

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 III

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

Thursday, December 13, 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
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1 P R O C E E D I N G S

2 CHAIRMAN TREDICK: Okay. We're on
3 the record, please.

4 The hearing will come to order.
5 Mr. Wilder, are you prepared with a witness?

6 MR. WILDER: We are prepared to
7 move forward with the testimony, Mr.
8 Chairman. Prior to examining the witness
9 seated beside me, I wanted to advise the
10 board that Leo McCann, the President of ATDA,
11 will not testify early. Mr. McCann provided
12 written testimony and we think that that
13 should be ample for the Board's purposes.

14 Mr. McCann is present and is more
15 than pleased to answer any questions the
16 Board has. If you do have questions of Mr.
17 McCann, I will be pleased to call him, but
18 otherwise we will stand on his written
19 testimony.

20 CHAIRMAN TREDICK: Thank you.

21 MR. WILDER: All right. The
22 organization calls Jed Dodd.

1 Whereupon,

2 JED DODD

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

5 DIRECT EXAMINATION

6 CHAIRMAN TREDICK: Good morning,
7 Mr. Dodd, please proceed as you will.

8 BY MR. WILDER::

9 Q Would you give your full name for
10 the record, please.

11 A My name is Jed Dodd. I'm the
12 General Chairman of the Pennsylvania
13 Federation, Brotherhood of Maintenance of Way
14 Employees, International Division of the
15 International Brotherhood of Teamsters. The
16 Federation is a division of the Maintenance
17 of Way that represents both freight and
18 passenger rail.

19 We also represent the -- the
20 freight and passenger rail. We represent the
21 men and women who build and maintain the
22 railroad, the buildings and bridges and the

1 electric traction system on the Southern
2 district.

3 The Federation is one of five
4 federations on Amtrak that represents Amtrak
5 workers. There's a Federation that
6 represents workers performing the same work,
7 except for the electric traction work, on the
8 Northern end.

9 And since 1984 I have chaired the
10 Brotherhood's bargaining committee on Amtrak,
11 and I've also chaired the Brotherhood's
12 bargaining committee on Norfolk Southern and
13 Conrail in the last two rounds of
14 negotiations.

15 Q Mr. Dodd, how long have you served
16 as the Chairman of the Pennsylvania
17 Federation?

18 A I've served in that capacity since
19 September 1st, 1983.

20 Q Is that an elected position, sir?

21 A Yes, it is.

22 Q All right. Have you had occasion

1 during your career as a BMWED official to
2 participate in collective bargaining with
3 Amtrak?

4 A Yes. This is the fourth round.
5 I've chaired the last four rounds of
6 collective bargaining for the Maintenance of
7 Way committee on Amtrak.

8 Q And what function did you serve in
9 connection with that collective bargaining
10 with Amtrak?

11 A I was the chief negotiator and I
12 also presented testimony to various
13 Presidential Emergency Boards regarding
14 Amtrak, and I also held the same function on
15 the freight side.

16 Q Drawing your attention to the
17 current round, which somewhat uniquely began
18 in 1999, when did you serve Section 6 notices
19 on behalf of the BMWED?

20 A We served our Section 6 notices in
21 November of 1999.

22 Q I see. And did the carrier

1 thereafter serve Section 6 notices on its
2 behalf?

3 A It did, but it didn't do it right
4 away, and it was one of the frustrating
5 aspects of the bargaining. They actually
6 didn't serve Section 6 notices until several
7 months after we invoked mediation in April of
8 2000 because we kept asking, you know, for
9 counter-proposals, for proposals back, and
10 they weren't really forthcoming during that
11 period. And they didn't serve a Section 6
12 notice until June of 2000, several months
13 after we invoked mediation.

14 Q All right. And can you tell the
15 Board whether or not direct negotiations
16 occurred with respect to the Section 6
17 notices exchanged by the BMWED and the
18 carrier?

19 A Direct negotiations did occur.
20 They occurred prior to invocation of the
21 mediation, and we had approximately 16 days
22 under the jurisdiction of the Mediation Board

1 in 12 separate sessions.

2 Q I see. And when was the
3 application for mediation made, Mr. Dodd?

4 A I'm not exactly certain. In April
5 of 2000. April 7th I think.

6 Q All right. Did Amtrak raise
7 so-called work rule issues in the Section 6
8 notice?

9 A They did.

10 Q Were any of those issues resolved
11 in direct negotiations?

12 A No, they were not.

13 Q Were any of those issues resolved
14 in mediation?

15 A No, they were not.

16 Q Can you give the Board some idea of
17 the nature of the discussions that took place
18 between your committee and Amtrak's
19 bargaining committee over the work rules?

20 A Discussions is a stretch for the
21 term. It's Amtrak would come in and lay out
22 a series of work rules, more than half of

1 them very Draconian in terms of our working
2 conditions, and say: Which ones are you
3 going to agree to? And the work rules
4 themselves that they would lay out were not
5 of a very specific nature. They're more in
6 the nature of an idea, and we would ask
7 questions about it and really would not get
8 answers back.

9 At some point -- we would
10 continually ask -- for instance, they had a
11 rule to contract out more work, and we would
12 say: Well, what work of the current
13 collective bargaining agreement is work that
14 you feel you are prohibited from contracting
15 out? And they wouldn't -- they wouldn't give
16 us a list.

17 I mean, they felt that would
18 somehow jeopardize another position that they
19 might have at another place, but it's their
20 proposal. They had an obligation to explain
21 that to us what they were seeking, and they
22 wouldn't do it.

1 With respect to the costing out, we
2 would ask them to cost out some of their work
3 rules. By the way, that was without
4 prejudice to our primary position that the
5 National agreements were resolved without
6 work rule changes and that we were of the
7 opinion that those patterns were set, and
8 that it would be proper to negotiate these
9 agreements without work rule changes.

10 I think Brother Parker laid that
11 stuff out to you pretty clearly, but,
12 nevertheless, we had a duty to bargain under
13 the Act and we did bargain or attempt to
14 bargain under the Act. And we would ask the
15 company to cost out work rules, and their
16 chief negotiator on April 10th, 2003 referred
17 to costing out exercise as an exercise in
18 futility, that it would be a nearly
19 impossible task.

20 In some ways, I sympathized with
21 him because we're being presented with ideas.
22 We weren't being presented with concrete work

1 rule proposals. We weren't even being
2 presented with problems that could be
3 resolved in terms of bargaining.

4 So, at one point, they did present
5 us with some costing out and, of course, even
6 that was without any real give and take or
7 testing of some of the rules that were costed
8 out. For instance, they've never costed out
9 the contracting out of work demand that
10 they've made on us.

11 And, in my opinion, the work rules
12 have always been on the table in order to
13 thwart collective bargaining. They've never
14 been there because Amtrak has presented a
15 real problem that needs to be corrected or a
16 real desire to reach agreement, but the work
17 rules are there to ensure that they had a
18 reason not to reach agreement with the Union.

19 Q Mr. Dodd, has the BMWED modified
20 its bargaining demands since the original
21 notices were served by the parties?

22 A Certainly. In our original

1 demands, what we were seeking rates of pay
2 that were similar to the Long Island railroad
3 workers. We were seeking differentials for
4 our night workers and our production workers.
5 We were seeking a variety of other work rule
6 improvements. We were seeking no health care
7 cost sharing. We were seeking benefit
8 benefits. We were seeking, you know, a
9 variety of other improvements.

10 When the National settled in 2001,
11 the first round of National bargaining, we
12 pared our bargaining demands down to
13 virtually reflect that National settlement in
14 hopes of reaching settlement with the company
15 because, in my experience, after the National
16 agreement settled, the Amtrak agreements
17 generally settled along the same lines
18 shortly thereafter.

19 And Amtrak never really responded
20 in kind in terms of narrowing the differences
21 between the parties.

22 Q Did the BMWED adjust or make

1 changes in its proposal after the freight
2 agreements settled this year?

3 A Yes, it did. We -- we formed a
4 passenger rail. Well, the BMWED on its own,
5 before the Passenger Rail Labor Bargaining
6 Coalition was formed, put forward a proposal
7 that mirrored our National settlements, and
8 after the Passenger Rail Labor Bargaining
9 Coalition, we put forward a proposal that
10 mirrored our National settlements.

11 Those National settlements are not
12 get-rich-quick agreements. I mean, they're
13 bare bones agreements that maintain the
14 buying power of wages, except they're, you
15 know, in our opinion, very onerous cost
16 sharing provisions, has some costing
17 increases for drugs and to go to see the
18 doctor, and they're not -- they're not as
19 very popular actually with the membership.

20 The membership understood, though,
21 that when the National agreements have
22 settled that the Amtrak the agreements

1 generally pattern those issues, but I want to
2 make it clear that it was a difficult
3 decision for us to move in that direction.

4 But it was also a decision based
5 upon the 25 years of experience in this
6 industry and understanding that when the
7 National agreement settled, that the Amtrak
8 agreements are going to settle pretty much
9 around the same lines whether we like the
10 National agreement or not.

11 Q Mr. Dodd, I'm going refer you to
12 the Passenger Rail Labor Bargaining
13 Coalition's exhibits before you and, in
14 particular, to Exhibit 1. Is that the PRLBC
15 proposal that you referred to?

16 A Yes, it is.

17 Q Is that the current proposal that
18 the BMWED and the other PRLBC Unions have
19 before Amtrak?

20 A Yes, it is.

21 Q All right. Were those moves at the
22 bargaining table made by the BMWED and the

1 other passenger rail coalition members
2 successful in narrowing the dispute to the
3 issues resolved in the freight agreement?

4 A They virtually mirror them. Yes.

5 Q How did Amtrak respond to that
6 proposal?

7 A Well, Amtrak actually never came
8 into the room to respond to the proposals,
9 which, in my opinion, was ridiculous, but
10 that's for others to determine, I suppose.
11 But Amtrak responded by actually presenting a
12 proposal that the work rules became even more
13 Draconian, particularly with respect to the
14 contracting out of work, and made no movement
15 to settle the issues.

16 Q When did this proposal by Amtrak
17 come to your attention?

18 A I'm not certain. In November of
19 2007, a month ago.

20 Q Was that during the cooling-off
21 period?

22 A Yes. We had never even been

1 presented with the failed BLET agreement for
2 consideration, not that it would have made
3 much difference, but we were not presented
4 with that until November of 2007 officially.

5 Q At this stage of these lengthy
6 negotiations, Mr. Dodd, can you tell the
7 Board what BMWED's goal is?

8 A Our goal is to get a voluntary
9 settlement based upon the patterns that were
10 established in our National Freight
11 Agreements, pretty much in the same manner
12 that the last four or five Amtrak agreements
13 have settled.

14 Q Now, with that goal in mind, are
15 there any of Amtrak's work rule demands that
16 are more problematic than others?

17 A Sure. I mean, they have presented
18 us with a list of demands and any one of them
19 is, you know, what is the best way to
20 amputate your right arm, but the contracting
21 out of work demand is probably the most
22 objectionable.

1 Q I see.

2 A Not probably. It is the most
3 objectionable.

4 Q Now, under the existing agreement
5 maintained by the BMWED on Amtrak's property,
6 is Maintenance of Way scope work protected
7 against subcontracting?

8 A We have a scope agreement and it
9 does protect against some contracting out of
10 work, but it doesn't at all prohibit
11 contracting out of work. For instance, in an
12 emergency, Amtrak has almost an unfettered
13 right to contract out work. So, at no point
14 is the scope of our agreement going to
15 prohibit -- going to keep the trains from
16 running. It will never affect the operation
17 of the railroad in that respect.

18 And there's a wide variety of work
19 that we consider -- that is considered
20 Maintenance of Way scope covered work that is
21 permissible to contract out under the scope
22 of the agreement.

1 Q Can you tell the Board how the
2 scope of the rule is administered on the
3 Amtrak property?

4 A Yes. If Amtrak desires to contract
5 out work that's covered by the scope of the
6 agreement, they're required to notify us in
7 writing of that desire, and if we so choose,
8 we can request a meeting. And at the
9 meeting, we're supposed to engage in
10 good-faith discussions to either obtain the
11 information we need about the contracting out
12 of work or to resolve any dispute we may have
13 with the contracting out of work.

14 And one of the things that's
15 occurred over the last eight years is I would
16 suppose we received several hundred notices
17 for the contracting out of work, and where
18 there's an attachment in the exhibits that
19 reflect on the Southern district alone, 170
20 different Maintenance of Way projects that
21 were contracted out of work contracted out
22 without penalty from the Union.

1 My colleague, Stuart Hurlburt,
2 General Chairman on the Northern end, has
3 submitted a statement where 30 projects were
4 contracted out without penalty from the
5 Union.

6 In addition to that, there's
7 probably another hundred projects where
8 arrangements were made to -- to satisfy our
9 concerns about the contracting out and a
10 mutual agreement was reached. It's-- Amtrak
11 has a significant amount of flexibility in
12 the agreement.

13 Now, what the agreement does do is
14 protect what we consider to be the core work
15 of Maintenance of Way workers and, you know,
16 we're very sensitive about that.

17 For instance, you've heard a great
18 deal of testimony here about how brush and
19 tree cutting and right-of-way cleanup is not
20 core work and to contract out that work would
21 not be -- would not harm a single Maintenance
22 of Way worker. And the fact of the matter is

1 brush and tree and right-of-way cleanup is
2 basic core Maintenance of Way work.

3 Hundreds of Maintenance of Way
4 workers across this nation earn a living
5 cutting brush and trees against the
6 right-of-way to keep the trains moving. Any
7 engineering manual that you want to read on
8 railroad maintenance, the first thing they're
9 going to tell you is to control the brush and
10 vegetation, and we view that as basic bread
11 and butter work.

12 We don't consider that non-core
13 work. They've just made that up. I mean, I
14 don't know where -- all of a sudden, I don't
15 understand how brush and tree cutting has
16 become non-core work. We have in the
17 agreement since the early '80s mechanical
18 brush gangs in our agreement. We have lots
19 of guys that earn a living cutting brush and
20 trees from the right-of-way.

21 And right-of-way cleanup, my own
22 personal example. I was hired on the

1 railroad in March of 1977. It's a
2 seniority-based system. In '79, there was a
3 massive layoff. Everybody in front of me up
4 until April of '77 was laid off in the New
5 York division. I worked that winter doing
6 right-of-way cleanup work.

7 For these guys to sit here and tell
8 you that it's not going to harm a single
9 Maintenance of Way employee, that's not true.
10 I put food on my family's table doing
11 right-of-way cleanup work and so do lots of
12 other members that we represent, and to tell
13 you the truth, it's infuriating listening to
14 that.

15 I mean, that's -- that's -- another
16 issue that they'll tell you is we're required
17 to use skilled workers in brush cutting and
18 tree cutting, and President Kummant has
19 testified in other areas that he's required
20 to use linemen, skilled Class A linemen to
21 cut trees and brushes and that's simply not
22 true.

1 There's nothing in our collective
2 bargaining agreement to Amtrak to use linemen
3 to cut trees and brush along the
4 right-of-way. In fact, we don't even
5 represent linemen on the Northern end, and we
6 cut trees and brush along the right-of-way.

7 They've come to you with this issue
8 and they've made up this concept of core
9 work, and core work is basic. We consider
10 that to be core work and would highly object
11 to the idea of contracting out the
12 maintenance.

13 Now, one of the things with respect
14 to the linemen is we work under an energized
15 catenary system. That trolley wire is 11,000
16 volts. The transmission wire is 180,000
17 volts. Yeah, you have to have a Class A
18 lineman out there to turn the wire off or
19 else you'll get people electrocuted.

20 Since I've been General Chairman,
21 we've lost two people to electrocution, but
22 that lineman has to be out there whether the

1 contractor is cutting the trees and brush or
2 whether we're cutting the trees and brush.
3 So either way, the lineman has to be on the
4 job.

5 There's nothing in the agreement
6 that requires the lineman to cut the trees
7 and brush and, in fact, most of the trees and
8 brush on this property are not cut by
9 linemen. It's cut by Maintenance of Way
10 mechanical work gangs. Maintenance of Way
11 gangs that are doing that work, putting food
12 on their table, doing that work basic core
13 work.

14 Q Mr. Dodd, remembering that the rest
15 of us are not as familiar with these issues
16 as you are, can you tell the Board in what
17 part of the right-of-way that your
18 organization represents linemen?

19 A We represent the linemen and the
20 substation electricians from New York City to
21 Washington, DC and out to Harrisburg.

22 Q And what organization represents

1 linemen north of New York City?

2 A The IBEW.

3 Q I see. And so what organization is
4 responsible for reducing brush and trees
5 along the right-of-way throughout the system?

6 A Generally speaking, the Maintenance
7 of Way. Although we do have a conflict on
8 the Northern end and sometimes the IBEW
9 claims that the work belongs to them.
10 However, in general, we have been the
11 responsible party for clearing brush and
12 trees along the right-of-way on the Northern
13 end and on the Southern end.

14 The Northern end was recently
15 electrified, and Amtrak is now trying to
16 claim that because the wire is there that
17 that work should be accruing to the IBEW, and
18 then they tried to contract it out under the
19 IBEW agreement.

20 Well, the fact is the very brush
21 and trees that we cut before there was a wire
22 there was cut by Maintenance of Way forces,

1 and now the wire is put up and Amtrak has
2 constructed an agreement -- an argument to
3 try to basically steal that work from us.

4 Q Mr. Dodd, I'm going to direct your
5 attention to a statement that you made a bit
6 earlier about contracting out that occurs by
7 agreement of the parties.

8 A Sure.

9 Q Do you recall that statement?

10 A Yes, I do.

11 Q All right. Now, are there examples
12 on this property, to your knowledge, of work
13 that has been contracted out by agreement
14 between Amtrak and your organization but
15 which is, nonetheless, covered by the scope
16 of your collective bargaining agreement?

17 A The contract covers basic core
18 maintenance and construction work of track.
19 Building maintenance, basic B&B construction
20 projects. Doesn't cover big construction
21 projects. It covers, protects maintenance
22 and construction of the catenary system in

1 the substations and specifically excludes
2 major electrical conversion projects, and as
3 a result -- well, the core work, we
4 understand where it is, but once you get
5 outside the core work, management and labor
6 are exploring what that means.

7 I mean, we argue about what is a
8 major construction project, and so from my
9 perspective, it's always better to try to
10 resolve those issues voluntarily rather than
11 run it to an arbitration board and have
12 somebody else tell us -- tell us what that
13 language means.

14 And so, for instance, we had this
15 East side access project. It's a \$10 billion
16 project that's going to put a tunnel -- that
17 part of it is to put a tunnel under the
18 Sunnyside Yard that requires a
19 reconfiguration of Sunnyside Yard. It's
20 basically a Long Island railroad and mass
21 transit project to connect the Long Island
22 railroad to Grand Central Station.

1 But the Phase I of it is a two or
2 three billion-dollar project for two and a
3 half years and a lot of that involves the
4 work in Sunnyside Yard. We have resolved all
5 of our issues with Amtrak on the contracting
6 out of work of that project.

7 We've gotten what we consider to be
8 a fair piece of the work, and we've made some
9 significant compromises with respect to some
10 of the other work and so we have a two and a
11 half billion-dollar project for Phase I of
12 the project that has been resolved through
13 the current scope rule and through the
14 voluntary efforts of the parties.

15 And a significant amount of work,
16 particularly with the substation electrician
17 work and some B&B retaining walls will be --
18 bridge and building retaining walls will be
19 contracted out as a result of those
20 agreements.

21 Q Mr. Dodd, I'm going to draw your
22 attention to Exhibit 15 in the PRLBC volume.

1 Do you have that before you?

2 A Yes, I do.

3 Q Can you tell the Board what that
4 document consists of?

5 A It's a document -- it's a document
6 that -- actually I think it's Exhibit 14.

7 MR. WILDER: I misspoke, Mr.
8 Chairman. I was referring the witness to
9 Exhibit 14.

10 THE WITNESS: Actually, this is the
11 one that Stuart --

12 MR. WILDER: These all look alike,
13 unfortunately.

14 THE WITNESS: Right here, 12.

15 BY MR. WILDER::

16 Q This is 12, yes.

17 A Sorry, 12. It's a document that I
18 prepared that's --

19 Q I might add, if you want to know
20 what I'm doing, try telling the difference
21 between these documents without your glasses
22 on.

1 A It's a document that I prepared
2 that details the work that is being
3 contracted out under the current scope rule
4 in the last eight years. It's 170 projects.
5 Some for as little as \$10,000. One is a \$400
6 million project that has been -- that was
7 contracted out without penalty under our
8 agreement.

9 I mean, like Amtrak, who's afraid
10 to state what is -- what is work they are
11 unable to contract out, I am also unwilling
12 to say that they have a right to contract out
13 this work under the agreement, but it is work
14 that was contracted out without penalty under
15 the agreement and, you know, I think that
16 speaks for itself.

17 Q Now, are there other instances of
18 work being contracted out under the scope
19 rule that do not appear on the list in
20 Exhibit 12, Mr. Dodd?

21 A Yes. For instance, the East side
22 access project, which I described. It's

1 because we made an agreement there and came
2 to -- came to a resolution of that issue, I
3 didn't include it. And there's dozens of
4 examples like that of issues where we would
5 negotiate a portion of the agreement for our
6 workers in exchange for no claims for the
7 remaining of the contract, or whatever would
8 make sense to try to resolve the issue.

9 Which, by the way, until -- this
10 rule was negotiated in 1987 and it wasn't
11 until the early 2000s that we actually had a
12 claim to go to arbitration under this --
13 under these rules. I mean -- I mean, I know
14 these guys are trying to tell you these are
15 steam engine rules and we're hampered and we
16 have all that, but this rule is voluntarily
17 negotiated between us and Amtrak, you know,
18 long after the last puff of steam ever came
19 out of a train engine.

20 And it's only this recent crew
21 that's taken over Amtrak that's tried to
22 basically undermine the agreement that we

1 reached, and it served the parties well for
2 20 years -- not 20 years -- 15 years before
3 the arbitrations came under it.

4 Because I'm, by the way, of the
5 opinion that there's -- there's vagary in the
6 rule and that I would rather not have an
7 arbitrator tell me what that rule means. I
8 would rather live with the settlement that I
9 reached voluntarily and, you know,
10 particularly if everybody is working and
11 people are doing okay and we have a piece of
12 the project, and fine.

13 But what happened is the new crew
14 took over and said: We want to contract out
15 welding. We want to contractor out brush
16 cutting. We want to contract out material
17 distribution. We want to contract out simple
18 building maintenance and we're not going to
19 make any arrangements with you and too bad.

20 And so we had to go to arbitration
21 and, you know what? The arbitrator found out
22 that that work was protected by the scope and

1 returned that work to us.

2 Q Mr. Dodd, are you familiar with Mr.
3 Crosbie's testimony both at the hearing and
4 his written testimony?

5 A I am.

6 Q All right. In your judgment, is
7 his testimony accurate with respect to work
8 scheduling?

9 A What Mr. Crosbie told you is wrong.
10 Mr. Crosbie in his statement on page 10 --
11 on page 12 said, "Moreover, to the extent
12 that the rules that permit Amtrak to begin
13 work at other times of the day, the rules
14 require Amtrak to maintain and operate a
15 first shift before creating a second shift
16 and a second shift before creating a third
17 shift. Even though it is grossly inefficient
18 to perform work during the first and often
19 the second shifts across much of Amtrak's
20 system."

21 He said that in his written
22 statement. He made a big deal of it here.

1 He said that to you directly. That statement
2 is simply wrong, and I'm not asking you to
3 believe Jed, even though I like to tell the
4 truth. I mean, I put up my hand. I'm asking
5 you to read the collective bargaining
6 agreement with me. The current collective
7 bargaining agreement.

8 MR. WILDER: Mr. Chairman, the
9 particular excerpt from the collective
10 bargaining agreement, which have been marked
11 as PRLBC Exhibit 63, have been distributed to
12 the panel and to the carrier.

13 THE WITNESS: What you have with
14 Rule 42 is our basic starting time rule.
15 Now, Rule A does say when three shifts are
16 employed, the starting time of the first
17 shift shall not be earlier than 6 a.m. nor
18 later than 8 a.m., the second shift will
19 start immediately following the first shift,
20 and the third shift will start immediately
21 following the second shift.

22 I mean, that's, generally speaking,

1 because if you're going to have three shifts,
2 you would think that the shifts would follow
3 each other, you know. However, we forgot in
4 our testimony to talk about Rule 42-C.

5 Rule 42-C says, "Starting times
6 other than those set forth in paragraphs A
7 and B of this Rule 42 may be established
8 between 4 and 6 and 7 and 11." There is no
9 requirement to have a first or second shift
10 if you want to start the employees between 7
11 and 11. There simply isn't.

12 And, in fact, I spent most of my
13 railroad career working nights without a
14 first and second shift. I am flabbergasted
15 that he represented his situation to you in
16 that way. It's simply wrong.

17 BY MR. WILDER::

18 Q Mr. Dodd, I'm going to draw your
19 attention to Exhibit --

20 A Can I talk about the workweeks a
21 little bit?

22 Q I'm sorry?

1 A I want to talk about the workweeks
2 a little bit.

3 Q All right. That's fine.

4 A In addition, he says, "The
5 inefficiencies generated by the current
6 starting time rules, current workweek rules
7 always prevent engineering employees from
8 working on those days when their services are
9 needed most. The current BMWWE agreement
10 prohibits the company from scheduling
11 employees to work on both Saturday and
12 Sunday, when these are by far the most
13 efficient days of the week to perform the
14 engineering craft work."

15 Then he puts a picture up for you
16 to look at, the concrete ties, and says: The
17 Union agreement won't allow us to put these
18 ties in on Saturday or Sunday.

19 I'd like to refer you to the next
20 page of the exhibit, which we refer to as the
21 special construction gang agreement. Page 1
22 says, "Employees assigned to special

1 construction gangs established pursuant to
2 Rules 89, 98, B and C" -- let's talk about
3 what those rules are.

4 Rule 89 is the rule that allows
5 employees to travel between Boston and
6 Washington, DC doing heavy track maintenance
7 work. They put in the concrete ties. They
8 live away from home. We have a request in
9 that their daily per diem be increased a
10 little bit because it hasn't been increased
11 since, I think, 1997.

12 But they live away from home. They
13 go home on the weekends. They stay in hotels
14 and they travel in these gangs. These are
15 huge gangs with a lot of capital intensive
16 work, big machines, installing concrete ties
17 and rail, and they travel along the
18 right-of-way.

19 Now, these are the rules, these are
20 starting time rules that govern those gangs.
21 The gang that installs concrete ties that he
22 showed you, that they showed you a picture of

1 concrete ties. The gangs that do
2 undercutting work that he said that he
3 couldn't do on a Saturday or Sunday.

4 It says, first of all, "The
5 starting time of these special gangs will be
6 established by bulletin and will supersede
7 existing starting time rules." They can
8 start these gangs any time of the day they
9 want and, in fact, they generally do.
10 Generally these gangs are 10 at night until 6
11 in the morning.

12 "The starting time of these special
13 gangs established by bulletin may be changed
14 upon 16 hours of advanced notice to the
15 organization and the employees affected." He
16 told you they couldn't change their hours.

17 They can start their hours at 10
18 o'clock on -- 10 to 6, 10 p.m. to 6 a.m. one
19 day and with 16 hours notice, you can be
20 working a second shift and with 16 hours
21 notice, you can be working a third shift or
22 be back to whatever shift. It doesn't even

1 have to be 10 o'clock. It can be whatever
2 o'clock as long as it's an eight-hour or a
3 10-hour day.

4 "Rules governing workdays and rest
5 days are modified to establish Saturday and
6 Sunday as workdays provided that any two
7 consecutive rest days may be assigned. A
8 workweek consisting of four 10-hour days may
9 be established as any three consecutive days
10 of rest days."

11 Those concrete ties that he showed
12 you, my guess is they were put in at 3
13 o'clock in the morning on a Saturday on
14 straight time under these rules. These rules
15 have been in the agreement since the early
16 1980s, and he's standing here telling you
17 with his screen charts that we don't have the
18 flexibility to move our capital construction
19 gangs around the -- around moving our
20 passengers, and that's just simply wrong.

21 Q Have you finished with your answer
22 to the last question, Mr. Dodd?

1 A Actually, no, I have not. I have
2 one more point to make. He goes on to say,
3 "The need for flexible starting time and
4 workweek rules is not confined to the
5 employees performing work. There is an
6 equally growing need for flexibility with
7 respect to scheduling engineering prep at
8 Amtrak's facilities."

9 Let's look at Rule 32, which has
10 been in the agreement -- it was modified in
11 1992 I think. However, the second paragraph
12 of that rule says, "Workweeks consisting of
13 four days of 10 hours per day with three
14 consecutive rest days are permissible
15 provided there is one Saturday or Sunday rest
16 day per week."

17 I don't know what to tell you.
18 They can work their facilities guys on a
19 Saturday or a Sunday, you know, for straight
20 hours, for 10 hours and they can put them
21 there at night. They can have a night gang
22 with a Saturday rest day or a Sunday rest day

1 for their facilities gangs.

2 I'm sure that he believed he was
3 telling the truth, but what he said was not
4 accurate in any way, shape or form and that's
5 been the problem with negotiating work rules
6 on this property from the very beginning.

7 If they had brought to us a problem
8 like this, we could have fixed that. We
9 could have said, you know what? You already
10 have that right under the agreement, you
11 know, and, in fact, you got a bunch of gangs
12 working right now under those rules, and so
13 we don't have a problem.

14 Now, the last rule, Rule 38 says,
15 "In positions of work extending over five
16 days per week, when Amtrak contends an
17 operational problem cannot be met under the
18 provisions of Rule 32, some of the employees
19 may in locations listed below and at other
20 locations, as may be agreed upon by the
21 general chairman and the chief engineer, be
22 assigned Sunday and Monday instead of Sunday

1 and Monday as days off."

2 They can have a Saturday or a
3 Sunday for five-day guys at these locations,
4 which are all in the major locations on the
5 Northeast corridor or in other locations upon
6 which we make an agreement, and they've never
7 even asked us to make an agreement. That's
8 now I'm done.

9 Q Mr. Dodd, I'm going to draw your
10 attention to Exhibit 3 to Mr. Crosbie's
11 testimony.

12 A Yes.

13 Q Do you have that before you?

14 A I do.

15 Q All right. Now, I have a series of
16 yes and no questions.

17 A Really?

18 Q That the first --

19 A I'll try.

20 Q The first is whether the tree and
21 brush cutting removal is core work or not.

22 A Yes, it is.

1 Q Okay. And the examples that are
2 set forth by Mr. Crosbie in his exhibit
3 reflect settlements that your organization
4 made with Amtrak relative to the contracting
5 out of these projects?

6 A I have not had an opportunity to
7 test the exhibits against my files. So I
8 don't know if -- if what the allegations that
9 are here are accurate, but I think for the
10 purposes based upon the record of accuracy, I
11 would suspect that they are not. But if --
12 but for the purposes of these discussions, I
13 think we can have a discussion and assume
14 that's what in here is accurate.

15 And one of the issues that pop up
16 when I look at this Exhibit 3 is that there's
17 1500 engineering employees represented by our
18 agreement. We've received hundreds, maybe a
19 thousand notices over the eight-year period
20 and this is their complaint. This is -- when
21 we finally get down to a factual complaint,
22 this is what they pull up.

1 This is de minimis. This barely
2 warrants the attention of the Board. Even if
3 it's true and probably -- I would doubt that
4 it is. For instance, with respect to like,
5 you know, I've talked about brush cutting and
6 right-of-way cleanup and how that puts food
7 on the table of our members that we
8 represent.

9 But with respect to asphalt paving,
10 we generally agree that to make arrangements
11 for paving of the asphalt and that's because
12 they're generally paving the parking lots
13 where we park our cars. And then we, you
14 know, that's kind of okay with us. You know?
15 But we also like to perform some of that work
16 and so we try to negotiate a crew to work
17 with the paving company to also perform that
18 work as well.

19 And so when you read what they've
20 said here about asphalt paving, you would get
21 the impression that you got a bunch of lazy
22 Maintenance of Way guys standing around doing

1 nothing and the big bad Union is making
2 Amtrak pay these guys, you know, for nothing,
3 ghost workers, and that's simply not our
4 intention and not what we attempt do.

5 What we attempt to do is integrate
6 ourselves into the project, so that they
7 don't forget that we're there and that we
8 become part of it. If people stood -- if
9 these people were unproductive, that's
10 because they didn't -- they didn't manage
11 their work force. We expect them to perform
12 work when they're there. And the last piece
13 is just, they're just annoyed because we
14 asked for a meeting and asked them to discuss
15 it.

16 And the Hazmat stuff, we are
17 generally okay. Although we are qualified to
18 remove asbestos and we are qualified in lead
19 abatement, oftentimes we will agree to some
20 sort of Hazmat contracting because, I mean,
21 of the obvious hazards. But here's the
22 problem.

1 They'll tell us that they have
2 \$250,000 job they got to contract and we'll
3 find out that 10,000 of it involves removing
4 asbestos. They'll just attempt to piggyback
5 a mutual problem that we have on a bigger
6 project.

7 So we ask for a meeting. We ask to
8 go look because we've been burned too many
9 times in the past, and that's why they have a
10 labor relations department, to meet with us
11 and to make sure that what we're doing is
12 asbestos removal and not building maintenance
13 or building construction at the same time
14 because we claim we have an asbestos problem.

15 Q Thank you, Mr. Dodd.

16 CHAIRMAN TREDICK: Thank you.

17 Thank you, Mr. Dodd. Questions?

18 MR. JAVITS: I'm struck by the
19 ability of the parties to negotiate these
20 MOUs or agreements on particular projects and
21 what appears to be in a generally amicable
22 fashion. One that works for the parties with

1 the overall negotiations where there hasn't
2 been apparently real meaty discussion of a
3 contracting out and other issues, starting
4 time and the like.

5 Can you -- is there any way to
6 explain that? Is it day-to-day --

7 THE WITNESS: Yeah.

8 MR. JAVITS: -- problems work and
9 overall strategy doesn't? Or what is the
10 problem as best you can discern it?

11 THE WITNESS: All right. In my
12 opinion, the reason for that is because those
13 issues were real problems and we were dealing
14 face to face with the members of the company
15 that were dealing with the real problems, the
16 engineering staff, the operating people that
17 were coming to us with real issues and real
18 problems.

19 These work rule issues that they're
20 asking you to deal with are ideological and
21 they're not real problems, and they're
22 designed to play on your prejudices with

1 respect to unionized workers and work rules
2 and they're not designed to fix anything.

3 They're designed to thwart
4 negotiations, but when we have a real problem
5 and when the engineering department or the
6 operating people come to us and say, we have
7 this real problem, let's sit down here and
8 figure out how to fix that problem, we're
9 more than willing to do that.

10 And most of all of my colleagues
11 are more than willing to do that as well
12 because we all have an interest in running
13 the railroad. That's what we do and that's --
14 in my opinion, that's the reason for the
15 apparent vagrant discrepancies.

16 MR. JAVITS: Thank you.

17 CHAIRMAN TREDICK: Thank you, Mr.
18 Dodd.

19 MR. WILDER: Mr. Chairman, that
20 would conclude the witness testimony
21 presented by the PRLBC, and the Organizations
22 have one or two additional witnesses which

1 will be -- who will be presented by Mr.
2 Guerrieri.

3 CHAIRMAN TREDICK: Mr. Guerrieri.

4 MR. GUERRIERI: Mr. Chairman,
5 Members of the Board, this is the
6 long-awaited second to last witness today,
7 Mr. Gary Maslanka, but before Mr. Maslanka
8 is introduced, I wish to introduce the
9 gentleman sitting to my right, whose name is
10 Roger Rose.

11 He is a local chairman from Union
12 Station who has come to these hearings on
13 behalf of the International Brotherhood of
14 Electrical Workers and can answer any
15 questions you might have concerning the real
16 operations and what electrical workers are
17 actually responsible for doing in the event
18 that the Board should have questions of him.
19 He has not submitted a written statement.

20 Our witness, Mr. Gary Maslanka, is
21 the International Vice President of the
22 Transport Workers Union of America. He's

1 also the Director of TWU's railroad division.
2 He began his career in the railroad industry
3 with the Penn Central Railroad in October of
4 1974 and worked as a carman in both the Penn
5 Central's freight and at that time passenger
6 services operations.

7 In the course of his career, he's
8 had extensive involvement in rail safety
9 issues and in the Federal Railroad
10 Administration's rulemaking process. He
11 serves as a member of the Railroad Safety
12 Advisory Committee, which was established by
13 the FRA in 1996 as a collaborative group of
14 various railway stakeholders, including labor
15 and management, to make cooperative
16 recommendations on safety regulations to the
17 FRA.

18 Earlier in his career, he assisted
19 in drafting procedures manuals for compliance
20 with Federal regulations. He's also
21 conducted safety training in hazardous
22 materials and other safety-related issues and

1 has testified before Congress on rail safety
2 and since 9/11 on security issues as well.

3 Mr. Maslanka, why don't you proceed
4 with your testimony.

5 CHAIRMAN TREDICK: Please be sworn
6 before you begin.

7 Whereupon,

8 GARY MASLANKA
9 was called as a witness and, having been first
10 duly sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 CHAIRMAN TREDICK: Welcome to the
13 hearing. Please proceed.

14 THE WITNESS: Yes, good morning. I
15 think I will probably preface my remarks this
16 morning by saying timing is everything and I
17 come after Jed Dodd, my distinguished
18 brother, and I'm not quite sure my testimony
19 is going to be quite the same. So, bear with
20 me.

21 Like Mr. Guerrieri has told you, my
22 name is Gary Maslanka. I'm Director of

1 Transport Workers Union of America's Railroad
2 Division, and I appear before this Board
3 today on behalf of the Amtrak shopcraft
4 coalition, which is comprised of the
5 International Association of Machinists, IAM,
6 International Brotherhood of Electrical
7 Workers, IBEW and the Joint Council of
8 Carmen, JCC.

9 My written statement before the
10 Board has been submitted in accordance with
11 the NMB's scheduling order in these
12 proceedings. I will focus on several
13 important issues addressed in that statement
14 and respond to several points raised by Mr.
15 Crosbie.

16 I would also say at this point, you
17 have heard a lot about some of the things
18 that are already in my written statement. So
19 I'm not going to belabor those issues. I'm
20 just going to try to focus on a few very
21 important matters.

22 As you will note, with very little

1 exception, what Amtrak seeks are rules. The
2 likes of which are not in place on the
3 nation's freight railroads or commuter
4 railroads.

5 It bears emphasis that most
6 commuters generally do not have the work
7 rules that Amtrak seeks from organizations
8 before you because those carriers, like
9 Amtrak, engage in passenger service and have
10 much the same operational requirements as
11 does Amtrak.

12 In short, as revealed by the chart
13 we have in Exhibit 43 in our submission,
14 Amtrak seeks rule changes which are not in
15 commuter freights. And I'm not going to go
16 through the entire chart, but for your
17 convenience, if you want to look to it,
18 that's the chart. It's Exhibit 43 in our
19 submission to the Board.

20 Amtrak maintains the basis for its
21 demands are cost savings, but the basis for
22 those savings were neither -- either not

1 outlined or explained in negotiations.
2 Amtrak seeks these concessions in spite of
3 the fact that productivity has soared and in
4 spite of shopcraft employees keeping aging
5 fleet operational.

6 I would just note on that comment
7 that Mr. Crosbie and others from Amtrak have
8 made very vivid points about the condition of
9 Amtrak's fleet, the age of it and the skills
10 it requires, and I would agree with that, but
11 I would also like to point out that these
12 shopcraft workers have done what it takes to
13 keep that fleet running.

14 Amtrak has demanded 15 rule
15 concessions since the first day of
16 bargaining. All are addressed in our
17 submission and my written statement. I will
18 address two in my oral comments, composite
19 mechanic and subcontracting.

20 Composite mechanic first. Amtrak
21 demands the right to assign shopcraft
22 employees across -- work across craft lines.

1 We call this a proposal a composite mechanic.
2 Amtrak suggests that it's not their intent,
3 but that is, in fact, the effect of the rule
4 change.

5 Amtrak would have you believe that
6 the craft rules under which it operates have
7 not changed since the days of the steam
8 engine. Of course, this is not accurate.

9 Our submission shows the history of
10 the development of the incidental work rule
11 by various PEBs and the fact that Amtrak's
12 demands to go beyond flexibility provided by
13 that rule has been rejected by every PEB to
14 address this issue. Most recently on the
15 freights, PEB 219, on the commuters, PEB 226
16 and on Amtrak south, PEB 222.

17 The incidental work rule under
18 which Amtrak operates is the same incidental
19 rule applicable on the freights and virtually
20 all commuters.

21 I want to take a few moments and
22 just walk through a couple high points on the

1 incidental work rule for the Board's
2 understanding of what we're talking about
3 here. The rule is actually comprised of two
4 sections. One dealing with incidental work
5 and the other simple tasks.

6 First, incidental work provides
7 that a shopcraft employee performing an
8 assignment which calls for the performance of
9 incidental work that is part of another
10 craft's scope of work -- that is part of
11 another craft's scope of work, if capable,
12 may perform such work as long as it does not
13 comprise a propounded part of the total work
14 involved in the assignment.

15 In other words, if an assignment
16 were to last eight hours in a shift, an
17 employee can perform incidental work for up
18 to three hours and 59 minutes that would
19 otherwise be beyond the scope of his craft.

20 Examples are disconnecting,
21 connecting parts and appliances such as
22 wires, piping, covers, shielding and other

1 appliances from or near the main work
2 assignment to accomplish the assignment. It
3 includes simple tasks but is not limited to
4 simple tasks. Simple tasks. A simple task
5 is defined as work which does not require
6 special tools or training.

7 Simple tasks may be assigned to any
8 craft capable of performing them for a
9 maximum of two hours per shift, and the two
10 hours is not to be deducted from the time an
11 employee is permitted to perform incidental
12 work as discussed above.

13 For example, this would mean in an
14 eight-hour shift, an employee could perform
15 simple tasks for two hours and for the
16 remaining six hours spend two hours and 59
17 minutes on incidental tasks.

18 This is not all the flexibility
19 that Amtrak enjoys. In addition to the
20 incidental work rule and the simple task
21 rules, Amtrak's current rule allows the
22 performance of work by any craft at locations

1 where there is insufficient work to justify
2 employing a mechanic of each craft.

3 These rules provide Amtrak the
4 flexibility it needs, just like the freights
5 and the commuters, to operate in efficient
6 and productive operation.

7 In its presentation to this Board,
8 Amtrak cites two examples of asserted
9 inefficiencies that it seeks to correct with
10 its composite mechanic proposal. The repair
11 of HVAC units on trains and the repair of
12 toilets. Neither was discussed in
13 bargaining. Now I emphasize that point.
14 Neither.

15 Entirely absent from Amtrak's
16 discussions of these tasks, however, is any
17 explanation as to why the current incidental
18 work rule could not be applied to achieve the
19 efficiency that Amtrak claims it needs.
20 Again, I emphasize claims it needs.

21 Specifically with HVAC work.
22 Amtrak claims that such repairs require the

1 work of employees from three crafts; sheet
2 metal workers, electricians, and the JCC.
3 Simply put, this is not accurate at all.

4 First, Amtrak's presentation fails
5 to distinguish between repairs done in
6 turn-around situations and those that may be
7 done in the back shops. It's very vague.

8 In the turn-around setting, only
9 limited HVAC repairs are possible in the time
10 available obviously because the train has got
11 to turn around and go back out. In many
12 cases, HVAC require the car to be removed
13 from service for repair in the back shops.

14 Depending on the problem with the
15 unit, the skills and certification of an
16 electrician or a sheet metal worker may be
17 needed. And I'll just say, I think everybody
18 generally understands here as far as
19 electricians. They have very extensive
20 skills. Sheet metal workers have the Freon
21 certificate. So, just to make that point
22 clear.

1 But either can perform tasks
2 incidental to the main work of the
3 assignment. Thus, generally whether in a
4 turn-around setting or in the back shops,
5 HVAC repairs can be performed by a single
6 employee under the current rule.

7 As for toilets, the situation is
8 much the same. Amtrak claims that three
9 crafts are required to fix a toilet. Again,
10 it's the sheet metal workers, the
11 electricians, and the JCC. Again -- and I
12 stress this point -- it is necessary to
13 distinguish between turn-around and backshop
14 repairs.

15 Only so much can be done in
16 turn-around and generally can be performed
17 under the incidental work rule again. Even
18 in the backshop, in many instances, a sheet
19 metal worker or otherwise referred to as a
20 pipe fitter can accomplish all the repairs
21 under the current rule.

22 Sheet metal workers can and,

1 indeed, do unplug and replace electrical
2 motors. It is only when the pipe fitter or
3 sheet metal worker diagnoses the problem as
4 relating to the unit's control panel that the
5 specialized skills of an electrician are
6 required.

7 JCC employees generally have little
8 or nothing to do with toilet repairs.
9 Indeed, when I saw the presentation and I saw
10 JCC up there on toilet, I was shocked. We
11 have little. I mean, in the back shops maybe
12 very minimal.

13 But in some, HVAC and toilet
14 repairs are currently being performed by
15 three crafts. It is not because the current
16 rule requires such an outcome and, indeed, as
17 I stated before, that's not an accurate
18 scenario of what's actually taking place.

19 I also want to address Mr.
20 Crosbie's assertion regarding dwell time.
21 During turn-arounds as set forth by him,
22 Amtrak experiences on average 14 minutes of

1 dwell while members of different crafts are
2 called to an assignment.

3 Just stop here for one moment. And
4 if I recall in reading Mr. Crosbie's
5 testimony late Friday evening, I saw
6 references in there as to one shopcraft
7 employee going and seeing what the problem is
8 saying, oh, it's not my work, go get the
9 foreman and, you know, then the foreman comes
10 and looks and says, oh, it's the other craft
11 and all that. I'm not going to belabor that
12 issue, but I would submit to you that that is
13 pure exaggeration.

14 First of all, especially and
15 primarily in turn-around service, if there's
16 a train -- let me use this example. I think
17 there was referred to yesterday a situation
18 where a customer was really upset and wrote
19 some letters and took some pictures about a
20 toilet.

21 Using that scenario, that customer
22 is generally going to go to somebody on-board

1 on the train first and tell them there's a
2 problem, and my point for saying that is, I
3 would think or at least should be that when
4 that train arrives for its turn-around point,
5 they should know what the problem is already.

6 And I would also submit that
7 supervisors require training in all the tasks
8 that the crafts people do. So they would be
9 able to determine accurately what the problem
10 is and call the right craft to the scene.

11 First of all, the issue was never
12 cited to us in negotiations. Again, I mean,
13 they're talking about I think they said it
14 was eight or 10 million dollars in savings
15 over all these 14-minute dwells. Never once
16 mumbled a word about it in negotiations. You
17 would think in eight years of negotiations,
18 Amtrak would raise this point at the table
19 and provide us a few validated examples. As I
20 just said, not so.

21 It is also unclear to us how Mr.
22 Crosbie has arrived at the 14-minute figure

1 and no explanation has been provided. Most
2 importantly, we are at a loss as to why the
3 incidental work rule doesn't solve this
4 issue. If -- and I emphasize if -- it indeed
5 exists.

6 First, any one shopcraft employee
7 can begin a job performing simple tasks not
8 requiring special training or tools for two
9 hours. Second, any shopcraft employee can
10 start the job consistent with the five
11 minutes rule.

12 We suspect that the problem that
13 Amtrak refers to as dwell time is not a
14 problem related to craft lines at all, but
15 instead a problem related to manpower
16 shortages.

17 Trains often arrive in a station
18 with multiple maintenance issues that must be
19 addressed in priority order, keeping in mind
20 the age and condition of the fleet.
21 Obviously if there are insufficient numbers
22 of employees available, some jobs will dwell

1 while others are attended to.

2 Finally, we note in spite of this
3 claim, under the existing rule, on-time
4 performance has dramatically improved as
5 pointed out by Amtrak.

6 If there's a problem, it's not
7 because Amtrak does not have the necessary
8 flexibility under current rules. If
9 anything, it is because Amtrak has failed to
10 utilize the available flexibility
11 appropriately provided under the current
12 rules.

13 In numerous conversations, Amtrak
14 managers conceded that Amtrak has not made
15 full use of the incidental work rule.
16 Significantly, at no time during the
17 bargaining did Amtrak explain why the
18 incidental work rule cannot meet its needs or
19 has somehow fallen short.

20 PEB 222, in rejecting Amtrak's
21 claims, ordered it to utilize the incidental
22 work rule before seeking any further relief.

1 It is also -- it also failed to do so and has
2 offered no comprehensible excuse for this
3 failure, except to blame the unionized
4 foremen as opposed to its management
5 accepting responsibility.

6 I should point out that the foremen
7 are unionized on the freight and commuter
8 railroads that operate within and under the
9 same rule.

10 In Amtrak's presentation, several
11 speakers pointed out that three small
12 shopcraft Unions -- sheet metal workers, IBB
13 and NCF0 -- have already agreed to the
14 composite mechanic proposal, but what those
15 speakers have failed to point out is that
16 Amtrak made the same argument based upon the
17 small crafts to PEB 222 and that Board
18 rejected the notion that those agreements set
19 a pattern for larger craft Unions.

20 At the time of PEB 222, these three
21 small crafts represented only 19 percent of
22 the shopcraft employees. In addition, their

1 agreement to the composite mechanic rule was
2 conditioned on acceptance by other shopcraft
3 Unions and made in exchange for certain
4 protections for those crafts.

5 Under these circumstances, PEB 222
6 concluded, "We find no pattern as a result of
7 the agreements on work flexibility or
8 employee utilization programs with a few
9 smaller crafts. They represent a very small
10 part of the work force and it appears that
11 implementation of their agreements will
12 depend on similar arrangements with major
13 craft organizations."

14 There is no reason for this Board
15 to conclude differently. In fact, those
16 Unions now represent only 17 percent, a two
17 percent decrease of the shopcraft employees,
18 an even smaller percentage representation
19 than at the time of PEB 222.

20 PEB 211 involving the freight
21 carriers also rejected the same argument for
22 much the same reason.

1 Also on the issue of composite
2 mechanic, I am going to turn to what I
3 seriously consider truly critical points.
4 Having some background on safety, as Mr.
5 Guerrieri has mentioned, I want to talk a
6 little bit about safety and training as it
7 relates to composite mechanic rule.

8 It is also extremely important to
9 recognize that Amtrak's composite mechanic
10 proposal ignores the unique training skills
11 and qualifications that form the basis for
12 craft lines in the railroad industry.

13 Amtrak shopcraft employees require
14 extensive function-specific -- and I
15 emphasize -- function-specific training, are
16 highly skilled and require multiple type
17 qualifications.

18 They are governed by no less than
19 10 extremely comprehensive Federal
20 regulations and are held responsible for
21 compliance with these regulations, which, may
22 I add, includes personal liability to the

1 extent they can be disqualified from safety
2 critical positions in the industry.

3 It is also important to note that
4 the Passenger Equipment Safety Standards
5 provide a training, qualification and
6 designation program which requires that these
7 shopcraft employees receive extensive
8 training.

9 Most notably, specific training for
10 tasks or functions they are responsible to
11 perform, and I can't emphasize that enough.
12 It's in regulation. The regulation says if
13 you're going to perform the task, you have to
14 get the function-specific training.

15 This includes the inspection,
16 maintenance and repair of literally hundreds
17 -- and that's probably a low number -- of
18 components and devices that are part of
19 multiple systems on passenger cars and
20 locomotives.

21 In addition to the Federal
22 regulation requirements, these employees are

1 responsible to be proficient and comply with
2 numerous Amtrak and other industry rules.
3 This is but a snapshot of the requirements
4 and responsibilities of these employees to
5 ensure safety.

6 To ensure that all shopcraft
7 employees have the required training to even
8 consider implementation of Amtrak's proposal,
9 it would take literally -- and again I
10 emphasize -- a massive training commitment.
11 A massive commitment of time, resources and
12 funds, and I would say that begs one very
13 large question. How would Amtrak accomplish
14 that?

15 We've heard a lot here about, you
16 know, financial issues. I'm not going to
17 belabor them, but I would submit to this
18 Board, respectfully, it would be extremely
19 difficult, probably more likely impossible,
20 to complete that type of a training
21 requirement.

22 In fact, Amtrak's inability to

1 provide required training for shopcraft
2 employees who perform safety critical
3 functions has been called into question in
4 the past and continues to present a challenge
5 that Amtrak has not effectively addressed.

6 Most significantly, Amtrak has
7 reduced its training of shopcraft employees
8 and at no time during negotiations did Amtrak
9 discuss any new training programs. Whether
10 it related to their vague proposal or not,
11 there was nothing discussed as far as new
12 training programs.

13 I've just said that Amtrak's
14 training has been called into question in the
15 past, and I want to cite a couple examples.
16 JAO report RCED 93-68. The title of the JAO
17 report was "Amtrak Training: Improvements
18 Needed For Employees Who Inspect and Maintain
19 Rail Equipment."

20 As part of the effort to identify
21 training needs, this is just one small quote
22 out of a very large report, which had a lot

1 of recommendations and findings, but one
2 small part on the recommendations.

3 "As part of the effort to identify
4 training needs and establish training
5 programs, the Amtrak officials should
6 determine what cost would be associated with
7 the training. If adequate funding is not
8 available within Amtrak, we recommend that
9 requests for such funding be included in
10 Amtrak's next budget request to Congress."

11 Now, that was quite some time ago
12 by the number of the report. That was a 1993
13 report. However, the problem has not went
14 away. Most recently, Amtrak's Inspector
15 General semiannual report to Congress for the
16 period ending March of this year, and I will
17 reference for those who may be looking for
18 it, it's report number 300-204 issued
19 actually 11/21/2006.

20 It's a lengthy conversation about
21 the problems with training as far as
22 documenting it, but I'm just going to read

1 one small quote out of the report, which is
2 entitled or titled, "Internal Controls Over
3 Regulatory and Amtrak-Mandated Training."

4 "Weaknesses in the system used by
5 Amtrak's human resource department to ensure
6 that Amtrak employees complete required
7 mandatory training in a timely matter were
8 noted. These weaknesses make it difficult to
9 determine if employees received all
10 regulatory and Amtrak-required training for
11 their positions."

12 So what you have is a request or a
13 proposal to put forth a composite mechanic,
14 the history of problems with training that
15 still exist today, and no discussion of it at
16 the table.

17 Given this background based on
18 safety considerations alone, the safety of
19 the riding public and Amtrak employees,
20 Amtrak's proposal, if adopted, would
21 certainly compromise safety. As such, we
22 urge the Board based on these safety

1 considerations alone to reject Amtrak's
2 composite mechanic proposal.

3 I would now like to turn to the
4 issue of contracting out. The current rule
5 provides that Amtrak may contract out,
6 provided that no employees are furloughed as
7 a result. Amtrak's proposal that was
8 presented during the cooling-off period
9 provides as follows:

10 "Eliminate any contracting
11 restrictions provide that employees
12 furloughed as a result of contracting will
13 have an option for up to, and including, one
14 year's severance pay or transfer with
15 relocation or remaining on furlough."

16 We got a lot to say about this, but
17 I want to refer for one moment to Mr.
18 Crosbie's written statement to the Board in
19 their submission.

20 It says, "Amtrak's proposal is
21 directed primarily at the elimination of
22 certain lower class jobs such as coach

1 cleaning." I will talk to that in a minute,
2 but I really want to point out an important
3 factor here.

4 In the presentation yesterday,
5 which is much different than that involving
6 other crafts, bullet point on page 24 of the
7 presentation says, "Reduction in force
8 through attrition."

9 I mean, they're being very upfront
10 saying we're going to attrite the work force
11 and the point I want to make is how this
12 relates to contracting out in Beach Grove,
13 Indiana.

14 They -- and I can't speak for exact
15 numbers for all the craft, but they have cut
16 the work force there nearly in half, if not
17 in half, as far as carmen crafts. Literally
18 50 percent. They have not hired a carmen --
19 and I think the same applies for most of the
20 other crafts -- since 1988.

21 During the period from 1988 till
22 the current, they have had the ability to

1 contract out without any type constraints on
2 it, if it didn't result in a furlough. So,
3 indeed, what has happened is they haven't
4 furloughed.

5 They've attritted the work force
6 and they've contracted out time and again,
7 and I'll talk to that in a bit, but I wanted
8 to make that point very clear.

9 Amtrak's demand for the essentially
10 unfettered ability to outsource any and all
11 of our work, even resulting in furloughs,
12 truly is radical and upsetting. No railroad
13 -- and I emphasize no railroad -- freight or
14 commuter enjoys this ability to contract out
15 without restriction, and no PEB supports
16 Amtrak's request. No other freight or
17 commuter carrier has this right, simply put.

18 As pointed out in my written
19 statement, such demands have been repeatedly
20 rejected by PEBs. Significantly, while
21 Amtrak maintains that eliminating any
22 restrictions on contracting out is critical,

1 indeed legally required, in the three
2 agreements it made in this round, it failed
3 to gain that objective.

4 Just a little refresher. We heard
5 a lot of talk here about their position that
6 they were legally required to do this, which
7 we wholeheartedly disagree with.

8 In the three collective bargaining
9 agreements, the clerks, the on-board service,
10 and the product online supervisors called for
11 labor management committee to study
12 contracting out and in-sourcing. The
13 rejected ATDA contract and Maintenance of Way
14 supervisors agreement also did not have any
15 contracting proposal. So that undermines and
16 flies in the face what they say with respect
17 to legality part.

18 Also, the rejected BLE agreement
19 had a rule eliminating the furlough
20 restriction but, as BLE General Chairman
21 Kenny explained -- and much is made of that
22 by Amtrak -- in a letter to his members, that

1 this seeming concession was illusionary since
2 BLE has a strong scope rule prohibiting
3 subcontracting.

4 Unlike the BLE, the shopcrafts do
5 not enjoy the same protection against
6 contracting out in their scope rule. There
7 is simply no support for Amtrak's claim that
8 it needs these changes for cost cutting and
9 to improve efficiency. Amtrak President, Mr.
10 Kummant himself, stated: "Outsourcing is no
11 panacea."

12 In addition, I will call your
13 attention to Exhibit 50. It's an article by
14 Bob Johnson. It's titled "This Ain't Magic"
15 and it was in Trains Magazine in October of
16 2003.

17 It's our -- I think it's -- yeah,
18 it's Exhibit 50, but they talk a little bit
19 about outsourcing in there and what they say
20 is, "Outsourcing repair is a magic bullet say
21 the consultants, but if Amtrak were to
22 outsource, they'd be eating that bullet."

1 This article also speaks to the
2 skill levels of Amtrak shopcraft employees
3 and the role this skill plays in keeping an
4 aging, highly utilized Amtrak fleet in
5 operation.

6 I just want to say a couple words
7 about that. I would really encourage the
8 Board -- I know you've got volumes of paper
9 in front of you, but if you have the time to
10 read that article because Amtrak represents
11 that they have a very aging and difficult
12 equipment fleet.

13 We don't disagree with that, but
14 because of that, parts are not always readily
15 available. They have to be made with
16 improvisation for retrofits and things like
17 that.

18 These people have those skills.
19 Amtrak can ill afford to lose those skills.
20 Nevertheless, Amtrak continues to demand we,
21 who built this company and have consistently
22 worked to levels above and beyond to ensure

1 survival, to give our work to vendors.

2 Amtrak has highlighted its intent
3 to subcontract the work of 730 coach
4 cleaners. We note that all commuter carriers
5 perform this work with their own employees.
6 As shown in Attachment 14 -- I think you've
7 had it and probably the issue was already
8 addressed yesterday by Mr. Roth.

9 Each commuter pays higher wages
10 than Amtrak. Even after our proposed wage
11 increase is factored in and the benefits in
12 commuters, quite frankly, is much better. We
13 reject the notion that Amtrak needs this
14 relief that no commuter has, and we are
15 certainly dubious of Amtrak's claim that it
16 can get an outside contractor to do this work
17 for less.

18 Amtrak's single bid and other
19 contracting practices have been repeatedly
20 criticized by the JAO. I'm not going to go
21 into a lot of detail on that. You've heard a
22 lot about that. You can refer to our Exhibit

1 35, if you need more reference on that point.

2 We are also very dubious of
3 Amtrak's claims that the use of
4 subcontractors to perform this work will not
5 compromise safety. Just yesterday or the day
6 before, Rand came out with a huge report on
7 security. It's an issue I don't need to
8 enlighten people about here.

9 We have great concerns about that,
10 but most importantly, we want this Board to
11 know this is the bottom line. That a
12 recommendation that will result in laying off
13 730 coach cleaners, our brothers and sisters,
14 will not be helpful to reaching an agreement.
15 I can't overemphasize that point.

16 In conclusion, we greatly
17 appreciate this opportunity to express the
18 employees' frustration and the disappointment
19 at Amtrak's literally take-it-or-leave-it
20 attitude during the past eight-long
21 frustrating years, leading to the creation of
22 this Board.

1 Amtrak's bargaining posture
2 throughout has been unless the Unions agreed
3 to drastic and what we believe to be and
4 really believe to be destructive work rules,
5 which will destroy craft lines and probably
6 work towards the company's demise, they
7 propose our membership would receive no
8 raises or back pay.

9 Literally, they have been held
10 hostage. Amtrak's conduct cannot be rewarded
11 by this Board. The terms of the National
12 Freight Agreement, which you have heard said
13 by many here before, which had no work rule
14 changes, with all of its faults, is
15 acceptable to us. Amtrak's proposal will
16 never be.

17 Amtrak's demands for changing --
18 changes in work rules that have long been in
19 place in as well as the freights and
20 commuters should be denied. It has simply
21 not made the case that this PEB should ignore
22 the decisions of prior boards dealing with

1 Amtrak, freight and commuters alike, and has
2 not made the case that such changes are
3 required when shopcraft productivity and its
4 on-time performance has dramatically improved
5 under the current rule.

6 I will just say one thing about
7 that. Amtrak itself makes very clear that,
8 you know, on-time performance is up. You've
9 heard a lot here about the increases in labor
10 productivity. I can assure you that our
11 shopcraft employees have made that happen,
12 and I can provide examples if you would so
13 choose.

14 But again, Mr. Chairman, and
15 Distinguished Members of the Board, I thank
16 you very much for this opportunity.

17 CHAIRMAN TREDICK: Thank you, sir.
18 Questions?

19 MS. WITT: Sir, I have been sitting
20 here thinking in part as you were talking
21 about the various agreements that the
22 shopcrafts have made with the carrier in

1 different instances, but you didn't say
2 anything about maybe disagreements among the
3 crafts themselves.

4 If you know, what kind of
5 experience has there been with respect to
6 claims that are made that crafts are
7 overlapping illegally under the agreement?

8 THE WITNESS: Well, certainly
9 that's always a concern and there's been some
10 of that. I would say that it's not something
11 of primary focus. IBEW and IAM, for
12 instance, I don't believe they've had many,
13 if any, cases. From the JCC side we have.
14 We have had cases, but a lot of those deal
15 with issues other than, I would say, proper
16 application of the rule and they're pretty
17 much isolated.

18 If I can give you an example. Look
19 across 20 or 24 locations, whatever it may be
20 where we have people, there's been a few at a
21 couple locations, and then at other locations
22 there's been more, but it's very limited.

1 I mean, obviously people are
2 concerned about their work but --

3 MS. WITT: Sure.

4 THE WITNESS: -- for the most part
5 what we see -- and let me say one other
6 thing. Amtrak has come here and represented
7 that dwell time at its stations is a problem
8 and that this would change that problem. We
9 have heard nothing of that and I know nothing
10 of any, you know, disputes as far as that
11 goes.

12 Likewise with toilet and working
13 with HVACs. I mean, I don't know every issue
14 that may be out there, but off the top of my
15 head, I can't think of anything.

16 MS. WITT: Okay. Thank you.

17 MR. JAVITS: Under the incidental
18 work rule, if I can ask you about that. As I
19 understand -- well, drawing back for a
20 second. As I understand it, the total amount
21 of time that one of the shopcraft members can
22 work in another craft, if you will, would be

1 simple work two hours and incidental work up
2 to four hours. Is that right?

3 THE WITNESS: Technically three
4 hours and 59 minutes.

5 MR. JAVITS: Right. Let's call it
6 four hours and that's not exclusive time,
7 that is, one can be added to the other. So
8 you're talking about a total of six hours a
9 day?

10 THE WITNESS: (Nodding)

11 MR. JAVITS: And then with regards
12 to the depth of the work that may have to be
13 done. As I understand it, the simple work
14 can be done with no use of technical tools
15 and such. On the incidental side, I take it
16 that if a task requires some depth of
17 understanding, that at that point the work
18 has to go from one craft member to the one
19 who was more specialized. Is that right?

20 THE WITNESS: That would be
21 correct. In other words, and let me just try
22 to make sure I understand. So I'll give you

1 an example where a carmen may be performing a
2 function and then it may require a couple or
3 -- excuse me -- disconnecting a couple of
4 wire leads, you know, a simple, a couple
5 screws and take it off.

6 He would be able to do that, but if
7 it was more extensive than that and he didn't
8 have the electrical training, then he would
9 have to get the appropriate craft to do it,
10 obviously, for safety reasons and that's the
11 way the rule is designed because it talks
12 about work capable of being performed.

13 MR. JAVITS: Okay. You hit the
14 point that I was getting to. Let's assume
15 the sheet metal worker, or whoever it is, is
16 trained in electrical work. Could they -- if
17 Amtrak trained them -- first of all, is there
18 a restriction on Amtrak actually training
19 them in the electrical work so they could do
20 that work?

21 And second of all, would they be
22 able to do that within the incidental work

1 rule without violating scope or as an
2 exception of scope, or however you analyze
3 it?

4 THE WITNESS: Well, the first part
5 of that, if I'm understanding it correctly,
6 would be there's pretty extensive tasks and,
7 I mean, there's pretty extensive skills
8 involved in a lot of these tasks. I mean,
9 it's, you know, they use the example that,
10 you know, I wouldn't -- I think the example
11 was when I call the guy for the air
12 conditioning, it creates the whole, you know,
13 he fixes the whole unit.

14 But here, I mean, not only is that
15 sheet metal worker working with several other
16 components, you know, I guess technically at
17 the end of the day, if he had the proper
18 required skills, they would be able to do it
19 under the incidental work rule.

20 MR. JAVITS: Okay. And then a more
21 general question. Is there a direction that
22 the shops are going in with respect to work?

1 And maybe this question for Mr. Rose, too.

2 In my car, you know, diagnostics are done by
3 now, you know, a single procedure and it
4 seems at least on the surface more of an
5 electrical type approach to mechanical work.

6 Is the same true in the railroads?

7 It looks like the numbers of IBEW, for
8 instance, number members have increased
9 significantly vis-a-vis the other crafts, and
10 how does that impact Amtrak's needs in these
11 incidental and simple work rules?

12 THE WITNESS: I'll turn to Roger.

13 MR. ROSE: Yes. The diagnostics of
14 the problems, a lot of them are computerized
15 now, but, however, you do need the particular
16 expertise and training to diagnose the
17 problem and to solve it, but, yes, a lot of
18 the problems are now on the computer. So you
19 can -- basically it cuts down your
20 troubleshooting time basically.

21 THE WITNESS: I would only add one
22 thing to that being that I'm not from the

1 electricians, you know, background and I
2 really don't know too much about their work,
3 which I think is a good example of how this
4 proposal doesn't work, but I would only
5 stress the point that as Amtrak has
6 maintained, this is a highly utilized aging
7 fleet.

8 While there are certain things that
9 have changed with respect to diagnostics,
10 much the same is much the same.

11 MR. JAVITS: That's all. Thank
12 you.

13 CHAIRMAN TREDICK: Thank you, Mr.
14 Rose. Thank you, Mr. Maslanka.

15 According to the schedule that I've
16 been provided, Mr. Derillo will testify for
17 15 minutes and Mr. McCann is a question mark.
18 I mean, he may or may not testify; is that
19 correct?

20 MR. GUERRIERI: Yeah. Mr. Wilder
21 indicated that he will not testify.

22 CHAIRMAN TREDICK: Well, I thought

1 he said probably. Okay. So, let's proceed
2 with Mr. Derillo and then that would
3 conclude, as I understand it, the Union's
4 direct testimony and we'll take a break then
5 and get ready for the rebuttal. Is that
6 satisfactory?

7 MR. KRAUS: Yes, sir.

8 CHAIRMAN TREDICK: Okay. Will the
9 witness be sworn, please.

10 Whereupon,

11 JOE DERILLO

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

14 DIRECT EXAMINATION

15 CHAIRMAN TREDICK: Welcome, sir.

16 MR. KRAUS: Chairman Tredick,
17 Members of the Panel, good morning. My name
18 is Mitchell Kraus. I have previously
19 introduced myself. I've been quiet for most
20 of the hearing.

21 I am the General Counsel for the
22 Transportation Communications Union. ARASA,

1 the supervisors Union, is part of that Union
2 and I'm here on today on behalf of ARASA.
3 ARASA is not part of either of the two
4 coalitions that have appeared before you. As
5 a result, they get me.

6 (Laughter)

7 CHAIRMAN TREDICK: I'm sure that's
8 satisfactory, Mr. Kraus. Please proceed.

9 MR. KRAUS: ARASA represents three
10 crafts on the Amtrak, three supervisory
11 crafts that Mr. Derillo will be describing
12 to you. Mr. Derillo was the chief negotiator
13 for ARASA for all of these crafts in this
14 round of bargaining with Amtrak, and he has
15 previously been involved in prior bargaining
16 agreements on behalf of ARASA with Amtrak
17 since 1991.

18 He first began his employment on
19 the Penn Central in 1970. He was promoted to
20 a supervisor position in 1977. Thereafter,
21 he's held various supervisory and management
22 positions with Amtrak. He was elected

1 General Chairman of the Maintenance of Way
2 supervisory craft in 1991, and thereafter in
3 2003 he became the President of the ARASA
4 division.

5 In that capacity, he has been
6 directly involved in negotiations with not
7 only Amtrak, but the freight carriers and the
8 commuter carriers on behalf of ARASA members,
9 and most recently he has been made the
10 International Representative to the ARASA
11 division. So I give you Mr. Derillo, and we
12 will conclude well in advance of the 11
13 o'clock time that's been set.

14 CHAIRMAN TREDICK: Thank you so
15 much. Proceed.

16 THE WITNESS: Good morning. As
17 noted by Mr. Kraus, my name is Joe Derillo.
18 Even though I might look like Mike Ditka, I'm
19 not. So let's not confuse that. I might
20 have his mannerisms, but I'm not.

21 I'm the International
22 Representative of TCU with the overall

1 responsibility of our Union supervisors on
2 carriers throughout the country, including
3 Amtrak. A written submission was filed on
4 behalf of ARASA last week and that submission
5 makes clear on issues of wages and health,
6 ARASA is in complete agreement with the
7 shopcraft Union submission.

8 Mr. Joel Parker and Mr. Danny Biggs
9 have addressed these issues on behalf of all
10 the Unions before you, including ARASA.

11 In my testimony today, I will focus
12 on two issues addressed in our written
13 statement. First, the need for modifications
14 of our existing scope rules and, second, some
15 of the work rule concessions sought by
16 Amtrak.

17 There are two separate supervisors
18 crafts here before you. Each with a separate
19 collective bargaining agreement. The scope
20 rules in the current supervisors of
21 Maintenance of Equipment, hereafter referred
22 to as M of E, and the supervisors of

1 Maintenance of Way, hereafter referred to as
2 MW, generally describe the descriptions
3 covered by those agreements.

4 These rules need to be strengthened
5 to make clear that our positions under the
6 agreement may not be abolished and their work
7 reassigned to management.

8 While the need for improvement in
9 scope rules is addressed in our Section 6
10 notices, I must acknowledge to you that there
11 was virtually no bargaining on this subject
12 until an incident in December focused my
13 attention on the need for a stronger scope
14 rules.

15 In August of 2007, Amtrak abolished
16 seven supervisor positions in Washington, DC.
17 Copies of the job descriptions of these
18 abolished positions are contained in
19 Attachment 1-B to our submission.

20 After these positions were
21 abolished, Amtrak established seven new
22 manager positions. A review of the job

1 descriptions of these management positions
2 contained in Attachments 1-C and D to our
3 submission shows that the job duties of the
4 management positions are virtually identical
5 to the responsibilities of the abolished
6 positions.

7 I learned of this situation. I
8 filed a written complaint with Amtrak Vice
9 President, Mr. Joe Bress, and copies of our
10 correspondence on this subject is attached to
11 our submission as Attachment 1-E.

12 Mr. Bress argued that Amtrak's
13 actions were justified since a number of
14 ARASA represented supervisors has not been
15 reduced in the same proportion as the
16 reduction in the crafts we supervise.

17 With all due respect to Mr. Bress,
18 this answer is not responsive to my concerns
19 or the concerns of the supervisor craft. We
20 do not question Amtrak's right to abolish
21 supervisors positions if there is
22 insufficient work. We do question the

1 appropriateness of Amtrak reassigning the
2 work of the abolished positions to
3 newly-created managerial positions.

4 It is the reassignment of
5 supervisors' work to which we object to. To
6 prevent the destruction of our craft, the
7 reassignment of our craft to work management
8 -- work to managers, I propose a traditional
9 position and scope rule which will prevent
10 such reassignment of ARASA work to managers.
11 This proposal is contained in Attachment 1-F
12 of our submission.

13 I recognize that this request for
14 this rule improvement runs counter to Labor's
15 overall position that the pattern contained
16 in National Freight Agreements over the last
17 two rounds of no improvements and no
18 concessions should apply, but I believe that
19 this matter is critical to our craft and this
20 Board's consideration of this matter is
21 warranted.

22 I will now turn my attention to

1 some of the work rule concessions sought by
2 Amtrak focusing first on the M of E craft.
3 Amtrak seeks to eliminate the subcontracting
4 restrictions placed on the M of E supervisors
5 agreement by act of Congress. Others have
6 already addressed this issue.

7 Suffice it to say that Amtrak did
8 not receive this concession in the three
9 agreements signed in 2003, 2004, including
10 the Product Line Supervisors agreement, which
11 I was a party to, nor did it receive the
12 concession in the unratified MW supervisors
13 agreement, which I was a party to. This Board
14 should not recommend that it receive such a
15 concession from its M of E supervisors.

16 Amtrak seeks to modify the coverage
17 of its short-term disability for its M of E
18 supervisors. The M of E sick leave rule,
19 which had been in place since Amtrak's
20 inception, simply states that supervisors
21 shall be covered under Amtrak's management
22 sick leave policy.

1 That policy consists of several
2 parts. Employees are entitled to 10 sick
3 days per year. However, if an employee is
4 sick for more than five consecutive days, he
5 is placed under Amtrak's short-term
6 disability policy.

7 Under that policy, employees are
8 compensated on a sliding scale based on
9 seniority for up to 130 days of leave, minus
10 any railroad unemployment insurance benefits
11 to which the employee is eligible. There is
12 also a long-term policy that begins coverage
13 on the 181st day of sick leave.

14 In Mr. Bress's statement, he
15 proposes to delay the benefit -- delay the
16 short-term disability benefits from the
17 second day of illness to the fourth day of
18 illness, and to reduce income replacement
19 benefit to 70 percent from the current level
20 of 80 percent or a hundred percent, depending
21 on the length of disability and the
22 supervisor's years of service.

1 This proposal violates Amtrak's
2 commitment for parity, which has been in the
3 M of E agreement, as I have already stated
4 before, a number of years. Amtrak proposes
5 to make this change even though it has agreed
6 with -- even though it has agreed with the
7 ARASA product supervisors line to leave their
8 short-term disability benefit rule in effect.
9 Even though one of the negotiation goals was
10 to delete it.

11 The rule is actually superior to
12 the M of E rules, which Amtrak now seeks to
13 eliminate. Amtrak justified this break with
14 the parity principle because it alleged that
15 the policy has been abused.

16 However, as detailed in our
17 submission and the attached declaration of
18 General Chairman, Mr. Bob DUBY, in
19 Attachment 3, Amtrak was unable to come up
20 with the data to support this claim.

21 Our research indicates Amtrak's
22 data overstates the amount of sick leave by

1 1,056 hours for a sample of the entire group.
2 In the absence of reliable data from Amtrak,
3 which I've asked for twice, I was given it
4 twice. The first time I gave it back to them
5 because in the fairness of negotiating, I
6 knew it was totally wrong.

7 They sent me a second one. They
8 told me, this is it. Guarantee it. No
9 meaningful negotiations have taken place
10 because of it.

11 We are willing to participate in a
12 Labor Management Study Commission to address
13 an abuse -- of any abuse of the current rule,
14 assuming there are such abuses that exist.
15 But we respectfully urge this Board not to
16 recommend Amtrak proposal which will end
17 years of parity on this issue.

18 Amtrak seeks two lock-in rules.
19 Under these proposals, employees would not be
20 able to exercise normal seniority rights but
21 would be locked into a position. Amtrak
22 proposes that employees bidding for special

1 projects be locked into that position for the
2 duration of the project, or 18 months.

3 The current rules call for a
4 lock-in of 12 months with certain caveats.
5 First, an employee may be released from a
6 lock-in for hardship and, second, Amtrak must
7 provide notice and discussion prior to
8 designating a special project position
9 subject to a lock-in.

10 Amtrak has also proposed a
11 permanent lock-in for those in high speed
12 work service. The current rule provides for
13 18 months, not a permanent lock-in for such
14 employees. To summarize, Amtrak wants to
15 extend the lock-in period for special
16 projects from 12 months to 18 months and to
17 extend the period of high speed rail from 18
18 months to being permanent.

19 The current rules already are a
20 restriction on the exercise of seniority and
21 we believe have the proper balance between
22 special projects and high speed rail. No

1 further restrictions on seniority rights is
2 justified, particularly when there have been
3 essentially no bargaining on these proposals.

4 I will now direct my comments to
5 the MW supervisors. Amtrak has proposed
6 ostensibly the same work rule concessions
7 contained in the unratified agreement, which
8 was overwhelmingly rejected by a vote of 112
9 to 44, with one notable exception, which I
10 will discuss shortly. We urge this Board not
11 simply to recommend the concessions in that
12 unratified agreement.

13 The ratification process has long
14 been recognized as an important exercise of
15 Union democracy. Subject to being proposed
16 agreements to final approval by the rank and
17 file members. The rejection of the proposed
18 contract by our members should not be taken
19 lightly by this Board, and this Board should
20 not simply recommend a tentative agreement,
21 thereby giving no consideration to the views
22 and desires of our members.

1 The most significant of the rule
2 changes proposed by Amtrak is an extra board
3 rule. Extra board employees are not to be
4 assigned regular positions, rather they were
5 subject to being assigned to any position in
6 a wide geographic area which could have
7 resulted in likely, if not intolerable,
8 commuting distances.

9 Extra board employees would not
10 receive regular rest days. Their rest days
11 would be the rest days of the positions
12 filled or as assigned by management.

13 The rank and file opposition to the
14 proposed agreement was increased by the
15 statements of an Amtrak manager in
16 Philadelphia that he intended to use the
17 flexibility of the new extra board rules to
18 shaft the employee. A threat that via e-mail
19 was widely repeated to the most members
20 throughout the system.

21 When I asked Amtrak's Vice
22 President -- Vice President Labor Relations,

1 Mr. Joe Bress, to disclaim these comments, he
2 declined.

3 Amtrak should not be permitted to
4 use an agreement whose ratification to
5 sabotage on the basis of this dispute. The
6 extra board rule proposed by Amtrak has been
7 rejected by a large majority of the ARASA
8 members and is, therefore, not acceptable.

9 I also might add. There are two
10 rules in our agreement that also provide for
11 what they're exactly asking for, and they've
12 been in existence since the MW agreement came
13 into existence, which I was a party to back
14 in 1977.

15 Further, you should be aware that
16 unratified agreement called for the payment
17 of \$800 to each M of E supervisor in return
18 for this rule. The \$800 bonus payment was
19 not included in Amtrak's final proposal to
20 ARASA.

21 As explained in our submission, to
22 provide the same value to that that those

1 \$800 represented, it should be significantly
2 higher, but, frankly, even if a bonus were to
3 be included, the proposal has been soundly
4 rejected by our membership and as much
5 unacceptable.

6 There are other rule changes for
7 both M of E and MW supervisors proposed by
8 Amtrak. These are addressed in our written
9 submission. In many instances, there was
10 little or no bargaining over these proposals.
11 I see no reason to further burden the record
12 from reviewing each now.

13 I have heard testimony from Amtrak
14 on the great strides that they have taken to
15 build up the business and how successful it's
16 become. I have personally worked for Amtrak
17 years before many of those who have testified
18 before you.

19 I personally, I am a supervisor
20 C&S, construction by trade, and I considered
21 myself -- even though some people behind me
22 might consider it -- I consider myself a

1 teddy bear of a supervisor, and I feel -- I
2 personally feel that Amtrak owns the first
3 class worker in this country, in the country.

4 I transverse the country with
5 different railroads. I see the other
6 railroads. I am proud and I have always been
7 proud to wear the insignia of Amtrak on my
8 left shoulder or my left breast right over my
9 heart. Why has Amtrak workers been
10 diminished? Why have we taken away from them
11 what they deserve?

12 I'd like to add. My esteemed
13 colleague, Mr. Jed Dodd, who has was up here
14 and who's a pretty elegant speaker if I might
15 add, at one time Amtrak was killing people.
16 Jed Dodd came to me and Jed and I went to
17 John Cunningham, who was the chief engineer
18 of Amtrak at one time, and we collectively
19 come up with a program called PAT, which was
20 Protection Against Trains.

21 The primary purpose of that was to
22 send the employee home like they came, in one

1 piece. So they can go home with their
2 family. So they can spend parsely money they
3 were getting, okay? On the food that they
4 needed.

5 It was a very -- I took great pride
6 in that. Jed, Mr. Cunningham, myself, we
7 signed it. I still have it. That program
8 exists throughout the entire country of the
9 United States today on every railroad under
10 the name RWP. It's in the FRA rules. It's
11 protection by design for the worker.

12 That came from the mind of Amtrak
13 workers. From Amtrak workers, nobody else.
14 I would be proud to lead these workers
15 anywhere in any country to build a railroad,
16 whether it would be dispatching, whether it
17 would be laying track, whether it would be
18 putting signals in, whether it would be
19 building a new station. I would be proud.

20 I was quoted in the Trains Magazine
21 in 1999 just that. I am proud to be an MW
22 worker. I started in 1970 with a pick and

1 shovel in my hand, with a pick and shovel in
2 my hand in the C&S department. I am proud to
3 be part of the C&S department. Okay?

4 There's nothing like it in the
5 world than when you turn over the track in
6 the morning to see that first train barreling
7 down the track and you see the ballast dust
8 blowing.

9 The green signals up and bright and
10 you see the Amtrak product, the passenger,
11 safely gliding along to their destination,
12 totally unaware of what the worker -- of who
13 the worker was that got them there safely.
14 First class employees, first class.

15 I would like to make a comment on
16 something that was said before me about that
17 photo on the toilet. Does everybody remember
18 seeing that? Okay. Horrible, absolutely
19 horrible.

20 Two months ago, two months ago we
21 had the same situation. The supervisor and
22 craft people were there working on the

1 toilet. Supervisor calls the manager. I
2 need between five and 10 minutes to get the
3 feces off the floor, to get the toilet in
4 working condition and send it on. Five to 10
5 minutes. All right.

6 They accomplished that
7 collectively. The Unions collectively
8 accomplished that. You now have a proud
9 Union. You have a proud person. Okay? You
10 know what happened next? My supervisor was
11 put on trial and issued 10 days on the street
12 because he didn't lock the toilet up that
13 smelled and was disgusting. Give me a break.

14 We're sitting here arguing about
15 contracting out. I say to you or the other
16 side of the room: How would you like for us
17 to tell you to contract out marketing,
18 design, finance? How would you like that?
19 How would you like to work under those
20 conditions every day, on top of the fact that
21 we're not being financed by Congress?

22 I find it despicable. Put respect

1 back into the worker. Do you realize that
2 the people that run these trains, that
3 operate these trains, that move these trains,
4 that build the track out there, that are
5 operating the trains at 150 miles an hour
6 have not received a wage since the turn of
7 the century? Since the turn of the century.

8 Can you imagine what they can do if
9 they were receiving wages, how they can react
10 and how they feel good about themselves? I
11 implore you. Please support us. Put pride
12 back into the Amtrak worker where it belongs.

13 In conclusion, I would like to say
14 to you thank you very much and a Merry
15 Christmas and a Happy New Year to you.

16 (Laughter)

17 MR. JAFFE: Mr. Derillo, just a
18 couple, if I may. With respect to the August
19 2007 actions --

20 THE WITNESS: Yes, sir.

21 MR. JAFFE: -- that led to the
22 proposal for the scope rule change?

1 THE WITNESS: Yes.

2 MR. JAFFE: Was that grieved and
3 challenged under the existing contractual
4 provisions? I guess that's question one.

5 THE WITNESS: We were talking about
6 it and we were told that they were going to
7 get back -- they being Amtrak would get back
8 to me with what it actually was. I have not
9 received a response.

10 MR. JAFFE: Okay. And are there
11 existing scope provisions that at least
12 provide a basis for arguing that that was
13 violated by the carrier's actions, or is it
14 your belief that absent the changes you're
15 asking the Board to recommend that there's
16 nothing that would preclude this type of
17 behavior from going on again? Just so I
18 understand.

19 THE WITNESS: That's an excellent
20 question.

21 MR. JAFFE: Thank you.

22 THE WITNESS: I like that question.

1 First of all, yes, there are stuff in our
2 scope agreement. Our scope agreement in the
3 M of E craft tells us we are responsible to
4 supervise, and it says supervise, but in the
5 years as we muddy up the words "supervise"
6 and "shall" and "may" take totally new
7 meaning on different people. Yes, there are
8 rules in M of E agreement that say we
9 supervise the crafts above listed.

10 MR. JAFFE: Okay. Thank you.

11 THE WITNESS: You're welcome.

12 CHAIRMAN TREDICK: Thank you, Mr.
13 Derillo, very much.

14 THE WITNESS: Thank you.

15 CHAIRMAN TREDICK: Messrs. Kraus or
16 Mr. Guerrieri -- oh, I'm sorry.

17 MR. GUERRIERI: I believe Mr.
18 Wilder would like just to make a brief
19 observation or comment.

20 CHAIRMAN TREDICK: Okay.

21 MR. WILDER: Yes. As I indicated
22 earlier, I would like to introduce Mr. McCann

1 to the Board and give the Board an
2 opportunity to question him. This will take
3 about 30 seconds I believe.

4 THE WITNESS: Do I need to be sworn
5 in?

6 CHAIRMAN TREDICK: For 30 seconds,
7 let's just keep doing what we've been doing.
8 So, please swear the witness.
9 Whereupon,

10 LEO MCCANN
11 was called as a witness and, having been first
12 duly sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 MR. WILDER: Mr. Chairman, Members
15 of Board, this is Leo McCann. He's the
16 General President of the American Train
17 Dispatchers Union. Mr. McCann, as I
18 indicated earlier, has presented written
19 testimony for the Board's understanding, and
20 I had promised earlier to present him for
21 questioning by the Board if any of the
22 members do have questions of him.

1 CHAIRMAN TREDICK: Thank you, Mr.
2 Wilder and Mr. McCann, the written statements
3 all have been excellent. I have no questions
4 for Mr. McCann but --

5 MR. JAVITS: Did the '04 tentative
6 have a retro in it?

7 THE WITNESS: No, it did not, Mr.
8 Javits.

9 MR. JAVITS: Thank you.

10 THE WITNESS: Could I make one
11 comment about the train dispatchers?

12 MR. JAVITS: Certainly.

13 THE WITNESS: Even if we are a
14 small craft here, for the information of the
15 Board members, I want to express the
16 importance of the men and women I do
17 represent and for those who don't know what a
18 train dispatcher does, as Amtrak has
19 indicated when comparing to the airlines, we
20 think of our air traffic controllers and I
21 wanted to indicate to the Board members how
22 specialized and how important our craft is.

1 And you've heard some testimony
2 about on-time performance, and I believe my
3 brothers and sisters contribute to that to an
4 immense degree. Even though we're not the
5 craft that has the most members here, we are
6 the most vital part of the operation on the
7 on-time performance, and I wanted the Board
8 to recognize the importance of the American
9 train dispatchers to that cause. Thank you
10 very much.

11 CHAIRMAN TREDICK: Very well
12 stated. Messrs. Wilder, Guerrieri, Kraus,
13 does that conclude the presentations for the
14 Union?

15 MR. WILDER: There is just one
16 other matter. Mr. Roth, at my request, has
17 prepared a series of materials that in effect
18 relate to Mr. Gillula's testimony. They are
19 captioned rebuttal exhibits, but I think in
20 an overabundance of caution what I should do
21 is introduce these exhibits at this point and
22 indicate to the Board that Mr. Roth will be

1 available during the organization's rebuttal
2 case if it becomes necessary and appropriate
3 to comment further on these documents.

4 I'll point out that the documents
5 set forth a variety of comparability data
6 that relate directly to the jobs in question
7 and to the fairness and equitableness of the
8 wage proposals that have been made by the
9 parties.

10 CHAIRMAN TREDICK: Mr. Reinert, any
11 objection?

12 MR. REINERT: No objection.

13 CHAIRMAN TREDICK: Okay. Thank
14 you.

15 MR. WILDER: With that, the PRLBC
16 Organizations are prepared to rest, subject
17 to rebuttal.

18 MR. GUERRIERI: The same is true as
19 to the shopcraft coalitions, Mr. Chairman.
20 Thank you for your attention.

21 MR. KRAUS: As well as for ARASA.
22 Thank you, sir.

1 CHAIRMAN TREDICK: Okay. Let's
2 take a break now and begin rebuttal. I've
3 got a little before 11. Could we reconvene
4 promptly at 11:15? Is that satisfactory?

5 MR. REINERT: That would work for
6 us.

7 CHAIRMAN TREDICK: All right.
8 Thank you.

9 (Recess)

10 CHAIRMAN TREDICK: All right. Back
11 on the record.

12 Per the scheduling letter and
13 agreement of counsel, I believe Amtrak is now
14 going to proceed with its rebuttal case. Mr.
15 Reinert.

16 MR. REINERT: Mr. Chairman, we're
17 prepared to proceed with rebuttal and we're
18 recalling Joseph M. Bress.

19 CHAIRMAN TREDICK: Mr. Bress,
20 you've been sworn. So there's no need to do
21 that again. Thank you.
22 Whereupon,

1 JOSEPH H. BRESS
2 was called as a witness and, having been first
3 duly sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. REINERT::

6 Q Mr. Bress, you have been present
7 through, I believe, most of the testimony in
8 this proceeding?

9 A Yes.

10 Q Including the sessions yesterday
11 afternoon and this morning?

12 A Yes.

13 Q I'm going to ask you to speak to
14 the Board on a few issues that have been
15 raised and present some rebuttal from Amtrak.
16 Can you just give us an overview of the
17 points that you're going to touch upon this
18 morning?

19 MR. REINERT: One point before we
20 start, we are going to make reference to
21 Volume 2 of Mr. Bress' materials. So it
22 would probably be good just to take a moment

1 for the Board members to pull it out because
2 there is specific proposal language we are
3 going to look at. Mr. Bress' is divided into
4 two volumes and all the references we're
5 going to be making are to Exhibit 21 in
6 Volume 2.

7 We beg the Board's indulgence, I
8 know we swamped you with a lot of paper and
9 we try not to refer to much of it during the
10 hearing, but I think this one is going to be
11 necessary.

12 CHAIRMAN TREDICK: Just proceed.

13 BY MR. REINERT::

14 Q Mr. Bress, just give us an overview
15 of the areas that you're going to cover this
16 morning.

17 A I'm going to focus in this
18 presentation on five core work rules that are
19 most important to Amtrak's operation and to
20 respond to some of your questions that have
21 come up during this time.

22 We have specific proposals that

1 we're going to be looking at, and these work
2 rules that I'm going to discuss are intended
3 for the improvement of our efficiency to turn
4 trains around on time. So that customers not
5 only continue to use Amtrak, but depend upon
6 its on-time performance, which ultimately
7 will improve our revenues.

8 And, secondly, to achieve a state
9 of good repair, which you've heard about, but
10 to do it more quickly because of scheduling
11 changes that we will talk about and make the
12 most of our capital appropriations.

13 Now, we're willing to, as I will
14 discuss it, implement all of these work rules
15 I will discuss without a furlough. That is a
16 no-furlough guarantee to the employees who
17 are employed on the date of the agreement and
18 that they would not be furloughed as a result
19 of these work rules I will discuss.

20 Q Let's talk a little bit more about
21 those five areas. To what degree are these
22 work rules that you're going to focus on work

1 rules that exist elsewhere on Amtrak?

2 A Well, these proposals aren't new.
3 In many cases, they exist for other crafts at
4 Amtrak, and we want them to be extended to
5 crafts that are here before this Board.
6 There was discussion about, for example, in
7 contracting out about add hope discussions.
8 We've had add hope discussions. They don't
9 work. Every time there is a -- we'll call it
10 -- contracting out potential, there has to be
11 a discussion, particularly with BMW.

12 There is a question as to whether
13 you have shadow workers, which may not be
14 essential for that purpose at all, but are
15 necessary in order to achieve an agreement to
16 contract out, as well there are threats by
17 other groups of striking if we contract out
18 certain kinds of work. Whether those threats
19 are real or not, we have to work with those
20 as if they are.

21 So, add hope discussions have not
22 worked for us in terms of achieving what we

1 need to do, where we need to contract out and
2 where even though, regardless of the number
3 of areas we contract out, where our employees
4 may not be qualified to do the work anyway.

5 The areas where we have the
6 disputes cause significant problems for us in
7 discussions. Work is delayed from starting
8 and, in fact, the ability to do the repairs,
9 whether state of good repair or other repairs
10 that are necessary or work that's necessary,
11 is delayed.

12 Q Let's focus first on the issue of
13 subcontracting of BMW non-core work. On the
14 subcontracting issue, why is there a focus on
15 the BMW?

16 A The focus on the BMW is because it
17 is the only craft where the ability of a
18 craft to deny Amtrak the opportunity to
19 contract out exists, even if there's no
20 furlough. Now, BRS, the signalmen and the
21 other crafts in this PEB, have less
22 restrictive contracting provisions. In fact,

1 they have the provisions placed into the
2 agreements by the law. The Authorization Law
3 of 1997 that says that we cannot contract out
4 as a company if it results in a furlough, and
5 also the law that required us to negotiate
6 over this provision.

7 Q Where did the BMW language come
8 from that's different than the rest?

9 A The BMW language came from
10 discussions and negotiations and agreement in
11 the mid '80s as a result of what was the
12 called the NESAs project then and trade-offs
13 for the work in the Northeast corridor
14 improvement project at that time. The
15 language still exists, although there are
16 some -- and I wasn't here at the time, but
17 some who would say it was temporary for that
18 particular NESAs project, which long since has
19 ended, but it has continued in the
20 agreements.

21 Q Okay. Can you direct the Board's
22 attention to our specific proposal to the

1 BMWWE and the language?

2 A If you will look at Exhibit 21-D,
3 page 18, you will see on page 18 and 19 under
4 paragraph A the language that we have
5 proposed as the resolution of our issue
6 concerning non-core work.

7 Q And in there, the issue such as
8 tree removal, snow removal, cleanup of
9 right-of-way are set forth in the language,
10 correct?

11 A Yes, they're set forth and 19 adds
12 further bullet points of that work.

13 Q Now, Mr. Crosbie yesterday talked
14 about there was no intention to lay off
15 workers as a result of this subcontracting.
16 Do you have a response on that?

17 A Yes. I mean, we are -- we will
18 promise that we will not furlough any BMWWE
19 employee because we have the right to
20 contract out this non-core work and, in fact,
21 with all of the discussion that you heard,
22 the point is to direct our BMWWE work force to

1 do the core work rather than to have to
2 utilize them in non-core work and take them
3 away from the projects that are important to
4 the company.

5 Q Let's turn to the flexible
6 assignment issue with the mechanical crafts.
7 Where does Amtrak's proposal to the crafts
8 today come from?

9 A Well, basically it comes from our
10 having negotiated this provision with several
11 of the crafts, and you've all heard that
12 already. The sheet metal workers and the
13 boiler makers, as well as part of the firemen
14 and oilers, and what the provision allows if
15 you look at the language on 21-G, pages 14
16 and 20, but if you look at 14, I can explain
17 20 separately.

18 It's employee utilization. We have
19 not asked for a composite mechanic. That is
20 the term used in order to label this
21 provision in a way that appears to be
22 detrimental to our proposal. What this is is

1 the ability to train people, in whatever
2 craft, to train them to perform functions
3 that may be cross-craft.

4 We'd have to train them. That's a
5 requirement. There's no issue of safety or
6 security because that's part of the whole
7 process to train people to do that. This is
8 work not traditionally associated with their
9 craft, but what we would train them to be
10 able to do.

11 Q Just sitting here today, does
12 Amtrak have the ability to train people in
13 these specialized areas? For example, can it
14 give HVAC training across the craft?

15 A No, it can't. Again, there are
16 scope issues there, even in terms of the
17 incidental or simple work rule. We aren't
18 able to utilize those by training people to
19 either do the work or to use special tools.

20 Q Now, it says on the slide that
21 Amtrak will entertain any proposal to protect
22 craft equity. What does that mean?

1 A We have said that as the Unions
2 have objected that we would talk about a way
3 to protect the crafts by either an equity
4 rule established each year based upon the
5 number of people in the craft, or by, as we
6 have done in the past, a percentage of
7 protection of the number of employees in the
8 craft. We have left that to the Unions, with
9 which we have negotiated over this, to decide
10 how to do that.

11 Now, page 20, which talks about the
12 equity potential, is one alternative to that,
13 but we have not determined that alternative
14 as the only alternative. We have actually
15 discussed the Unions, their desires in this.

16 Obviously if the first Union
17 decided on equity, it would be much more
18 difficult for the others who came afterward
19 to deal with just a percentage because of the
20 issue of measurement, but still the point is
21 that there is a protection of craft and craft
22 work.

1 Q And the issue of equitable division
2 goes to due structure, does it not?

3 A It goes to due structure and I'm
4 not going to hazard an opinion on the issue
5 of cross-craft utilization as to whether
6 that's more directed at dues than it is to
7 the employees being able to do it because of
8 the potential of attrition that would allow a
9 fewer number of employees to do the same
10 work, but the fact of the matter is the
11 no-furlough guarantee exists with this
12 employee utilization rule as well, as
13 outlined in the five principles I talked
14 about several days ago.

15 Q And it says on the slide that part
16 of the NCF&O has agreed to the IBB and sheet
17 metal workers.

18 A Yes.

19 Q Can you explain that?

20 A That means that a portion of the
21 group that we use in the shops can or in back
22 or in the terminals can be utilized or other

1 people can be utilized to do their work.

2 Q Okay.

3 A They also can do other craft work
4 when the permissibility occurs to allow that,
5 but obviously in all three groups, they can't
6 do that cross-craft in the other direction
7 because the agreements don't exist at this
8 point.

9 Q This morning in the discussion from
10 one of the Union witnesses with respect to
11 the HVAC and toilet examples, there was a
12 question of whether this is really directed
13 at turn-arounds or whether it's directed at
14 backshop craft work. What's the answer to
15 that question?

16 A Well, in most all cases, it would
17 be directed at turn-around work. There are
18 aspects of backshop craft work where this
19 could occur, but clearly the ability to turn
20 a train quickly depends upon the ability to
21 do whatever maintenance is necessary to get
22 that train back into the station and out.

1 Q Okay. Let's turn to the scheduling
2 flexibility issue. You heard this morning
3 testimony from Jed Dodd, who said Amtrak can
4 do all these things already. Is that
5 correct?

6 A No, it's not correct. We can't do
7 all the things that we've proposed already.
8 Yes, we can have four-day gangs that work
9 either Saturday or Sunday, but not both days.
10 We can't do that with five-day gangs, though.
11 We can't work five-day gangs over a weekend,
12 either both days or one.

13 In fact, we did approach the BMW
14 about doing this in the busy New York
15 division where this would be helpful to us
16 because you saw the scatter grams. That was
17 rejected. In fact, the BMW even refused our
18 request for a few gangs to be off Friday and
19 Saturday and others to be off Sunday and
20 Monday, and if we attempted to do that, we
21 were challenged with a flood of claims that
22 would be filed because that was not capable

1 of being done by the company without a change
2 in the contract.

3 Q So, and is all the work that's
4 covered by the BMWWE organized in the gangs
5 that Mr. Dodd referred to?

6 A Not all of the work, no. Not in
7 the special construction gangs, which are
8 capital projects in the main.

9 Q Okay. In referring to the language
10 of our proposal, can you direct the Board to
11 where that language is?

12 A That would be Exhibit 21-D, pages
13 14 and 15 and E, 12 and 13 as we're dealing
14 with BMWWE and BRS.

15 Q Okay. Now, does Amtrak sitting
16 here today have flexibility with respect to
17 night and weekend work with crafts other than
18 the BMWWE and the BRS?

19 A Yes, we do. Many of the crafts,
20 some of which are before this Board today, do
21 permit night and weekend work without
22 requiring 24/7 coverage and without requiring

1 special gangs. The proposal clearly is not
2 new in the company. It may be new for the
3 organizations with whom we are trying to
4 achieve it.

5 Q Let's turn to the overtime only
6 after 40 hours and bank time issues, and can
7 you explain what is the problem Amtrak is
8 trying to address here?

9 A What we're trying to address is
10 having people available to work, rather than
11 utilizing one rule which is overtime after
12 eight hours to -- I will suggest in some
13 cases -- game the system, which I'll explain
14 in a moment, or to deal with bank time, which
15 has been when we agreed to it thought to be a
16 problem and turned out to be a much more
17 severe problem than we thought in terms of
18 the time utilization that employees use under
19 bank time and overtime that has to be
20 expended to back them.

21 Let's go to overtime after 40
22 first, and you'll see the proposal in 21-A,

1 page 12. Again, this is the language. We
2 are putting before you the language for these
3 provisions.

4 I might -- for those of you who
5 know the Fair Labor Standards Act, this is
6 the Fair Labor Standards Act kind of
7 provision, overtime after 40 with counting
8 the kinds of days that are listed there from
9 vacations through holidays and so forth as
10 counting toward that.

11 Now, what we have now is after
12 eight hours, you get paid overtime for every
13 hour worked on that day. So if it comes to
14 about Wednesday and you've worked three days,
15 maybe some overtime and you know you may be
16 called on overtime for Saturday or Sunday,
17 you might just elect not to come in Thursday
18 or Friday because you figure you'll get
19 overtime for that one day or that other day
20 when you've worked.

21 Or if you've worked overtime on
22 Monday and it's been six hours and you get

1 overtime for nine, you might elect not to
2 come in the next day, which means that in
3 those kinds of circumstances, we have to have
4 somebody else come in to cover for that
5 person more than likely on overtime.

6 The point is, if you work on Monday
7 for 10 hours, you've got 10 of the 40 done,
8 and the point is to have overtime after 40,
9 which is basically consistent with normal
10 workweeks that are done in the rest of --
11 we'll call it -- the work environment.

12 Q And have other crafts agreed to
13 this --

14 A Yes.

15 Q -- overtime only over 40?

16 A Yes, other crafts have agreed to
17 it.

18 Q Which ones?

19 A TCU has agreed to it. ARASA-MW has
20 agreed to it and the dispatchers in the
21 tentative agreement. The leadership agreed
22 to it as well, even though the tentative

1 agreement was not ratified.

2 Q And turning to bank time, you
3 referred to it as an experiment that has not
4 worked. Can you explain what you mean by
5 that?

6 A When we were negotiating this, the
7 Union, as I said before, JCC, the coach --
8 the coach cleaners, the carmen and coach
9 cleaners, proposed this as a way to deal with
10 part of the savings, the 20 percent savings
11 that we needed as part of each agreement that
12 we had entered into in '97, '97 and early
13 '99.

14 Now, the point of their position
15 was, well, if you take a half hour and you
16 put in it into a bank, then people can use it
17 at their election to put it in and at their
18 election when they wanted to take it off with
19 permission.

20 The rule was devised by the JCC
21 from the Fair Labor Standards Act
22 compensatory time provision, which allows

1 that in the public sector because there was
2 controversy over the change in the Fair Labor
3 Standards Act on this issue on overtime.

4 We wanted overtime after 40 and
5 while this can play together, as it does
6 under the FLSA, this was an area which the
7 JCC wanted no agreement to provide us. We
8 compromised and while we even indicated
9 during those -- me personally during those
10 negotiations that this was going to be a
11 problematic provision for us in terms of
12 implementation, utilization and overtime
13 cost, we did it. What has happened is that
14 very end.

15 Q Now, if I understand your testimony
16 correctly, this was one of the proposals that
17 was intended towards the work rule relief in
18 the last round?

19 A Yes, toward the work rule relief
20 that would allow for 20 percent against the
21 new cost of the agreement, and it obviously
22 cost us more. It did not result in savings.

1 The two working together, I don't know
2 whether that would have worked either, but
3 certainly overtime after 40 has a definite
4 savings piece to it.

5 Q And the proposal on this is what,
6 two sentences long on page 12?

7 A The proposal is two sentences long.
8 It's on page 12 and it's merely to eliminate
9 bank time.

10 Q Okay. Turning to ARASA-ME sick
11 leave. What's the problem and how does the
12 language address it?

13 A Most crafts don't have any sick
14 leave. Among the Unions in this room, the
15 dispatchers and the ARASA Maintenance of Way
16 are the only other crafts that have sick
17 leave. The ARASA Maintenance of Equipment
18 members are subject to the management sick
19 leave plan, and they use much more sick leave
20 than any other employee group under that
21 plan. Any management or any craft.

22 And while I will politely disagree

1 with my colleague who testified before, we
2 have provided data to that point and we have
3 data that you can see, if it's not already
4 included in your materials. Not wanting to
5 add more paper, but certainly we can do that.

6 As to the provision of material
7 that you have, that attempts to contradict
8 our data, that was taken from our work
9 management system before it was -- we'll call
10 it -- up and running and it was being tested,
11 and that was a test period where the material
12 that came out of that system even we did not
13 use. So if you want that data and if it's not
14 provided to you, we can provide that.

15 Q And where is the language on this?

16 A The language is on 21-A, page 14.
17 21 tab A page 14.

18 Q And would this change comport with
19 what you have with the other ARASA groups?

20 A In effect, it would be -- the other
21 ARASA groups have less sick time, but they
22 also haven't had an abuse of it. I mean,

1 this group even utilizes, the Maintenance of
2 Equipment, for reasons I don't have to
3 explain the use of it to you, used more sick
4 leave even compared to the other ARASA
5 supervisors groups.

6 Q Okay.

7 A This --

8 Q Go ahead.

9 A I was just going to say, this is a
10 reasonable curb on the use of sick leave.
11 Certainly if you start the fourth day instead
12 of the second day and 70 percent of the
13 short-term disability, you have a provision
14 where we think we can address what is now an
15 abuse.

16 Q Let's turn to another issue related
17 to work rules. Were you present when Mr.
18 Guerrieri gave his opening statement?

19 A Yes.

20 Q And did you hear him refer to
21 leapfrogging?

22 A Yes.

1 Q What did you understand him to mean
2 by leapfrogging?

3 A What I understood was that the term
4 referred to agreements that the Unions would
5 make with Amtrak, which then the freight
6 railroads, if there were work rule changes,
7 would move to adopt for themselves. Now, I
8 think it's been overstated here many times
9 that Amtrak is fundamentally different than
10 the freight railroads. The service we
11 provide, the cars we have, the locomotives we
12 have, the infrastructure we have, and we
13 don't carry coal or packages.

14 Q Historically, has work rule changes
15 on Amtrak been then picked up by the freights
16 in their bargaining?

17 A No, and I think we have examples
18 that are on the screen. We eliminated
19 mileage-based pay structure for our operating
20 crafts, conductors and engineers. The
21 freight railroads continue mileage-based or
22 trip travel each day payment for the

1 operating crafts.

2 Q That's the hundred mile per day
3 rule --

4 A Yes.

5 Q -- that goes back to the steam
6 engines?

7 A Yes. The 1997 round when I came
8 in, we did all the work rule changes I talked
9 to you about in terms of having 20 percent
10 savings against the new cost. I'm unaware of
11 any freight railroad that has come to us to
12 say, we're going to be using that and go to
13 the Unions and either negotiate it or demand
14 it. I'm unaware that they rolled it into any
15 of the freight rail negotiations.

16 And then the 2003 pattern that we
17 had with TCU and with ARASA Product Line
18 Supervisors or on-board supervisors and the
19 Service Workers Council of On-Board
20 Employees. None of those did I hear were
21 taken up by the freights as rules that they
22 either needed or wanted.

1 And I might add that while we
2 talked about contracting out, just to
3 interject that point in the five agreements,
4 the two tentatives that were not ratified
5 plus the three that were done from October
6 1st, 2003 to December 31, 2004 did have a
7 committee approach to contracting out because
8 the period of the agreements was so short,
9 that we figured it would be soon as it was
10 that we would start negotiating again for --
11 on that provision and others for the future.

12 It turned out that for the other
13 Unions, the other two-thirds of the employees
14 who are represented we never even got to that
15 point. So now we have a proposal that goes
16 out to 2010 and incorporates now the
17 long-term needs of the corporation and
18 contracting out.

19 Q Have you heard the testimony from
20 several Union witnesses and their counsel
21 that Amtrak really didn't obtain any work
22 rule relief from the other Unions on the

1 property?

2 A Well, I hesitate to say that I
3 would expect that to be said in terms of a
4 Union which agreed with us on work rules.
5 That's not true, and if you go through -- and
6 I'm not going to go through them all and
7 explain them again on the screen, but the
8 train and engine crew calling assignment and
9 verification reform was a major concern for
10 the company when we moved two different crew
11 calling teams together in one place. One
12 that had flexible rules and higher pay and
13 one that had rigid rules and lower pay.

14 This group's pay was raised and
15 they became flexibly able to operate like the
16 Baltimore. It was Baltimore and Philadelphia
17 that together combined into Wilmington. You
18 have the ability to schedule nonstandard
19 workweeks and the extra boards versus
20 assignments. These to the company were
21 important in terms of our productivity and
22 flexibility.

1 Q Let's just cover some of the other
2 agreements. What about the ASWC?

3 A ASWC. A big point there was the
4 creation of the utility worker position that
5 could perform functions on the train, whether
6 it was a coach or in the dining car or
7 sleeping car at 75 percent of the rate of pay
8 of other workers. This was a universal work
9 position and important. A reduced layover
10 payment, which allowed for the first 90
11 minutes of a six hour layover being unpaid. I
12 mean, these were important changes for the
13 company.

14 Q Let's turn to the ARASA-OBS
15 agreement. What type of work rule real work
16 rule relief was given there?

17 A The ARASA-OBS or Product Line
18 Supervisor agreement as it became later was
19 really in two pieces because they gave them
20 credit for a prior agreement the year before
21 where we agreed to reduce by over 60 the
22 number of ARASA-OBS employees there were.

1 We reduced the number, and then
2 when we went into this negotiation, what we
3 gave them credit for doing that, we also
4 reduced more. Took them off the trains,
5 except as needed, and put them as Product
6 Line Supervisors in charge of crew bases and
7 doing supervisory tasks as the train loaded
8 either with food or with other -- other
9 equipment. This was a major flexible change
10 for us.

11 Q Let's turn to the tentative
12 agreements that we've made reference to. Do
13 the tentative agreements, including the two
14 tentative agreements with the organizations
15 that are here today, have work rule reform?

16 A Yes. We went to three times 12
17 workweeks with the ARASA supervisors. So
18 that then we could move to have the people
19 they supervise move to that. Where we did
20 not have an ability to do that, we also
21 increased probationary period to 180 days.

22 Q What about the ATDA?

1 A There we went to overtime after 40.
2 We got a lock-in to positions for two years
3 and we had other provisions that were
4 important. And remember that in these two
5 agreements, leadership did agree to these.
6 These were negotiated. They were negotiated
7 in 2004 within the principles that I
8 articulated on Tuesday.

9 Q And before this PEB, is our work
10 rule proposal on ARASA-MW and the ATDA
11 derived from those tentative agreements?

12 A Yes.

13 Q Let's turn to the BLET tentative
14 agreement from 2007. Did that have work rule
15 reform?

16 A Yes. That had a number of changes,
17 including the subcontracting provision, which
18 you have heard much about, flexibility in the
19 start time and yard assignments, which was
20 important for engineers to be in the yards
21 when we needed them. When the trains
22 arrived, not when they weren't there or when

1 they were scheduled to arrive later.

2 And emergency rescue rule reform,
3 which is very important, which meant that you
4 could come out of Chicago. If a train had
5 died somewhere along the way, get to that
6 train or the engineer had timed out, get to
7 that train and take that train to the next
8 crew base ahead of them. So you could get
9 passengers to a station or two or three
10 whenever the next crew base came up. So that
11 was a major change for us, too.

12 Q In your view, does the pattern on
13 Amtrak of existing agreements have work rule
14 reform as part of its elements?

15 A Yes.

16 Q And other than the agreements we've
17 pointed to, both the agreements that were
18 ratified and those that were not, we've heard
19 about failure to bargain on work rule issues.
20 Has Amtrak engaged in discussions with other
21 labor organizations about work rule issues?

22 A Well, I would say there's been a

1 lot of talk about the parties not engaging in
2 discussion on the work rules, and that's
3 simply not true at all. I mean, I've been
4 involved in it personally with people in this
5 room and people not in this room. They were
6 private discussions about which we do not
7 speak, but I must say to you, there were
8 private discussions and they know it.

9 And while we're here before you, I
10 think it is unfair to leave you with the
11 impression that we did not negotiate and
12 discuss these rules. And this in many cases,
13 while people may say that there has been no
14 dialogue, one could say that there was a
15 monologue, but in our or my explaining what
16 the rules were, but you have heard from the
17 beginning that as has been the position, no
18 work rules. It was to parallel the freights.
19 It appears to me that the leapfrogging is
20 reversed.

21 Q I want to turn away from the work
22 rule issue and talk about the \$4500 signing

1 bonus which we've proposed. That was part of
2 the Amtrak BLET tentative agreement and there
3 was a PRLBC proposal of a 13,500 lump sum.
4 The position of the Unions now is that this
5 should be allocated in some way based on
6 income base among the different -- different
7 crafts. What's Amtrak's view on that?

8 A It is clear and we've made the
9 presentation that we cannot afford to pay
10 more than the \$4500 per employee and, again,
11 as a lump sum. Again, I point out that means
12 it's \$5400 because the 20 percent of the
13 railroad retirement that we have to add onto
14 that figure.

15 However, taking that figure and
16 knowing how much money that is for the
17 organizations and crafts in this room, if
18 they feel that some craft should get more
19 than that 4500 and some should get less than
20 that 4500, as long as the whole sum is 4500 a
21 head, we'll talk about that. We can do that.

22 Q Mr. Bress, what final points do you

1 want to make to the PEB?

2 A I think it's important to point
3 out, one, that we have a very generous, I
4 would call it, wage package on the table.
5 Certainly in the context of the history of
6 the negotiations in this company as you have
7 heard.

8 Secondly, even though we cannot
9 afford the back pay, even though we
10 established the principle of no retroactive
11 pay, we have put a signing bonus on the table
12 of \$4500, which is whatever figure you use
13 12, 9 or 13.5, 30 to 33 cents on the dollar
14 as the best that we can do to recognize what
15 happened here.

16 The work rules, we need to improve
17 our efficiency. There are work rules that I
18 discussed earlier today that some groups have
19 and other groups don't. We want to -- we
20 want to have groups that work together have
21 similar work rules. We want to have
22 flexibility in being able to contract out.

1 We want to have flexibility in
2 being able to schedule, so we can achieve a
3 state of good repair in a faster time period
4 than the rules allow us now and to ensure
5 on-time performance.

6 We have to beat, as you heard from
7 our chief financial officer, aggressive
8 revenue targets in order to make the payments
9 that we are committing in our offer to make
10 and in order to do that, we need these work
11 rule changes to assure us of the capability
12 of doing that.

13 I want to thank you and respond to
14 any questions that you may have.

15 CHAIRMAN TREDICK: Thank you, Mr.
16 Bress. Questions from the panel?

17 MS. SANDBERG: Can you turn to page
18 4, please?

19 THE WITNESS: Page?

20 MS. SANDBERG: 4.

21 THE WITNESS: The slide 2?

22 MS. SANDBERG: Yes, the slide 2 and

1 Exhibit 21-D.

2 THE WITNESS: Yes.

3 MS. SANDBERG: When was that
4 presented to the Unions?

5 THE WITNESS: We had talked to the
6 Unions about doing this kind of work as a
7 result of -- early on as a result of an
8 arbitration decision that we lost on the
9 North end. I mean, we've gone to arbitration
10 decisions on carpet laying, on tree trimming
11 on the North end, carpet laying elsewhere.

12 Certain kinds of paint jobs that we
13 did lose and that we felt that this kind of
14 work should not be -- we'll call it --
15 subject to the approval or consent of the
16 Union.

17 MS. SANDBERG: Can you tell me when
18 the specific proposal had been?

19 THE WITNESS: I don't have the
20 date, but I can get it to you.

21 MS. SANDBERG: Was it early on,
22 later on?

1 THE WITNESS: The list -- the list
2 as it's here was in the last proposals that
3 we gave to them. The discussion was earlier.
4 We drafted language as you see here in these
5 books over the last three months to reflect
6 every agreement for every organization in
7 order to have the language done, not knowing
8 whether we would reach agreements with
9 anyone.

10 MS. SANDBERG: By saying that you
11 gave these to the Union later on, is that the
12 proposal that was given to the Unions the end
13 of November?

14 THE WITNESS: I believe so. I'd
15 have to check that, what was discussed
16 earlier.

17 MS. SANDBERG: Were there any
18 specific proposals given to the Union
19 earlier?

20 THE WITNESS: Yes.

21 MS. SANDBERG: And what were those?

22 THE WITNESS: They were the right

1 to contract out.

2 MS. SANDBERG: Just that --

3 THE WITNESS: Basically.

4 MS. SANDBERG: -- provision?

5 THE WITNESS: Yes, with discussion.

6 MS. SANDBERG: Without any specific
7 project or work?

8 THE WITNESS: Yes.

9 MS. SANDBERG: There's no other
10 specific discussions that occurred in
11 bargaining other than --

12 THE WITNESS: In terms of public
13 discussions, I'd have to talk to my
14 negotiator on that, but I'd have to say to
15 you that there were, but I don't know the
16 extent to which they were done as opposed to
17 my own discussions --

18 MS. SANDBERG: Thank you.

19 THE WITNESS: -- privately.

20 MR. JAVITS: In terms of time, was
21 there back pay in the TCU agreement 2003?

22 THE WITNESS: No.

1 MR. JAVITS: And so no back pay or
2 signing bonus?

3 THE WITNESS: There was no pay in
4 any of the three agreements or the two
5 non-ratified.

6 MR. JAVITS: All right. And none
7 has been proposed until the BLE -- BLET
8 tentative?

9 THE WITNESS: In public
10 discussions, none has been proposed till the
11 BLET agreement.

12 MR. JAVITS: And with regard to the
13 BLET on the subcontracting, we've heard that
14 the BLE's scope provision renders
15 subcontracting ineffectual in any case.
16 What's your view of that?

17 THE WITNESS: I don't think that
18 that was true that it would be ineffectual.
19 I think from their perspective, I would
20 probably believe that contracting out the
21 engineering work is perhaps more difficult
22 than others because people have to be

1 familiar with the territory and certified
2 engineers.

3 MR. JAVITS: Okay.

4 THE WITNESS: But that doesn't mean
5 that where we've lost contracts that you
6 can't achieve that. We've lost operating
7 contracts in California for operation of
8 trains where other engineers have been hired
9 by other organizations, other companies to do
10 that. So the potential is there. I'm not
11 sure whether the engineers in their agreement
12 to this considered this as a real threat to
13 their doing this work.

14 MR. JAVITS: I take it Amtrak
15 believed that they couldn't fund pay
16 increases, at least until a point at which
17 they decided to offer them in approximately
18 2007; is that right?

19 THE WITNESS: I'm sorry?

20 MR. JAVITS: The first time that a
21 pay -- when was the pay first pay increase
22 put on the table with the Unions?

1 THE WITNESS: Well, the first pay
2 increases were when we were negotiating
3 through 2004 and so those pay increases were
4 put on the table after the TCU agreement with
5 the principals for other Unions. Everybody
6 knew and the health insurance contributions.
7 Everybody knew what we'll call our pattern
8 bargaining was.

9 The 2007 offer for the money that
10 we've put on the table did not occur until
11 this past April because it wasn't until
12 March, the end of February or early March
13 when the freights agreed to go out to 2010.

14 At the time that we put our offer
15 together and spoke to some Unions about it,
16 the Unions had not yet ratified those
17 agreements with the freight, and we went out
18 in front of that ratification because we
19 expected that the freights would ratify --
20 the Unions would ratify those freight
21 agreements.

22 MR. JAVITS: So your position is

1 that Amtrak put on the table essentially the
2 freight pay package each time approximate to
3 the freight agreements?

4 THE WITNESS: Approximate to it,
5 yes, within the context of our original
6 commitments in December 10th, 2002 as to what
7 our principles were.

8 MR. JAVITS: And were they put in
9 writing, verbally?

10 THE WITNESS: Yes, they were put in
11 in writing. They were verbal. People knew
12 where we were going. I think the more
13 important point was that after we came out
14 with the proposal to go through 2010, the --
15 we'll call it -- the clamor for retroactive
16 pay became much more loud.

17 MR. JAVITS: In terms of the work
18 rules, which we've heard, made negotiations
19 difficult, shall we say. Were all the work
20 rules essentially done in these private --
21 was there a purpose for having private
22 discussions of the work rules rather than

1 presenting written proposals? Is there a
2 strategic reason?

3 THE WITNESS: Yes.

4 MR. JAVITS: Can you discuss that?

5 THE WITNESS: Yes. Can I discuss
6 it? I would prefer not to at this point.

7 MR. JAVITS: No, not the actual
8 discussions, but why you decided to hold
9 those discussions.

10 THE WITNESS: Well, I would say
11 generically, some organizations may have
12 agreed with us that we should meet together
13 without mediators. Some organizations may
14 have decided that meeting in their either
15 established or informal coalitions didn't
16 want to deal with the other parties.

17 MR. JAVITS: And can I just ask?
18 Were those meetings with negotiating
19 committees with individuals or what were
20 they?

21 THE WITNESS: They would be meeting
22 with the same people we'd otherwise meet with

1 in mediation or in negotiations.

2 MR. JAVITS: In other words,
3 negotiating committees?

4 THE WITNESS: Right. However they
5 composed them.

6 MR. JAVITS: And we talked about
7 whether costing was done on some of these
8 proposals by the company. Was costing done
9 while you had these private discussions?
10 Were they communicated to the Unions as to
11 what the savings would be?

12 THE WITNESS: Well, let's say we're
13 not going to discuss those, but I will say
14 that we have done costing, but remember that
15 we talked about two aspects here. One is
16 savings in those areas where you can really
17 measure the money and the others are
18 productivity and efficiency.

19 The ability to schedule and to do
20 things in a way that the work might get done
21 faster where you can't say that you're going
22 to save X number of dollars on that because

1 you can take a group of people and put them
2 on a new project and have your projects done
3 in your state of good repair and advanced in
4 terms of timing.

5 In other words, there was a
6 combination of that and the fact of the
7 matter is that some rules do have significant
8 savings. Some rules of some groups in this
9 room may have -- not in this room may have
10 greater savings than some of the rules with
11 groups in this room.

12 It was the specific reason that we
13 didn't put a thumb print of 20 percent of the
14 new cost on this round of negotiations
15 because the work rules that we needed for the
16 flexibility and productivity of the company
17 were different between different
18 organizations and could be different in terms
19 of savings or efficiencies between different
20 organizations.

21 MR. JAVITS: We've heard a lot from
22 the Unions about how Amtrak could get to the

1 ends that it sought through existing
2 contractual arrangements or through MOUs and
3 discussions, informal discussions,
4 particularly with Maintenance of Way.

5 THE WITNESS: I think --

6 MR. JAVITS: Was there -- I mean,
7 were the rules in effect marginal in terms of
8 savings and efficiencies, such that when you
9 look at the overall picture, all it did was
10 delay agreements on pay proposals that you
11 had on the table?

12 That is, we wouldn't be facing the
13 retro or back pay issues here if the
14 agreements had been made on the basis of the
15 freight agreements which you were offering
16 all along. I guess my impressions are the
17 Unions are suggesting these work rules, which
18 they perceive as marginal benefit at best,
19 were the stopper to reaching agreements in an
20 earlier basis and that they had only marginal
21 benefit.

22 I don't -- I suppose the carrier

1 believes they had very significant benefits
2 or it wouldn't have proposed them. But maybe
3 you could comment on that.

4 THE WITNESS: They do have
5 significant benefits, both monetarily and/or
6 in terms of efficiency, but discussing, as I
7 said at the beginning, with BMW on every
8 contract that they think -- on every
9 contract, now they can decide not to assert a
10 right to do that work, but on every contract
11 and then to determine that in order to do
12 certain kinds of work with a contractor, we
13 should have shadow employees that we pay to
14 be there for the purpose of watching or
15 "training" on equipment that they're never
16 going to use because we don't own such
17 equipment, it is not fruitful.

18 The fact of the matter is that in
19 order to have flexibilities without adversely
20 affecting the employees, we made the proposal
21 that I presented to you this morning for the
22 BMW to achieve what we think will alter the

1 way we relate in terms of our ability to
2 contract out work and to have a dispute and
3 arbitration over everything that we may do.

4 It is not -- while there may be an
5 argument that tree trimming is core work, we
6 don't believe that to be the case. We're not
7 going to furlough anyone because we contract
8 that out, but to go to arbitration on that on
9 the North end, where they did not have that
10 work and were not, as you heard, employed to
11 do any of the work on the lines and the
12 catenary, the IBEW, doesn't seem to be
13 progressive or helpful to the company.

14 MR. JAVITS: The Unions have also
15 indicated that they were willing to discuss
16 work rules, but that the specific rules and
17 reasons for them weren't forthcoming. And
18 they were very sporadic meetings --

19 THE WITNESS: Well --

20 MR. JAVITS: -- to do that. And
21 even though they believe that the freight
22 agreement was the appropriate pattern, they

1 were willing -- without work rules, they were
2 willing to discuss work rules, and do you
3 agree that they didn't refuse to discuss work
4 rules or is it your perception that they did?

5 THE WITNESS: Well, we reached five
6 agreements, two tentatives with the work rule
7 change. We reached agreement with the
8 Fraternal Order of Police with work rule
9 change. We reached agreement with the BLET,
10 which was not ratified, with work rule
11 change.

12 Work rule change was a component of
13 our needs in this round of negotiation.
14 There almost is no need for negotiation, I
15 suppose, if we just say whatever the freight
16 money and health insurance is. I suppose I
17 could become irrelevant and people might
18 enjoy, but on the other hand, the point,
19 though, is that part of the work rule relief
20 we're seeking this round. We also wanted
21 pieces of this the last round. We did not
22 get it or achieve it.

1 If you go through 90 years of
2 railroad history, without boring everybody
3 about reading or doing all of that, if you
4 don't change them now and we know they need
5 to be changed and we know we have competition
6 in the future from outside companies that
7 don't -- aren't handcuffed -- I'll call it
8 handcuffed if I may -- by these rules, who
9 can compete in state corridors where we think
10 our business can grow, we will not be able to
11 grow.

12 And now is the time to change it
13 because that future is here basically in
14 terms of what we look at as the
15 transportation world in which we exist. If
16 we don't make these changes now, when do they
17 happen and how many more contracts will we
18 lose?

19 MR. JAVITS: Thank you.

20 MR. JAFFE: I have some. Thank
21 you, Mr. Bress. I'm a little bit at a loss.
22 I'll wait for you.

1 THE WITNESS: I'm sorry.

2 MR. JAFFE: That's okay. I'm a
3 little bit at a loss. It sounds like Amtrak
4 chose not to make any specific written
5 proposals with respect to these substantial
6 work rules proposed changes to many of the
7 Unions that are before the Board in this case
8 --

9 THE WITNESS: We didn't --

10 MR. JAFFE: -- up until -- up until
11 a few weeks ago.

12 THE WITNESS: No, we did make
13 specific proposals. In fact, in one specific
14 time two years ago when the Board chairman of
15 the National Mediation Board went to
16 Philadelphia with the BMW negotiations. We
17 presented a comprehensive proposal at that
18 time, and we were informed that BMW would
19 make a comprehensive response, and I assume
20 that we got it during the last month or so
21 when the PRLBC gave us their response.

22 There have been written proposals.

1 Our Section 6s that were given proposals
2 after that. Written proposals that I've
3 given back and forth to people.

4 MR. JAFFE: The specific --

5 THE WITNESS: But I would say to
6 you, you know, if you look, you have to look
7 at the period of time we were in mediation
8 and the number of mediation sessions that
9 were called. I mean, Mr. Javits asked about
10 private discussions and the rest. If you
11 look at the number of mediation sessions that
12 were called, there were a dearth of them
13 called which was part of the reason that. I
14 might say that I reached out to do that, to
15 have private discussions.

16 MR. REINERT: Mr. Jaffe, let me
17 just make a point.

18 MS. WITT: Yes.

19 MR. REINERT: We had a choice to
20 make when we decided what materials we would
21 put together before the Board. We did not
22 put all the Section 6 proposals and all the

1 history of proposals in bargaining because we
2 thought you had enough paper. We went to the
3 last proposals. There's obviously a lot of
4 issues on the table.

5 There can be disagreement on how
6 much was said, what was said, where it was
7 said, but it's not because there's a lack of
8 specific proposals or an understanding what
9 went on.

10 It's because the record before you
11 we've made some effort to control and that
12 was a mistake on my part. I assume
13 responsibility for it.

14 MR. JAFFE: Fair enough. There's
15 been an issue raised about moratorium. I
16 don't know if you wanted me to pose that to
17 Mr. Bress or whether you were planning to
18 deal with it, Mr. Reinert, with someone else.

19 THE WITNESS: The moratorium of
20 September 30th --

21 MS. WITT: Correct.

22 THE WITNESS: -- 2010 versus

1 December 31st, 2009?

2 MR. JAFFE: That's correct, and the
3 question I wanted to pose is: If the Board
4 is disinclined to recommend the extension of
5 the period, would Amtrak prefer to see a
6 9/30/09 date to correspond with the fiscal
7 year issues you've raised, or is the
8 company's position in that scenario to stick
9 with the calendar year moratorium?

10 THE WITNESS: Well, I suppose your
11 question has a question for me.

12 MR. JAFFE: Sure.

13 THE WITNESS: And that is in your
14 hypothetical --

15 MR. JAFFE: It's exactly what it
16 is.

17 THE WITNESS: -- does that mean the
18 October 1st, 2009 raise is not part of the
19 package that we've put forth?

20 MR. JAFFE: Fair enough. I guess
21 it could go either way, couldn't it?

22 THE WITNESS: Then I would say to

1 you it could go either way.

2 MR. JAFFE: Fair enough.

3 (Laughter)

4 MR. JAFFE: The only other question
5 that I had is in the context of the specific
6 proposals that you asserted were raised
7 earlier in connection with things like
8 contracting out and some of the other work
9 rules issues, were these made in the context
10 of proposed quid pro quo type bargaining or
11 was the carrier's position that it needed or
12 wanted the flexibility and it was not done in
13 the context of you give us this, we'll give
14 you that?

15 THE WITNESS: You've asked me a
16 difficult question. You'll understand when I
17 give you my answer.

18 MR. JAFFE: Fair enough.

19 THE WITNESS: When we put forward
20 -- when I put forward proposals certainly and
21 discussed it with the Unions, they listed all
22 of our work rule proposals, including the

1 contracting out piece and in the discussions
2 at mediation or public discussions that we
3 had, there was no response, well, if you can
4 do this for me, I can do that for you.

5 I mean, whether the position was
6 right or wrong, I decided it was not an
7 appropriate procedure for me to negotiate
8 with myself and that's part of why we are
9 here, I suppose.

10 MR. JAFFE: Fair enough. Thank
11 you.

12 THE WITNESS: Thank you.

13 MS. WITT: Just following up on
14 that a little bit. You've made reference to
15 the fact that you were in communication with
16 whoever the person was that was the chief
17 negotiator. It may be in this record, but I
18 did not absorb it. Who was the person that
19 was considered the spokesman for Amtrak on
20 the day-to-day kinds of basis?

21 THE WITNESS: I have four directors
22 who report to me. Each of whom has different

1 crafts for which they're responsible, and
2 they're responsible to engage in the
3 negotiations as well as in grievance
4 administration and typical daily issues which
5 may come up concerning the relationship
6 between the company, the interpretation of
7 the contract and its administration.

8 They have not only the
9 responsibility, but they have the authority
10 to enter into an agreement and with
11 signature. Now, obviously since I would
12 oversee all the negotiations, I would expect
13 that before that authority was entered into,
14 we would have discussed the result, but they
15 do have the authority to negotiate and enter
16 into an agreement.

17 So if at the table they said, we
18 agree, it would be an agreement on behalf of
19 the company.

20 MS. WITT: Okay. Good. We talked
21 about changes in personnel at the very top,
22 which I guess is a matter of record. Was

1 there much in the way of change in these four
2 individuals that you've just mentioned or was
3 there continuity?

4 THE WITNESS: I was thinking of the
5 JOLTS data for a moment. The four -- let me
6 go to the negotiations before three months
7 ago. The four directors when I came into the
8 company 10 years ago are still there. The
9 fourth one retired this past April, May 1st,
10 and we have hired a new person to replace
11 him, but the other three have been here my
12 entire time.

13 MS. WITT: And they --

14 THE WITNESS: My time. They have
15 been here much before me. I mean, so I
16 should make that clear, too.

17 MS. WITT: Yeah, yeah. What I'm
18 just looking for is some possible reasons why
19 there was so little exchange for the length
20 of period or the length of time that we know
21 that we see these negotiations took.

22 THE WITNESS: I don't have all the

1 dates in front of me but, you know, as you
2 heard this morning, one Union went to
3 mediation almost immediately. Others went to
4 mediation over time, and I tenderly state
5 that mediation sessions which are scheduled
6 by the mediator were sparse.

7 MS. WITT: Thanks.

8 CHAIRMAN TREDICK: Thank you, Mr.
9 Bress.

10 THE WITNESS: Thank you.

11 CHAIRMAN TREDICK: Mr. Reinert, do
12 you have further witnesses?

13 MR. REINERT: No further witnesses.

14 CHAIRMAN TREDICK: Okay. So that
15 concludes your rebuttal?

16 MR. REINERT: That concludes
17 Amtrak's rebuttal case.

18 CHAIRMAN TREDICK: Okay. I assume
19 that counsel would like to break now since
20 it's lunch time anyway. How much time would
21 you want? It's now 12:15.

22 MR. WILDER: Can we resume at 1:30,

1 Mr. Chairman?

2 CHAIRMAN TREDICK: Certainly.

3 That's fine. We'll adjourn until 1:30.

4 Thank you.

5 (Whereupon, at 12:15 p.m., a

6 luncheon recess was taken.)

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1 where he brought to the Union a request to
2 change the hours in the days for a project in
3 New York and we rejected that. I believe
4 he's talking about what's called the JO
5 project, which is an interlocking project in
6 Penn Station. It's one of those choke points
7 on the railroad. A thousand trains a day go
8 through it. It's got some close tolerances.

9 He is looking for work rule relief,
10 but what he asked was the three 12 hour days
11 with the Saturdays and Sundays as regular
12 workdays, and we were not interested in
13 extending the basic workday the 12 hours.
14 But what we did say in response was, well,
15 why don't you do it under the existing rules.
16 The four 10s with the Saturday or the Sunday.

17 And, in fact, Amtrak did do the
18 construction project under the existing rules
19 and, in fact, they brought it in way under
20 budget, a million dollars under budget, and
21 they had a little ceremony where they gave
22 themselves plaques about what a good job they

1 did to perform the job. So the existing
2 rules were of benefit to both parties.

3 MR. WILDER: Thank you, Mr.
4 Chairman.

5 CHAIRMAN TREDICK: Is that all from
6 Mr. Dodd?

7 MR. WILDER: That is all from Mr.
8 Dodd.

9 CHAIRMAN TREDICK: Thank you.

10 MR. WILDER: The Organizations
11 recall Mr. Roth.

12 CHAIRMAN TREDICK: Welcome back,
13 Mr. Roth.

14 THE WITNESS: Mr. Chairman, thank
15 you.

16 Whereupon,

17 THOMAS R. ROTH
18 was recalled as a witness and, having been
19 previously duly sworn, was examined and testified
20 further as follows:

21 DIRECT EXAMINATION CONTINUED

22 MR. WILDER: The purpose of

1 recalling Mr. Roth is to elicit from him
2 limited testimony regarding the validation of
3 the parties' positions or proposals regarding
4 employees who have already settled. What Mr.
5 Roth is going to speak on is the relationship
6 between the agreements that were earlier
7 concluded during the first round and the
8 proposals that the Organizations are making
9 in this round.

10 BY MR. WILDER::

11 Q Please proceed, Mr. Roth.

12 A Thank you. Mr. Chairman and Board
13 members, I have I believe had previously been
14 distributed a document which was entitled
15 "Miscellaneous Rebuttal Materials" submitted
16 by myself, and in that I'm actually covering
17 several subject matters in that document,
18 which I do not intend to address at this
19 time.

20 Pages 1 through 6 on the document
21 bear on the question of comparisons, in
22 particular Carrier Exhibit No. 6 that was

1 offered for the purpose of making comparisons
2 with some generic job classifications and
3 some aggregate data produced by the BLS.

4 So I would offer those materials in
5 connection with Carrier Exhibit No. 6. If
6 there are any questions that the panel might
7 have regarding the data or the purpose, I'd
8 be glad to respond to those questions.

9 Pages 4 through 7 or Attachments 4
10 through 7 of the document offer some
11 additional material on the airline industry,
12 producing only the facts regarding current
13 wage levels for comparable positions and
14 making the point that even bankrupt airlines
15 pay considerably more than what we are
16 proposing here.

17 But the real purpose of my
18 addressing you this afternoon begins on
19 Attachment 8, which is a valuation that I
20 have performed. It's a simple arithmetic
21 evaluation of the respective proposals made
22 by the parties regarding the treatment of the

1 employees who have settled for the first five
2 years of this agreement, and specifically the
3 TCU clerks.

4 This is data and some information
5 and a calculation that is done for the
6 convenience of the panel, which is not yet in
7 evidence.

8 Now, we know from reviewing the PEB
9 literature, which is massive on the subject
10 of pattern negotiations, that the pattern
11 principle is grounded in the notion that
12 unequal treatment among similarly situated
13 employees infects the workplace with
14 resentment among the employee groups and, in
15 the view of the employers, would breed costly
16 efforts by one, you know, or whipsawing, if
17 you will, among the organizations. One
18 organization trying to outdo the other.

19 And so the pattern concept then has
20 been generally applied and championed by the
21 employer in most instances and sometimes by
22 the organizations as a means by which you

1 would stabilize labor relations, and you have
2 heard that phrase used frequently.

3 So I thought it would be
4 instructive for us to look at the two
5 proposals and to calculate the differences
6 between the positions in the proposals
7 regarding the consequence on the settled
8 employees and how that agreement stacks up
9 with the proposal that we made and the
10 proposal that Amtrak has made.

11 Simply put -- and we need not go
12 through all the data unless you have
13 questions -- if you take the proposal that
14 the organizations have made and you apply it
15 to the -- you apply it to the TCU clerks for
16 the last half of their agreement, that is to
17 say, the TCU clerks received, what they
18 received under the agreement that they have
19 negotiated and then for the balance of the
20 five-year period, we would apply the National
21 Freight Agreement as we would -- as we would
22 propose.

1 So if you make that -- if you make
2 that calculation, what you have is the stream
3 of wage rates, the chronology of wage rates
4 that I show on Attachment 9. So this is the
5 model that you saw earlier in the valuation
6 of our respective proposals, but this one
7 here applies the actual TCU experience for
8 the first five years and then follows it with
9 the freight pattern for the balance of the
10 10-year period.

11 And you can see as was customary in
12 my earlier work, I have calculated the rate
13 net of health insurance in the far right-hand
14 column. This reflects the reality and the
15 fact that for the first five years of this
16 agreement, the TCU clerks paid \$50 initially
17 to health insurance and then that was
18 increased on October of 2004 to \$75 and so
19 on. Under the application of the National
20 Freight Agreement, that would go up to
21 \$166.25 on January '07 as shown. So this is
22 essentially our proposal applied to the TCU.

1 On Attachment 10, I lay out the
2 Amtrak proposal as applied to the TCU clerks.
3 Obviously for their first five years, the
4 agreement is what it is and the chronology of
5 wage rates net of health insurance is laid
6 out as actually negotiated.

7 For the balance of the contract,
8 given the principles outlined by Amtrak here
9 in negotiating agreements in the current
10 round, there was no retroactivity and I
11 assume that their position to TCU clerks
12 would be that they would receive the \$4500
13 signing bonus and no retroactivity and the
14 wage increases that otherwise would prevail
15 discounted for the increases that they
16 already received.

17 That latter application, by the
18 way, is not material here because I am
19 running these calculations up through the
20 current period. In other words, the values
21 that we're looking at here run only through
22 January 1 of 2008 and not July or -- excuse

1 me -- and not through the end of the
2 contract.

3 So the numbers that I'm going to
4 give you do not relate to the values on
5 average retroactivity that I offered earlier
6 because those numbers ran through or they --
7 excuse me -- not the retroactivity numbers,
8 but the values of the contracts because those
9 contract values ran through the 10-year
10 period.

11 Anyway, to get to the bottom line
12 here, on Attachment 11, when you run out
13 these scenarios, one TCU employee working
14 under the proposed terms of the organizations
15 as compared with the Amtrak proposal, you get
16 a value as of today, which is about \$7,072,
17 not about, but at these assumptions on
18 average pay hours and using the common
19 average rate for the coalition.

20 Under these terms, the TCU clerk
21 would have -- or let me say the average -- if
22 you take the average rate for the coalition

1 and you apply the TCU pattern, if you will,
2 which is being offered here by Amtrak, that
3 would produce \$7,072 more than what is being
4 offered here to the organizations.

5 And, of course, this does -- this
6 in addition to the \$7,072, the \$4500 is not
7 offset against that. It's in addition. Now,
8 this does not include, of course, the cost of
9 money, the time value of money. Over this
10 period of time as the stream of payments were
11 made, and you can see the stream flow on
12 pages 2 and 3 for this average employee.

13 There's earnings that could be made
14 on this money. I'm just giving you the
15 nominal amounts. You can argue what that
16 interest assumption should be, but clearly I
17 think something in the five or five and a
18 half percent range is reasonable, given the
19 average mortgage rates and the revolving
20 credit card rates that could be paid down
21 with this cash.

22 If you then go to the next and

1 final piece in here, I think this is
2 Attachment 12, this is the -- this is -- I'm
3 sorry, not 12. 12 we just talked about. But
4 go back to 11. 11 is the organization's
5 proposal compared with the yield of the
6 actual TCU clerks' terms on Amtrak plus the
7 2005 freight pattern, which of course is the
8 position that we are taking here.

9 So if you line these two employees
10 up, one a TCU clerk who got that agreement
11 for the first five years and then the
12 National Freight Agreement for the balance of
13 the 10-year period against the employee who
14 got the National Freight Agreement for the
15 entire 10-year period, there would be a
16 difference of \$1,250.

17 In other words, \$1250 more in the
18 National freight pattern than what the TCU
19 clerk plus the freight pattern produce.

20 Now that, of course, happens to be
21 erased in whole, that differential, if you
22 will, would be erased in whole if the TCU

1 clerk individual under that scenario was able
2 to collect five and a half percent on those
3 monies over the course of the period that he
4 received them from Amtrak, which I think is
5 entirely reasonable.

6 The point of the exercise is this.
7 You have two proposals in front of you. Both
8 of them rest on one pattern or the other.
9 The one that is the least disabled -- the one
10 that's the least disruptive to the pattern
11 principle is the one that is offered by the
12 organizations because under that scenario,
13 under that proposal where the TCU individual
14 receives that agreement for the first five
15 years and then the agreement that we suggest
16 for the last five years, the National freight
17 pattern, that individual, if a person acting
18 in an economically rational way, would have
19 no argument that a member of these nine
20 organizations did better over this 10-year
21 period than they did.

22 Contrarily, if you apply Amtrak's

1 proposal over -- as laid out over this
2 10-year period, then the organizations
3 represented here and all the organizations
4 yet to settle for the first five years would
5 receive substantially less money than what
6 was made available to the TCU group and there
7 would be cause to -- and there would be
8 resentment and there would be a disabling
9 effect on the labor force. One group getting
10 much more than the other.

11 The point is, of course, this is
12 wholly contrary -- Amtrak's approach is
13 totally contrary to the application of the
14 pattern principle and the whole purpose for
15 which it had been developed and argued over
16 the years. Thank you.

17 MR. JAVITS: Do you assign any
18 value to the TCU employees having money in
19 pocket the first four years?

20 THE WITNESS: In the numbers that
21 you see on the face of the document, I have
22 not. The nominal amounts would be under the

1 TCU pattern plus -- Amtrak's proposal, put it
2 that way. The TCU individual would have
3 constructive receipt of this \$7,000 number
4 that I gave you and without interest and
5 that, of course, was paid over a period of
6 time as shown in the attachments. But neither
7 that number nor the \$1250 number is not
8 expressed in any present value including
9 interest.

10 MR. JAVITS: Thank you.

11 CHAIRMAN TREDICK: Thank you, Mr.
12 Roth.

13 THE WITNESS: Thank you.

14 CHAIRMAN TREDICK: Do you have
15 another witness?

16 MR. WILDER: We do not, Mr.
17 Chairman. That concludes the Organizations'
18 rebuttal case.

19 CHAIRMAN TREDICK: Thank you.
20 Thank you. As I remember, you were going to
21 give the first closing argument; is that
22 correct?

1 MR. WILDER: That is correct, Mr.
2 Chairman.

3 CHAIRMAN TREDICK: Would you like a
4 couple of minutes or are you prepared to
5 proceed?

6 MR. WILDER: It is time to give the
7 closing argument.

8 CHAIRMAN TREDICK: Okay.

9 MR. WILDER: I don't think anyone
10 is ready for a closing argument.

11 (Laughter)

12 CHAIRMAN TREDICK: Thank you for
13 that correction. Proceed, please.

14 MR. WILDER: If we take a moment to
15 switch chairs here.

16 Mr. Chairman, members of this
17 Public Emergency Board. Over the past three
18 days, this Board has heard oral testimony
19 from 16 witnesses and has considered some 150
20 exhibits. Many of them complicated and
21 technical in nature.

22 In addition, you have read the

1 briefs of counsel, the written testimony of
2 these and other witnesses, and it now comes
3 time in my unenviable task to try to bring
4 together this massive data in a way to help
5 the Board accomplish its statutory purpose.

6 I think the way to start this
7 closing argument is to devote at least a few
8 words to setting forth what the Organizations
9 believe to be the Board's appropriate role in
10 this proceeding.

11 The role of emergency boards under
12 the Railway Labor Act had its genesis in a
13 desire by Congress to protect the Board
14 members themselves from controversial
15 decisions.

16 Everyone knows that the Mediation
17 Board is not supposed to recommend
18 settlements, to suggest what the parties'
19 substantive collective bargaining terms
20 should be, but there was thought that the
21 public interest required a board of
22 distinguished individuals, whose neutrality

1 is not in question and could not be
2 questioned by anyone, to investigate major
3 disputes threatening interruptions of
4 interstate commerce and to make certain
5 recommendations that could aid in the
6 settlement of those disputes.

7 That's the genesis of the Public
8 Emergency Board. What the Board is to do is
9 to act as a fact-finder, that is, to
10 investigate the nuances of a major dispute
11 threatening a serious interruption of
12 Congress -- commerce, rather, and to
13 recommend a settlement within the broad range
14 of acceptability given the positions of both
15 parties, which, in turn, would turn to
16 encourage a voluntary settlement.

17 I believe that that formulation of
18 the Board's role is reflected in the
19 literature of one Public Emergency Board
20 after the next, in the legislative history of
21 the statute and in the comments of various
22 commentators under the Railway Labor Act. It

1 certainly is not a novel one.

2 We submit that it is beyond the
3 Board's jurisdiction or authority and its
4 competence to attempt to divine what Congress
5 might do in the appropriation process.
6 Former PEBs made clear that the Board's
7 obligation is to recommend a fair and
8 equitable compensation package and leave the
9 funding authority to deal with the question
10 of how that package would be funded.

11 Now, whether in the somewhat
12 flowery language of former Public Emergency
13 Boards or in the very brutal language that
14 Mr. Roth used at the conclusion of his
15 testimony yesterday, everybody means the same
16 thing.

17 Amtrak should provide its employees
18 with marketplace wage rates and monetary
19 benefits, but its employees, being a critical
20 input in the provision of transportation
21 services, should be treated in the same way,
22 whether in the collective bargaining process

1 or in the appropriations process, as other
2 inputs needed by Amtrak to produce the
3 passenger seat miles that it is its mission
4 to provide.

5 In other words, employees should be
6 treated no different than the suppliers of
7 rolling stock, the makers of locomotives or
8 the builders of structures and other elements
9 of Amtrak's infrastructure. That's what's
10 meant and that we believe is this Board's
11 mission to determine what are the marketplace
12 rates based upon comparable jobs elsewhere in
13 the economy.

14 Now, let me see if I can close the
15 circle to make perfectly clear what the
16 Organizations mean. If Mr. Kummant was to
17 approach the CEO of General Electric in
18 connection for the contract for replacement
19 of some or all of Amtrak's locomotive fleet
20 and he told GE's CEO that he couldn't really
21 pay the marketplace rate for these
22 locomotives because he didn't know whether or

1 not Congress would go along. He didn't know
2 what the next year appropriation would be.
3 So he wanted to be safe and he would offer to
4 pay 57 percent of the market rate to GE.

5 Now, you and I both know what would
6 happen. Mr. Kummant would be told that GE
7 couldn't help him and he would be referred to
8 Lionel for his locomotives. Well, the fact
9 is that that's not going to happen. That's
10 just a far-fetched hypothetical. It's
11 hyperbole and it's argument, but the point is
12 no one really expects Congress not to fund
13 marketplace rates, either for the equipment
14 that Amtrak needs to produce its
15 transportation services or marketplace rates
16 for the employees it needs to produce
17 transportation services.

18 What the record shows is despite
19 some tension in round after round dating back
20 15 or 20 years, Congress has always come
21 through in the appropriations process to
22 enable Amtrak to provide the services the

1 Congress thinks are necessary in the public
2 interest.

3 Now, you recall the testimony of
4 Don Griffin. What Mr. Griffin brought to the
5 Board's attention through his research into
6 legislative materials is that Congress and,
7 wisely so I might add, appears to be awaiting
8 the conclusion of this dispute, a
9 determination by the parties with the
10 assistance of this Board as to what the
11 marketplace wage rates and economic benefits
12 are to be, before engaging further in the
13 appropriation process.

14 No one wants or expects Amtrak to
15 go out of business, but that does not detract
16 with the way I began this section of my
17 closing argument.

18 It's equally clear that no one
19 wants or expects this Board to fulfill a
20 function akin to a bankruptcy court in an
21 1113 proceeding looking toward Amtrak's
22 reorganization. That type of consideration

1 is beyond, as I said, the Board's competence,
2 its jurisdiction and its authority. I can't
3 say that strongly enough.

4 Let me turn again to the
5 fact-finding element. Frankly, the most
6 important facts in this dispute are not
7 disputed at all. Amtrak's employees have
8 been without a wage increase since 1999, for
9 some eight years.

10 They have received minimal COLA
11 payments during this period, amounting to
12 less than 1 percent a year. Other than that,
13 they remain stagnant in their earning power
14 at 1999 levels.

15 Before I forget, I should point out
16 that under the Organizations' proposal, those
17 COLA amounts that employees have had annually
18 during the period these contracts have been
19 under negotiation will be recaptured by
20 Amtrak. They will be deducted from the back
21 pay that the Organizations are asking for. I
22 wanted to make that quite clear.

1 But during these eight years, as
2 the testimony and the economic exhibits put
3 forward by Mr. Roth indicate clearly,
4 Amtrak's employees have fallen behind the
5 wage progression of comparable workers.

6 The extent to which Amtrak workers
7 have fallen behind in the aggregate were
8 quantified by Mr. Campbell in Exhibit 1 to
9 his testimony. Mr. Campbell estimates that
10 the back pay owing the so-called PEB nine
11 Unions -- they are the nine Unions before you
12 -- would total approximately \$103 million.

13 That's the extent that Amtrak
14 workers have fallen behind. That is a
15 quantification of the gap between the lines
16 that appear in Mr. Roth's various charts
17 showing that Amtrak workers are behind their
18 counterparts in the freight industry, they're
19 way behind their counterparts on the
20 commuters and the other passenger carriers,
21 and they are even behind workers in the
22 general economy. The exhibits put forward by

1 Amtrak's experts confirm the same facts.

2 These facts are undisputed.

3 Now let me return to Mr. Campbell's
4 testimony and that \$103 million that I spoke
5 of and that he spoke of. That money remained
6 in Amtrak's operating account and it was, I
7 suggest, a good substitute for the loan that
8 Mr. Campbell could not obtain on Wall Street
9 because, by his admission, Amtrak is not
10 credit worthy.

11 That \$103 million must have helped
12 Mr. Campbell sleep better at night than he
13 otherwise would have, as he balanced the
14 various economic demands submitted facing
15 Amtrak over the status quo period.

16 In this sense, I believe it
17 accurate to liken the back pay issue to a
18 loan that Amtrak obtained from its employees
19 to assist in paying its operating costs from
20 the period 1999 through the current date.

21 The question in this proceeding is
22 whether that is a loan, an interest-free loan

1 or is it a gift. That's the ultimate
2 question that's before this Board.

3 So the wage question is twofold.
4 The first is how to restore employees to
5 their appropriate wage progression
6 trajectories and that is the wage issue going
7 forward. The second question is how to
8 recover the principal represented by unpaid
9 wage increases over eight years.

10 Now, we believe that we have put
11 forward a viable way to accomplish both
12 objectives by urging the Board to recommend a
13 pattern settlement based upon the freight
14 pattern for 2005 through 2009, which was just
15 concluded, and the freight pattern for the
16 previous years that is from 2000 to 2004.

17 This approach is supported, I
18 submit, by the parties' practice over six
19 rounds of bargaining at Amtrak. There has
20 been much talk about internal patterns and
21 variations from the freight pattern and how
22 the freight pattern is relevant but not

1 controlling.

2 We can engage in this kind of
3 verbiage and commentary, but the fact is that
4 the linkage between the freight pattern and
5 the Amtrak wage rates is well-established in
6 this record.

7 There was a variation when the
8 Conrail employees came to Amtrak and brought
9 with them the 12 percent giveback that they
10 had given to Conrail, and we have heard how
11 that giveback was restored to the Amtrak
12 employees by PEB 222.

13 Mr. Roth characterized this event
14 -- and I believe accurately -- as a
15 restoration of the freight pattern on Amtrak,
16 but it is a pattern that has been observed
17 ever since.

18 Now, what makes the freight pattern
19 real? What makes it something other than
20 words that appear in a PEB report? It is the
21 most comparable clear expression of the
22 market rate paid for this labor.

1 It enables the Board to find, not
2 create, not discover, not conceptualize, but
3 to find the marketplace analog that's
4 appropriate for Amtrak's employees.

5 The jobs are identical. The
6 collective bargaining representation is
7 identical. We're speaking of rail carriers
8 and we're speaking of rail carriers that were
9 the forerunners of Amtrak.

10 Amtrak, after all, was created out
11 of the Class 1 industry and so the genesis of
12 the Amtrak agreement lay in the Class 1
13 carriers as well.

14 I don't think that anyone reading
15 this record could question seriously, at
16 least, that the freight comparison is by far
17 the most accurate.

18 Now, there has been quite a bit of
19 discussion, mainly from Amtrak's
20 representatives, about how different
21 passenger service is from freight service.
22 If that is so -- and I disagree with that,

1 but if that is so, then the appropriate
2 comparator for determining the marketplace
3 rate is with the passenger carriers, and
4 their rates are much higher than those of the
5 freight carriers.

6 We have not suggested that. Both
7 because of the unquestioned linkage between
8 the passenger, between the freight industry
9 and Amtrak and because urging the commuter
10 rates on this Board would be a stretch. It
11 would not contribute to the timely conclusion
12 of contracts, bringing to an end a round of
13 bargaining that has already existed far too
14 long.

15 What is Amtrak's response to this?
16 It is a weak one. They have some notion of
17 an "internal" pattern. That pattern, as I
18 understand it, is formed by several
19 agreements that were entered into in 2003
20 with the clerks, one of the supervisors
21 Unions and an operating Union.

22 In the aggregate, these Unions

1 represented less than 30 percent of the work
2 force. That is supposed to create an
3 internal pattern for the 2000 to 2004 period.

4 For the internal pattern between
5 2005 and 2009, Amtrak relies on what I refer
6 to as the failed pattern, that is, a number
7 of tentative agreements that were put forward
8 to their respective memberships and failed
9 ratification.

10 Now, there is a temptation to go
11 overboard on this, but I'm going to try to
12 resist that temptation and say simply that
13 given this Board's role of making a
14 recommendation for a settlement within a
15 broad range of acceptability to both parties,
16 why would one select a failed pattern that by
17 definition is outside of the range of
18 acceptability by at least one party. That
19 simply does not make sense.

20 As part of its direct case, Amtrak
21 presented the testimony of an expert named
22 Dr. Gillula. I submit that Dr. Gillula's

1 testimony was not helpful in the context of
2 this case.

3 You will note two things about his
4 comparisons. First of all, they were not
5 based on the railroad industry. They were
6 based on the railroad industry amongst all
7 the other industries, and if one wonders of
8 the accuracy of the job comparisons in Dr.
9 Gillula's study, it needs go no further than
10 the first line in which he equates taxi
11 dispatchers with the dispatchers represented
12 by the American Train Dispatchers
13 Association.

14 That one item without more tends to
15 discredit the reliability of Dr. Gillula's
16 study, but there are other flaws as well.
17 The rail workers who are represented in his
18 study were buried in a mass of workers from
19 other industries.

20 The third point is that Dr.
21 Gillula's study was not regional specific.
22 It didn't purport to analyze job comparisons

1 within the Northeast corridor where the
2 employees whose representatives are before
3 you are concentrated and where those
4 employees render their labor.

5 So I don't believe that Dr.
6 Gillula's study advances the ball very far
7 for the benefit of the Board. But even so,
8 he showed that Amtrak workers have fallen
9 behind, and they've fallen behind the wage
10 rates within the general population. That is
11 the only value to the study.

12 Now, the proposals of both parties
13 confined to their wage elements -- and I'm
14 speaking of their prospective wage elements
15 -- are rather close as the testimony of Mr.
16 Roth and Mr. Parker demonstrate.

17 We have quantified that difference
18 at approximately .8 of 1 percent or close to 1
19 percent in wages. Now, there are various
20 reasons for that difference.

21 First of all, for the period from
22 2000 to 2005, Amtrak uses the TCU agreement

1 and not the freight agreement from that
2 round.

3 Secondly, Amtrak has extended the
4 duration that we propose from December 31st
5 of 2009 to July 1st of 2010. These
6 differences account for the differences in
7 the prospective wage rates, but that's not
8 the source of the parties concern.

9 The source of their dispute is what
10 happened over the past eight years. If you
11 take Amtrak's wage proposal going forward and
12 you add to that the \$4500 per employee lump
13 sum in lieu of retroactive pay, you come up
14 with a very impressive gap between the
15 parties.

16 Mr. Roth attempted to quantify this
17 gap. He testified, you will recall, that the
18 differences were 3.1 percent per year wage
19 increase being proposed by the Organizations
20 versus a 2.6 percent wage increase proposed
21 by Amtrak. Both figures being net of health
22 insurance contributions.

1 When you included the health
2 insurance contributions, the figures dropped
3 precipitously. The final figures or the
4 differences between the proposals, taking
5 into account the health insurance
6 contributions, are 2.6 percent per year for
7 the Organization versus 2.3 percent per year
8 for the Amtrak proposal.

9 Now, why is that important?
10 Obviously because a dollar is a dollar, but
11 it's important, too, because Amtrak's
12 proposal of 2.3 percent per year does not
13 restore Amtrak's workers to the appropriate
14 wage projectory that their jobs should
15 entitle them to, given skill, effort and
16 responsibility.

17 They will remain below their peers
18 in the railroad industry, however you want to
19 define that industry, and that is a fact, I
20 submit, that should be found and taken into
21 account by the Board and used by the Board in
22 recommending a fair and equitable settlement.

1 There are other differences within
2 the proposals and none is more aggravating
3 than the difference in the health insurance
4 proposal.

5 As the evidence shows, the
6 Organizations based upon their experience in
7 the freight industry, which I will outline
8 very briefly in a moment, took the largest
9 single problem confronting American employees
10 today, that is of health cost inflation and
11 solved it for Amtrak.

12 We, the Organizations proposed to
13 increase health insurance contributions by
14 employees from zero to \$166.25, escalating
15 potentially to \$200 per month.

16 Now, Amtrak presented the testimony
17 of its health and welfare consultant from the
18 Rand firm, and I'd like to point out this is
19 a man who had just been told that 15 percent
20 of health cost inflation had just been
21 shifted potentially from the shoulders of his
22 client and undertaken by the participants of

1 the plan.

2 This is a man who should have been
3 hanging from the chandeliers in celebration.
4 What was his testimony? His testimony was,
5 yeah, that's true. Well, the, yeah, that's
6 true amounts to if the Organizations'
7 proposal extended to all of Amtrak's 16,000
8 employees, it amounts to \$32 million a year.
9 Each and every year increasing and going
10 forward with the pace of health insurance
11 inflation.

12 What was his testimony? He was
13 whining about the fact that the
14 Organizations' proposal by proposing that
15 Amtrak increase the few benefits to match
16 those of the freight agreement would cost
17 Amtrak \$1.7 million more per year.

18 Where is the perspective here?
19 Where is the perspective? We can do the
20 math. I can do it in my head. I know that
21 \$32 million is one heck of a lot more than
22 \$1.7 million.

1 The point is that Amtrak has taken
2 this major, major overture to bring this
3 round to an end and put it in its pocket and
4 didn't even say thank you.

5 Mr. Bress only reluctantly admitted
6 under examination from the panel members that
7 this contribution was even made. Something
8 is wrong here. Something is very, very
9 wrong.

10 As I said, the major problem facing
11 American industry today -- and I speak of all
12 industry, automobiles, oil, chemicals. You
13 name it. It's health insurance, medical
14 cost, inflation, and we did that for Amtrak
15 and we're still here in a dispute.

16 Mr. Parker opined that maybe we
17 made a mistake. Maybe we went to the bottom
18 line too quickly and after listening to
19 Amtrak's presentation and its attitude during
20 the cooling-off period, I'm inclined to agree
21 with him.

22 I think we should have played

1 harder ball with the company. I think we
2 should have withheld the concessions that
3 were made under the freight agreement. I
4 think we should have determined how willing
5 they were to play ball with us rather than to
6 put on the table the health insurance
7 contribution for employees.

8 Now, we know from Mr. Roth's
9 evidence what that does to the wage increases
10 that we're looking for, how it diminishes
11 them. That's what we're dealing with here.

12 Now, let me draw the line firmly
13 and unequivocally. The organizations are
14 unwilling, as Mr. Biggs testified and Mr.
15 Parker testified and others testified, to
16 make contributions toward health care that we
17 have offered and accept for those
18 contributions inferior benefits.

19 The fact is that the benefit
20 increases under the freight plan were made in
21 the 2000 to 2004 period. There were benefit
22 increases last time, but they are not

1 applicable to Amtrak due to its geographic
2 concentration in the Northeast.

3 Those benefits on the freight side
4 had to do with extending managed care in the
5 superior benefits available under the managed
6 care plan to so-called white areas where
7 those benefits had not previously been
8 available to employees, and that very large
9 benefit is essentially inapplicable to Amtrak
10 due to its geographic spread.

11 So what we have is a carrier that
12 has cherry-picked the freight settlement with
13 reference to the health and welfare coverage
14 and the benefits available under the health
15 plan.

16 He's cherry-picked the freight way
17 settlements by relying on a so-called
18 internal pattern that is characterized more
19 by failure than it is characterized by
20 concluded agreements between employees and
21 the company.

22 Now, along these lines, in addition

1 to Amtrak's other sins in this round is its
2 breach of faith, for there's no other word
3 for it.

4 You heard from Mr. Parker, who is
5 one of the chief negotiators for labor in
6 connection with the tax reform that occurred
7 in 2001, and it is included in the Railroad
8 Retirement and Survivors Act of that year.

9 The deal made between the rail
10 industry and the rail organizations was
11 simply this. Labor would agree to a
12 lightening of the tier 2 tax burden in return
13 for superior retiree health benefits.

14 That was the deal. Mr. Parker
15 testified to it. There's no doubt about it.
16 Amtrak's proposal, sure enough, gives the
17 retirees who contribute to obtain retiree
18 health.

19 The Board asked Amtrak's health
20 benefits specialist whether those kinds of
21 contributions are required under the freight
22 agreement. He didn't know the answer

1 immediately, but he did come back with the
2 answer at the end of the day.

3 No, they're not. Of course they're
4 not. That was not the deal. But that is
5 part of Amtrak's proposal.

6 Let me turn to the back pay issue,
7 and I suspect that is the toughest one that
8 confronts the Board and the parties at this
9 juncture.

10 As I said at the outset of this
11 closing argument, that \$103 million that is
12 left with Amtrak was a loan. It was not a
13 gift. Unlike Wall Street, the employees are
14 not going to earn interest on that money, but
15 we intend to get it back.

16 And what it takes to get it back is
17 in percentage terms an agreement that will
18 entitle employees to 3.1 percent wage
19 increase commencing at the outset of the
20 agreement in 2000 and running through the
21 current date. That's what it will take for us
22 to recover our money.

1 You heard Mr. Parker. You heard
2 Mr. Roth and perhaps other witnesses as well
3 testify that wage patterns consist as much of
4 the timing of the wage increases as their
5 nominal amount.

6 That is a principle I believe has
7 been unquestioned in wage administration
8 under the statute. It certainly has been, to
9 my knowledge, recited again and again by one
10 emergency board after the next.

11 Our papers and those filed both by
12 the shopcraft coalition, those filed by the
13 passenger rail bargaining coalition, both
14 bring those Public Emergency Board reports to
15 your attention. They have been discussed
16 enough during the direct case put on by the
17 parties that I don't believe they require
18 further reference in this closing argument.

19 Mr. Roth told us one other thing,
20 too, and it was a statistic, but it's one
21 that's stuck in my mind because it was so
22 gross, so clear, so attention-gathering and

1 that is, without the retroactive feature,
2 without the back pay, the settlement that
3 Amtrak employees will obtain will be worth,
4 worth, 57 percent of what freight employees
5 received over these two rounds.

6 I'm not sure I heard disagreement
7 with these figures from Amtrak. If I did, I
8 don't remember them because they were so
9 disguised, so obscure, so tangential.

10 What I did hear, however, was great
11 deal of commentary from the carrier about
12 whether or not fairness and equity for its
13 employees were affordable.

14 Remember the testimony of Mr.
15 Campbell, Amtrak's chief financial officer.
16 I'm going to ask you at this point to look at
17 Mr. Campbell's exhibits and, in particular,
18 his Exhibit 21. If you'll take a moment to
19 take that out.

20 And I ask you to believe me. I
21 would not ask you to dig if I didn't think it
22 was important. But in Exhibit 21 to the

1 testimony of Mr. Campbell, he tried to
2 estimate the total cost union by union for
3 fiscal year '08 through fiscal year 2010 of
4 the proposal that the PRLBC has made in this
5 proceeding.

6 And if you look in the very first
7 block entitled "Retroactive," you have a
8 value for each organization to which Mr.
9 Campbell has included the RRTA increment, and
10 then those figures are totaled on the second
11 column from the left entitled "Total Impact."

12 You'll see for the PEB Unions
13 retro, the figure is \$103 million. Now, Mr.
14 Campbell has also added other unions retro.
15 In other words, he's extended the proposal to
16 other organizations to come up with a total
17 of 156,567,000.

18 Now, you will note and I don't
19 believe it is disputed that the retroactive
20 payout of 13,500 per employees that appears
21 in the notes is inaccurate. The actual
22 figure is 12,848. That was a figure that was

1 calculated by Mr. Roth.

2 So, if you substitute the latter
3 figure that is 12,848 for the 13,500, the
4 figure 156,557,000 declines to between 149
5 million and 150 million. That's the
6 retroactive price tag.

7 Now, you recall during Mr.
8 Campbell's testimony, he was asked by Ms.
9 Sandberg and by Mr. Javits about Amtrak's
10 ability to pay the back pay or retroactive
11 requested by the organizations.

12 In particular, Mr. Javits asked him
13 if the back pay were divided into three
14 installments, three annual installments,
15 would it be affordable, and Mr. Campbell
16 said, theoretically, that could be a way of
17 doing it. That it would be all right for the
18 first year, probably all right for the second
19 year, but in the third year there was a
20 chance that Amtrak would run out of money.

21 The reason I'm calling the Board's
22 attention to this testimony is that Mr.

1 Campbell, like the Rand firm, like Mr. Bress,
2 like counsel, like everybody on the other
3 side of the room, has not taken into account
4 that 32 million in health insurance
5 contributions.

6 That's 32 million a year and so I
7 submit to you as a matter of simple
8 arithmetic, if you take 32 million a year for
9 2 and 3 million dollars, you add to it the
10 \$86 million that Mr. Campbell told Mr. Javits
11 that and Ms. Sandberg that he already had,
12 you've got the money.

13 Your ability to fund it at least on
14 an annual basis of three installments is
15 quite plainly shown in this record.

16 What I'm saying is that this record
17 as it exists before the Board does not
18 support Amtrak's argument that the PRLBC
19 proposal, which is also the shopcraft
20 proposal, is not affordable.

21 Amtrak has not met its burden on
22 this record of showing that the only way that

1 it can afford the proposal we make is to
2 secure a special appropriation of Congress.

3 That's what the record shows and it
4 shows it through the data and through the
5 figures of Amtrak's chief financial officer.

6 This was something that we
7 suspected. We did not have the data to show
8 it. Now we do and we bring that to your
9 attention.

10 Amtrak does not deserve a finding
11 from this Board, even if it were within this
12 Board's competence and authority, to the
13 effect that it cannot afford a fair and
14 equitable settlement for its employees.

15 That brings me to the work rule
16 issue. I'm going to suggest to the Board
17 that what this record shows and shows rather
18 clearly is that the work rule issue, of which
19 so much has been said, not just in the last
20 three days but by Amtrak in public and
21 private statements running back for eight
22 years, is actually a non-issue.

1 And that's a good thing. That's a
2 very good thing because as Ms. Witt noted, we
3 don't know enough about the work rule demands
4 that Amtrak presents here to make a
5 knowledgeable recommendation.

6 I'm going to address myself at the
7 risk of offending both Mr. Javits and Ms.
8 Witt to the three members of PEB 241. You'll
9 remember not long ago when we gathered in New
10 York, we had before us a dispute between
11 Teamsters Local 808 representing Maintenance
12 of Way employees and the Metro North Railroad
13 concerning the railroad's desire for night
14 and weekend work.

15 Do you remember that? I'm sure you
16 do. I do. And I'm sure you will remember
17 that that was an issue whose various facets
18 had been collectively bargained and discussed
19 by the parties and investigated back and
20 forth for at least three rounds.

21 The participants in that PEB and in
22 the mediation that followed it knew more

1 about that dispute than I know about
2 anything. And they shared that knowledge
3 with the Board, and yet it took over a day of
4 rather intense fact-finding by the Board of
5 explanation upon a fully bargained set of
6 proposals for the Board to understand and
7 feel confident enough to make a suggestion as
8 to how that dispute might be settled.

9 And then, of course, the parties
10 rejected the Board's suggestion, but that's
11 all right. That happens. But the important
12 thing is they went off and they settled it
13 themselves within a period of weeks and that
14 dispute ended the way these disputes should
15 end, with a voluntary settlement.

16 Now, I was there. I do not feel
17 sufficiently confident about the work rule
18 issues in this dispute to do anything of the
19 nature that was done by PEB 241. As Ms. Witt
20 said, we just don't know enough. That's a
21 fact.

22 I should point out that it would be

1 unique in the annals of Public Emergency
2 Board for a Board to venture forward on a
3 record as thin as this one and put forward
4 solutions to complicated work rules issues
5 that have not been tested in bargaining, that
6 have not been tested by the marketplace, that
7 have not even been enunciated with any degree
8 of clarity by their proponent.

9 Let me address that for a moment.

10 The Board has heard witness after witness
11 come before it and say Amtrak presented a
12 laundry list of work rule requests in its
13 Section 6 notices, and these notices were not
14 seriously bargained in the sense of being
15 explained or in the course of bargaining.

16 They were not costed out.

17 Information that was requested about them was
18 not obtained. That was the testimony of Mr.
19 Picket. That was the testimony of Mr.
20 Francisco. That was the testimony of Mr.
21 Dodd. That was the testimony of witness
22 after witness.

1 Now, Amtrak for its part has come
2 forward and said, no, there were proposals
3 made and it's attached to my exhibits. We
4 turn to Exhibit 21, which I had not had the
5 privilege of seeing, despite being the
6 spokesperson for the PRLBC prior to this
7 hearing, and I looked at the date.

8 The date was 12/7/07. Well, I'm
9 clever enough to know that that was last week
10 after this hearing began. Now, Mr. Bress
11 assured Ms. Sandberg and Mr. Jaffe that
12 comprehensive proposals were delivered.

13 Pray tell, why then when I asked
14 for work rule proposals in November of this
15 year, the proposals I got are the same as the
16 Section 6 notices and phrased in the same
17 bullet point vague terms.

18 Is it the carrier's contention that
19 they gave -- that it gave comprehensive
20 proposals to the PRLBC Unions and then when I
21 asked for them, all I got was a terse list of
22 demands? Is that their testimony?

1 That's something I'm going to wait
2 with great interest to hear about. Either
3 the company is bargaining in bad faith or
4 those proposals really were not made. That's
5 something for the Board to consider.

6 But I said that I believed the work
7 rule issue was, in fact, a non-issue. Let me
8 proceed along those lines.

9 Perhaps when this round began in
10 1999 with the service of Section 6 notices,
11 work rule issues were part of the dispute. I
12 don't know. I wasn't there, but it's
13 certainly possible that they were.

14 But I'm suggesting that at some
15 point in time, they effectively fell off the
16 table. They became a matter of less than
17 dramatic importance to the parties. They
18 must have been because the parties didn't
19 discuss them. We know that. That's the
20 first point.

21 But think about the facts in the
22 record before you. You have a carrier whose

1 productivity was increasing by leaps and
2 bounds. Mr. Roth told you that over the
3 period of this dispute, productivity measured
4 according to standards criteria has increased
5 48 percent. That's unheard of.

6 The airlines would die to obtain
7 that kind of productivity improvement. So
8 would the auto companies. So would every
9 other industry.

10 Now, look at the other metrics that
11 show, as Mr. Roth testified, Amtrak did not
12 have a labor cost problem. Amtrak stands
13 very well among its competitors in terms of
14 unit cost. It tops all of its competitors in
15 terms of the amount of operating cost it
16 recovers at the turnstile.

17 Remember Mr. Campbell's testimony?
18 First he said that we recover 86 percent of
19 our cost at the turnstile. Then he corrected
20 himself; 76 percent is what he said. Do you
21 remember in PEB 240 in which Metro North
22 employees were so proud that their carrier

1 obtained 55 percent of its operating cost at
2 the turnstile relative to Long Island?

3 Remember how proud the Metro North
4 employees were? Amtrak recovers 76 to 78
5 percent of its operating cost at the
6 turnstile.

7 Now, I put these metrics forward to
8 suggest, again, that this is not the kind of
9 a situation that would cause a railroad or
10 any carrier, for that matter, to seriously
11 approach controversial work rule change.

12 Amtrak had a huge problem. You
13 heard about it from the representative from
14 Rand. AmPlan first started to be less
15 expensive than GA 23000 and then due to the
16 increasing productivity and the seniority of
17 Amtrak's employees, the cost of AmPlan
18 increased until today they are the equal of
19 23,000.

20 My point is that Amtrak's
21 experience is identical to that facing the
22 freight railroads in this round. The problem

1 was health cost inflation. That was the
2 800-pound gorilla in this round, and I'm
3 submitting that was true for Amtrak just as
4 it was for the freight carriers.

5 I was the designated spokesperson
6 for the Rail Labor Bargaining Coalition that
7 negotiated the pattern agreement in the
8 freight industry, and I can say that that
9 round was entirely about health cost
10 inflation.

11 Experts were retained and an
12 unbelievable amount of money was spent on
13 studies and analysis in an effort to cope
14 with this problem, and we're very proud with
15 the way health cost inflation was corrected
16 in the freight industry.

17 Now, there were work rules at issue
18 in the freight negotiations, and they sounded
19 somewhat the same as the work rules that
20 Amtrak has presented in this proceeding.
21 Broad, generic, unspecific as to craft, let
22 us do everything, with all the buzz words,

1 flexibility, productivity, efficiency,
2 on-time performance, ad nauseam.

3 We heard the same thing on freight,
4 but the point was that wasn't the issue
5 because productivity, unit costs and all the
6 metrics were strongly in the freight
7 company's favor, just as they are with
8 Amtrak.

9 So, as Mr. Parker concluded, I
10 believe we concluded too late, we made it too
11 easy for Amtrak. We gave them all the work.
12 The hundreds of thousands of dollars of
13 analysts' fees, all the bargaining, two years
14 on the freight industry and we gave it to
15 them. This is not about work rules.

16 The question then is what it's
17 about. We've heard from Amtrak over again --
18 over and over that in 2002, Mr. Gunn
19 announced five principles to the chiefs of
20 the rail labor organizations.

21 One of them was there would be no
22 back pay. Another was there would be work

1 rule reform, and that has been the mantra
2 since 2002.

3 What has that accomplished? Well,
4 it's kept this dispute going. It's kept
5 employees at the same wage rates that they
6 were at in 2000. It enabled Amtrak to use
7 the employees' wage increases in operating
8 the railroad in lieu of a loan from Wall
9 Street, given Amtrak's less than credit
10 worthy reputation.

11 That's what it did. That's what
12 the work rule issue did for Amtrak. Now it's
13 time to bring that to a close and it's time
14 to stop tripping over the work rule issue.

15 Listen to the work rule proposals
16 that they have made. Unlimited
17 subcontracting. You heard it from Mr.
18 Francisco. If we agree to unlimited
19 subcontracting, we don't have a contract.
20 It's perfectly clear.

21 If we went in a grievance before
22 the adjustments board, they give the work

1 out. There are no contractual protections
2 with that kind of unlimited authority to
3 contract out the employees' work. They know
4 it, we know it, and I am quite certain that
5 with its experience, this Board knows it as
6 well.

7 And I'll submit, too, that they've
8 asked for something that no self-respecting
9 Union could possibly give. No one is
10 interested in that. That's so far beyond the
11 bounds of acceptability, it's not worth
12 talking about. There is no middle ground on
13 what Amtrak has proposed.

14 Now, is there subcontracting? You
15 bet there is. Is there millions and millions
16 of dollars of subcontracting? Absolutely
17 there is. You've seen evidence of it. Not
18 obscure references but project by project by
19 project.

20 In the exhibits of the
21 organization, we know what our core work is.
22 We know what we can accomplish efficiently

1 and on time and we know what we can't and, as
2 to the latter, Amtrak contracts that out.
3 There are no time claims and there is very
4 little controversy.

5 If you look at the exhibits
6 accompanying Mr. Crosbie's testimony about
7 subcontracting, you'll see that the company's
8 complaint is really they had to discuss it
9 with us.

10 Labor relations was forced to waste
11 its time with labor relations. That's their
12 complaint, and I submit that is not the sort
13 of thing that this Public Emergency Board
14 should deal in this proceeding.

15 In terms of the flexibility, I
16 could go through that, but I'm not because I
17 think based upon the experience of 241, this
18 Board knows that starting time scheduling
19 disputes call for far more information and
20 understanding than we have in this case.

21 It would take many, many, many more
22 days of testimony concerning Amtrak's

1 perceived needs in order to come up with a
2 solution to these kinds of difficult
3 problems.

4 And why should we? Why should we?
5 Amtrak hasn't done it in eight years. They
6 haven't tried. Why should we try today? Why
7 should this dispute be delayed still further?
8 Why should employees go even longer without
9 the increases in wages and economic benefits
10 so we can play still further with what Amtrak
11 itself has not come to grips with?

12 All we've heard is vagaries, ideas,
13 concepts, what might be nice. What we've
14 heard today is what employers have been
15 saying for 15 years. Gee, it would be nice
16 to have more flexibility. Gee, it would be
17 nice if we didn't have to manage. Gee, it
18 would be nice if our employees were available
19 any time we wanted them 24 hours a day.

20 Mr. Chairman, Members of the Board,
21 what the evidence shows is Amtrak doesn't
22 even look in its own contracts to determine

1 what it can and cannot do by way of starting
2 time flexibility and weekend work, and at the
3 very least they should be directed to look at
4 their own agreements before they bother you
5 for a recommendation.

6 That brings me to the composite
7 mechanic situation. Now, the Board has
8 received rather elaborate evidence from the
9 organizations on this point, but I want to
10 start off with rather simple evidence that
11 Mr. Francisco shared with you.

12 You remember that Mr. Francisco is
13 the President of the National Conference of
14 Firemen and Oilers, and a number of years ago
15 back when Amtrak was still making agreements
16 -- that was a long time ago, but that's when
17 this dates from -- Mr. Francisco agreed with
18 the company's proposal to create a composite
19 worker known as utility man.

20 And the purpose of this was to
21 enable three classifications to be combined
22 into one so they could be used

1 interchangeably, and there was a quid pro
2 quo. The wage rate for this classification
3 was taken from the top classification, that
4 of forklift operator.

5 What Amtrak proposes in this round
6 is to lower the wage rate of the utility man
7 or contract out the work altogether. Is that
8 the progression that we're going to see if we
9 agree to a composite mechanic? Is that the
10 progression we're going to see if we go along
11 with their desires for flexibility?

12 What's going to happen if, for
13 example, the brush cutting is contracted out?
14 I suspect what we will see next time is a
15 story like this. Well, our core mechanics did
16 not have sufficiently highly skilled work to
17 do and they're standing around. We can't use
18 them on lesser skilled tasks because all that
19 work is being contracted out.

20 What we've got to do is whack the
21 work force still further. The trick, cut the
22 population, gain more productivity, so forth.

1 What Amtrak invites us and the
2 Board with it to do is engage in a rapid race
3 to the bottom. This is something that the
4 organizations are not interested in
5 participating in.

6 The composite mechanic issue calls
7 into question craft lines or the so-called
8 crafter class. I've been doing this for now
9 too long and I'm not certain even after these
10 many years I truly appreciate the meaning of
11 crafter class.

12 We may think that this is a simple
13 concept, but it really isn't and I'm going to
14 try to explain why it's a difficult one. Why
15 it's important.

16 The notion of crafter class has its
17 historical genesis back in the guild period
18 in England. It was imported to this country
19 and it certainly has been the foundation of
20 railroad job performance from the very
21 beginning. Certainly from the Civil War when
22 the current organizations began to be formed.

1 Now, there are certain foundations
2 of the craft system. First of all, there is
3 skill. I want to emphasize that the skill of
4 the Amtrak employees, like those of other
5 railroad employees, are not simply acquired
6 on the job.

7 If we take the signal craft -- I'm
8 only using the signal craft as an example --
9 you're dealing with broad difficult knowledge
10 that has to be acquired in an academic
11 environment. In other words, it takes
12 training and training off the job. That's
13 the first point.

14 Secondly, as Mr. Maslanka pointed
15 out in his testimony, the craft system
16 presupposes unique training skills and
17 qualifications that form the basis for craft
18 lines in the railroad industry. Amtrak
19 shopcraft craft employees require extension
20 -- extensive function-specific training, are
21 highly skilled and require multiple type
22 qualifications.

1 So the very first element of the
2 craft system is skill, but there's more to it
3 than that and it's difficult to express, but
4 I'm going to try.

5 It has to do with the esprit d'
6 corps, if you will, the confidence in
7 understanding that comes from belonging to a
8 unique occupation or group. It's the same
9 thing that causes the elite military units,
10 the SEALS, the Special Forces, the
11 paratroopers to wear different colored
12 berets.

13 It's a sense of belonging to a
14 first class organization and both the
15 tangible and the intangible are very
16 important, and they go to creating the craft
17 lines that is, as I said, began early and
18 have served the railroad industry well.

19 Now, it's difficult to understand
20 why a rigorous adherence to the craft lines
21 is anachronistic, if you will. That it
22 doesn't fit with modern industry. That we

1 shouldn't have to wait 14 minutes, as Mr.
2 Crosbie, testified to get a mechanic there to
3 do something that some other worker could do.

4 But think of the skill component
5 and remember, if that skilled mechanic can do
6 the job in 30 minutes and it would take a
7 less skilled employee to do it 45 minutes to
8 do, the fact that you waited 14 minutes for
9 the skilled mechanic puts you one minute
10 ahead. That's a fact.

11 The idea is quite similar to what
12 the doctors and lawyers have come up with
13 most recently and that's specialization.
14 It's the same idea that causes Mr.
15 Guerrieri's firm and my own to specialize
16 entirely in labor and employment.

17 It's the same idea that causes Mr.
18 Reinert's firm to have different departments
19 to service different areas of law for its
20 corporate clients.

21 It's what causes doctors to
22 specialize in brain surgery, podiatry,

1 orthopedics and the like. It's the notion
2 that as the world becomes more complex, as
3 technological improvements occur, as it
4 becomes more difficult to do the job, that
5 greater specialization is necessary.

6 I submit to you that the craft
7 system is growing in importance rather than
8 declining in importance. That it's being
9 followed more rigorously by other
10 occupations. I used the term doctors and
11 lawyers.

12 Would Morgan Lewis be content to
13 serve as corporate clients with the legal
14 equivalent of a potty mechanic? I suspect
15 not. I suspect not. So there is a place
16 today for the craft system, and I wanted to
17 emphasize it.

18 Mr. Maslanka. The rest of Mr.
19 Maslanka's testimony is very similar to the
20 testimony of other officials you've heard in
21 this proceeding. He suggests and shows with
22 compelling force that the problems that

1 Amtrak complained of are easily met through
2 an application of the intermittent work rule.

3 He explained how the work rule
4 worked and surely it did appear, as he said,
5 to fit the issues that had been raised by Mr.
6 Bress and Mr. Crosbie.

7 So, again, the answer to Amtrak's
8 dilemma appears to lie in its own collective
9 bargaining agreements, and I suspect it is
10 within the existing agreements that Amtrak
11 should look for that remedy, instead of
12 seeking additional provocative change in
13 those agreements from this Board.

14 Thank you.

15 CHAIRMAN TREDICK: Thank you, Mr.
16 Wilder. We'll take a break.

17 How long would you like, Mr.
18 Reinert?

19 MR. REINERT: I would like -- why
20 don't we say -- let's come back at 3:30.

21 CHAIRMAN TREDICK: Okay.

22 MR. REINERT: I don't want to

1 extend it too far, but I have to set some
2 things up. Two things I want to advise the
3 Board. I will be using a PowerPoint
4 presentation. So I'm going to distribute the
5 slides and the other documents it would be
6 helpful for the Board members to have before
7 them is the chronology, which I think is on
8 the last page of the demonstrative book. I
9 think if we get here at 3:30 sharply, I'll be
10 done by 4:30.

11 CHAIRMAN TREDICK: Okay. We'll be
12 back by 3:30 promptly.

13 (Recess)

14 CHAIRMAN TREDICK: We're back on
15 the record, please.

16 Mr. Reinert, are you prepared?

17 MR. REINERT: I am prepared to
18 deliver Amtrak's closing statement.

19 CHAIRMAN TREDICK: Great. Thank
20 you. You may proceed. Please, again, take
21 your seats everybody. We're about to start.

22 MR. REINERT: Chairman Tredick and

1 Members of the Board. The first thing I want
2 to do is thank you for your service and your
3 patience in listening during what seemed like
4 a very long three days. I know it did to me.
5 I suspect it did to many other people.

6 This is a difficult case. It's a
7 very difficult case, and I am going to
8 attempt, again, to try to both respond to
9 some of the arguments we've heard from the
10 Unions over the last several days, respond in
11 part to Mr. Wilder's closing argument, but,
12 again, do my best to try to simplify things
13 and get to the true issues in this case.

14 So, what I'm going to do in this
15 closing is I'm going to attempt to begin by
16 addressing some of the easy issues. I'm
17 going to turn to retroactive pay, which is
18 not an easy issue. I'm going to discuss the
19 Union's suggested approach on Congressional
20 funding and that necessarily gets me to the
21 role of the PEB. Provide some discussion on
22 the issue of the market.

1 Briefly I'm going to touch on work
2 rule reform because I think that issue has
3 been discussed at length by Mr. Bress, and
4 then I want to address the future of Amtrak
5 in a dispute, which I think is very important
6 to Amtrak, I think it's very important to the
7 Amtrak employees, and I actually think it's
8 important to the country.

9 There are easy issues in this
10 dispute and I suppose easy is a relative
11 term, but I don't know of many disputes in
12 the collective bargaining context where the
13 issue of what wage increases people are going
14 to have and what health and welfare benefits
15 they're going to have are actually two of the
16 easiest issues before this Board.

17 Both sides have put on the table
18 prospective wage increase proposals that are
19 based upon the freights. They're substantial
20 increases, and I believe Mr. Roth said in a
21 response to one of the Board members
22 questions at the end of the contract period,

1 you're basically getting to the same place in
2 terms of the increases that are occurring.

3 So we think that issue has been
4 pretty fully presented to the Board, and I am
5 not going to comment upon it much in the
6 course of this closing.

7 On health and welfare, there are
8 some differences. They're not overwhelming
9 differences, but they're differences in
10 approach and they have cost implications, but
11 in the context of the broader issues before
12 this Board, Amtrak is confident that this
13 Board can fashion an appropriate compromise
14 on those issues that have been fully
15 presented.

16 There's an issue with respect to
17 duration. There's a nine-month difference.
18 We've talked about our fiscal year. They've
19 talked about the freight pattern. There's
20 been an issue raised about what, well, what
21 do you do about any interim increase.

22 Again, I don't think I need to

1 dwell on that issue because the Board
2 certainly has the experience and the
3 information to address those issues.
4 Instead, I'm going to turn and spend much of
5 my time on the issue of retroactive pay and
6 the broader context of this dispute.

7 And the broader context begins with
8 the budget reality. This slide comes
9 straight out of Mr. Campbell's presentation.
10 It graphically depicts what happened to
11 Amtrak's appropriations, its operating grant,
12 its capital grant, its debt service grant
13 from the Federal government during this
14 course of bargaining, and there's some very
15 significant things here.

16 And the most significant is looking
17 at FY2000 and FY2001 under operating grants.
18 They're zeros. That's what the world was
19 beginning this bargaining round in 2002.

20 So, when you go to our chart, our
21 foldout on the bargaining round chronology,
22 it doesn't seem that much is happening in

1 2000 and 2001. Well, why? Amtrak has no
2 money. The Unions knew Amtrak had no money.
3 That's not a circumstance that's going to
4 generate much progress in collective
5 bargaining.

6 When you look further on this
7 chart, what becomes apparent is since FY2004.
8 We're talking 2004, 2005, 2006, 2007 and
9 you've heard testimony about 2008. We're
10 talking 1.2 to 1.3 billion dollars in total
11 appropriations. That's actually fairly
12 stable funding for that period of time.
13 There's some variations, but there's no \$150
14 million bump to pay for the Unions'
15 retroactive pay demand. That's the reality.

16 The political reality you've heard
17 from our witnesses McHugh and Campbell. I
18 think they demonstrated that there is and
19 there will be no special Congressional
20 appropriation to pay for a retrograde
21 settlement. Congress knows about this issue.
22 It's been around for some time.

1 There hasn't been any additional
2 funds appropriated, and we get to the
3 question even if there was a special
4 appropriation, how likely is this to get the
5 presidential signature, given the budget
6 issues just with respect to domestic
7 spending, let alone Amtrak.

8 We have a very good record of where
9 the legislation has gone. We now have a new
10 authorization bill S. 294. We know where
11 that's going. There was no additional kicker
12 of \$150 million added to that to pay for full
13 retroactive pay. So this issue has been
14 vetted. It's not a new issue.

15 We've got a long-term trend
16 developing with respect to Congressional
17 funding. So it's not any surprise on where
18 we're going with respect to Congressional
19 funding.

20 And you heard the testimony of
21 Amtrak's CEO Kummant, Alex Kummant. He said,
22 "Amtrak will not sign an agreement it cannot

1 afford." He's a fiduciary of a private
2 corporation that's federally funded. We've
3 gone through the numbers.

4 We do not have the money to pay for
5 a substantial retro payment on top of 30
6 percent wage increases that we've offered at
7 the table. Amtrak is simply not going to
8 make the same mistake it made in 1997.

9 Now, you heard an effort in closing
10 argument by Mr. Wilder to basically deny the
11 problem. Mr. Wilder is a gentleman I have
12 great respect for. He's an excellent lawyer.
13 He's a poor accountant.

14 He pulled out Campbell's Exhibit 21
15 and he said, well, the total cost of the
16 retroactive pay according to Amtrak is 156
17 million. We'll discount that because we're
18 not asking for 13,5. We're asking for 12,9
19 now. That really comes out to be about 150
20 million and if you spread it over three years
21 and you have the offset from the health care
22 costs, you can afford it.

1 The problem with that is the same
2 chart, Exhibit 21, you'll see that 156
3 million is on top of the other impact of the
4 wage increases, which is 850 million. So
5 this is 150 million incremental on 850
6 million. This is an expensive proposition.

7 And on the health and welfare costs
8 he says, well, you're going to save this \$32
9 million. If you go to look at Mr. Rand's
10 presentation -- and it's slide 10 -- there's
11 a chart there that shows very clearly what
12 the health and welfare savings are going to
13 do are going to provide that at the end of
14 this contract in 2010, our costs will be the
15 same as they are today.

16 The cost savings is against
17 increases. So you're not generating the
18 funds to offset a retro pay increase, and
19 those offsets for health and welfare are
20 already in the profit and loss statements we
21 presented.

22 So we're talking about an

1 incremental cost for the retro pay issue
2 alone of \$150 million and it's got to come
3 from somewhere, and the only place it can
4 come from, given the rich wage settlement
5 we've put on the table, is public money,
6 Congressional funds.

7 And the political reality is that's
8 not going to happen. What have the Unions
9 said? They've come in and said -- Mr.
10 Guerrieri in opening said he's confident that
11 Congress would fund retro pay.

12 Union witness Parker was asked a
13 question by Mr. Jaffe. Well, you know, what
14 if we recommend then let's just make retro
15 pay contingent on Congressional funding?
16 There was no interest expressed in that
17 proposition and the reason why is clear.
18 Because the Congressional funding is not
19 going to come.

20 There's a Union brief, you know, it
21 refers to Congressional funding issue as
22 speculation. We shouldn't read the tea

1 leaves. Well, the tea leaves are out on the
2 table. We can all read them. The money is
3 not there from the Federal government.

4 And we referred to the ratification
5 materials from the BLET, and I want to pull
6 out this particular reference, the reference
7 to the perfect storm in which the BLET
8 representative set forth the conditions that
9 would be required to get to full retroactive
10 pay. He actually left one out, which is that
11 the President would have to sign the bill.

12 And even assuming an Amtrak and
13 labor-friendly President, we are in tough
14 budgetary times.

15 The Unions have argued, well, the
16 record is divided on this issue of
17 Congressional funding, so you really can't
18 tell. We think you can tell. It's not that
19 difficult. Apply your common sense.

20 Take a moment. Think of yourself
21 as a Senator or Congresswoman sitting there
22 in your office and you have a constituent and

1 let's say that constituent is an airline
2 industry employee, of whom 100,000, 100,000
3 airline employees were laid off post-9/11 and
4 out of Congress they attempted to get some
5 benefits. They got nothing.

6 Now, you explain why Amtrak
7 employees should get \$13,000 a head of
8 Federal money because they're unhappy that
9 the freights were paid more during the same
10 period of time. I don't care if you're on
11 the left or the right of the political
12 spectrum, that does not make sense.

13 So, what do the Unions say? They
14 pull out PEB 234 and start talking about the
15 role of a PEB and the PEB they say shouldn't
16 consider the political and financial reality
17 in which we sit today.

18 The PEB should put on platonic
19 robes and make decisions of what, quote, the
20 market is and then Amtrak should enter an
21 agreement based upon that PEB determination,
22 even if it does not have the funds, and then

1 Congress decides whether it really wants to
2 fund Amtrak at market labor cost. And if
3 this Congress doesn't decide that, that
4 really means it's a Congressional decision
5 that Amtrak should discontinue its
6 operations.

7 The analysis of PEB number 234 is
8 wrong. It's not just wrong, it's dangerously
9 wrong. The Board's responsibility, in our
10 view, is to investigate a real world dispute
11 and make recommendations to help to lead the
12 parties to a settlement. Its actual
13 recommendations are not to Congress.

14 It's not here, we think, to make a
15 detached market determination, and I use the
16 term detached advisedly. I think both sides
17 want an objective Board, a fair Board. We
18 don't want a detached Board.

19 Detachment is the surgeon who comes
20 and tells you he has great skills and
21 performed a great surgery. Unfortunately,
22 your loved one died. We don't want a Board

1 that is not engaged in this problem, and this
2 problem ultimately relates to the future of
3 Amtrak.

4 What PEB 234 was really about was
5 presenting Congress with an ultimatum. It
6 was the ultimatum that the Unions
7 articulated. It's the same ultimatum you
8 heard from Tom Roth in saying, you know,
9 Congress, you either fund this or you should
10 get out of the business. That, in our view,
11 is not a responsible way to address this
12 problem.

13 PEB 234 also got it wrong in the
14 way it defined the market, and the market in
15 its view is the freight industry. One of the
16 country's most profitable, largest carriers,
17 the Class 1 railroads and what they were
18 paying.

19 Congress actually responded to PEB
20 234. Actually, the Administration that
21 appointed PEB 234 responded. You heard the
22 story. The Administration promised us

1 get-well statements of \$170 million to cover
2 an agreement that came out of the PEB.

3 Amtrak didn't get the get-well
4 payments and Amtrak got sick financially.
5 That's what led, in part, to the crisis in
6 2002. Amtrak will not make that mistake
7 again.

8 Also in 1997, Congress did many
9 other things with respect to Amtrak. We know
10 there were two years of zero operating
11 subsidies. We know it passed the 1997
12 Accountability Act, and we know it stated in
13 directives that Amtrak had to operate more
14 efficiently, and it was talking about its
15 unionized employees and their labor
16 contracts.

17 You've heard the testimony from Mr.
18 Griffin. You've heard Mr. Griffin testify on
19 this issue before. No real Congressional
20 directive for Amtrak to control costs. You
21 know, you can cover your ears and you can
22 close your eyes, but the legislation is not

1 going to go away.

2 In 1997, we were given a directive.
3 That's what led to this bargaining round.
4 That's why we're in there saying no
5 retroactive pay. That's why we were saying
6 we need work rule reform. And then we got
7 into a problem in 2002. We couldn't meet our
8 payroll. We got a DOT loan.

9 That loan also put a condition on
10 us to achieve substantial operating cost
11 reductions through the cooperation of our
12 employees, and you can look at S. 294, the
13 most recent Senate bill for authorization,
14 and it's talking about reducing costs and
15 improving productivity.

16 Now, you ask why this round took so
17 long. Well, this round took so long because
18 from 1997 to today, these particular Unions
19 have been in denial about the legal directive
20 that Amtrak has been operating under.
21 They've been talking freight pattern, freight
22 pattern and ignoring what Congress has said,

1 what DOT has said and what directives we have
2 been under.

3 Denial is a wonderful defense
4 mechanism for a very short period of time.
5 It catches up with you, and that's why we
6 have this long retroactivity problem.

7 In my opening statement, I made
8 reference to the October 3, 2003 political
9 strike. It's on the bargaining round
10 chronology. I heard no response on that.
11 You can go back. There's a public record on
12 that.

13 Mr. Griffin, for example, testified
14 in the injunction proceedings and the Unions
15 said, our problem isn't with Amtrak. It's
16 with the Administration and it's with
17 Congress. We want to have a political
18 protest to show them our dissatisfaction
19 about the funding decisions that Congress has
20 been making.

21 That strike was enjoined because it
22 was a strike against Amtrak, or it was

1 declared illegal on appeal.

2 What the retro pay claim is really
3 about it's a Union effort to undo eight years
4 of Administration and Congressional funding
5 decisions, including those FY2000 and 2001
6 zero operating subsidies.

7 Now, you heard from us about we
8 can't retain funds. Amtrak -- Amtrak if it
9 has cash reserves at the end of the year,
10 it's a use-it-or-lose-it situation. Just
11 like a Federal agency, you can't carry over.

12 That's not news to those sitting
13 across the aisle representing the Unions.
14 They knew this. They knew Amtrak was putting
15 aside no reserve to pay retro pay because it
16 couldn't. It had no vehicle to do it.

17 And they also knew -- the Unions --
18 that Congress had directed Amtrak to improve
19 productivity. That presented work rule
20 issues, and they didn't want to deal with it.

21 I want to turn to the market. When
22 the Unions talk about the market, what they

1 really mean is freight pattern. In fact, you
2 can take every reference the Unions make to
3 the market, just excise those, write freight
4 pattern because they think the only market is
5 the most profitable largest railroads in the
6 United States.

7 Mr. Roth's testimony both has a
8 very selective interpretation of Amtrak
9 history and then a very selective use of
10 comparators for looking at what the market
11 is.

12 We brought in Dr. Gillula and
13 presented his testimony because we asked him
14 to look at the labor market. The labor
15 market has records that are kept by the
16 Bureau of Labor Statistics, which is this big
17 organization that sits next to Union Station
18 and gathers data from around the country,
19 classifies employees to job occupational
20 classifications, and you can compare and it's
21 nationwide.

22 That tells a very different story

1 than the freight pattern story that the
2 Unions like to invoke when they're talking
3 about the market.

4 This is a modification -- let me
5 address first the history issue. This is a
6 modification of a slide that Joe Bress
7 presented, and it really goes through the
8 history of the relationship between Amtrak
9 and the freights on wages issues.

10 And this all began because the
11 Amtrak employees came from the freights. Not
12 surprising that the starting point for their
13 wages and benefits was the freight industry,
14 but there are relatively few Amtrak employees
15 working today who started in 1971. Most of
16 them have come over the course of the years
17 when there have been very different
18 conditions applicable on Amtrak.

19 And the big one, which I've put in
20 red, is the holdback period. There was a 12
21 percent difference between the freight and
22 Amtrak's rates for almost a decade. Now, you

1 heard Mr. Roth try to explain that basically
2 the freight comparative then became Conrail.

3 Well, the National agreements that
4 they're trying to compare with, we were
5 behind. We were behind for a long period of
6 time, and there was no retro pay to make that
7 up. That was the economic reality during
8 that time and, quite frankly, I think these
9 labor organizations know that.

10 They don't like that history. They
11 don't want to see it happen again, but it was
12 again a political reality, a financial
13 reality related to Amtrak's condition during
14 that period of time. And what we've tried to
15 do at Amtrak repeatedly is try to move the
16 employees back towards something that's
17 closer to the freight rates. That's what we
18 did in our proposal just this year.

19 This is Dr. Gillula's slide about
20 the market and his results, and I know the
21 labor organizations don't like this, but we
22 at Amtrak commissioned an expert and when

1 that expert came back and said you lagged
2 behind the market rates for a couple of
3 years, we brought that information in and
4 presented it to this Board because you need
5 to know that.

6 What this slide doesn't show is
7 that this group of workers does have a
8 benefit premium. It's not a wage premium,
9 it's a benefit premium throughout this period
10 of time because they've got a very rich
11 benefit package, particularly in the health
12 care area.

13 So that their total compensation
14 package was always well above the market, and
15 there are alternatives in the real world
16 marketplace. This is not a regional
17 analysis. That's correct. Amtrak is a
18 national railroad.

19 The national freights that the
20 Unions like to compare us against are
21 national employers. This is all employers
22 nationwide.

1 We think Congress knows about this.
2 We think Congress is very aware what average
3 compensation that is out there among their
4 constituents when they're dealing with a
5 quasi-public entity that the wage rates over
6 most periods of time have been above market.

7 The total compensation with a
8 benefit package has always been above market.
9 There isn't as much sympathy for issues such
10 as direct payments for retroactivity, and
11 what this slide also shows is where the
12 proposal we have on the table, which is very
13 close to the Unions proposal, puts these
14 employees, and it's going to give them a wage
15 premium and on top of that, there's going to
16 be a benefit premium. It's a very good
17 compensation package.

18 We also mentioned quit rates. Quit
19 rates are powerful data because they tell you
20 in the real world what employee decisions are
21 being made. Employees are staying with
22 Amtrak. That's an economic determination.

1 There's loyalty. There's pride.

2 There are many factors in employee
3 decisions, but part of it is the economics.
4 That this is an employer where they're not
5 likely to get fired. There's a very good
6 compensation package. There's a government
7 pension and it's a good compensated blue
8 collar position in most cases. People stay.
9 They don't leave.

10 There are a couple of issues I just
11 want to refer to before I get to the content
12 of this slide. There's been some discussion
13 about the airline industry. We raised it
14 because we think we compete with the airline
15 industry.

16 Now, Mr. Roth didn't think much
17 about that. He made a comment about when
18 pigs fly, Amtrak will, you know, be like an
19 airline. Well, pigs don't fly, business
20 people do, and business people fly a lot
21 between New York Boston and Washington.

22 The problem is a lot of them choose

1 Amtrak. When they choose Amtrak, they go on
2 the Internet, they get an e-ticket or they go
3 to a travel agent. They get a ticket on
4 airline industry ticket stock.

5 The price for that ticket is set
6 according to competition with the airlines,
7 and the interesting thing is Amtrak has
8 succeeded enough in recent years that it now
9 has the largest part of market share in the
10 New York/Washington, New York/Boston market.
11 So we're in the passenger intercity travel
12 business. We do compete with the airline
13 industry.

14 We're not saying the airline
15 industry positions match up with the
16 positions of our employees in most cases, but
17 you have to keep in mind that during the same
18 period of time that these labor organizations
19 are saying they were mistreated, there was a
20 crisis going on in the passenger
21 transportation industry in this country where
22 many other folks had a much worse economic

1 situation.

2 We had a discussion of internal
3 patterns. We rely heavily on internal
4 patterns and we raised the BLET tentative
5 agreement. We think that shows an arm's
6 length negotiated set of conditions. Union
7 came back and said, we've never heard of an
8 agreement failing ratification being used as
9 pattern.

10 Well, I'll give them an example.
11 This year, Postal Service. The largest
12 collective bargaining units in the country.
13 The Rural Letter Carriers negotiated an
14 agreement, put it out for ratification. It
15 failed.

16 In the interim, the other Unions
17 were in bargaining. They followed the
18 pattern both before and after the
19 ratification failure. The Rurals wound up in
20 arbitration before Herb Fishgold. He issued
21 a decision last week. He said -- and he
22 actually truncated the arbitration proceeding

1 saying your tentative agreement set the
2 pattern. You're back with a modification on
3 the tentative agreement.

4 That's not that unusual. We're not
5 saying that these Unions should be locked in
6 every detail of what the BLET negotiated, but
7 it's the best evidence out there right now of
8 a 2007 negotiated provision that relates to
9 the issues before this Board.

10 Mr. Wilder raised, well, you
11 wouldn't, you know, don't compare us to --
12 compare us to GE contract where you wouldn't,
13 you know, pay less for GE than you pay for
14 us. Well, Amtrak bids like a government
15 contractor, actually does RFPs, gets
16 government contract rates. Actually does pay
17 a number of its suppliers less than the
18 private sector or the rest of the private
19 sector.

20 The market reality is that Amtrak
21 employees have low quit rates. That's an
22 indication their total compensation is above

1 market. They did lag a bit in wages from
2 2005 to 2007. They've never been below the
3 total compensation market.

4 And Amtrak has lost contracts --
5 you've heard testimony about this -- because
6 of cost. If we're behind market, why are we
7 losing contracts because of cost? And you've
8 heard a great deal of Union anxiety about the
9 subcontracting issue.

10 You're going to subcontract our
11 jobs. You're going to take away our jobs.
12 Well, the subcontracting is actually an
13 indication of market. That there are
14 suppliers out there in the workplace that are
15 willing to provide comparable services for
16 less money.

17 Amtrak has offered these Unions a
18 very competitive wage and benefit package
19 according to any markets stand. And there
20 was a reference by Mr. Wilder, you know,
21 we're not going to be -- this is not an 1113
22 proceeding.

1 Well, I'll tell you in an 1113
2 proceeding, people don't get offered 30
3 percent increases. Mr. Wilder said, you
4 know, maybe we made a mistake on the Union
5 side of moving too quick and, you know,
6 agreeing to the health care concession.

7 Well, perhaps we made a mistake on
8 the Amtrak side in putting these increases on
9 the table because it was when we put these
10 increases on the table then we heard
11 retroactive pay.

12 I want to turn to work rule reform,
13 and I don't want to spend a lot of time on
14 this because Mr. Bress has covered it. The
15 point I do want to make is the political
16 pressure from our funding authority to change
17 our work rules has been real.

18 Amtrak's operational needs are
19 real. You heard from Mr. Crosbie about the
20 state of good repair backlog, a congestion in
21 the Northeast corridor, our high speed and
22 increasingly high tech operation in which we

1 need to change work rules.

2 Our goal is to have skilled
3 employees perform skilled work, and we talked
4 a bit about training. Some of the craft
5 lines prevent us from giving our employees
6 more skills. That's a problem. We should be
7 able to train people so they have even
8 greater skills.

9 There's a great deal of pride and
10 self-respect in performing a skill well.
11 There's not a great deal of pride in not
12 doing it, and we're trying to get away from
13 the situations where they're not doing it.

14 We heard, oh, you know, you don't
15 have enough record because these issues
16 weren't discussed in bargaining. Well,
17 that's because when we sat down, we heard no
18 work rule changes because they're not in the
19 freights. That was the record they made.

20 You've heard these are too
21 complicated to deal with. These aren't
22 complicated proposals. Our BMW proposal on

1 subcontracting non-core work is very
2 specific. There is some basis for it. We
3 actually put in the record the CSXT/BMWE
4 local agreement. It doesn't go as far as our
5 proposal, but those issues were addressed.

6 The mechanical assignments across
7 crafts. We have agreements like this with
8 some of our other Unions. The engineering
9 scheduling flexibility, the contract
10 provisions are clear on which we're seeking
11 change.

12 Back to the HVAC, and I don't want
13 to spend too much time on this, but this is
14 really not a difficult problem to solve. We
15 want to train people so they know how to do
16 air conditioning technology and know how to
17 fix them. They can be in any of these three
18 crafts.

19 We should have the flexibility to
20 get people the training. Let them do it. We
21 can't train people for this now. We have to
22 break it up.

1 You heard about the incidental work
2 rule. The incidental work rule requires you
3 to measure two things, time and the task
4 you're performing. Now, I'm not sure who's
5 supposed to do this, whether it's a
6 supervisor standing there with a stopwatch or
7 the employee keeps his own record.

8 All I know is I'm a lawyer in
9 private practice. We have a computer program
10 called Carpe Diem so I can record to the
11 six-minute increment which client I'm working
12 on at which project. I hate it. All lawyers
13 hate it. It's not an efficient system.

14 To think that you're going to solve
15 a craft distinction problem by that type of
16 rule is ridiculous. So we keep on hearing,
17 oh, well, you just haven't applied that
18 incidental work rule.

19 Well, it doesn't work. PEB 222
20 said it's not yet been tested and you need to
21 try to. It doesn't work. It doesn't make
22 sense to begin with, but it doesn't work and

1 we're not trying to get rid of craft lines.

2 We want people trained according to
3 the jobs we need. We can have them in
4 different crafts. Obviously there's a lot of
5 electrical work we're not going to want sheet
6 metal plumbing people to do, and there's a
7 lot of plumbing work we're not going to want
8 electrical people to do, but they both can be
9 trained to fix air conditioning units because
10 we have a lot of them and when they break, it
11 hurts our schedule.

12 What's the Union's concern with
13 work rule reform? You heard it from Mr.
14 Guerrieri in opening statement. He talked
15 about leapfrogging. You heard it from Mr.
16 Wilder in closing statement. He talked about
17 rapid race to the bottom.

18 What this is about is these Unions
19 are concerned that if they give work rule
20 concessions to Amtrak, that will set a
21 pattern for the freights. In fact, the
22 concern about the freights we believe runs as

1 well to the economic side as much as to the
2 work rule side.

3 Well, is Amtrak going to set the
4 pattern for the freights? First of all, just
5 look at this chart and Amtrak is a much
6 smaller unprofitable player in a different
7 world.

8 You know, if you want to use the
9 leapfrogging analogy, we're a smaller
10 different species of amphibian and we're
11 actually swimming in a very different pond.
12 It's just they're not the same businesses.

13 They're not following us and
14 historically they haven't followed us. We
15 got rid of the hundred mile per day rule.
16 The basic rule for how locomotive engineers
17 are paid. We changed it on Amtrak. We
18 changed it on Amtrak because we got high
19 speed rail on the Northeast corridor.

20 Have the freights said, oh, let's
21 go to the BLET, get the hundred mile per day
22 rule. They haven't. They haven't gotten it.

1 I don't think they even tried. It's just not
2 going to happen.

3 This is a concern that really
4 doesn't relate to collective bargaining with
5 Amtrak. It relates to collective bargaining
6 with the freights. It shouldn't be part of
7 the issue. Quite frankly, the Board could
8 address this in anything it writes, and we
9 shouldn't be spending a lot of time on it.

10 I want to speak about how the work
11 rule issue relates to the broader economic
12 issue and the issue of delay, and I have to
13 go back to 2003 because I think 2003 was
14 really the crucial time here.

15 We had a financial crisis in 2002.
16 In early 2003, we started making -- sitting
17 down with our Unions and we succeeded in
18 making an agreement with the TCU. The Unions
19 got into the political strike issue because
20 they were angry with Congress and they told
21 us very clearly back then no to work rules,
22 and we've heard it consistently since then.

1 And you heard two arguments from
2 the labor organizations that I really want
3 you to focus on. One was that with respect
4 to the TCU, ASWC, ARASA-OBS, the Unions that
5 made the agreements back in that time period,
6 these Unions say, well, we could not agree
7 back then because of Amtrak's "onerous" work
8 rule demand.

9 Then they turn around and they look
10 at the agreements that TCU, ASWC and
11 ARASA-OBS reach and they say, you know,
12 Amtrak didn't get much out of those Unions on
13 work rules. There's a disconnect there.
14 There's a disconnect because they didn't
15 engage on the work rule issue.

16 They didn't sit down and try to
17 make agreements at that time. Instead, they
18 went the political strike route and they said
19 freight pattern, freight pattern, freight
20 pattern. We have to have the freights
21 economics and we're not going to agree to
22 work rule changes.

1 And they come back here to the PEB
2 now, and they really are not accepting
3 responsibility for the decision they made at
4 the bargaining table. There was an
5 opportunity. There was a window of
6 opportunity to make agreements back in that
7 time, and they let it go by.

8 There were questions about, you
9 know, what proposals were given. What
10 exchange were there. If I made a mistake in
11 preparation, it was this. I didn't go and
12 download all the information I have from
13 their Web sites back from that time period
14 that shows what they were saying.

15 And they were saying, we're at war
16 with the Administration. We want to pressure
17 Congress, and we're not going to agree to
18 work rules. They drew a line in the sand.
19 So it wasn't how we costed out our proposals.
20 It wasn't that we were not giving sufficient
21 justification. They didn't want to talk about
22 it.

1 Why was Amtrak pursuing work rules
2 then and now? It's the same reason. It's
3 what our funding authority told us to do.
4 What they expect from us. They want
5 efficiency. They want productivity and there
6 were questions well, you know, did you sit
7 down and give quid pro quos.

8 Well, this was not work rule
9 bargaining where we can go in and say, you
10 know, we can give an extra cent here if we
11 get a work rule concession. The work rule
12 concessions were going to be to give us the
13 ability to get to the freight rates. That's
14 what we did with the other Unions. These
15 Unions understood that.

16 It's the same issue today. We've
17 got a very good wage package on the table,
18 but we need the health care changes and we
19 need work rule relief because at the end of
20 the day, Congress is going to want to know,
21 what did you achieve in improving your
22 efficiency as a trade-off for these generous

1 increases?

2 And they're generous. I understand
3 the folks across the table think they're
4 entitled because they're on the freight, but
5 when you look at the rest of the economy, if
6 you look at what other Unions are doing,
7 these are generous increases.

8 I'll go back to the Postal Service.
9 Another agency. A lot of Federal scrutiny.
10 Rates are nowhere close to a 30 percent
11 increase.

12 Mr. Roth presented an analysis in
13 rebuttal about how there was going to be this
14 inequity between TCU and the other agreements
15 if you don't give full retroactivity.

16 First of all, we don't embrace his
17 numbers because we've got problems with the
18 methodology. So I don't think there's a
19 record on what that differential would be
20 and, quite frankly, we don't have a
21 bargaining conclusion with the TCU.

22 But it's very possible there could

1 be a difference. There will be a difference.
2 Why? Because of Union choice. It was a
3 choice back in 2003, 2004 and these Unions
4 chose no agreement.

5 So, when you look at our chart and
6 you've got the 2003, 2004 time frame, you've
7 got Unions who are entering agreements and
8 then you've got this big gap from 2005 into
9 2007. What was going on?

10 Again, not very much. Why? You've
11 already concluded that round and the freights
12 are in bargaining. So we were not going to
13 get to agreements while the freight issues
14 were still out there.

15 So when you look at the bargaining
16 history question, I believe Ms. Witt asked,
17 you know, what was going on, and Mr. Bress
18 said there were relatively few sessions
19 scheduled by the NMB. In the real world it
20 means the NMB knows where the parties are in
21 their positions, and they're waiting for some
22 external events to change circumstances.

1 So this bargaining round, the
2 problem was not internal to the bargaining
3 round that we somehow weren't talking to each
4 other. I think the parties knew very well
5 where they were.

6 Just there was a fundamental
7 disagreement, and the fundamental
8 disagreement came down to the Unions'
9 unwillingness to accept the political and
10 financial context for these negotiations and
11 unwillingness to deal with the work rule
12 issue.

13 How do we dissolve this dispute? I
14 don't have an easy answer on that one. We
15 need a recommendation that can lead to
16 settlement between the parties, and I said at
17 the outset and I sit here today and I don't
18 know the answer to this question.

19 Do the Unions want agreement or do
20 they want a national crisis and showdown with
21 the Administration and Congress? And I fear
22 the answer is some of them do, some of them

1 don't.

2 American history teaches I think
3 that attempts to pressure the Federal
4 government and to engage in conflict are
5 generally not very successful. You look at
6 the Civil War. You can look at the bonus
7 Army of the Depression who wanted back pay.

8 You can look at the 1981 air
9 traffic controllers strike, unfortunately.
10 I'm hopeful that calmer heads on the other
11 side will prevail. We don't need a national
12 crisis. We don't need a strike.

13 It would be bad for Amtrak. It
14 would be bad for the country, and I think
15 ultimately it would be very bad for these
16 labor organizations.

17 I'm going to put up the next slide
18 with a proviso. I prepared this last night,
19 and I want to add something to this because
20 Roland Wilder said in his closing statement,
21 I quote: "No one wants or expects Amtrak to
22 go out of business."

1 And I was pleased to hear that
2 because I think that's what the people across
3 the table really think.

4 In my opening statement, I said the
5 most important rate of pay rule and working
6 condition is having a job and for that
7 reason, there's a joint interest here between
8 Amtrak and its employees and that joint
9 interest is the continued existence, the
10 success, and we believe the growth of Amtrak.

11 It's that joint interest that is
12 the only way we're going to get to an
13 agreement. Recognition of that. So, talk
14 about crises, going to Congress, I had to do
15 this in this closing statement, but I think
16 really further discussion along those lines
17 is not very productive.

18 Whatever discussions we have with
19 the Board members have to be focused on real
20 world solutions, real proposals trying to get
21 the compromise on our issues.

22 My final thought is a simple one.

1 Amtrak needs a deal. The 16,000 Union
2 represented employees need a deal. We want
3 to work towards one. We're not inflexible,
4 and we hope we can resolve this dispute with
5 the assistance of this PEB.

6 I thank you very much for your time
7 and your hard efforts in this difficult case.
8 Thank you.

9 CHAIRMAN TREDICK: Thank you, Mr.
10 Reinert. I assume that concludes your
11 statement?

12 MR. REINERT: That concludes my
13 statement.

14 CHAIRMAN TREDICK: Well, if there's
15 nothing else, I'm prepared to conclude the
16 hearing. Does anyone else have anything to
17 raise?

18 MR. WILDER: Only to join the
19 carrier in thanking the Board for its
20 attention over a very full three days.

21 CHAIRMAN TREDICK: Well, with those
22 kind remarks, we will conclude the hearing.

1 Let me just echo what both counsels
2 have said during this hearing. That it's our
3 task under the statute and the Executive
4 Order to investigate the facts of this
5 dispute. I think that these hearings, both
6 the live testimony and the exhibits and the
7 arguments of counsel, have developed a very
8 full record, and we appreciate that.

9 We appreciate the cooperation of
10 counsel and the witnesses with meeting our
11 time allotted -- time allotments, and I also
12 want to thank the other attendees here for
13 helping us conduct a very civil hearing. And
14 I don't think anybody's cell phone went off
15 and that's always a good sign.

16 On behalf of the Board then, let me
17 again thank everyone. I think that does
18 conclude the hearing. I would like to see
19 counsel up here after we adjourn. Thank you.

20 (Whereupon, at 4:20 p.m., the
21 HEARING was adjourned.)

22 * * * * *

