happen?
4 Yes. In the situation, it could happen in,
5 is the work is in one location and the
6 workforce is in another and they choose not
7 to go with the work, if you will.

8 And in terms of if that happens,
9 we'll offer severance pay. We'll certainly
10 offer relocation if they want to relocate.
11 Or they can remain on furlough. I want to
12 make it clear, the intent is not to eliminate
13 jobs. As I've testified earlier, we have a
14 lot of work to do. I need that workforce
15 focused on the core functions.

16 Q Let's turn to the issue of
17 workforce scheduling flexibility. What is
18 the problem Amtrak wants to address
19 concerning workforce scheduling flexibility?

20 A I was pleased to hear that the
21 union counsel brought up the issue of the
22 freight, freights and the freight agreements.

1 What you have is freight agreements
2 on a passenger railroad. Passengers want to
3 be moved during the business hours, the
4 morning rush hour, afternoon rush hour. When
5 you're on the freight side, you're dealing
6 with packages. Packages can generally wait,
7 on a relative basis.

8 What we're trying to do in terms of
9 scheduling of the work is to get that work
10 into the off-peak hours. You'll see in a
11 moment the reasons why we want to do that.
12 They're very compelling for the need to do
13 that. But the fundamental principle is to do
14 the work when there's minimal impact to our
15 customers because that's what we're all here
16 for at the end of the day is to deliver
17 service to our customers.

18 Q What has changed on the Northeast
19 Corridor?

20 A Here's the reason why. In '75,
21 1975, the number of trains per week was 7200.
22 That's grown in '05 to 11,860. So we have

1 taxed the capability of the Northeast
2 Corridor. Every -- what we refer to as slots
3 or time allotments, every slot is occupied.
4 Certainly in the rush hours, even midday now,
5 and the afternoon rush hour as well.

6 Q Can you tell us what this diagram
7 shows?

8 A It's an eye test for first thing in
9 the morning. No, just kidding. Don't get
10 too concerned over all the information there
11 and the ability to read the fine print. Each
12 of those lines represents a train. That's
13 the important piece.

14 And, of course, the important note
15 is on the bottom there, four to six trains
16 per hour. The gap between those lines on the
17 horizontal axis is the time between trains.
18 That's that headway I mentioned earlier, and
19 what this represents is between the hours of
20 midnight and 4 a.m. on the Northeast
21 Corridor. That's between Morris, New Jersey,
22 and New York.

1 Q What does this show?

2 A Same territory, Morris, New Jersey,
3 to New York, between the hours of 8 a.m. and
4 12. That's the problem is we're trying to do
5 work while running those trains. And every
6 one of those trains is carrying people.
7 Average number of people on our trains, an
8 Acela train carries 286 passengers. One of
9 our regional trains will carry on order of
10 between 4- and 500. Commuter train will
11 carry a thousand, just to give you an idea of
12 the impact.

13 So if you delay those trains, and
14 we've all seen the -- I mentioned earlier in
15 the media, the tolerance level of delays and
16 the expectation, our whole business model on
17 the Northeast Corridor's built on that
18 on-time performance of 10 minutes and that is
19 the expectation.

20 Q What current rules are a problem
21 with respect to scheduling the work when you
22 have the track time to get it done?

1 A The way the current agreements and
2 where I would agree with the union counsel is
3 the old freight agreements is you have to
4 have what's called a first trick or first
5 shift. Typically from 7 a.m. to 3:30 in the
6 afternoon is first trick. Second trick is
7 3:30 to around 10 o'clock at night. And then
8 third trick is overnight.

9 And the way our agreements are set
10 up is you have to have that first trick but
11 for maybe a special arrangement with the
12 unions, but the fundamental principle within
13 the current agreements is to do the work
14 during the daylight hours, during the
15 business hours when we're trying to run, as
16 you saw earlier, all those trains.

17 Q What changes is Amtrak proposing?

18 A Fundamentally, what we are
19 proposing is the ability to schedule work.
20 That's a fundamental right with many other
21 rail -- passenger rail operations. What
22 we're proposing is that with 72 hours'

1 notice, we could schedule the work to when it
2 is convenient to be done with minimal impact
3 to our customers, to schedule the work on
4 Saturdays and Sundays. I haven't talked
5 about them. Traffic is a little less, but
6 even today, traffic is getting busy at what
7 would be the weekday business -- weekday rush
8 hours on a Saturday and even a Sunday.
9 Sunday afternoon we have a little rush hour
10 happening now.

11 The net savings of this is \$10
12 million, per year, but that's not why we're
13 doing it. What we want to do is to get that
14 work done. We didn't get from 56 percent
15 on-time performance in '03 to almost 90
16 percent by not doing the work. If we don't
17 get to those difficult items, the things that
18 will take more time to do, such as a bridge,
19 we will slide backwards very quickly. Within
20 two years, we will be right back to 56
21 percent on-time performance.

22 Q Let's turn to the mechanical crafts

1 and the proposal on flexible assignment.

2 What is the issue with respect to the
3 mechanical crafts?

4 A The issue -- give us just a little
5 bit of history. You heard some of it in some
6 of the earlier testimonies, but in the
7 mechanical area, the crafts and how the work
8 is assigned was established in the 19th
9 Century during World War I, the
10 director-general established that. I'm sure
11 it made sense back then. We had steam
12 locomotives back then.

13 I do not have a steam locomotive
14 today. I have diesels, I have electrics, I
15 have high-speed electric train sets.
16 High-speed electric train sets have hundreds
17 of computers onboard, vastly different than
18 the steam operation. And those -- the
19 current scope rules, you know, fundamentally
20 are inconsistent with what we're running
21 today.

22 I'm sure back then it made sense.

1 Today, it does not.

2 Q Is Amtrak seeking through this
3 proposal a composite mechanic position?

4 A Absolutely not. That's not the
5 intent of what we want to do here. What we
6 want to do is be able to train our employees
7 in any one of the crafts we currently have,
8 pipefitters, boilermakers, electricians,
9 train them to do work, assign that work to
10 them and have them do that work and there, as
11 a result of it, we get some flexibility.
12 You'll see a little bit later on why that is
13 so critical to us and in terms of customer
14 service.

15 Q What is the incidental work rule?

16 A The incidental work rule allows us
17 to assign simple tasks for which they're
18 trained.

19 Q Is there a time limitation on it?

20 A Time limitation's two hours.

21 Really, one of the issues there, I think, is
22 we -- really, two things. You heard that

1 we've reduced our mechanical workforce. You
2 heard that earlier from the union counsel,
3 and that's true, we have. Two reasons for
4 that. One is we've -- as I mentioned earlier
5 in my testimony, we've lost some contracts,
6 the MBTA, the Coaster. Well, with that, the
7 employees are released.

8 The other reason is we have taken
9 some efficiencies. And in discussions with
10 my chief mechanical officer, I have been
11 pressuring him for more efficiencies on it,
12 is that we have maxed what we can do with
13 that incidental work rule and the simple task
14 rule.

15 One of the other things that we
16 deal with is -- why don't I deal with that in
17 a minute?

18 Q Okay. Let's turn to some examples
19 of the issues you're trying to address. Can
20 you explain what the issue is with respect to
21 the HVAC units?

22 A Sure. Again, freight railroads do

1 not have 2,680 HVAC systems. They don't.

2 Passenger railroads do.

3 Q Just explain what an HVAC system
4 is.

5 A Sorry, HVAC is a heating and
6 ventilating system much the same as if you
7 have a heat pump at your home or an
8 air-conditioning system at your home.

9 As I was mentioning just a moment
10 ago, one of the other reasons why the
11 incidental work rule is ineffective, we've
12 done what we can with it, is it's entirely
13 dependent on our foremen. Now, our foremen
14 are unionized. The foremen come from the
15 craft, and as we continue to push them to try
16 to maximize whatever we can get out of that
17 incidental work rule, it's problematic.

18 And in this example, you know, an
19 HVAC -- car comes in, it's hot. That's
20 somewhat of a safety issue as well with our
21 customers. What we do, so everybody knows,
22 we move the customers. If you have a ten-car

1 train and a car becomes hot en route, we move
2 the customers out of that car into the
3 adjacent cars and we pack them in, go from a
4 ten-car train down to a nine-car train. So
5 it's not exactly the service I envision
6 providing. It's not what they paid for.

7 So when it comes in, it needs to be
8 fixed. What happens is an electrician may
9 come out. Foreman will assign an electrician
10 to try to fix that problem, remembering we
11 got to turn this train within hours to go out
12 on another train.

13 Electrician shows up and says,
14 well, I don't think it's -- nothing wrong
15 with the electric, but goes back to the
16 foreman and tells the foreman, okay, well,
17 we'll send a plumber out. Plumber goes out,
18 looks at it and says, it's not my stuff, then
19 we send the JCC out to look. "We think the
20 air filters are dirty on it." All of that
21 interaction with the foreman and the foreman,
22 are they compelled to say to the electrician,

1 "Look, if you think it's just the filters,
2 could you just clean them? Replace them?"
3 Are they going to do that? No, they're not
4 going to do that.

5 At your home, if your
6 air-conditioner unit at your house stops
7 working, you will call a heating and
8 ventilation person. One person shows up in a
9 van to fix the problem. I think all of us
10 would say if that person said, "Oh, sorry, I
11 don't do filters," we'd be probably taking
12 our business somewhere else.

13 Q Can you explain the same issue with
14 toilets?

15 A Sure. I have 4,000 toilets.
16 Again, another great example of the
17 differences between a freight operation and a
18 passenger railroad operation, inner-city
19 passenger railroad operation.

20 Cleanliness in the operation of
21 those toilets is the second-biggest complaint
22 we have from our customers. First is on-time

1 performance. Number two is the cleanliness
2 and the functioning of the toilets.

3 Same type of situation. You're
4 dependent on the foreman to assign the work.
5 One craft shows up, says, "It's not my
6 problem. It's -- electrical's fine on it.
7 It's a plumbing problem." We call on the
8 plumber. Plumber says, "It's not my problem.
9 Something to do with the air system." Some
10 of our toilets function on air. So you're
11 left with either -- the train gets dispatched
12 with a nonfunctioning toilet, or -- just let
13 me just read you, to really drive home this
14 point, a customer complaint that came in to
15 our President and CEO November 28. So this
16 is very, very current.

17 It says here, "Enclosed is a
18 picture of a restroom in my car on Train 94.
19 September 7, 2007. The floor was covered
20 with a vial-smelling liquid. The toilets
21 were overflowing with toilet paper and human
22 waste. Disgusting. Soon after 94 departed

1 Washington, I took the enclosed pictures."

2 That's what we're dealing with.

3 That train was dispatched with nonfunctioning
4 toilets.

5 Q Do those letters sometimes get
6 forwarded to the senators and congressmen and
7 women who decide our appropriations?

8 A Absolutely, absolutely, absolutely.

9 Q Where's the issue with respect to
10 turnaround and layover systems?

11 A I mentioned this. I've touched on
12 this a little bit in terms of the capability
13 of our fleet, what's called availability in
14 our industry and the need to turn equipment.

15 I don't have a giant pool of
16 equipment that's sitting on a storage track
17 beside the terminal that when one train comes
18 in, I then have days to service it. I've got
19 to turn that equipment. On an operation like
20 the Northeast Corridor, we need to turn that,
21 you know, within an hour at times. If the
22 train's late for some reason, then it becomes

1 even more critical.

2 We refer to that as the dwell time.

3 And in the example and what we're proposing
4 here with the flexibility with our shopcrafts
5 is to allow us to train our employees again
6 to do tasks, assign tasks to those employees
7 in an effort to become more efficient and
8 lower that dwell time by, in this case, 14
9 minutes. It represents a quarter percent per
10 month. It will result in a reduction in the
11 workforce. We would handle that through
12 attrition. We have enough attrition that
13 this would get taken care of.

14 We would -- in terms of the
15 assignment of the work, again, we're not
16 after changing the craft lines here. That's
17 not what this is about. What this is about
18 is just we would just simply assign the work
19 on an equity basis on the historical
20 distribution that's been used in the past.

21 Q What's Amtrak's proposal?

22 A What our proposal is, is to amend

1 the scope rules that require the use of more
2 mechanical employees than are necessary to
3 complete that work in basic routine jobs, the
4 turning and servicing of a train. We should
5 be able to assign, you know, some work to an
6 electrician that would normally be assigned
7 under the current work rules to machinists,
8 for example.

9 The cost savings associated with
10 that is a modest 8 to 10 million. Again,
11 what this is -- in terms of you've seen our
12 budget numbers. We talk in terms of hundreds
13 of millions and billions of dollars. This is
14 a modest 8 to 10 million in savings, but what
15 it's about is it's about customer service and
16 delivering what we have said we're going to
17 deliver to our customers and being able --
18 getting a better chance to do that. That's
19 why we are here.

20 Q Let's turn to the subcontracting
21 issue with the mechanical crafts. Is the
22 folks of the subcontracting issue with the

1 mechanical crafts different than the
2 subcontracting issue with the engineering
3 crafts?

4 A In terms of with respect to
5 contracting out the mechanical work, what we
6 have requested is different in that it deals
7 with primarily with lower-skilled jobs, and
8 specifically, the coach cleaning.

9 And coach cleaning is another good
10 example of the difference between us and the
11 freights. Freights don't have coach
12 cleaners. There's no coaches to clean.

13 Q What's the issue with coach
14 cleaning?

15 A The issue is really the pay rates.
16 You've seen some earlier testimony on how we
17 compare with the marketplace. You can check,
18 I think, with some of the submissions on
19 these pay rates. The average hourly rate
20 currently of a coach cleaner is 2550. In the
21 market, it's 1775. And it's being able to be
22 competitive.

1 And if you come back to in the
2 context of us wanting to win contracts with
3 our commuters, that's part of this, because
4 often, we end up handling the servicing of
5 the trains in those contracts. It's to be
6 able to be competitive and pay rates that are
7 in alignment with the marketplace.

8 The workforce is roughly 750
9 employees. And the annual savings if we were
10 to contract this work out is 10 to 12 million
11 a year.

12 Q Just a few questions before we sum
13 up. What is the relevance in your view of
14 on-time performance to our increased
15 ridership and future revenues?

16 A Our customers have repeatedly, in
17 the surveys, the focus groups we do, they
18 have repeatedly told us that is the primary
19 reason why they ride our service. That is it
20 is the on-time performance. It's getting
21 them from Washington to New York within 2
22 hours and 45 minutes.

1 Q Why does Amtrak need work rule
2 reform?

3 A As I mentioned earlier, there's two
4 fundamental reasons. And again, the work
5 rules, it's not complicated. And don't let
6 anyone tell you it is. It is not complicated
7 what we want to do here.

8 Fundamentally, it's about getting
9 that backlog of deferred maintenance done and
10 doing it in a way that has minimal impact to
11 our service that we deliver.

12 You heard Mr. Campbell's testimony
13 yesterday and he talked about, you know, it
14 was in the context of the \$4,500 and how --
15 our capability of doing that in fiscal '08.
16 Every penny on the revenue line counts. If
17 we misstep on the revenue line, there's not
18 enough there. There's not enough to be able
19 to accomplish what we've budgeted.

20 So on-time performance is critical.
21 What we want to do is get that backlog of
22 deferred maintenance done and we want to do

1 it in a way that has minimal impact to our
2 customers on the mechanical side.

3 Yes, it's about efficiency, but
4 it's also about customer service, about
5 getting that train turned and getting it
6 cleaned and in a condition that our customers
7 expect it to be in. And we have many
8 customer complaints that we can certainly
9 submit to you.

10 Q Mr. Crosbie, are you aware either
11 at the bargaining table or elsewhere the
12 labor organizations making alternative
13 suggestions for addressing these capability
14 and productivity concerns of Amtrak?

15 A None. And that is -- you heard
16 earlier, again, I keep going back to this,
17 the union counsel, their opening statement
18 is, you know, the freight agreements work.
19 They don't work for a passenger railroad.
20 And there's been no effort on that side of
21 the table to recognize that fact, that we are
22 a passenger railroad. We have people on

1 those trains. We're not moving packages.

2 If a boxcar stays in the yard for
3 an extra day, one or two customers may get a
4 little upset with it, but we're moving
5 people. Vastly different operation. And you
6 heard me earlier talk about the Northeast
7 Corridor and how complex it is to, you know,
8 balance doing the maintenance that's required
9 with delivering the customer service.

10 Q Thank you, Mr. Crosbie.

11 A Thank you.

12 CHAIRMAN TREDICK: Thank you, Mr.
13 Crosbie. Questions? Mr. Javits has some
14 questions.

15 MR. JAVITS: Good morning.

16 THE WITNESS: Good morning.

17 MR. JAVITS: Could we start with
18 slide -- I think it was 27? I'll go
19 backwards if I may just for ease of
20 reference. You indicated that the potential
21 savings from the coach cleaning functions
22 were about 10 to 12 million. Is the plan

1 under this proposal to eliminate all of your
2 active coach cleaners and contract out the
3 entire body of work?

4 THE WITNESS: Yes.

5 MR. JAVITS: Okay. Is this problem
6 in terms of the economic disadvantage
7 something that's recent or has this been
8 something that's been in effect throughout
9 much if not all of the life of the carrier?

10 THE WITNESS: In terms of the work
11 being done by that craft?

12 MR. JAVITS: Correct.

13 THE WITNESS: Yeah, it has been
14 historically done by that craft. Today, we
15 have -- we have the right to contract that
16 out, but in terms of the furlough, you just
17 can't furlough any employees. So you can
18 take a location, for example, and if there's
19 work around that area that they can go to,
20 you can do that within the existing
21 contracts.

22 But the issue here is getting us

1 cost-competitive in this area and recognizing
2 the difference between -- basically, you have
3 an hourly rate here that is in line with some
4 of the other crafts, skilled crafts. And
5 even if you recognize the freight agreements
6 in the past is in line with the freight
7 agreements, for an area that has nothing to
8 do with freight operation, and IT certainly
9 requires a lower-skilled employee and is
10 completely out of line with the marketplace.

11 MR. JAVITS: Okay. I'm not sure
12 that I followed the responses. IS this
13 problem of the differential between what
14 you're paying the coach cleaners and what you
15 think you could get it done for on the
16 outside something of recent origin, or is
17 this something that if we went back to the
18 prior agreement, the one before that, the one
19 before that, the same issues would be in
20 play, that your contract provides for you to
21 obtain this service at a much higher cost
22 than you think you could get it for on the

1 outside?

2 THE WITNESS: In terms of the past
3 agreements, this area has not changed at all.
4 And the issue that we have tried over the
5 years to deal with this issue, and it's one
6 of our efforts to become more
7 cost-competitive, and to deliver -- continue
8 to deliver that service.

9 MR. JAVITS: Fair enough. In terms
10 of the congestion on the Northeast Corridor,
11 slide 17 showed at least some of the
12 differences over a 30-year period. Is that
13 something that has exacerbated an amount over
14 the last few years, or has this been a
15 problem that it was crowded back in '75, it's
16 certainly crowded, maybe even more so now?

17 THE WITNESS: I think it's followed
18 the pattern that you see in other modes. I
19 would say in the 1980s is when it really
20 started to take off.

21 When we electrified the north end,
22 north end being New York to Boston, that had

1 an impact. And it just continues to grow.
2 We're working with -- for example, Maryland
3 is adding a train to the MARC service. So
4 it's not going to go away. The demand is
5 there.

6 MR. JAVITS: And it looks at least
7 like the vast majority of the increase in
8 number of trains by way of traffic comes from
9 the local commuter or equivalent operations
10 that are using the tracks; is that correct?

11 THE WITNESS: Yes, that's correct.
12 Most of it has been the commuter -- the
13 growth has been on the commuter side.

14 Now let me be clear on that, just
15 to clarify. You know, we -- for example, New
16 Jersey Transit, they use our infrastructure.
17 We don't do the maintenance on their trains
18 or service their trains, so in the context of
19 the mechanical crafts, it's not -- this isn't
20 something that's a growing business on our
21 mechanical side.

22 MR. JAVITS: Fair enough. The need

1 for track work during nonprimary operating
2 hours. I assume that that's something that
3 has been true for a number of years as well.

4 THE WITNESS: Yes. It -- you know,
5 when the company was first formed, '70-'71,
6 and, you know, through into the '80s, they
7 could get the work done with -- you know,
8 there's certainly some impact to the service
9 but they managed to accomplish that. Now,
10 with the increases in traffic, it's-- you
11 will definitely have an impact. Doesn't
12 matter what piece of track you take out of
13 service today, you'll definitely have an
14 impact on the on-time performance of the
15 trains.

16 MR. JAVITS: And given that impact,
17 is Amtrak simply not doing that work now and
18 deferring it or is it being done but you're
19 asserting that the impact already is shown in
20 the on-time performance numbers presently?
21 I'm not certain that I completely follow.

22 THE WITNESS: We are making some

1 inroads, marginal, but we are not getting it
2 done at a level we need to get it done. And
3 if you take -- as things age, what we're
4 talking about is the equipment that's aging.
5 It's already aged past its useful life. And
6 as you take things off the list, if you will,
7 you add things to the list. We keep adding
8 more than we're taking away, and that's the
9 issue.

10 In terms of getting the work done,
11 we do get some of it done today and we've
12 seen some results from that. But again, one
13 of the points I want to make sure you're
14 clear on is we've taken a lot of low-hanging
15 fruit in terms of complexity of what needs to
16 get replaced. We're now into things like the
17 Thames River Bridge. We're going to have a
18 four-day outage when we cut that bridge in.
19 Those are the types -- that's a huge impact.
20 Those are the types of things that we're
21 dealing with now.

22 There's other examples where we

1 simply want to do it on the off hours, where
2 we have -- we do something like undercutting,
3 where a track will be out of service for a
4 week or two. We'd like to do as much as we
5 can at night so we can shorten that time
6 frame, so at least you may still have an
7 impact but at least you've shortened the
8 number of days that it is an impact to our
9 customers.

10 MR. JAVITS: Okay. So the primary
11 savings would be one of working round the
12 clock but there would still be the impact on
13 these bridge projects and the like of
14 interrupting primary hour service as opposed
15 to planning to do the work almost exclusively
16 in the evening hours and bringing the bridge
17 somehow on and off line?

18 THE WITNESS: The bridge is an
19 example of a life cycle replacement one. The
20 work rules that we -- the areas we want to
21 focus in on is more the -- in terms of track
22 outages. And you know as an example, you

1 mentioned earlier the undercutting, for
2 example, is a fairly significant piece of
3 work.

4 Another even better example is
5 interlockings. Our interlockings are the
6 original interlockings from -- in some cases,
7 they are 50 to a hundred years old, and you
8 need to take out a whole interlock.
9 Interlock can be multiple tracks with
10 multiple switches. And we want to do that on
11 a weekend on straight time. It doesn't
12 necessarily have to be in the night. I want
13 to be clear on that as well. But the
14 fundamental principle is we want to be able
15 to schedule the work for when it makes sense
16 for that task.

17 And there's -- the size of the
18 work, the scope of the work that we do
19 changes depending upon the asset, depending
20 on what we're doing. And again, the
21 fundamental thing is being able to schedule
22 that work as when it makes sense, as minimal

1 impact to our customers, and to do it at
2 straight time.

3 MR. JAVITS: So is this an area
4 where you currently can't do what you want to
5 do in other than the primary shift or first
6 tricks, or is this something that you want to
7 do on the off shifts but simply not pay
8 whatever the other time or other premiums
9 might be that are covered under the current
10 agreement and rules or perhaps a combination?

11 THE WITNESS: It's really a
12 combination. We want to be able to schedule
13 the work to do it on straight time,
14 absolutely. But it's also to be able to
15 schedule that workforce into a shift that
16 makes sense for our operation.

17 And what I mean is you may end up
18 with having more regular second and third
19 tricks, for example, in an area or on a gang,
20 if it's a gang of workers, as opposed to
21 having, you know, the bulk on first trick.

22 MR. JAVITS: Fair enough. Thank

1 you, Mr. Crosbie.

2 THE WITNESS: Thank you.

3 MS. WITT: Following up on Mr.
4 Javits' questions, I have been sitting here
5 thinking about your comment that the
6 important thing is to get the work done.

7 What has been the company's
8 experience with the use of overtime both in
9 terms of the willingness or the ability of
10 you to schedule overtime and, secondly, the
11 economic impact of that as contrasted with
12 hiring more people for the kind of work that
13 you're talking about?

14 THE WITNESS: That's a good
15 question. There's a lot in that.

16 Let me start by saying in terms of
17 scheduling the overtime, like any business,
18 particularly our business, if you -- you can
19 reach a point -- and we certainly have at
20 Amtrak -- at times where the workforce will
21 say no more. They don't necessarily want any
22 more overtime because they have families too.

1 They want to see their families. They -- you
2 know, maybe the -- they don't need the money
3 for some reason as well. So our ability to
4 get qualified individuals to do the work is
5 in issue in terms of scheduling overtime.

6 And now the second part of your
7 question, would you repeat it, please? Was
8 the financial impact?

9 MS. WITT: The financial impact.
10 If you compare using overtime to expanding
11 the workforce on this and using people on a
12 straight-time basis. Usually, it's a lot
13 cheaper to have somebody work at time and a
14 half --

15 THE WITNESS: Yeah, absolutely.

16 MS. WITT: -- than to have a second
17 person?

18 THE WITNESS: I don't have a hard
19 number here. We could probably get you some
20 hard numbers, but let me give you an example.
21 The New York tunnels, we would often on a
22 weekend set up, because it's a minimum impact

1 to our service, to take one of the tunnels
2 out of service and we'd have a 55-hour
3 outage, because if you're going to take it
4 out of service, you might as well take it out
5 of service for a good chunk of time. All of
6 that would be done, the bulk of it would be
7 done on overtime.

8 So if you put that in the context
9 of doing the same -- setting it up the same
10 way on a weekend, on a Saturday into a
11 Sunday, you could do that then on straight
12 time. I don't have an exact figure for you
13 in terms of the savings that would represent,
14 but I think it would -- it shows that there
15 certainly would be some efficiencies there.

16 MS. WITT: I'm a slow thinker. Can
17 I just conclude from this, then, that
18 overtime is not a desirable alternative for
19 the backlog, for example, that you're talking
20 about?

21 THE WITNESS: In our business, you
22 will always have overtime. There will be

1 some level of overtime.

2 MS. WITT: There's always
3 emergencies and things. I'm not talking so
4 much about extraordinary events.

5 THE WITNESS: Yeah. And that was
6 the intent always of overtime, was just what
7 you mentioned is the emergencies. It was not
8 to get the -- you know, the regular
9 programmed maintenance done. That's not the
10 way overtime in this industry was intended.
11 Even on the freight side, they don't do it
12 that way. I mean, that's not the way they
13 run their business.

14 And we're forced to do it that way
15 because we try to minimize the impact to our
16 customers. We do it in the off hours and
17 therefore we have to pay overtime to do that
18 work.

19 MS. WITT: Now, I just wanted to
20 ask you one other thing, and I will preface
21 it by saying I am not a numbers person. The
22 days that I get my checkbook balanced are red

1 letter days in my life.

2 But we have been talking about the
3 willingness of Congress or the greater
4 willingness of Congress to provide for your
5 capital expenditures than for your operating
6 expenses. That's a very general statement
7 that we heard yesterday.

8 When we're talking about some of
9 the projects that you have mentioned, the
10 infrastructure projects --

11 THE WITNESS: Yes.

12 MS. WITT: -- which side of the
13 ledger do they fall on in terms of labor
14 costs?

15 THE WITNESS: The capital side.
16 And actually, your question's reminded me of
17 a very good point and thank you for asking.
18 The --

19 MS. WITT: Wasn't intended to be a
20 softball.

21 THE WITNESS: One of the things
22 that is really important to understand is

1 that we do get a set amount of money for
2 capital infrastructure replacement. And
3 every penny counts of that. And last year,
4 we spent on the infrastructure side every
5 dollar on the capital.

6 But if you do that with a labor
7 cost, that's on overtime, less gets done.
8 You get less track miles, if you will,
9 replaced, less catenary replaced. So the
10 efficiency of the actual dollar you get gets
11 spread thinner, and I think that's critical
12 to understanding our need as well.

13 MR. REINERT: In partial response
14 to that question, I'm not sure it came out
15 clearly in our financial presentation, but if
16 you look up in the backup materials, it may
17 be more clear. When Amtrak looks at labor
18 costs generally, the rule is 90 percent goes
19 to the operating budget and 10 percent goes
20 to the capital budget.

21 So when we're looking at, for
22 example, impact on profit and loss statements

1 to the funding of agreements, the general
2 rule is we're attributing 90 percent of our
3 labor costs to the operating budget.

4 MS. WITT: Thanks, Mr. Reinert.
5 Thank you, Mr. Crosbie.

6 THE WITNESS: Thank you.

7 MS. SANDBERG: I have a follow-up
8 question. I'm assuming you, similar to
9 highways, know exactly what projects need to
10 occur in the next year --

11 THE WITNESS: Yes.

12 MS. SANDBERG: -- based on the age
13 of the infrastructure.

14 THE WITNESS: Yes.

15 MS. SANDBERG: At any point during
16 the last eight years have you amended your
17 proposal to the union with regard to off-peak
18 work to list specific projects and when you
19 needed to be done?

20 THE WITNESS: I'm going to have to
21 get back to you on that question. I want to
22 make sure I get you -- I would anticipate the

1 answer's probably no.

2 MS. SANDBERG: Okay. Thank you.

3 MR. JAVITS: A couple of things.

4 If you look at Exhibit 4 or page 4 here, I
5 think that's the Northeast Corridor itself,
6 so may be slightly off topic, but looks like
7 Amtrak owns the trackage from Washington to
8 New York and just north of New York.

9 THE WITNESS: Yes.

10 MR. JAVITS: What would be the
11 impact of a shutdown of Amtrak on
12 Metro-North, New Jersey Transit and Long
13 Island if dispatch is occurring by Amtrak in
14 New York for those trains? Or are they --

15 THE WITNESS: Yeah, we -- we -- if
16 I understand your question, we dispatch.
17 Now, we don't dispatch the Red Line between
18 -- that's on this chart from New Rochelle to
19 New Haven. That's the Metro-North, and they
20 handle that. But into New York, it gets
21 handed off just before you get to New York.
22 We do dispatch that out of our dispatch

1 center.

2 So the impact would be you'd have
3 all of New York City in terms of commuter
4 trains shut down. It would impact Long
5 Island Railroad, Metro-North, obviously our
6 operation.

7 MR. JAVITS: PATH and to NJG?

8 THE WITNESS: NJG as well.

9 MR. JAVITS: PATH?

10 THE WITNESS: PATH, no.

11 MR. JAVITS: On the slide 14 that
12 is examples of noncore work for BMW and BRS,
13 have you estimated manhours, numbers of
14 employees that would be affected were the
15 board to grant Amtrak's proposal on this?

16 THE WITNESS: Again, the answer to
17 that is the intent is to impact in terms of
18 furloughing or laying off is to impact no
19 one. It's not to say it couldn't happen, but
20 the intent is to put those employees onto the
21 core work.

22 And the examples I gave, I

1 referenced earlier of cleaning -- picking up
2 trash and the right-of-way, you know, we did
3 that work, but we did it at the expense of
4 that core infrastructure replacement.

5 MR. JAVITS: Is there any estimate
6 of just generally number of manhours, that
7 is, the hours done by current BMW and BRS
8 employees that would not be done by them?
9 Are there any estimates that you've come up
10 with and savings?

11 THE WITNESS: In terms of savings,
12 some -- as I mentioned, we have some specific
13 examples of that. Over the course of a year,
14 we can certainly look back at -- because we
15 do track this -- the number of times we have
16 had to do it and get you a rough estimate of
17 that. The examples that I referred to, you
18 know, in one example you take eight people
19 and they're not doing core work for a month,
20 as an example.

21 MR. JAVITS: Oh, I understand the
22 examples, but in convincing the union that

1 this is a good idea, wouldn't you want to
2 present them with, you know, numbers of hours
3 that their current employees are working that
4 they would not be working? Whether that goes
5 to overtime or whatever, it seems to me that
6 would be something the union would be
7 interested in, and certainly from
8 management's point of view, gross savings
9 rather than anecdotal incidents would be of
10 -- it would be important, it seems to me, to
11 know in terms of prioritizing your request.

12 THE WITNESS: Yeah. And in terms
13 of the work I mentioned earlier, the net
14 savings was estimated at 10 to 12 million
15 again. But the intent is to not achieve that
16 through a labor reduction. But that will
17 give you a sense of how big that is and you
18 can -- you know, if you estimate fully
19 loaded, say, \$75,000 per employee, you could
20 -- another good example of -- again, it's not
21 about the savings, it's about getting the
22 work done. And it also works in the reverse.

1 What we end up doing is choosing not to do
2 the work.

3 Let me give you an example of that,
4 is that we don't do the tree trimming, so
5 then what happens, the tree falls down and
6 the catenary catches fire. We had that
7 happen last week. When I go to my
8 engineering people and ask, well, why did it
9 happen, we didn't do it because what it would
10 have meant is taking this workforce off of
11 this work here and putting them over to do
12 the tree trimming.

13 MR. JAVITS: All right. Now, and
14 have you gone to your unions to say, look,
15 this is costing us a lot for tree trimming
16 and nonskilled work, can we try to work
17 something out --

18 THE WITNESS: Yes, we have.

19 MR. JAVITS: -- so you as a craft
20 don't do it?

21 THE WITNESS: That, we have.

22 MR. REINERT: I believe we have in

1 the record where the BMW challenged and
2 there was an arbitration decision on this
3 issue. They've not been cooperative on this
4 issue.

5 MR. JAVITS: On slide 19, starting
6 times, I take it Amtrak can load up a
7 particular shift if they wish to have work
8 done in nonpeak hours but they have to meet,
9 as I -- as I take it, your criteria number 2,
10 cannot establish second shift without
11 maintaining first shift or third shift
12 without maintaining second shift. Could you
13 explain that a little bit?

14 THE WITNESS: Yeah. It's what you
15 had stated, is that if you need to establish
16 a third shift in a particular area, and you
17 need to put it in the context too of the
18 geographic areas, you might not have a
19 workforce in that area, for example. And the
20 way the current rules work, but for any
21 agreement, is you need to establish a first
22 and a second shift.

1 And the intent here is to give us
2 the flexibility to schedule the work when it
3 makes sense to do it without having to have a
4 first or second shift.

5 MR. JAVITS: In the Northeast
6 Corridor, wouldn't it -- it would be unusual
7 not to have a first, second shift, or would
8 it? In other words, is that a problem in the
9 Northeast Corridor?

10 THE WITNESS: It is a problem in
11 terms of the amount of work that needs to be
12 done. And in terms of the planning of the
13 work as well. And, you know, today you -- if
14 you want to take, for example, you have --
15 one of the things we always struggle with too
16 is having the qualified workforce, is that,
17 you know, there is some ups and downs in the
18 work we do. The amount is what I'm talking
19 about, is if you've got them all on first
20 trick, for example, and you want to move them
21 to second trick, the ability to move them
22 with 72 hours' notice. We don't have that.

1 We don't have that flexibility to do that and
2 be able to handle that in a -- you know, on a
3 needs basis when a need comes up.

4 Often when we do a track inspection
5 with our -- say, our geometry car and there's
6 a need to go in and do a lot of work to get
7 that infrastructure back to where it needs to
8 be, that's, you know, to some degree one-time
9 work, incidental work that we need to get
10 done and the flexibility to move the
11 workforce around.

12 MR. JAVITS: All right. Well,
13 you're looking for that. You'll be able to
14 move a -- or shift a gang temporarily within
15 -- with 72 hours' notice, not less than that.

16 THE WITNESS: Not less than that.
17 And I fully agree with that. I worked night
18 shift. I understand the issues on the body
19 clock and I've no intent of making it any
20 less than that.

21 MR. JAVITS: Is there any
22 definition to what "temporarily" means in

1 that context?

2 THE WITNESS: Temporary in the
3 sense of, again, to fit the needs of the
4 business. And they will change. They will
5 change geographically, they'll change with --
6 as you go forward with the infrastructure and
7 the issues that you need to deal with, as we
8 inspect it and need to -- one of the things I
9 didn't mention is what happens when something
10 -- when we inspect something and it's not to
11 the standards, federal railroad standards, we
12 put slow orders on.

13 MR. JAVITS: All right. But it's
14 not -- the word "temporarily" is not defined
15 for how many days, weeks, months, whatever?

16 THE WITNESS: No, it is -- it is --
17 intent is for what the need of the scope of
18 work is for that period of time.

19 MR. JAVITS: Okay. And then a
20 composite mechanic or incidental work rule on
21 page 22, could you explain in your examples,
22 the HVAC mechanic needs or the sanitation

1 mechanic need, why a foreman couldn't just
2 say to a -- an electrical worker, go in and
3 do this and if it takes you, you know -- if
4 you have to do some other craft's work,
5 you've got up to whatever it is, two hours of
6 -- to do that and just do the whole thing.
7 Why do they have to keep going back to the
8 foreman to say, well, there's another craft's
9 work here and a question arise as to whether
10 to assign another craft to it?

11 THE WITNESS: Again, I think you
12 need to understand the dynamic on whether
13 it's on the platform or in a shop.

14 You have a foreman. In this case,
15 you have three crafts, and you need -- you
16 know, the electrician will say, first off,
17 what was missing. And what you said was the
18 issue of simple task. So if it's not a
19 simple task, then absolutely not.

20 You have the dynamic, as I
21 mentioned, of the foreman of -- you know,
22 you'll have -- you'll have all of these

1 crafts on that shift so they will be around.
2 They may not be at that exact HVAC system.
3 So the foreman -- the electrician comes back
4 and says, I think it's the air filters that
5 need to be replaced, and the foreman's not
6 going to take the chance of any issue with
7 the incidental work rule. They will choose
8 to go and get the employee that's already on
9 duty to do it.

10 MR. JAVITS: Does the term "simple"
11 cover most of the cases, that is, 95 percent
12 of the cases are simple? That is, if you
13 send in an electrician and there's something
14 else for another craft?

15 THE WITNESS: No.

16 MR. JAVITS: That basically they'd
17 be able to change the filter out or something
18 that's --

19 THE WITNESS: Filters are one
20 example. There's many other things, if you
21 look at the sheet metal workers and the
22 plumbing, that are not -- definitely not

1 simple tasks. But in our proposal, what we
2 want to do is train the electrician, train
3 the plumber to do tasks that are beyond what
4 we would consider simple tasks, simple tasks
5 being, you know, maybe taking a cover off,
6 undoing a bolt or a nut, to train them to do
7 more complex things.

8 MR. JAVITS: It would be hard to
9 make it too complex; that is, you may want a
10 specialist electrician to do the electrician
11 work and not expect or be able to train
12 someone to be a skilled plumber and
13 electrician. In other words, it's simple.

14 THE WITNESS: No, there's certainly
15 a balance between the two extremes. And what
16 we're trying to do is get into that middle
17 ground where most of the failures would be if
18 a plumber had some basic electrical training,
19 they could do the task and get it completed
20 and the train would then get dispatched on
21 time.

22 MR. JAVITS: All right. And then

1 coach cleaning, I assume there are the issues
2 you've looked at with respect to security
3 and, you know, contracting out all of that
4 work and defining a reliable contractor and
5 the like is -- I mean, a lot of companies as
6 well as the government has had problems with
7 subcontracting that type work, it would seem
8 to me. I mean, that type of work in the
9 sense of skilled work is one thing, but
10 reliability and security and other issues may
11 be other obstacles for the -- for the
12 company.

13 THE WITNESS: What we talked about
14 in my testimony was coach cleaning. We have
15 in some -- some of our stations, for example,
16 that we don't own, some that we do own, we
17 have cleaners to clean the station. Our
18 procurement department does background checks
19 as part of the vetting that we do with any of
20 our contractors, whether it's in cleaning or
21 other areas as well.

22 MR. JAVITS: Okay. Thank you.

1 CHAIRMAN TREDICK: We would like an
2 answer, I guess, a specific answer to Miss
3 Sandberg's question. I know your counsel
4 said he probably didn't think that you had
5 gone to the union with specific projects and
6 staffing requests, but if you could pin that
7 down for us, that'd be fine.

8 THE WITNESS: Okay, that'd be fine.

9 CHAIRMAN TREDICK: Thank you very
10 much.

11 Do you wish to proceed with your
12 next witness?

13 MR. REINERT: Yes.

14 CHAIRMAN TREDICK: Okay. Excuse
15 me. Everybody seems to be disappearing. I
16 think we're going to proceed with the next
17 witness. Let's take a five-minute break.

18 (Recess)

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

21 MR. REINERT: Amtrak calls Alex
22 Kummant.

1 Whereupon,

2 ALEXANDER KUMMANT

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

5 CHAIRMAN TREDICK: Welcome, sir.

6 Proceed as you wish.

7 DIRECT EXAMINATION

8 THE WITNESS: Good morning, Mr.

9 Chairman, members of the board. My name is
10 Alex Kummant. I'm the President and CEO of
11 Amtrak. I have been with the company since
12 September of 2006. Prior to that, I was
13 responsible for managing a series of
14 industrial concerns and have also spent four
15 years with Union Pacific Railroad, where I
16 held a series of executive positions. So you
17 have a pretty good sense of the realities of
18 corporate management in the railroad
19 industry.

20 I think the officers here that have
21 testified before me have done a good job
22 describing the company's finances, its

1 operations, its overall history, the state of
2 the labor relations.

3 From my point of view, one of the
4 most important aspects does go back to the
5 earlier testimony on the history on the road
6 to the 1997 Presidential Emergency Board and
7 its economic aftereffects.

8 The agreement took Amtrak down a
9 very difficult path, and were it not for the
10 2002 government bailout, the consequences
11 would have been even more serious for
12 everyone. We stand at a different point
13 today. But it's for that reason that I think
14 all of us in this room are interested in a
15 labor settlement, all of the parties here.
16 There's no question seven to eight years is a
17 very long time. But it must be a durable
18 agreement and one that establishes an equity
19 solution.

20 It will likely set a pattern for
21 the 60-plus percentage of the Amtrak
22 employees that are not represented here today

1 in these proceedings. And again, this point
2 has been made repeatedly, but because Amtrak
3 is the only federally controlled and funded
4 entity that's subject to the Railway Labor
5 Act, the fit with freight labor patterns is
6 imperfect at best.

7 Amtrak is offering a fair and
8 reasonable proposal for this settlement. We
9 wish to increase our employees' compensation
10 significantly, as you've heard, 30 percent.
11 At the same time, reform and improve our
12 business practices and processes, and above
13 all else, get back to the business of running
14 this railroad.

15 Our proposal is really about the
16 future. It's about improving, refining and
17 growing our business so that we can realize
18 its full potential. The PEB here today has
19 an opportunity to craft a fair solution that
20 will really propel this essential national
21 service into the future, and it can do this
22 by sorting out the issues that the two sides

1 can solve themselves.

2 Mr. Chairman, Amtrak cannot afford
3 to meet the demand for back pay that it
4 currently faces. You've heard a lot of
5 testimony along that line. As well as the
6 fact that the nature of our federal funding
7 and governance structures really precludes
8 the accumulation of funds over multiple years
9 for such one-time payments.

10 We've made concessions. I drove
11 the settlement package that we offered to the
12 Brotherhood of Locomotive Engineers and
13 Trainmen. We proposed a wage raise of some
14 30 percent, and that's going to cost the
15 company \$130 million in the first year alone.
16 I took responsibility for that decision and I
17 committed us to the \$4,500 signing bonus
18 offer. We're pushing our numbers to the
19 limit to make that total offer. You've heard
20 a lot of testimony on that point as well.

21 We've heard a lot of discussion,
22 rhetoric comments as well, that nothing has

1 changed. Well, I'll tell you, everything has
2 changed. That is a good offer and it's
3 dramatically different from the position
4 Amtrak took just a year and three months ago
5 when I walked through the door.

6 That brings me to some pretty
7 important realities that I want to take a few
8 minutes to discuss.

9 When I decided to join Amtrak,
10 believe me, I got a lot of cautionary advice.
11 The company's recent history was at the
12 forefront of most of my friend's minds and
13 the arguments they made were pretty
14 reasonable, pretty substantial. But I saw an
15 opportunity and I thought that there was real
16 demand for passenger rail and I thought that
17 demand was going to grow. I've lived in
18 Europe as well, and I have been a regular
19 consumer of week-to-week passenger rail
20 service in completely different environments.

21 The things that I personally see
22 since I've arrived at Amtrak only

1 strengthened that conviction.

2 I believe more strongly in the
3 future here than when I did walk through the
4 door. I've ridden a lot of the system, I've
5 met a lot of our employees over the last
6 year, and I have been deeply impressed by
7 their talent and dedication. There should be
8 no question about that. Those quick rates
9 Mr. Gillula mentioned are indicative of the
10 loyalty our employees have to this company
11 and their faith in this business. They
12 deserve a shot at a future where growth
13 provides them with a greater opportunity, and
14 the company deserves that as well.

15 I think America needs passenger
16 rail service, and I think we need a couple of
17 things to allow us to provide it.

18 We want to give our employees a
19 fair economic settlement, including that
20 large wage increase. And we're seeking help
21 in containment of healthcare costs, as has
22 also been testified to. And as we just

1 listened to this morning, we must also
2 realize improved efficiencies and
3 capabilities through changes in work rules.

4 Amtrak, as you've also heard the
5 phrase expressed, is an unusual business
6 existing at the intersection of public policy
7 and private enterprise. Amtrak has its roots
8 in private industry. Its culture, its
9 organizations, its operations, many of its
10 facilities, equipment, are an inheritance
11 from the private railroads from which it
12 stems. It operates daily on trackage rights
13 of over 22,000 miles of track owned by the
14 freight railroads.

15 But like a federal agency, it is
16 dependent on the annual Congressional
17 appropriations progress for both capital
18 needs and operational funding. We have heard
19 a lot about that. Our financial strategy is
20 of course governed by that reality.

21 Let me talk again and sum up about
22 our capital needs. As you've heard, during

1 the last years before the 2002 intervention
2 our entire railroad had run down because
3 there just wasn't enough funding to maintain
4 it. I have been working and we have been
5 working hard ever since at making up for that
6 time and that money lost.

7 And I also need to make sure to
8 credit my predecessor, David Gunn, for his
9 overall efforts to return the property to
10 state of good repair. It was -- we're really
11 the beneficiaries of his vision, his drive.
12 It was his governing thrust to drive the
13 state of good repair, and the reasons for the
14 results and where we sit today is because of
15 that.

16 But the state of good repair, as
17 you've also heard, is not just repair and
18 maintenance of existing assets; it's the
19 replacement of those assets that have long
20 passed their life cycle. And Amtrak has no
21 shortage of those.

22 The time is fast approaching when

1 we have to replace all of our electric
2 locomotives on the Northeast Corridor, and
3 we're still running some of the baggage cars
4 and diners that were outshopped when Harry
5 Truman was in the White House. Our fleet is
6 barely large enough to meet our own needs
7 today. And you also saw that our engines and
8 cars are the rail industry leaders by a long
9 shot in annual mileage, and the demand on our
10 existing routes continues to grow.

11 Our infrastructure needs investment
12 as well. You also heard that the Northeast
13 Corridor is not one of the busiest corridors
14 in the country but the busiest and likely one
15 of the top five busiest in the world. It's a
16 good piece of railroad but it was built a
17 century ago and the infrastructure requires
18 continued maintenance and expensive
19 investment.

20 But for all that expense, it gives
21 us great capability. Railroads have large
22 fixed costs because it takes a core critical

1 mass of talent, equipment, infrastructure,
2 money, to keep them running. There are
3 really two ways to deal with that reality.
4 You can attempt to expand your business or
5 you can try to dramatically cut costs.

6 In the end, I don't think the
7 second approach is viable. We won't shrink
8 our way to success. Our strategy must be a
9 growth strategy. We need to use our existing
10 assets and workforce to continue to carry
11 more passengers and generate more revenue.

12 And to the question yesterday about
13 what are you doing with price, we've actually
14 worked that very hard. Our FY07 year-end
15 numbers resulted in 6.3 percent ridership
16 increase and over 11 percent revenue
17 increase, so we have worked that issue very
18 hard. The real opportunity for Amtrak is
19 corridor service in the Northeast Corridor
20 and elsewhere.

21 Our experience strongly indicates
22 that there's real untapped market out there

1 for frequent reliable train service between
2 large urban areas over shorter distances, say
3 less than 350 to 400 miles. That's really
4 our sweet spot. Some of these areas we serve
5 now, some really would like us to serve them
6 and others, we're looking very strongly at
7 developing services.

8 State government's work closely
9 with us. They're very interested in corridor
10 services, but we can't make that appealing if
11 we can't make it affordable and competitive.
12 We actually track our air-rail market share
13 in the Northeast Corridor. We do operate in
14 a market. We do operate in a competitive
15 environment.

16 But all the evidence suggests that
17 we can make it work. We're currently in
18 conversations with 36 states to develop or
19 expand corridors.

20 As I said a moment ago, our
21 existing services are very strong. Our
22 Northeast Corridor service carried 13.2

1 percent more riders in November than they
2 carried November of 2006, just one year, and
3 the systemwide total for November was over 12
4 percent higher.

5 Those are just explosive figures in
6 any people-moving business anywhere, those
7 are incredible figures, and we have to
8 continue to hit that kind of record growth if
9 we're going to afford the settlement we
10 offered with the BLET. That means on-time
11 performance, that means fast turns of
12 equipment, that means fundamental capability
13 to execute the type of on-time number and
14 continue to improve them that we have today.

15 As I mentioned earlier, the most
16 tangible manifestation of our position at
17 this public/private intersection is funding.
18 You heard yesterday from Joe McHugh and Bill
19 Campbell, and I think they made it clear that
20 it's very doubtful there's going to be any
21 sort of new appropriation to fund the 150 to
22 \$200 million for a back-pay settlement. In

1 fact, we'll be lucky if on a continuing
2 resolution basis our funding doesn't continue
3 to get cut somewhat this year. So Amtrak
4 will have to make every single one of its
5 revenue and cost projections in this fiscal
6 year -- those are projections, mind you, that
7 are coming off of a record year in 2007 --
8 just to afford the pay raises that we have
9 offered the BLET.

10 As CEO of this operation, my
11 fiduciary responsibility precludes me from
12 signing any agreement that I know we can't
13 afford.

14 The Congress has taken some
15 tentative steps toward a multiyear funding
16 process but they are by no means committed to
17 it. In the end, though, the best guarantor
18 of jobs and salaries is not Congress but it's
19 a prosperous, growing Amtrak that's capable
20 of meeting most of its own payroll and
21 providing opportunities to its employees.

22 If we can get the work rules that

1 will allow us to grow efficiently, I think we
2 can take advantage of the favorable economic
3 climate to expand service and provide greater
4 opportunities for our current workforce. So
5 we need both capability and productivity out
6 of our work rules.

7 But as you've heard, our work rules
8 were meant for a different age. Steam
9 engines are, of course, completely different
10 from diesels or electrics. Steam turned its
11 last wheel on a Class 1 railroad the year I
12 was born, but we're still working with rules
13 that were optimized for the maintenance of
14 steam locomotives.

15 You heard the air-conditioner
16 example. I won't go through it. In the end,
17 if you fix one at home, you call one man. We
18 have to call three. And that's because all
19 the crafts came into being with steam engines
20 before we even had air conditioning.

21 Technology has changed, and the
22 justifying rationale for the division of work

1 in that particular case is no longer valid,
2 but we continue to pay the economic and
3 operational price.

4 Let me say again, I believe in this
5 company's tremendous potential. Our numbers
6 show that. We have had steady ridership
7 growth. We can make the on-time performance
8 numbers. States want our services. This is
9 an inherently efficient method of
10 transportation, and there's a strong public
11 demand for it.

12 It's really something to think
13 about, the effect new technology would have.
14 I believe we could even double our ridership.
15 50 percent growth by 2020 is certainly
16 possible. It would be feasible to do. But
17 how would we do that? We'd offer the best
18 possible product. Fast, frequent, reliable
19 transportation. And in the end, technology
20 would play a very key role to get there.
21 Modern information technology, electronically
22 controlled brakes to shorten stopping

1 distances, GPS tracking and collision
2 avoidance systems, complex communication
3 systems, complex suspension systems, and
4 heavy use of engineered materials. All of
5 that represents growing complexity and
6 involves new technologies.

7 We already have something like a
8 thousand CPUs across our Acela fleet, as you
9 heard Mr. Crosbie testify to. We aren't
10 going to maintain equipment like that with
11 steam engine work rules. We need new skill
12 sets, and we're going to have to completely
13 rethink how we handle maintenance, probably
14 taking a cue from sectors like the airline
15 industry that demand ultra-high levels of
16 reliability.

17 Our diesel age habits and steam
18 engine work rules need to change to
19 accomplish this. We can't just do the same
20 old thing the same old way. We're going to
21 have to get a 21st Century railroad with 21st
22 Century methods, not 19th Century methods.

1 With those comments in mind, I
2 would say that Amtrak hopes to obtain a
3 settlement that's fair to all involved
4 parties and that establishes a just and
5 affordable pattern of wages and cost
6 distribution. We feel that the tentative
7 agreement we reached this year with the BLET
8 provides an example of such a settlement and
9 we hope that the board will consider that
10 strongly.

11 It certainly provides an indication
12 of the upper bound of our ability to address
13 the outstanding demand for back pay, and we
14 hope that the Presidential Emergency Board
15 will address this issue, if it decides to, by
16 recommending that the union accept a similar
17 proposal to the one we've made.

18 Again, on behalf of Amtrak, I'd
19 wish to thank you for my opportunity to
20 testify and to thank all of you for your
21 service during the busy holiday season. I
22 hope that the evidence our officers have

1 presented depicts a company as I've tried to
2 describe. It's a company staffed by
3 thousands of dedicated employees who have
4 chosen this work in part because they believe
5 that the passenger train has a great future
6 in America. With some hard work and some
7 changes in the way we do business, we should
8 be able to both reward their dedication and
9 perseverance and to build on the efforts of
10 those who have come before us.

11 Thank you again for the opportunity
12 to testify, and I'll be happy to answer any
13 questions.

14 CHAIRMAN TREDICK: Thank you, sir.

15 MS. WITT: Just one quick question.
16 You talked about the need for ultra-high
17 levels of reliability and made a comparison
18 with the airline industry.

19 I think of reliability in that
20 context as meaning good attendance and being
21 there to do the job. Did you have something
22 other than that in mind?

1 THE WITNESS: Well, in general,
2 there's a technical and an overall
3 sophistication of the technical wherewithal
4 of that aspect. How do you deal with
5 statistical probabilities that are ultimately
6 very small? Tight tolerances. It's about
7 speed. It's about getting the job done very
8 quickly. But it's also about entirely
9 different types of equipment. Again,
10 collision avoidance systems with very
11 complicated software. So it's all about
12 skill sets.

13 But you're right. It is also about
14 everyone being there and knowing precisely
15 what their roles are.

16 MS. WITT: But you were basically
17 talking about technology rather than
18 presently. That's what --

19 THE WITNESS: No, they go hand in
20 hand. The issue is you can't have one
21 without the other so how do we structure a
22 workforce, how do we get highly technical

1 work done? It's clearly a personnel issue, a
2 training issue and attendance issue as well.

3 MS. WITT: Okay. I understand.

4 THE WITNESS: I agree.

5 MS. WITT: Thanks.

6 MR. JAVITS: Just using that
7 analogy to the airlines, there are probably a
8 couple of models in the airline, one is
9 Southwest Airlines which works well with its
10 union, and they're wall-to-wall union and has
11 very high productivity. The other model is a
12 major carrier which went into bankruptcy and
13 essentially crammed down on their union's
14 work rule and concessions.

15 I assume that the first model is
16 the one that you'd like to see happen. And
17 I'm wondering what your view of that is in
18 terms of labor relations and working with the
19 unions to get to that high level of service
20 and productivity you're talking about.

21 THE WITNESS: Hey, I said from day
22 one, when I walked through the doors, we need

1 agreements. I'm the guy that walked in and
2 said, look, we have to address in some way
3 the back-pay issue. I'm the one who looked
4 at the cash flow at the end of the year and
5 said I think we can make this offer.

6 Let me also say, one of the pieces
7 of magic of Southwest is, in fact, the
8 equipment choice. We are saddled with an
9 incredibly complex equipment legacy. If you
10 had a single type of equipment, that also
11 goes to a long way in terms of how you
12 structure work, how you structure the
13 workforce. So there's actually an
14 infrastructure and equipment piece to that
15 that we need to address in fact over the next
16 10 years. That makes our environment very
17 complicated because of the great age of our
18 equipment, the lack of modularity in the
19 maintenance. So that's a very tough
20 question.

21 But, goodness, absolutely. We want
22 to go that route rather than the other route.

1 CHAIRMAN TREDICK: Thank you, sir.

2 Does that conclude the Amtrak direct case?

3 MR. REINERT: That concludes

4 Amtrak's direct case.

5 CHAIRMAN TREDICK: Okay. Can we go

6 off the record for a minute?

7 (Discussion off the record.)

8 CHAIRMAN TREDICK: Okay, Mr.

9 Guerrieri, would you call your witness?

10 MR. GUERRIERI: Our next witness is

11 Mr. Joel Parker, who serves as the Vice

12 President of the Transportation

13 Communications Union and Special Assistant to

14 the President, Robert Scardelletti, and has

15 served in that capacity since 2004.

16 He has been the principal advisor

17 to the International President in a series of

18 national freight negotiations and has been

19 the lead negotiator in a number of local rail

20 negotiations.

21 He began his career in the railroad

22 industry in 1973 with Amtrak and for a number

1 of years prior to becoming International Vice
2 President was the General Chairman
3 representing employees of Amtrak.

4 He has also served as the elected
5 spokesman for a number of labor bargaining
6 coalitions, including the Amtrak C2
7 Coalition, the ten-craft Metro North Labor
8 Coalition, and during the bargaining round
9 with the Amtrak Shopcraft Coalition. He was
10 also the lead negotiator in the negotiations
11 with the National Rail Carriers that led to
12 the passage of the Railroad Retirement and
13 Survivors Improvement Act of 2001 which
14 reformed the railroad retirement system and
15 serves currently as the Trustee of the
16 National Railroad Retirement Development
17 Trust, which holds more than \$30 billion in
18 assets.

19 He has testified before
20 Presidential Emergency Boards, PEB 222, on
21 behalf of the Amtrak Joint Council of Carmen,
22 and PEB 240, the Metro North Labor Coalition,

1 and he's testified before Section 7
2 arbitration boards involving Amtrak and the
3 National Carmen and Clerks.

4 He has served as the lead
5 negotiator for the Shopcraft Coalition and
6 today will be speaking on behalf of not only
7 the Shopcraft Coalition but also of the
8 Passenger Rail Labor Bargaining Coalition.

9 So I present to you Mr. Parker.

10 CHAIRMAN TREDICK: Welcome, Mr.
11 Parker. Will you rise so you can be sworn?
12 Whereupon,

13 JOEL PARKER

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

16 CHAIRMAN TREDICK: Please proceed.

17 DIRECT EXAMINATION

18 THE WITNESS: Good morning. Make
19 sure this is close enough. As Joe said, I'm
20 testifying on behalf of all nine crafts,
21 including ARASA, that are before this Board.
22 On behalf all of them, I want to thank you

1 for accepting the challenge of being
2 appointed to this PEB, particularly at this
3 time of year.

4 You have my written statement.
5 Rather than read that statement, I plan to
6 summarize it and highlight what we believe
7 are the most critical issues.

8 I'll be glad to take questions as I
9 go, or at the end if you prefer. Judging by
10 yesterday, you're not shy, so I probably
11 didn't have to say that.

12 I do want to warn you that I have a
13 lot of ground to cover. I'll begin by
14 emphasizing how significant are the issues
15 facing this Board. The unions, our
16 overriding concern, of course, is to achieve
17 a fair recommendation for our Amtrak members,
18 one that will lead to a voluntary settlement
19 without a strike, one that will recognize the
20 contributions of Amtrak workers to Amtrak
21 success, and one that will not, as Amtrak
22 proposes, deprive them of eight years of back

1 pay and subject them to the most onerous work
2 rules in the rail industry.

3 But this Board also faces decisions
4 that transcend this particular dispute. By
5 insisting that members of unions that settle
6 later in a round get penalized by forfeiting
7 back pay, Amtrak is attempting to radically
8 change the historical norm of pattern
9 bargaining in the rail industry.

10 Amtrak enunciated this new approach
11 from the first days of negotiations and has
12 clung to it ever since. Under Amtrak's new
13 paradigm, unions who settle first get more
14 money than those who settle later, and the
15 members of unions who refuse to capitulate to
16 long lists of sweeping work rule demands
17 receive thousands of dollars less than unions
18 who settle earlier.

19 This approach threatens the very
20 fabric of pattern bargaining. It threatens
21 it not only for Amtrak workers, but if
22 Amtrak prevails, it will certainly be

1 tempting for the rest of the industry to
2 follow suit. It is the most destabilizing
3 proposal I have encountered in more than 30
4 years of representing members. And it is the
5 primary reason we're here today, a ridiculous
6 eight years after negotiations began.

7 To my knowledge, this is the
8 longest running dispute ever to go to a PEB.
9 We're now talking about agreements that span
10 two traditional rounds of bargaining. Again,
11 a first. How could this happen?

12 Every union here is capable of
13 making agreements, and all of them do. Since
14 bargaining began with Amtrak in 2000, the
15 unions here assembled have reached not one,
16 but two agreements with the largest player in
17 the railroad industry, the National Freight
18 Carriers represented by the National Carriers
19 Conference Committee.

20 ARASA, which does not bargain
21 nationally, made the exact same agreements
22 with the national carriers on which they have

1 representation.

2 During the same period, each of the
3 unions here have made contracts, sometimes
4 two, with most major commuter railroads.
5 Long Island Railroad, Massachusetts Bay
6 Commuter Railroad, and Metra, to name but a
7 few. Only one, Metro North, went to
8 Presidential Emergency Board. As Chairman
9 Tredick knows, and two others of you, that
10 Board's recommendation successfully led to a
11 peaceful resolution of that dispute.

12 The evidence is clear. We know how
13 to make agreements. We do not seek an
14 impasse. We do not seek to prolong
15 bargaining.

16 So how is it then we find ourselves
17 here eight years after bargaining began not
18 an inch closer to agreement than we were on
19 day one?

20 Normally, a dispute of this
21 magnitude would be over the amount of wage
22 increases over the life of the contract.

1 That's not true here. The final wage rates
2 under each side's proposals are less than 1
3 percent apart. Although Amtrak's proposed
4 longer duration would significantly lower the
5 average annual increase, we base our proposal
6 on the national freight pattern. It's
7 unclear how Amtrak came up with theirs,
8 especially for the last half of the contract
9 period.

10 Alternatively, many of the most
11 contentious bargaining disputes in the U.S.
12 over the last eight years primarily involved
13 company's efforts to cost shift and restrain
14 benefit costs in health plans. Here again on
15 this critical issue the parties are not very
16 far apart.

17 Our proposal adopts all of the
18 cost-saving provisions of the two national
19 settlements, including going from zero
20 employee contributions to more than \$166 a
21 month immediately with retroactive employee
22 contributions predating our proposed first

1 wage increase, and a number of increases to
2 employee out-of-pocket expenses.

3 The only difference on this issue
4 is that Amtrak wants all of the concessions
5 of those agreements, but it refuses to offer
6 some of the benefit improvements also found
7 in those national agreements.

8 So if this dispute is not primarily
9 over overall wage levels or health insurance,
10 why have eight years gone by without
11 agreement? And Amtrak has said this too.
12 That's one thing we agree on. We are really
13 here because of two issues: back pay, and
14 Amtrak's demands for sweeping work rule
15 concessions.

16 From just about day one, Amtrak
17 laid down the gauntlet. It announced a
18 radical new bargaining strategy that it would
19 not agree to any back pay. Unions would only
20 receive wage increases from the day of
21 signing, no matter when the first union
22 signed. There was coupled with demands for

1 far-reaching and numerous work rule
2 concessions.

3 Now, the seeking of work rule
4 concessions was not new in itself. We'd been
5 through many rounds of bargaining before,
6 both on Amtrak and other railroads, where
7 carriers began negotiations with aggressive
8 demands for work rule changes, just as unions
9 sometimes would seek significant work rule
10 improvements. Both rounds in national
11 carriers, for example, put work rule -- very
12 significant demands for work rule changes on
13 the table. They later withdrew them.

14 What was different here was
15 Amtrak's coupling of the two positions, a
16 must-have stance on major work rule
17 concessions with the no back pay principle.
18 By putting forward demands it should have
19 known were unacceptable on their face, Amtrak
20 was told from day one by all of the crafts
21 that its contracting out demand, for example,
22 would never lead to a voluntary settlement.

1 Amtrak, in effect, dug a hole from which it
2 couldn't bargain.

3 Amtrak would start each negotiation
4 session by repeating its litany of work rule
5 demand and repeating its insistence that back
6 pay was not negotiable. It opposed union's
7 request to be proffered arbitration. To us,
8 its strategy was transparent. With each day
9 and then year that went by, the members would
10 suffer the lack of a wage increase with no
11 prospect of recovery through back pay, and
12 eventually would force us to capitulate to
13 the work rule demands.

14 Under this strategy, if workers
15 didn't give Amtrak all it wanted, Amtrak
16 suffered nothing. Each day without an
17 agreement was just another dollar saved.

18 What Amtrak didn't expect and
19 opposed to the bitter end was that the NMB
20 would finally say enough is enough and
21 release the parties, which is what brings us
22 here.

1 The combination of unyielding
2 demands for rule concessions and the refusal
3 to recognize back pay obligations has put us
4 in front of this Board. Amtrak takes this
5 stance at the same time that it has
6 significantly increased its ridership and
7 revenue, and while employee productivity is
8 off the charts.

9 According to Amtrak, its workers
10 should be rewarded for their increased
11 productivity by receiving no wage increases
12 for the last eight years and by giving up
13 works rules that have protected them since
14 and Amtrak again.

15 Yesterday, Amtrak tried to put a
16 different spin on why this dispute has
17 dragged on for so long. We heard testimony
18 that, quote, the union strategy was to await
19 political change. I have no idea what
20 they're talking about. I really don't.

21 From day one, all the unions tried
22 to get Amtrak to budge from its no-compromise

1 position on back pay and work rule
2 concessions. We decry delay. We didn't seek
3 it.

4 Some of the unions here requested
5 release in 2003, well before the 2004
6 Presidential and Congressional elections.
7 The majority of others followed suit shortly
8 thereafter. Amtrak opposed release to the
9 very last day. There's just no basis in
10 reality to assert that the unions delayed
11 bargaining in pursuit of some kind of
12 political change.

13 I want to turn now to discussion of
14 differences between our settlement proposal
15 and Amtrak's. We bring to you a conservative
16 proposal, one based on our conviction that
17 the two national agreements covering the
18 period 2000 to 2004 and then 2005 through
19 2009 constitutes a pattern for settlement on
20 Amtrak.

21 I want to briefly walk through each
22 element of our proposal, comparing it with

1 Amtrak's, so that the differences are clearly
2 drawn.

3 First, as to contract duration, we
4 seek a contract covering the period January
5 1st, 2000, through December 31, 2009, a
6 period of 10 years. Amtrak proposes
7 extending the duration an additional nine
8 months into 2010 with no wage increase in the
9 final calendar year.

10 Our proposed duration exactly
11 tracks the national freight settlement.
12 Amtrak said yesterday that its rationale is
13 based on the fact that it's funded on an
14 October 1st fiscal year basis. That may be
15 true, but the solution then should be to
16 offer an additional increase after October
17 1st, 2009, to cover the nine-month contract
18 extension.

19 On wages, our proposal again
20 follows the pattern of agreements reached
21 with the National Freight Carriers covering
22 this period. It's set forth in detail in my

1 written statement and will be further
2 explained by our economist, Tom Roth.

3 Suffice it to say that the total
4 compounded increase under our proposal is
5 35.2 percent while the total under Amtrak's
6 is 34.4 percent, a difference of 0.8 percent.

7 Using a weighted average rate for
8 the nine crafts before this Board, our
9 proposal results in a final average hourly
10 rate of 2506. Amtrak's proposal results in a
11 final average hourly rate of 2490. The
12 difference is 15 cents per hour.

13 In its submission, Amtrak says that
14 its proposed wage increases, quote, in the
15 aggregate are almost identical to the freight
16 pattern, unquote, and says that the small
17 differences in timing are, quote, for cash
18 flow reasons.

19 In fact, however, their proposal
20 lags the freight pattern by almost a full
21 percent, and their proposal to extend the
22 contract by nine months with no raise

1 represents a significant dilution of the
2 contract's value and departure from the
3 freight pattern.

4 Where both parties agree that the
5 proposals do widely diverge are in the timing
6 of the proposed wage increases and, as a
7 result, the overall worth of the contract.

8 Our proposal conforms to the
9 national pattern timing of wage increases.
10 At settlement, under our proposal,
11 retroactive payments would be calculated for
12 each qualifying employee reflecting the
13 compensation the employee would have received
14 had the national agreement been adopted. The
15 amount owed each employee would be reduced by
16 the amount of Harris COLAs that the employee
17 received subsequent to June 30, 2002. Under
18 the national pattern, the first 27 cents of
19 Harris COLA is rolled in. It's the
20 subsequent COLAs that are offset for
21 retroactive pay.

22 Our proposal also conforms to the

1 national freight pattern in our approach to
2 employee health insurance contributions. The
3 gross retroactive amount owed each employee
4 would be reduced dollar for dollar by the
5 amount that the employee would have had to
6 contribute under the national freight
7 agreement for health insurance.

8 Under that agreement, and what we
9 are proposing, is that employee contributions
10 began in July 2001, a full year before the
11 first actual wage increase. We would do the
12 same here.

13 We estimate that the net
14 retroactive payment under our proposal after
15 applying the dates of the national wage
16 increases and offsetting the Harris COLAs and
17 employee medical contributions will
18 approximate \$12,800. We calculated that
19 through January 1st, 2008.

20 Amtrak's proposal is for
21 significantly less compensation. It would
22 bundle all wage increases due from the

1 opening of the contract through the date of
2 signing and apply them prospectively only.
3 There would be no retroactive calculating.
4 In its place, Amtrak proposes a
5 one-size-fits-all \$4,500 signing bonus. It
6 estimates this is about 30 cents on the
7 dollar of what would be owed under the
8 freight agreement. In other words, Amtrak
9 workers would receive 70 percent less over
10 the first seven years of the contract than
11 their counterparts on freight.

12 The unions further propose that the
13 existing Harris COLA provisions continue in
14 the event a successor agreement is not
15 reached by July 1, 2010. There would be none
16 during the contract period through December
17 31, '09, but if no agreement is reached
18 between December 31, '09, and July, they
19 would come back.

20 Amtrak proposes that the Harris
21 COLAs be discontinued. This is the single
22 area in our proposal that is different from

1 the national freight settlement.

2 The reason we believe a change is
3 warranted is obvious. Amtrak settlements
4 have traditionally been reached after freight
5 agreements. Amtrak employees should not be
6 expected to go years without even the
7 pittance of a COLA. We fear that eliminating
8 the COLA on Amtrak would only encourage
9 Amtrak to repeat the stalling strategy it
10 used this round. Amtrak should not have any
11 reasonable objection to the Harris COLA,
12 since it will be offset against wage
13 increases when a new contract is reached.

14 On health insurance, our proposal
15 contemplates that Amtrak employees will
16 contribute under the same formula as that
17 agreed to under the national freight
18 agreement. That is essentially Amtrak's
19 proposal as well.

20 The difference here, however, goes
21 to how the 15 percent formula of that
22 agreement would be applied, and this is the

1 one area where the unions have a slightly
2 different proposal among us. You can imagine
3 the complexity of trying to get nine unions
4 to agree to the same proposal. We ran out of
5 time on this one, but we got there on
6 everything else.

7 The PRLBC unions propose that the
8 Amtrak employee contribution be the identical
9 amount as what will be paid under the
10 national freight agreement. Whatever comes
11 out of the freight payment formula, Amtrak
12 workers would pay the same. Amtrak proposes
13 that the 15 percent formula be the same but
14 that it be applied to Amtrak's actual medical
15 costs rather than the national. This would
16 probably result in a different actual
17 contribution from Amtrak workers than workers
18 on the freight railroads. Dan Biggs, our
19 health insurance witness, will testify on
20 that in detail.

21 The Shopcraft Coalition unions and
22 ARASA propose to use Amtrak's method and

1 timing of calculating the annual increase but
2 with the stipulation that the amount be
3 capped at no greater than the actual payment
4 under the national freight plan for that
5 calendar year.

6 On health and welfare benefit
7 levels, we propose to adopt the same medical
8 plan design changes, including those to
9 vision, life insurance, dental, off-track
10 insurance and supplemental sickness benefits
11 as called for in the national freight
12 agreement. Here, Amtrak proposes all of the
13 concessionary aspects of that agreement be
14 applied but does not propose to adopt all of
15 the improvements found in that agreement.
16 Again, coalition witness Dan Biggs will
17 testify on the specific differences.

18 We also propose that payments for
19 meals, lodging and travel expenses be
20 increased by 20 percent as they were under
21 the national freight agreements. Amtrak
22 proposes no increases.

1 And last but certainly not least,
2 we propose that there be no changes to work
3 rules whether there are improvements or
4 concessions. Here again, we follow the
5 national freight agreements which contain no
6 changes to rules. Amtrak, as you know, is
7 insisting on a long list of major work rule
8 concessions.

9 Why do we believe that the national
10 freight agreements constitute a pattern
11 settlement for Amtrak? Our economist, Tom
12 Roth, will lay out in detail the historic
13 relationship between Amtrak workers' wages
14 and those of employees on the national
15 freight carriers. Suffice it to say here
16 that wage adjustments over the years have
17 been almost identical and coterminous for the
18 two groups.

19 Amtrak itself does not challenge
20 the historic relationship. In its brief it
21 says its proposed increases, quote, are
22 derived from the pattern of the 2002 and 2007

1 freight agreements, unquote. It proposes to
2 depart from the national freight pattern only
3 when it suits its self-interests, namely, on
4 the key issues of back pay and work rule
5 changes.

6 The reliance of Amtrak wage
7 settlements on national freight patterns is
8 not a case of first impression. This was
9 squarely the issue facing PEB 234 in August
10 1977 when it made its recommendation to
11 settle the outstanding negotiations between
12 BMW and Amtrak. The similarities to today's
13 dispute are striking.

14 Then, as today, the union urged the
15 adoption of the national freight pattern.
16 Then, as today, unions representing about 30
17 percent of the Amtrak workforce had already
18 reached agreements for part but not all of
19 the bargaining round two years out of five.
20 Then, as today, Amtrak pleaded inability to
21 pay.

22 The major difference was that the

1 Congressional and performance outlook in 1997
2 was much, much bleaker for Amtrak than it is
3 today. Funding was being cut. Congress was
4 about to enact the Amtrak Reform and
5 Accountability Bill, which would put in place
6 a procedure for Amtrak to be eliminated.
7 Nevertheless, PEB 234 decisively recommended
8 the adoption of the national freight pattern
9 as the basis for the Amtrak BMWWE settlement.

10 In rejecting Amtrak's inability to
11 pay argument, PEB 234 stated it would not
12 impose a wage disparity with the, quote,
13 usual comparators, namely, quote, the
14 historic relationship between Amtrak and the
15 freight industry BMWWE employees from which
16 Amtrak employees might never recover.

17 The Board looked to the BMWWE
18 freight settlements to craft a wage
19 recommendation that provided increases not
20 only in the same amount but at the same time
21 as the freight increases, thereby
22 categorically rejecting Amtrak's claim that

1 it was, quote, not tied to any freight
2 pattern.

3 As held by PEB 234, the appropriate
4 pattern upon which this Board should base its
5 recommendations is this freight settlement
6 for the comparable period. And that pattern
7 includes the payment of Amtrak wage increases
8 at the same time as the freight wage
9 increases.

10 Amtrak counters that it can't meet
11 the back pay obligations of the national
12 settlement because Congress has not
13 appropriated enough money for that purpose.
14 It says it told the unions as much back in
15 2002, so it's the unions' fault for not
16 capitulating back then. Of course, it also
17 admits back in 2002, it tied any settlement
18 to achieving its work rule agenda to
19 achieving its work rule agenda, which was the
20 main reason why agreements weren't reached
21 back then or in the succeeding years.

22 Implicit in Amtrak's argument is an

1 assumption that, had the parties agreed in
2 2002, Congress would have funded the same
3 wage increases we're asking for
4 prospectively. So even Amtrak admits it is
5 not necessarily opposed to the size of the
6 compensation increases the unions proposed,
7 just the timing of the payments.

8 Amtrak President Alex Kummant and
9 Vice President Joe McHugh go further. They
10 suggested in their written statements that
11 the union should outside of this proceeding
12 go to Congress and secure a supplemental
13 appropriation that would pay the back pay
14 liability. Again, there's an implicit
15 acknowledgement that if Congress would fund
16 them, our back pay proposals are not out of
17 line.

18 The inability to pay argument is by
19 no means a new one. We have heard it every
20 time a subsidized carrier has gone before a
21 PEB, whether it is Amtrak or a commuter
22 railroad. And each time, it has been soundly

1 rejected by the PEB hearing the dispute.

2 As I previously mentioned, the most
3 recent time this happened was in 1997 at PEB
4 234. The Congressional situation was
5 hostile. The Clinton administration was
6 calling for the elimination of operating
7 subsidies, and subsidy levels were being
8 reduced. Amtrak's presentation to that Board
9 mirrored its case here: It couldn't afford
10 back pay, Congress would never fund it, the
11 devil was at the doorstep.

12 In rejecting Amtrak's position and
13 recommending that the national freight
14 settlement be the pattern for the BMW
15 settlement with Amtrak with the same dates of
16 payment of wage increases, PEB 234 said,
17 quote, our obligation is to recommend a fair
18 and equitable package of compensation for
19 maintenance of way employees and then leave
20 to the funding authorities the issue of
21 whether or not they wish to fund that
22 package, unquote.

1 In Amtrak's view, the only
2 stakeholders that must accept less than what
3 would otherwise be called for by the market
4 are Amtrak union workers. Amtrak has adopted
5 a policy of paying its managers dollar for
6 dollar what federal employees receive.
7 There's no discount because of federal
8 subsidy. Nor does Amtrak tell its multitude
9 of vendors and suppliers that they must
10 accept less than market rates because
11 Congress wants to reduce the subsidy. PEB
12 234 noted this directly. Quote, fair and
13 reasonable labor costs are as integral a part
14 of the budget picture as payment of the
15 prevailing rates for power, equipment,
16 supplies and the like. Labor costs should
17 not be considered a residual element of
18 funding dependent upon the availability of
19 remaining money or to be temporarily
20 suppressed to present an unduly rosy view of
21 Amtrak's costs, unquote. We are not
22 ostriches. At least I hope we're not. Been

1 called worse.

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

7 PEB 234 correctly concluded that it
8 had an obligation to Congress to base its
9 recommendations on traditional criteria of
10 pay equity, not what it deemed or it could
11 guess was politically feasible. Again, it
12 said it is our charge -- I'm quoting. It is
13 our charge and responsibility to determine
14 the equitable terms and conditions of
15 employment for BMW employees based on the
16 record and judged by the standard of people
17 receiving comparable pay for comparable work.
18 Congress must be informed of considerations
19 of equity in labor cost rules and conditions
20 if it's to make realistic judgments on
21 continuing funding for Amtrak, unquote.

22 PEB 234 is not an outlier. Its

1 findings on this score are consistent with a
2 long line of PEB and public sector interest
3 arbitration decisions discussed in our
4 submission standing for the proposition that
5 a public entity's relative willingness or
6 lack thereof to fund the costs of an
7 agreement should not be a consideration for
8 an interest arbitration Board.

9 The situation is the same when
10 commuter railroads have wound up before PEBs.
11 As with Amtrak, commuter railroads will
12 always be subsidized. To the degree there's
13 any difference, it's that commuters require a
14 higher percentage, a much higher percentage
15 of subsidy than Amtrak. On average,
16 commuters cover a far smaller percentage of
17 their operating costs with revenue. 47
18 percent for commuters, compared to 78 percent
19 for Amtrak.

20 This has not led any PEB in a
21 commuter case to reduce its wage settlement
22 proposal based on an assessment of what the

1 funding agency might do or want. In fact,
2 wages on commuter railroads are significantly
3 higher than for their Amtrak counterparts,
4 currently averaging 3 to \$5 an hour more for
5 the same jobs.

6 Not once has a PEB in a commuter
7 case done as Amtrak here suggests, deprive
8 the employees of back pay on the grounds that
9 there was not sufficient subsidy to cover it
10 and tell the unions that, on their own, they
11 should seek a higher appropriation from the
12 funding authority to cover their wage
13 demands.

14 For example, in 1995, PEB 226
15 rejected Metro North's argument that an
16 anticipated reduction in state and federal
17 subsidies was a basis to deny employees'
18 demands for annual wage increases. That
19 Board recommended annual increases both
20 retroactively and prospectively.

21 Three unions were before the PEB
22 for the retroactive period. The other 14

1 crafts had already reached agreement with
2 Metro North for 1992 to 1994. Contrary to
3 the result that Amtrak propounds here, the
4 PEB recommended that members of the three
5 unions, without contracts for '92 through
6 '94, receive the same wage increases
7 retroactive to the same dates as the unions
8 who had already settled.

9 Amtrak is truly trying to reinvent
10 the wheel here. Their argument on this score
11 has been rejected as far back as we can find.
12 Way back in 1946, PEB 37 -- that's an early
13 one -- concluded that the Hudson and
14 Manhattan Railroad Company, a publicly
15 subsidized carrier, should pay the prevailing
16 wage rates. Quote, the employees should not
17 be expected to sacrifice a part of their pay
18 to serve the general public interest any more
19 than vendors of steel rails or tickets or
20 railway cars, unquote.

21 Since it can't find any PEB support
22 for its position that workers on publicly

1 subsidized carriers should receive less than
2 market rates, Amtrak instead testifies that
3 it has had off-the-record private
4 conversations with unnamed Congresspersons
5 that have allegedly convinced them that
6 Congress won't fund back pay in the amounts
7 that the union's proposal would require.

8 Let's leave aside the incongruity
9 of Amtrak asking Congressmen whether they'd
10 fund back pay settlements that Amtrak admits
11 over and over again that it opposed from day
12 one and opposes to this day.

13 Let's also ignore the fact that for
14 several of the years between 2000 and the
15 2007, the Amtrak Board of directors opposed
16 Congressional efforts to fund Amtrak at
17 higher levels than what Amtrak even asked
18 for, higher funding levels that the union
19 supported and achieved.

20 No, let's just say that I know from
21 first-hand experience that rail labor
22 lobbyists and representatives have had

1 numerous back-channel discussions with
2 several Congressional leaders, and we have
3 been told exactly the opposite.

4 Now, Congress is a big place, but
5 my testimony to that effect should have the
6 same evidentiary weight as Amtrak's: None.

7 What is an incontrovertible fact is
8 earlier this year, the House Transportation
9 and Infrastructure Committee leadership on a
10 bipartisan basis summoned Amtrak's top
11 executive leaders and the leaders of Amtrak
12 rail labor unions to meetings at which they
13 urged Amtrak to up the back pay offer and
14 asked for a number that would resolve the
15 dispute, because Amtrak has made it clear
16 that even if the back pay issue was resolved,
17 it still wouldn't settle without work rule
18 reforms. No answer was given.

19 Over the last several years, key
20 Congressional leaders have repeatedly asked
21 both Amtrak and our unions what kind of
22 appropriation it would take to resolve the

1 back pay issue. The problem was that for
2 most of those years, Amtrak opposed any back
3 pay payment. And even now, the parties are
4 far apart as to what would be required. Had
5 Amtrak been serious about it for back pay, we
6 have no doubt that a method could have been
7 mutually worked out with Congress to
8 accomplish it.

9 This Board should not expect Amtrak
10 workers to earn less than their railroad
11 industry counterparts simply because Amtrak
12 is and always will be subsidized to some
13 degree.

14 Yesterday Mr. Javits asked during
15 our opening statement, well, we thought about
16 an arbitration award from many years ago
17 about Southern Pacific Railroad that held --
18 I think I got the award straight. Was that
19 the Casher award? -- was held that SP, due to
20 its economic distress, should not be held to
21 the national freight pattern.

22 It's a good question, and here's

1 how we answer it. We submit that there is no
2 real analogy between SP and Amtrak. SP was
3 the definition of a failing company. It no
4 longer exists.

5 Amtrak is not a failing company.
6 It is a subsidized company, like every rail
7 passenger service in the world. It is less
8 subsidized than most other passenger rail
9 services, and much less than commuters. But
10 other passenger rail workers and commuter
11 workers don't work for less because they're
12 subsidized. In fact, commuter workers are
13 paid much more than their counterparts on
14 freight and Amtrak.

15 Along the same line, Amtrak's
16 counsel tried to compare Amtrak workers to
17 airline workers. Again, a strained
18 comparison. The workers -- and, you know,
19 they won't say it. The workers who come
20 closest to Amtrak's situation are rail
21 commuter workers. They work in the same
22 industry. They do the same jobs. They too

1 work for subsidized carriers. The second
2 closest group are rail freight workers. If
3 you want, we could change our demands to
4 commuter. We didn't do that, and I'll
5 address later why.

6 Mr. Crosbie this morning spent a
7 lot of time pointing out the different
8 operation along needs of Amtrak as opposed to
9 the freights, but he stopped short of saying
10 whose operational needs are almost identical
11 to Amtrak: the commuter railroads.

12 Amtrak wants to negotiate over --
13 will not consider negotiating over putting
14 the commuter wages in place, yet those are
15 the ones with the same operational needs as
16 Amtrak.

17 This Board through its
18 recommendations should let Congress know the
19 fair labor costs of employing a skilled and
20 dedicated work force. It is then for
21 Congress, not this Board, to decide whether
22 to provide the funding to assure that Amtrak

1 can pay such wages.

2 So far, I've addressed the back pay
3 issue only from the perspective of Amtrak's
4 ability to pay. I want to now turn to the
5 equity and collectively bargaining reasons
6 why this demand is so crucial.

7 While employees on all other
8 carriers have received wage increases during
9 the last eight years, Amtrak maintains that
10 the union members represented here are
11 entitled to none except for the paltry 171 an
12 hour in COLAs that Amtrak was required to pay
13 by previous agreements. These COLAs are to
14 be offset against future negotiated wage
15 increases. This 171 an hour amounts on
16 average to about 1 percent a year, which is
17 unacceptable on its face and not consistent
18 with the national freight pattern. While
19 Amtrak has offered a \$4,500 signing bonus,
20 this bonus represents a small fraction of the
21 back pay rightfully owed to these workers
22 after eight years without a wage increase.

1 Amtrak's position on back pay is at
2 total odds with the historical norm in rail
3 bargaining, whether on Amtrak, national
4 freights or major commuters. While the
5 amount of retroactivity has varied from
6 contract to contract, one principle has not
7 varied. Unions that sign later receive wage
8 increases or their monetary equivalent back
9 to the start date established by the first
10 signing union.

11 Let's first look at the Class 1
12 freight carriers. They have historically
13 provided these union entering an agreement
14 after the pattern was set by others, the same
15 wage increases on the same date as union
16 setting the pattern. Occasionally, however,
17 they too have advanced the position that
18 Amtrak here propounds. It hasn't happened
19 often. When it has, it's usually been when
20 almost every craft has settled and one
21 holdout union seeks more. Every time the
22 freight carriers have advanced that argument,

1 it has been rejected.

2 For example, in 1992 after the wage
3 pattern for the freight carriers was
4 established by PEB 219, two PEBs dealt with
5 the timing of wage increases of others for
6 whom the 219 pattern was deemed to apply.

7 PEB 220 rejected the freight
8 carrier's efforts to deny back pay to the
9 machinists, who had declined to enter the
10 pattern settlements agreed to by the other
11 rail unions in that round.

12 The Board found that the machinist
13 members were entitled to the same increases
14 to become effective on the same date as set
15 forth in the prior agreements. The Board
16 stated it saw, quote, no reason why the IAM
17 should suffer any loss of any retroactivity
18 simply because it declined to participate in
19 the proceedings before PEB 219, which it had
20 the legal right to do unquote.

21 Similarly, this Board should not
22 deny Amtrak employees back pay because their

1 unions exercise their legal right to decline
2 to capitulate to Amtrak's demand for sweeping
3 concessions.

4 In PEB 221 involving Conrail, the
5 BMWWE sought to conservative a wage settlement
6 higher than PEB 219's recommendations. The
7 Board rejected that effort, recommending that
8 the parties adopt the same wage increases,
9 quote, and time schedule, unquote, as
10 recommended by PEB 219. Later, in PEB 234,
11 which involved Amtrak, the Board, over
12 Amtrak's objections, recommended the freight
13 carrier settlement which included wage
14 increases on the dates they became effective
15 under that settlement resulting in back pay.

16 PEB 234 specifically cited
17 Amtrak's, quote, tradition of matching the
18 duration and expiration dates of freight
19 industry agreements, unquote.

20 Finally, it should be noted that in
21 PEB 240 involving the most recent dispute to
22 go to a board, the coalition of labor

1 organizations therein received the same wage
2 increases at the same time as the increases
3 provided in the pattern agreement between
4 Metro North and Airway. We seek the same
5 results here.

6 The wage increases of the national
7 freight settlement should be given to Amtrak
8 employees in the same amount on the same
9 dates as called for under those settlements.
10 The outcome of all those cases followed the
11 same principle. A wage pattern consists as
12 much of the timing of the wage increases
13 therein as their nominal amount. How could
14 it can otherwise? How can one talk of a
15 pattern that would have a worker under the
16 pattern agreement receive thousands of
17 dollars more than a worker with identical
18 rates and hours under the later agreement?
19 That result is the very definition of
20 "destabilizing."

21 Amtrak's proposal to substitute a
22 signing bonus for back pay is not only

1 woefully inadequate, but it's also internally
2 inequitable and needlessly divisive to
3 employees. We have been through signing
4 bonuses. Signing bonuses traditionally are
5 in addition to back pay settlements, or to
6 cover short periods where differences in
7 rates and hours worked would not lead to
8 significant individual disparities between
9 employees.

10 Their inequities are profound,
11 however, if applied to a period of long
12 duration as is the case here. There can be
13 no equitable rationale for a settlement that
14 pays the same amount to employees regardless
15 of rates of pay or straight time and overtime
16 hours worked over an eight-year period.

17 A lump sum signing bonus doesn't
18 account for the fact that wage rates for the
19 crafts before you can vary by as much as \$12
20 an hour between the lowest and highest rated
21 jobs.

22 Mr. Crosbie said coach cleaners

1 make \$25 an hour. They don't. I'm assuming
2 that's a derived number with benefit load,
3 and I don't know where he got it. The actual
4 coach cleaner rate is 1622 an hour.

5 He said that there are no coach
6 cleaners on freight. He's correct. But
7 there are coach cleaners on every commuter
8 railroad, and they make much more than Amtrak
9 coach cleaners.

10 But the reason I bring that up here
11 is that under our back pay proposal, coach
12 cleaners would receive about 50 percent of
13 that average \$12,800 payment because their
14 rates are so much lower than, say, a
15 journeyman carman or maintenance of way
16 worker or ARASA supervisor. It is ridiculous
17 to have a lump sum payment that would give
18 the coach cleaner the same amount as any of
19 the much higher paid groups. Nor does a lump
20 sum signing bonus account for widely
21 different amounts of overtime work.

22 Under Amtrak's proposal, an

1 employee could have worked full time and
2 overtime in seven straight years, 2000
3 through 2006, and received zero signing
4 bonus. Alternatively, an employee hired in
5 2006 with only one year's seniority at a much
6 lower entry rate would receive the full
7 bonus. Further, Amtrak's proposal would deny
8 the signing bonus to employees who worked
9 since 2000 but retired or died before 2006.

10 Our proposal, the coalition back
11 pay proposal, is eternally equitable. Back
12 pay will be tied to the individual employee's
13 actual hours worked and rate of pay.
14 Employees who retired or dependents of
15 employees who died during the retroactive
16 period will receive the correct prorated
17 amount for the time they worked. Amtrak's
18 stall tactics would not be rewarded by
19 depriving employees who retired or died
20 during the eight-year bargaining period of
21 any back pay.

22 Amtrak's argument that it can't

1 afford the union's back pay proposal is
2 inconsistent with its treatment of its own
3 management. Beginning in 2003, Amtrak has
4 raised salaries for its management by 17.5
5 percent. Earlier this year, Amtrak announced
6 plans to increase most management salaries by
7 another 10 percent. That plan was put on
8 hold after criticism by unions and others.

9 I'm about halfway through. I don't
10 know if you want to break or plunge on.

11 CHAIRMAN TREDICK: Proceed.

12 THE WITNESS: Okay. I will now
13 turn to the other major divide separating the
14 parties: work rules.

15 From the day bargaining began, as
16 you heard, Amtrak announced it would not make
17 an agreement unless the unions agreed to a
18 long list of major work rule concessions. In
19 seven years, Amtrak has not taken a single
20 rule demand off the table and instead has
21 kept adding new ones. While not providing
22 economic rationales for its proposal, Amtrak

1 justifies them by vague references to
2 Congressional intent.

3 Don Griffin will testify later in
4 detail how Amtrak mischaracterizes the
5 legislative history.

6 Suffice it to say there is no
7 statutory basis for Amtrak's claims. There
8 is no law, not even one line in a law, which
9 compels Amtrak to achieve any of the work
10 rules proposal it is advancing, including
11 contracting out.

12 Amtrak repeatedly tries to justify
13 its take-it-or-leave-it stance on work rules
14 by saying that they told the unions upfront
15 in 2002 that they would not make an agreement
16 without such concessions. Since we were put
17 on notice, the argument goes, it's our fault
18 we didn't just bite the bullet back then and
19 save everyone the aggravation of spending the
20 holidays in Washington.

21 It's an interesting argument. I
22 suppose if the unions made our first mistake

1 by advancing modest realistic settlement
2 proposals not only at the beginning but over
3 the last eight years and now at this Board,
4 under Amtrak's logic, we should have instead
5 announced at the outset of bargaining that
6 since our members essentially perform the
7 same work as our counterparts on Long Island
8 Railroad or Metro North or Massachusetts Bay
9 Commuter Railroad, we would never accept a
10 penny less than to catch up to those wage
11 rates and to have zero employee medical
12 contributions, as those workers still do.

13 I guess if we had said that on day
14 one, that would have justified that they
15 would have agreed. I doubt it.

16 We will present other witnesses to
17 discuss in detail why the specific Amtrak
18 work rule proposals are unacceptable. My
19 testimony will focus on the larger picture of
20 why recommendation of Amtrak's proposals at
21 this late juncture will almost in all
22 likelihood not result in a voluntary

1 settlement. All nine crafts remain steadfast
2 against these demand for now going on eight
3 years of bargaining. Even in the face of the
4 prospect of no release and Amtrak's tactic of
5 trying to starve out a settlement by refusing
6 to offer back pay.

7 There is no way that now, with the
8 release in hand, we'll suddenly do an
9 aboutface and agree to demand that we
10 universally see as unwarranted and punitive.

11 PEBs traditionally strive to
12 fashion recommendations that will lead to
13 voluntary settlements. As PEB 222 said, we
14 think it would be unrealistic and a costly
15 exercise in futility for all concerned if our
16 total recommendations didn't take into
17 consideration as a critical ingredient the
18 acceptability to the parties, unquote.

19 All the unions before this Board
20 have demonstrated they will not voluntarily
21 agree to Amtrak's work rule agenda.

22 Now, it's not as if the union's

1 proposal does not contemplate serious
2 concessions. Far from it. Our proposal
3 accepts verbatim the profound, far-reaching
4 changes in the health plans that were
5 negotiated in the national freight agreement.
6 Amtrak acts as if those health insurance
7 changes count for little and had in these
8 huge concessions above and beyond them. We
9 submit most American companies would be more
10 than satisfied, they'd be overjoyed to
11 achieve such changes in a bargaining round.
12 Certainly, the national freight carriers
13 were.

14 In fact, the underlying basis of
15 the two national settlements before us as the
16 pattern is the achievement of inflation
17 catching up annual wage increases for the
18 employees in return for significant cost
19 shifting and cost controls in the health
20 insurance plan. We are not talking about
21 changes on the margin. We are talking about
22 major concessions, wholesale changes to

1 health insurance.

2 In light of those dramatic changes
3 to the health and welfare plan, the national
4 carriers saw the light and dropped all
5 demands for rule changes. The normal
6 justification for worker rule concessions is
7 demonstrated shortfalls in productivity, yet
8 Amtrak workers have compiled a productivity
9 record second to none.

10 According to Amtrak in answers to
11 Congressional testimony, questions, between
12 2000 and May 2007, union-represented jobs
13 were cut by approximately 26 percent. That's
14 after you took out the 1500 workers who went
15 to NBCR. With those included, it would have
16 been 33 percent but putting them aside, it
17 was 26 percent. During that same period,
18 management jobs were reduced by only 3
19 percent.

20 Despite this cut in employment,
21 Amtrak continues to establish performance
22 records, a testament to the skills and

1 commitment of our members.

2 There is much discussion this
3 morning about backlog of work and overtime.
4 The doesn't square with Amtrak's job-cutting
5 record. All of our crafts have a multitude
6 of unfilled positions. When someone leaves,
7 basically Amtrak just doesn't fill the
8 position. Somehow, sometimes because of
9 overtime, if there's an -- a driver for
10 overtime, that's it. We've gotten the work
11 done.

12 The Class 1 freight railroads
13 operating under more restrictive rules have
14 not been hindered from recording record
15 profits and performance. Just look at the
16 stock prices. Up from 55 bucks to I think
17 135 yesterday, even with the cut. But all of
18 them, you know, their profits of soaring.
19 They operate under work rules more
20 restrictive than Amtrak.

21 Many of Amtrak's proposals strike
22 at the most fundamental protections contained

1 in our agreements. Amtrak -- this was not so
2 much in the written testimony of Mr. Crosbie,
3 but it was in the written testimony, not the
4 verbal this morning, emphasizing concessions
5 it says it, quote, must have.

6 These are transformative
7 concessions. Contracting out, wholesale
8 changes to permissible scheduling,
9 obliteration of craft lines. They don't like
10 to call it composite mechanic. A demand that
11 says any craft can do the work of any other
12 craft, which is the demand on the table, is
13 the definition of composite mechanic.
14 Two-tier wage systems. These are not
15 insignificant changes around the margin.
16 They strike at the most fundamental
17 protections that our contracts provide.

18 PEBs have long rejected proposals
19 of the magnitude that Amtrak seeks as too
20 destabilizing of the fundamental labor
21 management market. As PEB 222 wrote in
22 rejecting Amtrak's proposal to allow

1 bargaining unit work defined by the BMWWE
2 scope rule to be performed by other crafts at
3 management's discretion, quote, if Amtrak
4 were allowed to assign work traditionally
5 assigned to the BMWWE craft to other crafts,
6 or if Amtrak were allowed to assign the work
7 of other crafts to the BMWWE at its
8 discretion, the craft lines of all of the
9 affected labor organizations would be
10 destroyed.

11 People can have a philosophical
12 disagreement about whether it should be craft
13 unions, whether it should be industrial
14 unions, one union. But the reality is on the
15 rail industry, it is a craft union setup, and
16 that's why we have these rules.

17 What the PEB 222 talked about is
18 precisely what would happen here if Amtrak
19 had succeeded in achieving its major
20 proposals. Crucial to this discussion on
21 work rules is the fact that work rule changes
22 are historically negotiated on a quid pro quo

1 basis.

2 The unions have made had a
3 conscious and painful decision to refrain
4 from seeking work rule improvements, because
5 to do otherwise would amount to cherrypicking
6 the national pattern.

7 It's not that our members don't see
8 the need to improve Amtrak working
9 conditions. For example, vacations and other
10 time-off provisions have not been improved
11 for decades. Protection against contracting
12 out and transfers of work are much weaker on
13 Amtrak than in most rail contracts. Rate
14 differentials need to be increased.
15 Employees really want matching 401K
16 contributions.

17 Recommendation of any of Amtrak's
18 work rule proposals would necessarily open
19 the door to traditional quid pro quo rules
20 bargaining, which, after almost eight years
21 of no progress, would almost certainly not
22 result in a voluntary agreement during the

1 30-day cooling-off period.

2 Presentations to PEBs are not meant
3 to be a substitute for negotiations. Rather,
4 the PEB has to look at the history of
5 bargaining to search for an acceptable
6 recommendation. Where there has been no
7 meaningful bargaining on issues, PEBs have
8 simply declined to make recommendations.

9 It's untenable for this PEB to make
10 recommendations on demands where there has
11 been no real bargaining. I'm going to get to
12 Amtrak yesterday and today said, well, the
13 unions are at fault for that. No real
14 bargaining.

15 The reason there has been no
16 meaningful bargaining on rules lies with
17 Amtrak's basic bargaining tactics. As I
18 already noted, Amtrak came to the table with
19 a long list of concessionary demands from
20 which it never budged and hoped that by
21 refusing back pay, it would force its
22 employees to concede. It hasn't worked. It

1 shouldn't be rewarded by this Board.

2 Yesterday, Amtrak in a response to
3 a question from a Board member, tried to put
4 the blame on the unions for the fact that no
5 serious bargaining on work rules took place.
6 That is simply not true. At the meetings I
7 attended of first the Carmen and then the
8 Shopcraft Coalition, we asked for economic
9 data on what savings would result from each
10 of their demands. Amtrak could not or would
11 not produce answers.

12 We asked them to prioritize their
13 demands several times. Amtrak refused.

14 We asked if any rules could come
15 off the table. Amtrak said no.

16 We asked if Amtrak was willing to
17 do quid pro quos. The answer was no.

18 And we asked if Amtrak would under
19 any circumstances be willing to drop its most
20 destabilizing demands, which in that
21 bargaining context, was composite mechanic.
22 Again, a hard no.

1 In the Shopcraft negotiations, we
2 had extensive discussions about the composite
3 mechanic demands versus the incidental work
4 rule. I was there at each session. I was
5 there at each session. None of Amtrak's
6 witnesses who testified were at a single
7 session except for Mr. Bress, who did attend
8 our last session on November 26 after we had
9 been released.

10 Amtrak tells you not to worry, no
11 existing employee will be hurt by adoption of
12 any of its proposal. And it even guarantees
13 that no furloughs will result. So it asks,
14 why should the unions object so much?

15 It's hard for me to remember a more
16 classic example of doublespeak. The core of
17 Amtrak's proposal on contracting out
18 explicitly reaches the opposite result: the
19 removal of existing prohibitions against
20 contracting out if they result in furlough,
21 and the offering of a one-year separation
22 package, even if you've been there 30 years,

1 to employees who would be furloughed.

2 Amtrak is not offering a
3 no-furlough guarantee on subcontracting.
4 Just the opposite. It's proposing to get rid
5 of that guarantee. But the hollowness of the
6 no-furlough promise doesn't end there.

7 Amtrak explained to us at our last
8 bargaining session that its purported
9 no-furlough guarantee was very carefully
10 crafted. Its syntax that, quote, no existing
11 employee will be furloughed as a result of
12 these rule changes, unquote, means that many
13 of these same employees could indeed be
14 furloughed as long as Amtrak could point to
15 any other possible reason for the furlough
16 beyond the specific work rule involved.

17 In my written statement I also
18 explained at length why we find so
19 objectionable Amtrak's proposal that early
20 retirees contribute to health insurance, a
21 proposal that Amtrak saw fit to add six years
22 into bargaining.

1 I'll not restate here all the
2 reasons for opposition. I urge you to
3 revisit that part of my statement if you have
4 questions. Suffice it to say here the
5 national freight agreement has no such
6 contribution requirement for retirees and
7 that Amtrak's proposal would undermine a quid
8 pro quo bargain with the entire rail
9 industry, that in exchange for enacting the
10 tier two tax cuts in the Railroad Retirement
11 and Survivors Improvement Act of 2001, early
12 retirees would have their insurance benefit
13 improved.

14 Amtrak wants to keep the millions
15 of dollars in tax cuts it has enjoyed as a
16 result of passage, but it wants to diminish
17 the early retirement benefit that was a major
18 consideration for labor supporting that
19 legislation.

20 Wrapping up the work rule issue, we
21 strongly believe that the national pattern
22 represents a careful balance of employees'

1 needs to increase compensation and the
2 carrier's desire to control health cost
3 inflation. Amtrak's proposal would radically
4 upset that balance and is therefore
5 unacceptable.

6 I will finish my testimony with a
7 discussion of Amtrak's argument that while
8 the freight settlements are a guide for this
9 Board, there really exists a so-called,
10 quote, internal pattern consisting of the
11 unratified BLET agreement. Where Amtrak
12 doesn't like that agreement, the internal
13 pattern becomes the 2003 TCE clerical
14 agreement, an agreement I'm very familiar
15 with since I was one of its negotiators, as I
16 was the following ASWC agreement and the
17 product line supervisors agreement.

18 Let's start with BLE. I have never
19 heard anyone propose that a contract rejected
20 in ratification in one craft can serve as a
21 pattern for unresolved negotiations in other
22 craft. The only principle that the BLET

1 agreement is a pattern for is the principle
2 that at least 70 percent of our members would
3 reject it.

4 Its rejection by BLET members was
5 not exactly a close call. 70 percent is the
6 most overwhelming margin of a rejection of a
7 contract that I have ever seen.

8 BLET leadership earnestly tried to
9 sell the contract. Amtrak makes much of this
10 in its submission. It was not as if the
11 members understood the issues. They
12 understood the issues, all right, and they
13 rejected it hook, line and sinker. They
14 rejected the attempt to limit back pay to 30
15 cents on the dollar. They rejected the
16 laundry list of rule concessions. They
17 rejected it from page one to the side
18 letters.

19 And the turnout, as Amtrak tried to
20 say, was not small by historic standards of
21 ratification turnouts. We've seen successful
22 ratifications on Amtrak over the years with

1 far smaller turnouts. We've never heard
2 Amtrak suggest those results were
3 illegitimate.

4 We can again come back to that the
5 goal of a PEB is to make recommendations
6 which can form the basis of a settlement and
7 thereby avoid an interruption in service.

8 As noted by Professor Benjamin
9 Aaron in the book The Railway Labor Act At
10 50, the importance of arriving at an award
11 that is within the limits of acceptability of
12 both sides cannot be overstated. The BLET
13 agreement is demonstrably not within the
14 limits of acceptability.

15 As to the 2003 clerical agreement
16 and the agreements that followed it, they
17 cover only 30 percent of the Amtrak
18 workforce.

19 PEB 230 rejected the claim that
20 agreements with 40 percent of the unionized
21 workforce constituted a pattern. The
22 clerical agreement covers only five years of

1 the ten-year contract period. It cannot
2 possibly serve as a pattern for the entire
3 round. And -- and this is the most
4 significant point -- the clerical agreement
5 was voluntarily reached through the crucible
6 of collective bargaining and involved
7 traditional quid pro quo bargaining over work
8 rules.

9 None of the changes Amtrak achieved
10 in that agreement remotely approached the
11 magnitude of what Amtrak is seeking from the
12 unions here today. There were no equivalent
13 concessions to Amtrak's demand for composite
14 mechanic, contracting out, work scheduling,
15 and early retiree medical contributions or
16 the host of other far-reaching demands.
17 There were concessions, to be sure, but each
18 concession was tied to what the union
19 believed to be an equivalent craft-specific
20 improvement.

21 In Mr. Bress' testimony, he singled
22 out a few rules in the 2003 clerical

1 agreement that supposedly stood for a general
2 proposition that that agreement contained
3 work rule concessions of the magnitude Amtrak
4 seeks from the unions here today.

5 I was at all the clerical
6 negotiations and I was at the Carman and
7 Shopcraft negotiations, and I can tell you
8 firsthand that had Amtrak sought from the
9 clerks the sweeping kinds of concessions they
10 want from the nine crafts here today, there
11 would have been no clerical agreement. You'd
12 have ten unions in front of you, and not
13 nine.

14 I don't think it makes sense for me
15 to get into the weeds of the clerical
16 agreements and go through each rule change in
17 that agreement outlining the limited
18 magnitude or the quid pro quos we got. We'd
19 be here a very long time. But I will say
20 that the clerks did not agree -- these were
21 the principles we approached it -- to allow
22 anyone else but the clerical craft to perform

1 any clerical craft work, nor was there a
2 single change that could result in job
3 reductions, even through attrition.

4 I do want to address the rules Mr.
5 Bress singled out the yesterday, because he
6 put them on the table, so you will need to
7 hear about them.

8 The first rule are he cited was our
9 agreement to put in place some limited
10 restrictions for how employees not already
11 trained as crew callers could access the crew
12 calling center.

13 What you didn't hear was that the
14 quid pro quo for that concession was a 19
15 percent raise in crew caller compensation in
16 addition to the freight wage pattern
17 increases everyone else got. Our crew
18 callers received a 30 percent increase in
19 pay, not over 10 years, over five years. And
20 they received the management's sick plan and
21 vacation agreement, which was superior to the
22 clerical vacation and sick plan agreement.

1 Both were significant improvements. That's
2 quid pro quo rule bargaining. That's not
3 what Amtrak is offering to do here.

4 The second example we heard about
5 yesterday was the establishment of guaranteed
6 extra board. The union wanted that. It
7 wasn't a concession at all. We prefer jobs
8 with guaranteed 40 hours rather than
9 unassigned positions that could go weeks
10 without a call.

11 Both of these above examples were
12 classic win/win outcomes. Amtrak is not
13 suggesting win/win outcomes for the unions
14 here before you.

15 The next example Amtrak cited was
16 what they described as a change in clerical
17 weekend rest day provisions. I believe they
18 wanted you to infer somehow that change was
19 analogous to the sweeping scheduling changes
20 they're seeking from the BMW and signalmen.
21 Jan Todd will address those issues in detail
22 as they apply to the BMW, but I can

1 firsthand testify that the change in the
2 clerical agreement was the exact definition
3 of "de minimis." It affected only a handful
4 of small stations that were only staffed five
5 days a week and were under threat of being
6 closed completely, and stations that were
7 unstaffed where we hoped the rule change
8 would lead them to being staffed.

9 The rules impact on the overall
10 clerical workforce was less than minimal.
11 But when it came to the most far-reaching
12 demand of Amtrak's work rules demands, the
13 demand to eliminate the prohibition against
14 contracting out if it resulted in furlough,
15 Amtrak doesn't want you to look at the
16 clerical agreement as a pattern. They don't
17 want to you look at it at all.

18 On this issue, Amtrak served
19 identical notices to the clerks as they do to
20 the union here assembled. Their notice
21 called for elimination of the rule that
22 prohibited contracting out if it resulted in

1 furlough. The clerical settlement resolved
2 that issue by Amtrak withdrawing that demand
3 and, instead, establishing a nonbinding
4 Union/Management Committee to examine both
5 outsourcing and insourcing.

6 We don't understand how Amtrak can
7 come before you and argue to you that the
8 1997 authorizing legislation mandates that it
9 achieves the elimination of the contracting
10 out prohibition when in 2003, six years
11 later, Amtrak made an agreement with the
12 clerks that did not do so.

13 Is Amtrak saying the clerical
14 settlement broke the law? I doubt it. The
15 real reason is, as Don Griffin will show
16 later, there was never such a Congressional
17 mandate then or now.

18 Perhaps the most glaring
19 inconsistency with Amtrak's asserted pattern
20 is that on closer look, it's not a pattern at
21 all, at least as that concept has been
22 understood by past PEBs as well as the

1 parties themselves. Under Amtrak's proposal,
2 the first wage increase for the unions at
3 this Board will be effective on the date of
4 signing. And the clerical agreement, the
5 first increase was effective October 1st,
6 2003.

7 Amtrak proposes that the members of
8 the nine crafts here assembled receive
9 thousands of dollars less than Amtrak clerks
10 received through 2004, even with the \$4,500
11 signing bonus. That is not a pattern. It's
12 leapfrog in reverse.

13 Nor does Amtrak want the clerical
14 agreement to establish a pattern for employee
15 health insurance contributions, copays and
16 deductibles. Under the clerical and the two
17 succeeding agreements, employee contributions
18 are capped at \$75 a month. Copays for doctor
19 visits remain at \$15 instead of the \$20 and
20 35 payments Amtrak proposes to copy from the
21 national freight agreement.

22 Copays for prescription drugs are

1 lower. Deductibles, other out-of-pocket
2 employee, expenses are lower. Here where it
3 suits it, Amtrak switches hands. On health
4 insurance, it wants what the national freight
5 carriers achieved, clerical pattern be
6 dammed.

7 In my written statement, we
8 demonstrate how concessions in one craft can
9 have a far different impact on another craft.
10 The example we used was the contracting out
11 language agreed to by the BLE in their
12 unratified contract. We explain how because
13 the BLE had a scope rule that reserved
14 engineer work only to them, a rule that
15 prohibited Amtrak from giving the work to
16 outsiders or other crafts, the agreement to
17 get rid of the no-furlough provision language
18 was gratuitous. It had no effect whatsoever.

19 The so-called concession was a
20 transparent attempt by Amtrak to use the BLE
21 as a stalking horse so that it could argue
22 that its concession was now a pattern.

1 That's just as true of the clerical
2 agreement. Many of the specific rule changes
3 which were agreed to there would have much
4 more negative impact if they were
5 transplanted to the crafts before you.

6 In summary, the 2003 clerk Amtrak
7 agreement is not a pattern for settlement
8 with the unions at this Board. It only
9 covers half the bargaining period. It only
10 covers 30 percent of the bargaining unit, and
11 it contains craft-specific rule changes that
12 balance changes that Amtrak sought with
13 improvements that the union sought. It
14 reflects a complex voluntary bargain, the
15 polar opposite of what Amtrak proposes here.

16 I'll close by emphasizing how
17 important this Board's recommendations will
18 be both for Amtrak workers and for future
19 rail industry bargaining.

20 For 30 years, Amtrak workers have
21 lived under the shadow of funding
22 uncertainty, hearing again and again that

1 powerful interests wanted to eliminate Amtrak
2 from the face of the earth. They have
3 endured wage deferrals where their wages
4 lagged for a period their counterparts
5 throughout the transmit. They have seen
6 their numbers cut by a third while management
7 headcounts have remained stable. And now
8 they've gone eight years without a wage
9 increase. Yet through it all, they're
10 maintained their professionalism and
11 commitment to provide the best service they
12 could to the riding public.

13 Mr. Crosbie testified this morning
14 about the incredible operational challenges
15 Amtrak faces, particularly in the Northeast
16 Corridor. And I agree with him. Our
17 members, working shorthanded, have met that
18 challenge. Amtrak's current success is a
19 testament to the efforts of its workforce.
20 Our members are proud of what they've
21 achieved, and the last thing they want to see
22 is Amtrak riders suffer disruptions in

1 service. That's why -- you know, we had a
2 big debate among real labor. Should we come
3 here with go-for-the-sky proposal, figuring
4 you get half or something? It was very
5 painful. We were coming to you with almost
6 like a baseball arbitration proposal. Is a
7 very conservative proposal. It is a very
8 modest proposal. We want a settlement.

9 We're not asking for the kinds of
10 wage increases that would bring Amtrak
11 workers parity with their commuter
12 counterparts. We don't shrink from agreeing
13 to the health insurance concessions found in
14 the national agreement. We don't come with a
15 laundry list of work rule improvements. We
16 come with a bottom-line position that
17 preserves the historic relationship between
18 Amtrak workers and their freight
19 counterparts.

20 We basically seek wage increases
21 that would keep up with inflation. We
22 scrupulously adhere to the pattern principle.

1 We respectfully urge this Board recommend our
2 proposal as a basis for settlement.

3 Thank you so much for your
4 attention and patience.

5 CHAIRMAN TREDICK: Thank you, Mr.
6 Parker. Any questions from the -- go ahead,
7 Miss Sandberg.

8 MS. SANDBERG: Mr. Parker, given
9 the current political climate on the Hill,
10 how realistic do you think it is that
11 Congress would pass a supplemental to fund
12 your proposal? And that it would actually be
13 signed?

14 THE WITNESS: I don't -- you know,
15 the honest answer is no real problem. They'd
16 do it. I don't know. I mean, I do know
17 this: that you can't predict what they will
18 do.

19 I mean, if we come to them jointly
20 with an agreement, I believe they will fund
21 it. I also don't believe -- as you know,
22 normally when a Board makes a recommendation,

1 if it's within the parameters of
2 acceptability, the agreement that follows
3 from that recommendation usually is different
4 than the recommendation. That, you know, in
5 the Metro North situation. That's exactly
6 what happened.

7 You know, there are ways to address
8 when they would pay, things like that.

9 I think neither you nor I can
10 really answer that question. If they were
11 given a fait accompli that this is what would
12 be necessary to treat Amtrak workers in a
13 fair -- and in a way that is consistent with
14 the rest of the railroad industry, I truly
15 believe that it would be funded. But if the
16 recommendation is not to do that, then of
17 course they won't fund it.

18 MS. SANDBERG: Thank you.

19 MR. JAFFE: In terms of the overall
20 issue of ability to pay or funding, is there
21 any way that either an agreement or a
22 recommendation should be crafted that

1 conditions payment of full back pay upon some
2 appropriate funding by the Hill?

3 THE WITNESS: I hate to defer on
4 that. We have nine unions, and I can't speak
5 for the nine unions on such a fundamental
6 question. It would be wrong for me to do
7 that.

8 MR. JAFFE: Fair enough. And one
9 more that you may also not be able to respond
10 to, but I'll try it anyway.

11 Shifting to the work rules side of
12 the equation if I may, is there any interest
13 in some type of a process, either directly in
14 bargaining or a side process, that deals with
15 proposed work rule changes in a more limited
16 quid pro quo-type fashion? Or is the
17 assertion simply that hasn't been done up
18 until this point and therefore, this Board
19 ought not to recommend adoption of Amtrak's
20 proposed changes?

21 THE WITNESS: Well, I actually
22 think some of the succeeding craft-specific

1 witnesses are going to deal with that. It's
2 not as if during this eight-year period there
3 have not been many, many agreements reached
4 over that period of specific work rule
5 demands, Amtrak would come to the unions and
6 say we need this, you know, in order to
7 accomplish a project. Sometimes agreements
8 were reached, sometimes they weren't. But
9 that process always goes on and will continue
10 to go on whatever the recommendation says.

11 MR. JAFFE: Thank you.

12 MS. WITT: Mr. Parker, I come from
13 many years in heavy industry, and including
14 railroads, where subcontracting has been an
15 issue for three or four decades. Prior to
16 that, maybe not so much. But I know that
17 there are various means to treat with it
18 other than the polar extremes of saying none
19 or all. And you mentioned something that I
20 think you said came from the BLE tentative
21 agreement that referred to a committee to --

22 THE WITNESS: No, that was a

1 clerical agreement.

2 MS. WITT: All right, the clerical
3 agreement that referred to a committee. How
4 did that committee work? And after you tell
5 me how it worked --

6 THE WITNESS: I hate to defer, but
7 the honest answer is that it hasn't met.

8 MS. WITT: It hasn't met?

9 THE WITNESS: That's the honest
10 answer.

11 MS. WITT: Well, I'm familiar with
12 committees that do work and processes that do
13 work where detailed information is provided
14 by the employer and detailed responses are
15 given by the union and where broad general
16 rules will cover whether it's okay or not.
17 Has anything like that ever been tried?

18 THE WITNESS: Well, if the pictures
19 emerge that Amtrak can't contract out, that's
20 just not reality. Amtrak does a lot of
21 contracting out.

22 Now, it varies with each craft what

1 their rule says. Some crafts have more
2 restrictive rules on contracting out than
3 others. But, for instance, in the shopcrafts
4 Amtrak contracts out, the rules are not that
5 restrictive. The one protection we have is
6 that it can't result in furlough. But beyond
7 that one consideration, there are others -- I
8 don't want to, you know, misspeak. There are
9 other, a few other restrictions. But
10 basically, they have very loose contracting
11 out restrictions, much looser than in the
12 national freight agreements, for example,
13 where we have the -- I'm sure you're familiar
14 with the 64 agreement.

15 So it's just not -- I mean, there
16 is contracting out, and Amtrak again, even
17 where there are rules prohibiting, has come
18 to us.

19 Mr. Meslanka for the shopcrafts
20 will testify in much more detail on it. So
21 will Jeff Dodd on that, so I'm going to defer
22 to that.

1 MS. WITT: Okay.

2 THE WITNESS: But there's nothing
3 -- I don't want you to have the picture that
4 Amtrak doesn't contract out or can't contract
5 out. That's just not true.

6 MS. WITT: Yeah. I'll tell you,
7 tell both sides, the picture that I have is
8 that I don't know enough about the subject.
9 And I know it's important to both sides, and
10 you've talked about it or not talked about
11 it. And, you know, I don't feel really up to
12 speed on it in the context of these hearings.

13 THE WITNESS: I think some of the
14 later witnesses will address it in more
15 detail so hopefully they'll clarify the
16 picture a little, at least.

17 MS. WITT: Okay, good. Thank you.

18 CHAIRMAN TREDICK: All right, thank
19 you very much, Mr. Parker. I think it's
20 probably appropriate to take a break now.
21 You're going to be prepared to proceed after
22 lunch?

1 MR. GUERRIERI: Yes.

2 MR. WILDER: We are, Mr. Chairman.

3 We will begin with our expert, Thomas Roth,
4 directly after lunch. And because his
5 testimony will be comprehensive and detailed,
6 we'd like to start at.

7 CHAIRMAN TREDICK: 1:20. That's
8 fine with me is that okay with Mr. Reinert?

9 MR. REINERT: Yes.

10 CHAIRMAN TREDICK: One other point.
11 I'd like -- I know Mr. Roth will have
12 substantial testimony, given the time that
13 you've identified for his testimony. I'd
14 like to continue to move through the
15 afternoon, though, after his testimony and
16 get as much done today as we can, because
17 with the time slots for rebuttal and closing
18 argument, that's almost a full day in and of
19 itself. And I'd like to leave, if possible,
20 a little time at the end where we could just
21 talk maybe to the principals and counsel. So
22 if we can move ahead, move ahead.

1 MR. WILDER: We will be prepared to
2 move as quickly as we can.

3 CHAIRMAN TREDICK: Thank you so
4 much. Adjourn until 1:20.

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

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

1 Q And by training, Mr. Roth, what is
2 your profession?

3 A I regard myself as a financial and
4 economic advisor and have been performing in
5 that function for the past 32 years with the
6 Labor Bureau in a firm which has represented
7 labor organizations throughout the
8 transportation sector and elsewhere for
9 approximately 80 years.

10 MR. WILDER: Mr. Chairman, the
11 organizations have distributed a document
12 entitled, "The Labor Bureau, Inc., Resume,"
13 which consists of Mr. Roth's CV, and appended
14 to that is a list of matters in which he has
15 appeared over the years. And at the suitable
16 time, I will ask that that be introduced into
17 the record as an attachment to Mr. Roth's
18 summary statement.

19 CHAIRMAN TREDICK: Thank you. I
20 think we all have it here too. Fine, thank
21 you.

22 BY MR. WILDER:

1 Q Would you take just a moment, Mr.
2 Roth, and tell the board of your experience
3 and qualifications?

4 A Well, I have made -- over the past
5 25 years, I have appeared before
6 approximately half of all of the Presidential
7 Emergency Boards that have been appointed
8 over that period. It's about 15 or 16 cases.
9 That would include, of course, under --
10 regarding Section 10 cases, there have been
11 about 17 of those over the past 25 years, and
12 I have appeared as an expert witness in
13 furnishing the testimony of the kind I'm
14 going to deliver on ten of those occasions.
15 So ten Section 10 cases.

16 That would include, of course, all
17 of the Amtrak cases, both 222 and 234 that
18 have been referred to here.

19 And it would also involve nearly
20 all of the national freight cases that had
21 been involving the National Rail Labor
22 conference or the NCCC. There were like nine

1 of those cases over the past 25 years, and I
2 appeared in, representing all of the labor
3 organizations, in seven of those cases. So I
4 have extensive experience in the preparation,
5 presentation of Presidential Emergency Board
6 cases.

7 There's also been a couple interest
8 arbitration cases between the parties here,
9 including the job protection case some time
10 ago that I appeared as an expert in, and also
11 some time ago there was an interest
12 arbitration case between the police
13 association representing the rail, Amtrak
14 Railroad Police Association and Amtrak, back
15 in 1993. And I appeared in that case as
16 well.

17 Q Mr. Roth, are you appearing on
18 behalf of all of the organizations before
19 this Presidential Emergency Board?

20 A Yes, I am.

21 Q Now, were you requested to
22 undertake certain inquiries or analyses in

1 connection with the disputes underlying this
2 proceeding?

3 A I was.

4 Q Can you tell the board, in general
5 terms, the nature of the analyses that you
6 were engaged to perform?

7 A Okay. My assignment in this case
8 included six discrete subject matters,
9 actually. First of all, I was asked to
10 create a simple economic model that would
11 enable the organizations to value their own
12 proposal and that which had been presented by
13 Amtrak so that it could get a sense
14 quantitatively what the respective values of
15 those two positions were.

16 That simple model would also form
17 the basis and enable me to do any kind of
18 aggregate costing that might interest the
19 board or interest the labor organizations.
20 So that was chore number one, and I did that.

21 Secondly, I was asked to examine
22 the bargaining history between these parties

1 in an effort to uncover the standards for
2 wage bargaining for wage determinations, and
3 to the extent possible, to quantify the
4 relationship between wage agreements and wage
5 determination standards that the parties have
6 experienced in the past.

7 Thirdly, I was asked to perform
8 some wage comparisons of the traditional
9 type. These may or may not be validated in
10 the parties' experience, but could form the
11 basis for a logical test, if you will, of the
12 reasonableness of the employees' position
13 regarding the wage levels that they sought.

14 Fourth, I was asked to examine
15 historical relationships here in an effort to
16 determine whether or not there existed any
17 kind of, you know, wage lag, to determine
18 whether or not the wage progress experienced
19 by Amtrak workers represented by these nine
20 organizations had been adequate as compared
21 with certain other usual and typical
22 standards, such as changes in the Consumer

1 Price Index, changes in wages and salaries
2 received by workers elsewhere in the economy
3 and total compensation changes received by
4 workers elsewhere.

5 Fifth, I was asked to investigate
6 the role of labor costs here at Amtrak and
7 the extent to which they have played -- the
8 role that they played in the economic fortune
9 of the carrier. I guess put simply, I was
10 asked to determine whether this carrier had a
11 labor cost problem that needed to be attended
12 to in this round of bargaining by
13 recommendations for concessions or other more
14 moderate changes in wage levels and wage
15 progress.

16 Finally, I was asked to investigate
17 the -- the question of retroactivity and to
18 determine, kind of call upon my experience in
19 the industry and elsewhere to determine
20 whether or not the position that has been
21 advanced here by Amtrak had any precedent in
22 terms of the manner in which they sought to

1 compensate the employees retroactively under
2 their proposal and under ours.

3 So I did some historical research
4 regarding the matter of retroactivity that I
5 would also like to present to the panel. And
6 I think that about covers the breadth of the
7 assignment that I have been asked to perform
8 here.

9 Q Now, in general terms, Mr. Roth,
10 were you able to reach any conclusions with
11 respect to the parties' proposals as a result
12 of your analyses?

13 A Yes, I was. First of all, with
14 regard to the bargaining history, the
15 application of the national freight agreement
16 is wholly consistent with the parties' past
17 contract determinations. Agreements on
18 Amtrak involving these organizations have
19 been generally coterminous with the freight
20 railroad agreements of these same parties.
21 All principal benefit programs here on Amtrak
22 were inherited from the freight railroads and

1 continue to be the same today. Wage
2 adjustments over the years have been nearly
3 identical. And that really is a litmus test
4 to the extent to which the freight agreements
5 have been influential at the bargaining table
6 here at Amtrak.

7 Over the course of the past 25
8 years, ending on the date of January of 2000,
9 the wage progress for these organizations
10 have been nearly identical to that attained
11 by application of the national freight
12 agreements.

13 I find, as well, that Amtrak has
14 acknowledged the importance of the freight
15 pattern historically, not only during this
16 round but in prior rounds. And what
17 distinguishes this round, however, they're --
18 I think it's been characterized accurately --
19 cherrypicking the settlement on the national
20 freight side.

21 They call for the adoption of those
22 elements favorable to the employer, namely,

1 medical plan design changes and increases in
2 employee contributions, and they ignore all
3 of the quid pro quos, the associated
4 retroactive wage increases, the various
5 health and welfare benefit improvements, and
6 of course the total absence of any rule
7 concessions by labor.

8 By way of further background, I did
9 participate in the last national freight wage
10 and rule movement and represented the RLBC,
11 the Railway Labor Bargaining Coalition, that
12 negotiated the lead contract that ultimately
13 became the pattern for the other
14 organizations representing freight railroad
15 employees.

16 Secondly, with respect to the wage
17 comparisons, I find that the moderation of
18 the organization's position is tested by
19 comparing the levels with comparable mode of
20 passenger rail transportation, namely,
21 commuter railroads, urban transit systems, in
22 particular.

1 Here, I will develop this further.
2 We have systems which provide quasi public
3 service, which is appropriately funded by
4 government subsidies. The work involved in
5 commuter railroads and urban transit systems
6 is identical to that performed by the
7 employees represented here. And further by
8 way of wage comparisons there's no doubt, no
9 question, that the appropriate job matches
10 produce the fact that Amtrak workers are
11 grossly and substantially underpaid compared
12 to their cohorts elsewhere in the passenger
13 transportation sector.

14 Third, with respect to historical
15 comparisons, I have found that the results
16 overall establish that Amtrak workers have
17 experienced a substantial wage lag as
18 compared with the normal metrics, whether it
19 be changes in the cost of living or the
20 Employment Cost Index or changes in total
21 compensation. And moreover, by application
22 of the organization's proposal, that wage

1 lag, that gap will not be closed. It will be
2 helped, nevertheless, as we will see when I
3 show you the detail of those calculations.

4 Regarding labor costs, here again,
5 we have examined all of the traditional
6 metrics and have established that in my
7 unequivocal view, there is no labor cost
8 problem here that needs to be attended to by
9 any sort of wage moderation, any sort of rule
10 concession. And I looked at all of the
11 typical measures, such as productivity
12 change, labor cost ratios, unit labor costs
13 and, of course, the wage rate comparisons
14 that I -- and total compensation comparisons
15 that I referred to earlier.

16 Finally, with respect to
17 retroactivity, I have determined -- and
18 again, we've done a lot of research on this
19 -- the notion that the employees should be
20 denied the benefit of a full retroactive
21 application of a pattern once selected, and
22 that may be the pattern that is pursued by

1 the organizations or that pursued by Amtrak.
2 But in either case, there is absolutely no
3 precedent for denying these employees the
4 application of the wage increases on the
5 effective dates that the pattern dictated.

6 And again, this is something that
7 I'll pursue further in my testimony. But I
8 think that covers the general conclusions
9 that I have drawn.

10 Q I would like to ask you, for the
11 record, Mr. Roth, whether you have provided a
12 summary statement for purposes of this
13 record.

14 A Yes, I have.

15 Q And then appended to the summary
16 statement are two statistical supplements,
17 volumes 1 and 2; is that correct?

18 A Yes, sir.

19 Q And there is a second summary
20 statement dealing with the meal allowance
21 proposal made by the PRLBC; is that correct?

22 A That's correct. I assume the board

1 has all of those documents.

2 Q At this point, Mr. Roth, can you
3 show the board, by reference to the
4 statistical supplements to your written
5 testimony, how you reached the general
6 conclusions that you described a moment or so
7 ago?

8 A Yes, I will. Mr. Chairman, my
9 manner of presentation here will be different
10 than that which you have previously
11 experienced in this case. I have, as counsel
12 indicates, offered a textual summary
13 statement which contains all of the points
14 that I want to make here. And I assume that
15 at the appropriate time the panel will read
16 that document.

17 I'm not going to read that at you
18 at this point, nor am I going to read any
19 summary of that statement. I would much
20 prefer to take this opportunity to create a
21 factual basis, an evidentiary basis, which
22 support the labor organization's position.

1 And frankly, my opinion here is of less
2 importance than the facts in the document and
3 the statistical analysis that support the
4 general position of the organization.

5 So I would ask your indulgence to
6 pursue some of the data points in the
7 analyses that I've performed that are
8 contained in what we have labeled here as the
9 "Statistical Supplement, Volume 1," to my
10 statement.

11 CHAIRMAN TREDICK: Yes, I think we
12 have that, so we can follow along.

13 THE WITNESS: Great. I understand
14 the chairman has a distinct desire to get all
15 of this testimony in as expeditiously as
16 possible, but it is also important to us that
17 it be received with the utmost clarity. So
18 if there is any -- are any questions from the
19 panel as I go through the evidence, feel free
20 to interrupt rather than wait until the end
21 of my testimony. Of course, that's your
22 privilege. I will not be deterred in my

1 testimony if you interrupt me for clarity.

2 CHAIRMAN TREDICK: Don't hurry
3 through your testimony. We want a full
4 record and a complete record, so even though
5 we do want to keep moving along, we also want
6 to give you every opportunity to make your
7 record.

8 THE WITNESS: Thank you, Mr.
9 Chairman. I would direct your attention
10 first of all to attachment number 1. We have
11 heard from both sides. We have heard from
12 Joel Parker this morning an outline of the
13 organization's position, and I would just
14 like to go through it to make certain that we
15 understand exactly what the labor
16 organizations are pursuing in this case.

17 MR. JAVITS: Could you hold on one
18 second so we can all get that?

19 THE WITNESS: Yes, sir. It would
20 be in volume 1 of the supplements. You can
21 put the other document aside if you like.
22 We're going to focus on the statistical

1 supplement.

2 MR. WILDER: I'll bet we could find
3 another copy for Mr. Javits.

4 THE WITNESS: Attachment 1 simply
5 sets forth the proposal of the labor
6 organizations for contract settlement. The
7 reason we need to focus on it is because we
8 did hear yesterday some differences of
9 interpretation, I suppose, of exactly what
10 the organization proposal is.

11 There was reference, for instance,
12 to a proposal by the PRLBC to negotiate a
13 fixed \$13,500 check lump sum in lieu of
14 retroactivity. That is not our proposal and
15 it hasn't been our proposal for a while.
16 There might have been at some point during
17 negotiations where that suggestion was made,
18 but the panel should rely upon attachment
19 number 1 in this document as an accurate
20 description of what the proposal is.

21 Now, with respect to the --

22 CHAIRMAN TREDICK: I'm sorry, this

1 is your proposal dated November 3, 2007?

2 THE WITNESS: Yes, sir.

3 CHAIRMAN TREDICK: Okay.

4 THE WITNESS: Attachment 1 to the
5 document.

6 In terms of the wage adjustments, I
7 just want to emphasize for the panel that it
8 is two things. Number one, it is intended to
9 fully replicate the national freight pattern
10 of wage change over the relevant period from
11 the amendable date of January of 2000.

12 Secondly, with respect to form,
13 what we propose is important because we are
14 -- the mechanics of the proposal is such that
15 the cost-of-living adjustment that has been
16 paid thus far under the so-called Harris COLA
17 here at Amtrak is unwound except for the
18 first 27 cents that is paid. The first 27
19 cents is incorporated on June 30, 2002 and
20 becomes part of the base upon which
21 subsequent percentage general wage increases
22 are applied.

1 The purpose of subtracting the
2 \$1.44, that is to say, the rest of the Harris
3 COLA, is to prevent compression from
4 occurring from within the bargaining unit.

5 We represent a wide range of
6 individual occupations with an equally wide
7 range of hourly wage rates and, obviously,
8 for the highest-paid classification, the
9 \$1.44 represents nearly 10 percent, and for
10 the lowest-rated classification, the \$1.44
11 represents -- I'm sorry. Other way around.
12 For the lowest classification, the \$1.44,
13 that would be the car cleaner, would be 9.7
14 percent, almost 10 percent, and for the
15 highest-rated classification that we
16 represent, which is a supervisor in
17 communications and signals, that would be
18 approximately 5.4 percent.

19 So you can understand that what we
20 are -- the function and purpose of unwinding
21 the COLA is to prevent that compression and
22 give a more uniform and appropriate and fair

1 increase to employees that we represent.

2 That is a feature of our proposal,
3 which is adopted, in part, by Amtrak's
4 position because they are erasing part of the
5 COLA that has accrued, but they are
6 incorporating 75 cents. So some of the
7 objective that we are pursuing here is
8 defeated by the manner in which they intend
9 to make the wage increases.

10 I think all you need to know
11 following here is the retroactivity proposal.
12 You can read the language. Again, this is
13 intended to be an exact replica of the
14 national freight agreement. Those are the
15 numbers and the dollar amounts that were paid
16 under the shopcraft pattern on the national
17 freight side. It accounts for those -- the
18 form of our proposal accounts for those that
19 are off payroll.

20 Again, that is important. There
21 are persons who may be on payroll entitled to
22 retroactivity but who did not have coverage

1 for health insurance over the relevant period
2 and, therefore, we're not going to bill them
3 for a contribution that they -- under
4 circumstances where they didn't have the
5 coverage. That explains the language that is
6 included in our proposal.

7 And turning the page, with respect
8 to future cost-of-living adjustments, the
9 existing Harris COLA under our proposal
10 continues with the first adjustment effective
11 six months after the amendable date on July
12 1, 2010. Joel Parker spoke of the purpose of
13 maintaining this provision, and I would add
14 the following: First of all, I don't agree
15 with the kind of characterization that was
16 made regarding the purpose of the Harris
17 COLA. I was there at 219 when this provision
18 was invented and it is my judgment that it
19 was never intended to affect the speed of
20 negotiations or to provide incentives one way
21 or the other.

22 Remember, that the original Harris

1 COLA had no cost -- no health and welfare
2 offsets to it. It was simply a provision
3 which would enable the employees to have some
4 sort of minor wage adjustment pending what
5 had historically been a long process, even
6 under the best of circumstances, in reaching
7 an agreement.

8 Secondly, I would add to Joel's
9 testimony by saying that during the last
10 round of bargaining on the freight side, the
11 elimination of the Harris COLA was not a
12 union concession. It was a union proposal.

13 At the time, and by the time of the
14 last freight agreement, significant health
15 and welfare offsets were being made to the
16 Harris COLA such that the size of the
17 employee health and welfare contribution
18 continued to grow during the rollover period
19 or during the status quo period. And in
20 order to avoid that then from occurring
21 again, the RLBC proposed and the other unions
22 adopted the approach of eliminating the COLA.

1 So it has a different purpose here in this
2 context.

3 It would be a concession here to
4 eliminate it from the Amtrak contract where
5 there is no offsets for health and welfare.

6 The item 5 on health and welfare
7 cost sharing, I will attend to in a moment.
8 And item 6 with the health and welfare
9 benefit changes, we have a witness to
10 describe the relationship between the
11 proposals that we made in this and the last
12 round and what the national freight agreement
13 and the AM plan has.

14 Meals and logic, that will be the
15 matter of a separate statement I have filed
16 and will attend to that later.

17 Regarding the moratorium, again,
18 this is -- this mimics the moratorium and the
19 amendable date that we negotiated on the
20 freight side this last round. January of
21 2010 would be the amendable date, the day
22 before the moratorium expires.

1 And I'm not going to say much more
2 about the term. Obviously, we're going to
3 see in a moment that the Amtrak proposal to
4 extend the moratorium by another nine months
5 sucks a lot of value out of their proposed
6 wage change, and we'll see the magnitude of
7 that.

8 But I would suggest that if it is
9 true that there is something important about
10 synching up the amendable date with the
11 fiscal year, that certainly could be
12 accounted for and comfortably could be
13 achieved if the amendable date fell a quarter
14 earlier than what we are proposing. And, I
15 mean, again, there can't be any doctrinaire
16 position about that. We are interested in a
17 shorter contract if that was preferable to
18 the carrier. We're not interested in a
19 longer contract which diminishes value of the
20 contract under any circumstances.

21 MR. WILDER: Mr. Chairman, one
22 point of clarification. The carrier has used

1 the figure 13-5 as an explanation of the back
2 pay demand made by the organization. That
3 figure apparently was drawn from an earlier
4 proposal made by the RLBC to the carrier,
5 which is set forth at PRLBC Exhibit 61. The
6 proposal was dated September 12, 2007. That
7 proposal was superseded by the proposal that
8 Mr. Roth has described.

9 CHAIRMAN TREDICK: Thank you.

10 THE WITNESS: All right, I would
11 direct your attention to attachment 2. And I
12 do not intend to go through all these
13 attachments, so don't be concerned, but there
14 are some that need to be -- are extremely
15 important and need to be highlighted.

16 Attachment 2 is an illustration of
17 the organization's wage proposal. And by
18 "wage proposal," you should read that "wage
19 and healthcare contribution." The healthcare
20 contribution, in my view, is nothing more
21 than a wage issue. Obviously, it just
22 affects disposable income in the same manner

1 as a wage increase or deduction and so they
2 should be treated together in the evaluation
3 of anybody's wage position.

4 What you have here are 12 pages.
5 And the first page is one you may want to
6 focus on, because this one I have referred to
7 as the -- this is the analysis regarding the
8 consolidated nine organizations.

9 And what this is based upon is the
10 average straight time hourly rate for all
11 6,729 employees in the 210 job
12 classifications that these organizations
13 represent.

14 So that rate today, by the way, is
15 \$20.24. That's the weighted average rate.
16 You can -- further in the document, that
17 calculation by craft is shown. In my summary
18 statement, you have a small statistical
19 profile of each of the organizations.

20 Our purpose here is to create a
21 simple model of how the wages will change,
22 both in the gross way and net of healthcare

1 contributions, over the course of the
2 agreement.

3 So just if I can explain the manner
4 in which this exhibit in this table was
5 prepared, you'll understand how all of the
6 subsequent ones that follow were prepared as
7 well because it's all the same.

8 On the left-hand side we have all
9 of the dates of change in the table. In the
10 next column over you have the Harris COLA
11 that has been paid up through July 1, 2007.
12 Following 2007, you see beginning January
13 2008, four 10-cent increases.

14 When this document was prepared, I
15 wanted to simply -- since it was my purpose
16 to measure the incremental cost and the
17 incremental value under these respective
18 proposals, we needed to make some assumption
19 for what the continuation of the Harris COLA
20 would produce. I imputed 40 cents. It's
21 low. We already know, for instance, that
22 January 2008 will be 16 cents. So I'm

1 probably understating. But as long as it's
2 consistently assumed and applied, both to the
3 analysis of Amtrak's proposal and the Amtrak
4 hours, you have at any point in time the bid
5 and the ask, if you will, as between the
6 parties.

7 Up above in the caption you see 178
8 hours. This is based on data furnished by
9 Amtrak, the average actual pay hours, monthly
10 pay hours for all nine organizations over the
11 past eight years, okay? So that's an average
12 actual figure and it's a pay hour figure
13 which, of course, drives all wage costs and
14 value.

15 It may seem low because it also
16 includes overtime, but it also includes lost
17 time and to pay for time which is not worked.
18 In any event, the number is generated off of
19 the database that was furnished by Amtrak,
20 and we suspect that it is accurate.

21 In the next column over you have
22 the present rate. So this would be an actual

1 wage chronology for the consolidated nine
2 organizations leading to the 20.24 as the
3 Harris COLA was received.

4 In the next four columns over in
5 the body of the table you have our proposed
6 increases and then the resulting proposed
7 composite rate, the incremental increase,
8 then the value of that wage change.

9 The value of the wage change is
10 simply a function of the monthly pay hours
11 multiplied by the number of months that that
12 wage difference is in effect. In other
13 words, what's going on here is that the
14 incremental increase would be the difference
15 between what I would be paid under our
16 proposal as to what I already have been paid
17 under the Harris COLA. We are measuring the
18 incremental change, what is added. They've
19 added value here.

20 There were no health and welfare
21 contributions made by Amtrak employees over
22 the past eight years, but under our proposal

1 we would subtract from any back pay
2 obligation, the health insurance
3 contributions that were made under the
4 national freight agreement. They are
5 reflected in the far two right-hand columns,
6 both in terms of the health insurance costs
7 per month and the total health insurance, the
8 first number multiplied by the number of
9 months in effect.

10 When you get to the bottom of the
11 table, there's several numbers that are
12 important. The first is the gross wage value
13 to January 1, 2010. So for our composite
14 employee, it is 57,629. However, from that
15 amount, you have to subtract the prepaid
16 COLA, which in this instance would be
17 \$22,214. And when I say "in this instance,"
18 you understand that that COLA amount,
19 although it's the same cents per hour for
20 everybody, is driven not by the differences
21 in wage rates but the differences in your pay
22 hours, number of pay hours over the period.

1 So you'll see that number change as you look
2 at different occupations and classifications
3 of work.

4 So the incremental value, if you
5 will, just on the wage side would be the
6 difference between those two numbers, which
7 in this instance is \$35,415.

8 If we subtract from that the value
9 of the health insurance contributions that we
10 are willing to concede, that's \$11,876, you
11 have the net incremental value, which is
12 23,735.

13 Now, of that amount -- that's a
14 calculation that runs for the whole duration
15 of the ten-year agreement, so that's a
16 calculation that runs through January of
17 2010. If you were to stop the clock at
18 January of 2008, which is our assumed date of
19 paying retroactivity, then of that 23,739
20 there would be an average retroactive check
21 of \$12,848 paid. And that compares -- if you
22 consider the \$4,500 lump sum as a payment in

1 lieu of that, that represents -- the \$4,500
2 proposed by the carrier here is 35 percent of
3 that number.

4 The next two pages are important.
5 We're not going to go through all 12 pages
6 because as you see by the table of contents,
7 I performed this analysis independently for
8 each one of the labor organizations to give
9 the panel an indication on the kind of
10 differences and breadth among the
11 organizations as to what the value of
12 retroactivity is and the value of the wage
13 adjustments are.

14 But to give the full spread, I'll
15 make the calculation on page 2 for the coach
16 cleaners and then separately on page 3 for
17 the supervisor in communications and signals,
18 which is our highest-paid job.

19 For each of those classifications
20 we're using the average actual pay hours over
21 the relevant period from 2000 through 2007.
22 The source of that is attachment 55, page 6

1 in the other volume.

2 So the bottom line is that the back
3 pay obligation for the coach cleaner would be
4 \$5,139. The flat \$4,500 proposed by the
5 carrier is 88 percent of that amount.

6 If you flip the page, you'll see
7 that for the supervisor in communications and
8 signals, the back pay obligation is 34,433,
9 or only 13 -- 4500 bucks is only 13 percent
10 of that.

11 The point of the exercise, of
12 course, is to illustrate how unfair it would
13 be to have a fixed dollar amount applicable
14 to all of the classifications under
15 circumstances where you have such a wide
16 range of wage rates and a wide range of pay
17 hours over the course of the back pay period.
18 So even at any level, a flat dollar amount is
19 not equitable because it's not properly
20 associated with the actual pay hours and pay
21 rates that should have been paid over the
22 course of the back pay period.

1 That same exercise is performed, by
2 the way, for -- separately for the
3 dispatchers and all the other organizations
4 in the pages that follow. We need not go
5 through that detail unless there are
6 questions of the panel.

7 Somebody said earlier -- I think
8 Joel said in his testimony that the BLET, in
9 failing to ratify their agreement, understood
10 that the \$4,500 paid only 30 cents on the
11 dollar.

12 Well, it paid no such thing. It
13 wasn't even close to that. It paid more like
14 10 cents on the dollar for the BLE, because
15 they are among the highest paid on the
16 property. So there was certainly ample
17 reason for the BLT, if they're interested in
18 retroactivity, to turn down such a proposal.

19 On attachment 3, please, this is a
20 second measure of the quality of a wage
21 agreement, and in this analysis -- and I'm
22 speaking here to page 1 -- we have developed

1 two separate chronologies. One -- actually,
2 three.

3 One, the present rates which you
4 have already seen. The one, the proposed
5 nominal rate, which is the kind of grossed-up
6 wage rate under our proposal. In the far
7 right-hand column we have the hourly rate net
8 of health insurance.

9 Again, when I perform these
10 analyses, you could do it from a kind of a,
11 you know, a -- rather than a bottoms-up, as I
12 tend to look at these matters, or a tops
13 down, where you're dealing with the gross
14 dollar amounts, much the same way Amtrak
15 looks at it when they're valuing a contract.

16 But I'm looking at it from the
17 employee's perspective. This is our average
18 employee, and as Joel testified this morning,
19 the consequence of our proposal would
20 increase the wage rate, the nominal wage rate
21 over the course of the agreement by 35.2
22 percent. That's a compounded annual rate of

1 3.1 percent per year.

2 But when you consider the fact that
3 there are very heavy healthcare contributions
4 over this same period of time, the true
5 increase or the real increase is 29.2
6 percent. That's an annual rate of increase
7 of 2.6 percent.

8 When we, as we proceed through the
9 evidence, put that in proper perspective, it
10 becomes a very, very modest objective in any
11 wage negotiations. So the point again is
12 when you do the analysis from the employee's
13 perspective, you look not only at the nominal
14 increases and the fancy 30 percent that
15 people have been talking about. Look at the
16 consequence of coming from zero contributions
17 to healthcare to \$166.25 immediately with the
18 prospect, the very real prospect of going to
19 \$200 by January of 2010. That diminishes the
20 value of both proposals which are placed
21 before you. When you judge the propriety and
22 the adequacy of these wage demands, take into

1 account the math regarding healthcare
2 contributions.

3 There's not very much of a spread
4 under this measure of wage change between the
5 highest and lowest paid, but I do perform
6 that analysis for you on pages 2 and 3. We
7 need not focus further on it.

8 I thought it would be instructive
9 at this point to run the same model against
10 the employer's proposal. That's what you
11 have in attachment 4. So now you can get an
12 idea of what the differences are between the
13 two parties. This is the same consolidated
14 nine organizations on page 1. It's the --
15 based on the same 20.24 dollars current wage
16 rate composite with the same number of pay
17 hours over the period. The assumptions are
18 all the same so you have an apples-to-apples
19 comparison.

20 You can see under the carriers'
21 proposal the wage rate goes to \$24.90
22 ultimately. Immediately, it goes to \$20.24.

1 That -- I'm sorry, on January 1, 2008,
2 assuming that's the payment date, it was to
3 \$22.91. That's after the 18.85 percent
4 increase. Now, that is a 13.2 percent
5 immediate increase, in other words, over
6 status quo. It's not 18 percent because
7 remember, they are rolling back some of the
8 costs of living escalation that we received.
9 So when you incorporate only 75 cents of
10 \$1.71, this becomes a 13.2 percent increase.

11 There was testimony yesterday that
12 I heard someone talking about an immediate
13 increase of 14 percent or more. That's -- I
14 can't get that. I don't think that's
15 correct. I don't see anything improper with
16 this analysis that I performed. Increase is
17 13 percent.

18 It does, nevertheless -- this is an
19 important point -- provide evidence that even
20 Amtrak concedes that its employees are
21 underpaid, at least by 13 percent today.

22 Included in here, you'll note in

1 the wage value column is the \$4,500 lump sum
2 that is being offered, and that is adjacent
3 to the date of signing on the left-hand side.

4 We then calculate the gross wage
5 value as I described before. We net out the
6 prepaid Harris COLA and the health insurance
7 contributions that are anticipated under the
8 carriers' proposal and you get a total value
9 net of healthcare contributions of 13,533.
10 So this is a difference when you compare this
11 to the analysis of the organization's
12 proposal of \$10,206 per person on average.

13 That's attachment 2, page 1. In
14 other words, we're offering and we're
15 proposing, I should say, 100 percent of the
16 national freight agreement, that is to say,
17 the value that that agreement would produce
18 for our average person, and they are
19 proposing 57 percent of that.

20 And that, ladies and gentlemen, is
21 why we are here.

22 If you look at the summary of the

1 wage positions -- and you can gather that
2 data by comparing this page with prior pages,
3 and it's also summarized on page 9 in a table
4 of my summary statement. The wage increase
5 including the prepaid COLA from January 1,
6 2000 and through January 1 of 2005, which is
7 the amendable date of the second contract
8 we're talking about, the second freight
9 agreement, under our proposal, wages could go
10 up by 14.5 percent. This is nominal. Under
11 Amtrak's, 13.2. Very close.

12 If you go all the way to January of
13 2008, we're seeking a 24.5 percent proposal.
14 They're offering 5.3 percent. If you go
15 through 2010, again, the gap closes. 35.2
16 percent under our proposal, a number you have
17 heard before, and 34.4 percent under
18 Amtrak's.

19 In terms of an annual rate of
20 increase, including the effect under Amtrak's
21 proposal to extend the amendable date by nine
22 months beyond the freights, their annual rate

1 of increase over the term nominally is 2.8
2 percent per year. If you take into account
3 the healthcare contributions, that number
4 falls to 2.3 percent per year.

5 So basically, they're offering a
6 contract which over a ten-year period would
7 produce net wage change of 2.3 percent.
8 That's what the employee sees in his pocket.
9 And under our proposal, that number would be
10 2.6. Under either circumstance, it's a
11 modest and moderate rate of wage change but
12 others is a tick higher and consistent with
13 the national freight agreement.

14 In terms of total value, I gave you
15 those numbers before. It's \$23,739 for us,
16 13,533 for them, and a difference of \$10,206.
17 As to retroactivity, they're at zero, we're
18 at \$12,848 per person.

19 And that, I think, panel members,
20 is kind of an accurate description of the two
21 positions of the parties with respect to wage
22 change, both gross and net of healthcare

1 contributions.

2 Okay. If there are no questions on
3 that, Mr. Chairman, I'll move forward.

4 Page 10 and 18 of my statement, I
5 have produced a series of small tables, and
6 along with some descriptions of the crafts
7 and classes that the nine organizations
8 represent here, a small statistical profile
9 of those groups. So I don't see any purpose
10 in reading this at you. I'm assuming,
11 because we don't have a lot of time to go
12 into this, that the panel members are fully
13 appreciative of the level of skills and
14 training and expertise and experience that
15 these employees bring to this job.

16 We're talking about the highest
17 skilled crafts on the property and they --
18 again, you know, we -- cases like this often
19 evolve into detailed descriptions of their
20 job tasks and duties, and time constraints
21 don't permit that. But I hope that the panel
22 understands the character and nature of the

1 work performed by these employees. Again,
2 the highest in skilled of any railroad
3 occupation.

4 On attachment 6 we have the 2007
5 Amtrak headcounts and rates. This comes from
6 the carrier. This is the source of the
7 weighted average wage rates and also of the
8 statistical profiles that I put together in
9 the summary statement.

10 Once again, I think this -- if you
11 need to know, for example -- let me back up
12 for a moment. This is an important document
13 because it not only produces the backup for
14 doing any kind of costing or analysis of wage
15 positions, but it also enables you to prepare
16 the proper job matches when you're looking to
17 outside sources for comparable norms.

18 This gives you an idea of the --
19 just the titles alone give you an indication
20 of the nature of the railroad work. Many of
21 these occupations are peculiar to a railroad,
22 either passenger or freight or commuter. And

1 we will talk a little bit more about that
2 later.

3 But moving forward, let's go to
4 another subject, which is of great importance
5 and import before this panel. Here I move to
6 attachment number 7.

7 We heard testimony from Amtrak
8 witnesses regarding the role that the freight
9 railroad played in the making of Amtrak
10 contracts. And I've heard, as I listen to
11 the testimony, phrases like "relevant but not
12 controlling," "the application has been
13 mixed," "internal patterns have governed
14 where they existed."

15 Well, all of that is true to some
16 level, but I disagree with the import of all
17 of those characterizations and I'll tell you
18 why. There's been six rounds of negotiations
19 between these labor organizations and Amtrak.
20 Six rounds of negotiations. The first two
21 were determined by what we call standby
22 agreements. A standby agreement is an

1 agreement between the parties on Amtrak to
2 stand by and wait to see what happens in the
3 national freight negotiations and then adopt
4 automatically the terms of those national
5 freight agreements.

6 Standby agreements govern three out
7 of the six rounds. So stop right there.
8 Anyone who is under the impression that the
9 national freight agreements haven't been not
10 just influential but controlling in 50
11 percent of the wage determinations here is
12 mistaken and not understanding the history.
13 Simple as that.

14 Now, let's talk about the other
15 three. The other three, the '75 round, the
16 '78 round, they were standby agreements. The
17 1981 round follows Conrail. Now, in the
18 presentation made by the carrier here, they
19 gloss over the 1981, sometimes referred to as
20 '82 round. The agreements were actually made
21 in '82. They refer to that round as
22 departing from the national freight standard.

1 That's not true. It followed
2 precisely the Conrail contract which was the
3 dominant freight railroad in the northeast
4 and the one which two contracts earlier, all
5 of the Amtrak -- nearly all the Amtrak
6 employees came from.

7 So they brought with them from
8 Conrail their Conrail rules, their Conrail
9 wages, their Conrail benefits. Wage levels
10 on Conrail, by the way, back in 1981 actually
11 exceeded, for most crafts, the national
12 freight averages. Conrail was a high-paying
13 property.

14 When that 1981 round came along,
15 and I think most of you know this history,
16 there was a 12 percent so-called deferral.
17 In other words, Conrail employees received --
18 did not receive the first 12 percent of the
19 national freight pattern, that is to say, the
20 pattern applied to other major Class 1
21 carriers, freight carriers. Amtrak followed
22 the Conrail pattern.

1 Now, I leave it to your judgment as
2 to whether or not that is a deviation from
3 the, quote, freight pattern, but it certainly
4 wasn't independently determined on Amtrak.
5 It followed the freights. It happened to
6 follow Conrail, which was at that point the
7 dominant northeast freight carrier. I don't
8 judge that as a deviation from the national
9 freight rate, freight determinations, but
10 that is for you to judge.

11 The 1984 round, again, a standby
12 agreement. 1988 round was PEB 22, which
13 we'll talk about shortly. And the last
14 round, 1995, you heard a lot about, it's that
15 -- that's the consequence of PEB 234, which
16 recommended a full application of the
17 national freight pattern.

18 But that's an overview. Let's look
19 at the facts. Let's look at the detail.

20 Attachment 7 gives you the wage
21 rates under the shopcraft agreements on the
22 Amtrak and the national freight railroads

1 from 1975 to the present.

2 The way the table is constructed,
3 you have compartmentalized each of the
4 contracts that I'm talking about, each of the
5 six rounds of bargaining. The first contract
6 term and the date of the agreement, if we
7 know it, is January 1, 1975. And it ran
8 through the moratorium through the 31st of
9 1977. That contract was determined for the
10 shopcrafts in January of 1975.

11 If you look at the columns that
12 follow, they're identical. Left-hand column,
13 same as the right-hand column. The
14 right-hand column for the shopcrafts under
15 national freight agreements, of course, was
16 determined in the first instance. Amtrak
17 agreements followed precisely. But if you
18 look at the increases, look at the effective
19 dates, they're identical.

20 If you go to the next contract,
21 that's the contract spanning the period
22 January 1, '78, through March 31, 1981.

1 Again, identical in all respects.

2 If you go to the third contract,
3 this was the Conrail deferral agreement. The
4 national freight, the non-Conrail national
5 freight agreement goes up as indicated in the
6 right-hand side. The deferral -- the Amtrak
7 rates go up in accordance with the Conrail
8 deferral agreement and that's shown on the
9 left-hand side.

10 If I were to plot on this -- in
11 this analysis the Conrail agreement and
12 substitute for what is described here as the
13 national freight agreements, the other Class
14 1 agreements, then the settlements on Amtrak
15 and Conrail would coincide.

16 Not with respect to -- it would
17 coincide with respect to the 12 percent
18 deferral, and the ending wage rates would be
19 identical as to those on Conrail, which they
20 were.

21 As I've indicated, the agreement --
22 the next agreement, the '84 round of

1 bargaining was a standby agreement. Once
2 again, the terms are identical as shown.
3 That's the first of four rounds, first four
4 rounds of bargaining.

5 Next we come to the 222, PEB 222
6 and the agreements that followed the
7 recommendations. Let me see if I can make
8 this -- I wrote this up in the summary
9 statement. But let me make this as brief as
10 possible.

11 Prior to PEB 222, the TCU and the
12 on-board service workers council, or Allied
13 Service Workers Council, the on-board service
14 folks, entered into agreements. Those
15 agreements were designed to restore the 12
16 best deferral and get them back on track, so
17 to speak, with the non-Conrail -- with the
18 Conrail and the national freight agreements.

19 By the time TCU entered its
20 agreement for the 1988 rounds of bargaining,
21 employees on Conrail, including all the
22 organizations, have already snapped back,

1 that is to say, restored their rates to where
2 they would have been had the 12 percent
3 deferral not occurred. So Conrail was
4 already back on the national freight levels.

5 Amtrak, in its negotiations with
6 the TCU, enter into an agreement which
7 produces a 21 point -- actually with the 2
8 percent, it was 18 percent plus for the TCU.
9 It ultimately turns out to be 21.7 percent
10 for the rest of the organizations.

11 This gets complicated because there
12 were different amendable dates under those
13 agreements. I have detail later on that we
14 can refer back to. The short story is that
15 the consequence of the increases following
16 the recommendations of PEB 222, which I agree
17 incorporated the, quote, Internal pattern
18 then established on Amtrak, had the effect of
19 restoring the 12 percent differential.

20 It was precisely the same amount,
21 the amount necessary to close the 12 percent
22 gap. Now, I say that's not an accident. I

1 say that 21.7 is an odd number and that it
2 has exactly the mathematical effect of
3 eliminating the 12 percent gap for the BMW, E,
4 for the BRS, for the shopcrafts. And that's
5 not an accident.

6 So following 222, we get back on
7 the national wage rate levels.

8 The last agreement, as you know, is
9 the product of PEB 234. Their increases are
10 those which are shown on page 2. If you
11 look, there's some deviation, and they occur
12 in the December '95 increases. And later,
13 there's some for the shopcrafts. There's
14 some additional deviation from the national
15 freight patterns, as you can see.

16 Compare those two columns and
17 you'll uncover the facts regarding the
18 shopcrafts agreement vis-a-vis the national
19 freight agreement during that round of
20 bargaining, and that was a deviation from the
21 national freight terms, the literal national
22 freight terms.

1 The effective dates of the changes
2 were the same, but the general wage increases
3 were the same but slight differences in the
4 amounts.

5 If you turn to attachment 8.
6 Actually, this is the one I have a revision
7 to, attachment 8. I found a glitch in it.
8 Let me explain the structure of the exhibit
9 and then the data that's being circulated.

10 What we have done here is for
11 January and July of every year set forth,
12 since 1975, set forth the Amtrak shopcraft
13 rate and compared it to the rate that would
14 be applicable on that same date under the
15 freight agreement. So we start with a common
16 \$6.29 for both Amtrak and freight effective
17 January 1975. Then all I do is apply the
18 respective agreements, the literal terms of
19 the agreements, both in regards to the
20 cost-of-living changes and the general wage
21 increases.

22 So if you look at the revised

1 exhibit that I just distributed, and you see
2 that the index numbers in the two right-hand
3 columns are identical after the first
4 contract, identical after the second. The
5 third contract is the deferral agreement.
6 The next contract is a standby agreement in
7 '84 which gives the same percentage
8 increases, so that 12 percent deferral
9 changes. And then you have the application
10 of PEB 222.

11 So by September of 1995, the
12 amendable date of the shopcraft agreement --
13 and here I speak of the IAM, the sheet metal
14 workers, firemen oilers and IBEW -- the index
15 numbers are nearly identical for September
16 1995.

17 So we go through five rounds of
18 bargaining, and the wage accrual is precisely
19 the same as that which would occur had the
20 national freight agreements literally
21 applied.

22 Now, I don't think this is an

1 accident. I think that the parties looked to
2 that standard and they make agreements so
3 that this becomes the consequence of their
4 decisions.

5 If you apply the next agreement,
6 that holds true. We indicate it was slight
7 deviation but the shopcrafts come out at
8 184.1 percent over a 25-year period, and
9 under the freight agreement, their wage
10 accrual would be 186.2 percent. This is over
11 an extended period covering six collective
12 bargaining agreements.

13 We need not go through the
14 similarly constructed analyses for the BMWED
15 or the BRS, but what I wanted to do in this
16 analysis, Mr. Chairman, is to work with three
17 sets of data. I didn't want to just pick out
18 one contract and draw conclusions on a matter
19 this important based on the experience of one
20 organization, because there are nuances.
21 There are variations here and there, and I
22 wanted to be certain that if I looked not

1 only to the BMWED or the shopcraft contracts
2 or the BRS, that our general conclusion on
3 the relationship between the Amtrak contracts
4 and the national freight agreements would be
5 consistent.

6 And so what we have in attachment 9
7 is the similar analysis for the BMWED. Their
8 terms are slightly different here and there
9 because remember, they're following their
10 freight pattern. They're not following the
11 shopcraft pattern on Amtrak, they're
12 following the national freight pattern. So
13 when you get to the bottom line -- I would
14 look at attachment 10, for instance. If you
15 look at the 25-year period ending December
16 '99, day before the amendable date on the
17 contract you are determining, you will see
18 that the total wage accrual under the BMWED
19 Amtrak contract was 193.8. Total wage
20 increase under the national freight agreement
21 covering -- negotiated by the BMWED is 193
22 even. Almost exactly the same.

1 Is that just an accident or do you
2 think the BMW was looking to their national
3 freight contracts when they were making
4 Amtrak agreements?

5 CHAIRMAN TREDICK: What exhibit is
6 it?

7 THE WITNESS: Page 2, attachment
8 10.

9 CHAIRMAN TREDICK: What line is it?

10 THE WITNESS: December '99. These
11 are indexes, so when I say the index shows
12 293.8, that means it's 193.8 increase.
13 Sorry.

14 CHAIRMAN TREDICK: I don't think
15 we're all following that.

16 THE WITNESS: Given what member
17 Witt said this morning, I really feel badly.
18 You're going to have a migraine after this.
19 How about if we -- if you look at the
20 picture, that tells a story as well, and I
21 think that is easier to absorb.

22 We have some color graphs in here

1 that show this relationship that I speak of,
2 and that would be on the third page of
3 attachment 10.

4 If you go to attachment 11, the
5 same analysis for the BRS. Attachment 12,
6 and if you look at the index numbers for the
7 BRS on page 2, you can see how they -- and
8 the graph shows it as well. That hiatus
9 there is the lag caused by the 12 percent
10 deferral which was closed when the
11 recommendations of PEB 222 were adopted.

12 And if you look to what this graph
13 would look like under the BRS proposal, right
14 before tab 13, you can see where they land
15 right on where they would have been had they
16 applied their national freight agreement,
17 consistent with the rest of history.

18 There's another little trick in
19 here, another way to test this theory of mine
20 that 222 intended to erase the 12 percent
21 deferral. If you look at attachment 12, for
22 instance -- and I'll try to do this slowly.

1 Look at the very bottom numbers. The BRS
2 rate. This is June '88, okay? This is right
3 before the amendable date of the contract
4 rate determined pursuant to 222.

5 The Amtrak rate is 1281 and the
6 Class 1 freight rate is 1414. The Amtrak
7 rate is 90.6 percent of the Class 1 rate. If
8 you take that 90.6 percent and add 21.7, you
9 get 110.3. If the freights was 100, and
10 under the national freight agreement, those
11 increases totaled 10.3 percent, the rates
12 become equal following 222.

13 Now, again, you can ask yourself
14 whether that's an accident or whether 21.7
15 percent was pulled out of thin air. I don't
16 think so. The math is too perfect.

17 If there are no questions about
18 that segment, I'm going to move forward and
19 we can begin to pick up the pace here because
20 I know it's running behind.

21 MR. JAVITS: Were there any lump
22 sums, or how did you treat lump sums and or

1 retro in the prior six agreements?

2 THE WITNESS: Both the national
3 freight and Amtrak called for a \$2,000 lump
4 sum, so they -- and they're not -- I don't
5 attempt to embed them in a -- when I'm
6 measuring wage change because they're not as,
7 you know, permanent and they're not part of
8 your wage accrual. But they are both
9 equalized because they both were \$2,000.

10 MR. JAVITS: I don't want to jump
11 the gun, but if you were to -- just looking
12 at the rates that Amtrak is proposing, the
13 pay rates at the end of the term, whether
14 it's 2010 or 2009, some vague approximation,
15 will the pay rates be comparable, I mean,
16 excluding the whole retro and back pay issue
17 here, just looking at those numbers that
18 Amtrak is proposing in terms of pay rates at
19 the end?

20 THE WITNESS: I understand what
21 you're asking.

22 MR. JAVITS: Where are you on your

1 kind of -- your chart here, your index --

2 THE WITNESS: Right.

3 MR. JAVITS: -- on the pay rate?

4 THE WITNESS: This is an exercise
5 that reflects back on history.

6 MR. JAVITS: Right.

7 THE WITNESS: To attempt to answer
8 the question as to how and to what extent the
9 national freight agreement has influenced
10 wage changes on Amtrak, it doesn't go to the
11 retroactivity.

12 You're correct if you are assuming
13 that if they were proposing the same wage
14 accrual end to end as we are, then we would
15 both be on at the end, we would both be on
16 the national freight target. But we would
17 have a big gap in between where the target
18 was missed for a considerable period of time.

19 MR. JAVITS: Right. You would have
20 had a concavity going up to the rates which
21 at the end would be the same?

22 THE WITNESS: Correct, correct.

1 Because consider there would be a flat line
2 and then snapping up to that rate under their
3 proposal.

4 MR. JAVITS: All right, all right.

5 THE WITNESS: A relatively flat
6 line, you know, Harris COLA in there.

7 MR. JAVITS: So it would almost be
8 like a 12 percent Conrail cavity. Employees
9 are losing money vis-a-vis compared with the
10 freights, but you catch up?

11 THE WITNESS: Not -- right, except
12 that didn't occur for eight years.

13 MR. JAVITS: Right.

14 THE WITNESS: Right.

15 MR. JAVITS: Right.

16 THE WITNESS: There's a -- but I
17 understand the point. This doesn't go to the
18 -- we're going to talk later about the manner
19 in which the pattern is applied. Here, I'm
20 trying to identify for the panel which
21 pattern is controlling, which is -- should be
22 the most influential.

1 There's no dispute between the
2 parties that that pattern ought to make the
3 -- create the outline for a recommendation
4 here. They're proposing for the first five
5 years the TCU internal pattern. There is no
6 pattern for the second five years. And we
7 are proposing the two national freight
8 agreements as a pattern so the question is
9 which one is more influential over the period
10 of time.

11 MR. JAVITS: I understand.

12 THE WITNESS: And again, we had six
13 rounds of bargaining. You know, clearly five
14 out of six are being governed by the national
15 freight pattern and you be the judge, as you
16 are.

17 MR. JAVITS: Recommenders.

18 MR. JAFFE: One calculational
19 question, if I may. With respect to the
20 healthcare contribution that we looked at
21 earlier, under the freight agreement, is that
22 something that comes out of gross or net?

1 How is that done, if you know?

2 THE WITNESS: It's pretax, and I
3 understand that that is not controversial
4 here, that if we make a contribution, it will
5 be sheltered in the same manner. But that's
6 a question you may have to ask Amtrak.

7 BY MR. WILDER:

8 Q Fair enough. I was just trying to
9 get clarification because I hadn't heard
10 anybody address it. Thank you.

11 A Right.

12 MR. WILDER: I will remind the
13 chairman I was charged with the
14 responsibility of determining when an hour
15 and 15 minutes had passed so the reporter
16 could have a break.

17 CHAIRMAN TREDICK: Your memory's
18 excellent. So is this a good time?

19 MR. WILDER: I think so.

20 CHAIRMAN TREDICK: We'll stand
21 adjourned for ten minutes.

22 (Recess)

1 CHAIRMAN TREDICK: Back on the
2 record. Mr. Wilder?

3 MR. WILDER: Thank you, Mr.
4 Chairman. We are resuming with the direct
5 testimony of Thomas Roth.

6 THE WITNESS: Okay, I direct your
7 attention to attachment 13. And there, we
8 have set forth the first of several exhibits
9 that relate to the commuter railroad
10 comparisons that we have summarized in this
11 statement that I filed.

12 As you know, Amtrak is principally
13 an intercity passenger railroad but it is
14 also in the commuter railroad business. It
15 operates commuter railroad services under
16 contract with several public agencies that I
17 have identified in my statement. And the
18 2005 alone, there were 22 commuter railroads
19 with annual ridership of about 423 million
20 and 25,000 employees. The five operated by
21 Amtrak would make it the seventh-largest rail
22 operator in the nation.

1 That is pretty much a summary of
2 what you find on attachment 13. I think
3 counsel for Amtrak made reference to the fact
4 if Amtrak were an airline it would be a major
5 airline, but if pigs could fly. This is a
6 railroad and certainly, if it's -- by
7 definition, it is more comparable to the
8 commuter railroad sector than anywhere
9 outside the passenger sector.

10 Amtrak witnesses offered several
11 reasons why the freight pattern should be
12 discounted. They note differences between
13 the freight railroads and the -- and Amtrak
14 passenger railroads. For example,
15 profitability. The freight railroads are
16 profitable and Amtrak is not and therefore,
17 they infer there ought to be some discount to
18 the association between the two.

19 I remember times when there were
20 arguments that the freight railroads should
21 not be compared to Amtrak because they
22 weren't making any money and they weren't

1 profitable and therefore, we should not be in
2 a position where we're emulating on Amtrak
3 their terms and conditions of work. Now I
4 guess we're not supposed to look at them
5 because they are profitable.

6 I would think in the public sector,
7 in the quasi public sector negotiations,
8 there's often cited the lack of kind of
9 market discipline at the bargaining table in
10 wage determinations, the kind of discipline
11 you find in the private sector. Here is a
12 perfect opportunity to embrace what has been
13 determined to be competitive set of
14 conditions of work and again apply them here
15 to the quasi public organizations where you
16 don't necessarily have that market
17 discipline.

18 The sole reason, apart from
19 profitability and the level of subsidies,
20 Amtrak points to the uniqueness of the
21 inner-city passenger transportation because
22 of the -- I guess the, you know, passenger

1 safety issues, the speed of the trains I
2 heard mentioned, the congestion along the
3 Northeast Corridor was mentioned as well,
4 circumstances that are not confronting the
5 freight railroads as well.

6 I don't know how that plays,
7 because seems to me those are all the same
8 reasons why the commuter railroad sector
9 would be more applicable in terms of
10 comparing the operations with Amtrak.

11 It was also said here in the record
12 earlier that Amtrak is the only -- several
13 times, Amtrak is the only federally
14 controlled and funded railroad governed by
15 the Railway Labor Act. Well, the control
16 part is correct but the funded part is not.
17 I don't want the panel to infer from those
18 comments that the commuter railroad sector is
19 not only covered by the Railway Labor Act but
20 is also substantially a product of federal
21 funding and continuing operation subsidies.
22 So it may not be controlled. The commuters

1 may not be controlled by the Feds, but they
2 certainly are funded by them in whole or in
3 part.

4 The similarities between the
5 commuters and Amtrak are again outlined on
6 page 25 of my report, and without any kind of
7 further discussion of the comparability, let
8 me direct you to Exhibit Number 14, which
9 lays out some comparative data. I just want
10 to explain to you the structure of the
11 exhibit, then we can pass by it. I assume
12 the panel will look at the numbers when it
13 has an opportunity.

14 The job matches that are made here
15 are easy and accurate because both commuter
16 railroads and Amtrak share the same
17 bargaining structure. They have the same
18 classification system. They're represented
19 in major part by the same labor
20 organizations.

21 If you look to the first entry here
22 on page 1 of -- behind tab 14, you'll see the

1 Long Island Railroad data. The Long Island
2 Railroad is the largest commuter railroad in
3 the country, some 95.5 million passengers,
4 700 miles of track. Invariably as you glance
5 down the table, the wage rates paid to Amtrak
6 employees for comparable jobs are
7 substantially below, 25 to 30 percent in most
8 cases.

9 This attachment 14, by the way, is
10 restricted to maintenance of equipment
11 classifications. They include, I should
12 point out in the left-hand column, the car
13 appearance maintainer, which is the car
14 cleaner. Car cleaners on Long Island make
15 \$21.92 compared to 16.22 on Amtrak.

16 The Metro-North is the entry that
17 follows. Again we're looking at
18 classifications that are directly comparable
19 to the ones here for you. These are
20 maintenance of equipment. Metro-North began
21 January 1, 1983, coming out of
22 recommendations made by PEB 198. I

1 represented 17 unions in that case when
2 Metro-North was created. Employees came from
3 Conrail, the same origin as Amtrak employees.
4 We lay out the wage rates there for
5 comparable jobs. If you look to the coach
6 cleaner making \$22.85 on Metro-North compared
7 to \$16.22 here.

8 New Jersey Transit is on the top of
9 the next page. I need not read it at you.
10 We'll breeze through this stuff as quickly as
11 possible, Southeastern Transportation
12 Authority is at the bottom of the page, same
13 set of jobs. Again, this is the product of
14 PEB 196 in January of 1983.

15 Finally on the last page we have
16 the Massachusetts Bay Transportation
17 Authority. This is the governing agencies,
18 the MBTA, but they have subcontracted the
19 operation and maintenance of their commuter
20 railroad system to a private company called
21 the Massachusetts Bay Commuter Railroad.

22 I discuss that on pages 27 and 28

1 of my summary. Prior to July 1, 2003, Amtrak
2 was providing the system to the MBTA and ran
3 and maintained its commuter operation.
4 Somewhere in this record, in fact I think on
5 more than one occasion, the witnesses for
6 Amtrak testified that Amtrak lost that
7 contract. That's not true. They didn't bid
8 on the contract.

9 A week ago today I had lunch,
10 actually, with the chief operating officer of
11 the MBTA who's on the executive committee
12 that negotiates the commercial agreement with
13 the MBCR. The MBCR agreement is up in July
14 and has just recently this week been renewed
15 for an extended period.

16 According to the MBTA executives,
17 the work performed by the ex-Amtrak employees
18 is excellent. They're satisfied with their
19 services and by definition, there is no --
20 the materials of their work have been set in
21 a competitive environment.

22 Prior to July 1, 2003, as I

1 indicated, this work was performed by Amtrak
2 employees. The MBCR took over the operation
3 and in so doing recruited 1500, approximately
4 1500 employees, approximately 745 of them
5 from the organizations represented here, to
6 perform the MBCR operations. It not only
7 recruited the employees but agreed to a
8 contract which incorporated all the benefit
9 programs, all of the work rules and all the
10 then-existing terms and conditions that
11 existed under Amtrak contract with one
12 exception. They increased the wage rates
13 over a five-year period by 21.7 percent.
14 Now, that contract, as I said, is open for
15 negotiation, this is July of 2008, and will
16 be subject to further increases.

17 But at this point in time, you can
18 see that there's about a 16 to 17 percent
19 advantage to working for the MBCR than it is
20 for working at Amtrak. Same classifications,
21 same labor organizations. A competitive
22 environment, one which Amtrak for its own

1 reasons refused to participate in. But if
2 they refused to bid on the contract, it
3 wasn't because, as they are insinuating here,
4 they lacked a competitive advantage or had a
5 labor cost problem. The way I heard the
6 testimony, you could infer from it that
7 Amtrak was not competitive, that they had
8 work rules that encumbered their ability to
9 successfully bid. They used the word they
10 lost the business. Well, they gave up the
11 business. Or maybe they had some other
12 business interest in foregoing to bid on the
13 operation, such as insurance liabilities or
14 lack of management.

15 I don't know what the reasons were,
16 but by definition, they had no labor cost
17 problems because the MBCR immediately absorbs
18 the full cost of the contract plus 21.7
19 percent on wages.

20 On attachment 15 we have the
21 comparative wages for Amtrak and commuter
22 rail. These are maintenance of way jobs.

1 They're the same northeast commuter
2 railroads. They cover approximately 70 --
3 about 77 percent of the non-Amtrak commuter
4 railroad sector, so you got a full breadth of
5 the wages and terms that apply here.

6 On attachment 16, we have a third
7 set of data. These are commuter wage rates
8 and comparisons between Amtrak and commuter
9 railroads. These are for signals and
10 communications classifications.

11 And once again, there's -- the
12 pattern is the same. There's absolutely no
13 contest. We are proposing here that the
14 National Freight railroad contracts apply,
15 that they be the means by which we determine
16 wage levels here on Amtrak. But there can be
17 a case equally strong and perhaps even
18 stronger that the commuter railroad patterns
19 and commuter railroad terms and conditions
20 ought to apply.

21 Attachment 17 gives you comparative
22 wage rates for supervisors. Again, the

1 classifications are comparable. The work,
2 comparable.

3 Attachment 18 is the same
4 information for train dispatchers. Train
5 dispatcher on the Long Island is making \$41
6 plus compared to 26.96 here on Amtrak. And
7 even under our proposal, dispatcher will be
8 making 3132, substantially under the -- about
9 25, 30 percent under what the Long Island
10 Railroad dispatcher would make.

11 One point worth making here is that
12 these analyses compare wage rates only and do
13 not go into the health insurance contribution
14 aspect of the analysis that we had performed
15 earlier under our proposal.

16 In the commuter railroad sector,
17 employee healthcare contributions are rare
18 and where they exist they are substantially
19 below what the organizations are proposing
20 here. That's attachment number 19. Long
21 Island Railroad, noncontributory, 100 percent
22 employer paid. Same with the MBCR. Same

1 with PATH, Septa. They pay 1 percent of
2 their 40-hour base pay. For nearly all of
3 the organizations on Metro-North, it remains
4 100 percent employer paid.

5 Attachment 20 gives you a
6 historical look at the commuter railroads
7 versus Amtrak. And the story here is easily
8 discerned. We have over the prior decade a
9 consistent relationship with the commuter
10 railroads.

11 In this instance, we're looking at
12 the Long Island Railroad in particular. And
13 the -- you can see that the dollar
14 differences are significant in the 5- and \$6
15 range indicated by my prior exhibit.

16 Well, that kind of relationship has
17 existed for a long, long time. We have never
18 really been able to close the gap with the
19 commuter railroads because the National
20 Freight patterns have applied. That's been
21 established elsewhere.

22 But my point here is that there is

1 no grounds, given the comparability of the
2 work, given the similarities between commuter
3 railroads, both operationally and fiscally,
4 to permit the expansion of this differential.
5 You can see how this has grown from the 4- to
6 \$5 range to over \$7 today for, in this
7 instance, the trackmen. And that kind of
8 pattern is evident no matter what occupation
9 you look at.

10 Under our proposal, if fully
11 adopted, we will squeeze that differential
12 back down to what it has historically been,
13 around the \$5 range.

14 Now, that particular comparison is
15 attachment 20 and it covers the trackmen as
16 an example. I have a shopcraft example on
17 attachment 21, and the analyses including the
18 organization's proposal is set forth in
19 attachments 22 and 23.

20 Attachment 24 introduces another
21 set of data on page comparisons. It begins
22 with a profile of the heavy rail urban

1 transit systems in the country. There's 14
2 of them. The statistical profile's laid out
3 on attachment 24. I'm not going to again go
4 through these comparisons with you.

5 Essentially, we are not proposing
6 that we eliminate the gap between the wage
7 rate levels on heavy urban transit systems
8 and Amtrak. It is substantial. They're paid
9 substantially more for not only comparable
10 work but equal work. And that is a
11 conclusion that is readily apparent as you
12 look through the data. It doesn't matter
13 what function we look at, what occupations,
14 it's consistently true.

15 I am not suggesting that urban
16 transit systems and urban transit comparisons
17 have formed the basis for wage decisions here
18 on Amtrak. I don't believe they have.
19 However, you have elsewhere in this record
20 the introduction of some aggregate wage data
21 claiming to demonstrate that if you place
22 Amtrak's classifications of work in a family

1 of jobs that are apparently comparable in the
2 economy that you can show that Amtrak's
3 proposal, or under ours or even currently,
4 there is what was referred to as a wage
5 premium.

6 We're going to talk about that if
7 we have a rebuttal opportunity because I
8 don't believe that to be the case at all. I
9 don't believe that data to be relevant. And
10 certainly, if you were to drill this down to
11 wage comparisons for identical work performed
12 outside the freight railroad or commuter
13 railroad industry, you will have to look next
14 to the heavy rail urban transit sector
15 because that's where the next most comparable
16 occupations reside. When you do that, you'll
17 reach the conclusions that I have as you
18 examine the data furnished.

19 On attachment 28, it even gives you
20 a historical dimension to this. The wage
21 rates have lagged well behind urban transit.
22 So even if you don't accept the proposition

1 there is any validity in making wage level
2 comparisons between the transit systems and
3 Amtrak, you can't possibly justify a growing
4 gap between these two occupations, again,
5 performing identical work, particularly under
6 circumstances where, like Amtrak, urban
7 transit systems are publicly financed and
8 rely heavily on both federal and local
9 subsidies to operate.

10 The recovery rate for a transit
11 system, as we show here on attachments
12 produced later in the volume, that recovery
13 rates, the portion of operating expenses
14 which are recovered by the fair box or by
15 passenger revenue is much smaller than on
16 Amtrak, typically in the 30 percent range as
17 opposed to in the high 70s for Amtrak. So
18 again, if you're looking for comparability in
19 the operations, looking for comparability in
20 the manner in which the systems are financed,
21 urban transit is a place to go if you wish.

22 Finally, in looking at outside

1 data, we have two additional other sources.
2 This should be read I think, Mr. Chairman,
3 together with whatever other testimony on
4 outside industry comparisons you've received.
5 I'm not suggesting they should dominate your
6 recommendation or that they have been
7 significantly influential in the past
8 negotiations of the parties, but if you're
9 looking to jobs that are comparable and
10 outside the realm of what the parties have
11 designated as appropriate and important in
12 their history, then look to the construction
13 industry.

14 We have several jobs that are in
15 the same -- that are construction in nature.
16 Many of them in the maintenance of way and
17 engineering department. When you look at the
18 wage levels, same in IBEW occupations, when
19 you look at the wage levels, you'll find
20 there is a huge gap between what the
21 construction trades receive and what Amtrak
22 tradesmen performing the same type of work

1 perform, whether it's a welder or a carpenter
2 or electrician.

3 Also note here that there is a
4 northeast premium that becomes evident when
5 you look at wage rates that are fixed in the
6 Northeast Corridor, where many of our persons
7 work, especially those on the Northeast
8 Corridor lines, and where -- and the
9 engineering and maintenance departments.

10 The carrier's witness on wage rate
11 comparability can only make his case, if
12 there is a case at all, by looking at
13 national data, because there is -- and we'll
14 show this later on if we get a rebuttal
15 opportunity -- there's about a 2- or \$3
16 premium paid in the northeast.

17 For example, he compares an
18 electric lineman to our ET linemen on the
19 Northeast. Well, we don't have ET linemen
20 working anywhere except between here and
21 Boston. So it would seem if we are looking
22 to the outside industry, if you want to look

1 to labor markets, then you look to the labor
2 market in which Amtrak employees participate
3 and not to the Wichita lineman.

4 So what you'll see in attachment
5 29, there is a lot of -- that wage levels are
6 much higher in the northeast than they would
7 be elsewhere.

8 29 gives you the maintenance of way
9 classifications and comparisons. Attachment
10 30 is the maintenance of equipment set.
11 Attachment 31, signals and communications.
12 Attachment 32 gives you the electric tracking
13 maintenance, the construction trades.

14 Finally, in attachment 33, we have
15 approximately 200 ET linemen. There's
16 actually two classifications. One
17 represented by the BMW, there's 162 of them.
18 They're paid \$20.18 an hour on average. The
19 IBEW has 37 such ET linemen. There's an ET
20 linemen classification, there's a catenary
21 lineman classification. They're paid \$20.14.
22 You can see how those rates compare to

1 linemen represented by the IBEW along the
2 Northeast Corridor. That information's on
3 attachment 33.

4 Again, if you're inclined to go
5 outside the commuter railroad industry or
6 outside the freight railroad industry to find
7 a solution for this case, then look to this
8 evidence as well.

9 Attachment 34 brings us to another
10 set of data. This is the Employment Cost
11 Index comparisons, giving you a historical
12 dimension to the wage comparison factor.

13 And once again, without going
14 through all of the data, we generally draw
15 the conclusions evident in the graph that
16 follows on page 4 that there has been a
17 widening gap between the wage progress of
18 Amtrak employees and that achieved by
19 American workers generally.

20 Equally important here is the fact
21 that if you impute the labor organization's
22 proposal as though it were paid along

1 retroactively and along the chronology
2 between January of 2000 and forward you can
3 see that the lines basically track the
4 Employment Cost Index, indicating that what
5 we are proposing here by way of wage progress
6 is no more, no less than what the rest of
7 American workers have achieved over this
8 period of time. So again, just another test
9 on the moderation of the labor organization's
10 position on wages in this case.

11 We have several, as was the custom
12 here, several versions of the three datasets.
13 I have the shopcrafts, the BRS, BMWWE wage
14 histories to make certain that we are
15 adequately represented when it comes to all
16 of the occupations and their wage history
17 experience so that a conclusion drawn on any
18 one organization can be equally drawn on the
19 others.

20 BY MR. WILDER:

21 Q I'm going to ask you to turn to the
22 chart on page 4 of attachment 34, that index

1 of wage changes and Amtrak shopcrafts.

2 A I've got it.

3 Q You have testified earlier to a --
4 if I may paraphrase your testimony, to a
5 significant wage gap to the detriment of
6 Amtrak's workers, and can you use the chart
7 that's depicted in attachment 34 to
8 illustrate that wage gap?

9 A Yeah. This is a pattern that I see
10 in all of the data, no matter which
11 organization I look at. And whether I
12 compare it to, you know, real wage analysis
13 or do an Employment Cost Index analysis, it's
14 clear that between 1978 and 1982,
15 approximately -- and this is -- remember, the
16 deferral agreement comes along, but that's
17 corrected by 222. But 222 only gets Amtrak
18 employees back up to the national standard.

19 The national standard itself was at
20 that point the subject of a three-year wage
21 freeze under PEB 219 followed by the 10.3
22 percent wage increase. So they got 10.3

1 percent over a six-and-a-half-year term
2 preceded by a three-year wage gap.

3 The point is that tracking the
4 freight pattern has not been -- has not
5 benefitted Amtrak workers when it comes to
6 keeping pace with either inflation or the
7 rest of American workers. It has been a
8 detriment.

9 If they had to start over again and
10 if we didn't have to confront the bargaining
11 history that we are, I would not advise to
12 follow the National Freight pattern. It of
13 itself does not provide for any wage progress
14 that by anyone's measure is fancy. It has
15 failed to keep up with inflation. It has
16 failed to keep up with the rest of American
17 workers. That's why we repeatedly say in
18 this case following the National Freight
19 agreement is the minimal standard. It's the
20 least that Amtrak workers should expect.

21 The flat line that you see on the
22 graph that counsel's referring to is the

1 three-year wage freeze that we accepted, that
2 we embraced from that -- that had its origin
3 in the recommendations of PEB 219 which were
4 followed by the organizations. 222 erased
5 the 12 percent deferral but it did nothing
6 further to enable these employees to keep
7 pace with inflation or keep pace with the
8 rest of workers.

9 Q Thank you, Mr. Roth. Please resume
10 your description.

11 A Okay. Attachment 37 is in the
12 second volume and that begins a series of
13 exhibits again looking to our three groups of
14 organizations, the shopcrafts, BRS and BMW, and
15 and lays out the real wage change from
16 January 1975 up to the current period.
17 Without drilling down on all of the data, you
18 can tell from the graph that follows in the
19 last page that maintenance of real pay has
20 been a struggle from the beginning.

21 In fact, real pay is below the
22 level that obtained on January 1975 under the

1 first and very first agreement between these
2 parties. So this again is evidence that
3 keeping pace with the pattern of wage change
4 in the National Freight agreement is a
5 conservative approach because it doesn't even
6 furnish these employees in the long run with
7 a maintenance of real pay.

8 The way the graph is constructed,
9 if you haven't already figured it out, is
10 that it's an index from 1975. And so the red
11 line, if it's below 100, it's falling below
12 what is required to maintain real pay. The
13 blue line is the nominal shopcraft rate and
14 the brown line, the CPI.

15 Attachment 38 is a similar analysis
16 for the BMW. 39 is the BRS, once again
17 using all three sets of data.

18 Let's turn to attachment 41, if you
19 will. Again we have two sets of data here.
20 One is applicable to the shopcraft wage
21 history and the other to the BMW.
22 Attachment 41 is the shopcraft illustration.

1 This is the cost of compensation-per-hour
2 work. This is total meetings analysis that
3 -- where we track total comp from 1995
4 through 2007.

5 As you look down the left-hand side
6 you can see that's a comprehensive measure,
7 including all components of compensation,
8 including base pay. We control for overtime
9 as the BLS does. Overtime element is in here
10 simply to pick up on any changes in the rates
11 of overtime pay over this period.

12 This reflects vacations, holidays,
13 personal leave, sick leave, if any. It has
14 railroad tier 1 and tier 2, reflects the
15 railroad retirement supplements, basic health
16 and welfare costs to the employer, dental,
17 vision, the early retirement amount and the
18 UI repayment that has now expired, life
19 insurance AD&D. It reflects the extent to
20 which contracts have vacations, holidays and
21 personal leave and sick leave.

22 So when you put all these

1 ingredients together, you can calculate the
2 total compensation per hour work that's shown
3 at the bottom of the table rising from \$25.62
4 to 3524 by 2007.

5 But what is important here, page 2,
6 by the way, takes that data, this is our
7 total comp model that is developed by the
8 labor bureau, and then we convert it to a
9 format which is consistent with the Bureau of
10 Labor Statistics' Employment Cost Index.
11 That's done on page 2. The purpose is to
12 arrive at the comparison that we make on page
13 3 of the document. This is where the
14 important data lie.

15 Between 1995, if you look at the
16 top line, this is total compensation per hour
17 worked for the shopcrafts on Amtrak, it's
18 gone up 21.3 percent by 2001. If you drop
19 down to all private industry, it's slightly
20 below but not significantly, all private
21 industry. And again, a little bit -- right
22 at where the union worker category is.

1 So essentially, I would conclude
2 that over the contract beginning in 1995 and
3 the five years that followed, we kept pace
4 with the total cost of compensation that had
5 been absorbed and experienced by the rest of
6 American industry.

7 From 2001 forward, obviously for
8 the lack of adequate wage change, our
9 relative progress and the relative cost to
10 the employer here has collapsed, going up
11 over the entire period by 37.5 percent
12 compared to 51 percent for all industry.

13 So again, this is -- I think this
14 is -- having received only a 1.1 percent wage
15 increase over this period of time by virtue
16 of the Harris COLA, even with the carrier
17 absorbing the costs of healthcare and
18 railroad retirement payroll expenses, they --
19 the total compensation per hour worked still
20 fell relative to the rest of American
21 industry. The second --

22 MR. JAVITS: Contrary to probably

1 popular belief, why are the union workers'
2 total compensation less than all private
3 industry, at least in the example you gave of
4 2001?

5 THE WITNESS: In terms of wage
6 level and benefits level, there's still a
7 union premium. In terms of total
8 compensation increases, that pace has slowed
9 for unionized workers principally because of
10 the change in the mix of industry and
11 occupations that are included in that sector.
12 So that's the answer.

13 MR. JAVITS: Okay, thank you.

14 THE WITNESS: Looking to 42, this
15 is the same analysis, only in this set of
16 charts, we incorporated the organization's
17 proposal both with respect to the healthcare
18 contributions and the wage increases that
19 we're proposing. And we model this out as
20 though they were paid consistent with the
21 organization's proposal over this period of
22 time.

1 So if you go to page 3 of the
2 document, you'll see what develops. This
3 again, note the caption. This is the cost of
4 compensation per hour worked from 1995
5 forward under the organization's proposal.
6 And you can see that over this period of time
7 total comp would have risen by 47.5 percent
8 on Amtrak for the shopcrafts, and for the
9 industry as a whole, it would have gone up by
10 150 percent, 150 percent.

11 So we are asking in this case for
12 nothing more by way of wage increases and
13 healthcare contributions than what all other
14 employers have been able to absorb over this
15 period of time. Again, another measure of
16 the reasonableness of the position and of the
17 moderation in that position.

18 Even after including the full
19 organization's proposal, total compensation
20 per hour worked for Amtrak will be less than
21 the rest of American industry over this
22 period of time.

1 You have to ask yourself why would
2 this -- these organizations and why should
3 these employees accept wage increases and
4 benefit increases and benefit cost increases,
5 for that matter, that produce this kind of
6 picture? Why should Amtrak be exempt from
7 the experience of all other American
8 employers in terms of absorbing costs --
9 compensation increases over this period of
10 time?

11 BY MR. WILDER:

12 Q Drawing your attention to Exhibit
13 43 and 44, is this the same kind of
14 information for the BMWED that you developed
15 for the shopcrafts?

16 A It is. It's identical analysis
17 only for the purpose of assuring that the
18 shopcraft experience isn't any different than
19 other organizations being represented here.

20 Q Is there anything in attachment 45
21 that you wish to highlight for the benefit of
22 the board?

1 A Just one. I think this is just to
2 describe what it is, if you set aside
3 everything I have said thus far, there would
4 still be the -- there would still be the case
5 for the organization's proposal based on the
6 current pace of wage and salary change being
7 experienced out there in the real world.

8 Remember that we are proposing, in
9 nominal terms, wage increases that over this
10 period of time are 3.1 percent per year.
11 Forget about healthcare deductions. 3.1
12 percent nominally. That's all. When you
13 page through this 11-page document you will
14 see that measure after measure, no matter
15 where I look, no matter what indicator I go
16 to, no matter what survey is performed, the
17 3.1 percent pace of wage and salary change is
18 conforming if not low.

19 I would point out that Amtrak's
20 proposal doesn't meet that standard. They're
21 asking these employees to agree to wage
22 increases over this contract which are --

1 cannot be supported by any outside survey or
2 standard. Why is that?

3 Q Drawing your attention to
4 attachment 46, Mr. Roth, is there anything in
5 particular that you wish to bring to the
6 board's attention?

7 A Right before we get there, one last
8 thought on the last exhibit. On page 11 I've
9 added the increases that federal employees up
10 the GS salary schedule receive, and as you
11 can see through the period we're talking
12 about, 4.2 percent per year to 3.6 percent
13 per year, again, relevance here is that the
14 nonagreement people at Amtrak, annual
15 increases are now tied to the increases that
16 are guided by -- I don't know whether it's
17 indexed or simply guided by the increases
18 received by employees covered by the GS
19 schedule.

20 That would predict a 4.2 percent
21 annual rate of increase.

22 Counsel, to get to your -- the 46 I

1 think is -- and 47 need a brief discussion.
2 I'll move as quickly as I can. Remember, we
3 -- in Joel Parker's testimony, he made the
4 point that invariably, both in national
5 handling and Amtrak, once a pattern agreement
6 is reached, an acceptable pattern is
7 identified and followed, it doesn't matter
8 when subsequent settlements are reached. The
9 effective dates of the pattern settlement are
10 honored.

11 And you can go back, and you can do
12 this with national rounds of bargaining, as I
13 have. But what you have in 46 and 47 are the
14 last two rounds of bargaining here at Amtrak.
15 So you can see what we've done in 46 is lay
16 out chronologically the date at which time
17 the agreement was signed for this particular
18 organization.

19 In the '95 round of bargaining it
20 was the BMW. They signed an agreement in
21 December of '97. As you flip through the
22 pages you'll see that settlements were

1 reached as much as a year or year and a half
2 later and yet the 3 percent adjustment that
3 became the model under the BMW pattern was
4 paid retroactively. What the carriers here
5 are proposing is that the TCU pattern applies
6 but the manner in which you apply it is to
7 ignore the effective dates when the TCU
8 member received those increases.

9 And what I am establishing here is
10 that that approach has no precedent. It has
11 no precedent on this property. It has no
12 precedent elsewhere, to my knowledge. Now,
13 that's not to say that -- that's a big
14 statement, because we have a long bargaining
15 history, but -- there are some exceptions.
16 There are some exceptions that I note here.

17 For example, at one round of
18 bargaining, the dispatchers went to an
19 arbitration, couldn't settle on the pattern
20 and ended up arbitrating. They ended up
21 getting actually, in terms of wage accrual
22 over the period, more than everybody else but

1 they sacrificed some retro.

2 There are exceptions. Exceptions
3 are noted. But the general rule, it's the
4 exception that proves the general rule. And
5 that is when a pattern is identified, no
6 matter where it is, what it is, if you want
7 to argue it's the internal pattern, if you
8 want to argue it's the National Freight
9 agreement, whatever this panel settles on, it
10 is true that the effective dates of the
11 increases under that pattern have been
12 honored by application of the pattern
13 principle on this property.

14 Q Mr. Roth, I am anxious to get to
15 your analyses of the cost metrics as you
16 described at the outset of your testimony,
17 but beforehand, can you tell the board
18 whether there is anything they should pay
19 particular attention to in the reports that
20 appear behind tabs 48, 49, 50 and 51?

21 A No. In fact, these documents are
22 in evidence elsewhere. They are the source

1 of several of my statistical analyses, and I
2 thought if they weren't otherwise admitted,
3 they should be attached to my documents. But
4 we don't have to look at them at all. I
5 would go to 52.

6 While you're moving in that
7 direction, board members, let me make one
8 comment in support of the proposition that
9 Joel Parker had posed in his testimony. He
10 made reference to a BLET, being a nonratified
11 agreement and the notion that it ought to
12 serve in any form or fashion as a pattern to
13 those who have yet to settle.

14 There have been, in my experience
15 and based on my research, I am aware there
16 have been several examples of where
17 ratifications have failed, and following the
18 establishment of a pattern and the adoption
19 of that pattern by a majority of
20 organizations, subsequent negotiations occur,
21 ratifications might fail. Perhaps those
22 cases are arbitrated, perhaps they're

1 ultimately ratified.

2 That's not what we're talking about
3 here. I've never heard of and I don't know
4 of any situation in railroad bargaining where
5 a failed tentative agreement which had not
6 been accepted by any organization had then
7 ultimately served as a pattern for another
8 organization.

9 Now, you know, counsel for Amtrak
10 at the outset in his opening statement made
11 reference to the great effort that his staff
12 made in the preparation of this case, and I'm
13 sure they did. But I would challenge them to
14 find a single precedent that supports the
15 proposition that is being advocated in this
16 case, and that is to take a failed agreement
17 and use it as a standard for unsettled
18 contracts, because it simply hasn't been
19 done.

20 Okay, I just -- I know I'm running
21 out of time and I appreciate your indulgence.
22 I just want to make some comments at closing

1 here regarding the question of ability to pay
2 and fiscal capacity and the role of labor
3 costs in that determination.

4 I would urge the board, as I have
5 in my written statement, to approach the
6 question of fiscal capacity or for lack of a
7 better phrase ability to pay in a manner
8 that's consistent with all other previous
9 boards and interest arbitration panels that I
10 am familiar with.

11 They have generally distinguished
12 between the concept of ability to pay and a
13 willingness to pay in the manner of making --
14 of wage agreements. Elsewhere in this
15 record, there is -- and I don't know where
16 the cite is, but elsewhere in the record,
17 it's in the shopcraft exhibits, there is a
18 collection of citations that I had prepared
19 for Emergency Board 234. It's simply
20 reproduced here. It's 50 pages long, and
21 cite after cite.

22 I've done over 200 interest

1 arbitration cases in the public and quasi
2 public sector. The notion that the employer
3 doesn't come to the table and voluntarily --
4 and with a willingness and voluntarily
5 produce money for the purpose of meeting the
6 demands of the employees is not unusual. I
7 mean, it just never -- it has never happened.

8 The proper approach begins with the
9 fundamental -- in this industry, begins with
10 the fundamental understanding of the nature
11 of the passenger rail enterprise. It is both
12 -- it's quasi public in nature. We can talk
13 about the legal construction of Amtrak, but
14 economically, it is a quasi public
15 organization and it produces both public and
16 private products.

17 The private product of course is
18 that which the passenger enjoys and pays for
19 when being transported from point A to B.
20 The public products are those that Amtrak
21 itself has on numerous occasions identified.
22 The energy conservation, conservation of

1 scarce land space resources, environmental
2 control, the -- controlling the congestion
3 along the Northeast Corridor and providing
4 for economic development where Amtrak and
5 other passenger trains pass.

6 These are all part of the public
7 product or the public good that Amtrak
8 produces. You have heard ad nauseam in this
9 last couple days about how Amtrak recovers
10 only a portion of its total operating
11 expenses. And the recovery rate as I refer
12 to it is in the 78 to 80 percent range. It's
13 actually higher than it has been for decades
14 and it's been -- it's in the high 70s. 78
15 percent is what was quoted here by Amtrak
16 yesterday, but I think that includes noncash
17 expenses.

18 When you exclude depreciation,
19 recovery rate tips up a bit. It's at one of
20 the highest levels in history. That evidence
21 is recorded in my materials.

22 But the 20 percent subsidy

1 represents the price that the federal
2 government pays as the consumer of the public
3 product that Amtrak produces. And it is not
4 for this board to judge whether or not Amtrak
5 -- or the federal government is going to
6 continue to recognize that value and finance
7 it at a level that is appropriate.

8 It is my judgment that that is
9 beyond the mission of a Presidential
10 Emergency Board.

11 If you require Amtrak to cover all
12 operating costs with self-generated
13 commercial revenue, not only it's
14 unrealistic, it's inconsistent with the whole
15 economic nature of the transportation system
16 itself. And we don't believe that it is the
17 board's -- within the board's purvey to
18 question Congress as to whether it desires to
19 -- and will continue to recognize the public
20 value.

21 The board's mission in our view and
22 the scope of your efforts, we hope, is to

1 focus on the labor cost issues, to determine
2 in the first instance by all appropriate and
3 acceptable comparative norms whether there is
4 a labor cost issue that needs to be addressed
5 by the board in this round of negotiations.

6 I say emphatically that Amtrak does
7 not have a labor cost problem at all and we
8 -- I use to support that proposition all the
9 appropriate metrics, which begin with
10 productivity, unit labor costs and recovery
11 rates and other similar indicators.

12 If you look at page or attachment
13 52, for example, you'll see the labor cost
14 ratios falling as a percent of revenue,
15 consistent as a percent of operating
16 expenses. Labor cost ratios are below those
17 which prevail throughout the rest of the
18 commuter railroad sector of which Amtrak is a
19 part. They're usually in the 60 to 70
20 percent range. Labor cost ratios among urban
21 transit systems, of course, far exceed that
22 which you have on Amtrak in the 50 percent

1 range.

2 We have an analysis in here on page
3 53 of the recovery rate and the calculations
4 I have been referring to. Some of the -- at
5 79.8 percent in 2007, the best in many years.
6 Obviously over the course of this wage
7 hiatus, labor has participated heavily in the
8 improvement in that ratio. But at 78
9 percent, it remains well above that which
10 you'd find in the commuter railroad industry
11 or any other passenger sector. That's shown
12 in attachments 54 and 56.

13 If you look at attachment 55, here
14 we have a indicator of the change in
15 employment level since -- this goes back to
16 1986. Just by way of a footnote here, this
17 data here comes from the Surface
18 Transportation Board. It is a combination of
19 groups 300 and 400, and that is as close as
20 you can get to the group that is represented
21 here by the nine organizations.

22 But there's like a 30 percent cut

1 in employment since 2000. About 745 of these
2 individuals were transferred to the MBTA
3 operation. And even without them, there's a
4 loss of 2,341 jobs, or 22 percent. That cut
5 in employment is corroborated by the internal
6 data we have been furnished by Amtrak, and
7 that's found elsewhere, I believe on page 6
8 of this document, 6 or 7.

9 The drop in employment has driven
10 an unprecedented improvement in productivity
11 levels on the system. That's shown in
12 attachment 56, where you can see from 2000
13 alone over the pendency of these negotiations
14 productivity has gone up by 48 percent. This
15 is measured as seat miles per employee or
16 seat miles per total hours paid for, the
17 traditional measures of labor productivity in
18 the industry.

19 Since the -- since Amtrak announced
20 in 2002-2003 period that it needed work rule
21 reforms to improve productivity, productivity
22 has nevertheless jumped 13 percent, again, a

1 spurt that has little precedent in the entire
2 history of the organization. It would seem
3 to me there would be mitigation on the need
4 for any work rule changes to produce
5 productivity under circumstances when it has
6 been skyrocketing.

7 Finally, we have an attachment 57
8 analysis of unit labor costs and compare them
9 to unit labor cost changes in all U.S.
10 business, and as you can see, labor costs
11 here both in real terms and nominal terms has
12 fallen. This is a measure that captures the
13 experience of the organizations before you
14 and not the whole system. I'm focusing here
15 on the experience of the organizations.

16 What I'd like to conclude with is
17 -- based on the evidence is that it certainly
18 can be demonstrated and I think that we have
19 -- that Amtrak does not have any labor cost
20 problem that deserves any kind of attention
21 by way of concessions in this round of
22 bargaining.

1 If nevertheless in the wisdom of
2 the Congress it refuses to finance the public
3 good that we recognize ourselves and that has
4 been historically identified and paid for,
5 then we believe that Amtrak should go out of
6 business. This enterprise has no business
7 paying lower than what is the competitive
8 labor rates, and if the consumer of the
9 public good is not willing to recognize the
10 price for that portion of Amtrak's services,
11 then the enterprise should go out of
12 business.

13 There is no entitlement here.
14 Amtrak talks about the entitlement that
15 employees have to retroactivity, arguing
16 well, there's no such entitlement. Well,
17 there is no free lunch for the public either
18 and if there's no will to finance the public
19 goods that this organization produces,
20 consistent with demonstrable and appropriate
21 labor standards, then it should be out of
22 business.

1 CHAIRMAN TREDICK: Does that
2 conclude your testimony, sir?

3 THE WITNESS: I think so. I think
4 I'm out of time.

5 MR. WILDER: I think you're
6 certainly getting close to that.

7 CHAIRMAN TREDICK: I wasn't looking
8 at my watch. Are there any questions here?

9 MR. JAVITS: I guess, I don't know,
10 you meant your last comment as hyperbole that
11 if Amtrak can't pay labor rates, it goes out
12 of business and should go out of business.
13 I'm not sure that 17,000 or so Amtrak
14 employees would necessarily agree with that,
15 that is, if Congress doesn't subsidize. We
16 just went through, on the airline side, an
17 awful lot of bankruptcies and there was no
18 federal subsidy. And I don't think a few
19 hundred thousand employees of the airlines,
20 regardless of Congress' action, wanted their
21 airlines to go out of business even though
22 they weren't paying the going labor rate.

1 So I -- you know, I -- it's not to
2 say that Amtrak's financial situation should
3 be borne exclusively on the side of -- on the
4 backs of its employees, but seems to me some
5 recognition of Amtrak's situation, political
6 reality, including financial situation, is
7 not unwarranted.

8 I mean, I guess my question would
9 be if Congress does not fund, let us say, 100
10 percent retroactivity, where do you see the
11 money coming from in Amtrak's financial
12 statement? And we had yesterday a good deal
13 of testimony in terms of what happened in '97
14 to the 2002 period where Amtrak almost did go
15 out of business, or at least that was what
16 was asserted.

17 Where do you see -- do you see a
18 repeat of that period potentially if full
19 retro is recommended by this board, if Amtrak
20 has to come up with that, or what do you see
21 happening if Congress doesn't chip in?

22 THE WITNESS: Well, fundamentally,

1 the Congress has to decide whether or not it
2 values Amtrak's public service. That is to
3 say that portion of the public -- of the
4 service that Amtrak provides that is in the
5 public nature.

6 And if it decides that it's not
7 valuable, then there's nothing these
8 employees can do. This is not controllable
9 at the bargaining table. The Congress will
10 do what it wills. You know, that's not to
11 say that I'm not confident that Congress will
12 view Amtrak as valuable and continue to meet
13 its obligation as long as it views that
14 obligation as incorporating labor standards
15 that are appropriate.

16 We're not asking the Feds to
17 overpay for services provided. We are asking
18 them to pay the competitive and normative
19 rates, labor rates. And below that is a
20 subsidy by employees that I don't believe the
21 public nor Congress expects. But the notion
22 that Congress has been stubborn about

1 increasing subsidies during the pendency of
2 these negotiations doesn't influence me and
3 should not influence the decisions of labor
4 -- of the labor organizations, because as the
5 consumer of the public product and being
6 required to meet the price of the public
7 product furnished by Amtrak, the consumer is
8 not going to voluntarily pay more for
9 something that it can receive for less.

10 We believe -- I believe, that
11 Congress acts in an economically rational
12 way. It's not going to come to you and
13 volunteer to pay for something that is
14 noncontractual. It's not going to offer the
15 money up. You don't shop at an electronic
16 store for Christmas going to buy a
17 wide-screen TV and say I don't think you're
18 asking enough for that. Let me pay more.
19 You wait for the price to be fixed.

20 It's this board's obligation to fix
21 the labor price and if it's fixed in --
22 consistent with appropriate and acceptable

1 norms as PEB 234 said, then it will be up to
2 the Congress to finance it. I believe they
3 will.

4 Let me read you something and see
5 if this doesn't sound familiar. Quote, This
6 proceeding comes at a time when Amtrak is
7 facing the most serious fiscal challenge in
8 recent years. Even with federal operating
9 subsidies, Amtrak is projecting a substantial
10 deficit for fiscal year and cash reserves are
11 virtually exhausted. Summer furloughs and
12 other cost-cutting measures will be
13 implemented to make up the shortfall. Due to
14 severe undercapitalization in the 1980s,
15 Amtrak needs several billion dollars in
16 capital funding merely to sustain existing
17 operations much less grow and expand,
18 unquote.

19 This is not deja vu. You heard
20 that today, yesterday and we heard it in
21 1992. That's a quote from Graham Claytor,
22 who was the then-president and CEO 15 years

1 ago of Amtrak.

2 We have been threatened by this in
3 every round of bargaining since 1975. This
4 is not influential. It's not a motivating
5 force for the employer to come to the table
6 and say the consumer won't give us any more
7 money for what we're asking -- when it
8 doesn't have to. Of course they won't. This
9 is public sector bargaining. This is no
10 different than 200 other cases I've ever been
11 involved in and I've never been in a case
12 where the employer volunteered the money.

13 It shouldn't happen. It doesn't
14 happen. Your job is to set the appropriate
15 labor price. We do that at the bargaining
16 table irrespective of the willingness of
17 Congress to increase the subsidy. And then,
18 after the price is set and the agreements are
19 made, Congress will make the decision.

20 And what I made, which was not
21 hyperbole, if it ever is determined that the
22 appropriate labor standards cannot be

1 financed by the government, it's not willing
2 to recognize its share, and understanding
3 full well that the nature of the enterprise
4 cannot be profitable, that there's no such
5 commuter railroad or passenger transportation
6 system in the world, that is, recognizing
7 that reality, and if the Congress refuses to
8 finance appropriate wage levels and
9 appropriate labor standards, then it doesn't
10 deserve to be in business. This enterprise
11 doesn't deserve a free ride on the backs of
12 labor.

13 MR. JAVITS: Let me just ask the
14 reverse question, if I can. You've done
15 freight negotiations. I assume that when
16 labor organizations go into freight
17 negotiations that they point out the
18 financial health of the freights, that is,
19 their earning billions of dollars in profits
20 per year and argue that labor deserves its
21 fair share of that.

22 Is there any relationship in your

1 view between financial health and labor
2 rates?

3 THE WITNESS: In the long run --

4 MR. JAVITS: And let me just -- the
5 ultimate reversal I suppose is why aren't
6 freights following Amtrak rates if you
7 believe that Congress ought to be paying full
8 whatever -- you know, the full amount that
9 you describe?

10 THE WITNESS: Well, first of all,
11 the question's a large one. It's the
12 materiality of kind of the ability to pay and
13 the financial ability of carriers in freight
14 negotiations. And the fact of the matter is
15 in that part of the world, we had been
16 dealing with an employer that had been going
17 out of business for a hundred years.

18 And it -- and there, the railroad
19 unions made a choice between jobs and wage
20 progress, and they never had -- and jobs went
21 away as railroads merged and went bankrupt
22 and wages continue to go up. That's a

1 decision that was made.

2 In recent years, after they had
3 become profitable, yes, we are opportunistic
4 and we argue that if you have a larger
5 profit, you ought to permit us to share in
6 those profits. But when you look at the
7 history of freight railroad bargaining, there
8 is no evidence there is a correlation in
9 profitability and wage progress or increases
10 in total compensation. I have done that
11 analysis. There is no correlation. In the
12 worst of times, we made progress. In the
13 best of times, we made the same amount of
14 progress.

15 MS. SANDBERG: Will you turn to
16 attachment 60, please?

17 THE WITNESS: Yes.

18 MS. SANDBERG: What's included in
19 terminations in that chart? Is this people
20 that are actually terminated from service, or
21 are these people that quit?

22 THE WITNESS: The terminations in

1 this chart would be all kinds of separations,
2 including quits and voluntary retirements.

3 MS. SANDBERG: Do you have any data
4 that shows specifically quits?

5 THE WITNESS: No. This data came
6 out from published sources from Amtrak and we
7 did not have any access to any separate quit
8 data or any other turnover data. This -- I'm
9 sorry, go ahead.

10 MS. SANDBERG: Just in looking at
11 the turnover rate, is that turnover rate not
12 significantly less than other transportation
13 sectors?

14 THE WITNESS: It's less than the
15 economy as a whole. It's not necessarily
16 less than other transportation sectors. I've
17 only seen this kind of data on an ad hoc
18 basis like an airline or individual transit
19 system.

20 MS. SANDBERG: Thank you.

21 CHAIRMAN TREDICK: Thank you, Mr.
22 Roth. Maybe we should stand down for five

1 minutes to give the reporter a break.

2 MR. WILDER: I think that's a good
3 idea, Mr. Chairman. I did want to note for
4 the record that Mr. Roth has prepared a
5 summary statement in support of the PRLBC's
6 request for an increase in the meal
7 allowance. I believe that his statement is
8 self-explanatory and therefore, we would rely
9 on his written statement instead of eliciting
10 additional oral statements.

11 CHAIRMAN TREDICK: Thank you. I
12 think we have that statement.

13 MR. REINERT: Who's the next
14 witness, Mr. Chairman?

15 MR. WILDER: Mr. Daniel Biggs.

16 CHAIRMAN TREDICK: Okay, let's take
17 a five-minute break.

18 (Recess)

19 CHAIRMAN TREDICK: All right, we're
20 back on the record. Mr. Wilder?

21 MR. GUERRIERI: It will be Mr.
22 Guerrieri. That's fine. As a preliminary

1 matter, I just wanted to note that at the
2 break I put before each Board member and
3 opposing counsel about 14 pages of documents
4 which Mr. Biggs may reference during his
5 testimony. For the record, perhaps we ought
6 to refer to it as Exhibit C to the written
7 testimony of Mr. Biggs. We now have A and B
8 attached to his statement. We'll just call
9 this C if that makes it easier.

10 CHAIRMAN TREDICK: That's fine.

11 Whereupon,

12 DAN BIGGS

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

15 DIRECT EXAMINATION

16 MR. GUERRIERI: Mr. Biggs, our next
17 witness, began his railroad career as a
18 ticket clerk for Amtrak in 1975. He held a
19 number of local and regional union offices,
20 and in 1991 he was elected as a General
21 Chairman of the TCU representing Amtrak
22 clerical employees and onboard services

1 employees. He ultimately was elected
2 International Vice President in 2004 and then
3 International Secretary/Treasurer in 2006 of
4 the TCU.

5 He has served as the Labor Chairman
6 of the Joint Medical Administration
7 Committee, or JMAC, for the past 11 years.
8 And, as has been mentioned before, JMAC is
9 the Administrative Oversight Committee for
10 the negotiated medical plan at Amtrak, also
11 known as AM plan. JMAC is comprised of three
12 management representatives, three labor
13 representatives with each side selecting its
14 own chairman.

15 As I mentioned, Mr. Biggs is the
16 Labor Chairman of JMAC. For the past four
17 years, he has served as a member of the Joint
18 Plan Subcommittee of the Railroad Employees
19 National Health and Welfare Plan which covers
20 employees of the major freight railroads.

21 He is personally familiar with both
22 the national plan and the Amtrak plan and

1 will testify on behalf of all nine unions
2 today.

3 You may proceed, Mr. Biggs.

4 THE WITNESS: Good afternoon, Mr.
5 Chairman, members of the Board. I appreciate
6 the opportunity to testify today because I am
7 personally familiar with both the negotiated
8 health and welfare plans covering Amtrak
9 workers and the plans covering workers of the
10 major freight railroads.

11 At the outset, I want to clarify
12 that the Joint Medical Administration
13 Committee's authority at Amtrak is limited to
14 administering the Amtrak medical plan. It
15 has no authority to modify benefits, and the
16 members of the committee have always been
17 very careful not to do so. That limitation
18 was set forth in the 1996 agreement between
19 Amtrak and all of its unions which
20 established JMAC.

21 As Mr. Guerrieri said, I also serve
22 on the Joint Plan Subcommittee of the

1 Railroad Employees National Health and
2 Welfare. I'm going to refer to that as the
3 national plan. The role of that committee is
4 to investigate issues and problems facing the
5 plan and to make recommendations to the
6 policyholders which are the Class 1 freight
7 railroads and the rail unions.

8 For me, the easiest part of these
9 two assignments stems from the fact that the
10 national plan and AM plan, which is what we
11 call the medical plan at Amtrak, are
12 essentially the same in structure and benefit
13 design. Both are self-funded, and each
14 medical plan offers participants a point of
15 service network plan called the managed
16 medical care program.

17 Both plans also offer a basic
18 indemnity plan option with deductibles and
19 coinsurance. In both instances, these
20 indemnity plans are called the comprehensive
21 healthcare benefit.

22 There are many other identical

1 features of AM plan and the national plan
2 which I detail in my written report. In
3 fact, except for the administration of the
4 plans and prior to the current eight-year
5 bargaining impasse at Amtrak, the benefits
6 provided by both plans were virtually
7 identical.

8 I am here today on behalf of all of
9 the unions appearing before you to argue that
10 this historic parity should be maintained.

11 At first blush, we do not appear to
12 be far apart from Amtrak in health and
13 welfare matters. Most of the specific items
14 Amtrak has proposed come directly from the
15 last two national freight agreements. Where
16 differences do exist, it is because Amtrak is
17 seeking all of the labor concessions from the
18 national freight agreements, particularly the
19 formula for employee monthly contributions,
20 but adding additional labor concessions not
21 in the national agreements and at the same
22 time failing to provide a number of benefit

1 improvements that were part and parcel of
2 those freight agreements.

3 Under Amtrak's proposal, employee
4 contributions will be at the same level as
5 freight employee contributions, or perhaps
6 higher, but the benefits at Amtrak would be
7 inferior to the national plan in a number of
8 respects.

9 Amtrak's proposal is frankly -- and
10 this is a word you've heard a number of times
11 -- an attempt to cherrypick from the national
12 plan to its benefit and to the detriment of
13 its employees. Amtrak seems to break or
14 severely bend a 30-year history of parity
15 between Amtrak and the freight railroads on
16 health and welfare matters. We propose
17 instead to maintain parity by adopting
18 changes to the national plan. Changes good
19 and bad, concessions and improvements.

20 Before Amtrak even existed, the
21 national plan medical plan emerged out of
22 bargaining in the 1950s and 1960s at a time

1 when inner-city passenger railroad service
2 was owned and operated by the freight
3 railroads. Amtrak began operating in May
4 1971. As Amtrak assumed train routes and
5 amassed its own employees, it sought and was
6 granted inclusion into the multiemployer
7 national plan and it made agreements with its
8 unions for coverage under that plan.

9 By 1976, all of Amtrak's unionized
10 employees were covered by the national plan.
11 During the late 1970s, the freight railroads
12 and unions negotiated additional health and
13 welfare benefits, such as a medical plan for
14 preMedicare retirees, a dental plan,
15 off-track vehicle insurance and supplemental
16 sickness plans.

17 The very same benefits were
18 afforded the employees at Amtrak. These
19 improvements were negotiated between Amtrak
20 and its unions through standby agreements
21 which automatically applied to Amtrak the
22 results of the national freight contract.

1 In 1987, Amtrak advised its unions
2 it intended to withdraw from the national
3 medical plan, and the unions responded that
4 Amtrak was required to bargain that matter.
5 This dispute was settled by SBA 1029, which
6 ruled Amtrak had the right to leave the
7 national plan as long as benefits remained
8 comparable. Employee contributions are not
9 at issue in that award or at that time, since
10 there were none.

11 Eventually, Amtrak did withdraw
12 from the national medical plan and
13 established AM plan on January 1, 1997. The
14 AM plan medical and prescription drug, life
15 and AD and D plans were established as mirror
16 images of the national plan group policy
17 GA2300. An AM plan medical plan for
18 preMedicare retirees was also established,
19 and it was a mirror image of national plan
20 GA4600.

21 Amtrak did not establish its own
22 dental plan but remained a participating

1 employer in the national dental plan. Amtrak
2 also continued to participate in the national
3 supplemental sickness plans covering
4 signalmen, Shopcraft employees, maintenance
5 of way employees and supervisors. At that
6 time, neither the national plan nor Amtrak
7 provided vision care coverage.

8 Subsequent to its leaving the
9 national plan, Amtrak closely adhered to the
10 obligation placed upon it by SBA 1029 to
11 provide the same level of benefits as the
12 national plan. To give you one cogent
13 example, in January 2005, I personally
14 discovered and pointed out to Amtrak it had
15 overlooked providing certain preventive care
16 benefits when it withdrew from the national
17 plan eight years earlier. Once that fact was
18 verified to Amtrak's satisfaction, it moved
19 quickly to add those benefits to AM plan,
20 still mindful of the ruling by SBA 1029,
21 which had been issued some 15 years earlier.

22 Amtrak's testimony before this

1 Board was wrong in suggesting to you that
2 there have always been significant benefit
3 differences between AM plan and the national
4 plan. In reference to the so-called benefit
5 differences depicted yesterday on a slide and
6 listed on page 5 of Mr. Rand's written
7 statement, there were a number of factual
8 inaccuracies which I'd like to point out.

9 For example, it's not true that
10 only AM plan replaced the only
11 preauthorization lists of medical conditions
12 with care coordination. In fact, that
13 administrative change was undertaken by both
14 AM plan and the national plan. And both
15 plans still require prenotification for such
16 items as nonemergency hospitalization,
17 private duty nursing, home healthcare and
18 organ transplants. One can find this
19 information in the national plan summary plan
20 description and in the Amtrak benefits
21 handbooks, and that is some of the material
22 which you have been provided copies of the

1 pertinent pages from those documents.

2 It's also wrong to suggest only AM
3 plan has a nurse line. All three medical
4 plan vendors for the national plan offer
5 nurse line services for the plan. The actual
6 phone numbers appear on page 60 of the
7 national plan SPD.

8 In any case, establishing a nurse
9 line is also an administrative matter
10 regarding access to advice, not a difference
11 in benefits. And in regard to the plans
12 having different managed care networks,
13 that's most decidedly an administrative
14 matter and not a difference in benefits.

15 Plans administered separately will
16 have different networks. That is the nature
17 of the beast. Medical plans contract with
18 insurance companies to administer the plan
19 benefit design, and those vendors provide the
20 networks. The national plan has since the
21 early 1990s had at least two nationwide
22 vendors. And currently, it has three:

1 United Healthcare, Aetna, and Blue Cross,
2 each of which provides distinct networks for
3 the plan.

4 AM plan has just one nationwide
5 vendor. Originally, it was Prudential and
6 currently, it is United Healthcare. Plus, it
7 has utilized from time to time regional
8 vendor networks.

9 As I stated previously, the
10 national plan Amtrak utilized an identical
11 plan structure of offering the MMCP managed
12 care networks on a nationwide basis and
13 offering the indemnity plan option. The
14 national plan and AM plan networks are
15 comparable, and it is misleading to suggest
16 that network differences are evidence of a
17 pattern of benefit differences.

18 Mr. Rand also pointed to three
19 benefits as so-called, quote, key
20 differences. They were: One, a slightly
21 different emergency room copay requirement.
22 Two, a variance in childhood immunizations.

1 And three, elimination of the maximum
2 limitation for hospice care.

3 None of these items were negotiated
4 through the regular Section 6 bargaining
5 process. Rather, JMAC recommended these
6 changes to both labor and management as in
7 the interest of the participants and the plan
8 itself.

9 JMAC was advised by our consultants
10 that the emergency room copay variance was
11 needed because Prudential Healthcare, which
12 at that time administered the Amtrak medical
13 plan, had failed miserably trying to police
14 the copay rebate, a feature that was unlike
15 the rest of Prudential's book of business.
16 JMAC was told to try to continue the rebate
17 could cost Amtrak more in administrative
18 costs than to simply reduce the initial \$30
19 copay to the \$15 rebate.

20 JMAC consultants also performed a
21 return on investment study on expanding
22 immunization coverage for diseases such as

1 hepatitis B, meningitis and chicken pox.
2 They recommended that change as very likely
3 to reduce plan costs in the long run. And
4 the elimination of the hospice cap was
5 recommended so as to discourage members from
6 remaining in a hospital at higher expense
7 when hospice care was a reasonable and
8 significantly less expensive alternative.

9 Labor met to discuss the JMAC
10 recommendation to change the immunization
11 provision in June 1998. As JMAC Labor
12 Chairman, I notified Amtrak by letter that we
13 had approved that change.

14 On September 22, 1999, labor met
15 and approved the changes for the emergency
16 room copay and hospice care, and I also
17 notified Amtrak of that by letter. Those
18 letters attest to the fact that the changes
19 were agreed to outside of the traditional
20 bargaining arena because first, they were
21 extremely minor in nature. And secondly,
22 they were recommended for purposes of

1 administrative simplicity or to achieve some
2 small savings to the plan while
3 simultaneously slightly improving several
4 benefits.

5 They were not then and are not now
6 evidence of a pattern or past practice of
7 benefit design differences between AM plan
8 and the national plan. Mr. Chairman, the
9 Board also has copies of both of those
10 letters to which I just referred.

11 The fact is that as a result of the
12 decision by SBA 1029 and pattern bargaining,
13 before the current eight-year impasse at
14 Amtrak, benefits were virtually identical.
15 The genuine benefits, benefit differences
16 that exist today between AM plan and the
17 national plan, are a product of the most
18 recent rounds of freight bargaining. The
19 most significant change, of course, was the
20 requirement that active employees contribute
21 on a monthly basis toward the cost of their
22 benefits.

1 National freight employees
2 currently contribute 16625 per month. The
3 Amtrak employees represented by the unions
4 now before you, on the other hand, do not pay
5 any monthly contribution. The freight
6 employees' actual dollar contribution is
7 established by a formula calling for the
8 employees to pay 15 percent of the monthly
9 amount that the railroads pay for medical,
10 dental, vision care benefits and life, and AD
11 and D insurance. The contributions that are
12 collected on a pretax basis are adjusted each
13 January 1 based upon the railroad's monthly
14 payment rates that are established prior to
15 each new year. In fact, the adjustment has
16 already been made for 2008, and we do know
17 that the employee contribution will remain
18 next year at 16625.

19 The freight agreements also provide
20 for the contribution cap that's been referred
21 to, namely, that if the 15 percent
22 calculation in 2010 would result in employee

1 contributions exceeding \$200, a \$200 cap will
2 be applied unless the 2009 contribution had
3 already exceeded \$200, in which case the 2009
4 contribution will continue in 2010.

5 Contribution amounts are frozen
6 after 2010 unless modified in subsequent
7 bargaining. Amtrak has proposed a lookalike
8 contribution formula. Amtrak proposes that
9 employee monthly contributions will be set at
10 16625 on October 1, 2007. For 2008 through
11 2010, Amtrak is willing to apply the 15
12 percent formula to its plans, including the
13 200-dollar cap for 2010; however, Amtrak
14 proposes to adjust contributions each July
15 1st.

16 Unlike the freights, Amtrak's
17 monthly cost of its medical plan for any
18 given year is not established prior to the
19 new year because Amtrak has chosen not to
20 prefund that plan. Instead, monthly plan
21 costs become known to Amtrak retrospectively
22 after claims are processed and reported.

1 It's worth emphasizing for me that
2 it is entirely Amtrak's choice not to prefund
3 its plans for the coming year in the way done
4 by the national plan and many other
5 self-funded plans. And it is solely Amtrak's
6 proposal to adjust employee contributions on
7 July 1st of each year instead of January 1st.

8 Amtrak now tells us for the first
9 time at this Board that because its proposal
10 to adjust contributions in July may save
11 employees approximately 6 to \$7 a year
12 beginning in 2009 that employees should pay
13 that amount and more in the form of lesser
14 benefits.

15 We reject any scheme that results
16 in our members at Amtrak paying the same
17 contribution as their freight counterparts
18 for lesser benefits, nor do we want our
19 Amtrak members paying a higher contribution
20 for the same or lesser benefits.

21 As Joel Parker testified, the PRLBC
22 unions propose that Amtrak employee

1 contributions be in the identical amount as
2 paid under the freight agreement. The
3 Shopcraft Coalition unions and ARASA are
4 willing to accept Amtrak's proposal to apply
5 the 15 percent formula to its own plan
6 experience so long as the amount is capped at
7 no greater than the actual payment under the
8 freight agreement for the same calendar year.

9 As information, AM plan's costs on
10 a per-employee, per-month basis, had been
11 lower than the national plan from 1997
12 through 2004. But there was over those years
13 a steady narrowing of Amtrak's comparative
14 cost advantage. In 2005 and 2006, AM plan
15 costs slightly exceeded those of the national
16 plan, and for 2007, it appears that the
17 per-employee costs of AM plan and the
18 national plan will be virtually the same. A
19 chart of cost comparisons is attached to my
20 written statement.

21 No one can safely predict whether
22 or not Amtrak will enjoy a comparative cost

1 advantage over the freights in the future,
2 but if Amtrak did become consistently more
3 costly than the national plan, Amtrak
4 employees should not be forced to pay the
5 price through their contributions. Amtrak
6 did not share its cost savings in the 1997 to
7 2004 period by offering its employees greater
8 benefits than the national plan, and its
9 employees should not in future years be
10 saddled with higher contributions than their
11 freight counterparts as a result of Amtrak's
12 decision to leave the national plan a
13 decision that employees had opposed.

14 I want to now refer you to the
15 color-coded benefits chart that you have
16 before you. It compares the benefit changes
17 in the national plan to the Amtrak proposals.

18 Looking at the chart, all items
19 under the column labeled NATIONAL PLAN
20 RAILROAD CHANGES SINCE 1-1-2000 appear in a
21 tan color. And in the column labeled
22 AMTRAK'S PROPOSALS IN BARGAINING, if an item

1 appears in the same tan color, that means
2 that the Amtrak proposal appears to be
3 identical to the national plan provision.

4 As you heard yesterday, and as
5 jumps out at you on the chart, Amtrak is
6 happy to propose the very same cost
7 containment and cost shifting measures that
8 were agreed upon for the national plan.
9 These are quite significant from an employee
10 cost perspective and they include increased
11 deductibles, increased out-of-pocket annual
12 maximums for both managed care out-of-network
13 services and for the comprehensive plan,
14 increased copays for prescription drugs,
15 increased copay under managed care for visits
16 to doctors, and even higher copays for visits
17 to specialists and limiting the definition of
18 "other children considered to be eligible
19 dependents."

20 Now, you will next see on the chart
21 an Amtrak proposal in yellow, because it
22 varies from the national plan provision. But

1 if you look over to the right, you will also
2 notice that in this instance, Amtrak's
3 proposal, while slightly different from the
4 national plan, is acceptable to us. I'll try
5 to explain that briefly.

6 Amtrak proposes to reduce the
7 indemnity plan coinsurance for employees
8 choosing that plan who have the managed care
9 option available to them. They want to
10 reduce the coinsurance from 85 to 75 percent
11 in those instances. This would steer
12 participants to existing managed care
13 networks where contracted discounts with
14 providers are more advantageous.

15 The proposal comes directly from
16 the freight round of bargaining ending in
17 2004. In the most recent round of freight
18 bargaining, however, the union sought to have
19 managed care networks expanded to new areas
20 where discounts are, quite frankly, not so
21 good. In exchange for the railroads agreeing
22 to allow all three of the national plan

1 insurance company vendors to open up new
2 managed care networks to the plan's
3 population, the unions also agreed that
4 managed care would be mandatory for employees
5 residing in existing network areas.

6 Now, Amtrak cannot duplicate that
7 bargain because it has just one nationwide
8 medical plan vendor and it cannot provide
9 managed care networks in places such as
10 western Nebraska and Montana; however, we
11 recognize that AM plan has a fairly extensive
12 managed care network. We are agreeable to
13 this item in Amtrak's proposal.

14 Next on the chart you will see that
15 Amtrak proposes five benefit improvements
16 that come directly from the national freight
17 contracts. While these are not significant
18 in terms of costs, we give Amtrak credit for
19 including these in its proposal. They are
20 adding a routine annual physical as a covered
21 benefit, adding PKU testing for infants,
22 expanding speech therapy, eliminating the

1 copay requirement for a doctor visit for the
2 sole purpose of getting an allergy shot and
3 increasing so-called off-track vehicle
4 insurance for employees traveling on company
5 business.

6 At this point, Amtrak proposed two
7 other items at variance with the national
8 plan which were not previously known to us or
9 at least not understood by us. First, Amtrak
10 proposed to eliminate the monetary penalties
11 due a participant obtaining a brand drug when
12 "dispense as written" is not on the
13 prescription. And secondly, Amtrak proposes
14 a \$20 copay for visits to an urgent care
15 facility as opposed to a \$25 copay, a change,
16 by the way, that I think could very well
17 reduce AM plan costs. But in any case, on
18 the face of it, both of these modifications
19 provide some small benefit enhancement. So
20 thus far, then, the parties appear to be on
21 the same page so to speak.

22 But now we reach important items on

1 this chart where Amtrak is seeking additional
2 concessions not contained in the national
3 plan and which are unacceptable to us.

4 First and foremost, Amtrak is
5 seeking to shift costs to retired employees.
6 It proposes that retirees covered by the
7 preMedicare health plan contribute \$50 per
8 month. Amtrak seems to apply the higher
9 prescription drug copays to that population.
10 Neither provision was contained in the
11 freight agreements.

12 MR. JAVITS: Where are those in the
13 chart? That's under preMedicare retirees?

14 THE WITNESS: Correct. On the
15 second page, it's the first yellow square
16 that you see under Amtrak's proposal.

17 Neither the prescription drug
18 copays nor the retiree contribution was
19 included under the freight agreements.

20 In addition, I want to comment on
21 Amtrak's rationale. The rationale advanced
22 for this demand was terribly misleading. The

1 demand Amtrak says in Mr. Rand's written
2 statement -- and I'll just quote it -- is
3 driven by the principle of consistency and
4 recognizes that AM plan is a single plan
5 versus the separate plans for actives and
6 retirees maintained by the freights, end
7 quote.

8 As I stated previously, the Amtrak
9 retiree plan is a mirror image of the
10 national retiree plan, and both retiree plans
11 have completely different benefit designs
12 than the plans for active employees. Neither
13 retiree plan has a managed care network
14 feature, which is the mainstay of the plans
15 for the active employees. Instead, both the
16 Amtrak and national retiree plans provide a
17 basic 80/20 indemnity plan with a deductible
18 and a very limited lifetime benefit cap of
19 just over \$100,000.

20 Now, one cannot even claim that the
21 administration of the Amtrak retiree and
22 national plans are integrated. There is, of

1 course, an entirely separate eligibility list
2 for the retiree plan.

3 None of the voluminous reports that
4 JMAC reviews on a regular basis for the
5 active plan on cost, enrollment, utilization,
6 high-cost disease states and other matters,
7 contain any information on the retirees. The
8 claim reporting is completely segregated. To
9 call these plans a single plan is entirely
10 misleading.

11 But, more importantly, we believe
12 that shifting costs to retirees is a
13 misplaced objective and unfair to them.
14 These retirees are essentially on fixed
15 incomes, surviving on railroad retirement
16 annuities.

17 In addition, Amtrak does seem to
18 have forgotten that just seven years ago, it
19 agreed to maintain and improve the retiree
20 plans in exchange for reforms in the railroad
21 retirement system that would significantly
22 reduce its tier 2 retirement taxes. Now

1 Amtrak seeks to undermine that deal after
2 pocketing millions in reduced retirement
3 taxes.

4 Amtrak has also proposed to reduce
5 benefits for disabled workers. Under the
6 national plan, a disabled worker retains
7 coverage for as long as his disability
8 continues, up to two years following the year
9 in which he last rendered compensated service
10 or got vacation pay. And Amtrak wants to
11 reduce that coverage to 24 months from the
12 date of disability.

13 Here, Amtrak obviously aims to
14 reduce benefits for those who need them the
15 most. And precisely because disabled workers
16 are not able to work, they are normally not
17 in a position to purchase alternate coverage.
18 The current extended benefits provide an
19 essential safety net for our disabled
20 members, and we strongly object to Amtrak's
21 proposal to weaken that safety net.

22 Amtrak also wants an employee

1 opt-out feature that is quite different from
2 the freight agreements. Under the freight
3 plan, employees who can prove they have
4 alternate coverage, usually through a spouse,
5 may opt out of the medical plan and be
6 relieved of the entire monthly employee
7 contribution requirement. The freights also
8 pay each such opting-out employee \$100 per
9 month, and those employees continue to enjoy
10 dental and vision care benefits. I also want
11 to clarify that opt-outs only apply to the
12 active plan. There is no opt out for the
13 retiree plan.

14 Amtrak claims on paper that it also
15 wishes to allow its employees to opt out;
16 however, unlike the freights, it's unwilling
17 to give those employees the \$100 incentive
18 payment. In addition, Amtrak told us in
19 bargaining that an employee must opt out of
20 the medical and dental and vision plans in
21 order to be relieved of his or her monthly
22 contribution requirement.

1 Amtrak's proposal has the
2 appearance of an opt-out feature without much
3 substance. Under the far more generous
4 freight provision, less than 2 percent of
5 eligible employees have opted out in any
6 given year. Under Amtrak's proposal,
7 precious few employees could or would
8 voluntarily relinquish all medical, dental
9 and vision care benefits and do without the
10 \$100-per-month incentive payment.

11 Now, I need to note that it was not
12 entirely clear to me from Amtrak's
13 submissions to this Board whether Amtrak is
14 still insisting that employees must opt out
15 of all three plans rather than just the
16 medical plan. In any case, we urge this
17 Board to reject Amtrak's proposal and
18 recommend application of the national plan
19 provision.

20 Amtrak's proposal on emergency room
21 copays is also lacking. Under the freight
22 agreement, an employee in managed care must

1 pay \$50 copay for emergency room treatment.
2 If the diagnosis is a true emergency, the
3 copay is reduced to \$25. Amtrak also
4 proposes a \$50 copay, but Amtrak does not
5 want to apply the reduced copay for true
6 emergencies.

7 There really is no justification
8 for Amtrak's proposal that I can understand.
9 In 1998, AM plan found its medical plan
10 administrator could not implement the
11 emergency room rebate. Now, however, AM plan
12 is administered by United Healthcare, which
13 also administers the national plan. Higher
14 copays for emergency room usage as compared
15 to doctor office visits are implemented by
16 plans to discourage frivolous use of the more
17 costly emergency room setting.

18 Amtrak's proposal not to apply the
19 rebate for genuine emergencies has nothing to
20 do with such steerage. It simply means that
21 Amtrak employees will pay more than their
22 freight counterparts for using an emergency

1 room when doing so is both prudent and
2 necessary.

3 The remaining items on the chart
4 before you concern benefit improvements
5 agreed upon with the freight carriers which
6 Amtrak totally omits from its proposal.
7 These include updating supplemental sickness
8 benefits, increases in life insurance for
9 active employees from 10,000 to \$20,000, and
10 an accidental death and dismemberment
11 insurance from 8,000 to \$16,000, an expanded
12 network of providers under the vision plan, a
13 \$600 annual benefit for hearing testing
14 and/or hearing aids, and coverage for
15 cochlear ear implants. These improvements
16 were part and parcel of the overall deal with
17 the freight carriers, and we expect to have
18 them on Amtrak.

19 I want to note that the life and AD
20 and D benefit at Amtrak has not increased in
21 25 years, so the value of that benefit as
22 originally bargained has eroded significantly

1 in that quarter century.

2 I also want to emphasize that
3 Amtrak's refusal to agree to change
4 supplemental sickness benefits is tantamount
5 to a benefit cut. The supplemental sickness
6 benefits originally negotiated in the 1970s
7 provide income supplements to sick or
8 disabled workers in addition to railroad
9 sickness payments. Benefits are intended to
10 help replace workers' lost income and
11 therefore, benefit amounts are tied to wage
12 scales. In order that the value of the
13 benefits not be eroded and no longer provide
14 a sufficient income replacement value, they
15 must be adjusted to reflect employees' more
16 current rates of pay.

17 At Amtrak, supplemental sickness
18 benefits have not been adjusted in many
19 years, and they lag far behind those of the
20 freight railroad employees. For example, the
21 monthly benefit for an Amtrak classification
22 1 Shopcraft employee is \$675. For a

1 comparable Shopcraft employee, same
2 classification for the private railroads, it
3 is \$1,189, or more than 70 percent higher.
4 These inequities speak for themselves.
5 Amtrak's supplement and sickness benefits
6 need to be updated and adjusted so as to
7 establish the same ratio of benefits to rates
8 of pay as exist under the freight agreements.

9 I also want to comment that all of
10 these benefit enhancements that Amtrak omits
11 from its proposal, except for cochlear ear
12 implants, occurred in the prior round of
13 freight bargaining covering 2000 through
14 2004. The great bulk of cost-saving
15 measures, on the other hand, took effect on
16 July 1, 2007, for some of the freight unions
17 and October 1, 2007, for others.

18 I think that Mr. Bress was well off
19 the mark yesterday in musing that Amtrak may
20 have missed out on the retroactive value of
21 the freight cost containment measures. Taken
22 as a whole, it's really been the employees

1 who have to a greater degree and a longer
2 period missed out on the benefit
3 improvements. Most of the cost containment
4 measures took place in 2007.

5 In the materials I provided you,
6 there is a two-page listing of the changes in
7 the national plan as to when they occurred in
8 the last two rounds of bargaining.

9 In closing, I want to emphasize
10 that the health and welfare benefits
11 negotiated for freight employees have been
12 the pattern for Amtrak health and welfare
13 benefits since 1976, shortly after Amtrak was
14 created. Amtrak voluntarily joined the same
15 plan. When Amtrak withdrew in 1997, the
16 basis for Amtrak leaving was that it would
17 provide comparable benefits.

18 In subsequent years, but before the
19 two most recent freight agreements, benefits
20 were virtually identical, and the current
21 discrepancies did not then exist. This Board
22 should not allow Amtrak to take a major step

1 toward ending that historic parity.

2 We seek the national plan changes
3 in the context of the overall national
4 pattern on wages, rules and benefits. This
5 Board should not ask our members on Amtrak to
6 accept lesser benefits for the same or
7 greater monthly contributions as their
8 freight counterparts. And I thank you for
9 your time.

10 CHAIRMAN TREDICK: Thank you, sir.

11 MR. JAVITS: A structural question.
12 This may be for counsel. If the Zumas award
13 applies and this Board doesn't recommend or
14 -- that may be irrelevant if the eventual
15 contract doesn't include the freight benefit
16 improvements, then would not the
17 organizations arbitrate the issue of whether
18 the benefits are comparable? And isn't that
19 the forum to address -- would that be the
20 forum to address that issue again if the --
21 if there weren't agreement on the improved
22 benefits since Zumas called for comparable

1 level of benefits?

2 THE WITNESS: Well, I think the
3 forum is collective bargaining, and it's been
4 the pattern bargaining.

5 MR. GUERRIERI: In further answer
6 to the question, the fact is we have been in
7 Section 6 negotiations to change the
8 collective bargaining agreement. What Mr.
9 Zumas had before him was an existing
10 collective bargaining agreement, and the
11 question of whether the -- Amtrak had the
12 right to withdraw from the national plan and
13 go into a new plan, then called AM plan. He
14 found that under the existing contract at the
15 time, they had the right to do it, but the
16 benefits had to be substantially the same.
17 Those weren't his words, but I think that's
18 the import of it.

19 Amtrak is now attempting to digress
20 from that and to make certain changes that
21 would make it different than what is
22 currently extant on the -- for the freight

1 railroads.

2 MR. JAVITS: But subsequent -- the
3 Zumas award doesn't apply to subsequent
4 improved benefits? Is that it?

5 MR. REINERT: Mr. Javits, I think
6 the issue is really a distinction between a
7 rights and an interest type arbitration
8 issue. Nick Zumas decided the issue under a
9 prior version of the contract, resolved that
10 issue. I think where the confusion comes
11 from is both sides sort of look at the Zumas
12 award as something of a guideline on how
13 they've dealt with each other on benefits
14 issues.

15 So you'll hear both invoking it as
16 part of our history, but the reality is we
17 negotiated the agreement for change, and
18 change, which occurred under the Zumas award
19 previously, is always an open issue.

20 MR. JAVITS: I guess that wouldn't
21 prevent the unions from arguing there's a
22 practice of improving benefits as the

1 freights have improved them, but that's --

2 MR. REINERT: I would never
3 speculate on what the unions could argue.

4 THE WITNESS: I could comment on
5 that. It's really been pattern bargaining
6 that solved that problem, because the benefit
7 changes don't always take effect at the same
8 time. So when I was talking earlier, they
9 may happen on the freights and then there may
10 be a lag time before they happen in Amtrak in
11 collective bargaining. We don't run off to
12 arbitration and say, you know, you have to
13 give -- to do this. We solve the matter in
14 collective bargaining. And that's again why
15 we are here discussing this matter.

16 MR. JAVITS: Thank you. If I may
17 ask for clarification for my education, with
18 respect to the retiree contribution proposal,
19 what is that equivalent to by way of
20 percentage of total premium, premium
21 equivalent, as it were, for the retiree
22 benefits, if you have that breakdown?

1 THE WITNESS: Well, it's a
2 difficult question. I do know that the
3 retiree premiums or payment rates are -- they
4 appear to be very low. It looks like a
5 little over \$100 a month or something. But
6 that's because the -- at least on the freight
7 side, the way they measure that is by their
8 active employee headcount divided into what
9 that plan costs to get a PEPM. I've never
10 seen it and we've never discussed it and
11 also, we never discussed it at AM plan, what
12 the cost is per participant in that plan. So
13 I just don't have the answer of what the
14 actual premium cost is per participant of
15 that plan.

16 MR. JAVITS: And the second
17 question is also a cost question. If you
18 don't have that, that's fine too. If you do,
19 I may as well get at least some feel.

20 With respect to the proposed
21 changes on eligibility for the disabled, do
22 you have any idea as to how many people would

1 be covered at least historically by being
2 there more than 24 months but within the
3 period of two years after the calendar year?

4 THE WITNESS: I don't. I do know
5 if an employee becomes permanently disabled,
6 this has no application. They're going to
7 apply for permanent disability under railroad
8 retirement benefit.

9 MR. JAVITS: Sure.

10 THE WITNESS: And most employees,
11 obviously, if you have a disability or
12 sickness, it's short-term. It's less than
13 this period so that they're not affected, but
14 I don't have a number.

15 MR. JAVITS: I don't know whether
16 this was more philosophical or whether it was
17 actually a money/large number of participants
18 issue, and that's why I asked.

19 THE WITNESS: It certainly is
20 philosophical in terms of how we feel about
21 that safety net.

22 MR. JAVITS: Fair enough. Thank

1 you.

2 MS. WITT: I just had one for
3 clarification. Your exhibit that we have now
4 marked as Exhibit C, where there are four
5 blank spaces under Amtrak's proposal and
6 bargaining and they are beside titles that
7 say increase life and AD and D, you explained
8 that the increase was from 10,000 to 20,000
9 for life insurance, for example. Does the
10 blank in Amtrak's mean there is no life
11 insurance and accidental death? Or that it
12 is not to be increased?

13 THE WITNESS: That it's not to be
14 increased.

15 MS. WITT: Okay.

16 THE WITNESS: The blank is because
17 they have no -- they have no proposal on
18 that. They've just left those items out of
19 their proposal.

20 MS. WITT: But there is coverage?

21 THE WITNESS: There is -- for
22 example, the current life benefit for active

1 employees is 8,000 -- is 10,000, and for AD
2 and D insurance it is 8,000, and those were
3 established 25 years ago.

4 MS. WITT: That would be the same
5 with the improved vision care. There is
6 vision care, but it is not enhanced?

7 THE WITNESS: Yeah. The main thing
8 there is that -- that is a network issue.
9 There's a vision care plan, but that we have
10 a lot of members that don't have access to
11 the network because we have a more restricted
12 network at Amtrak so this just expands the
13 network so more people can actually use it.

14 And the same thing with the hearing
15 -- well, the hearing benefit is different.
16 There is no existing hearing benefit at
17 Amtrak.

18 MS. WITT: Okay. For cochlear
19 implants, I take it.

20 THE WITNESS: That does not exist.

21 MS. WITT: Thanks.

22 THE WITNESS: For all cochlear

1 implants, that does not exist.

2 CHAIRMAN TREDICK: Thank you, Mr.
3 Biggs. Mr. Guerrieri, do you have another
4 witness? Mr. Wilder has another witness?
5 Okay.

6 MR. WILDER: Mr. Chairman, the
7 Passenger Rail Labor Bargaining Coalition
8 calls Dan Pickett.
9 Whereupon,

10 DAN PICKETT
11 was called as a witness and, having been first
12 duly sworn, was examined and testified as follows:

13 CHAIRMAN TREDICK: Welcome, and
14 proceed.

15 DIRECT EXAMINATION

16 BY MR. WILDER:

17 Q Would you give your full name for
18 the record?

19 A Willard Daniel Pickett.

20 Q Where are you employed, Mr.
21 Pickett?

22 A Brotherhood of Railroad Signalmen.

1 Q What is your position with the BRS?

2 A International President.

3 Q How long have you been a -- the
4 International President of BRS?

5 A Since 1992.

6 Q Okay. And that is an elected
7 position; is that correct?

8 A Yes, it is. Elected in '92, and
9 then again in '94. And '92, I was elected to
10 fulfill the position of our President
11 outgoing. Then in '94, I was elected by the
12 convention, and each four years thereafter.

13 Q Do you hold seniority in the rail
14 carriers?

15 A Yes, I do, hold seniority on the
16 old former Norfolk and Western Railroad,
17 which is now, of course, part of the Norfolk
18 Southern.

19 Q During your career as a union
20 official, Mr. Pickett, did you have occasion
21 to participate in collective bargaining with
22 Amtrak?

1 A Yes, I have. I have been in part
2 of the negotiations for the last three times
3 with Amtrak. That would be the '97, 2000,
4 and the 2005.

5 Q Were those negotiations conducted
6 on a single union -- a single-carrier basis?

7 A All three rounds that I was a part
8 of have been single-union and single-carrier
9 basis.

10 Q Is that also true of the 2005 to
11 2009 round?

12 A Yes.

13 Q I'm going to ask you, how many
14 direct negotiating sessions were held after
15 the BRS's Section 6 notices were served?

16 A Prior to holding our -- prior to us
17 asking for mediation, we had ten negotiating
18 sessions with Amtrak.

19 Q All right. And when, if at all,
20 did BRS apply for mediation?

21 A We applied for mediation in August
22 of 2001, and we first requested to be

1 released from mediation in December of 2002,
2 again in '04, July of '04, and again in
3 February of '05.

4 Q Now, speaking of both rounds, how
5 many bargaining sessions took place in
6 mediation?

7 A In mediation, we've held eight
8 rounds of bargaining sessions with the
9 mediator and Amtrak.

10 Q Were these meetings fruitful?

11 A They were not.

12 Q Why not?

13 A I feel that the reason -- or the
14 reason was that we never had a productive
15 meeting with Amtrak because Amtrak continued
16 to want to talk on a conceptual terms only.
17 They never gave us a concrete proposal for
18 wages or work rules. Amtrak also never gave
19 the BRS any information we requested about
20 how their concepts would affect operations of
21 the signal employees.

22 Q I'm preliminary going to draw your

1 attention to the summer of 2007. Did the BRS
2 attempt to encourage movement toward an
3 agreement with Amtrak?

4 A We feel we did. We tried to form a
5 coalition with other unions to try to enhance
6 our negotiations and felt that we had to try
7 something. After seven years with
8 negotiations with no agreements, we felt that
9 if we tried to put groups together, maybe it
10 would enhance our negotiations and it would
11 bring Amtrak to the table.

12 Q Now, what was the name of that
13 coalition?

14 A The Passenger Rail Labor Bargaining
15 Coalition.

16 Q When was that coalition formed?

17 A In August of 2007.

18 Q What organizations became
19 affiliated with the PRLBC?

20 A The four unions that are a part of
21 the PRLBC are the Brotherhood of Maintenance
22 of Way Employees department, a part of the

1 Teamsters, the Brotherhood of Railroad
2 Signalmen, the National Council of Firemen
3 and Oilers, which is a part of the SEIU, and
4 the American Train Dispatchers Association.

5 Q Did the PLRBC make a new proposal
6 to Amtrak?

7 A Yes, we did.

8 Q Okay. When was that proposal made?

9 A Made the proposal in September of
10 this year, and we took most all of our issues
11 that we had on the table off of the table and
12 tried to narrow down the issues to where that
13 we felt we could make a -- some progress in
14 our negotiations. We basically took the
15 proposals that we'd made in the last two --
16 or two rounds of the -- with the freight
17 lines, and that was our proposal to the
18 Amtrak.

19 Q I'm going to draw your attention to
20 PRLBC exhibits, volume 1, Exhibit 61, and I'd
21 ask you if that is the proposal that you made
22 to Amtrak on September 12, 2007.

1 A Yes, sir, it is.

2 Q What was Amtrak's reaction to that
3 proposal?

4 A Amtrak refused to even meet with --
5 or they met with us, but they refused to
6 address any of the issues that we had
7 proposed.

8 It's sad, but the fact is instead
9 of bargaining with the PRLBC, Amtrak sued the
10 PRLBC. Once again, this was to slow the
11 process and try to get the ENB to force the
12 unions in the PRLBC from their rights under
13 the Railway Labor Act.

14 Q What, if any, action did the PRLBC
15 take in response to that lawsuit?

16 A Once again, our whole effort was to
17 try to pursue to get an agreement and so what
18 we tried to do was to change what -- what
19 they had filed, the lawsuit, we then objected
20 to in the federal court in our complaint. We
21 waived this provision during the cooling-off
22 period so that hopefully, that we would

1 enhance our negotiations with the PRLBC.

2 Q Did the waiver of the objected-to
3 provisions make any difference to Amtrak's
4 willingness to bargain with you during the
5 cooling-off period?

6 A No. Even after we made the change
7 and told Amtrak of the change and gave them
8 copies of the change, they still refused to
9 meet with the PRLBC face to face or as --
10 with the separate unions.

11 Q Did the company eventually agree to
12 meet with the PRLBC?

13 A No, they did not.

14 Q All right. Did you on behalf of
15 the PRLBC agree to meet without prejudice to
16 the company's legal position?

17 A Yes, we did, and all the other
18 organizations also in the coalition. But
19 even after we agreed to meet without
20 prejudice to their position, Amtrak wouldn't
21 meet with the unions in the PRLBC.

22 Q Did the company make another

1 proposal?

2 A Yes, they made another proposal,
3 but not to -- directly to the unions in the
4 PRLBC. They gave our proposal to the
5 National Mediation Board mediators, and they
6 gave us their proposal. The proposal added
7 work rules that were more objectionable than
8 those discussed previously. The proposal had
9 many components of an agreement that had been
10 rejected overwhelmingly by another
11 organization.

12 Q Now, of the carrier's work rule
13 demands, those that were -- withdrawn.

14 When did the company make this
15 proposal?

16 A I don't that have date with me.
17 What it gave is a proposal -- September 17,
18 I'm sorry. They gave us the proposal on
19 September 17.

20 Q Now, of the carrier's work rule
21 demands, that is, those demands that were
22 delivered to the BRS recently, this year, are

1 any especially problematic for the BRS?

2 A I'll have to say many are
3 objectionable, but the changes requested in
4 the contracting out of signal work and work
5 assignments, they could never be ratified by
6 the BRS membership. The fact probably is
7 that this type of rule change would never
8 even be submitted to our membership.

9 Q Now, were these work rule demands
10 of the sort that you had seen at the national
11 freight table?

12 A Amtrak's proposal were the very
13 same off-the-shelf so-called demands that the
14 National Carriers Conference Committee gave
15 us initially but they withdrew in the
16 recently concluded national agreement.

17 Q Those demands include the ability
18 to subcontract out the BRS's work without
19 limitation?

20 A The short answer is yes, they did
21 ask to subcontract out our work. But I do
22 want to add on that that BRS has always met

1 with Amtrak to address Amtrak's needs to
2 contract out work. And most of the time,
3 those issues are resolved between the
4 parties.

5 If there is a true need for
6 contracting out, those issues are addressed,
7 and in many instances we allow contractors to
8 go on the property. The most information on
9 the proposal that the BRS received is
10 probably in Mr. Crosbie's testimony. And as
11 I read this proposal, what -- Amtrak would do
12 away with all of our construction forces, so
13 therefore, Amtrak would only keep the
14 maintenance forces with the BRS, because BRS
15 construction is all in capital. We don't
16 have a core work included. All that is
17 considered is capital work. They continue to
18 talk about the core, keeping the core work
19 done.

20 Signalmen are a very unique craft.
21 Most of our work is very highly skilled work.
22 Amtrak already knows this, because in one

1 instance, they contracted out signal work, a
2 mistake was made, and the contractor employed
3 by -- the contractor employ of such magnitude
4 that Amtrak removed the contractor from the
5 property.

6 It really does, it appears to
7 signalmen that Amtrak's biggest complaint has
8 that the labor relations department now is
9 required to meet with the BRS to work out an
10 agreement if they want to subcontract out our
11 work. We are more than willing to work with
12 them on subcontracting.

13 Q Mr. Pickett, I'm going to draw your
14 attention to PRLBC Exhibit 15. Do you have
15 that before you, Mr. Pickett?

16 A Yes, I do.

17 Q Can you tell us what that document
18 is?

19 A That's a document where Amtrak has
20 asked for us -- it's estimated cost of
21 contracting and a job brief, or brief job
22 description. It's different locations that

1 they've needed to contract out work.

2 Q I see. And does this listing
3 reflect agreements between the BRS and Amtrak
4 relative to jobs that were contracted out?

5 A Yes.

6 Q Would it be accurate to say that
7 the dollar amount of subcontracting goes from
8 a low of approximately \$10,000 to a high of
9 many millions?

10 A Yes, it does.

11 Q And this subcontracting was reached
12 by mutual agreement of the BRS and the
13 carrier; correct?

14 A That's correct.

15 Q I'm going to draw your attention to
16 Exhibit 3, to the written statement of
17 William Crosbie. And this is entitled
18 EXAMPLES OF NONCORE WORK, ENGINEERING CRAFTS;
19 is that correct?

20 A Yes.

21 Q Let me draw your attention in
22 particular to the last two pages of that

1 exhibit. Can you explain for the Board, Mr.
2 Picket, what the controversy was relative to
3 the replacement of a submarine cable for the
4 portal bridge in Kearney, New Jersey?

5 A I can explain that part of the --
6 was that we had the equipment, and our people
7 was willing to do the work, and we had to --
8 they had to go down below the surface of the
9 water, which that part, we were willing to --
10 but we felt that we could push a cable
11 through the -- under once they put the pipe
12 under there.

13 Q And what was the disposition of
14 this dispute over subcontracting?

15 A We never granted the concurrence
16 for this work and correctly insisted that
17 Amtrak do the work and train our employees to
18 do the work, once we had the work.

19 Q Was a grievance filed on this
20 subcontracting?

21 A No, there was not.

22 Q So there was no monetary claim

1 asserted by BRS regarding that dispute over
2 subcontracting; correct?

3 A That's correct.

4 Q Now let me draw your attention to
5 the camera and security equipment page, which
6 is the last page of Exhibit 3 to the Crosbie
7 statement. Can you tell the Board what that
8 dispute was about subcontracting?

9 A Camera and security work.

10 Q Is that the work within the scope
11 of the BRS agreement?

12 A Yes, it is.

13 Q Is there any dispute or any broad
14 dispute between the BRS and Amtrak that
15 camera and security equipment work belongs to
16 the BRS?

17 A There is no dispute that the work
18 is signalmen. The only dispute is that it's
19 -- they are saying that it's TSA work, that
20 it isn't even being done. But the work --
21 the dispute of whose work it is is certainly
22 -- they even concur that it's our work.

1 Q So the description of the disputes
2 over camera and security work are, in fact,
3 over a small subset of camera and security
4 equipment work, that is, the work that is
5 called for by the TSA; is that correct?

6 A That's correct.

7 Q And how did this -- did these three
8 disputes come out?

9 A It's my understanding that the work
10 was done by outside contractors. We will do
11 the maintenance on the work.

12 Q Was that decision by the carrier
13 grieved?

14 A It's my understanding, yes.

15 Q Part of it was grieved and part of
16 the --

17 A Yeah.

18 Q And obviously, the part that you
19 performed was not grieved.

20 A That's correct.

21 Q I'm going to draw your attention to
22 page 13 of Mr. Crosbie's statement which

1 reads, and I quote, specifically, Amtrak has
2 proposed, one, to modify its starting time
3 rules to permit any starting times for
4 engineering craft employees consistent with
5 operational requirements; two, to modify
6 rules governing to permit the starting time
7 of a gang to be changed temporarily upon 72
8 hours' notice; and three, to modify the
9 existing rules governing rest days as
10 necessary to permit Saturday and Sunday
11 coverage at a straight time rate, end of
12 quote.

13 Has the carrier given you a
14 specific proposal for scheduling signal work
15 according to what may be perceived as
16 operational needs?

17 A No.

18 Q I'm going to draw your attention to
19 PRLBC Exhibit 4, and paragraph 8. Is this
20 the proposal that the carrier recently gave
21 you?

22 A Yes, it is.

1 Q All right. And I note that the
2 date is November 7, 2002, not September 17;
3 is that correct?

4 A November 7, 2007, right.

5 Q Now let me draw your attention to
6 paragraph 8 on the last page of that
7 document.

8 A Uh-huh.

9 Q Paragraph 8 reads, modify existing
10 starting time restrictions to permit starting
11 times consistent with operational
12 requirements, eliminating the need for
13 specialized rules.

14 Mr. Pickett, over the course of the
15 eight years that the BRS and Amtrak have been
16 engaged in this major dispute, has Amtrak
17 ever given you a proposal that specifies the
18 kinds of changes that it wants in that area?

19 A Not that I'm aware of, no, sir.

20 Q Okay. Mr. Pickett, let me draw
21 your attention to PRLBC Exhibit 36 at page
22 36. Can you, first of all, tell us what this

1 exhibit is?

2 A It's a Federal Railroad
3 Administration study, and it says AN
4 EXAMINATION OF EMPLOYEE RECRUITMENT AND
5 RETENTION IN THE U.S. RAILROAD INDUSTRY.

6 Q Is this a recent report?

7 A Yes, it is August of 2007.

8 Q All right. Now drawing your
9 attention to page 36, does the FRA identify
10 retention challenges facing the nation's
11 railroads?

12 A Yes. Yes, they do.

13 Q And what is the foremost retention
14 challenge?

15 A The changing of work schedules.
16 There's numerous things that they addressed
17 during this, but one of the things that they
18 address is some of the things that's -- the
19 biggest problem for the railroads that the
20 railroads has got to face, and that is one of
21 the things that they said.

22 One of the big issues was with new

1 employees, and even existing employees, was
2 the 72-hour notice, or the changing of work
3 days, no consistency in when -- what
4 schedules you was working, no consistencies
5 of being off on the weekends.

6 Those all showed that when this --
7 after this test communicated back to the
8 railroads that when this was done, numerous
9 people left when they were even in the
10 interview process for these jobs. If they
11 knew that they were going to get into this,
12 they left. Another large percentage left in
13 their probationary period because they
14 couldn't handle that. Even existing
15 employees, if you change them, they also
16 found that they weren't as safe, they weren't
17 as productive, and there's the thing that
18 they are urging the railroads to take a
19 serious look at of not having these type of
20 requirements on their workers to try to keep
21 us steady as work periods as they possibly
22 can.

1 Q Mr. Pickett, has the BRS known for
2 some time that the unpredictability of
3 scheduling has a negative impact on the
4 railroad's ability to retain workers?

5 A Yes, we have.

6 Q Were you able to discuss that at
7 the bargaining able with Amtrak?

8 A We were not.

9 MR. WILDER: Thank you, Mr.
10 Pickett.

11 CHAIRMAN TREDICK: Thank you, Mr.
12 Picket. Any questions here? You're excused.
13 Thank you.

14 THE WITNESS: Thank you.

15 MR. WILDER: The organization calls
16 George Francisco.

17 MR. REINERT: Could we have some
18 prediction of how late we're going this
19 evening?

20 CHAIRMAN TREDICK: Yes. I was
21 hoping to go perhaps until 6 o'clock, if
22 that's agreeable.

1 MR. REINERT: How many witnesses
2 are we talking about?

3 MR. WILDER: I hope to beat that
4 schedule with one additional witness.

5 MR. REINERT: Okay. And perhaps
6 off the record we could talk about schedule
7 for tomorrow, because I think there's some
8 flexibility there that we need to address.
9 But we can wait until after we're done.

10 CHAIRMAN TREDICK: Okay, that's
11 fine. Welcome, Mr. Francisco. Proceed.
12 Whereupon,

13 GEORGE FRANCISCO
14 was called as a witness and, having been first
15 duly sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. WILDER:

18 Q Would you give your name for the
19 record, sir?

20 A My name is George Francisco, Jr.

21 Q Who are you employed by?

22 A I'm employed by the National

1 Conference of Firemen and Oilers Service
2 Employees International Union.

3 Q What position do you hold at that
4 organization?

5 A President of the National
6 Conference of Firemen and Oilers.

7 Q Do you hold seniority in the
8 carrier?

9 A I currently hold seniority on Metro
10 North. I was hired on the Penn Central
11 Railroad in 1971, and through consolidations
12 and mergers, my seniority is now on Metro
13 North Railroad.

14 Q How long have you been the
15 President of the National Conference of
16 Firemen and Oilers?

17 A Ten years.

18 Q All right. Also, were you involved
19 in national freight negotiations?

20 A Yes, I was.

21 Q In what capacity?

22 A As chief negotiator for the Firemen

1 and Oilers and as also Chairman of the
2 National Rail Labor Bargaining Coalition.

3 Q And that was the group that reached
4 the pattern agreement with the freight
5 railroads in this round; is that correct?

6 A That's correct.

7 Q You had occasion to be involved in
8 bargaining with Amtrak?

9 A I have been involved with
10 bargaining with Amtrak since 198.

11 Q Could you tell the Board very
12 briefly what the craft or class of firemen
13 and oilers do at Amtrak?

14 A Yeah. We do a number of different
15 duties on Amtrak. We clean the shops,
16 operate fork trucks. We service and clean
17 and fuel locomotives. We hostile engines. We
18 drive fuel trucks. We have stationary
19 engineers in fuel plants and in Penn Station,
20 New York, and Newark Station, New Jersey.

21 Q Were you present at a bargaining
22 session on or about November 26, 2007?

1 A Yes.

2 Q Can you tell me who was present?

3 A Who was present?

4 Q Yes. What organizations were
5 present?

6 A The organizations that were present
7 were the Firemen and Oilers, the Brotherhood
8 of Railway Signalmen, the Train Dispatchers
9 and the BMW.

10 Q Now, is this the -- are these the
11 organizations that presently compose the
12 Passenger Rail Labor --

13 A Yes.

14 Q -- Bargaining Coalition?

15 A Yes.

16 Q Did Amtrak meet with the Coalition
17 on November 26?

18 A No.

19 Q Did Amtrak deliver a proposal to
20 the Firemen and Oilers on November 26?

21 A No. The National Mediation Board
22 delivered a proposal to me and our

1 representatives on November 26.

2 Q And by your representatives, you
3 mean another official of the Firemen and
4 Oilers?

5 A Yes.

6 Q Did this proposal request the
7 Firemen and Oilers to accept unlimited
8 subcontracting?

9 A Yes. Should I elaborate?

10 Q Was that the first time since 1999
11 that the Firemen and Oilers have received a
12 subcontracting proposal from Amtrak?

13 A That's correct. There was no
14 contracting out proposal in their original
15 Section 6 notice, nor was there any other
16 proposals exchanged from 2000 to 2007 until
17 November 26th.

18 Q And was this subcontracting
19 proposal delivered during the cooling-off
20 period?

21 A Yes.

22 Q What is the likelihood of that

1 proposal being accepted by your members?

2 A First of all, no self-respecting
3 union would accept an unlimited contracting
4 out proposal. I would never even put it out
5 to my members because I wouldn't accept it.

6 Q Why is that?

7 A Well, because if we accepted
8 unlimited contracting out, there would be no
9 existence of any of our members on the
10 property, and there would be no collective
11 bargaining agreement to police.

12 Q By no collective bargaining
13 agreement on the property, do you mean that
14 if you had a dispute over some provision, and
15 you won, the company would simply contract
16 out the work or could simply contract out the
17 work?

18 A If I were to agree to it, unlimited
19 contracting out provision, yes.

20 Q Well, that's enough of
21 hypotheticals.

22 A Okay. All right.

1 Q Now, did the company also ask the
2 Firemen and Oilers to create lower wages for
3 utility workers?

4 A Yes. They requested to establish
5 two tiers for our classification of utility
6 worker.

7 Q Would you take a moment and tell
8 the Board what the utility workers do and how
9 their work has been the subject of bargaining
10 during the 1997 round and by way of
11 background?

12 A Okay. The utility worker is a
13 combination of former classifications that we
14 had working on Amtrak. We had
15 classifications of laborer, assigned laborer,
16 load equipment operator, power plant laborer
17 and power plant assigned laborer. They all
18 performed different duties within the Amtrak
19 facilities.

20 And what we did was we created a
21 utility worker to combine all of those
22 classifications into one. So now, a utility

1 worker would clean the shop, clean the pits.
2 They would drive fork trucks, deliver
3 material. And the same in the power plant
4 where we had a shop or power plant laborer
5 that was doing just one specific duty. He
6 would now be entitled to do numerous duties.
7 And we classified that as a utility worker.

8 Q When was this composite job
9 created?

10 A I believe it was the last round.

11 Q I see.

12 A It could have been earlier, to be
13 honest with you, but I believe it was the
14 last round of negotiation.

15 Q Was this change in the nature of
16 the job classification requested by Amtrak?

17 A Yes.

18 Q And you agreed with it?

19 A We agreed to it because what we did
20 was we upgraded everyone to the higher
21 classification of motor equipment operator
22 and created the new classification of utility

1 worker. So a number of our members got wage
2 increases. I don't remember what the wage
3 increases were, anywhere from 15 to 25 cents
4 per hour.

5 Q Those wage increases were given in
6 return for the increased flexibility that the
7 carrier wanted; is that correct?

8 A That's correct.

9 Q And what position is the carrier
10 taking today?

11 A Well, now they want to establish a
12 lower tier for utility workers, which is kind
13 of mindboggling, because they already have a
14 five-year entry rate for new employees coming
15 in. To establish a two-tier pay system --
16 the morale is very bad on Amtrak now. Can
17 you just imagine two employees working side
18 by side doing the exact same job earning a
19 lower rate of pay? To me, that's a
20 morale-killer. And there's nothing worse
21 than a disgruntled employee.

22 Q And what is Amtrak's alternative

1 proposal?

2 A Their alternative proposal?

3 Q Yes.

4 A I guess their alternative proposal
5 is to contract everything out and eventually,
6 probably, to do away with the utility work.

7 Q And that was your reward for
8 cooperation in the last round; is that right?

9 A I guess that would be my reward.

10 Q Last question, Mr. Francisco. Is
11 Amtrak looking to -- for the ability to have
12 part-time workers in the firemen oiler craft?

13 A That's a proposal I don't quite
14 understand, because we've agreed to part-time
15 employees the last round of negotiations. So
16 they already have the ability to have
17 part-time employees under our agreement, so I
18 don't understand that.

19 Q I see. So your current agreement
20 in article 6 says under paragraph A,
21 part-time positions may be established for
22 group A positions subject to the overall caps

1 specified in paragraph B. Amtrak already has
2 the flexibility that it's asking for; is that
3 correct?

4 A That's correct.

5 Q All right.

6 A And they're not utilizing it.

7 Q Have they utilized this
8 flexibility?

9 A They have. After we first
10 negotiated that rule, they did utilize it,
11 and -- but I don't think they've utilized it
12 in the last five to seven years, five to --
13 no, five years, I guess.

14 MR. WILDER: Thank you, Mr.
15 Francisco.

16 THE WITNESS: Thank you.

17 CHAIRMAN TREDICK: Thank you, Mr.
18 Francisco. You're excused.

19 THE WITNESS: I would just like to
20 thank the Board for your patience and your
21 stamina for being able to sit up there so
22 long.

1 CHAIRMAN TREDICK: We have had good
2 witnesses. It's been a good experience. Do
3 I understand, Mr. Wilder, there's one more
4 witness you wish to call today?

5 MR. WILDER: I am right on
6 schedule, Mr. Chairman.

7 CHAIRMAN TREDICK: Good.

8 MR. WILDER: The organization calls
9 Don Griffin.
10 Whereupon,

11 DON GRIFFIN
12 was called as a witness and, having been first
13 duly sworn, was examined and testified as follows:

14 CHAIRMAN TREDICK: Welcome, Mr.
15 Griffin.

16 THE WITNESS: Thank you, Mr.
17 Chairman.

18 DIRECT EXAMINATION

19 BY MR. WILDER:

20 Q Would you give your full name for
21 the record, Mr. Griffin?

22 A My full name is Don Frederick

1 Griffin.

2 Q Where are you employed?

3 A I'm employed by the Brotherhood of
4 Maintenance of Way Employees Division,
5 International Brotherhood of Teamsters.

6 Q What is your position with the
7 Brotherhood?

8 A I presently hold the position of
9 Director of Strategic Coordination and
10 Research. Prior to that, I was the Assistant
11 General Counsel.

12 Q Would you take a moment and inform
13 the Board of your employment history and
14 background?

15 A Yes. I was hired by the
16 Brotherhood in 1996 in the position of
17 Assistant General Counsel. I have been the
18 coordinator of BMW's presentations to
19 Presidential Emergency Boards number 234,
20 involving Amtrak, and 229, involving the
21 National Carriers Conference Committee, the
22 nation's freight railroads.

1 Prior to coming to the Brotherhood,
2 I had worked from 1987 to 1996 as an
3 associate and later partner at the law firm
4 of Hissong Maloney and Clark here in
5 Washington, D.C., representing rail labor
6 unions. Prior to that, from 1983 to '87, I
7 was the Assistant to the General Chairman pf
8 the Pennsylvania Federation of the BMWE,
9 dealt with Amtrak issues then. While working
10 for the Pennsylvania Federation, I attended
11 and graduated Rutgers University Law School
12 in Camden.

13 I hired out on the railroad in 1973
14 as a clerk telegrapher for the Southern
15 Pacific Railroad.

16 Q Mr. Griffin, as counsel for the
17 PRLBC, did I ask you to undertake to examine
18 certain legislative materials?

19 A Yes, you did. In particular, my
20 written testimony refers to the Amtrak Reform
21 Act and particularly, the provisions within
22 it related to the contracting out of work.

1 Q I see. And did you prepare a
2 statement setting forth the results of that
3 research?

4 A Yes, I did.

5 Q I see. Is that included among the
6 statements provided by the PRLBC?

7 A Yes, it is. It's the volume
8 entitled TESTIMONY OF DONALD F. GRIFFIN ON
9 BEHALF OF NONOPERATING ORGANIZATIONS.

10 MR. WILDER: Excuse me, Mr.
11 Chairman. I think the problem that I want to
12 bring to the Board's attention is that the
13 volume of -- entitled WITNESS STATEMENTS ON
14 BEHALF OF THE PRLBC, which we've referred to,
15 does not contain Mr. Griffin's statement.
16 And we will submit that for the record
17 tomorrow morning.

18 CHAIRMAN TREDICK: That's fine.

19 MR. WILDER: It's a separate
20 volume. That's right, thank you. This is
21 it. Got it.

22 BY MR. WILDER:

1 Q Now, I'm not going to ask you to,
2 particularly at this hour, ask you to read or
3 even summarize that statement. But there
4 have been a variety of comments made during
5 the course of this hearing to the effect that
6 Congress really expects us to be efficient.
7 Congress expects us to bargain hard, perhaps
8 even successfully, for work rule flexibility,
9 for the ability to subcontract out without
10 limitation.

11 And so my question to you, Mr.
12 Griffin, is: Did Congress make these
13 statements?

14 A No, Congress did not make such
15 broad and sweeping statements.

16 I'd like to start with the Reform
17 Act. The language contained in there
18 requires bargaining only about subcontracting
19 which would result in the furlough of an
20 employee. And, as my statement indicates,
21 the reason it was put into the collective
22 agreements is it became bargainable because

1 otherwise, it was a statutory mandate.

2 It's also important to note, as Mr.
3 Pickett has previously testified to and as
4 Mr. Dodd will testify to later, there never
5 has been any prohibition against bargaining
6 over subcontracting that would not result in
7 the furlough of an employee. And indeed,
8 there has been active bargaining on that
9 subject since the inception of Amtrak.

10 All that was expressed in the
11 Reform Act was a requirement that the parties
12 bargain over this narrow issue in quid pro
13 quo bargaining.

14 As Mr. Parker testified earlier
15 today, TCU engaged in such quid pro quo
16 bargaining in 2003 and concluded an agreement
17 that contained no change to this particular
18 provision in their collective agreement.

19 As Mr. Parker stated then, clearly,
20 that was not violative of the statute, nor
21 was that collective agreement the result of
22 it, as it related to subcontracting, ever a

1 subject of comment, to my knowledge, in
2 Congress. So I think that tends to put
3 finish to the argument that there was a
4 Congressional mandate to make changes to the
5 collective agreement on this particular
6 narrow issue of subcontracting.

7 Now, as to the area of efficiencies
8 -- and we have heard this over and over again
9 -- what I did is not contained in my written
10 testimony, but I engaged in research looking
11 at the last three fiscal years, 2006, 2007
12 and 2008, and specifically, the
13 Appropriations Committee reports. And I have
14 prepared excerpts of those.

15 Unfortunately, in the rush here, an
16 excerpt of the House Committee report I
17 believe it is for fiscal year 2006 was
18 omitted. I will get that to the Board before
19 the Board concludes.

20 But I looked at those reports
21 because, as other witnesses have testified,
22 Amtrak's authorization essentially expired in

1 2002 when the Reform Act authorization ended.
2 So where the appropriators have been are sort
3 of the ad hoc authorizers of Amtrak since
4 then, so I thought it would be worthwhile to
5 look to see what they said in those reports
6 about efficiency and how they defined
7 efficiency in particular and whether there
8 was any mention of collective bargaining
9 agreements in general or subcontracting
10 specifically.

11 Q Was there any indication in the
12 Congressional materials that you researched,
13 Mr. Griffin, that Congress sought to
14 stipulate any substantive term of any
15 agreement?

16 A No. There was absolutely no
17 evidence to that extent. And I looked at the
18 last three fiscal years, because I thought
19 they were significant. There are times when
20 -- at times both the House and Senate were
21 controlled by the Republicans and later when
22 they were controlled by the Democrats, and so

1 hopefully from these three fiscal years one
2 could obtain some sort of cross section and
3 synthesis of where Congress was going.

4 I realize the hour is late, and I
5 don't intend to go through this chapter and
6 verse, but what I would like to do is
7 summarize my conclusions, although I would
8 like to focus on one committee report in
9 particular.

10 When you look at the reports for
11 the fiscal years 2006 and 2007, there's
12 discussion of efficiencies, but when
13 efficiencies are discussed by the
14 appropriators, they are talking about a
15 number of things. They are talking about
16 subsidies in food and beverage service and
17 subsidies in first class service, such as
18 sleeping cars. They are also talking about
19 subsidies or routes, long distance routes
20 where the subsidies are, in their view
21 perhaps, excessive.

22 There is no discussion of

1 collective agreements. When they talk of
2 food and beverage, for example, they don't
3 want a federal dollar subsidizing a ham
4 sandwich served on a train. There is no
5 mention made in that discussion about the
6 collective bargaining agreement that applies
7 to the server of the ham sandwich.
8 Throughout these reports they talk about
9 potential savings if these services are
10 discontinued, and what they urge Amtrak to do
11 is to basically, if you're going to provide
12 the service, you should charge for it.

13 They also make mention, the
14 appropriators, in those two fiscal years that
15 perhaps the states are not contributing their
16 fair share to the maintenance of the
17 infrastructure on the Northeast Corridor.
18 And in particular, they are critical of
19 Amtrak's decision primarily focusing on the
20 Acela to, at a time of economic trouble, to
21 pour a great deal of money into high-speed
22 service whose design and implementation

1 initially was quite problematic involving
2 delays, that the Acela entered service, and
3 subsequent structural problems they had with
4 the train that required it to be pulled out
5 of service. And that's through fiscal years
6 2006 and 2007.

7 And then in 2008, for this current
8 fiscal year, there are expressions related to
9 collective bargaining but not to the
10 substance but to the lack of collective
11 bargaining that have been made between Amtrak
12 and the labor unions.

13 And in particular, I would like to
14 focus on an excerpt I presented to you. It
15 says CALENDAR 272 on the upper right-hand
16 corner, which comes out of the Senate for
17 this year, Senator Murray reporting on
18 Amtrak.

19 And that committee report is highly
20 critical of the lack of progress in
21 collective bargaining, noting the disparity
22 in wage rates between Amtrak employees and

1 freight employees, and noting that the lack
2 of agreements is resulting in a
3 demoralization of the workforce and that it
4 makes any attempt by Amtrak to propose
5 strategic initiatives problematic.

6 Now, what the committee report also
7 mentions about Amtrak are three things. They
8 are highly critical of Amtrak's attempt to
9 give managers a 10 percent locality pay bonus
10 when they had not concluded collective
11 agreements with their employees. They are
12 extremely critical of Amtrak's attempt to
13 outsource reservation work to India. In
14 fact, they say if you try to do it again,
15 then you will not get federal subsidies. We
16 are not using federal money to outsource and
17 offshore jobs.

18 And they are also critical of an
19 apparent golden parachute given to the
20 interim -- the former Interim President of
21 Amtrak, the entire package of which
22 apparently exceeded the salary of the

1 President of the United States, something
2 that Amtrak is prohibited from doing
3 unilaterally. Those are the -- those were
4 the observations the appropriators made.

5 And then there finally is what I
6 think is a rather telling remark from the
7 committee, and that's at page 93 in that
8 excerpt. It is actually the first full
9 paragraph on that page. And I would just
10 like to read it, because it goes to the
11 questions that have been raised here about
12 funding and what Congress may or may not do.

13 In this, the committee's report
14 says, and I quote, Amtrak's failure to reach
15 a labor settlement is not a result of
16 inadequate federal funding. To the contrary.
17 Salary and benefit costs are derived from
18 Amtrak's operating budget, which is financed
19 mostly by self-generated revenues. For each
20 of the last several years, the committee has
21 provided Amtrak with operating support at or
22 near the level sought by Amtrak's board of

1 directors. Any differences between the
2 larger overall funding request submitted by
3 Amtrak's Board and the actual federal
4 appropriations have come in the area of the
5 railroad's capital budget.

6 In other words, the claim of
7 inability to pay appears to be, at least in
8 this committee's opinion, self-inflicted.

9 MR. WILDER: Thank you, Mr.
10 Griffin.

11 CHAIRMAN TREDICK: Questions?
12 Thank you, Mr. Griffin.

13 THE WITNESS: Thank you.

14 MR. WILDER: I will note, Mr.
15 Chairman, that there is a very good reason
16 why Mr. Griffin's testimony was not included
17 with the PRLBC witnesses. That is because he
18 was speaking for all of the organizations in
19 this proceeding, and that's why his witness
20 statement was bound separately. The hour is
21 late. I regret forgetting that.

22 But with that in mind, the -- I

1 have one more witness, but I think we would
2 prefer to put him on tomorrow morning, if we
3 might. I think we will be able to finish
4 comfortably, because he'll be a witness of
5 the nature which you have heard recently, not
6 earlier.

7 CHAIRMAN TREDICK: Well, that's
8 certainly agreeable with me. So with that,
9 Mr. Reinert, are you agreeable to adjourn
10 now?

11 MR. REINERT: I'm agreeable to
12 adjourn. I would like to have some sidebar
13 discussion on what the schedule is going to
14 be for tomorrow, because I'm not sure where
15 the labor organizations are in their
16 allocation of time and how they're going to
17 allocate rebuttal and continuation of their
18 direct case tomorrow.

19 CHAIRMAN TREDICK: I have been
20 keeping track of the time, sir, but I agree.
21 Let's go off the record. Let's just conclude
22 the hearing for today.

1 (Whereupon, at 5:43 p.m., the
2 HEARING was adjourned.)

3 * * * * *

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

