CARRIERS’ SUBMISSION No. 2

BEFORE EMERGENCY BOARD No. 243

Between

The Railroads Represented
By The National Carriers’ Conference Committee

And Their Employees
Represented By
American Train Dispatchers Association,
International Association of Machinists and Aerospace Workers,
International Brotherhood of Electrical Workers,
Transportation Communications International Union,
Transport Workers Union,
And
The Rail Labor Bargaining Coalition.

National Mediation Board Case Nos. A-13569; A-13570;
A-13572; A-13573; A-13574; A-13575; A-13592

CARRIERS’ SUBMISSION No. 2:

HISTORY AND CONTEXT OF THE DISPUTE

October 10, 2011
# TABLE OF CONTENTS

INTRODUCTION ............................................................................................................ 2

BACKGROUND ............................................................................................................... 3
  A. The Requirements of the Railway Labor Act .................................................. 3
  C. The Parties in the Current Round ................................................................. 6

ARGUMENT .................................................................................................................... 7
  I. The Historical Success of National Bargaining is Based on The Pattern Principle .................................................. 7
  II. The 2005 Round of National Bargaining ...................................................... 10
  III. The Economic, Labor Relations and Policy Context At the Beginning of the 2010 Round .................................................. 12
   A. The National Economy .............................................................................. 12
   B. The Railroad Economy ............................................................................ 13
   C. The Policy Context .................................................................................. 13
      1. Jobs ........................................................................................................ 14
      2. Investment in Rail Infrastructure ........................................................... 15
      3. Health Care .......................................................................................... 15
   D. The Labor Relations Context .................................................................. 16
  IV. The Progression of the 2010 Round .............................................................. 18

CONCLUSION .............................................................................................................. 21
INTRODUCTION

Collective bargaining does not occur in a vacuum. The broader context and history of the negotiations is almost always important in ascertaining the terms of a fair and reasonable settlement. See, e.g., Report of Emergency Board No. 221 (May 28, 1992) at 5-8, 11-12 (noting that Board must take account of the context of the dispute in crafting its recommendations).

That is certainly true in this case. The key issues in this round of bargaining – wages and health care – have a long history in railroad labor negotiations. The resolution of those issues reached by the Carriers and the United Transportation Union (“UTU”) can best be understood in that historical context. And this historical perspective bolsters the Carriers’ core argument that the pattern set by the UTU agreement should now be applied to the other Unions.

This submission outlines the history and context of the current dispute between the freight rail carriers represented by the National Carriers’ Conference Committee (“NCCC”) and the thirteen major rail unions. We begin with a short review of some of the basic aspects of bargaining under the Railway Labor Act (“RLA”). We then briefly discuss the history of national bargaining in the railroad industry, explaining why it has been so successful in preventing disruptions to commerce. Next, we examine the lessons of the last bargaining round. We then turn to the economic, labor, and policy context at the outset of the current round. We conclude with a summary of the course of the current round of bargaining between the NCCC and the three union groups, which began on January 1, 2010.
BACKGROUND

In this section, we review the general background of this dispute, including the law governing PEB proceedings, the essential characteristics of collective bargaining under the RLA, and the parties in this round.

A. The Requirements of the Railway Labor Act

The RLA provides various procedural mechanisms that are designed to promote resolution of collective bargaining without strikes or other interruptions to interstate commerce. 45 U.S.C. § 151a(1). In using these procedures, the parties are required to “exert every reasonable effort” to resolve disputes so as to “avoid any interruption to commerce” or “the operation of any carrier.” 45 U.S.C. § 152 First. This obligation includes a duty to bargain with the “desire to reach agreement.” Chicago & North Western v. United Transp. Union, 402 U.S. 570, 578 (1971) (App. A-9).

Bargaining over proposals to change a collective agreement under the RLA (commonly referred to as a “major dispute”) is initiated by the service by one side upon the other of a written notice of proposed changes in rates of pay, rules, or working conditions pursuant to § 6 of the Act (known as “§ 6 notices”). 45 U.S.C. § 156. The parties must then meet in conferences to try to reach agreement on the proposed changes. If such voluntary negotiations fail, either side may invoke mediation before the National Mediation Board (“NMB”). 45 U.S.C. §§ 152 First, 155 First. The NMB has essentially unfettered discretion to determine the extent, timing and length of the mediation process.

If mediation fails, the NMB must proffer binding arbitration to the parties. 45 U.S.C. § 155 First. If both parties do not agree to arbitration, the NMB may recommend
that the President appoint a presidential emergency board (“Emergency Board” or “PEB”) to investigate and report on the dispute. The parties may not resort to strikes or other self help until 30 days after the NMB terminates its services and, if an emergency board is appointed, 30 days after it makes its report. 45 U.S.C. § 160. See Shore Line v. Transportation Union, 396 U.S. 142, 150-51 (1969) (App. A-20); Railroad Trainmen v. Terminal Co., 394 U.S. 369, 378 (1969) (App. A-19). The PEB is the last step in the process before the parties can resort to economic force.

The Act does not establish any specific PEB procedures or standards for the development of recommendations. Historically, most Emergency Boards have conducted hearings in which the parties may submit testimony under oath, along with written submissions and exhibits.¹ Moreover, while there is no set standard for recommendations, a review of the reports of past PEBs suggests that, in general, Emergency Boards attempt to craft recommendations that are “fair and reasonable under the circumstances.” Report of Emergency Board No. 233 (Mar. 19, 1997) at 14. In doing so, PEBs consider various factors, including recent agreements with other railroad crafts (i.e. “pattern”), the financial health of the railroad industry, the broader economic climate, the relative position of railroad employees to workers in comparable industries, equity between and among railroad workers, and the like. The ultimate goal, of course, is to avoid disruptions to commerce.

¹ In the 1970s, as part of an effort to get away from “ritualism” and “legalism,” Emergency Boards began to adopt a relatively streamlined approach to hearings, requiring the parties to narrow the issues in dispute before the hearings and minimize the length of their oral presentations. See The Railway Labor Act at Fifty (1976) (App. A-8) at 179-80.
B. The Nature of Collective Bargaining in the Railroad Industry

Most collective bargaining agreements ("CBAs") in the railroad industry do not have expiration dates. Rather, they contain "moratoriums" barring service of new § 6 proposals until a specified future date. Thus, agreements continue in effect unless and until modified. One consequence of this fact is that most employees and most Carriers are parties to multiple, overlapping CBAs.

The multiplicity of CBAs in the rail industry is also a product of the fact that railroads and rail unions have historically conducted bargaining on both the "local" and "national" level. Local bargaining is between a single Carrier and Union, and generally results in an agreement that applies on just one Carrier (or a portion of the Carrier). In national bargaining, a multi-employer group bargains jointly with one or more Unions, resulting in so-called national agreements.

For some time, the moratoriums in national agreements with the 13 major rail unions have had the same reopening dates. Thus, a new round of national bargaining – known as a "wage and rules movement" – commences at about the same time for all of those unions. Wage and rules movements ordinarily involve proposed changes in wages, fringe benefits, and work rules. This is because it is generally recognized that wages, benefits, and rules are all linked; the cost of work rules, the cost of benefits, and the cost of wages represent inherent trade-offs that cannot be assessed in isolation, and thus must be handled in a single, consolidated negotiation. See Alton & Southern Ry. v. BMWE, 928 F. Supp. 7 (D.D.C. 1996), citing Delaware & Hudson Ry. v. UTU, 450 F.2d 603, 609-10, n. 14 (D.C. Cir. 1971) (App. A-2).
The Parties in the Current Round.

Traditionally, all of the major Class I railroads have bargained together. In this round, the multi-employer group includes the nation’s four largest freight railroads – BNSF, CSXT, Norfolk Southern, and Union Pacific – along with a number of smaller Carriers. Together, they employ roughly 95 percent of all American freight railroad workers. The Carriers are represented by the National Carriers’ Conference Committee (“NCCC”), which is a committee of the National Railway Labor Conference (“NRLC”), an association that handles labor relations matters of national concern. The NCCC consists of the Chairman of the NRLC, together with the senior labor relations executives of the major Class I railroads.

Likewise, in this round, the thirteen major rail unions have organized themselves into three groups. The Railway Labor Bargaining Coalition (“RLBC”) includes a total of six unions, representing roughly 61,000 employees. The Transportation Communications International Union (“TCU”) leads a second coalition comprised of five unions, representing roughly 31,000 employees. Finally, the United Transportation Union (“UTU”) – the largest single rail union – and the Yardmasters (a division of UTU) have bargained on behalf of roughly 40,000 Carrier employees.

Two of the other three Class I carriers – Kansas City Southern and Soo Line – are also part of the Carrier group. For a complete list of the involved Carriers, see Carriers’ Submission No. 1 (Summary of Position) at 1 n.1.

For a complete list of the involved organizations, see Carriers’ Submission No. 1 (Summary of Position) at 2 n.2.

In addition to its five major unions, the TCU Coalition also includes the Transport Workers Union, which represents a small number of employees on one of the railroads.
ARGUMENT

The history of this dispute has four main parts: (1) the long experience of successful national bargaining; (2) the last round, which began in 2005; (3) the lead-up to the current round; and (4) the course of bargaining during the round itself. We address each stage in turn.

I. **THE HISTORICAL SUCCESS OF NATIONAL BARGAINING IS BASED ON THE PATTERN PRINCIPLE.**

For over 70 years, national handling has been remarkably successful in achieving the RLA’s primary goal of resolving labor disputes. As the NMB has recognized, national handling serves to minimize the number of disputes that can lead to disruptions of commerce:

> The benefit of negotiations, national in scope, is that . . . a single negotiating proceeding, if successful, disposes of problems which otherwise would probably result in hundreds of serious disputes developing at the same time or closely following one another on the various railroads of the country.


The Carriers and Unions that have participated in national handling have reached hundreds of agreements through this process with very few disruptions to commerce. *Id.* at 3. Indeed, the NMB has noted that in the past 30 years, there have been only six days of rail service disruptions due to disputes arising from national bargaining, with the last one occurring almost 20 years ago. *See* http://www.nmb.gov/publicinfo/railroad-strikes.html (App. A-22).
The reason for this history of success of national bargaining lies in the application of the pattern principle. As explained in the Carriers’ Summary of Position, the pattern principle holds that the first settlement in each national wage and rules movements sets a pattern for settlement with the other railway unions, allowing for uniform treatment of employees on common issues. See Carriers’ Submission No. 1 (Summary of Position) at 5-7 (collecting authority). National handling works, in other words, because it ensures a consistent resolution of issues from Union to Union, and Carrier to Carrier. See Alton & Emergency Board No. 242, the last PEB in a railroad case, summarized the pattern principle as follows:

The importance of pattern bargaining in the railroad industry has been the subject of commentary by a number of PEBs over the years. In each of these reports, the PEB has noted that pattern bargaining principles serve a number of functions. First, absent changed circumstances sufficient to break the pattern, they provide an objective indicator of the terms that should result from arms length, good faith bargaining between parties in the same industry, attempting to set wages and working conditions in similar jobs, at the same points in time. Second, pattern bargaining promotes stability, both internally within a carrier and externally in the industry, by utilizing referents that the Parties themselves used in prior rounds of bargaining and, depending upon the proposals, perhaps even in the current round of bargaining. Third, these principles provide benchmarks in bargaining, enhancing the likelihood of voluntary agreements. Fourth, the absence of a pattern would be much more uncertain and chaotic, encouraging groups at one carrier to attempt to outdo others, creating an undesirable and disruptive cycle. Given the critical nature of the services provided and the economic repercussions of labor disruptions, stability as a goal is even more important than in other industries. Avoiding strife and work stoppages, while ensuring that wages, benefits, and working conditions are fairly and appropriately determined, are among the principal goals underlying the RLA generally and the PEB process in particular. Fifth, patterns assist in the maintenance of well recognized parity relationships among the wages paid to employees in different classes or crafts or working at different carriers.

Southern Ry., 928 F. Supp. at 17 (App. A-2) (“Obviously if wage adjustments were to be handled on an individual carrier basis, each carrier would be deterred from settling because the possibility that a competing carrier might obtain better terms; and, by the same token, union members would be dissatisfied if employees on other railroads doing the same job received higher salaries.”).

Application of the pattern principle is, accordingly, a settled expectation in nationally handled rail labor disputes. As one commentator has noted, any union facing a pattern argument will inevitably respond by insisting that “it has the right to bargain for itself and should not be compelled to follow slavishly what another union has done.” The Railway Labor Act at Fifty (1976) (App. A-8) at 184. However, “Emergency Boards usually side with the carriers on this issue.” Id. While emergency boards have occasionally struggled with the application of a pattern when the pattern agreement contains a number of work rule changes that are difficult to translate to other crafts, that is not so where, as here, the issues are limited to compensation and benefits. Id.

Thus, the pattern principle is woven into the very fabric of this dispute. It forms a critical part of the backdrop to this bargaining round, as all of the unions were aware, from the very beginning, that the first to settle would likely set a pattern for the others. Given the long experience with pattern in this industry, the Coalitions cannot claim to be surprised that they face a pattern at this stage of proceedings. All of the unions had an opportunity to be the first to the table – this time it was the UTU. Indeed, as we now show, the Coalition Unions have benefitted from this same dynamic in the past when they were the first to settle.
II. THE 2005 ROUND OF NATIONAL BARGAINING

The Coalition Unions have pointed to the last round of bargaining – and in particular the wage increases negotiated during that round – in arguing that they deserve greater compensation increases. The Carriers agree that there is a lesson to be learned from the last round, but it is not the one the Coalitions suggest.

The national bargaining round that immediately preceded the current round began in 2005. It involved the same parties, but progressed in a rather different fashion. At the outset of that round, the Carriers were focused on negotiating a new rule with UTU that would permit one-person train crews in certain circumstances. The issue quickly became very contentious, with lawsuits, regulatory battles, and threats of legislative action.

By contrast, the Carriers were able to make progress with the RLBC and the TCU groups, and eventually reached agreement with RLBC in early 2007. As in many other rounds of national handling, the basis for settlement was reduced to core issues of compensation – both sides gave up their work rule demands. The deal with RLBC set a pattern, which the other Unions (including UTU) ultimately accepted.

At the time this deal was struck in 2007, the national economy was still booming. The housing market had not yet crashed, and the railroad industry anticipated substantial future growth in business. Given this climate, the Carriers agreed to an extremely generous – overly generous, as it turned out – wage package of 17 percent over five years. See 2007 BMWED Agreement (App. A-1).
Just a few months after the first of these agreements, the national economic downturn began.\textsuperscript{6} The U.S. stock market peaked in October 2007, followed by a precipitous decline. By mid-2008, the economy was in free-fall, with the failure of Bear Stearns, Fannie Mae and Freddie Mac, Lehman Brothers, AIG, and many others. \textit{See} The Financial Crisis Inquiry Commission, \textit{THE FINANCIAL CRISIS INQUIRY REPORT} (Jan. 2011) at 233-345 (App. A-24). Millions lost their jobs during this period. \textit{Id.} “The economy shed 3.6 million jobs in 2008 — the largest annual plunge since record keeping began in 1940. By December 2009, the United States had lost another 4.7 million jobs.” \textit{Id.} at 390. The railroads were affected as well. In 2009, the freight railroad industry experienced the biggest percentage decrease in traffic (carloads and ton-miles) since 1949. \textit{See} ASS'N OF AMERICAN RAILROADS, \textit{RAILROAD FACTS} 5 (2010 ed.) (App. A-4).

But during this period, as a result of the 2007 agreements, railroad employees were enjoying wage increases far above the national norm:

\begin{center}
\textbf{Wage Increases: 2008-09}
\end{center}

<table>
<thead>
<tr>
<th>Year</th>
<th>Unionized Railroad Employees</th>
<th>Private Sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>4.0%</td>
<td>1.97%</td>
</tr>
<tr>
<td>2009</td>
<td>4.5%</td>
<td>1.66%</td>
</tr>
</tbody>
</table>

Thus, railroads were required to pay huge wage increases during a time of extreme financial difficulty.

\textsuperscript{6} The six unions that make up the RLBC signed agreements on July 1, 2007. The UTU and Yardmasters signed agreements on July 1, 2008. The remaining Unions signed agreements from September of 2007 through October of 2008.
The clear lesson from this experience is that multi-year labor agreements with fixed compensation packages can quickly deviate from economic realities when the unexpected occurs. This hardly supports the Coalitions’ demand for yet another round of wage increases that are far out of line with national norms at a time of considerable economic uncertainty. To the contrary, the results of the 2005 round suggest that, if anything, increases in employee compensation must be moderated to balance out the windfall overpayments of recent years. That is especially so in light of renewed concerns about the current economy.

III. THE ECONOMIC, LABOR RELATIONS AND POLICY CONTEXT AT THE BEGINNING OF THE 2010 ROUND.

In 2009, as the Carriers approached a new round of national handling, they faced a number of fundamental decisions. Could they accept a contract with no changes other than wages? Should they try again to bargain for the controversial work rule changes they had sought in the 2005 round? How should they address the ever-increasing costs of the health care plans? In assessing these issues, the Carriers were, of course, influenced by the broader economic and policy context.

A. The National Economy

Entering the current round of bargaining in 2009, the nation was still recovering from the “Great Recession.” While the country’s real Gross Domestic Product growth rate was improving, growth remained (and still remains) at historically low levels. See Carriers’ Exhibit No. 6 (Report of Dr. Evans) at 23–24. Moreover, although the recession technically ended in 2009, unemployment remained very high, leading to what
many have called the “jobless recovery.” See Carriers’ Exhibit 6 (Report of Dr. Evans) at 24–26; see also THE FINANCIAL CRISIS INQUIRY REPORT (App. A-24) at 391. At best, the economy was – and has remained – fragile and uncertain.

B. The Railroad Economy

As noted above, although the rail industry did better than most, railroads were hardly immune from the disruptions of the 2008-2009 recession. The steep decline in car loadings during this period contributed to the largest percentage decrease in freight revenue – almost 22% – since 1933. See ASSOCIATION OF AMERICAN RAILROADS, RAILROAD FACTS (App. A-4) at 5. In response, the railroads slashed expenses, including laying off a large number of employees in 2009. Id. at 6. Even so, rail operating profits fell dramatically. Id. After steady improvement for several years, the railroad industry’s return on investment in 2009 was once again substantially below its cost of capital. Id. Thus, the industry was reminded that railroads cannot expect uninterrupted prosperity, and must be prepared for hard times. Excessive spending on anything – including labor costs – may have serious adverse consequences.

C. The Policy Context

Since taking office, three of the President’s most important priorities have been job growth, reinvestment in infrastructure, and health care reform, all of which are consistent with the Carriers’ position in this round.

1. Jobs

The Obama Administration has repeatedly emphasized jobs and the persistent rate of high unemployment as a barrier to renewed growth. Moreover, the Administration has explained that it does not want to just expand employment generally, but rather wants to foster “good” jobs. Earlier this year, the Secretary of Labor testified:

My goal is to help foster an economy in which good jobs are available for everyone and American workers are prepared with the skills necessary to be productive in these jobs throughout their lifetime. This means jobs that can support a family. Jobs that are sustainable. Jobs that are safe and secure. Jobs that can lift up the middle class. In short, my highest priority is to get Americans back to work in good jobs.

The Obama Administration’s definition of a “good” job is one that “will help rebuild a strong middle class,” provides “increasing incomes,” is “safe and secure and gives people a voice in the workplace[,]” and “provides access to a secure retirement and to adequate and affordable health coverage.” In other words, the Administration wants to encourage creation of more jobs with exactly the sort of compensation and benefits that are provided in railroad industry.

2. Investment in Rail Infrastructure

As part of its jobs program, the Obama Administration has identified investment in infrastructure as a top priority. See Mark Landler, “Obama Challenges Congress on Job Plan,” The New York Times (Sept. 9, 2011) (App. A-26). Transportation infrastructure, in particular, has received renewed attention. Noting that the country’s “aging system of highways, air routes, and rail lines is hindering [future] growth,” the President has urged investments to “lay a new foundation for our economic competitiveness and contribute to smart urban and rural growth.” Id.

To be sure, very little of any new public investment in infrastructure has been or is likely to directed to freight rail. Freight railroads continue to bear the burden of making their own capital investments. See Carriers’ Ex. 7 (Report of Dr. Gallamore and Mr. Gray) at 9, 18, 23-29. But the Administration’s emphasis on the need for greater infrastructure investment confirms that the railroads’ effort to expand their own investments is consistent with the national interest.

3. Health Care

A third main economic priority of the Obama Administration has been to address the escalating cost of health care. In particular, the Administration has refocused attention on how health insurance plans are designed. In a 2009 interview, the President...
challenged the notion that “more medicine. . . is automatically better medicine.”

He also expressed support for controlling excessively generous health care plans, explaining,

I think we can structure something that protects ordinary workers, makes sure that they are getting a great health care plan, but also makes sure that they’re not overpaying in a situation where they’re just giving money to health insurance companies that instead could actually be going into their pockets in the form of higher salaries.

This concern was echoed several months later by the President’s Director of the Office of Management and Budget, Peter Orszag. In testimony before Congress, Mr. Orszag explained that a “proposed tax on ‘Cadillac’ health insurance plans” would “provid[e] employers with an incentive to seek higher-quality and lower-cost health benefits.” The passage of the Patient Protection and Affordable Care Act was the culmination of the Administration’s plan to reign in overly rich health care plans. See Carriers’ Submission No. 5 (Health Care Plan Design) at 32-33.

D. The Labor Relations Context

Going into the 2010 round, the railroads were burdened with any number of onerous and outdated work rules. For example, the railroads have long had good reasons to seek reform of the following:

___________________________________________________________

12 Id.

(1) **Restrictions on subcontracting.** Existing rules impede efficient performance of work by limiting, in some circumstances, the carriers’ right to contract for sound business reasons, such as insufficient manpower, lack of necessary equipment, or customer needs.

(2) **Bid-and-bump rules.** Current rules impose a laborious and lengthy process for filing vacancies (the delay in exercise of seniority currently averages at least 35 hours per vacancy). An automatic bid-and-bump system would greatly improve utilization and availability of existing forces.

(3) **Scope and incidental work rules.** The current system of scope rules and work restrictions is hugely inefficient, preventing employees from performing work in a timely and efficient manner. Other examples of work rule issues that the carriers considered raising in this round included work site reporting, improved scheduling, staffing and employee utilization, reform of travel expense arrangements, and modification of FMLA paid leave rules.

Nevertheless, the Carriers made the determination that they would not seek work rule reform in this round of bargaining. They did so for several reasons. First, the Carriers understand that both sides have to carefully pick and choose the issues they will focus on, or impasse is inevitable.

Second, the Carriers believed that by voluntarily foregoing work rule reform, the Unions could likewise agree to set aside their own demands for work rule change. In other words, the Carriers invited the Unions to narrow the issues and focus on just the most important concerns of both sides.
Third, the Carriers set aside their demands for work rule reform because they recognized that the most important issue in this round should be to address the over-utilization problem in the health care arena. Fighting over other issues would be a distraction and impediment to getting that problem solved.

* * * *

All of these considerations – from the poor economy to the President’s call for health care reform – have shaped and defined the scope and direction of this bargaining round. And, as we now show, the issue of health care, in particular, has been the crux of the debate from the outset.

IV. THE PROGRESSION OF THE 2010 ROUND

In this round of bargaining, it was the UTU that accepted the Carriers’ invitation to put aside the distraction of other demands – from both sides – and focus on the critical questions of compensation and health care. Perhaps due to the bruising fight over work rules in the previous round, both sides quickly narrowed in on a simple quid pro quo: above-market compensation in exchange for health care reform.\(^{14}\) The terms of the UTU agreement were settled in April, 2011, and the agreement was ratified by the UTU membership on September 2, 2011. As detailed in the Carriers’ Summary of Position, the UTU agreement provides a 17% wage increase, additional compensation increases, and modest, mainstream health care plan design changes.

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\(^{14}\) Early in the process, a UTU officer acknowledged that “[l]abor’s challenge in interest-based bargaining is to have a solid understanding of carrier economics. It is not good enough to say we simply want something, because that list is endless.” Interest-Based Bargaining Key to Success, http://www.utu.org/worksite/print_news.cfm?ArticleID=51477 (App. A-29).
However, the other Unions have refused to even consider changes in plan design. From the outset, the TCU Coalition has taken the position that “there can be no justification for any concessions in health insurance or other benefits.”\textsuperscript{15} It subsequently asserted that “[w]e will not voluntarily agree to a single concession.”\textsuperscript{16} In fact, the TCU Coalition made clear from the very beginning that its only goal in bargaining was to obtain a release as quickly as possible.\textsuperscript{17} Likewise, the RLBC resisted any plan design changes from the beginning (and in fact sought additional costly benefits). Moreover, unlike most of the TCU Coalition members, the RLBC unions showed no restraint in seeking extensive changes to work rules and miscellaneous compensation extras. The RLBC Section 6 notice contained ten pages of craft-specific demands, and the RLBC never significantly narrowed the range of issues during bargaining.\textsuperscript{18}

Moreover, after the UTU tentative agreement was announced, both Coalitions essentially refused to engage in any meaningful bargaining at all. They rejected the UTU


\textsuperscript{17} The TCU Coalition unions issued their Section 6 Notices in November 2009. Direct negotiations with the NCCC began in January of 2010. The parties engaged in three separate direct negotiations until from January through July of 2010 before the TCU Coalition requested mediation. On November 3, 2010, after just three mediation sessions, the TCU Coalition sought a release. On December 14, 2010, the NMB rejected the Coalition’s petition as premature. On February 2, 2011, after only one further mediation session, the Coalition again requested a release.

\textsuperscript{18} The RLBC notice was served on December 9, 2009. The parties engaged in ten separate direct negotiations from January of 2010 through January of 2011 before entering mediation. Beginning in February of 2011, the RLBC and the NCCC engaged in seven separate NMB mediation sessions over the course of seven months.
agreement and sought immediate release from mediation. On June 15, 2011, President Scardelletti declared the UTU agreement “DOA,” and reiterated that the TCU saw “no reason for a single concession.” Likewise, the RLBC, in a letter to the NMB soon after the UTU deal was announced, categorically stated that “[w]e do not intend to bargain further in this matter.”

In fact, the member unions of the RLBC and TCU Coalitions – and most prominently the BMWED – began an unprecedented lobbying effort against ratification of the UTU agreement. In a letter dated July 21, 2011, the BMWED president asserted that the UTU tentative agreement “has placed our position at the bargaining table in jeopardy.” He further insisted that “this deal must be voted down,” and asked BMWED officers and members to distribute leaflets and other propaganda to UTU members during the ratification vote period. The BMWED also published statements on its website referred to the UTU deal as “rotten,” the UTU ratification process as “rigged,” and asserting that the UTU was spreading “myths” and “lies” about the agreement.

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These efforts to undermine ratification of the UTU agreement failed, as the membership voted by a solid margin to accept the package. But the Coalitions’ efforts to subvert the UTU agreement are revealing. It confirms that the Coalitions have always known – notwithstanding protestations to the contrary – that the UTU agreement does indeed set a pattern for this bargaining round.

CONCLUSION

For the foregoing reasons, as well as the reasons detailed in the carriers’ other Submissions, this Board should recommend a settlement based on the terms of the UTU agreement.

Respectfully submitted,

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