

Executive Summary of PEB 242 Report

Section V. OVERVIEW

The Parties differed in their views of the role of the PEB. On the issue of retroactive pay, Amtrak argued that the recommendations must be based on their lack of funding for this purpose and the likelihood that Congress will not appropriate specific funds for backpay. The Organizations argued that backpay is fair and equitable, and that predicting how Congress will act is beyond the PEB's authority. The Board finds that Congress should be informed of the "true cost" of Amtrak's service; and leave it to Congress to determine whether to provide the necessary funding. The Board also notes that it gives consideration, inter alia, to historical patterns and relationships, Amtrak's fiscal realities, Amtrak's dependence on Congress for funding, and the equities surrounding the long period of time since the last wage increases.

Section VI. DISCUSSION AND RECOMMENDATIONS

A. Summary of the Parties' Proposals

The Organizations' proposals largely track the Class I Freight Carrier agreements for 2000-2004 and 2005-2009. Amtrak's proposals are similar in many regards. The two areas of major dispute are retroactive pay and work rules. The Organizations propose full retroactive pay to 2000, adjusted for cost-sharing contributions that employees would have made toward health insurance under an agreement like the Freight agreements. This costs out to \$12, 848 per employee. Amtrak proposes no retroactive pay, but offers instead a lump sum signing bonus of \$4,500 per employee. Amtrak also proposes "potentially sweeping work rules changes."

B. Pattern Considerations

For over 30 years, the Parties' agreements have been patterned on the Freight agreements. The Board discusses the positive attributes of pattern bargaining, noting that the Organizations seek the traditional pattern and Amtrak seeks a claimed internal pattern. The internal pattern is based on agreements with three organizations that became amendable at the end of 2004 and based on two TAs that failed ratification. The Board concludes, at p. 24, that the internal pattern claim is not persuasive, and that the Freight pattern is the appropriate one for this round of bargaining.

C. Wages

The Parties' proposals were close, without reference to the retroactive issue. The Organizations propose wages in accordance with the Freight agreements. Amtrak propose similar wages based on its internal pattern (which,

in any event, closely mirrored the Freight agreements in this area). The Organizations also propose that the "Harris COLA," which provides for a small annual wage adjustment after the amendable date of the contract until a deal is reached, be reinstated after the amendable date of the agreement in issue. The Carrier opposes the resurrection of the Harris COLA, which existed for the Freights as well, but is now permanently extinguished for the Freights.

The Board finds the Organizations proposals are the most "reasonable, fair and equitable." Those proposals mirror the Freight agreements, which are the appropriate pattern, and there is no showing that Amtrak cannot afford the Freight pattern. In keeping with the Freight pattern, the Board finds that the Harris COLA should not be reinstated after the amendable date of the contract.

D. Retroactive Pay

The Organizations' proposal results in retroactive pay, on average, of \$12,848 per employee. Amtrak proposes \$4,500 for each employee, but indicated it did not care if the total amount was paid out "ratably" based on the employees' relative wage rates. The parties also differed on who was eligible to receive the bonuses and the timing of the payments. Amtrak presented evidence that it cannot carry money over from one budget year to the next, and that it has no ability to pay the backpay sought by the organizations.

The Board finds that full retroactive pay (calculated as if the 2000-2009 agreement had been in effect, minus the retroactive employee health care contributions) is the appropriate recommendation, but that the timing must be spread out because of Amtrak's ability to pay issue. In making its finding, the Board relies in part on its view, at pp. 36-38, that "there is a serious question as to whether Amtrak desired to obtain agreements from the Organizations in this proceeding other than under terms evidencing complete capitulation in several areas in which such capitulation could not reasonably be expected."

As to eligibility and timing, the Board finds that employees are eligible only if they were on the payroll as of December 1, 2007, the date on which the PEB was created. [The Organizations had sought payment for all employees who worked, retired, died, or were terminated during the 2000-2009 period.] This more restricted eligibility pool will necessarily reduce the amount of backpay owed. The Board recommends that Amtrak pay eligible employees 40% of the retroactive pay 60 days after ratification, and pay the other 60% on or before the one year anniversary of the 40% payment. The Board intends for the one year delay to give Amtrak time to seek the necessary funding from Congress, as well as other sources.

E. Moratorium

The Organizations seek an amendable date of December 31, 2009. Amtrak seeks an amendable date of September 30, 2010. In keeping with the Freight pattern, the Board recommends the December 31, 2009 date.

F. Meal Allowance

The Organizations proposes a 20% meal allowance increase. Based on the ad hoc nature of these adjustments, the 10 years since the last adjustment, and the adjustment negotiated in the 2000-2005 Freight agreement, the Board recommends the daily meal allowance increase.

G. Health and Welfare

In 1997, Amtrak ceased participation in the Railroad Employees National Health and Welfare Plan and began its own AmPlan, which was required by an arbitration board to provide the same level of benefits as the National Plan. From 1997-2007, Amtrak was able to provide the same benefits for less money than the National Plan. By 2007, the costs of the two plans were almost identical.

The Organizations propose that the benefit changes negotiated in the National Plan by the Freights from 2000 through the present be incorporated into AmPlan. Amtrak proposes deviations from the National Plan. The Board recommends, with only minor modifications, that the National Plan changes be incorporated into AmPlan. The minor modifications, proposed by Amtrak, include a \$100 per month payment to employees who opt out of the plan, a benefits coverage change due to differences in the National Plan and AmPlan networks, a change in Emergency Room co-pays, and having the employee contributions track the National Plan by using a percentage basis rather than the actual dollar figure used by the National Plan.

H. Work Rules

Amtrak seeks major work rules changes in the areas of its ability to contract out work, its ability to assign work out of craft or class, and its ability to schedule work. The Board does not recommend any of Amtrak's requested changes. None of the changes were made in the Freight agreements, none of the changes were bargained with the Organizations in a specific manner, there was no showing of operational need, and there was no showing that Amtrak was adequately utilizing existing rules in these areas.

ARASA proposed some minor work rules changes based on situations that arose since the last agreement was reached. The Board does not recommend these changes based on a lack of specifics and a lack of intensive bargaining on the issues.